

DRAFT FOR ENDORSEMENT ONLY

Submission from the Second Regional Consultation on ASEAN and Human Rights to the High Level Panel on the Establishment of the ASEAN Human Rights Body

1. **WE, who** represent more than **xx** civil society and people's organisations at the Second Regional Consultation on ASEAN and Human Rights, organised by the Solidarity for Asian Peoples' Advocacy (SAPA) Task Force on ASEAN and Human Rights, from 5-7 August 2008 in Jakarta, Indonesia are:
2. **GUIDED BY** the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the more specific human rights treaties and instruments on human rights adopted by the international community, and enshrined universal values of human dignity and worth including the outcome document from the 2005 UN Summit; We:
3. **RECOGNISE** that all ASEAN countries are member states of the United Nations, and are legally obliged to respect and observe human rights and fundamental freedoms for all as stipulated in the UN Charter, have ratified the UN Convention on the Elimination of all Forms of Discrimination against Women and the UN Convention on the Rights of the Child, which recognises women and children rights as human rights, observe and respect international human rights treaties obligations ratified by the state parties;
4. **RECALL** that all ASEAN member states have voted for the UN Declaration on the Rights of Indigenous Peoples;
5. **RECALL** the Joint Communiqué of the 26th ASEAN Ministerial Meeting in June 1993 which declared that "the Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights [...] and reaffirmed ASEAN's commitment to and respect for human rights and fundamental freedoms" and that "ASEAN should also consider the establishment of an appropriate regional human rights mechanism";
6. **RECALL the** landmark ASEAN Vision 2020, where leaders jointly declared that, "We envision our nations being governed with the consent and greater participation of the people with its focus on the welfare and dignity of the human person and the good of the community";
7. **ACKNOWLEDGE** the human rights commitments and progress made by ASEAN in the Hanoi Action Plan (1999-2004), Declaration on the Commitment for Children in ASEAN (2001), Vientiane Action Programme (2004-2010), Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004), Declaration Against Trafficking in Persons Particularly Women and Children (2004), and Declaration on the Promotion and Protection of Migrant Workers (2007);
8. **EMPHASISE that** the 13th ASEAN Summit had undertaken to "strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms" through the ASEAN Charter and welcome the objective of creating a "people's centered" community.

9. **WELCOME** the establishment of an **ASEAN human rights body** under Article 14 of the ASEAN Charter to promote and protect human rights and fundamental freedoms;
10. **ACKNOWLEDGE** years of continuous civil society engagements on ASEAN human rights mechanism;
11. **WELCOME** the establishment of the High Level Panel to draft the terms of reference of the ASEAN Human Rights Body and the statement by the Chairperson of the High Level Panel on the importance “to engage ASEAN civil society in our work”;
12. **RECALL** the 2006 submissions on the three pillars of an ASEAN community from the Solidarity for Asian People’s Advocacy Working Group on ASEAN to the Eminent Persons Group on the ASEAN Charter;
13. **NOTE** the continuing commitments of civil society groups in series of national consultations on the ASEAN human rights body in Indonesia, Malaysia, Philippines, Singapore, Thailand, and Burma (Thai-Burma border) between May and July 2008;
14. Therefore, WE make this submission to the High Level Panel with regards to the drafting of the terms of reference of the ASEAN human rights body:

Part I: On the work of the High Level Panel

15. The High Level Panel (HLP) shall:
 - a. Work in an inclusive and democratic manner in **national and regional consultation with civil society groups including individuals, groups, communities and peoples, general public and in particular those who are disempowered, marginalised, vulnerable or difficult** to access, including indigenous peoples, women, migrants and migrant workers, LGBT communities, stateless, refugees, children, the aged, disabled persons and persons deprived of their liberty. These consultations shall engage groups from all sectors and thematic issues as broadly as possible.
 - b. Include **national human rights institutions** in the region in both the national and regional consultations including those specific thematic institutions such as national commission on violence against women;
 - c. Ensure that the consultative process is **meaningful and effective** through appropriate procedures, that consultation meetings should be held at least twice in the period of the drafting by the HLP, at the beginning of the process and before the terms of reference of the commission are finalised, and that draft of the terms of reference be made available prior to the consultation activities;
 - d. Establish appropriate procedures for these consultative processes to reach out to the **widest sections and largest groups of peoples of society** as much as possible at the national level through creative forms of communication that enable concerned peoples not otherwise able to participate directly in the process

to register their views on the terms of reference of the ASEAN human rights body.

- e. Establish mechanisms and processes at the national and regional level that would **ensure children's meaningful participation**, including thorough provision of access of children to relevant and appropriate information, conduct of consultation activities, and inclusion of children's perspectives and recommendations.
- f. Adopt mechanisms that allow civil society organisations to support as well as **monitor the work of the HLP**.

Part II: Mandate of the ASEAN human rights body

- 16. The ASEAN human rights body shall be called "**ASEAN Human Rights Commission**".
- 17. The commission shall be given the mandate to work on **promotion, protection and thereby the fulfillment of human rights**. Both mandates shall be treated in equal importance at all times.
- 18. The commission shall be governed by rules and principles of international laws including the **Universal Declaration of Human Rights** and all related international human rights and humanitarian laws and principles, including conventions of the International Labor Organization, and function based on the principles that "all human rights are universal, indivisible, interdependent and interrelated" including civil, political, economic, social, and cultural rights;
- 19. The commission shall **devise its own mechanisms and institutions** for the promotion and protection of human rights, including the setting up of its sub-commissions, special rapporteurs, and working groups to conduct studies and fact finding on country and thematic issues;
- 20. The commission shall appoint the **secretariat** to assist the commission in its work. Decision making roles of the staff of the secretariat shall be based on geographical representation and gender balance;
- 21. The commission shall have the following **roles**:

On Promotional roles:

- a. Develop wider **public awareness and knowledge** of human rights in the region by carrying out, publishing and distributing widely, **materials** on specific subjects; organising conferences, seminars and meetings with representatives of governments, academics institutions, civil society organisations and UN representatives in order to distribute relevant information on human rights.
- b. Develop and contribute to **human rights training** programmes for relevant groups such as the judiciary, police, military, government officials, parliamentarians, civil society organisations, national human rights institutions,

schools, universities, faith-based organisations, vulnerable groups and communities.

- c. **Advise** on national and regional **policies** and **legislations** in order to ensure synchronisation, harmonisation and compliance with international human rights laws and standards.
- d. Respond to **request for advice** from State Parties on matters concerning human rights.
- e. Help to **clarify** the application of human rights standards in line with international human rights laws and standards.
- f. Conduct **promotional country visits** with the purpose of engaging with government officials, reminding State Parties of their obligations, and promoting human rights standards.
- g. Encourage states to **ratify without reservations**, fully incorporate into domestic laws, and implement in practice international human rights treaties including the optional protocols.
- h. Encourage state to ratify the **Rome Statute of the International Criminal Court** as well as exercise universal jurisdiction over cases of war crimes and crimes against humanity.
- i. Encourage state to **report** in a timely manner to UN human rights monitoring bodies and implement their recommendations as well as fully cooperate with the UN Special Procedures and implement their recommendations.
- j. Promote the **implementation** of existing ASEAN human rights related declarations.
- k. Assist member states in setting up **national human rights institutions** in compliance with the Paris Principles.
- l. Urge that the commission including its mechanisms, institutions, and the secretariat shall be made **accessible** to civil society, individuals and groups who are disempowered, marginalised, vulnerable or difficult to access including indigenous peoples, women, migrants and migrant workers, LGBT communities, stateless, refugees, children, the aged, disabled persons and persons deprived of their liberty.
- m. **Promote its work and mandate** through civil society organisations, other relevant non-state institutions, and the media.
- n. Initiate discussions on the establishment of an ASEAN **human rights court**.

On Protection roles:

- o. Receive, inquire, analyse and decide on communications whether written or otherwise from any **individual, group of persons, parties, or civil society**

organisations alleging human rights violation including cases where states have failed to exercise *due diligence* to prevent abuses by non-state actors including corporations and armed groups.

- p. Assess and review the **general human rights situation** in the region and publish reports on recommendations for collective action at the regional level. This includes requesting member states to provide information on the human rights situation within the respective country.
- q. The report shall be made public and **widely circulated** with the help of state parties to legislatures, national human rights institutions, civil society organisations, academic institutions, the media, and general public.
- r. State Parties shall provide **periodic reports** with information on the promotion and protection of human rights, including information on specific human rights situations, where the commission may review the report with the participation of civil society organisations and national human rights institutions;
- s. The commission shall develop **procedures** on the **admissibility and prioritising** of communications in accordance with international standards.
- t. Carry out **on-site visits** to inquire on specific human rights concerns and **obtain all necessary information** during investigation of human rights violations, including unrestricted, confidential access to victims, witnesses, and places such as prisons, with a guarantee that state parties will not engage in reprisals against those providing information to the mechanism.
- u. Issue **urgent letters** (including press statements and letters of inquiry) to request government action in response to information received.
- v. Issue progress reports and recommendations to the relevant state to adopt measures to remedy any violations identified including reparation for victims.
- w. Whenever the commission considers a complaint in need of **urgent action**, it will issue an urgent communication to the government where upon the government must provide the commission with information within 30 days, as to the steps it has taken to remedy the said situation.
- x. The commission shall transmit **findings, decisions, and recommendations** including those from urgent communications and fact-finding missions to the states concerned. To help ensure compliance, state parties shall report within 90 days on steps proposed to give effect to the findings or decisions of the commission. A mechanism should be established to follow-up on information pertaining to compliance and implementation of remedies and recommendations of the commission.
- y. Where it has concluded that the member state has committed widespread and systematic human rights violations, the commission shall be authorised to refer the matter to the ASEAN Summit as a serious breach of the charter in accordance with article 27(2) on **non-compliance**.

- z. Take measures to **protect** from violence, threats of violence, and any other form of intimidation the complainants, witnesses, persons undertaking the investigation activities, and other persons otherwise involved in the investigation of human rights cases.
 - aa. Develop an **early warning system** to prevent gross violations of human rights.
 - bb. The commission shall have the power to request **suspension of the application of any legislative and executive steps** that have created or may create blatant human rights violations such as Internal Security Act or National Security Act.
 - cc. The commission shall create mechanisms for the protection on **human rights defenders** based on the UN Declaration on Human Rights Defenders,
 - dd. The commission shall establish **independent and impartial mechanisms** to deal with trans-boundary problems including regional concerns including stateless persons, refugees, undocumented and documented migrant workers, indigenous peoples, and trafficked persons.
22. The Commission shall consult and cooperate with international, regional, national and local institutions including civil society organisations, national human rights institutions and United Nations agencies and offices with competence in the field of human rights promotion and protection.

Part III: On the Composition and Structure of the Commission

23. The commission and its members shall be **independent**, especially from government and non-state actors such as corporations, and in line with the criteria of the mandate-holders under the Special Procedures of the United Nations and guided by **Paris Principles**.
24. The commission shall be **placed above the three community councils** so that human rights serve as an overarching mechanism for all matters and conducts of the three ASEAN community councils.
25. Members of the commission shall be appointed for their integrity, impartiality, professionalism, commitment and **competence in human rights**; due consideration should be paid to selection of representatives from civil society sectors, based on geographical and gender balance. They shall act as independent experts and shall not act as representatives of governments.
26. The **selection process** shall be **transparent and involve extensive and meaningful consultations** with civil society groups, giving due consideration to feedback and suggestions by civil society organisations.
27. Members of the commission shall be appointed for a **5-year non-renewable** term.
28. Members shall be given **privileges and immunities according to provisions specified under relevant international instruments including the Convention on the Privileges and Immunities of the United Nations** by the state parties in order to conduct their works.

Part IV: On the Sub-commissions and Secretariat

29. The commission shall be open for the **creation of sub-commissions**, including sub-commissions on women, children, migrant workers, indigenous peoples, and others.¹
30. The **criteria** for qualification and selection of sub-commissioners shall be the same as those for the commissioners. **In addition, the sub-commissioners shall be experts and have the relevant qualifications in their respective mandate.**
31. In the creation of the sub-commission on women, the HLP shall be guided by the Declaration on the Elimination of Violence against Women in the ASEAN region. In particular, the HLP shall take into account that ASEAN had agreed individually or collectively to implement and monitor:
- a. The promotion of an understanding of the nature and causes of violence against women, and changing societal attitudes and behavior
 - b. The elimination of all forms of discrimination against women
 - c. The investigation, prosecution, punishment and where appropriate, the rehabilitation of perpetrators, and to prevent the re-victimisation of women and girls.
32. The provision above shall be implemented without prejudice to UN human rights treaties and other instruments in particular on the Convention on the Elimination of all Forms of Discrimination against Women and the UN Declaration on Violence against Women; where the said declaration falls short of international norm, the latter shall prevail.
33. The Sub-Commission on Children's Rights (SCC) shall be established in accordance with the Convention on the Rights of the Child, the Optional Protocol on the Sale and Trafficking of Children, the Optional Protocol on the Involvement of Children in Armed Conflict, and the ASEAN Declaration on the Commitments of Children in ASEAN.
34. In all processes and decisions, and in the performance of all its tasks and functions, the SCC shall adhere to the following principles:
- a. Primacy of the best interest of the child;
 - b. Recognition of children's evolving capacities and their right to participation;
 - c. Protection of children from all forms of abuse, exploitation and violence;
 - d. Non-discrimination on the basis of sex, age, culture and ethnicity, religion, class, geographical area and differing abilities.
35. The SC on Children's Rights shall recognise and consider the results and recommendations of the United Nations Study on Violence against Children.

¹ The ASEAN Commission on the Promotion and Protection of Women and Children and the ASEAN Instrument on the Promotion and Protection of Migrant Workers, once set up, shall be subsumed under the ASEAN human rights commission.

36. In the creation of the sub-commission on migrant workers, the sub-commission shall promote and protect the rights of **all** migrant workers, shall implement the ASEAN Declaration on the Protection and Promotion of Migrant Workers.
37. The secretariat of the commission shall be independent from the ASEAN secretariat and shall be given **adequate resources**. The secretariat shall include professional staff selected in an open process ensuring the participation of civil society organizations.

Part V: Financial

38. ASEAN governments shall provide adequate financial support to the commission.
39. The commission shall have fiscal autonomy from ASEAN governments.

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