
Background information on the creation of the ASEAN Human Rights Body

I. ASEAN and Human Rights

1. The Association of Southeast Asia Nations (ASEAN), which was established in 1967, has always been seen as an “elitist club” which only recognises state security and often put democracy and human rights aside. However, this view seems to have changed in the 1990s after the World Conference on Human Rights in Vienna, Austria in June 1993.
2. At the conference, participants endorsed the Vienna Declaration and Programme of Action (VDPA), where the document highlighted the need to set up a regional human rights protection mechanism for regions which are yet to have one. The outcome of the World Conference seem to have influenced the 26th ASEAN Ministerial Meeting (AMM) in Singapore when it declared in a Joint Communiqué that, “the Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights [...] and reaffirmed ASEAN’s commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993.”¹
3. The same Communiqué also stressed that, “in support of Vienna Declaration and Programme of Action [...] ASEAN should also consider the establishment of an appropriate regional human rights mechanism”.

II. Developments in ASEAN on women and children’s rights

4. ASEAN started its focus on women and children concerns, not explicitly on women’s rights, since the 1980s. Specifically, it has adopted the following:
 - 4.1 On women:
 - 4.1.1 Declaration on the Advancement of Women in ASEAN (1988)
 - 4.1.2 Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004)
 - 4.1.3 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004)
 - 4.2 On children and youth
 - 4.2.1 Declaration of Principles to Strengthen ASEAN Collaboration on Youth (1983)
 - 4.2.2 Kuala Lumpur Agenda on ASEAN Youth Development (1997)
 - 4.2.3 Yangon Declaration on Preparing ASEAN Youth for the Challenges of Globalisation (2000)
 - 4.2.4 Manila Declaration on Strengthening Participation in Sustainable Youth Employment (2003)

¹ The full text can be found at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En)

- 5 Given that all ASEAN member states have ratified the two international conventions related to women and children - the Convention on the Elimination of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC) - ASEAN feels more comfortable to discuss about women and children's rights issues but are hesitant when it comes to civil and political rights (under the ICCPR). Most ASEAN member states have ratified the ICCPR.
- 6 The first mention of women and children's rights by ASEAN was in the Hanoi Action Plan (HAP) covering the period 1997-2004. The HAP was intended to fulfil the ASEAN Community by the year 2002 as envisioned in the ASEAN Vision 2020 document. The HAP points out the need to:
 - 6.1 Strengthen ASEAN collaboration in combating the trafficking in, and crimes of violence against, women and children.
 - 6.2 Work towards the full implementation of the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women and other international instruments concerning women and children.
- 7 In 2004, after the conclusion of the HAP, ASEAN leaders came up with the Vientiane Action Programme (VAP) for the next five years: 2005- 2010. This ASEAN plan includes the following:
 - 7.1 Complete a stock-take of existing human rights mechanisms and equivalent bodies including sectoral bodies promoting the rights of women and children;
 - 7.2 Formulate and adoption the MOU to establish a network among existing human rights mechanisms;
 - 7.3 Formulate the work of the network;
 - 7.4 Promote education and public awareness on human rights;
 - 7.5 Establish a network of cooperation among existing human rights mechanisms;
 - 7.6 Elaborate on an ASEAN instrument on the protection and promotion of the rights of migrant workers; and
 - 7.7 Establish an ASEAN commission on the promotion and protection of the rights of women and children.

III. Developments of the ASEAN Charter

- 8 The goal of creating an ASEAN Charter was first officially acknowledged in the 10th ASEAN Summit in November 2004 in Vientiane as embodied in the VAP: "we recognise the need to strengthen ASEAN and shall work towards the development of an ASEAN Charter". At the 11th ASEAN Summit in December 2005 in Kuala Lumpur, Malaysia, ASEAN leaders came out with the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter. This was followed by the setting up of Eminent Persons Group (EPG) to provide practical recommendations on the creation of the charter. The Declaration stated that the charter would reaffirm the "promotion of democracy, human rights and obligations", a final recognition of the importance of human rights in the charter.

- 9 Regarding the inclusion of a human rights mechanism, the EPG report only stated that “the EPG discussed the possibility of setting up of [*sic*] an ASEAN human rights mechanism, and noted that this worthy idea should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of human rights of every individual in every Member State.”² This wording was particularly disappointing when considering that it was way back in 1993, at the 26th ASEAN Ministerial Meeting (AMM), that the foreign ministers “agreed that ASEAN should...consider the establishment of an appropriate regional mechanism on human rights.”³
- 10 The 12th ASEAN Summit in Cebu, Philippines in January 2007 endorsed the EPG report with its Cebu Declaration on the Blueprint of the ASEAN Charter. It also directed a High Level Task Force (HTLF) to draft the Charter ready for signing at the November 2007 13th ASEAN Summit in Singapore.
- 11 The HTLF met for the first time in February 2007 and began drafting the Charter based on directives from the 11th and 12th ASEAN Summits, the EPG Report and other key ASEAN documents.

IV. ASEAN Charter and ASEAN human rights body

- 12 At the 13th ASEAN Summit on November 2007 in Singapore, the HTLF presented the ASEAN Charter to the ASEAN leaders, which was then signed by all the ten leaders. It is now under a ratification process. As of July 2008, Brunei, Cambodia, Laos PDR, Malaysia, Singapore, and Vietnam have deposited their ratification documents to the ASEAN Secretariat, while the other four members, namely Burma, Indonesia, Philippines, Thailand, have yet to ratify the charter.
- 13 The ASEAN Charter mentions human rights three times, as follows:
 - 13.1 ASEAN will “[adhere] to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms.” (Preamble)
 - 13.2 The purpose of ASEAN is “to strengthen democracy enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN.” (Purpose)
 - 13.3 ASEAN and its member state shall act in accordance with the “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.” (Principles)
- 14 Article 14 of the ASEAN Charter makes references to the ASEAN human rights body:

² *Ibid*, pg.23

³ AMM Communiqué (1993), Joint Communiqué of the 26th ASEAN Ministerial Meeting held in Singapore on 23-24 July 1993, available online at (accessed 31st May 2007): <http://www.thinkcentre.org/article.cfm?ArticleID=1797>

- 14.1 In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.
- 14.2 This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

V. Engagement with ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) under the Vientiane Action Programme (VAP)

- 15 After the adoption of the VAP in July 2005, ASEAN senior officials (SOM) met the Working Group for an ASEAN Human Rights Mechanism (Working Group). The Working Group is a coalition of government officials from national working groups, academe and NGOs in the following five countries namely Cambodia, Indonesia, Philippines, Singapore, and Thailand. The national working groups are to assist in the human rights programmes of the VAP with regards to the ACWC.
- 16 The Working Group tasked the Thailand national Working Group and Mahidol University's Office of Human Rights and Social Development (OHRSD) to conduct studies and stocktaking of the regional and national laws relating to the rights of women and children in ASEAN. The OHRSD conducted two meetings on 20 November 2006 and 3-4 April 2007 which started the process of writing and releasing the report of the study.
- 17 In the ASEAN Security Community Plan of Action Coordinating Conference (ASCCO) held in Jakarta on 4-5 September 2006, the ASEAN SOM and the ASEAN Standing Committee (ASC) agreed that they would take the lead role in the implementation of the VAP in the area of women and children's human rights and will be working with other bodies such as the Senior Official Meeting on Social Welfare and Development (SOMSWD) and the ASEAN Committee of Women (ACW)⁴
- 18 At the first meeting of the OHRSD expert group on 20 November 2006, some of the significant conclusions and recommendations were:
 - 18.1 Any regional mechanism to be established should take into consideration the regional economic and social agenda;
 - 18.2 The commission should not replicate the experiences of other regional mechanisms but should be distinctly ASEAN.
 - 18.3 The institution should not challenge the government. It should not be used, however, by governments as window dressing to raise their image.
 - 18.4 The commission should be mandated with promotional and protective activities. It should be empowered to monitor compliance by member-states according to international and regional standards.

⁴ See "ASEAN and Women and Children's Rights", paper by Everlyn S. Dunuan, National Commission on the Role of Filipino Women, presented at the First Regional Consultation on ASEAN and Human Rights

- 18.5 The selection of the commissioners should be done through a participatory and transparent process including impartiality and independence of the commission and commissioners.
- 18.6 Further consultations should be broadened to involve more people from various sectors.
- 18.7 Engaging civil society and creating space for dialogue with all parties concerned is needed.⁵
- 19 On 3-4 April 2007, the Regional Consultative Meeting on the Establishment of an ACWC was held in Bangkok to discuss the study report on the establishment of the ACWC. The outcome of the meeting identified the following components of any regional mechanism:
- 19.1 Promotion and protection of human rights, particularly women's and children's rights;
- 19.2 Consistency with international standards, particularly CEDAW and CRC;
- 19.3 Commission of experts with independence of action;
- 19.4 Inputs from civil society pertaining to the establishment and functioning of the commission;
- 20 Both meetings resulted in the report entitled "Towards an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children" which was only released in June 2008, four years after the VAP was launched. The report is very comprehensive as it discusses i) ASEAN's commitment to the promotion and protection of the rights of women; ii) Legal and political commitment to human rights of the rights of women; iii) Lessons drawn from other regional mechanisms; and iv) conclusion and recommendations. However, there is very little involvement from the broader civil society, human rights organisations, and women and children's rights groups as participants were mainly governments and national machineries on women or children.
- 21 In another development, on 7-8 April 2008, the ASEAN Secretariat held a Joint Roundtable Discussion on the Establishment of an ACWC in Jakarta which stressed the need to set up the commission. It also recommended that the terms of reference of the Commission should be established by the appropriate ASEAN body and the members of the drafting group to be nominated by member states. However, there are different views and options on the following:
- 21.1 Establishment of the Commission prior to the establishment of the human rights body; the status of the Commission would be reviewed with the establishment of the human rights body with the option for it to be subsumed under the body;
- 21.2 Await the establishment of the human rights body first and then consider the establishment of the Commission (or an alternative mechanism) after;
- 21.3 Review the ASEAN Committee on Women (ACW)'s mandate and ensure that it covers all function of the Commission on Women and establish a new ASEAN Committee on Children to oversee issues related to the child.

⁵ Working Group for an ASEAN Human Rights Mechanism (2007). A Submission on the Occasion of the 2nd ASEAN Security Community Plan of Action Coordinating Conference (ASCCO). Available at: <http://www.aseanhrmech.org/downloads/Working%20Group%20Submission%202nd%20ASCCO.pdf>

22 The outcome of the Joint Roundtable was sent to the ASEAN Committee for Women (ACW) and SOMSWD for endorsement and was subsequently submitted to the 41st AMM in July 2008.⁶

VI. Actors in engagement and development of the ASEAN human rights body

23 With regards to the ASEAN human rights body/mechanism, there have been several major groups who played key roles in monitoring and advocacy for the creation of the ASEAN human rights mechanism. This part will explain the brief background of each group and the work that each group has done with respect to the process of the establishment of the ASEAN human rights body.

24 The first player is the ASEAN ISIS Colloquium on Human Rights (AICOHR), which is an annual platform organised by the national members of the ASEAN Institute for Strategic and International Studies (ASEAN-ISIS). It has held annual meetings since 1993. The AICOHR, however, does not conclude or recommend what can or cannot be used for submission to the ASEAN. But it has provided the initial venue for human rights defenders and government officials to meet and discuss about human rights.

25 AICOHR held its 15th Meeting in Manila, the Philippines on 1-2 May 2008 with the theme, “Towards Implementing the Human Rights Provisions in the ASEAN Charter: Views from Human Rights Advocates”.

26 The second actor is the Working Group for an ASEAN Human Rights Mechanism (Working Group). As mentioned earlier, this is a coalition of national working groups comprising representative of government institutions, parliamentary human rights committees, national human rights institutions, the academe, and NGOs set up in 1995. It follows a step by step, constructive and consultative approach when dealing with the government. The Working Group convenes annually for two main events – a) the Workshop on ASEAN Regional Human Rights Mechanism, and b) the Roundtable Discussion on Human Rights in ASEAN. The first is a forum for governments, NHRIs, the ASEAN Secretariat, and NGOs to discuss updates on the implementation of VAP and the ASEAN human rights body. The second forum involved only the government, NHRIs, and the members of the Working Group.

27 The Working Group has access to meetings of the ASEAN SOM in every ASEAN ministerial meeting. In the 2000 SOM, the Working Group submitted a draft agreement on the setting up of the ASEAN Human Rights Commission; however, there has been no feedback from the SOM.⁷

⁶ See ASEAN Secretariat’s Discussion paper for the Joint Roundtable Discussion Recommendations on the Establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, 7-8 April 2008 at the ASEAN Secretariat.

⁷ See the Draft Agreement at <http://www.aseanhrmech.org/downloads/draft-agreement.pdf>

- 28 Four national human rights institutions (NHRIs) have been established in the following ASEAN member states: Indonesia, Malaysia, Philippines, and Thailand. These NHRIs have set up their network and regularly meet in the ASEAN NHRIs Forum. So far, four meetings have been held since its formation in 2007. These NHRIs held their 4th Consultative Meeting and Conference in Manila, Philippines from 29-31 January 2008 while its Technical Working Group (TWG) meeting was held from 28-30 April 2008 in Cebu City, the Philippines.
- 29 The meeting of the TWG in April 2008 resulted in the terms of reference (TOR) for the ASEAN Human Rights Commission (AHRC). It recommended that the AHRC should be the first body that should be set up. It is believed that the TOR has been submitted to the 41st AMM in Singapore. Some of the key points in the TOR include:
- 29.1 The AHRC shall advise and assist ASEAN in formulating directives and procedures and recommend measures to be taken in addressing human rights issues as well as the ratification of international treaties;
 - 29.2 It shall promote, protect, and monitor human rights consistent with the UDHR.
 - 29.3 It will cooperate with NHRIs, NGOs, civil society organisations, regional institutions, and international institutions concerned with human rights;
 - 29.4 It shall receive, analyse, investigate and take action on complaints of alleged violations by any person(s) or group of persons and others.

VII. Engagement by Solidarity for Asia People's Advocacy (SAPA) Working Group on ASEAN

- 30 The Solidarity for Asia People's Advocacy (SAPA) is a network of Asian national and regional NGOs and people's organisation operating at regional (and international) level. The motivation for this network was to improve communication, cooperation, and coordination between Asian civil society groups in order to enhance the influence on regional inter-governmental structures. The SAPA Working Groups were set up in specific areas to share relevant information and news and to coordinate activities. Three Working Groups are currently operating: the Working Group on UN Human Rights, Working Group on ASEAN, and Working Group on Migration and Labour.
- 31 On 26-28 August 2007, the first Regional Consultation on ASEAN and Human Rights was held by Asian Forum for Human Rights and Development (FORUM-ASIA) in Kuala Lumpur. In the meeting, civil society actors in ASEAN came together to set up the Task Force on ASEAN and Human Rights (TF-AHR). This is a network of civil society organisations under SAPA Working Group on ASEAN, which focuses on the creation of the ASEAN human rights body. Its objectives are:
- 31.1 To hold ASEAN member states accountable to their international and domestic human rights obligations, and
 - 31.2 To make the ASEAN human rights mechanisms more accountable and effective. The meeting produced the Kuala Lumpur Action Points as a basis for an action agenda.

32 From May to July 2008, national workshops on AHRB have taken place in six countries namely: Cambodia (20 May 2008), Indonesia (23-24 July 2008), Malaysia (27-28 July 2008), Philippines (9 May and 10 June 2008), Thailand (5-6 July 2008), and Burma's border with Thailand, Mae sot (8-9 July 2008). The civil society inputs of these national consultations were submitted to the AMM in Singapore on 18 – 24 July 2008 which highlighted:

32.1 The composition of HLP shall include independent human rights experts from each of the ASEAN member states, who will participate in all meetings of the HLP in order to provide necessary advice,

32.2 The HLP shall engage in a democratic and inclusive process of consultation with relevant groups, to include:

- a. National and regional civil society consultations which gather views on the powers, responsibilities and structure of the ASEAN human rights body in order to ensure that the body serves the needs and interests of the people of ASEAN;
- b. The establishment of appropriate mechanisms for these consultations;
- c. Creative forms of communication to reach the largest number of people possible within ASEAN. Such forms of communication should enable concerned citizens who otherwise were not able to participate directly in consultation meetings to register their views on the powers, responsibilities and structure of the ASEAN human rights.