

**(Draft)**

**AGREEMENT ON THE ESTABLISHMENT  
OF THE ASEAN HUMAN RIGHTS COMMISSION**

**The Governments of.....**

**Being** members of the Association of Southeast Asian Nations, hereinafter referred to as ASEAN,

**Recalling** that the ASEAN Ministerial Meetings of 1993, 1998 and 1999 agreed and affirmed that ASEAN should consider the establishment of an appropriate regional mechanism on human rights,

**Mindful** of the need to promote and protect human rights in the ASEAN region, especially as a consequence of the Hanoi Declaration and Plan of Action of the Summit of Heads of State and Government (“Sixth ASEAN Summit” 1998) which underlined the importance of interchanges on human rights in ASEAN;

**Recognising** that the development of the region, in keeping with the ASEAN Vision 2020, depends upon the building of a culture respectful of human rights and that this requires the establishment of effective and accessible mechanism(s) to promote and protect human rights;

**DO HEREBY AGREE AS FOLLOWS:**

Chapter I. Purpose and Principles

*Article 1*

The Contracting States aim to establish a regional human rights mechanism to promote and protect human rights.

*Article 2*

Inspiration shall be drawn 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 the treaties to which the Contracting States have acceded.

## Chapter II. Establishment

### *Article 3*

The Contracting States hereby establish a permanent human rights commission for the region, which shall be called the ASEAN Human Rights Commission (hereinafter referred to as “the Commission”).

### *Article 4*

The Commission shall have its seat in.....

## Chapter III. Organization

### *Article 5*

The Commission shall be composed of (seven) members, who shall be persons of high moral character and recognised competence in the field of human rights.

### *Article 6*

The Commission shall act independently and, in its function, shall represent all the Contracting States which have ratified this Agreement.

### *Article 7*

1. The members of the Commission shall be elected in a personal capacity by the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement, from a list of candidates proposed by their governments. Members of civil society, including non-governmental organisations, shall be consulted in the choice of the candidates.

2. Each of those governments may propose up to three candidates who may be nationals of the Contracting States proposing them or of any Contracting States which have ratified this Agreement. When a list of three is proposed, at least one of the candidates shall be a national of a Contracting State which has ratified this Agreement, other than the one proposing the list.

### *Article 8*

The members of the Commission shall be elected for a single, non-renewable term of five years, bearing in mind gender balance. They shall be accorded privileges and immunities in their function by the Contracting States which have ratified this Agreement.

#### *Article 9*

The Commission shall prepare its Statute in consultation with the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement.

#### *Article 10*

The Contracting States which have ratified this Agreement shall provide the Commission with adequate resources required to accomplish the tasks assigned to it.

### Chapter IV. Mandate

#### *Article 11*

The main function of the Commission shall be to promote and protect human rights in the region. In the exercise of its mandate, it shall have the following functions and powers:

1. to develop an awareness of human rights among the peoples of the region;
2. to recommend to the governments of the Contracting States which have ratified this Agreement, when it considers such action advisable, the adoption of measures in favour of human rights;
3. to prepare such studies or reports as it considers advisable in the performance of its duties;
4. to request the governments of the Contracting States which have ratified this Agreement to provide it with information on the measure adopted by them in relation to human rights;
5. to investigate on its own initiative (alleged) violations of human rights by a Contracting State or States which have ratified this Agreement in accordance with established rules of procedure;
6. to respond to inquiries from Contracting States which have ratified this Agreement on matters concerning human rights and, where possible, to provide those States with the advisory services they request;
7. to take action on petitions and communications pursuant to its authority, under the provisions of Articles 10 and 11 of this Agreement;
8. to interpret all the provisions of the present Agreement at the request of a Contracting State or States which have ratified this Agreement;

9. to submit an annual report to the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement and to make it available to the public; and
10. to 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 the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement.

## Chapter V. Competence

### *Article 12*

Any person or group of persons, or any non-governmental organisation recognised in one or more Contracting States which have ratified this Agreement, may lodge petition(s) with the Commission containing complaints of violation of human rights by a Contracting State or States which have ratified this Agreement.

### *Article 13*

Any Contracting State which has ratified this Agreement may send communication(s) to the Commission alleging that another Contracting State which has ratified this Agreement has committed a violation of human rights.

### *Article 14*

The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law.

### *Article 15*

1. The Commission shall not deal with any petition submitted under Article 10 which
  - (a) is anonymous; or
  - (b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information; or
  - (c) uses abusive language.

2. The Commission shall consider inadmissible any petition or communication under Articles 10 and 11 which it considers incompatible with the provisions of the present Agreement or manifestly ill-founded.

## Chapter VI. Procedure

### *Article 16*

1. In the event of the Commission accepting a petition or communication referred to it:

- (a) it shall, with a view to ascertaining the facts, undertake together with (the representatives of) the parties an examination of the petition or communication and, if need be, an investigation; and
- (b) it shall at the same time place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter.

2. If the Commission succeeds in effecting a friendly settlement, it shall draw up a Report which shall be sent to the parties, the States concerned and the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement.

### *Article 17*

1. The Commission may at any stage of the proceedings decide to strike the petition or communication out of its list of cases where circumstances lead to the conclusion that:

- (a) the applicant does not intend to pursue the petition or communication; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Commission, it is no longer justified to continue the examination of the petition or communication.

However, the Commission shall continue the examination of a petition or communication if respect for human rights so requires.

2. If the Commission decides to strike a petition or communication out of its list after having accepted it, it shall draw up a Report which shall contain a statement of the facts and the decision striking out the petition or communication together with the reasons therefor. The Report shall be transmitted to the parties, the States concerned, and the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement. The Commission may publish it.

3. The Commission may decide to restore a petition or communication to its list of cases if it considers that the circumstances justify such a course.

### *Article 18*

1. If the examination of a petition or communication has not been completed in accordance with Articles 14 and 15, the Commission shall draw up a Report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under this Agreement. It may make such recommendations as it thinks fit. The Report shall be published and the individual opinions of the members of the Commission concerning the case shall be stated in the Report.

2. The Report shall be transmitted to the parties, the States concerned and the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement.

3. In transmitting the Report to the Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement, the Commission may make such proposals as it thinks fit.

4. The Ministers of Foreign Affairs of the Contracting States which have ratified this Agreement may transmit the Report to the Heads of State and Government of the Contracting States which have ratified this Agreement, for further action. They may make such proposals as they think fit.

### *Article 19*

The Commission shall take its decisions by a majority of the members present and voting, subject to a quorum of at least half its members.

### *Article 20*

The Commission shall meet as the circumstances require.

### *Article 21*

The Commission shall draw up its own rules of procedure.

### *Article 22*

The secretariat of the Commission shall be stated in its Statute.

## Chapter VII. Final Provisions

### *Article 23*

This Agreement shall enter into force on the 30<sup>th</sup> day after the deposit of the Third Instrument of Ratification.

*Article 24*

This Agreement may not be signed with reservation nor shall reservations be admitted at the time of ratification.

*Article 25*

All Articles of this Agreement may be modified through amendments to this Agreement agreed upon by consensus. All amendments shall become effective upon acceptance by the Contracting States which have ratified this Agreement.

*Article 26*

This Agreement shall be deposited with the Secretary-General of ASEAN who shall promptly furnish a certified copy thereof to each Contracting State.

*Article 27*

Each Contracting State shall deposit its Instrument of Ratification with the Secretary-General of ASEAN who shall likewise promptly inform each Contracting State of such deposit.

IN WITNESS WHEREOF the undersigned being duly authorised thereto by their respective Governments have signed this Agreement on the Establishment of the ASEAN Human Rights Commission.

DONE at.....

Initialed.....

For the Government of.....

For the Government of.....