

## WORKING GROUP FOR AN ASEAN HUMAN RIGHTS MECHANISM

### **A SUBMISSION ON THE OCCASION OF THE 2ND ASEAN SECURITY COMMUNITY PLAN OF ACTION COORDINATING CONFERENCE (ASCCO) 10-11 July 2007**

It has been two years since ASEAN engaged the Working Group for an ASEAN Human Rights Mechanism (Working Group) to help in the implementation of certain human rights related programs in the Vientiane Action Programme (VAP) during the meeting of the Working Group with the ASEAN Senior Officials in Vientiane on 25 July 2005.

Last year, this engagement was reiterated at the Working Group's last meeting with the Senior Officials in Kuala Lumpur on 24 July 2006 where the Working Group was encouraged to submit inputs for the 2006 Coordinating Conference on the ASEAN Security Community Plan of Action. In time for that occasion, the Working Group submitted a paper of proposed directions.

Encouraged by ASEAN's continued interest and openness, the Working Group is similarly honoured to submit the following update of its work for this year's coordinating conference.

#### **Conference on the Establishment of a National Human Rights Institution in Cambodia**

One of the VAP program areas on human rights is the networking among existing national human rights institutions (NHRIs) in the region. At present, there are four NHRIs subscribing to the Principles relating to the Status of National Institutions, otherwise known as the Paris Principles. There are, however, a number of national human rights bodies existing and emerging opportunities for the establishment of NHRIs in ASEAN countries where none exists.

On 25-27 September 2006, the Royal Government of Cambodia and the Cambodian Working Group for an ASEAN Human Rights Mechanism (Cambodian Working Group) co-organized and co-hosted a "Conference on the Establishment of a National Human Rights Institution in Cambodia" in Siem Reap, Kingdom of Cambodia. The objectives of the Workshop were to:

- Share experiences and good practices in setting-up an NHRI;
- Discuss domestic and even regional human rights concerns and challenges and the need to have an NHRI;
- Discuss developments of networking among the four NHRIs in ASEAN;
- Develop the key elements of a possible NHRI in Cambodia for the consideration of its parliament.

The conference was attended by participants of the Cambodian government (representing the Senate, the National Assembly, the Cambodian Human Rights Committee, the Ministry of Interior, the Ministry of Women Affairs, and the Ministry of Justice) and local non-governmental organizations (NGOs). Resource persons included representatives of the Working Group for an ASEAN Human Rights Mechanism, representatives from national human rights institutions (NHRIs) of Malaysia, the Philippines and Thailand, and the representatives of international institutions such as the Asia-Pacific Forum on National Human Rights Institutions (APF) and the Office of the UN High Commissioner for Human Rights (OHCHR).

The conference acknowledged the need to establish a NHRI in Cambodia and must adhere, at the very least, to the "Principles Relating to the Status of National Institutions," otherwise known as the Paris Principles. Furthermore, the conference resolved that a Joint Working Group be constituted composed of representatives of government and civil society to draft the law creating the National Human Rights Institution of Cambodia.

In more detail, the resolutions of the conference are as follows:

1. The conference supports the establishment of an Independent National Human Rights Institution (NHRI) that is a Constitutional Institution.
2. The NHRI must comply with the "Principles Relating to the Status of National Institutions" otherwise known as the Paris Principles.
3. The conference organizing committee shall become a Joint Working Group (Representatives from Government and Civil Society) on the Establishment of the NHRI in Cambodia. This Joint Working Group can expand its capacity according to their needs.
4. The Joint Working Group can create sub committees or technical working groups, as needed.
5. The Joint Working Group must set its membership policies, functions, working procedures, action plans, and its activities. All activities must be made public.
6. The Joint Working Group must create a technical working group with members from civil society to initially draft the necessary law on the NHRI.
7. The Joint Working Group must draft the statute creating the NHRI.
8. The Joint Working Group shall lobby, advocate, discuss, and engage the public and disseminate information to the public regarding the creation of the NHRI.
9. The Joint Working Group shall finalize the draft law and submit it to the Royal Government of Cambodia.

### **Second Roundtable Discussion on Human Rights in ASEAN: Challenges and Opportunities for Human Rights in a Caring and Sharing Community**

The Second Roundtable Discussion (Roundtable) on Human Rights in ASEAN, Challenges and Opportunities for Human Rights in a Caring and Sharing Community, was held in Jakarta, Indonesia, on 18-19 December 2006. The Roundtable was co-organized and co-hosted by the Department of Foreign Affairs of the Republic of Indonesia and the Working Group for an ASEAN Human Rights Mechanism. The Roundtable was attended by participants representing governments, national human rights institutions, and civil society groups from Brunei Darussalam, Cambodia, Indonesia, Lao P.D.R., Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam, including a representative from the ASEAN Secretariat.

The Roundtable was divided into five sessions covering the following topics: (A) Is ASEAN Making Progress on Human Rights?; (B) Efforts To Implement the Human Rights Program Areas of the Vientiane Action Programme (VAP), which is further divided into: (i) Promoting Education and Public Awareness on Human Rights in the Region; (ii) Promoting and Protecting the Rights of Women and Children; and (iii) Promoting and Protecting the Rights of Migrant Workers; (C) Human Rights and the ASEAN Charter; and (D) Networking of National Human Rights Institutions: Efforts to Address Common Human Rights Issues and Concerns; and (E) Plenary Discussion on the Roundtable Conclusions and Recommendations.

Some of the more pertinent conclusions and recommendations from the Roundtable are as follows:

- The Roundtable acknowledges the importance of having all ASEAN member-countries jointly subscribe to the regional mechanism at the same time. However, it also recognizes the merits of the proposal first advanced by Malaysia that an ASEAN human rights mechanism can be established with the initial involvement of member-countries which are already prepared to do so, while allowing others to join subsequently.
- The Roundtable encourages ASEAN to implement, within the timeframe, the human rights program areas of the Vientiane Action Programme (2004-2010), particularly the establishment of an ASEAN commission on the promotion and protection of the rights of women and children, and the elaboration of an instrument on migrant workers.

#### Human Rights Education (HRE)

- The Roundtable takes note of the following opportunities and corresponding challenges in human rights education in the region:
  - The framework for action and cooperation for HRE in the formal school curriculum provided by the World Programme on Human Rights Education and the challenge of assessing national strategies for implementation through national action plans;
  - The many case studies of successful non-formal HRE in the region and the challenge of assessing their applicability for replication; and
  - The regional cooperation undertaken through existing ASEAN mechanisms and the challenge of working towards an ASEAN human rights mechanism, including the sharing of best practices on policy implementation of HRE.

#### Promotion and Protection of the Rights of Women and Children

- The Roundtable recognizes that the establishment of an ASEAN commission on the promotion and protection of the rights of women and children is a modest but feasible preliminary step leading to the eventual establishment of a general human rights mechanism which can address the rights of all sectors in society.
- The Roundtable reaffirms the need to hold extensive consultations with representatives of ASEAN governments, NHRIs and civil society organizations in the process of considering the proposed commission on the promotion and protection of the rights of women and children.

#### Promotion and Protection of the Rights of Migrant Workers

- The Roundtable recognizes the need for both sending and receiving countries to coordinate closely in addressing the problems and concerns of migrant workers.
- The Roundtable recommends that ASEAN member-countries, which have not yet done so, consider ratifying the ICMR and concluding bilateral arrangements on the promotion and the protection of migrant workers' rights.
- The Roundtable acknowledges the importance of considering the viewpoints of both sending and receiving states, as well as bilateral agreements already concluded, in drafting the proposed ASEAN Declaration on the Promotion and

Protection of Migrant Workers.

ASEAN Charter

- The Roundtable acknowledges the importance of incorporating human rights components in the ASEAN Charter, including the establishment of a regional human rights mechanism.
- The Roundtable recommends that civil society participation be institutionalized in the ASEAN Charter.
- The Roundtable recognizes that the ASEAN Charter would impact on the lives of ASEAN peoples and that they should therefore be informed and made aware of what is to be contained in the Charter. For this purpose, the Roundtable recommends that information campaigns be undertaken.

National Human Rights Institutions (NHRIs)

- The Roundtable urges the establishment of an independent NHRI compliant with the Paris Principles in ASEAN member-countries without one and notes the recent developments in Cambodia towards such establishment.
- The Roundtable recognizes the importance of confidence-building measures (e.g., invitations to meetings) which existing NHRIs may undertake to encourage participation from other ASEAN member-countries considering a prospective national institution.

**Experts Group Meeting on the Establishment of an ASEAN Commission on the Rights of Women and Children**

On 20 November 2006, in line with the Study on the Establishment of a Commission on Women and Children being conducted by the Mahidol University, an Experts Group was convened in Bangkok, Thailand to primarily discuss the issues to be addressed in establishing an ASEAN commission on women and children.

The objectives of the meeting was to gather renowned experts from the ASEAN region in the field of human rights, particularly on the issues of women and children, and to discuss the issues surrounding the establishment of an ASEAN commission on women and children, existing mechanism that protect and promote their rights, and the possibility of setting up the commission within the timeframe of the Vientiane Action Programme.

The participants were able to openly discuss the following:

1. Existing national mechanisms on the rights of women and children and their effectiveness;
2. Prospect and challenges for the establishment of an ASEAN commission on the rights of women and children; and,
3. Possible recommendations and conclusions.

Significant conclusions and practical recommendations were reached as follows:

1. Any regional mechanism to be established should take into consideration the regional economic and social agendas;
2. ASEAN may have to learn from experiences of other regions but not to

- replicate. Measures and procedures should be sought out in order to make the mechanism distinctly ASEAN;
3. One of the working principles in ASEAN is cooperation, not confrontation. Any institution to be established should not challenge the government. It should not, however, be used by the governments as window dressing to raise their image;
  4. The Commission should be mandated with promotional and protective activities. It should be empowered to monitor the compliance with the international and regional standards. What needs to be avoided is the reporting requirements. All countries are already heavily burdened by various reports;
  5. The selection of the commissioners should be done through a participatory and transparent process. Representation of all is recommended. There is also strong recommendation that impartiality and independence of the commission and commissioners be ensured;
  6. Further consultations should be broadened involving more people from various sectors. Concrete guidelines and issues for discussion should be prepared before hand; and,
  7. Engaging civil society and creating space for dialogue with all parties concerned is needed.

A comprehensive report of the study project which includes concrete recommendations shall be submitted to ASEAN before the ASEAN Ministerial Meeting and ASEAN Senior Officials Meeting.

**Regional Consultative Meeting on the Establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children**

This consultative meeting was held in Bangkok, Thailand on 3-4 April 2007. The draft of the study report on the possible commission prepared by Mahidol University's Office of Human Rights Studies and Social Development (as commissioned by the Working Group) was presented and existing regional mechanisms on the promotion and protection of the rights of women and children were discussed. A number of working sessions were also undertaken to consider the norms of a possible commission, to tackle questions relating to the institution, and to consider possible procedures.

Possible next steps were identified for the establishment of an ASEAN commission on the promotion and protection of the rights of women and children. The participants agreed that the following should be among the components of any regional mechanism established:

1. Promotion and protection of human rights, particularly women's and children's rights;
2. Consistency with international standards, particularly CEDAW and CRC;
3. Commission of experts with independence of action;
4. Inputs from civil society in regard to the establishment and functioning of commission; inputs from civil society to commission; and
5. Power of commission to advise and make (non-binding) recommendations.

The participants also agreed on certain strategic policy points that would be helpful for government discussion as possible components for the ASEAN Charter:

1. Refer to human rights and need for human rights mechanism in the Charter as per EPG Report. *(Based on a principle found in the EPG Report:*

*“commitment to develop democracy, promote good governance and uphold human rights and the rule of law, and to establish appropriate mechanisms for these purposes”.*)

2. Refer, as a first step, to the need to establish an ASEAN Commission on Women's and Children's Rights.
3. Invite governments to elaborate on the establishment of a human rights mechanism through an ASEAN instrument to be drafted within one year of adoption of the ASEAN Charter.

### **Sixth Workshop on the ASEAN Regional Mechanism on Human Rights**

The Working Group will also be holding its Annual Workshop on the ASEAN Regional Mechanism on Human Rights, co-organized with the Philippine Department of Foreign Affairs and the Commission on Human Rights of the Philippines on 16-17 July 2007 in Manila. The objectives of the Workshop are as follows:

- To provide a forum for continuous dialogue on the establishment of a regional human rights mechanism in ASEAN;
- To discuss among the participants from the ASEAN-member states, especially with governments, the progress of how the Working Group helps implement the human rights programme areas of the Vientiane Action Programme (VAP);
- To discuss the process of drafting an ASEAN Charter and its implications to the ASEAN Community in promoting and protecting human rights; and
- To continue the confidence building approach of the Working Group in line with ASEAN's policy of a step-by-step, building-block approach in the establishment of a regional mechanism on human rights in ASEAN.

is[establishment] (n) - 31 (mme areas ) (t) BMC P MICID 14DC b) TT1 1 T0 Tc 1002 0 02 0 0 1002 0