Work on ASEAN Human Rights Body Poised to Begin

THE CHARTER OF the Association of Southeast Asian Nations (ASEAN) calls for the establishment of a regional human rights body. Although four more ASEAN member-states need to ratify the legally-binding Charter, ASEAN will soon begin laying the groundwork for the terms of reference (TOR) which will determine the powers, functions, mandate and composition of the ASEAN human rights body.

As a first step, ASEAN will come up with a TOR the High-Level Panel (HLP) which will draft the TOR for the human rights body. The foreign ministers are expected to name the TOR for the HLP during the ASEAN Ministerial Meeting in July 2008 in Singapore. Once the HLP has been named, it will proceed to draft the TOR of the human rights body.

Dr. Termsak Chalermpalanupap, special assistant to the ASEAN secretary-general, emphasized the importance of resolving the TOR. “The ASEAN Secretariat believes that it is not necessary to wait for the full ratification of the Charter to start doing work. Drafting the TOR won’t be easy and we need good venues to increase common understanding in ASEAN on what a regional grouping can do on the issue of human rights promotion and protection,” he said.

One such venue was the workshop organized by the Government of Indonesia on May 15-17, 2008 in Bali. Entitled “Supporting the Establishment of Regional Human Rights Mechanism in ASEAN,” the activity culled suggestions for the possible directions ASEAN can take in establishing the ASEAN human rights body.

Another venue was the roundtable discussion (RTD) organized by the Working Group for an ASEAN Human Rights Mechanism (Working Group) together with the Department of Foreign Affairs of the Philippines. The RTD, which took place in December 2007, was held to generate interest and support for the TOR.

Philippine Ambassador Rosario Manalo, former chairperson of the high level task force which drafted the ASEAN Charter, said that the details and the TOR of the ASEAN human rights body were not included in the Charter and urged ASEAN to “continue where the HLTF left off.”

Representatives of government agencies from all ASEAN member-states and the region’s national human rights institutions were in agreement. They encouraged ASEAN to set a specific timeframe for the prompt completion of the TOR to realize the human rights commitments enshrined in the ASEAN Charter.

Concrete moves by ASEAN and by some ASEAN member-states for the TOR were welcomed by the Working Group. “The Working Group will continue to explore how else it can contribute to developments of the TOR this year, especially now that the ASEAN human rights body, which we had been advocating since 1993, is taking shape,” vows Co-Chairperson Marzuki Darusman.

At the Third RTD, the Working Group and representatives from government agencies of ASEAN member-states reaffirm their support for the ASEAN human rights body.
WORKING GROUP UPDATES

ASEAN Parliamentarians Call for Quick Ratification of Charter

BY WAY OF preparing for the next stage of the Charter process, the ASEAN Inter-Parliamentary Caucus on Good Governance (AIPCGG) held a colloquium at the Parliament House in Kuala Lumpur on December 3-4, 2007 themed “Good Governance, Rule of Law, and Human Rights: the Way Forward for ASEAN.”

Co-organized by the Working Group for an ASEAN Human Rights Mechanism (Working Group) and supported by the Malaysian government, the colloquium was the first major ASEAN-wide event after the signing of the Charter. It was attended by members of parliament from ASEAN member-states and representatives of civil society.

The tone of the colloquium was set by Y.B. Datuk Seri Mohamed Nazri Bin Tan Sri Abdul Aziz, chairman of the AIPCGG: “It is clear that the concept of good governance is being envisaged as the norm of the ASEAN Community. My hope is that this colloquium will be able to propose suggestions and recommendations for the improvement of good governance, rule of law, and human rights in ASEAN.”

To concretize their commitments, the parliamentarians drew an AIPCGG Plan of Action. In here, they endeavored to advocate the ratification of the ASEAN Charter as early as possible. They also committed to support the adoption of the terms of reference that will establish an effective and independent ASEAN human rights body.

The AIPCGG was organized in December 2005 and launched in July 2006 by a group of parliamentarians from ASEAN member-states. Its steering committee is comprised of Dr. Muhammad AS Hikam (Indonesia), Senator Aquilino Pimentel (Philippines), Senator Kraisak Choonhaven (Thailand), Honorable Charles Chong (Singapore), Dr. Than Sina (Cambodia), and Hon. Lim Kit Siang (Malaysia).

Six ASEAN Member-States Ratify Charter

SIX MEMBER-STATES HAVE already ratified the ASEAN Charter: Singapore, Brunei Darussalam, Malaysia, Lao PDR, Viet Nam, and Cambodia. Now only ratification from the national parliaments of Indonesia, Myanmar, Philippines, and Thailand are needed for the Charter to come into force.

“The Charter is a milestone in ASEAN’s history. It is crucial that we maintain the momentum in taking ASEAN into its next phase of development,” explained Singapore’s Foreign Minister George Yeo. Singapore was first to ratify the Charter, immediately after Dr. Surin Pitsuwan officially assumed the post of the secretary-general of ASEAN in January 2008.

The ASEAN Charter, which took two years to produce, was adopted by the region’s heads of state on November 20, 2007 during the 13th ASEAN Summit. Once enforced, it will turn the regional bloc into a rules-based, legal entity.

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<th>Member State</th>
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<td>31 January 2008</td>
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<td>6. Cambodia</td>
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ASEAN, Working Group Pushes for Commission on the Promotion and Protection of the Rights of Women and Children

WITH THE ASEAN Charter calling for the creation of an intergovernmental human rights body, questions have arisen on what will happen to the proposal for a separate Commission on the Promotion and Protection of the Rights of Women and Children.

In order to explore directions for the proposed Commission, ASEAN organized a Joint Roundtable Discussion (JRD) at the ASEAN Secretariat in Jakarta from April 7-8, 2008 where representatives of key government agencies dealing with women and children’s affairs affirmed that the Commission should proceed independently and separately from the ASEAN human rights body.

Dr. Sriprapha Petcharamesree, a member of the Working Group for an ASEAN Human Rights Mechanism (Working Group), presented her research paper on laying down the foundations for the proposed Commission.

The paper was produced in pursuance of the Working Group’s mandate given by ASEAN in 2005 to assist in the implementation of the Vientiane Action Programme’s (VAP) human rights areas, particularly the establishment of a Commission on the Promotion and Protection of the Rights of Women and Children.

One of the observations stated by the paper is that “although there are still actual and relative gaps in the application of human rights protection afforded to women... ASEAN’s efforts to comply with the international standards of women’s rights can be interpreted as the region being poised to take responsibility and demonstrate its accountability for the human rights and well-being of women in the region.”

The Working Group will continue to press for the establishment of the specialized body on women and children, notwithstanding the expiration of the VAP in 2010. Working Group Co-Chairperson Marzuki Darusman explained, “Although the VAP has a timeframe of up to two more years, the soon-to-be adopted blueprints for the political-security and socio-cultural pillars of ASEAN are expected to implement the vision of establishing an ASEAN Community by 2015.”

He added that the Working Group will support both the creation of the Commission and the ASEAN human rights body concurrently.

What should be the key features of the Commission?

Here are partial recommendations suggested by the research paper:

- An intergovernmental body which is independent but part of ASEAN
- An entity established by a legally binding document
- The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of a Child should be used as common legal standards for the Commission
- Composed of one (full time) expert appointed by the government from each ASEAN member-state
- The Commission should have special rapporteurs who can undertake consensual on-site visits to ASEAN member-states.
- Broad mandate covering both promotional and protective functions
IN SPITE OF THEIR VARYING views on the Charter of the ASEAN, human rights advocates want to press for its human rights provisions further. An early venue for discussion was the 15th ASEAN-ISIS Colloquium on Human Rights (AICOHR), held in Manila from May 1-2, 2008.

Speakers from the region discussed the challenges and opportunities facing the establishment of the ASEAN human rights body. One of the most contentious issues is ASEAN’s practice of deciding by consensus.

Some participants feared that ASEAN will be unable to harness the full potential of the human rights body if it is too accommodating to the differing views of member-states. They argue that a consensus vote will ensure that ASEAN governments will be on the same footing as others when it comes to meeting international human rights standards.

Another challenge, said Rizal Sukma, executive director of the Centre for Strategic and International Studies of Indonesia, is the absence of sanctions in the Charter. While the Charter is legally-binding, it risks ineffectiveness because reparations for noncompliance are not identified.

By defining the approaches in tackling the challenges and opportunities for the ASEAN human rights body, participants – hailing from governments, the academe, think tanks, and civil society groups – acknowledged that they had different roles to play.

“Human rights requires a broad constituency and a complimentary approach,” said Professor Ed Garcia, senior policy advisor of International Alert, “Coming from all sides, we can push the advocacy for the creation of an ASEAN human rights body to the limit.”

ASEAN-ISIS is a network of independent think tanks in Southeast Asia. A key partner of the Working Group for an ASEAN Human Rights Mechanism, it is dedicated to the study of socio-political, security and economic developments in the region.

Terms of Reference Proposed for ASEAN HR Body

THE NATIONAL HUMAN rights institutions (NHRIs) of Indonesia, Malaysia, the Philippines, and Thailand will submit a draft which they hope the ASEAN will use as it fleshes out the Terms of Reference (TOR) of the ASEAN human rights body.

In their draft, the four NHRIs concretely defined the body as an “ASEAN Human Rights Commission”. No less than the Universal Declaration of Human Rights and the Paris Principles – the minimum standards set by the United Nations which institutions must adhere to in order to effectively promote and protect human rights – are its guiding principles.

The draft TOR also specifically proposes what should be the first acts of the Commission: to create an ASEAN convention on human rights and to assist in the creation of NHRIs in ASEAN member-states that still have none.

As to who should comprise the Commission, the four NHRIs recommend that the decision be left to the ministries of foreign affairs of all ASEAN member-states. However, it is emphasized that all candidates to the Commission be endorsed by any of the four NHRIs and civil society organizations.

The draft TOR was initially presented to representatives of government agencies and civil society organization representatives for feedback during the workshop organized by the government of Indonesia on May 2008 in Bali.
The four NHRIs are further exploring means by which they can individually support ASEAN as it gives shape to the ASEAN human rights body. During their Fourth Consultative Meeting in January 2008, it was suggested that they each translate the Charter into the vernacular to build wider public awareness and participation.

"We laud the four NHRIs for their concern and support for the fate of the human rights body," said Co-Chairperson Marzuki Darusman of the Working Group for an ASEAN Human Rights Mechanism (Working Group). "ASEAN should strongly consider consultations with NHRIs as they formulate the TOR because of their expertise and experience. We look forward to working with the NHRIs in giving life to the ASEAN human rights body."

The four NHRIs have been involved in the Working Group’s efforts to establish a human rights mechanism since 2001. In June 2007, the NHRIs entered into a formal cooperation agreement to support the establishment of the ASEAN human rights mechanism.

INDIVIDUALLY, THEY ARE known as the Indonesian National Human Rights Commission (KOMNAS HAM), Human Rights Commission of Malaysia (SUHAKAM), the Commission on Human Rights of the Philippines (CHRP), and National Human Rights Commission of Thailand. Now that these four national human rights institutions (NHRIs) of Southeast Asia have banded together, they are recognized as the ASEAN NHRI Forum.

Each member of the grouping will take the lead in addressing areas of cooperation on human rights issues of common concern. In addition, they have agreed to form a technical working committee comprised of focal persons from each NHRI to meet on a regular basis to follow through on their joint projects.

In April 2008, a technical working committee meeting was held in Cebu to finalize the details of 10 joint projects. KOMNAS HAM will work on a draft sub-regional instrument to combat terrorism which the Forum can propose to ASEAN. The instrument is envisioned to be legally-binding.

SUHAKAM will conduct research on national legislation on migrant workers in ASEAN member-states. In addition, SUHAKAM proposes that the Forum should collectively lobby for the ratification of the Convention on Migrant Workers by ASEAN member-states.

The CHRP will document the best practices in human rights education developed by ASEAN member-states. It will use the information gathered to develop a human rights training program for the region. The creation of an ASEAN NHRI Forum website and other possible systems of communications exchange is also the responsibility of the CHRP.

The Forum will also explore how they can assist in the creation of NHRIs in ASEAN member-states where there are none. "Human rights in the region are enhanced when you develop and strengthen national capacities. The establishment of new NHRIs and the reinforcement of existing ones are building blocks to the development of an ASEAN human rights body," said former CHRP Commissioner Quentin Cueto III.

All projects falling under the Forum’s cooperation framework, including initiatives to support an intergovernmental human rights body in ASEAN, are covered by a grant from the European Commission.

The ASEAN NHRI Forum formally agreed to address human rights issues of common concern when they signed a Declaration of Cooperation in Indonesia on June 28, 2007. However, they have been in dialogue since 2001, when they were invited to join the Jakarta workshop of the Working Group for an ASEAN Human Rights Mechanism.
THE FIRST DRAFT of the law which will create a national human rights institution (NHRI) in Cambodia has been completed. It will be released to the public for widespread consultations in 2008 before it is submitted to the National Assembly of Cambodia for adoption.

A joint committee, comprised of civil society members and government officials, are at the forefront of the initiative. They had originally hoped to present the first draft to the National Assembly before it closed in mid-April 2008. The draft is now in the hands of the committee members belonging to government for their inputs. It will be submitted to the National Assembly when it reopens later this year.

In the meantime, the committee has begun its consultation and public awareness processes. “We hope that people will actively support the establishment of the NHRI after they learn about how it will be beneficial to Cambodia. The process will be faster if they help us in lobbying with parliamentarians,” explained Chak Sopheap, a civil society member of the joint committee.

Chak, who is also part of the Cambodian Working Group for an ASEAN Human Rights Mechanism (CWG), said that the committee held a dialogue on December 11, 2007 with a diversified group of representatives from human rights organizations, labor unions and the academe. Suggestions for the composition and mandate of the NHRI were discussed.

Knowing that radio can reach even the farthest areas of the country, a weekly program which discusses the benefits of a NHRI for the people is also being produced. Listeners can call in to ask questions or give recommendations on air.

Inputs are also coming in from the outside. Experts from the United Nations have reviewed the draft law and are sending their recommendations. Closer to home, the four existing NHRI in Southeast Asia have invited members of the Cambodian joint committee in their meetings to explore means of assistance.

Currently, only Indonesia, Malaysia, Philippines, and Thailand have NHRI in ASEAN. At a conference organized by the Cambodian Working Group entitled “Establishment of a National Human Rights Institution in Cambodia” in September 2006, Prime Minister Hun Sen proclaimed that Cambodia will be the fifth ASEAN member-state to have an NHRI.

Cambodia already has three government-created human rights commissions but none are compliant with the Paris Principles or minimum guidelines that must be met in order to effectively promote and protect human rights.

A national human rights institution can address human rights violations at the grassroots level. In Cambodia, the task currently falls to organizations like LICADHO.
**OUR PEOPLE**

**CWG Establishes Permanent Secretariat**

IN ORDER TO effectively manage its growing list of activities in 2008, the Cambodian Working Group for an ASEAN Human Rights Mechanism (CWG) set up a permanent secretariat in January 2008. It is currently located in the office of Radio Voice of Democracy, a member of the CWG.

The secretariat is managed by Joanna Kong Kunthea who is charge of documentation, information dissemination and overall coordination of CWG activities. Kong Kunthea, who was previously involved in media work for non-government organizations, says that she is particularly excited about CWG’s advocacy for the creation of a national human rights institution.

The CWG is a multi-sector group composed of human rights organizations and advocates in Cambodia. It is a member of the Working Group for an ASEAN Human Rights Mechanism.

**Thai Working Group Chair Receives Special Citation for Human Rights**

DR. SRIPRAPHA PETCHARAMESREE, chairperson of the Thai Working Group for an ASEAN Human Rights Mechanism (Thai Working Group), received a special citation for her outstanding human rights work from the Jose W. Diokno Foundation in Manila on February 27, 2008.

The Foundation annually bestows an Award of Recognition and Special Citation on individuals who imbibe the libertarian and human rights values of the late Senator Jose “Pepe” Diokno. The former Senator was a renowned human rights lawyer who courageously fought for the rights of victims of military oppression during the martial law regime in the Philippines.

Petcharamesree is the first non-Filipino and the first surviving recipient of the Special Citation. She is recognized nationally and regionally for her contributions on issues of citizenship, economic, social and cultural rights, community rights, and human rights education. The Office of Human Rights Studies and Social Development (Mahidol University), where she sits as director, is the only institution in Southeast Asia which offers a graduate and a doctoral degree in human rights.

Petcharamesree is also the current chairperson of the Human Rights Education Working Group of the Thai Ministry of Education.

“I am grateful that my little contribution is being recognized by the Graduate School of Business of De La Salle Professional Schools and the Jose W. Diokno Foundation,” said Petcharamesree when she accepted her award. “I strongly believe that if each of us teaches our students how to live with others and how to care about the suffering of others, one day we will have a better society.”

**PWG Holds Nationwide Consultations on ASEAN Charter, HR Body**

THE PHILIPPINE WORKING Group for an ASEAN Human Rights Mechanism (PWG) will be popularizing the newly-adopted Charter of the Association of Southeast Asian Nations (ASEAN), particularly its provision on the creation of a regional human rights body, among civil society organizations (CSOs) in the country in 2008.

Foremost among its activities are consultations in the cities of Manila, Cebu, and Davao. Spearheaded by two PWG member organizations, Task Force Detainees of the Philippines (TFDP) and the Philippine Alliance of Human Rights Advocates (PAHRA), the consultations will brief those working at the grassroots level on the necessity of having a regional human rights mechanism. In addition, they will seek their suggestions on the terms of reference (TOR) which will determine the powers, functions, mandate, and composition of the ASEAN human rights body. Results of the consultations will then be submitted to the ASEAN High-Level Panel that is expected to draft the TOR.

TFDP Executive Director Cresencia Lucero, PAHRA Secretary-General Renato Mabunga, and PWG Chair Wigberto Tanada highlighted the importance of the consultations in their joint invitation to CSOs to participate: “The Charter serves as a legal institutional framework of ASEAN on human rights and codifies all ASEAN norms, rules and values towards the promotion and protection of human rights. It may also serve as a guide for Philippine law-making and governmental action. As members of CSOs, we are compelled to make necessary contributions and are impelled to remain vigilant in ensuring a workable mechanism that would merit the enjoyment of human rights for all.”

The PWG is part of the Working Group for an ASEAN Human Rights Mechanism.
A Gradual Change in Mindsets

THE WORKING GROUP for an ASEAN Human Rights Mechanism (Working Group) has been talking to ASEAN governments for 15 years. The conversation began when ASEAN Foreign Ministers agreed “to consider an appropriate regional human rights mechanism” in their 1993 Joint Communiqué. It continues today, as ASEAN has adopted a legally-binding Charter which calls for the creation of a human rights body.

As we celebrate each milestone for human rights, we also study the forces which contribute to the process. What we discovered was that the most valuable catalyst is the growing (albeit different levels of) interest among ASEAN governments in the human rights body.

From merely “considering,” some ASEAN governments have moved on to actively creating spaces for human rights. We only have to look at recent developments to find examples. The Indonesian government recently organized a workshop in support of the establishment of an ASEAN human rights mechanism. In addition, in June, the Singaporean government will co-host a workshop as a response to the need to define the ASEAN human rights body.

We credit the change in mindsets to the growing number of human rights advocates and supporters in ASEAN governments. These are a new breed of officials who have been educated and exposed to international human rights standards; some of them have even come from the ranks of civil society. These leaders are our best hope because the creation of an ideal human rights body must come from governments themselves.

With such allies in place, we should further strengthen our linkages, and see how we can compliment one another’s efforts. The Working Group, for its part, will continue the conversation it began in 1993.

Carlos P. Medina Jr.