

[TERMS OF REFERENCE]

**OF THE
ASEAN HUMAN RIGHTS COMMISSION¹**

PREAMBLE

The Member States of the Association of the Southeast Asian Nations (hereinafter referred to as “ASEAN”), as represented by the Heads of Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam,

Recalling the Universal Declaration of Human Rights (UDHR) adopted and proclaimed by General Assembly Resolution 217 (A) (III) of 10 December 1948, and Paris Principles, as well as other appropriate international instruments for promoting respect for and observance of human rights and fundamental freedoms;

Noting the ASEAN Charter signed by the ASEAN Heads of Government at the 13th ASEAN Summit in Singapore on 20 November 2007, which stipulated establishment of an ASEAN human rights body (Article 14) in conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms;

Acknowledging the important roles of the ASEAN National Human Rights Institutions (NHRIs) in the promotion and protection for human rights and ensuring the fundamental freedoms in their countries and within the region;

Recognizing the guiding principles on (i) respect for national independence, sovereignty, equality, territorial integrity, and national identity of all ASEAN Member States, (ii) non-interference in the internal affairs of ASEAN Member States, (iii) share commitments and collective responsibilities in enhancing peace, security,

¹ As finalized at the Technical Working Group (TWG) Meeting of ASEAN NHRI Forum, Cebu, Philippines, 28-30 April 2008.

prosperity, and harmony in the ASEAN region, and (iv) make decisions through consultations and consensus.

Have agreed as follows:

PART I

PRELIMINARY

An ASEAN Human Rights Commission (hereinafter referred to as “Commission”), shall be established within ASEAN which would be an independent deliberative body with emphasis on the promotion and protection aspects of human rights and fundamental freedoms.

PART II

ESTABLISHMENT OF THE ASEAN HUMAN RIGHTS COMMISSION

1. Establishment of the Commission

The Commission:

- (i) is a body corporate having perpetual succession;
- (ii) shall have a common seal;
- (iii) may sue and be sued in its corporate name; and
- (iv) may acquire, purchase, take, hold and enjoy moveable and immovable property.

2. Duties, Functions and Powers of the Commission

The functions of the Commission shall be to:

- (i) promote, protect and monitor human rights, fundamental freedoms, including the right to live in peace and dignity, and the right to development, consistent with the UDHR;
- (ii) 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;

- (iii) advocate not only civil and political rights, but also economic, social and cultural rights in particular women and children rights, trafficking in person and migrant workers;
- (iv) create public awareness through education, research and dissemination of information;
- (v) conduct conferences, seminars and workshops on relevant human rights issues;
- (vi) cooperate with NHRIs, NGOs, civil society organizations, regional institutions, and international institutions concerned with human rights;
- (vii) receive, analyse, investigate and take action on complaints on alleged violations and abuse of human rights by any person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Commission. The Commission shall only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law;
- (viii) assist in the establishment of NHRIs in the ASEAN Member States that do not have an NHRI;
- (ix) submit annual reports to the ASEAN Coordinating Council of all its activities during the year to which the report relates. The reports should be accessible to the public; and
- (x) draft and recommend an ASEAN Convention on Human Rights and other related declarations, conventions, and other instruments that would promote human rights. The Commission shall have the mandate to carry out such activities not only upon request by the ASEAN Summit or the ASEAN Coordinating Council but also on its own initiative.

3. Members of the Commission and Term of Office

- a) The Commission shall consist of ten (10) members, one from every ASEAN Member State:
 - (i) members shall be appointed from amongst prominent personalities including those with a good reputation, morality, integrity, impartiality, and recognised competence in the field of human rights;

- (ii) members of the Commission shall be appointed by the respective Ministers of Foreign Affairs of the ASEAN countries from a list of candidates proposed by the selection committee consisting of NHRIs, NGOs and civil society organisations;
 - (iii) members of the Commission shall not hold any official post in their respective Governments, nor be an official or employee of a state agency, state enterprise or local government organisation or a director or advisor of a state enterprise or state agency;
 - (iv) every member shall hold office for a term of five (5) years from the date of his/her appointment and shall serve for only one (1) term;
 - (v) the Chairperson and Vice-Chairperson shall be elected by the members of the Commission from amongst themselves; and
 - (vi) where a member of the Commission upon his death or resignation or for any reason is unable to perform his duties and functions other than a temporary absence, the Commission shall replace the member whose seat becomes vacant for the remaining period of his / her term from the same member state.
- b) The composition of the Commission shall ensure the principle of non-discrimination and gender equality.

4. Meetings of the Commission

- a) The Chairman of the Commission shall preside at all meetings of the Commission. If the Chairman is absent from any meeting, the Vice-Chairman of the Commission shall preside at such meeting.
- b) The members of the Commission shall use their best endeavours to arrive at all decisions of the meetings by consensus failing which the decision by a two-thirds majority of the members present shall be required.
- c) The Commission may regulate the conduct of its own proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

5. Remuneration

Members shall be paid remuneration or allowance which is not less than that paid to the most senior ASEAN Secretariat Officer.

6. Disqualification

A member of the Commission may be removed from office by the ASEAN Ministerial Coordinating Council if:

- (i) the member is adjudged insolvent by a court of competent jurisdiction;
- (ii) after consulting a medical officer or a registered medical practitioner, is of the opinion that the member is physically or mentally incapable of continuing his office; and
- (iii) the member absents himself from three (3) consecutive meetings of the Commission without obtaining leave of the Chairman or, in the case of the Chairman, without leave of the Coordinating Council.

7. Resignation

An appointed member may resign from the office by submitting in writing such resignation to his/her respective Minister of Foreign Affairs and extending a copy to the Coordinating Council.

PART III

THE OFFICE OF THE COMMISSION

8. The Role of Secretary-General of ASEAN

The Secretary-General of ASEAN shall serve as an ex-officio member of the Commission.

9. Secretariat of the Commission

- a) A Secretariat of the Commission shall be established.
- b) The Commission shall appoint a Secretary to be responsible for the day-to-day administration of the Secretariat, directly answerable and responsible to the Commission.
- c) The Secretary shall be in charge of officers, committees or ad hoc working groups of the Office of the Commission.
- d) There shall be a Deputy Secretary of the Commission to assist the Secretary in the performance of his/her duties.

- e) The Commission may appoint officers, committees or ad hoc working groups as and when necessary to carry out its tasks.

10. Duties and Responsibilities

The Secretariat has the responsibility for the general affairs of the Commission and shall have the powers and duties as follows:

- (i) to be responsible for the administrative and technical work of the Commission;
- (ii) to carry out any other duties as required by the Commission.

PART IV

GENERAL

11. Venue

A permanent venue for the operation of the Commission shall be decided by the ASEAN Member States.

12. Funds

- a) ASEAN Member States shall provide, on an equal sharing basis, the Commission with adequate funds annually to enable the Commission to discharge its functions effectively.
- b) The Commission may receive funds from any individual or organization for the purpose of promoting human rights as may be approved by it.