

COOPERATION BETWEEN THE HUMAN RIGHTS NATIONAL
INSTITUTIONS OF INDONESIA, MALAYSIA, THE PHILIPPINES
AND THAILAND IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS
IN SOUTHEAST ASIA **

- * Former Commissioner (2002-2007) of the Human Rights National Commission of Indonesia.
- ** Notes presented to the Summer Institute in International Humanitarian Law and Human Rights - Asia-Pacific Transitional Justice and Peace-building, Bangkok, Thailand, 11-24 May 2008.

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I. INTRODUCTION

1. There are, at present, seventeen human rights national institutions in the Asia-Pacific region, of which four are in the Southeast Asian subregion, namely the National Human Rights Commission of Indonesia (established in 1993), the Human Rights Commission of Malaysia (established in 1999), the Commission on Human Rights of the Philippines (established in 1987)¹ and the National Human Rights Commission of Thailand (established in 1999).
2. The Vienna Declaration and Programme of Action (VDPA), adopted by the World Conference on Human Rights (WCHR), held in Vienna from 14 through 25 June 1993, states, inter alia, that it "reiterates the need to consider the possibility of establishing regional and subregional arrangements for the protection of human rights where they do not already exist".
3. In the light of the 1993 VDPA referred to in para 2 above, at the subregional level, i.c the Southeast Asian subregion, the Association of Southeast Asian Nations (ASEAN), which was established in 1967, stated in the Joint Communique of the 26th ASEAN Ministerial Meeting held in Singapore from 23 and 24 July 1993 that their Foreign Ministers "agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights".² For ASEAN this was a decision of a political significance, as it was the first time since its establishment in 1967, the Member States of ASEAN considered the importance of subregional cooperation for the promotion and protection of human rights through the establishment of an appropriate human rights mechanism.
4. Concerned individuals in Indonesia, Malaysia, the Philippines and Thailand, with the purpose of supporting the Governments of ASEAN Member States to realize the decision taken in 1993 mentioned in para 3 above, established, in 1996, a "Working Group for an ASEAN Human Rights Mechanism". In this context, The Working Group, since its establishment in 1996, held regular consultations with the Governments of the Member States of ASEAN, in particular prior to the convening of the annual ASEAN Ministerial Meetings (AMMs), to submit their views and suggestions on the proposed ASEAN human rights

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- 1 (a) Cambodia is considering to establish one; (b) Timor Leste, which is not a Member State of ASEAN, has such an institution.
- 2 In 1993 ASEAN had six Member States Bunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand. It has, since 1999 ten Member States with the joining of Viet Nam (1995), Lao PDR (1997), Myanmar (1997) and Cambodia (1999) to ASEAN.

mechanism. In July 2000 the Working Group submitted a proposed "Draft Agreement for the Establishment of the ASEAN Human Rights Commission" to the Senior officials of the ASEAN Member States in their meeting which preceded the latter's meeting of 2000. The proposed Draft Agreement was not acted upon by ASEAN.

5. Since 2001 the Governments of ASEAN Member States were organizing, in cooperation with the Working Group referred to in para 4 above, annual "Workshop(s) on Human Rights ASEAN Regional Mechanism" (Jakarta, Indonesia, 2001; Manila, the Philippines, 2002; Bangkok, Thailand, 2003; Jakarta, Indonesia, 2004; and Kuala Lumpur, 2006). The Kuala Lumpur Workshop of 2006 acknowledged six possible forms for the proposed mechanism, namely: (a) Establishment of a commission; (b) Establishment of a commission and a court; (c) Establishment of a court or a commission; (d) Establishment of a court and a committee of ministers; (e) Establishment of national human rights institutions (NHRIs) in Member States which have not done so and their networking; and/or (f) Promotion of activities without any mechanism. As to any commission which might be opted as a form of the proposed mechanism, the Kuala Lumpur Workshop of 2006 recommended that such commission be conferred with five powers, namely: (i) To assess and review the human rights situation [in ASEAN Member States]; (ii) To provide access to those affected, particularly vulnerable groups; (iii) To advise on needed reforms; (iv) To act, where national remedies have been exhausted and where States have agreed to become parties to the commission; and (v) To advocate for the protection of those affected, especially vulnerable groups, in cooperation with key partners and stakeholders.

6. On the part of the Governments themselves, they have been periodically reviewing, since 1998, or five years after the "historic" decision in 1993 to consider the establishment of an ASEAN human rights mechanism, the development of the idea during their periodic AMMs without, however, agreeing to the form or forms of such mechanism or, at least, possible forms of mechanism for consideration. Another notable development on the commitment of ASEAN Member States to institutionalize their cooperation for the promotion and protection of human rights in the subregion was the adoption of the Action Programme for 2004-2010 by the Tenth ASEAN Summit, held in Vientiane, Lao PDR on 29 November 2004. This Action Programme, officially referred to as "Vientiane Action Programme (VAP) 2004-2010", includes seven-point action programmes for the promotion and protection of human rights in ASEAN Member States. They are: (a) Completion of stock-taking of existing human rights mechanisms and equivalent bodies; (b) Formulation and adoption of a Memorandum of Understanding (MOU) to establish network among existing human rights mechanisms; (c) Formulation of work programme of the network; (d) Promotion of education and awareness on human rights; (e) Establishment of a network of cooperation among existing human rights mechanisms; (f) Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers; and (g) Establishment of an ASEAN commission on the promotion and protection of women and children.

7. To follow up on the VAP 2004-2010, specifically with respect to the action programmes relating to human rights (see para 6 above), the Government of Indonesia, in cooperation with the Working Group for an ASEAN Human Rights Mechanism (see supra, paras 4-5), a series of "Roundtable Discussions" since 2005.

8. In parallel with the activities referred to para 7 above. The Eminent Persons Group (EPG), tasked by ASEAN in 2005 to draw up a blueprint of an ASEAN Charter, have completed their work in 2006. On the basis of this blueprint, a High Level Task Force (HLTF) was preparing a draft text of the Charter of the Association of Southeast Asian Nations. The draft Charter, which was finalized in August 2007 and approved by the AMM, was eventually signed by the Heads of State or Government of ASEAN in Singapore on 20 November 2007. The legal instrument consists of eleven preambular paras, fifty-five operational articles and four annexes. The Charter does reaffirm ASEAN's commitment to respect, promote and protect human rights and fundamental freedoms (seventh preambular para, Articles 1 para 7, 2 para 2(i) and 14 para 1) and, for these purposes, to establish an ASEAN human rights "body" (Article 14 para 1) with its terms of reference to be determined by the ASEAN Foreign Ministers Meeting (Article 14 para 2). However, as it is so generally formulated, it is uncertain that the composition and mandate of this "body", to be determined by the AMM, would consist or act as independent experts and would have the mandate of both promotion and protection of human rights and fundamental freedoms.

II. NHRIS'S INITIATIVES

9. As of 1999 four Member States of ASEAN have their respective NHRI. The four NHRIs have been taking part in the series of annual Workshops on Human Rights ASEAN Regional Mechanism held regularly since 2001 (see supra, para 5, p. 2). However, only during the Fourth Workshop, held in Jakarta, Indonesia in June 2004 that the four NHRIs realized the need to promote cooperation among them, while efforts by the Governments of Member States of ASEAN continue. Following an informal meeting held during the lunch time on 18 June 2004 it was agreed that a formal meeting be held in Bangkok, Thailand to identify human rights questions of common concern which the four NHRIs could cooperate in addressing such questions.

10. The first formal meeting of the four NHRIs was eventually held in Bangkok, Thailand on 19 October 2004 during which five human rights issues considered as being of common concern were identified. They are:

(a) Implementation of economic, social and cultural rights and right to development;

(b) Enhancement of human rights education;

(c) Human rights aspects of trafficking in persons, especially women and children;

(d) Protection of human rights of migrants and migrant workers;
and

(e) Suppression of terrorism while respecting human rights.

11. It was also agreed in the Bangkok meeting that every NHRI should prepare a working paper or working papers on one or two subjects referred to in para 10 above which would also identify possible forms and areas of cooperation that might be promoted or enhanced among the four NHRIs on the

human rights issues concerned. It was further agreed that the next meeting of the four NHRIs to consider the five working papers would be held in Kuala Lumpur, Malaysia.

12. The second consultation meeting was held in Kuala Lumpur, Malaysia from 15 through 17 March 2006 where five working papers prepared by the four NHRIs, including the possible forms and areas of cooperation that might be promoted or enhanced among the four NHRIs, were discussed. Additionally, a proposal on the advisability of the four NHRIs to adopt a general framework instrument on cooperation would also be considered. The meeting agreed that the next meeting, to be held in Bali, Indonesia would consider two main agenda items, firstly, proposed actions of cooperation, both with respect to the forms and areas of cooperation recommended in every working paper and, secondly, the draft general framework instrument on cooperation for eventual adoption.

A. COOPERATION ACTIONS TO BE PROMOTED OR ENHANCED

13. The third consultation meeting between the four NHRIs was held in Bali, Indonesia from 25 through 28 June 2007. It established lists of possible cooperation actions in various forms or areas that may be promoted or enhanced on the five identified human rights issues of common concern referred to in supra, para 10, including the modes of financing (individually by each NHRI itself or jointly or otherwise), time-frames (for immediate actions or continuously for mid- or long-term periods) and periodic stock-taking meetings.

14. The Bali meeting considered five possible forms or areas of cooperation for the implementation of economic, social and cultural rights and rights to development, eleven on human rights education, twenty six in the field of human rights aspects of trafficking in persons, especially women and children, twenty five for the protection of human rights of migrants and migrant workers and four in the field of suppression of terrorism while respecting human rights.

15. The four NHRIs agreed to further study in more details the listed forms or areas of cooperation with a view to setting up priorities for further discussions in Manila, the Philippines in early 2007.

B. ASEAN HUMAN RIGHTS MECHANISM

16. The third consultation meeting of the four NHRIs in Bali, Indonesia (25-28 June 2007) coincided with the meeting of the HLTF who was to finalize the draft text of the ASEAN Charter on the basis of the blueprint prepared by the EGP (see supra, para 8, p. 3). The four NHRIs used the opportunity to meet with the HLTF to present a joint position paper containing, inter alia, four substantive points relating to human rights that should be incorporated in the ASEAN Charter. They are: (a) Ensuring that the principles and objectives of the ASEAN Charter should include the principles of respect

for human rights and fundamental freedoms; (b) The ASEAN Charter should include a provision on the importance of the role of NHRIs in the promotion of respect for human rights and fundamental freedoms and should therefore be engaged in the realization of such principles; (c) The ASEAN Charter should include a provision on the importance of the establishment of NHRIs in the Member States of ASEAN, which have not done so; and (d) Emphasizing the importance of the establishment of an appropriate human rights mechanism for the promotion of respect for human rights and fundamental freedoms in Southeast Asia.

17. Only two of the four points referred to in para 16 above are eventually reflected in the ASEAN Charter signed on 20 November 2007. They are: (a) inclusion of respect for and protection of human rights and fundamental freedoms as one of the principles and objectives of the ASEAN Charter (seventh preambular para, Articles 1 para 7, 2 para 2(i) and 14 para 1); and (b) inclusion of a provision stipulating that an ASEAN human rights "body" shall be established (Article 14 para 1) and a provision which stipulates that the terms of reference of such "body" would be determined by the AMM.

18. It is regrettable that the ASEAN Charter does not, at least, determine that the ASEAN human rights "body" would be an independent institution whose members would be acting as independent experts (not representatives of Government of Member States) and that the mandate of such "body" would include both promotion of respect for and protection of human rights and fundamental freedoms. It is also regrettable that the ASEAN Charter does not contain any reference to the importance of NHRIs in the promotion and protection of human rights and fundamental freedoms, in spite of the fact that an increasing number of States are establishing such national institution and that the role of NHRIs in the promotion and protection of human rights and fundamental freedoms are recognized by the international community (such as the Commission on Human Rights and now the Human Rights Council, the Office of the High Commissioner for Human Rights and the World Conference on Human Rights of 1993).

C. BALI DECLARATION

19. The 2007 Bali meeting, the third since the first Bangkok meeting in 2004, reflected the recognition of the four NHRIs on the necessity and utility of their periodic meetings to discuss human rights issues of common concern and on the necessity and usefulness to cooperate in the dealing of such human rights issues of common concern, naturally, within the scope of their respective mandates.

20. In addition to the listing of possible cooperation actions to promote or enhance the cooperation among the four NHRIs in the dealing of the five human rights issues considered by the four NHRIs as being of common concern, and in addition to the opportunity to submit a joint position regarding the ASEAN Charter, particularly with regard to the human rights aspects of the instrument that was being finalized by the HLTF at that time, the Bali meeting culminated in the adoption, on 28 June 2007, of the "Bali Declaration" which, in essence, reaffirmed their determination to promote and enhance cooperation in the dealing human rights questions of common concern and to meet regularly, at least once a year, to enable them to take stock of the progress