

**5th Roundtable Discussion on Human Rights in ASEAN –
Towards an ASEAN Human Rights System:
Role of Institutions and Related Activities**

15-16 December 2009
Bangkok, Thailand

SUMMARY OF PROCEEDINGS

I. Introduction

1. The **Fifth Roundtable Discussion on Human Rights in ASEAN – Towards an ASEAN Human Rights System: Role of Institutions and Related Activities** was held in Bangkok, Thailand, on 15-16 December 2009. The Roundtable was co-organized and co-hosted by the Ministry of Foreign Affairs of the Kingdom of Thailand, the National Human Rights Commission of Thailand, and the Working Group for an ASEAN Human Rights Mechanism (Working Group).
2. The Roundtable was attended by participants representing governments (the Foreign Ministry and agencies responsible for ASEAN cooperation on the rights of women, children and migrant workers); National Human Rights Institutions (NHRIs); and members of the Working Group - from Brunei Darussalam, Cambodia, Indonesia, Lao P.D.R., Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. Also in attendance were representatives to the ASEAN Intergovernmental Commission on Human Rights (AICHR) from Malaysia, Philippines and Thailand and observers from the United Nations (UN) and funding organizations.
3. **Welcome Remarks** were delivered by Dr. Marzuki Darusman, Co-Chairperson of the Working Group; Prof. Amara Pongsapich, Chairperson of the National Human Rights Commission of Thailand; and H.E. Asda Jayanama, Advisor to the Minister of Foreign Affairs of Thailand. Dr. Darusman likened the Roundtable to an informal “in camera” process to gauge progress in the promotion and protection of human rights in the region, particularly in view of the setting up of the AICHR and the parallel processes which have galvanized ASEAN civil society into responding. He proposed that this “top down” process be complemented with “bottom up” processes towards the development of regional human rights norms. Prof. Pongsapich discussed the cooperation framework of NHRIs in the region, called the Southeast Asia NHRI Forum, and how NHRIs have engaged stakeholders in ASEAN on the promotion and protection of human rights. She stressed the need for NHRIs to work with AICHR to improve the lives of ASEAN peoples. H.E. Jayanama expressed the importance of collective efforts to advance the ASEAN human rights agenda. He noted the emergence of core elements of the ASEAN human rights architecture and highlighted the following as the main challenges: (1) to develop and strengthen regional norms and instruments on human rights; and (2) to mainstream human rights into the ASEAN community-building process. To address them, and to ensure human rights are integrated into the three pillars of the ASEAN Community, he proposed collective work in the area of human rights education, legislation, institutions and mechanisms.

4. The **Keynote Address** was delivered by Dr. Homayoun Alizadeh, the Regional Representative for Southeast Asia, UN Office of the High Commissioner for Human Rights. He noted recent significant developments in ASEAN, many of them unthinkable a few years ago, which have led to a growing acceptance of human rights discourse in the region. He said that lessons learned by his office in other regions can help UN engagement with the ASEAN human rights structure. He emphasized the value of sincere collaboration in dealing with stakeholders and assured ASEAN and AICHR of the UN's continued support and constructive engagement.

II. Roundtable Sessions

5. The Roundtable was divided into six sessions covering the following topics: (a) System-Building for the Promotion and Protection of Human Rights at the Regional Level; (b) Mandate of the AICHR: Challenges of Implementation in a Contemporary Setting; (c) The Three Pillars of the ASEAN Community: Commitment to the Human Rights Process; (d) Women's Rights, Children's Rights and Migrant Workers' Rights: Alignment with the AICHR as the Overarching Institution; (e) Moving Forward: Lessons for the Future; and (f) Conclusions and Recommendations.
6. In **Session One**, "System-Building for the Promotion and Protection of Human Rights at the Regional Level", Ms. Nerea Aparicio of the Inter-American Commission on Human Rights (IACHR) discussed the Statute, functions and principal activities of the IACHR, including its relationship with civil society. Dr. George Mukundi Wachira, Africa Regional Coordinator of the Transitional Justice Programme of the Centre for the Study of Violence and Reconciliation, likewise explained how the African human rights system works. He also cited factors which can enhance its effectiveness, such as sufficient mandate, adequate resources, and political will. At the Open Forum, participants focused on complaints mechanisms, the relationship of general human rights institutions with thematic bodies and the Universal Periodic Review (UPR) process, the role of NHRIs and civil society, the meaning of "consultative body", and the challenges of the regional human rights systems. The session was moderated by Ms. Braema Mathiapparanam, Chairperson of the Singapore Working Group for an ASEAN Human Rights Mechanism.
7. In **Session Two**, "Mandate of the AICHR: Challenges of Implementation in a Contemporary Setting", Ambassador Rosario Manalo, Philippine Representative to the AICHR, explained that AICHR's evolutionary approach requires that it be made accessible by promoting its visibility and through human rights education. She said that AICHR needs an experts group to gather information and rules of procedure to function effectively. She also discussed the importance of the drafting of an ASEAN human rights declaration, the role of AICHR representatives, and the need to develop AICHR's expertise. Prof. Vitit Muntarbhorn, Co-Chair of the Working Group, reminded the body that ASEAN is a political entity, not a human rights organization, and this should be kept in mind in expectations with ASEAN. Referring to AICHR's Terms of Reference (TOR), he noted various challenges facing AICHR, particularly in view of the principles of non-interference and sovereignty, non-confrontational approach and consensus, and the broadness of "promotion and protection" of human rights. He proposed a liberal and constructive interpretation of the TOR such that "what is not prohibited is not forbidden", and more particularly of the phrase

“regional particularities”. He also stressed the need for AICHR to dialogue with civil society. At the Open Forum, questions were asked about the possibility of a complaints mechanism, AICHR’s role in the UPR process, the TOR’s review process, the provision of advisory services and technical assistance to ASEAN sectoral bodies, the meaning of “consultative” as opposed to an advisory body, and possible contents of an ASEAN human rights declaration. The session was moderated by Mr. Ou Virak, Vice Chairperson of the Cambodian Working Group for an ASEAN Human Rights Mechanism.

8. In **Session Three**, “The Three Pillars of the ASEAN Community: Commitment to the Human Rights Process”, Prof. Virginia B. Dandan, a member of the UN Committee on Economic, Social and Cultural Rights, said that while the ASEAN Economic Community (AEC) Blueprint does not expressly refer to human rights, there are provisions with great potential at integrating human rights. She also said ASEAN should complement economic policies with innovative approaches which could promote human rights. Dr. Chiam Heng Keng, Commissioner of the Malaysian Human Rights Commission (SUHAKAM) explained how human rights aspects are reflected in the Blueprints. She also discussed human rights beyond the Blueprints and how the three pillars are closely linked as they are all aimed at building a rules-based ASEAN Community of shared values and norms to enable ASEAN to cope competitively in a globalized world. Questions at the Open Forum focused on the following: AICHR’s place in the ASEAN Community set-up and its relationship with the Blueprints as roadmaps; the feasibility of integrating human rights into all three pillars; the implementation of the Blueprints at national and regional levels; and the possibility of a human rights “score card” as it relates to the Blueprints. The session was moderated by Mr. Boonthan Verawongse, a member of the Thai Working Group for an ASEAN Human Rights Mechanism.
9. In **Session Four**, “Women’s Rights, Children’s Rights and Migrant Workers’ Rights: Alignment with the AICHR as the Overarching Institution?”, Commissioner Evelyn Dunuan of the Philippine Commission on Women discussed the distinct features of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). After highlighting significant provisions in the TOR of the ACWC, she emphasized par. 5.12 of the Mandates and Functions which states that appropriate measures, mechanisms and strategies shall be made to eliminate violations of the rights of women and children, as one of the most progressive provisions of the ACWC TOR. Dr. Sriprapha Petcharamesree, the Thai Representative and Chair of the AICHR, focused on the relationship between the ACWC and the AICHR. She said that aligning the two bodies may be done in different arrangements, including where both bodies are independent, and where one acts as a specialized arm of AICHR. Interventions at the Open Forum included questions on what future the bodies will face and how ASEAN will deal with the intersections between the ACWC, ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) and the AICHR. The session was moderated by Dr. Budiono Kusumohamidjojo, the Secretary General of the Indonesian Working Group for an ASEAN Human Rights Mechanism.
10. In **Session Five**, “Moving Forward: Lessons for the Future”, H.E. Sihakak Phuangketkeow, Chairperson of the High Level Panel on an ASEAN Human Rights Body, discussed AICHR in the context of the evolution of ASEAN and the dynamics at the global level. He stressed that the AICHR is a reflection

of the changing notion of security in ASEAN as it shifts its focus from conventional security to human security. He added that the AICHR acts mainly as the catalyst for everyone to think about the human rights agenda of ASEAN. Interventions at the Open Forum included comments on how significant and important it is to have good leadership and representatives in the AICHR to ensure that the body will be forward-looking and effective. The session was moderated by Ms. Paulynn Sicam, a member of the Philippine Working Group for an ASEAN Human Rights Mechanism.

11. In the final session, entitled **“Conclusions and Recommendations”**, the participants discussed and adopted the proceedings of the Roundtable. The session was moderated by Ms. Usana Berananda, Head of Policy Section, Department of ASEAN Affairs, Ministry of Foreign Affairs of Thailand. She also delivered the Closing Remarks, where she thanked the Working Group, the National Human Rights Commission of Thailand, and the participants for a successful Roundtable. She said the Roundtable’s recommendations will serve as a basis for discussion in AICHR’s meeting later in the week. She reiterated Thailand’s pledge to focus on making ASEAN people-centered and expressed the hope that Viet Nam, as incoming Chair of ASEAN, will continue in hosting the next Roundtable.

III. Conclusions and Recommendations

General Statements and Conclusions

12. The Roundtable notes that the ASEAN Charter celebrated the first anniversary of its entry into force on 15 December 2009, the first day of the 5th Roundtable Discussion on Human Rights in ASEAN.
13. The Roundtable lauds the launching of the AICHR during the occasion of the 15th ASEAN Summit in Cha Am – Hua Hin, Thailand, on 23 October 2009, and considers its establishment as an indication of ASEAN’s commitment to human rights and as a significant milestone in ASEAN community-building.
14. The Roundtable welcomes the approval of the TOR of the ACWC by the ASEAN Ministerial Meeting of Social Welfare and Development and as noted by the ASEAN Leaders during the 15th ASEAN Summit in Cha am – Hua Hin, Thailand, in October 2009, and anticipates its launching in Viet Nam in April 2010. As such, the Roundtable supports the TOR’s provision in Article 6.4 that all ASEAN Member-States have a transparent, consultative and participative selection and appointment process for their respective representatives to the ACWC.
15. The Roundtable recognizes that, while the core elements of the ASEAN human rights architecture have begun to emerge, it is still incumbent upon all of the stakeholders in ASEAN to pool ideas, resources, and common efforts to advance the human rights agenda in order to achieve a truly people-oriented ASEAN Community in which rights and dignity of peoples are fully respected and opportunities for human development are accessible to all.
16. The Roundtable commends the cooperation framework of the national human rights commissions in the region, now called the Southeast Asia National Human Rights Institutions Forum, and encourages it to continue its engagement with AICHR and all stakeholders in ASEAN. It further acknowledges that existing NHRIs in ASEAN countries are important

stakeholders which the AICHR and ACWC, where appropriate, should engage with.

17. The Roundtable recognizes that all ASEAN Member-States have ratified the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. As such, the Roundtable looks forward to an effective ACWC that is in compliance with international norms.
18. The Roundtable recognizes that ASEAN's act of initiating the political process leading up to the establishment of the AICHR has galvanized civil society and the NGO community, regional as well as national, into responding to such process constructively and cooperating with ASEAN in seeing it through.
19. The Roundtable notes that it is time to explore and tap into complementary "bottom up" processes that would contribute to the development of human rights norms and standards in ASEAN.
20. The Roundtable emphasizes that human rights of the people is central to the process of the ASEAN community-building. Therefore, mainstreaming human rights in all three pillars of the ASEAN Community is essential.
21. The Roundtable reiterates that, while fundamental elements of human rights have been incorporated and enshrined in the ASEAN Charter, the Blueprints of the respective three pillars of the ASEAN Community and other important ASEAN documents, ASEAN still needs to translate these commitments into concrete actions so that it will have a positive impact in the lives of ASEAN peoples.
22. The Roundtable notes the changing notion of security in ASEAN as it shifts its focus from conventional security to human security. In particular, it believes that the ASEAN objective of a "cohesive, peaceful and resilient region with shared responsibility for comprehensive security" also involves important human rights issues, such as trafficking in persons and counter-terrorism, which must be the subject of collective efforts.

Recommendations

23. The Roundtable reiterates that the AICHR has to be seen in the context of the ASEAN Charter. Although the AICHR is the main venue for asserting human rights, stakeholders should make use of other platforms within ASEAN including interaction with ASEAN leaders, the Committee of Permanent Representatives, human rights bodies in ASEAN, relevant sectoral bodies, and the ASEAN Secretariat, for the purpose of human rights promotion and protection. Given the existence of national structures and the international system, the Roundtable recommends strengthening the complementary role of the AICHR.
24. The Roundtable believes that the drafting of an ASEAN Declaration on Human Rights be given priority as this may be a perfect opportunity to demonstrate the evolution of the AICHR into something more concrete and meaningful to the ASEAN peoples.
25. The Roundtable enjoins the AICHR and ACWC representatives to be forward looking and committed to achieving the regional goals of building a rules-based and people-oriented ASEAN Community.

26. The Roundtable recommends that the AICHR take a proactive role in awareness-raising and capacity-building on human rights in the region, and that these activities should not only be limited to the different organs and institutions of ASEAN which may utilize AICHR's advisory functions, but to the peoples of ASEAN as well.
27. The Roundtable recommends that AICHR consider setting up an experts group to gather relevant information, to help the AICHR develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community and to develop common approaches and positions on human rights matters of interest to ASEAN.
28. The Roundtable encourages AICHR to take advantage of its meetings in the Member-States to meet various stakeholders, governments and civil society alike, as part of its consultative and dialogue functions.
29. The Roundtable believes that in order for the AICHR to proceed with its duties and functions effectively in accordance with its TOR, rules of procedure must be put in place. The rules of procedure should define how strategic links can be encouraged and developed with well-placed institutions like premier universities in ASEAN and NHRIs in countries where they are present. It should also facilitate dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders.
30. The Roundtable recommends that given the imminent establishment of human rights bodies similar to AICHR, particularly the ACWC, the issue of their alignment and synchronization should be addressed expeditiously. For this purpose, the Roundtable proposes that a dialogue be conducted among the representatives of the AICHR and the relevant sectoral bodies as soon as possible.
31. The Roundtable notes the provisions in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers to protect migrant workers. As such, the Roundtable recommends that the ACWC incorporate elements of the Migrant Workers Declaration to promote and protect women and children.
32. In order for the AICHR and other human rights bodies to effectively promote their functions, the Roundtable recommends that ASEAN Member-States, through the Committee of Permanent Representatives, provide sufficient support, including funding and the building of a strong secretariat.
33. The Roundtable believes that despite lacking specific reference to human rights issues within the text of the AEC Blueprint, there are nevertheless indirect human rights implications. It recommends that the actions taken under the AEC Blueprint and Initiative for ASEAN Integration, which include human resource development, information and communication technologies, capacity building, poverty reduction and improvement in quality of life, take into consideration the human rights of the people.

IV. Acknowledgment

34. The Roundtable participants expressed their appreciation to the Ministry of Foreign Affairs of the Kingdom of Thailand, the National Human Rights Commission of Thailand and the Working Group for an ASEAN Human Rights Mechanism for co-hosting and co-organizing the *Fifth Roundtable Discussion on Human Rights in ASEAN – Towards an ASEAN Human Rights System: Role of Institutions and Related Activities*; to the Friedrich Naumann Foundation, the Canadian International Development Agency (CIDA)-sponsored Southeast Asia Regional Cooperation on Human Development (SEARCH) project, and the European Commission (EC) under the project “Enhancing the Role of National Human Rights Institutions in the Development of an ASEAN Human Rights Mechanism”, for providing financial support; to the UN Office of the High Commissioner on Human Rights for providing resource persons; and to the members of the conference secretariat, for all their hard work.