



ASEAN NHRI FORUM

POSITION PAPER ON TERMS OF REFERENCE OF THE ASEAN HUMAN RIGHTS BODY

*Submitted at the 2nd Consultation Meeting with the High Level Panel
(HLP),
20 March 2009, J.W. Marriot Hotel Kuala Lumpur*

The ASEAN NHRI Forum is comprised of the Indonesian National Human Rights Commission (Komnas HAM), the Human Rights Commission of Malaysia (SUHAKAM), the Commission on Human Rights of the Philippines (CHRP), and the National Human Rights Commission of Thailand (NHRCT).

The ASEAN NHRI Forum congratulates the HLP for the progress of their work in drafting the Terms of Reference (ToR) of ASEAN Human Rights Body (AHRB) and their continuous engagement with the civil society organizations and the ASEAN NHRI Forum in the drafting process. The HLP should provide the opportunity for ASEAN peoples to actively engage with the AHRB, and also to recognise the need to promote people-to-people learning and understanding.

The ASEAN NHRI Forum has a large stake in the creation of the AHRB in ensuring that the ToR provides for an effective, credible, and accessible AHRB. Reviewing the present draft ToR, the ASEAN NHRI Forum sees the need for the AHRB to be further vested with the necessary independence, effective protection mandate and powers, as well as to acknowledge the important roles of the other relevant stakeholders particularly with the ASEAN NHRI Forum.

Pursuant to Article 14 of the ASEAN Charter, the ASEAN NHRI Forum recommended that the AHRB shall be called as ASEAN Human Rights Commission (hereinafter referred to as “Commission”). The Commission should be an independent deliberative inter-governmental body with emphasis on the promotion and protection aspects of human rights and fundamental freedoms.

In this light, the ASEAN NHRI Forum submits the following comments and suggestions for consideration into the present draft ToR:

PRINCIPLES

The Commission should also be guided by the following principles:

- a. 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.
- b. 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 NHRIs and the civil society.
- c. Ensuring the independence of the Commission, taking into account the minimum standards as stipulated in the Paris Principles.
- d. 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.

MANDATES AND FUNCTIONS

- a. To develop strategies for the promotion, protection and monitoring of human rights and fundamental freedoms to complement the building of the ASEAN Community.
- b. 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.
- c. 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.
- d. 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).
- e. 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.

- f. 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.
- g. 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.

RELATIONSHIP BETWEEN THE COMMISSION AND THE NHRIs

Within national context, every ASEAN country has its own national mechanism to promote and protect human rights. It is, therefore, important that the Commission should closely co-operate with existing NHRIs, and share information as well as experiences. The Commission cannot work in isolation from the existing NHRIs and future NHRIs (such as in Cambodia). Particularly, in the above proposed protection functions, the existence of a NHRI in the four Member States of ASEAN should not be ignored, but should be emphasized as they have complementary roles in the promotion and protection of human rights in the region.

Thus, it is also important to define the relationship of the Commission and the NHRI, and a separate provision is proposed to read as follows: *“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.”*

RELATIONSHIP OF THE COMMISSION WITH THE REGIONAL AND INTERNATIONAL HUMAN RIGHTS PROTECTION SYSTEM

In the same manner, the Commission cannot confine its work within the region, but should operate and establish partnership within the framework of the regional and international human rights mechanisms, having invoked in the guiding principles upholding the Charter of the United Nations and international law. The Commission should relate with the relevant regional and international human rights mechanisms and a separate provision should be added as follows: *“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.”*

COMPOSITION

- a. 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.

- b. 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.

ROLE OF THE SECRETARY-GENERAL AND ASEAN SECRETARIAT

- a. A Secretariat of the Commission shall be established, the ASEAN Member States shall provide adequate support to the Secretariat to carry out its tasks.
- 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. He/She shall be in charge of officers, committees or ad hoc working groups of the Office of the Commission.
- c. There shall be a Deputy Secretary of the Commission to assist the Secretary in the performance of his/her duties.
- d. The Commission may appoint officers, committees or ad hoc working groups as and when necessary to carry out its tasks.
