‘An ASEAN human rights mechanism is a worthy idea that must be pursued’

ASEAN heads of state adopt blueprint of ASEAN Charter

THE CONCEPT OF A human rights mechanism was part of the recommendations the Eminent Persons Group (EPG) submitted to the heads of state of the Association of Southeast Asian (ASEAN) for the ASEAN Charter. Their recommendations were endorsed in a Declaration during the Cebu Summit last January 2007.

The provisions of the Charter, will be legally binding on all ASEAN member states. This means that if the adopted Charter mentions the establishment of a regional human rights mechanism, ASEAN will be empowered to finally establish it.

The recommendation states: “The EPG believes that ASEAN should continue to develop democracy, promote good governance and uphold human rights and the rule of law. The EPG discussed the possibility of setting up of an ASEAN human rights mechanism, and noted that this worthy idea should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of human rights of every individual in every Member State.”

The Working Group for an ASEAN Human Rights Mechanism (Working Group) commended the EPG, for including the issue of human rights in their recommendations. “The blueprint is a very positive development,” said Ray Paolo Santiago, Working Group Program Manager. “We will continue to meet with ASEAN not merely to achieve paper victories, but to seek ways on how we can work together to realize these commitments.”

The Working Group has been engaging ASEAN since 1996 when it launched its campaign for ASEAN to consider the establishment of a regional human rights mechanism. It will be recalled that in 2005, ASEAN asked the Working Group to assist in implementing the human rights provisions of the Vientiane Action Programme (VAP). Since then, the Working Group has undertaken studies, workshops, roundtable discussions, and meetings on the VAP.
WORKING GROUP UPDATES

Jakarta Roundtable Discussion:
How to support the Vientiane Action Programme

Indonesian Working Group co-hosts
the Second Roundtable Discussion

IN 2005, THE Working Group for an ASEAN Human Rights Working Group Mechanism was tasked by ASEAN to help implement activities for the four human rights areas of the Vientiane Action Programme (VAP). How the Working Group will do this was further discussed at the 2nd Roundtable Discussion entitled “Challenges and Opportunities in a Caring and Sharing Community” on December 18, 2006, in Jakarta, Indonesia.

The VAP is to be implemented until 2010, which means that ASEAN should have evolved into a stronger community. The gap between developing countries and their prosperous neighbors in the region should also have narrowed by then. Human rights must also be a part of this equation.

Working Group members and representatives from ASEAN foreign ministries and NHRIs discussed the four VAP human rights provisions and provided updates on current activities on those areas, as well as recommendations on how to implement them further.

The Roundtable also urged ASEAN member-countries that haven’t done so to ratify the International Convention of the Rights of All Migrant Workers and their Families and other bilateral arrangements.

Website revitalized

The website of the Working Group for an ASEAN Human Rights Mechanism (www.aseanhrmech.org) has a new look. Changes were made to be more user-friendly. The news section now includes the media room, a page with links to articles on the ASEAN human rights mechanism. There is also a section on each of the National Working Groups.

The website was created to provide the Working Group’s target audiences in the region and beyond with timely information on its activities. It is also meant to be the Working Group’s main communication hub, where visitors can learn more about the members of the Working Group, connect to the Secretariat, and subscribe to the Human Rights Herald.

“With the [ASEAN] Declaration [on migrant workers] in place, we hope that ASEAN can become a model of regional cooperation on the promotion and protection of migrant workers,” said Executive Director Mariano Dumia of the Migrant Worker Affairs Office, Philippine Department of Foreign Affairs.

On human rights promotion, successful non-formal methods for human rights education (HRE) were discussed. The Roundtable suggested that UNESCO publish a compilation of best practices in HRE in the ASEAN region. Ministries of education were encouraged to look at the framework of action for integrating HRE in formal school curriculums provided by the World Programme on Human Rights Education.

The Roundtable expressed support for the establishment of a commission on the promotion and protection of the rights of women and children. The Working Group sees the commission as a step towards a general human rights mechanism which will cover the rights of all sectors. As such, the Roundtable emphasized the importance of Mahidol University’s (Thailand) research on the establishment of a commission on the promotion and protection of women and children’s rights.

The Roundtable also encouraged the national human rights institutions (NHRIS) of Malaysia, Indonesia, Philippines, and Thailand to undertake more regional activities for human rights.

“IT would also help if our existing NHRIs can encourage other ASEAN countries to establish their own. They can initiate this through confidence-building measures, such as invitations to their activities,” said Dr. Sripapha Petcharamesree of the Thai Working Group.

Most people in the region do not know about ASEAN’s work and are unable to relate it with their lives. “Take the ASEAN Charter, for instance,” said Working Group Co-Chair Marzuki Darusman, “The ASEAN Charter will have an impact on ASEAN people so they should be informed and made aware of what is to be contained in the Charter.” He noted that ASEAN has held consultations with civil society in the Charter drafting process and that civil society participation should be institutionalized.

The Working Group organizes yearly Roundtable Discussions to facilitate continuous dialogue and interaction between the Working Group and ASEAN.
Experts discuss proposed ASEAN Commission on Women and Children’s Rights

Thai Working Group bares results of regional consultation

THE OFFICE OF Human Rights Studies and Social Development (OHRSD) of Mahidol University, Thailand in coordination with the Thai Working Group for an ASEAN Human Rights Mechanism (TWG), organized a consultative meeting with experts on the proposed ASEAN commission on women and children’s rights on April 3-4, 2007.

The OHRSD has been tasked by the Working Group for an ASEAN Human Rights Mechanism (Working Group) to conduct a research study to determine the type of commission that can be established in ASEAN based on existing national and international agreements and laws on women and children’s rights.

The consultative meeting was organized to solicit recommendations from experts on the establishment of the commission. Professor Vitit Muntarbhorn, United Nations human rights expert and the co-chairperson of the Working Group, chaired the discussions.

The experts’ meeting suggested that a discussion of a Commission on Women and Children’s Rights must take off from the following strategic policy points for the ASEAN Charter: the Charter must refer to human rights and the need for a human rights mechanism; it must refer to the need for the establishment of an ASEAN Commission on Women’s and Children’s Rights; and it must invite governments to elaborate on the establishment of a human rights mechanism through an ASEAN instrument to be drafted within one year after the adoption of the ASEAN Charter.

The drafters of the instrument for an ASEAN mechanism will have to contend with and resolve the following issues: the system by which individuals can report complaints; the power to conduct field visits; reporting by member-states to the commission; the creation of a secretariat; accountability of violators; the process of selection of those who will sit in the commission; timeframe for implementation; and funding.

The experts meeting recommended that the proposed ASEAN Commission on Women and Children’s Rights have the following provisions: ensure the promotion and protection of human rights, particularly women’s and children’s rights; ensure consistency with international standards, inputs from civil society regarding the establishment and functions of the commission; ensure that the commission has the power to advise and make non-binding recommendations.

OHRSD Director and TWG member Dr. Sriprapha Petcharamesree said that these inputs will be crucial to the study. The results of the study and its recommendations will be available at the end of 2007.

Manila workshop tackles NHRIs, ASEAN Charter

AS OPPORTUNITIES FOR human rights in the region grow, so is the role of the Working Group for an ASEAN Human Rights Mechanism (Working Group). To address developments and to plot out its course of action in 2007, the Working Group held a strategic planning meeting on March 21-22.

A breakthrough is the recommendation of the Eminent Persons Group to include the promotion of human rights in the ASEAN Charter. It also called for the exploration of the idea of a regional human rights commission. The High-Level Task Force (HLTF) which is drafting the Charter is now consulting with civil society groups. For their part, Working Group members are meeting with HLTF members from their respective countries to include the regional human rights commission. This must be done before the first draft is submitted in July 2007. If this is included in the Charter, the Working Group will propose a blueprint for the regional human rights commission.

Another development is the increasing collaboration among the national human rights institutions (NHRIs) of the Philippines, Thailand, Indonesia, and Malaysia. 2007 may see more joint activities and a closer, more formal cooperation. The Working Group is encouraged by these advances and will work closely with the NHRIs.

The promise of having the ASEAN Charter and the cooperation among NHRIs bodes well for the Working Group. “For 12 years we have been working hard for an ASEAN human rights mechanism. Finally we see a light of hope. The challenge now is to formulate what shape the mechanism will take,” says Malaysian Working Group Chair and former U.N. rapporteur Dato Param Cumaraswamy.
Surayud government supports creation of ASEAN Human Rights Commission

THAI PRIME MINISTER Surayud Chulanont assured a visiting delegation from the Working Group for an ASEAN Human Rights Mechanism (Working Group) of his government’s support for the ongoing initiative to establish an intergovernmental commission for human rights. “Even though we are not an elected government, we are committed to promoting human rights,” Surayud declared during their meeting on 1 March 2007 at the Government House in Bangkok.

A few days later, at an Association of Southeast Asian Nations (ASEAN) foreign ministerial retreat in Cambodia, Thai Foreign Minister Nitya Pibulsonggram told the assembly that it must move forward to establish a regional mechanism for human rights protection.

Former Philippine Senator Wigberto Tañada, a member of the delegation that met with Surayud, said that the Working Group is encouraged by the Thai government’s positive response and will relay it to the high-level task force that is drafting the ASEAN Charter. If the establishment of the regional human rights commission is included in the Charter, member-states will have a basis for its establishment. To date, Asia is the only region in the world without an intergovernmental human rights commission.

“It will take years to change the Charter. Thus, it is important to have human rights included in it from the very start,” explained Working Group Co-chairperson and Indonesia’s former Attorney-General Marzuki Darusman. Surayud agreed, “We at ASEAN have had discussions for 40 years but the time has come for action.”

The delegation and the Prime Minister also discussed possible activities that the Working Group and the Thai government can undertake in pursuit of the Thai human rights agenda. Chulanont asked Thai Working Group Chair Praphan Hutasingh to hold future human rights activities with the Justice Ministry and the Social Development and Human Security Ministry.

On his government’s human rights agenda, Surayud said: “We would like to see a fair treatment for all Thais and are open to opportunities where we can work with civil society.”

Working Group lauds ASEAN declaration on migrant workers

THE HEADS OF the member nations of the Association of Southeast Asian Nations (ASEAN) signed the Declaration on Migrant Workers during their 12th Summit held in Cebu City, Philippines in January 2007. The Declaration protects the rights of migrant workers and their families and spells out the obligations of the region’s labor-supplying and receiving countries.

“Crimes are committed across national boundaries and instigated by international syndicates. ASEAN must commit to adopting measures to curb the occurrence of these nefarious activities,” said Philippine Foreign Affairs Undersecretary Esteban Conejos.

The Working Group for an ASEAN Human Rights Mechanism (Working Group) lauded ASEAN for passing the Declaration which calls for decent working conditions, protection from abuse, and proper wages for migrant workers. Working Group Co-chair Marzuki Darusman said, “This is a positive step in safeguarding the fundamental rights and dignity of migrant workers across the region.”

Darusman, a member of the Indonesian parliament and former attorney general, noted that while the Declaration “does not contain specific terms on how to implement its provisions” and is not legally-binding, “This is still a significant move towards the creation of a human rights instrument or convention”.

He said that the Working Group is looking forward to hearing the report on the status of implementation of the Declaration at the next ASEAN Summit.

The Working Group will compare this report to its ongoing research on laws and policies in ASEAN regarding migrant workers. The research study examines the similarities and differences of protection measures existing in ASEAN and assesses the strengths and limitations of these measures. The Working Group intends to use the study to make recommendations on the shape and substance of the ASEAN migrant workers instrument.
WORKING GROUP UPDATES

ASEAN security community needs human rights mechanism

THE 14TH ASEAN Colloquium on Human Rights, organized by ASEAN-ISIS on May 4-5, 2007, explored the role of a regional human rights commission in strengthening an ASEAN Security Community.

In her keynote speech, Undersecretary Erlinda Basilio of the Department of Foreign Affairs of the Philippines emphasized that the Vientiane Plan of Action of the ASEAN Security Community is not only about the promotion of education and public awareness on international human rights. It also calls for the establishment of a network among existing human rights mechanisms.

“An ASEAN Human Rights Mechanism can begin from the bedrock of ASEAN consensus,” Basilio said. At the moment, all ASEAN states have ratified two international instruments, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). “Between the CRC and CEDAW, practically all human rights and fundamental freedoms are covered and protected. Given the list of rights in the CRC, it has the potential to overwhelm a human rights mechanism of a small ten-member regional organization like ASEAN,” she said.

Secretary General Carlos Medina, Jr. of the Working Group for an ASEAN Human Rights Mechanism highlighted what a human rights system can do for the ASEAN Security Community: “The promotion of human rights is an activity under the political development thrust of the ASEAN Security Community. The creation of a transnational human rights mechanism will signify ASEAN’s willingness for democracy and peace for the region, which are what the Security Community aspires to achieve.”

OHCHR holds workshop on human rights mechanisms

WHAT CAN SOUTHEAST Asia learn from the regional human rights systems of Europe, Africa, and Latin America? High ranking government officials, representatives from the four National Human Rights Institutions (NHRIs) in Southeast Asia, and NGO representatives drew from the experiences of other regions in a workshop organized by the U.N. Office of the High Commissioner for Human Rights (OHCHR) on February 26-27, 2007 in Bangkok, Thailand.

Three experts from Africa, Europe and Latin America introduced their respective regional systems.

Jeremy McBride talked about the experience in Europe, suggesting that there is no single solution for solving the problems that come with promoting and protecting human rights. Within the framework of the Council of Europe, there are mechanisms based on complaints by individuals, groups or states; investigative procedures and supervision of reports submitted by member states.

Christina M. Cerna reported on the Latin American system, particularly on the Inter-American Court of Human Rights.

Frans Viljoen, introduced the African system. He shared that an African Court was recently established to strengthen the protection and promotion of human rights in the region.

Dr. Srirapha Petcharamesree of the Working Group for an ASEAN Human Rights Mechanism summed up the significance of the workshop in her opening remarks: “This workshop is of particular interest to ASEAN so it can learn and finally decide, on its own, the design of the commission. I would like to reiterate the fact that the Working Group has been proposing various options to ASEAN, including the establishment of an intergovernmental ASEAN human rights commission with a broad mandate covering all categories of rights. This ultimate goal could be materialized only if ASEAN shows its political will and honor its commitment.”
Plans advance for Cambodian National Human Rights Institution

CAMBODIA IS POISED to become the fifth ASEAN nation to establish a National Human Rights Institution.

At a conference in Siem Reap in September 2006, Cambodian Prime Minister Hun Sen declared his support for the creation of an NHRI based on the Paris Principles in Cambodia. Civil society and the government have since worked together to make this happen. On February 7, 2007, representatives from government and the Cambodian Working Group for an ASEAN Human Rights Mechanism (CWG) held a meeting to finalize the action plan that will give rise to the establishment of a NHRI.

The two sectors grouped into a joint working committee which will do the groundwork for the establishment of the NHRI. Civil society representatives led by CWG Chair Kem Sokha, are tasked with drafting the law creating a NHRI.

Representing government, Om Yentieng, chairperson of the Cambodian Human Rights Committee, said that the joint working committee will observe the structures of other NHRIs, study international human rights laws and invite human rights experts to provide inputs while the law is being drafted.

To make the process as transparent as possible, the first draft of the law will be available to the public for feedback from August 2007 to July 2008. The public will be constantly updated on the draft's progress. The final draft law will be submitted to the Cambodian National Assembly between April and June 2009.

“The Working Group is greatly encouraged by these developments. We can extend our technical support and bring in resource persons to share their expertise on building an NHRI,” said Working Group Secretary General Carlos Medina, Jr.

One of the core aims of the Working Group for an ASEAN Human Rights Mechanism is to support the establishment of national human rights institutions (NHRIs) in each country in the region. While NHRIs need the support of governments, it is important that they are independent and able to make fair, unbiased decisions, especially in cases that involve government personnel. To date, only the Philippines, Thailand, Malaysia and Indonesia have NHRIs.

Chairperson Dr. Purificacioius Quimbo and Ambassador Alistair MacDonald (2nd from right) of the European Union during the ceremonial signing of the contract.

European Commission funds NHRI collaborative projects

THE COMMISSION ON Human Rights of the Philippines (CHR) was given a grant by the European Commission for human rights projects. The grant from the European Community, amounting to 900,000 Euros, is expected to be used for the improvement of human rights standards in the Philippines, Indonesia, Thailand, and Malaysia.

The projects will be implemented over a period of 36 months with activities such as meetings, conferences and workshops aimed at spreading awareness on the need for an ASEAN human rights mechanism. The funding is meant to institutionalize collaborative mechanisms among the NHRIs and facilitate the exchange of best practices and information among themselves.

“This important project, implemented by the Commission on Human Rights in Manila, marks an important step in strengthening human rights efforts in the ASEAN region. Its success will help strengthen ASEAN’s efforts to build the caring, sharing, community foreshadowed at the Cebu Summit,” said Ambassador Alistair Macdonald, head of delegation of the European Commission to the Philippines.
**European Court of Human Rights.** The African Union has its African address, human rights concerns. The European Union has its Commission or Commissions could evolve into human rights courts. Specific human rights issues, can be established. Eventually, the strengthening its mandate. Or more Commissions, each focusing on and gain in influence, the Commission can enlarge its scope and increase in number, as the networks promoting human rights expand and protect the rights of women and children. This is a modest establishment of an ASEAN Commission on the promotion and protection of human rights is pervasive in our region. To my mind, this means, the establishment of an ASEAN human rights mechanism as enjoined by the Vienna Declaration of the Second World Summit on Human Rights.

That, of course, is not easily done. The political and economic situation of each member of the ASEAN family is unique. ASEAN Governments are not uniformly comfortable in working with a fully empowered regional human rights mechanism—that is obvious.

Hence, our best option is for a gradual or “building block” approach to the establishment of a regional human rights mechanism. Thus the Vientiane Action Programme provides for the establishment of an ASEAN Commission on the promotion and protection of the rights of women and children. This is a modest step—but very feasible. And it serves as basis for further initiatives.

Over time, as national human rights institutions mature and increase in number, as the networks promoting human rights expand and gain in influence, the Commission can enlarge its scope and strengthen its mandate. Or more Commissions, each focusing on specific human rights issues, can be established. Eventually, the Commission or Commissions could evolve into human rights courts.

We know that we lag behind other regional groupings in addressing human rights concerns. The European Union has its European Court of Human Rights. The African Union has its African Commission on Human and People’s Rights. And the Organization of American States has its Inter-American Commission on Human Rights and its Court of Human Rights. We have no such regional mechanism.

So we have to catch up. In the foreseeable future we have to advance far enough to catch up—for at stake in the establishment of an ASEAN human rights mechanism is our credibility as a regional organization, our standing in the eyes of the world and our idea of ourselves as a caring and sharing community.

Moreover, in a globalized world where fundamental issues are intertwined, at stake is also our economic competitiveness. There is a real and heavy economic cost to impunity or even just negligence in addressing the issue of human rights. The people will not bear that cost indefinitely.

We must find the most practical ways to move forward to the establishment of an ASEAN human rights mechanism without causing the jolt that will set back our efforts.

This is an excerpt from the keynote speech delivered in the 2nd Roundtable Discussion on Human Rights in ASEAN: Challenges and Opportunities for Human Rights in a Caring and Sharing Community last 18-19 December 2007 in Jakarta.

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**Senator Wigberto Tañada**

‘People must be assertive of their rights’

**SENATOR WIGBERTO TAÑADA**, or “Ka Bobby” as he is fondly called in human rights circles in his country, is the chairperson of the Philippine Working Group for an ASEAN Human Rights Mechanism (PWG). He is recognized in the region as a crusader for democracy and a leading light of the human rights movement.

A lawyer who defended political activists and human rights victims when the country was under martial rule, he was elected to the Philippine Senate in 1987 where he served until 1995. As chair of the Senate Committee on Justice and Human Rights, he prepared two landmark reports on the Philippine human rights situation after the peaceful “people power” revolution of 1986. He authored and co-authored significant bills strengthening the Commission on Human Rights and supported the cause of marginalized sectors.

Whenever there is a human rights crisis in the Philippines, Ka Bobby is there to lend legal and moral support. With the recent wave of extra-judicial killings of journalists and political activists, he has called for a clean-up of the justice and law enforcement systems. He also emphasized the importance of human rights awareness: “People must be assertive of their rights,” he said.

Ka Bobby’s advocacies extend to the international scene. In 1994, he called for support for the people of East Timor. “The issue of human rights must not be subordinate to any temporary economic benefits that may be gained in our relationship with other nations,” he said. “The plight of East Timor is a source of concern and outrage for any nation that truly values the human rights of its people”.

He now leads the Philippine Working Group in calling for establishment of a regional human rights commission by the ASEAN Charter.

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**VIEWPOINT**

Challenges and opportunities for human rights in a caring and sharing community

**By: H.E. Dr. Hassan Wirajuda,**

Minister for Foreign Affairs

Republic of Indonesia

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Reasons for optimism

THE FIRST-EVER ASEAN Charter draft is nearing completion. In just a few months, the ASEAN heads of state will adopt this binding document that will bestow a legal personality on ASEAN.

In the 12th ASEAN Summit in Cebu, the Eminent Persons Group’s (EPG) recommendation to the high-level task force (HLTF) was to consider the establishment of an ASEAN human rights mechanism as a worthy idea that should be pursued.

Soon after, various sectors responded with strong expressions of support. Civil society groups sought an audience with representatives of the HLTF during its region-wide consultation for the Charter on 27 March 2007. Back in their own countries, members of the national working groups of the Philippines, Indonesia, Malaysia and Thailand lobbied for the regional human rights mechanism with their respective HLTF representatives.

In the 14th ASEAN Institute for Strategic and Development Studies (ISIS) colloquium on human rights, human rights specialists and the academe deliberated on the role of a human rights commission for the ASEAN security community.

Support from governments is increasing. Prime Minister Surayud Chulanont of Thailand has said that his government is pro-human rights and is for the creation of a regional mechanism for human rights. This was affirmed by Thai Foreign Minister Nitya Pibulsonggram during the ASEAN Ministerial Retreat in Siem Reap on March 4, 2007. There have also been calls of support from the foreign affairs ministries of Indonesia, Malaysia, and the Philippines.

The clamor for human rights promotion and protection at a regional level is clearly growing. We enjoin other sectors—the media, parliamentarians, and human rights advocates at the local level—to continue supporting the establishment of a regional human rights mechanism. With the Charter, ASEAN will evolve. This is our way of ensuring that it evolves into a truly caring, sharing community where human rights have a place.

Carlos P. Medina Jr.