

## **WORKING GROUP FOR AN ASEAN HUMAN RIGHTS MECHANISM**

### **PROPOSED ELEMENTS FOR THE TERMS OF REFERENCE OF AN ASEAN HUMAN RIGHTS BODY**

#### **Background**

1. During the 26<sup>th</sup> ASEAN Ministerial Meeting (AMM) in Singapore in 1993, the foreign ministers, *"in support of the Vienna Declaration and Programme of Action of June 25, 1993, ... agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights"*. Since 1998, the AMM has recalled and affirmed its commitment of establishing an appropriate regional mechanism on human rights.
2. In 2000, the Working Group recommended the establishment of a regional human rights commission to ASEAN as the "appropriate" mechanism and submitted a working document entitled Draft Agreement for the Establishment of the ASEAN Human Rights Commission containing the mandate, structure, powers and functions of a proposed commission for ASEAN's consideration. The Working Group has also been meeting with the ASEAN Senior Officials on the occasion of the ASEAN Ministerial Meeting and has, since 2001, been presenting the conclusions and recommendations of the annual workshops on the regional mechanism on human rights which it organizes together with a host ASEAN state, through its Foreign Ministry, and its national human rights institution, if any.
3. The 2004 Vientiane Action Programme (VAP) of ASEAN specifically lists down certain Program Areas on Human Rights, particularly the (1) establishment of a commission on the promotion and protection of the rights of women and children; (2) elaboration of an ASEAN instrument on the promotion and protection of the rights of migrant workers; (3) promoting education and public awareness on human rights in the region; and, (4) networking among existing national human rights institutions in the region. In July 2005, ASEAN engaged the Working Group to help in the implementation of the said program areas during the latter's meeting with the ASEAN Senior Officials in Laos.
4. Article 14 of the ASEAN Charter itself provides for the establishment of an ASEAN human rights body for the promotion and protection of human rights and fundamental freedoms.

#### **Guiding Principles**

5. Direction shall be taken from international law on human rights, universally recognised human rights standards and principles, and regional and national

laws, policies and practices consistent with international law. The relevant instruments of international law include the 1948 Universal Declaration on Human Rights, the 1986 United Nations Declaration on the Right to Development, the 1993 Vienna Declaration and Programme of Action of the World Conference on Human Rights, and international human rights treaties, particularly the Convention on the Elimination of all Forms of Discrimination of Women and the Convention on the Rights of the Child.

6. Inspiration shall also be drawn from the ASEAN Charter's emphasis on the need to adhere "to the rule of law, good governance, the principles of democracy and constitutional government" together with the "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice" by "upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States".
7. While the Charter upholds the "independence, sovereignty" as well as "non-interference in the internal affairs of ASEAN Member States", proper acknowledgment should be accorded to the internationally recognized responsibility to protect its populations, on the part of individual states, from genocide, war crimes, ethnic cleansing and crimes against humanity.
8. In all regional human rights systems, a human rights court has already been established to adjudicate cases concerning human rights. An ASEAN human rights body should be nothing less than what is the accepted norms and standards in other regions, such as in Africa, Inter-Americas and Europe. However, given the diversities existing among ASEAN Member States, both in political and economic aspects, it is desirable that a progressive evolutionary approach be taken that is still consistent with international laws and standards, as provided for by the Charter.

### **ASEAN Human Rights Mechanism**

9. It is recommended that the human rights body that is to be established shall be a **Commission**, constituting comprehensive human rights protection and promotion mechanisms.

### **Functions**

10. The main task of the Commission is to promote and protect human rights.
11. In the exercise of its promotion mandate, it shall have the following functions:
  - a. to raise capacity-building and awareness of human rights among the peoples of the region;

- b. to advise governments of ASEAN Member States on human rights issues;
- c. to conduct relevant studies and research;
- d. to serve as channel for information-sharing on human rights matters; and
- e. to cooperate with civil society in advocating for the promotion and protection of human rights in the region.

12. In the exercise of its protection mandate, it shall have the following functions:

- a. to prepare reports and recommendations to the Ministers of Foreign Affairs of the ASEAN Member States and to make these available to the public;
- b. to look into possible violations of human rights by an ASEAN Member State or States in accordance with established rules of procedure;
- c. to take action on communications pursuant to its authority and refer the matter to the respective parties; and
- d. to encourage ratification of human rights treaties by ASEAN member-states.

13. The Commission shall perform any other tasks concerning the promotion and protection of human rights which may be entrusted to it by the Heads of State and Government and/or the Ministers of Foreign Affairs of the ASEAN Member States.

### **Organization**

14. The Commission shall be a credible, impartial and independent intergovernmental body conferred with official status; accessible and open to states parties, ASEAN itself, and other stakeholders.

15. The Commission shall be composed of ten members, one from each ASEAN Member State.

16. A Commissioner shall be a person of high moral character and recognised competence in the field of human rights, appointed in a transparent and consultative manner by the respective authority but serving in an independent and personal capacity.

### **Evolutionary Process**

17. The evolutionary process could involve both evolution of the Commission's capacity as an institution and the evolution of the system for comprehensive promotion and protection of human rights.

18. The evolutionary approach may include the following steps:

- a. The Commission could initially cover women and children's rights under its jurisdiction; its findings will be recommendatory in nature;
- b. The Commission will undertake to come up with an ASEAN Declaration or Convention on Human Rights, taking into consideration the political, economic, and cultural diversities in the region. Such, however, shall still be consistent with internationally accepted law, norms, and standards.
- c. The Declaration or Convention shall include the setting up of an ASEAN Human Rights Commission that will have jurisdiction over all rights covered by the said Declaration or Convention. All other specialized human rights bodies shall be subsumed in the Commission.
- d. An Optional Protocol shall be developed to establish an ASEAN Court on Human Rights.

19. There should be a credible timeframe for every stage of the evolutionary process.