High Level Panel wraps up work on ToR for AHRB

THE HIGH LEVEL Panel (HLP) on an ASEAN human rights body (AHRB) will present to the ASEAN Foreign Ministers the final draft of the Terms of Reference (ToR) for an AHRB for approval and adoption during the 42nd ASEAN Ministerial Meeting in Thailand in July 2009.

Once the ToR has been adopted, the AHRB is expected to be established. It is also anticipated that the AHRB will be formally launched during the ASEAN Summit in October by way of a declaration.

During the period between its launching and adoption, the ASEAN member states are expected to select and appoint their respective representatives who shall serve for a term of three years. These representatives will then draft the AHRB’s work plan and programme of activities for the next five years for approval by the ASEAN Foreign Ministers.

It is also in this process of drafting the work plan where the representatives are expected to design activities that will balance the promotion and protection of human rights.

In the past 12 months, the HLP has held monthly meetings in the different ASEAN countries gradually moving their discussions forward despite the challenges of negotiating and compromising.

Their dialogue with experts in Geneva and Strasbourg last April aimed to contribute to broaden their perspectives on the different human rights systems.

Their consultations with civil society and sectoral bodies demonstrated how ASEAN is now opening up to engagements with CSOs and is striving to become more people-oriented.

The HLP submitted a first draft earlier this year to the ASEAN Foreign Ministers for their comments. The essence of the draft was presented to the CSOs in a consultation last March in Kuala Lumpur, Malaysia.

8th Workshop to tackle implementation of ToR

The 8th Workshop on an ASEAN Human Rights Mechanism will be held in Bangkok, Thailand on 14 to 15 July. The workshop, which is co-sponsored by the Foreign Ministry of the Kingdom of Thailand and the Working Group for an ASEAN Human Rights Mechanism, anticipates the adoption by ASEAN of the Terms of Reference (ToR) for the establishment of an ASEAN human rights body, will discuss the implementation of the ToR.

It will also receive updates from parallel processes in establishing other human rights mechanisms, such as commissions on women, children, and migrant workers.

The workshop is co-organized annually by the Working Group with a host ASEAN state through its Foreign Ministry, and its national human rights institution, if it has one. Past workshops have been held in Jakarta, Manila, Kuala Lumpur and Singapore.
High Level Panel holds second consultation with CSOs

THE ASEAN HIGH Level Panel (HLP) had its second meeting with civil society organizations in Kuala Lumpur in March to update them on the status of the terms of reference (ToR) for the establishment of an ASEAN human rights body (AHRB). Their first encounter was in September 2008. The meeting was in line with the HLP’s efforts to keep the process of drafting the ToR open and participatory.

Present were the Working Group for an ASEAN Human Rights Mechanism (Working Group), the ASEAN National Human Rights Institutions Forum (NHRI Forum), the Solidarity for Asian People’s Advocacy-Task Force on ASEAN and Human Rights (SAPA-TFAHHR) and the Women’s Caucus for the ASEAN Human Rights Body (Women’s Caucus).

Among other interventions, the CSOs emphasized that the ToR should maintain a balance between the AHRB’s human rights promotion and protection mandates; that the AHRB must exercise its functions with a degree of independence and impartiality; and that civil society participation be integrated in the mandate of the AHRB. The recommendations submitted by CSOs during the September consultation in Manila were reiterated with more urgency, given the expected establishment of the AHRB in July 2009.

The HLP representatives shared their sentiments on the issues and concerns raised by the CSOs. On the contentious issue of non-interference, a number of HLP members observed that this principle is also contained in the Charter of the United Nations. Ambassador Rosario Manalo of the Philippines reiterated however that while non-interference is an aspect of sovereignty, it is not absolute.

Mr. Rachmat Budiman, the HLP alternate member of Indonesia, emphasized that the HLP will strive to ensure a balance between promotion and protection by identifying possible areas to be covered by the ToR such as “information dissemination and education, standard-setting, monitoring, technical assistance and advisory services.”

While pointing out the shortcomings in the draft ToR, the CSOs also expressed the need for ASEAN to continue the process of engagement and meaningful discussions with CSOs, to facilitate communication and to understand each other’s views and opinions.

HLP Chairperson Ambassador Sihasak Phuangketkeow of Thailand said that the HLP “looks forward to the support, encouragement as well as the exchange of views from civil society representatives on this important process”. He added, “The HLP [continues] to regard the civil society groups as partners who have their own convictions and aspirations.”

Mr. Bilahari Kausikan, HLP Member of Singapore, emphasized that the ToR “cannot settle everything” but is “an enabling document” that will allow the AHRB to operate in light of the evolutionary approach. For his part, Ambassador Phuangketkeow said that for a human rights system to evolve, it will need a foundation. “The AHRB will lay the groundwork for further development on the promotion and protection of human rights and [this body will] continually be strengthened in the future.”


Key Features of the AHRB in the Draft ToR

(As of February 2009)

1. Purpose:
   a. To promote and protect human rights and fundamental freedoms, bearing in mind regional particularities and mutual respect for different backgrounds as well as the balance between rights and responsibilities;
   b. To uphold international human rights standards.
2. The primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State.
3. Approach: constructive, non-confrontational and evolutionary.
4. Form: An intergovernmental, consultative body; decision-making is by consultation and consensus.
5. Key mandates and functions include:
   a. Develop an ASEAN Human Rights Declaration;
   b. Obtain information from Member States on the promotion and protection of human rights.
6. Membership: One representative per Member State shall serve for a term of three years and shall be accountable to the appointing government.
7. Frequency of meetings: Two regular meetings each year; special meetings as necessary.
8. Funding: The AHRB shall be funded by Member States but it may also accept funding from other sources solely for human rights promotion, capacity building and education.
Philippine Working Group hosts CSO dialogue with Ambassador Manalo

SOON AFTER THE High Level Panel (HLP) submitted the first draft of the Terms of Reference (ToR) for an ASEAN Human Rights Body (AHRB) to the ASEAN foreign ministers in Hua Hin, Thailand, a discussion on the draft was convened by the Philippine Working Group for an ASEAN Human Rights Mechanism in Makati City on March 3, 2009 with Ambassador Rosario Manalo, Philippine HLP member, as the main speaker.

The discussion served as a venue for civil society stakeholders to share their views on the draft ToR, engage in a constructive dialogue with the Philippines’ representative, and make their recommendations. The dialogue was attended by some 90 individuals from government, civil society groups and the diplomatic corps.

In her briefing, Ambassador Manalo said that the approach taken by the HLP and the thrust of the ToR can be summed up in four words: [the AHRB should be] realistic, credible, evolutionary and effective.

After giving a background on the process and how far the HLP had done its work, she said that while it was not perfect or complete, the draft ToR was “substantive enough” to move the process forward.

During the open forum, the questions revolved around the nature of the body, the meaning of the term “consultative body”, the evolutionary approach as it applies to the development of the AHRB, the independence of the AHRB, the mechanisms by which the AHRB can include broad and regular consultations with civil society, and how an effective feedback mechanism can be put in place.

Ambassador Manalo admitted that the meaning of “consultative body” was not very clear at the beginning and was the subject of intense discussion in the HLP but that it was finally clarified to mean that the decision-making process of the AHRB will follow the same process in the Charter, which is by consultation and consensus.

On the “evolutionary approach”, she observed that everything in the AHRB, from its inception to the current negotiation process and beyond, is a work in progress. She added that the creation of a regional court may be too far-fetched at the moment, considering that ASEAN should first build knowledge and expertise on human rights. Nevertheless the establishment of a court may serve as a vision for the future.

On the matter of “independence”, the term is interpreted as allowing every ASEAN member-state the independence to choose its representative to the AHRB after consultation with civil society. This representative could come from the academe, grassroots, research foundations, etc. but once appointed, is accountable to the appointing government.

In her final remarks, Ambassador Manalo emphasized the need for sustained advocacy against cultural relativism. She said that civil society groups should see to it that the human rights values and practices that the region seeks to evolve uphold universally accepted human rights standards.

She concluded by stressing that the discussion boils down to just one thing: that government and civil society are partners who should have a constructive discussion and advocate for the promotion and protection of human rights. Ambassador Manalo further emphasized that as partners, both governments and civil society should learn to recognize their limitations and find a way to remove elements that create distrust.

Singapore CSOs form National Working Group

FROM AN INTERIM organization, the Singapore Working Group for an ASEAN Human Rights Mechanism (SWG) finally became a full-fledged National Working Group (NWG). Mr. Marzuki Darusman, Co-Chairperson of the Working Group for an ASEAN Human Rights Mechanism, together with the NWG chairpersons formally recognized the Singapore Working Group in November 2008.

With this recognition, the SWG’s goal to “inform and facilitate, from a Singaporean perspective, the establishment of an ASEAN human rights body” is expected to be enhanced and reinforced. The Working Group looks forward to the SWG’s active participation in its regional activities and programs.

Ms. Braema Mathiaparanam was designated by the SWG members as their chairperson.

Ms. Mathiaparanam has been active in civil society work for the last 20 years and is a leader in advocating for women’s rights, migrant workers’ rights and the ASEAN human rights body. Prior to her involvement in the Working Group, she was the Gender Studies Program Coordinator at the Institute of Southeast Asian Studies in Singapore. She is a teacher, journalist and researcher, and a consultant at the Lien Center for Social Innovation in Singapore and UNIFEM-Bangkok.

“I am very much honored to be part of the process of building an ASEAN human rights body,” said Ms. Mathiaparanam, “I have had many experiences with the people of the Working Group and I’m learning a lot from them.”

The WG is composed of national working groups in Cambodia, Indonesia, Malaysia, Philippines, Thailand, and now Singapore. Membership in NWGs usually include NGOs, the academe, representatives of government institutions, parliamentary human rights committees, national human rights institutions and individual human rights advocates.
HLP briefed on regional human rights systems in Geneva, Strasbourg

ON ITS 11TH meeting held in Geneva, Switzerland on 19-21 April 2009, the High Level Panel met with experts and representatives of regional human rights systems in Africa, the Americas and Europe where they made presentations at a sharing session organized by the Office of the High Commissioner on Human Rights.

Prof. Jeremy McBride spoke of the European Human Rights System and likened its historical development to the ASEAN espoused evolutionary approach on the AHRB. “The European system also had an evolutionary process, gradually advancing to where it is now,” Professor McBride said.

Prof. Christina Cerna shared that the Inter-American Commission on Human Rights underwent an evolutionary process that began with on-site visits by the commission upon the request of member states and later progressed to the acceptance of individual petitions. “The work of the Inter-American system is subsidiary to the national mechanisms and that the most important requisite for admissibility of a petition is the exhaustion of domestic remedies,” she said.

Discussing the African system, Prof. Christof Heyns pointed out that one of the principles adhered to by the African Union is the principle of non-interference by any member state in the internal affairs of another. Yet the African Union has an existing human rights commission and a human rights court.

The HLP members shared their views on the points of similarity and divergence of their drafting process compared to that of other more established systems.

Taking advantage of the HLP’s presence in Europe, the Friedrich Naumann Foundation organized a side trip to Strasbourg, France on 23 April 2009, where HLP members were exposed to the different European human rights mechanisms in the Council of Europe.

The Strasbourg program consisted of a briefing on the Council’s role in the European political landscape and its part in safeguarding human rights, democracy and the rule of law, and a visit to the debating chamber of the Council of Europe’s Parliamentary Assembly. They met with Mr. Fabrice Kellens, deputy executive secretary of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) who discussed the structure and aims of the Committee and its methods of work, and visited the European Court of Human Rights where they learned about the role and workings of the Court.

The HLP representatives were very interested in the CPT, especially the extent to which it could act on its own initiative. They noted with interest the capacity of the body to visit any place of detention and produce a report on its findings. The earlier observation that the European system was the product of progressive development and did not spring full-blown as a spontaneous creation was reinforced during the program, and the human rights configuration of the Council of Europe was seen as an example of what can be achieved through the evolutionary process, as long as the evolution does not lapse into disuse and neglect.

Ray Paolo Santiago, Program Manager of the Working Group for an ASEAN Human Rights Mechanisms who accompanied the HLP delegation, observed: “It is amazing to see and learn how European human rights mechanisms have evolved in a way that allows its member-states to improve its national human rights promotion and protection. The CPT, for example, has paved the way, through its visits, for some Council of Europe member-states to improve their prison facilities in such a way that it will not violate its prisoners’ human rights. These unhindered visits of the members of the CPT to the member-states demonstrate their political will in addressing human rights issues in their region.”

The information program in Strasbourg was attended by HLP participants from Brunei, Indonesia, Lao P.D.R., Malaysia, the Philippines and Thailand, as well as members of the ASEAN Secretariat.

ASEAN Community Blueprints support ACWC and ACMW

THE ASEAN POLITICAL-Security Community (APSC) and the ASEAN Socio-Cultural Community (ASCC) Blueprints which recognize and uphold the promotion and protection of the rights of women, children and migrant workers were adopted by the ASEAN heads of state/government at the 14th ASEAN Summit held on February 28 to March 1, 2009 in Cha-am Hua Hin, Thailand.

The APSC Blueprint which envisions ASEAN as “a rules-based community of shared values and norms” is expected to provide a favorable environment for the promotion and protection of the rights of women, children and migrant workers. The APSC Blueprint states that it will “cooperate closely with efforts of sectoral bodies in the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers” and “in the establishment of an ASEAN commission on the promotion and protection of the rights of women and children.”

The ASCC Blueprint, for its part, complements the APSC as it looks into “promoting social justice and mainstreaming people’s rights into its [ASEAN] policies and all spheres of life, including the rights and welfare of disadvantaged, vulnerable and marginalized groups such as women, children, the elderly, persons with disabilities and migrant workers.”

These blueprints are essential instruments, especially in creation of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and in the work of the Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).
ASEAN creates working group to push for commission on women and children

THE ASEAN COMMITTEE on Women (ACW) and the Senior Officials Meeting on Social Welfare and Development (SOMSWD) have agreed to collaborate to initiate the process of establishing an ASEAN commission on the promotion and protection of the rights of women and children (ACWC). At a meeting held on April 29-30, 2009 in Manila, they agreed to create a working group that will draft the terms of reference (ToR) for the ACWC.

The working group will be composed of two representatives from each ASEAN member-state, one each for women’s and children’s sectors. An interim working group was formed to discuss organizational matters relevant to the creation of the ACWC.

At the open session, experts from UNIFEM and UNICEF analyzed the challenges faced by women and children in the region, and Prof. Maureen Maloney of the University of Victoria, spoke about existing human rights mechanisms in other regions that focus specifically on women and children. Working Group Secretary-General Mr. Carlos Medina Jr., outlined the role of the Working Group for an ASEAN Human Rights Mechanism and other civil society groups in the establishment of a human rights mechanism in ASEAN.

The participants took note of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) in preparation for the drafting of the ToR for the ACWC.

The CEDAW and the CRC are the core human rights conventions that have been commonly ratified by all ASEAN member states. Although they recognize that it might be a lengthy process, women and children’s rights advocates expressed hope that the ACWC will be established sooner than later.

Workshop on ACMW creates drafting committee

THE PROCESS OF drafting a unifying instrument for the promotion and protection of the rights of migrant workers has begun.

The ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) met in Manila on March 26-27, 2009 to start discussions on the scope of coverage, rights and key principles to be embodied in an ASEAN instrument on the rights of migrant workers.

The ASEAN member-states agreed to convene a drafting committee composed of representatives from five member-states, namely: Malaysia, Singapore (both of which are receiving states), the Philippines, Indonesia (sending states) and Thailand as the Chair of ASEAN.

The drafting committee was initially tasked to outline the rights to be covered by the instrument on migrant workers.

To enhance the workshop participants’ knowledge and perspectives on the issues of migrant workers, an open session was incorporated into the program. Representatives from the International Labor Organization (ILO), the International Organization for Migration (IOM) and the Ateneo Human Rights Center made presentations on topics such as current trends, the impact of the global recession, the proposed labor migration framework, and the mechanisms currently in place.

Ms. Amparita Sta. Maria, Research Director of the Ateneo Human Rights Center, presented a survey of domestic legislation in ASEAN member-states that afford protection to migrant workers and expounded on the international commitments that are already in place and which are therefore part of national obligations.

The workshop participants represented ASEAN ministries of labor and other government agencies whose mandates affect labor migration.
Government, NGOs hold second conference on establishing Cambodian NHRI

The CAMBODIAN WORKING Group for an ASEAN Human Rights Mechanism (CWG) intensified its efforts to push for the establishment of an independent national human rights institution (NHRI) by convening the Second National Conference on the Establishment of an Independent National Human Rights Institution on December 6-7, 2008 in Siem Reap, Cambodia.

Representatives from the executive branch government agencies, the National Assembly and the Senate, as well as civil society organizations (CSOs) participated in the conference that looked into the significance, opportunities and challenges in setting up an independent human rights institution. They also agreed to have more capacity-building activities and improve the technical cooperation between government and civil society organizations towards the establishment of a Cambodian NHRI.

Mr. Mak Sambath, representing Mr. Om Yen Tieng, the president of the governmental Cambodian Human Rights Committee, welcomed the participants. He reiterated the political will of the Cambodian government in promoting human rights as enshrined in its Triangle Strategy which involves three aspects: the restoration of peace and stability, Cambodia’s integration into the region and normalization of relationships with the international community, and the promotion of economic and social development through extensive reform programs.

He also reiterated Prime Minister Hun Sen’s statement at the First National Conference in 2006 that, while there are already three existing governmental human rights bodies in Cambodia, “a national human rights institution which is higher than [these three bodies] will be established by law and will be consistent with the Paris Principles.”

The statement was supported by Dr. Pung Chhiv Kek, CWG Chairperson and LICADHO president who, explaining the value added by regional and a national human rights institution, said, “The NHRIs can enhance protection which is complemented by mechanisms on other levels.”

Representatives from the NHRIs of Thailand and the Philippines presented their experiences and compared the powers and compositions of their Commissions.

In addition to working substantively on the draft law establishing an NHRI, the participants proposed that more activities be undertaken to raise public awareness in Cambodia regarding NHRIs. This awareness on the part of stakeholders, coupled with the efforts of civil society and the political will of the government, will hopefully facilitate the creation of the fifth NHRI in the ASEAN region.

APF and AICOHR call for more meaningful civil society participation

IN COMPLETE CONCORD with the ASEAN Charter’s call for the ‘promotion of a people-oriented ASEAN in which all sectors of society are encouraged to participate and benefit from, the process of ASEAN integration and community building,’ the ASEAN People’s Forum (APF) and the ASEAN-ISIS Colloquium on Human Rights (AICOHR) called on civil society organizations to be informed of their significant roles and responsibilities in the promotion and protection of human rights in ASEAN.

Held on February 20-22, 2009 in Bangkok, the APF gathered participants from different groups and social movements to discuss the promotion of democracy, good governance, economic development and human rights. While not exclusively a human rights forum, most of the discussions touched on the significance of the ASEAN human rights body (AHRB) and other parallel processes.

Dr. Srirappha Petcharamesree, Chairperson of the Thai Working Group for an ASEAN Human Rights Mechanism, outlined the advantages and disadvantages of setting up an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Among other things, she argued that since one of the main debates in the AHRB process revolves around the issue of how to reconcile the principle of non-interference and the protection of individual rights, the ACWC has become a very significant track. Because it focuses on the rights of women and children and is perceived by ASEAN as being less contentious, the ACWC can be more effective in addressing specific issues that the general mechanism cannot.

At the AICOHR held on February 26-27, 2009, Atty. Carlos Medina Jr., Secretary-General of the Working Group, observed that civil society involvement in the establishment of an AHRB has evolved over time. “Their various roles should be enhanced because every group [has] expertise and [their] different approaches help in the bigger picture.”

The APF is designed as a platform for direct people-to-people engagement for civil society in the region and establishes a two-way process in which domestic concerns are elevated to a higher forum while simultaneously emphasizing local impacts of regional issues on communities.

AICOHR, organized by the national members of the ASEAN Institute for Strategic and International Studies (ASEAN-ISIS), is an annual platform for discussing critical human rights issues in the region.

The participants to both forums unanimously called for more opportunities for CSO participation and capacity-building mechanisms to further enhance their involvement in ASEAN’s processes.
The 4th Roundtable Discussion among representatives from ASEAN member states, national human rights institutions (NhRIs) and members of the Working Group for an ASEAN Human Rights Mechanism was held on November 20-21, 2008 in Thailand around the theme, “Realizing the People-Oriented ASEAN Community with Human Rights.”

Co-organized by the Ministry of Foreign Affairs of the Kingdom of Thailand, the National Human Rights Commission of Thailand and the Working Group for an ASEAN Human Rights Mechanism, the roundtable discussed the promotion and protection of the rights of women, children and migrant workers, the roles of NhRIs and other issues related to the establishment of a regional human rights mechanism. They also welcomed the entry into force of the ASEAN Charter which includes a provision on the establishment of a regional human rights body.

In his welcome remarks delivered by Commissioner Naiyana Supapeung, Chairperson Sanek Chamarik of the NhRI of Thailand, stressed the need to promote people-to-people learning and to discuss the evolutionary approach in relation to the ASEAN human rights body. They also welcomed the entry into force of the ASEAN Charter which includes a provision on the establishment of a regional human rights body.

In his welcome remarks delivered by Commissioner Naiyana Supapeung, Chairperson Sanek Chamarik of the NhRI of Thailand, stressed the need to promote people-to-people learning and to discuss the evolutionary approach in relation to the ASEAN human rights body (AHRB). Similarly, in his keynote speech Mr. Virasakdi Futrakul, the Permanent Secretary of the Ministry of Foreign Affairs of Thailand, reiterated that the AHRB is an important manifestation of the commitment to build a people-oriented ASEAN. He said the regular consultations of the High Level Panel (HLP) with various stakeholders, including civil society groups should be continued when the body is finally operational.

During the substantive discussions, representatives of government agencies shared that the ASEAN Committee on Women (ACW) and the Senior Officials Meeting on Social Welfare and Development (SOMSWD) have resolved to work collaboratively to jointly set up a multidisciplinary working group as a first step towards the establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). This was embraced by the body which resolved that the ACWC process can and should progress independently from the process of establishing the AHRB. They acknowledged that, while there are streamlining issues to consider, these can be dealt with more competently after the establishment of these two bodies.

In the session on the promotion and protection of the rights of migrant workers, the participants sought a common definition of a migrant worker, considered a protocol on the protection of migrant workers, and affirmed the need to coordinate in working for cohesive policies and strategies regarding trans-border issues. They asserted that measures to protect migrant workers must be improved and agreed that observing the good practices of other countries can be beneficial.

The roundtable envisioned an overarching framework in which the other proposed commissions would eventually be aligned with the AHRB and collaborative working arrangements are established among them. The participants also said that civil society should be recognized as an important consultative partner and acknowledged their inputs in realizing a people-oriented ASEAN community.

Working Group publishes research study on ASEAN commission on women and children

IN APRIL 2009, the Working Group for an ASEAN Human Rights Mechanism, with the support of the Southeast Asian Regional Cooperation on Human Development project of the Canadian International Development Agency (CIDA-SEARCH), has recently published a research study entitled, “Towards an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children.”

Completed in June 2008, the study was undertaken by Dr. Sriprapha Petcharamesree, Dr. Varaporn Chamsanit and Ms. Sunsanee Suthisunsanee of the Office of Human Rights Studies and Social Development in Mahidol University in Thailand, and Professor Maureen Maloney of the University of Victoria, Canada.

The research is based on the review of the commitments of ASEAN and its Member States on the rights of women and children in the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Some of the findings and recommendations included in the research are drawn from views expressed by participants during two regional consultative meetings held in Bangkok in November 2006 and April 2007.

For a copy of the publication, please contact the Working Group Secretariat or visit our website at www.aseanhrmech.org.
VIEWPOINTS

FROM THE SECRETARY-GENERAL’S DESK

Where Are We Now?

WHEN THE WORKING Group started out, it was made up of an eclectic mix of individuals and organizations which, buoyed though it was by an ASEAN joint communiqué alluding to the possibility of establishing a regional human rights mechanism, did not have a systematic plan of action as to how it would go about convincing reticent ASEAN member-states to establish such a mechanism. So it took stock, strategized, and then engaged. Every opportunity for consultation was sought, every avenue for dialogue taken. Both government and civil society were rightly deemed invaluable in the discourse. While insistent, it remained respectful of processes as it was keenly aware that, at the end of the day, what it sought was an intergovernmental mechanism.

But while it knew its place, the Working Group also understood the importance of being progressive and ingenious in its approach. The means and ends of a flexible tack were many. The Working Group’s regional workshops and roundtable discussions on human rights were mounted in partnership with governments; its meetings with senior officials were institutionalized within the agenda of ASEAN’s ministerial meetings; its submissions were sought and considered for programs of action; its suggestion for the national human rights institutions to band together to provide another solid level of advocacy was heeded; its members were included in high level governmental as well as civil society processes dealing with the establishment of the mechanism; its existence as an entity associated with ASEAN acknowledged in the ASEAN Charter itself.

Now the final crucial steps in the drafting of the terms of reference are about to be taken, the establishment of an ASEAN human rights body is imminent. And the question has been asked: What becomes of the Working Group “for the Establishment of an ASEAN Human Rights Mechanism” when the AhRB, presumably the mechanism, is created? Does this event spell the end of the advocacy?

Just as the fundamental right to life should not only be a right to exist but a right to a good life, the Working Group advocacy is not only for a token mechanism but for a real one – credible, effective, and empowered. The ASEAN human rights mechanism we envisioned many years ago, and for whose establishment we continue to advocate, is a regional system that is capable of effectively protecting and promoting human rights. The creation of the AhRB might be a vital first step towards this vision but we harbor no delusion that it will be the panacea to every human rights ill in the region. It will need work and improvement, and this in turn will need vigilance and continued advocacy on the part of groups like ours.

So the Working Group will again do what it has done in the past – take stock, strategize, engage. This time not for the straightforward establishment of a mechanism, but for the progressive empowerment of whatever body is created at the first instance. This time not for ASEAN to “consider the establishment of an appropriate regional mechanism on human rights” as it was in 1993, but for ASEAN to live up to its Charter promise of promoting and protecting human rights.

Carlos P. Medina Jr.

Perspectives on the AHRB

By Marzuki Darusman

Co-Chairperson, Working Group for an ASEAN Human Rights Mechanism

Remarks at the Second Consultation with civil society organizations in Kuala Lumpur, 20 March 2009

IT HAS BEEN almost a year since ASEAN established the High Level Panel (HLP) and announced the start of its work. In spite of the fact that the ASEAN Charter had not been ratified by all member-states at the inception of the HLP, they have pursued their task with vigor and responsibility. Now, quite far into the schedule set by the HLP, sooner or later, all of us will be historic witnesses to the formation of an ASEAN human rights body.

The most fundamental elements for the AhRB are its credibility, effectiveness and capacity to fully measure up to international standards. Inevitably, the Terms of Reference (ToR) will be regarded as a political document — not quite a legal document. Therefore, the result would have to be optimal rather than maximal, and open to multiple interpretations. This is a consequence of the evolutionary approach that was adopted, with the right balance between clarity and ambiguity.

However, questions remain as to what this evolutionary nature is, if it will be embryonic rather than rudimentary.

I want to make three points. My first point is, during the 3rd meeting of the HLP, the Working Group submitted a document entitled “Proposed Elements for an AHRB.” The Working Group observed that the vital importance of the body is that it is intergovernmental with suitable and pro-active functions effectively protecting and promoting human rights. This can clearly be advanced with the intent to move ASEAN into a rules-based organization.

My second point is about the regional human rights body itself. It is assumed that the AHRB will be an operational body rather than merely a policy forum.

My last point is about the balance between the promotion and protection of human rights. We note that at this time, promotion is desirable but protection is impossible. While promotion could later emerge into a protection goal, the human rights body should be credible in providing effective protection of human rights once it is functional.