

**EIGHTH WORKSHOP ON THE ASEAN REGIONAL MECHANISM ON HUMAN
RIGHTS**

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**THE OPERATIONALIZATION OF THE AHRB'S
PROMOTION AND PROTECTION FUNCTIONS: AN OUTLOOK**

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Excellencies, Ladies and Gentlemen...

As the earlier speakers have alluded to already, we are on the verge of a defining moment as the final crucial steps in the drafting of the terms of reference are being taken and the establishment of an ASEAN human rights body is imminent.

While this establishment will not cure all human rights ills in the region, it is an important step in the right direction. I believe it is no secret that for all of us who have watched and observed the High Level Panel process of drafting the terms of reference, one of the matters which have garnered the most attention and comments from civil society and other stakeholders is the issue of the AHRB's functions and the balance (or lack thereof) between the promotion and protection complements.

The Charter is clear that one of the purposes of ASEAN is precisely to "promote and protect human rights and fundamental freedoms" and this is, as far as I know, reiterated in the opening provisions of the ToR. But an imbalance where promotion functions heavily outnumber protection functions is one of the most lamented observations of those who have envisioned a regional system comparable to those established in other parts of the world. While we knew going in that a judicial institution similar to the Strasbourg Court was beyond the

realm of what is currently possible and foreseeable, we did hope for one where protection was every bit as prioritized and developed as promotion.

Promotion functions are pretty well covered. Based on the reports which have filtered down to civil society, the list of functions includes:

- enhancing public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information
- promoting capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States
- encouraging ASEAN Member States to consider acceding to and ratifying international human rights instruments
- promoting the full implementation of ASEAN instruments related to human rights

These are all good things, of course, and hopefully the full complement of the AHRB, including its support staff, will be progressive and motivated enough to fully optimize the space provided under these functions. Strategic links can be encouraged with well-placed institutions like premier universities in ASEAN and national human rights institutions in countries where they are present. Human rights education, for instance, is a program which is the subject of growing attention in a number of ASEAN countries and hopefully, this trend can be fostered and furthered by the AHRB.

However, even conceding the constructive and positive value of all these promotional functions, a more even and proportioned mandate where protection was similarly regarded would have been preferred. This the Working Group made clear very early on - as early as 2000 when, at ASEAN's request, we made a submission recommending the establishment of a regional human rights commission to ASEAN as the "appropriate" mechanism, specifically a working document entitled A Draft Agreement for the Establishment of the ASEAN Human Rights Commission, which contained the mandate, structure, powers and

functions of a proposed commission for ASEAN's consideration. In our interventions during the HLP process this past year, both verbally during consultations with them and in writing in all our submissions, we've reiterated this position.

Having said that, we in the Working Group have always taken a constructive, consultative and step-by-step process of engagement and we do realize that the ToR is, ultimately, a political document born of negotiation and compromise. Given this pragmatism but bearing in mind the ultimate objective of an effective regional system, it is important to peruse the AHRB's functions as we know them and find room for their progressive operationalization.

We are aware that the ToR does not contain the customary provisions on protection such as an individual complaint mechanism or powers to investigate alleged violations of human rights, to respond to inquiries on matters concerning particular cases, and to take action on petitions and communications. However, it does set forth certain other faculties such as the capacity...

- to engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders
- to consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights
- to submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting

All of these is subject to interpretation and, if liberally interpreted, can translate into more effectual benefits.

Civil society organizations, national institutions, and other stakeholders can ensure that matters which require attention are timely communicated to the AHRB. I believe that concentrated and earnest communication to a body specifically created for the promotion and protection of human rights is not

something which such a body can lightly and flippantly ignore no matter how limited its mandate.

“Studies on thematic issues of human rights in ASEAN” is another accepted function under the ToR. This can, and should, be prepared by employing a full range of tools at hand. Should a study on the thematic issue of torture be undertaken, for instance, the AHRB will be better able to produce a comprehensive report on the matter if it can access groups specifically working on eradicating torture, talk to victims, and survey detention facilities in ASEAN states firsthand. After all, even if the study is thematic and not country-specific, a “situational analysis” is not proscribed.

The same course of action can also be employed in performing its other roles. The ToR also instructs the AHRB “to develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community” and “to develop common approaches and positions on human rights matters of interest to ASEAN”. A lot of possible actions can be found between the lines of these stated responsibilities.

Furthermore, while there is no provision explicitly allowing country visits as we understand them under the UN system of protection, the ToR does include a provision which anticipates the obtaining of information from member states on the promotion and protection of human rights. The AHRB will, I’m sure, also have the opportunity to carry out their own meetings in more than one ASEAN country where the opportunity to meet stakeholders other than government institutions can be optimized. Again, liberal construction can transform seemingly innocuous powers into something which can be harnessed with more efficacy.

Moreover, I cannot stress enough the importance of the AHRB asserting its station, its place as it were, in the ASEAN cosmos. Awareness is key and the better acquainted the other players are with its functions and capabilities, the better able it will be to fulfill its mandate. For instance, it is directed to provide advisory services and technical assistance on human rights matters to ASEAN sectoral

bodies upon request. The confidence and trust of these bodies in the AHRB, as well as their willingness to access it, will depend largely on how well the AHRB is able to promote itself in the coming days.

Additionally, I wish to draw attention to the mandated development of an ASEAN Human Rights Declaration which is supposed to be undertaken with “a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights”. Perhaps the development of this Declaration can afford civil society and other stakeholders with the next venue for a renewed campaign for a stronger protection mandate. And of course, this can also be the chief issue at the first ToR review.

Friends, please bear with me while I make my last two points.

My penultimate point is in reference to the inclusive phrase which I believe will cap the ToR’s list of functions – that is, that the AHRB is to perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting. I believe that this provision allows extra maneuverability. Urgent concerns and desired actions which on its face may not be within the perceived parameters of the AHRB’s jurisdiction can be raised at this other level. Admittedly, the AMM has not been a feasible forum for human rights concerns to date, but this may be different in the future as the AMM now have an actual body or institution to refer matters to. This is within their powers and if referred or assigned by them, is necessarily brought into the ambit of the AHRB by virtue of the inclusionary proviso.

My final point is to highlight the importance of the AHRB’s composition in the operationalization of its functions. The quality of the people who make up the AHRB is paramount for the usual considerations, and the value of having representatives who have the capacity to act impartially and knowledgeably cannot be emphasized enough. This is also very important as no amount of liberal construction and interpretation will succeed in the face of ignorance or obstinacy as, at the end of the day, the AHRB will operate by consensus.

I hope that these musings and ruminations on my part will prove helpful, and while you may disagree with some or even most of them, will provide food for thought.

My best to everyone and I wish you all fruitful deliberations.