

**-Draft-**

Terms of Reference of [an ASEAN Human Rights **Commission**]

Pursuant to Article 14 of the ASEAN Charter, the **Commission** shall operate in accordance with the following Terms of Reference (ToR):

**1. PURPOSES**

The purposes of the **Commission** are:

- 1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
- 1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
- 1.3 To contribute to the realization of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;
- 1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;
- 1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and
- 1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.

## 2. PRINCIPLES

The **Commission** shall be guided by the following principles;

- 2.1 Respect for principles of ASEAN as embodied in Article 2 of the ASEAN Charter, in particular:
  - a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
  - b) non-interference in the internal affairs of ASEAN Member States;
  - c) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
  - d) adherence to the rule of law, good governance, the principles of democracy and constitutional government;
  - e) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;
  - f) upholding the Charter of the United Nations and international law, including international humanitarian law, subscribed to by ASEAN Member States;
  - g) respect for different cultures, languages and religions of the peoples of ASEAN, while emphasizing their common values in the spirit of unity in diversity.
- 2.2 Respect for international human-rights principles, including universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, as well as impartiality, objectivity, non-selectivity, non-discrimination, and avoidance of double standards and politicization;
- 2.3 Recognition that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State;
- 2.4 Recognition that the promotion and protection of human rights in each Member State should be compatible with the rule of law;
- 2.5 Pursuance of a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights;
- 2.6 Adoption of an evolutionary approach that would contribute to the development of human rights norms and standards in ASEAN;

- 2.7 **Ensuring the independence of the Commission, taking into account the minimum standards as stipulated in the Paris Principles;**
- 2.8 **Recognition that the formation of the Commission should be undertaken in a transparent and participatory manner, as well as an inclusive process of consultation with all stakeholders, including the national human rights institutions and the civil society;**
- 2.9 **Acknowledging the important roles of the ASEAN NHRIs in the promotion and protection of human rights and ensuring the fundamental freedoms in their countries and within the region; and**
- 2.10 **Reaffirming the complementary role between the Commission and the NHRIs in promotion and protection of human rights in the region. As such, the Commission should work in partnership with existing NHRIs, particularly in monitoring human rights situations and treaty compliance at the national level. In addition, the Commission should coordinate with and involve the NHRIs in its activities at the national level.**

### **3. INDEPENDENT DELIBERATIVE INTER-GOVERNMENTAL BODY**

**The Commission should be an independent deliberative inter-governmental body with emphasis on the promotion and protection aspects of human rights and fundamental freedoms.**

### **4. MANDATE AND FUNCTIONS**

- 4.1 To develop strategies for the promotion and protection **and monitoring of** human rights and fundamental freedoms to complement the building of the ASEAN Community;
- 4.2 To develop an ASEAN Declaration on Human Rights and other ASEAN human rights instruments **that will provide safeguards to human rights of all persons within the ASEAN region, as well as ASEAN peoples residing abroad. The Commission shall have the mandate to carry out such activities not only upon request by the ASEAN governments but also on its own initiative;**
- 4.3 To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;
- 4.4 To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;

- 4.5 To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments **and to monitor the implementation of international human rights obligations and the respective treaty bodies' recommendations at national level of ASEAN Member States;**
- 4.6 To promote the full implementation of ASEAN instruments related to human rights;
- 4.7 To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including **NHRIs**, civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter, **and other relevant human rights institutions and entities particularly the Office of the High Commissioner for Human Rights (OHCHR);**
- 4.8 To consult, as may be appropriate, with other relevant institutions and entities concerned with the promotion and protection of human rights;
- 4.9 To obtain information from Member States on the promotion and protection of human rights;
- 4.10 **To receive, analyse, investigate, and take action on complaints on alleged violations and abuse of human rights by any person or group of persons, any non-governmental entity legally recognized in one or more Member States of the Commission, or on its own initiative. The Commission shall only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law;**
- 4.11 To prepare studies on thematic issues of human rights in ASEAN;
- 4.12 **To advocate not only civil and political rights, but also economic, social and cultural rights in particular women and children rights, trafficking in person, migrant workers and indigenous peoples' rights;**
- 4.13 **To assist in the establishment of NHRIs in compliance with the Paris Principles that does not have NHRIs. The existing NHRIs can render expertise and advice in establishing a NHRI in ASEAN Member States where none exists;**
- 4.14 To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and
- 4.15 To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.

## 5. COMPOSITION

### *Membership*

The **Commission** shall consist of the Member States of ASEAN.

**ASEAN Member States shall consult extensively in a transparent manner with the existing NHRIs and civil society organisations in the appointment of their Representatives to the Commission.**

**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.**

### *Qualifications*

When appointing their Representatives to the **Commission**, Member States shall give due consideration to gender equality, integrity and competence in the field of human rights.

Member States should consult, if required by their respective internal processes, with appropriate stakeholders in the appointment of their Representatives to the **Commission**.

### *Term of Office*

Each Representative serves a term of three years and may be consecutively re-appointed for only one more term.

Notwithstanding paragraph 5.5, the appointing Government may decide, at its discretion, to replace its Representative.

### *Responsibility*

Each Representative, in the discharge of his/her duties, shall act impartially in accordance with the ASEAN Charter and this ToR.

### *Chair of the Commission*

The Chair of the **Commission** shall be the Representative of the Member State holding the Chair of ASEAN.

The Chair of the **Commission** shall exercise his/her role in accordance with this ToR, which shall include:

- a) leading in the preparation of reports of the **Commission** and presenting

such reports to the ASEAN Foreign Ministers Meeting;

- b) coordinating with the **Commission**'s Representatives in between meetings of the **Commission** and with the relevant ASEAN bodies;
- c) representing the **Commission** at regional and international events pertaining to the promotion and protection of human rights as entrusted by the **Commission**; and
- d) undertaking other specific functions entrusted by the **Commission** in accordance with this ToR.

### *Immunities and Privileges*

In accordance with Article 19 of the ASEAN Charter, Representatives participating in official activities of the **Commission** shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

## **6. MODALITIES**

### *Decision-making*

- 6.1 Decision-making in the **Commission** shall be based on consultation and consensus in accordance with Article 20 of the ASEAN Charter.

### *Number of Meetings*

- 6.2 The **Commission** shall convene two regular meetings per year. Each meeting shall normally be not more than five days. As and when appropriate, the **Commission** may hold additional meetings.
- 6.3 When necessary, the ASEAN Foreign Ministers may instruct the **Commission** to meet.
- 6.4 Unless otherwise agreed upon by the Representatives, meetings of the **Commission** shall be held at the Secretariat.

### *Line of Reporting*

- 6.5 The **Commission** shall submit an annual report and other appropriate reports to the ASEAN Foreign Ministers Meeting for its consideration.

### *Public Information*

- 6.6 The **Commission** shall keep the public periodically informed of its work and activities through appropriate public information materials.

### *Relationship with Other Human Rights Bodies and Mechanisms*

- 6.7 The **Commission** shall closely consult, coordinate, and collaborate with relevant ASEAN bodies in order to promote synergy and coherence in ASEAN's promotion and protection of human rights, and for these bodies to ultimately be aligned with the **Commission**.
- 6.8 **In Member States where there are existing NHRIs, the Commission should work in partnership with such NHRIs, particularly in monitoring human rights situation and treaty compliance at the national level. In addition, the Commission should coordinate with and involve the NHRIs in its activities at the national level.**
- 6.9 **The Commission shall cooperate with the various human rights bodies and organs of the other regions and the United Nations, in particular, the Human Rights Council, the OHCHR, the treaty monitoring bodies, the Special Rapporteurs, and other special human rights mechanisms.**

## **7. ROLE OF THE SECRETARY-GENERAL AND ASEAN SECRETARIAT**

- 7.1 The Secretary-General of ASEAN may bring relevant issues to the attention of the **Commission** in accordance with Article 11.2(a) and (b) of the ASEAN Charter.
- 7.2 **A Secretariat of the Commission shall be established, the ASEAN Member States shall provide adequate support to the Secretariat to carry out its tasks.**
- 7.3 **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. He/She shall be in charge of officers, committees or ad hoc working groups of the Office of the Commission.**
- 7.4 **There shall be a Deputy Secretary of the Commission to assist the Secretary in the performance of his/her duties.**
- 7.5 **The Commission may appoint officers, committees or ad hoc working groups as and when necessary to carry out its tasks.**

## **8. WORK PLAN AND FUNDING**

- 8.1 The **Commission** shall prepare and submit a Work Plan of programmes and activities with indicative budget for a cycle of five years to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.
- 8.2 The **Commission** shall also prepare and submit an annual budget to implement the Work Plan to be approved by the ASEAN Foreign Ministers Meeting, upon the recommendation of the Committee of Permanent Representatives to ASEAN.
- 8.3 The annual budget should distinguish between: (a) high priority programmes and activities that will be funded on an equal sharing basis by ASEAN Member States; (b) programmes and activities that will be funded by voluntary contributions from ASEAN Member States; and (c) those that could be funded by contributions from other sources.
- 8.4 Funding from sources other than ASEAN Member States shall only be for programmes or activities for human rights promotion and education in conformity with the general financial rules of ASEAN.
- 8.5 Secretarial support for the **Commission** shall be funded by the ASEAN **Member States**.

## **9. GENERAL AND FINAL PROVISIONS**

- 9.1 This ToR shall come into force upon the approval of the ASEAN Foreign Ministers Meeting.

### ***Amendments***

- 9.2 Any Member State may submit a formal request for an amendment of this ToR.
- 9.3 The request for amendment shall be considered by the Committee of Permanent Representatives to ASEAN in consultation with the **Commission**, and presented to the ASEAN Foreign Ministers Meeting for approval.
- 9.4 Such amendments shall enter into force upon the approval of the ASEAN Foreign Minister Meeting.
- 9.5 Such amendments shall not prejudice the rights and obligations arising from or based on this ToR before or up to the date of such amendments.

### ***Review***

- 9.6 This ToR shall be initially reviewed five years after its entry into force. Tills review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting.
- 9.7 In this connection, the **Commission** shall assess its work and submit recommendations for the consideration of the ASEAN Foreign Ministers Meeting on future efforts that could be undertaken in the promotion and protection of human rights within ASEAN consistent with the principles and purposes of the ASEAN Charter and this ToR.

### ***Interpretation***

- 9.8 Any difference concerning the interpretation of this ToR which cannot be resolved shall be referred to the ASEAN Foreign Ministers Meeting for a decision.