

Promoting and Protecting Human Rights in ASEAN

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ASEAN has attracted a great deal of public attention with its new commitment to enhance regional cooperation on human rights with the establishment of an ASEAN human rights body. This article is intended to provide some background information that could enable interested readers develop a better understanding of this significant initiative. A good starting point is in 1993.

The six ASEAN Member States (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) took an active part in the Regional Meeting for Asia of the World Conference on Human Rights, held in Bangkok from 29 March – 2 April 1993, as well as in the World Conference on Human Rights in Vienna, 14-25 June 1993. Subsequently, in the Joint Communiqué at the 26th ASEAN Ministerial Meeting (AMM) in Singapore, 23-24 July 1993, Foreign Ministers of these six ASEAN Member States announced the following collective view about human rights – which remain valid and relevant today:

The Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights in Vienna, 14-25 June 1993, and reaffirmed ASEAN's commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993. They stressed that human rights are interrelated and indivisible comprising civil, political, economic, social and cultural rights. These rights are of equal importance. They should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances. They emphasized that the promotion and protection of human rights should not be politicized.

The Foreign Ministers agreed that ASEAN should coordinate a common approach on human rights and actively participate and contribute to the application, promotion and protection of human rights. They noted that the UN Charter had placed the question of universal observance and promotion of human rights within the context of international cooperation. They stressed that development is an inalienable right and that the use of human rights as a conditionality for economic cooperation and development assistance is detrimental to international cooperation and could undermine an international consensus on human rights. They emphasized that the protection and promotion of human rights in the international community should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states. They were convinced that freedom, progress and national stability are promoted by a balance

between the rights of the individual and those of the community, through which many individual rights are realized, as provided for in the Universal Declaration of Human Rights.

The Foreign Ministers reviewed with satisfaction the considerable and continuing progress of ASEAN in freeing its peoples from fear and want, enabling them to live in dignity. They stressed that the violations of basic human rights must be redressed and should not be tolerated under any pretext. They further stressed the importance of strengthening international cooperation on all aspects of human rights and that all governments should uphold humane standards and respect human dignity. In this regard and in support of the Vienna Declaration and Programme of Action of 25 June 1993, they agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights.

The process to consider the establishment of “*an appropriate regional mechanism on human rights*” slowed down after 1995 partly because of increased political diversity following the arrival of four new members: Viet Nam joined ASEAN in 1995; Laos and Myanmar in 1997; and Cambodia in 1999. Moreover, the East Asian financial crisis, which broke out first in Thailand in July 1997, created new and serious challenges, forcing ASEAN to concentrate on addressing new and more urgent priorities. One of them was how to narrow the development gaps within the ASEAN membership.

ASEAN’s strategic response to new challenges in the 21st century was to embark on community-building in 2003. ASEAN adopted in 2004 the Vientiane Action Programme (VAP), which was the first 7-year master plan for building the ASEAN Community on three pillars: political-security, economic, and socio-cultural.

Cooperation on human rights appeared as part of political development in the ASEAN Political-Security Community. Measures to be undertaken included: establishing a network of cooperation among existing national human rights mechanisms (in Indonesia, Malaysia, the Philippines and Thailand); promoting education and public awareness on human rights; elaborating on an ASEAN instrument for the protection and promotion of the rights of migrant workers; and establishing an ASEAN commission on the promotion and protection of the rights of women and children.

It is now commonly accepted in ASEAN that human rights are comprehensive, indivisible and cross-cutting in nature; they encompass all dimensions of human life. Therefore, they should be addressed holistically, but not selectively. In ASEAN, promotion and protection of human rights has already been undertaken through functional cooperation to promote and protect the rights of women, children, and migrant workers.

At the 12th ASEAN Summit in Cebu, the Philippines, in January 2007, the Heads of State/Government of the 10 ASEAN Member States signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The ASEAN

Leaders tasked the Secretary-General of ASEAN to submit an annual report on the progress of implementation of their Declaration.

Subsequently, the ASEAN Committee on the Implementation of the Cebu Declaration was established in July 2007, during the 41st AMM in Singapore. The Committee is composed of one senior representative from each of the 10 ASEAN Member States, as well as a representative from the ASEAN Secretariat. The Committee reports to the ASEAN Senior Labour Officials Meeting (SLOM). One important task of the Committee is to develop an ASEAN legal instrument for the protection and promotion of the rights of migrant workers. Within ASEAN, the Philippines is so far the only country that has ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The ASEAN Committee on Women (ACW) and the ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSOD) are undertaking ground work for establishing the ASEAN commission on the promotion and protection of the rights of women and children. A multidisciplinary working group will soon be established to start drafting the Terms of Reference (TOR) for the proposed commission in the first quarter of 2009.

Cooperation on the promotion and protection of the rights of women and children in ASEAN has the advantage of the shared platform of the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC) to which all the 10 ASEAN Member States are parties to.

ASEAN Charter

In the 2004 VAP, ASEAN included a commitment to develop an ASEAN Charter as part of the political-security cooperation to shape and share norms. The ASEAN Charter was signed by the 10 Heads of State/Government during the 13th ASEAN Summit in Singapore on 20 November 2007. The Charter has now been fully ratified by all ASEAN Member States, and all of them have deposited their instruments of ratification with the Secretary-General of ASEAN. Consequently, the Charter will enter into force on 15 December 2008. ASEAN Foreign Ministers will meet at the ASEAN Secretariat in Jakarta on 15 December 2008 to celebrate the historic occasion.

Article 14 of the ASEAN Charter stipulates as follows:

“1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

“2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.”

A High Level Panel (HLP) has been established by ASEAN Foreign Ministers to draft the TOR for the ASEAN human rights body (AHRB). The HLP is consisted of 10 government representatives, one each from every ASEAN Member State, with a representative of the ASEAN Secretariat serving as resource person and providing secretariat support. The HLP is chaired by H.E. Srihasak Phuangketkeow, Thailand's Permanent Representative to the UN in Geneva. Ambassador Srihasak is assisted on the HLP by Prof Vitit Muntarbhorn of Chulalongkorn University's Faculty of Law.

Both Ambassador Srihasak and Prof Vitit are knowledgeable about human rights issues in the ASEAN region and international conventions on human rights. Their views about human rights, particularly about what ASEAN can do to promote and protect human rights, are progressive and yet realistic. Nevertheless, the two represent only Thailand on the HLP, in which Thailand is just one of the 10 equal Member States. Moreover, like in all ASEAN bodies, the HLP's decision-making is based on consultation and consensus.

The HLP has so far convened five meetings. On the sidelines of its third meeting in Manila, 11-12 September 2008, the HLP held a consultative meeting with relevant stakeholders, including the (informal) Working Group for an ASEAN Human Rights Mechanism (WG AHRM), the Network of Four National Human Rights Institutions (4 NHRIs), the Solidarity for Asian People's Advocacy (SAPA), the Women's Caucus for the ASEAN Human Rights Body.

The HLP earlier planned to meet with the leadership of the ASEAN Inter-Parliamentary Assembly (AIPA) during its upcoming sixth meeting in Jakarta, 11-13 December 2008. But the meeting will have to be postponed. The HLP also plans to visit Geneva in the first quarter of 2009 to learn from the UN Human Rights Council, and the UN High Commissioner on Human Rights about human rights issues at the international level.

After its sixth meeting in Jakarta, the HLP will submit its first draft of the TOR to ASEAN Foreign Ministers in mid-December. The final draft of the TOR will be submitted for consideration at the 42nd AMM (ASEAN Foreign Ministers Meeting) in Thailand in July 2009. In the meantime, nothing on the draft TOR is considered as final until all fundamental elements in it have been completely agreed upon.

After the TOR has been adopted by the ASEAN Foreign Ministers in July 2009, there is a plan for ASEAN Leaders to announce the launch of the AHRB during the 15th ASEAN Summit in Thailand in October 2009.

Conclusion

Bearing in mind the vast political diversity in the ASEAN membership, it is unrealistic for anyone to expect the AHRB to be a "Big Bang" in human rights promotion and protection in the ASEAN region. On the other hand, no one should dismiss the new and significant commitment of the 10 ASEAN Member States to promote and protect human rights through regional cooperation. The commitment is reflected in the Preamble, Purposes, and Principles of the ASEAN Charter.

Moreover, the commitment in Article 14 of the ASEAN Charter to establish an ASEAN human rights body to handle the promotion and protection of human rights within the ASEAN region is in itself an encouraging and significant step forward. Once established, the AHRB will be the first of its kind in Asia.

The AHRB will represent a new learning process for all the ASEAN Member States and their peoples. Undoubtedly the process will develop gradually. More important works can be done when the comfort level among the Member States in human rights cooperation rises, and when capability of the AHRB increases. This will take time.

ASEAN can learn from other regional and international organizations on how they go about promoting and protecting human rights through regional and international cooperation. At the same time, ASEAN also needs to develop its own modality of regional cooperation on human rights, which will take into account its political, economic and social diversity.

This is why the collective views about human rights in the 1993 Joint Communiqué of the ASEAN Foreign Ministers remain relevant and valid today.

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