

Bangkok, Thailand, 28 November 2008

The Secretary
Human Rights Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
CANBERRA ACT 2600

Your Excellency,

Thank you for the letter dated 19 September 2008 inviting the Asian Forum for Human Rights and Development (FORUM-ASIA) to prepare a public submission to the inquiry on the regional human rights mechanisms and possible models for the Asia-Pacific region. Attached with this submission:

1. Background information on the creation of the ASEAN Human Rights Body,
2. Civil Society engagement in the establishment of ASEAN human rights body lead by FORUM-ASIA and SAPA Task Force on ASEAN and Human Rights,
3. Civil Society Inputs on the Proposed headings of discussion on the Term of Reference of the ASEAN Human Rights Commission,

FORUM-ASIA together with the Solidarity for Asian's People Advocacy (SAPA) Task Force on ASEAN and Human Rights (TFAHR) which consists of more than 70 non-government organisations (NGOs), have been following and engaging the intergovernmental process on the establishment of the ASEAN human rights body as mandated by Article 14 of the ASEAN charter. Our first written input to the ASEAN High Level Panel (HLP) on the terms of reference (TOR) of the ASEAN human rights body was submitted by the Thailand focal point of our Task Force to the Chair of HLP, H.E. Sihasak Phuangketkeow during the HLP second meeting on 14-16 August 2008. This submission was the outcome document from the 2nd Regional Consultation on ASEAN and Human Rights held in Jakarta from 4-7 August 2008 and attended by 75 participants from 14 countries in Asia (further information on our activities in mobilising NGOs to different forums on the creation of ASEAN Human Rights Body (AHRB) is available in Annex 2).

The HLP third meeting was held in Manila, 12 – 14 September 2008 and an official interface dialogue with Civil Society Organisations (CSO) was organized for the first time. In this meeting, FORUM-ASIA together with SAPA TFAHR was invited and officially presented the CSO submission to all the HLP members.

On 16 October 2008, the HLP member from Malaysia informed the Kuala Lumpur based CSOs of the 15 “headings for discussion” for the TOR on the establishment of the ASEAN human rights body. A week after, FORUM-ASIA and SAPA TFAHR convened a meeting with its country and thematic focal points in Jakarta, Indonesia, to come up with the inputs based on the 15 headings of discussions. The meeting was held on 28-29 October and resulted in another submission called “Civil Society Inputs on the Proposed headings of discussion on the Term of Reference of the ASEAN Human Rights Commission” (see Annex 3). This submission was

handed out to the HLP member of Indonesia during the 5th meeting of the HLP from 13 to 15 October in Bali, Indonesia.

FORUM-ASIA believes that AHRB could be an important milestone to a new era of the promotion, protection and fulfilment of human rights in the region. In view of this, we would like to highlight some of the concerns deriving from our engagement with the process of the creation of AHRB as follow:

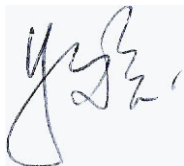
1. Although the ASEAN Charter recognises the importance of human rights in its Preamble and the Principles, there is however no specific mention of the Universal Declaration of Human Rights. It is therefore of utmost importance to ensure that the Term of Reference (TOR) of the AHRB will specifically recognise the Universal Declaration of Human Rights and international human rights laws as a source of guidance for its mandate and work on human rights.
2. To ensure that the AHRB will be an effective body, it should be constituted as an independent body while remains as an inter-governmental body. The body should be called “Commission”, as in other regional human rights mechanisms.
3. The composition of the commissioners shall be gender and geographical balance and selected based on their integrity, impartiality, professionalism, commitment and competent in human rights.
4. The process of the selection and appointment of commissioners shall be transparent with meaningful consultation with and participation from the civil society.
5. The TOR must take long term vision into account to include ensuring that the TOR is not drafted in finite terms that would obstruct its development in the future. We believe that the TOR should set out the plan or road map, commensurate with benchmarks for its development. Once the benchmarks are met, the gradual improvement of ASEAN human rights mechanism and system may be undertaken. Nevertheless, AHRB should start from their commitment which was made in 1993 on human rights.
6. Ultimately, AHRB should develop a comprehensive human rights treaty or treaties reflecting the international human rights laws and standards. However, there had been a resistance stand point from civil society groups during the 2nd Regional Consultation on ASEAN and human rights in Jakarta from 4-7 August 2008 on having ASEAN human rights convention. There is a fear that the ASEAN will compromise the international human rights standards with the so called “Asian values”, and ASEAN principles of non-interference.
7. The AHRB should not only function as advisory body, institute or a think-tank, but it should have a mandate to promote, protect, fulfil and realize human rights in the region (see annex 3 on heading VI. Mandate and Function). We believe that AHRB should be placed above the three community councils so that human rights can serve as an overarching mechanism for all matters and conducts of the three ASEAN community councils.

8. The ongoing process of establishing the ASEAN Commission on the promotion and protection for the rights of women and children (ACWC) should finally be subsumed within the AHRB to mainstream women's rights and children's rights in the main human rights organ of ASEAN. We also believe that AHRB shall be open for the creation of other sub-commissions, including sub-commission on migrant workers, indigenous peoples, ethnic minorities, people with disability and others.
9. AHRB should be in a constant dialogue with national and regional as well as international civil society organizations. We believe that AHRB should be accessible to all, in particular human rights defenders, victims of human rights violations and those who would otherwise be prevented from accessing the AHRB.
10. AHRB secretariat should be independent from the ASEAN secretariat and shall be given adequate resources. The secretariat shall include the professional staff selected in an open process ensuring the participation of civil society organisations.

FORUM-ASIA hopes that this submission will provide a brief description on the emerging protection mechanism of human rights in Southeast Asia. Otherwise, please contact me and the following list of names for further information and inquiries:

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- b. Ms. Yuyun Wahyuningrum, East Asia Program Manager, FORUM-ASIA at yuyun@forum-asia.org

Sincerely yours,



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