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Editorial

41 Years of ASEAN

Having ten countries in Southeast Asia working together in one organization is a feat, considering the history of failed efforts to unite. Security was the reason for the Southeast Asia Treaty Organization (SEATO), while similarity of language and culture among the Malay peoples in Malaysia, the Philippines and Indonesia was the pre-eminent justification for MAPHILINDO. But they both failed to continue. The idea of having another Southeast Asian organization of states arose with the Cold War at its height, the consciousness of freedom from the then world powers being promoted (particularly by Indonesia and Malaysia of the Non-Aligned Movement), and the need for the economic development of the subregion finding much support. Countries that had governments with authoritarian character, seen more particularly during the 1970s and 1980s, founded the Association of Southeast Asian Nations (ASEAN). Repression of political dissent and suppression of legitimate complaints by communities that suffered from "development projects" had been justified by national security and national development considerations. To its credit, ASEAN has started to discuss human rights during the early 1990s, and more than a decade later adopted human rights-related declarations and a Charter that provided for the creation of a human rights body. But in fulfilling this new interest in human rights ASEAN faces the hard realities of human rights violations affecting all countries of Southeast Asia at present. Hopefully, the forty-one-year experience as an organization has brought maturity to ASEAN in facing the human rights violations that deserve the resolve seen in its pursuit of economic development.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

FOCUS Asia-Pacific is edited by Osamu Shiraishi, Director of HURIGHTS OSAKA.

ASEAN and Human Rights

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The Association of Southeast Asian Nations (ASEAN) deserves both commendation and rebuke for its work during the past four decades. In terms of human rights, ASEAN has much to be criticized for.

A newspaper editorial evaluates the forty-one-year existence of ASEAN in this way:¹

In a region laced with rivalry, a history of disputes, long standing suspicion and with no tradition of cooperation, ASEAN contributed to the maintenance of peace and the fostering of a regional framework.

As mutual trust grew, so did economic synergy in an area encompassing some 4.5 million square kilometers.

The combined gross domestic product of southeast Asia now reaches US\$ 1,100 billion, with total trade valued at around US\$ 1,400 billion.

In that respect, ASEAN has fulfilled its two primary purposes as stated in its declaration: To accelerate economic growth and promote regional peace and stability.

Cooperation in economic development underpinned most of the activities of ASEAN since its inauguration in 1967. It established from the very beginning numerous committees on different economic issues such as food and agriculture, civil air transportation, communication/air traffic services, meteorology, shipping, commerce and industry, finance, and tourism. At present, economic development is dealt with by a number of high-level officials through the Meeting of ASEAN Economic Ministers, ASEAN Finance Ministers Meeting, Senior Economic Officials Meeting, ASEAN Senior Finance Officials Meeting, and by numerous committees as implementing mechanisms.

Southeast Asia today still faces the challenge of overcoming poverty that affects a significant portion of its almost 600 million people and that exists side-by-side with the prosperity of its cities and in Singapore. As the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) reports:²

Despite good economic growth in the ASEAN region, large disparities in development outcomes between countries remain. Especially stark are the differences in health, economic and IT [information technology] connectivity achievements. The child and maternal mortality rates of Cambodia, the Lao People's Democratic Republic and Myanmar, for example, are between 11 and 47 times higher than those of Singapore. Similarly, the GDP per capita and labour productivity of Singapore is on par with developed countries, and three times as high as that of the next ranking ASEAN country on these scores, Malaysia. The GDP per capita and labour productivity of the poorer countries, Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam, is a mere tenth or less of Singapore's levels. The per capita use of mobile phones and the Internet in Cambodia and the Lao People's Democratic Republic is just one-hundredth of Singapore's use.

ASEAN Foreign Ministers refer to this situation as development gap among the countries in ASEAN, which they would like addressed through cooperation and integration.³

In sum, there is still much to do in the economic development of ASEAN member-states despite decades of cooperation among the governments, their collective partners,⁴ and the private sector. In order to "accelerate economic growth, social progress and cultural development in the region" as the 1967 ASEAN Declaration states, UNESCAP

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argues for a change in the ASEAN system - from cooperation to integration. It believes that

[T]rue regional integration will require all countries to achieve minimum standards of economic and social development, guided by international[ly] agreed development goals and principles, including those contained in the United Nations Millennium Declaration. The benefits of social and economic development by ASEAN countries therein need to be shared. Similarly, the ability of future generations to meet their needs should not be compromised.

An integrated system is deemed feasible on issues such as investment and financial flows, trade integration, management of international migration flows, control of communicable diseases and their spread across the borders, energy security, information infrastructure, and transportation infrastructure.

On governance, UNESCAP observes a bleaker picture:

All ASEAN countries, for example, rank amongst the bottom half of all countries of the world on the ability of their citizens to select their government and to engage in freedom of expression and association. Cambodia and the Lao People's Democratic Republic rank amongst the bottom quintile of all countries on the effectiveness of their governments, rule of law and the control of corruption; the Lao People's Democratic Republic also does so on the quality of its policies and regulations. Myanmar, in the meanwhile, ranks among the bottom five per cent of all countries on all these dimensions; it is even last on "voice and accountability".

As the newspaper editorial further declares, ASEAN has not met the "fresh aspirations" of the current generation for "[B]older goals and more exacting standards" and which make "ASEAN now seem increasingly antiquated." It further states that the noble goal of the 1967 ASEAN Declaration of "ensuring social justice cannot be secured without

deference to the social and political rights of all ASEAN citizens."

ASEAN integration has started with the agreement to implement a number of measures:⁵

1. Signing of the ASEAN Charter in November 2007
2. Establishment of a Committee of Permanent Representatives to ASEAN composed of Ambassador-level representatives to be based in ASEAN secretariat from January 2009
3. Creation of the High Level Panel on an ASEAN human rights body
4. Creation of High Level Legal Experts' Group on Follow Up to the ASEAN Charter (which will discuss the legal personality of ASEAN, dispute settlement mechanisms and other legal issues).

The ASEAN Foreign Ministers expected the convening of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers before November 2008.⁶

The human rights situation in Southeast Asia presents a major challenge to the fulfillment of ASEAN's human rights plans.

Human rights issues in Southeast Asia

Southeast Asia suffers from human rights violations that occur within states and across the border. Some of the problems relate to the colonial legal framework of the 1930s-1950s period and to the national security ideology of the 1960s-1970s period. And some remain in the current legal system as shown in the case of Malaysia. Laws in Malaysia restrict the exercise of constitutionally supported human rights with The Internal Security Act of 1960 as an example of a potent legal tool for suppressing dissent. Similarly in Singapore there are legal measures that restrict fundamental liberties as

shown in Table 1.

Human rights violations go beyond the legal framework in the cases of extra-judicial killing, disappearances and torture, which have been reported in several Southeast Asian countries particularly in the Philippines. People considered as "enemies of the State" have suffered from these forms of viola-

tion.⁸ Likewise, the Philippine government agencies have been accused of violating the rights of urban and rural poor due to demolitions and displacements caused by public infrastructural projects and business enterprises.

In the context of the significant extent of poverty in Southeast Asia, women suffer more than men due

to limited access to health services, education, housing, financial services, and information. Discrimination and violence against women also figure prominently among poor women. The situation is more acute for rural women, including those who belong to ethnic minority groups.⁹

Trafficking has accompanied the migration of people to countries within Southeast Asia. Poverty and also a host of other reasons (including problems within the family, attraction to life in the city, restrictions in the local communities) are the usual reasons for migration, which traffickers exploit. Trafficking of children, men and women has affected Southeast Asia quite extensively for a long period of time. A recent report describes the situation as follows: ¹⁰

Within the ASEAN region, Cambodian children are trafficked to Vietnam and Thailand to work as street beggars, Indonesian women are trafficked to Malaysia to work as domestic workers,

Table 1: Legal Restrictions on Human Liberties and Freedom⁷

Fundamental Liberties	Restrictions: Legislative and Policy
1. Liberty of the Person * freedom not to be deprived of life * freedom from arbitrary arrest	<ul style="list-style-type: none"> • Penal Code • Internal Security Act • Criminal Law [Temporary Provision] Act • Criminal Procedure Code • Misuse of Drugs Act • Death penalty
2. No Slavery and Forced Labour * not to be held in slavery * not to be held in forced labour	<ul style="list-style-type: none"> • Enlistment Act • Prisons Act • Criminal Law [Temporary Provision Act]
3. Equality * all persons are equal before the law and provided with equal protection of the law * right not to be discriminated against due to race, religion, descent or place of birth	Policy on restricting marriage between Singapore citizens and work permit holders
4. No Banishment * right not to be banished	<ul style="list-style-type: none"> • Banishment Act • Immigration Act • Internal Security Act • Passports Act • National Registration Act
5. Freedom of Movement * freedom to move freely and live in Singapore	Housing policy on ethnic eligibility
6. Freedom of Speech, Assembly & Association * freedom of speech and expression * right to assemble peacefully and without arms * right to form an association	<ul style="list-style-type: none"> • Sedition Act • Undesirable Publications Act • Newspaper and Printing Presses Act • Penal Code • Internal Security Act • Public Entertainment Act • Trade Unions Act • Societies Act • Mutual Benefit Organization Act • Rules and regulations on Speakers Corner
7. Freedom of Religion * right to profess and practice religion	Religious Harmony Act
8. Education Right * right not to be discriminated against on the basis of religion, race, descent or place of birth in relation to admission of pupils or payment	Policies on admission of children to schools, e.g., sterilization and educational achievements of parents

Laotian men are trafficked onto Thai fishing boats, Vietnamese women are trafficked through false marriages into numerous commercial sex industries, Burmese women are trafficked to Thailand to work as domestic workers.

Migrant domestic workers in Singapore and Malaysia who come from the Philippines and Indonesia report many cases of abuse at the hands of their employers.¹¹

Southeast Asia has a great number of child workers working at home as domestic help, in factories and other commercial establishments. They may migrate from rural areas to the urban centers, or cross the border to the neighboring country. These children suffer from¹²

- * Working in isolation and/or being confined to the premises of the employer;
- * Long working hours; open-ended and ill-defined working hours; being "on stand-by" 24 hours a day;
- * No regular break times or rest days;
- * Limited or no opportunities for education;
- * Vulnerable to ill health due to physical and mental exhaustion, emotional trauma, etc.;
- * Trafficking into domestic labour;
- * [Not] [b]eing allowed ... or limited contact with outsiders and their own families; no channels to discuss or alert others to their problems; and
- * Denied their rights as children to special protection and care.

People living with HIV/AIDS (PLHIVs) in Southeast Asia suffer from discrimination. They are discriminated in the society, groups, and within their own family.¹³ Discrimination occurs most frequently within the context of health service. One survey of PLHIVs in Thailand and the Philippines shows the high rate of discrimination in the health sector at the point of testing, before they "knew they [were] HIV-positive..."¹⁴ The health personnel, without the prior consent of the PLHIVs, leaked out information on the positive test result. Some of the PLHIVs were forced or tricked into

testing, and many were not given appropriate explanation on the test to be done. Discrimination continues during the treatment phase.

Press freedom remains under threat in Southeast Asia. While there are positive developments supporting "political and media reform towards a more open society ...the fight to protect and promote press freedom in this part of the world is far from won." As the Southeast Asian Press Alliance (SEAPA) reports:¹⁵

the passage of laws on "national security" and Internet-related crimes in Thailand was a familiar theme in 2007 to all countries in Southeast Asia, from Vietnam to the Philippines and Malaysia to Laos. All carry implications for free expression and press freedom, particularly in the realm of new media where, in Southeast Asia and elsewhere, many flashpoints on free expression are taking place. All highlight the uncertainties the Southeast Asian press will continue to face in the days, months, and years ahead.

Internal armed conflicts in the Philippines, and in southern Thailand, have resulted in humanitarian crises that spilled over to the neighboring country, Malaysia. Internally displaced people in the Philippines suffer as much as those who crossed the border to Malaysia, especially when the latter decides to repatriate these people who escaped from the fighting between the government forces and the rebel groups in southern Philippines. Similarly, the refugees from Burma/Myanmar along the Thai-Burma border, and the Lao refugees along the Thai-Lao border, still face uncertainty and hardship.

The Burma/Myanmar situation remains a very grave issue in Southeast Asia.

There is also a serious problem of holding human rights violators accountable for their action. Inaction of government officials creates an environment of impunity. The slowness of the judicial

systems coupled with weak political will of the governments to resolve human rights problems are serious impediments to the full respect for human rights.

ASEAN, as an organization, has hardly been seen as actively working on many of these issues.

Human rights standards

If ASEAN seriously considers addressing these human rights issues, there must be clear standards on which to base its actions. These standards are set internationally and should be applied to the Southeast Asian situation. There should not be

ASEAN human rights standards, unless they are superior to the international human rights standards.

Such international human rights standards already exist, to a certain extent, in Southeast Asia. ASEAN member-states are parties to some of the core international human rights treaties. But out of eight core international instruments, only two have been ratified by all ASEAN member-states - the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Table 2 shows the status of ratification by the ASEAN member-states of the United Nations core interna-

Table 2. Ratification of core international human rights treaties¹⁶

State	ICERD	ICCPR	ICESCR	CRC	CEDAW	CAT	ICRMW	CPD
Brunei Darussalam	-----	-----	-----	√	√	-----	-----	Signature
Cambodia	√	√	√	√	√	√	Signature	Signature
Indonesia	√	√	√	√	√	√	Signature	Signature
Lao PDR	√	Signature	√	√	√	-----	-----	Signature
Malaysia	-----	-----	-----	√	√	-----	-----	Signature
Myanmar	-----	-----	-----	√	√	-----	-----	-----
Philippines	√	√	√	√	√	√	√	√
Singapore	-----	-----	-----	√	√	-----	-----	-----
Thailand	√	√	√	√	√	√	-----	Signature
Viet Nam	√	-----	√	√	√	-----	-----	Signature

Table 3. Ratification of major ILO conventions¹⁷

	Freedom of association and collective bargaining		Elimination of forced and compulsory labour		Elimination of discrimination in respect of employment and occupation		Abolition of child labour	
	Conv. 87	Conv. 98	Conv. 29	Conv. 105	Conv. 100	Conv. 111	Conv. 138	Conv. 182
Brunei Darussalam								
Cambodia	√	√	√	√	√	√	√	√
Indonesia	√	√	√	√	√	√	√	√
Lao PDR	-----	-----	√	-----	√	√	√	√
Malaysia	-----	√	√	√	√	-----	√	√
Myanmar	√	-----	√	-----	-----	-----	-----	-----
Philippines	√	√	√	√	√	√	√	√
Singapore	-----	√	√	√	√	-----	√	√
Thailand	-----	-----	√	√	√	-----	√	√
Viet Nam	-----	-----	√	-----	√	√	√	√

tional human rights instruments.

Some ASEAN member-states have also ratified the major International Labour Organization (ILO) conventions as shown in Table 3. It is notable however that one convention (Convention 87, Freedom of Association and Protection of the Right to Organise Convention, 1948) has not been ratified by five ASEAN member-states, while Convention 98 (Right to Organise and Collective Bargaining Convention, 1949) and Convention 111 (Discrimination [Employment and Occupation] Convention, 1958) have not been ratified by four member-states each. Only three member-states ratified all these major ILO conventions, while one member-state ratified only two conventions.

The 2000 Joint Communique of the ASEAN Labour Ministers declares the ILO conventions as standards in protecting labor rights:¹⁸

16. The Ministers reaffirmed their commitment to promote working conditions in an environment of freedom and equality. On the worst forms of child labour, the Ministers reiterated their position that child labour should be eliminated as soon as possible but were of the view that the solution to the fundamental problem should be through education, technical assistance and other promotional activities. On the promotion of labour standards, the Ministers stressed that it should not be linked to trade issues and registered their concern that labour standards could be used for protectionist or other purposes which are not relevant to the objectives of the ILO. In this regard, the Ministers urged the ILO to assure that the promotion of labour standards should be carried out within the purview of the ILO and for the benefit of the workers, employers and governments of the Member States.

Workers rights, being human rights, are a proper concern of ASEAN in line with its economic development focus. The ILO conventions are significant standards in protecting workers rights in Southeast Asia.

Any action on human rights issues should be based on internationally agreed human rights standards. ASEAN has declared its adherence to the Charter of the United Nations as guiding principle in its operations, and has stated in its ASEAN Charter the principle of "upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States."¹⁹ The rules in a "rules-based ASEAN" should include international human rights standards.

The use of international standards is not alien to ASEAN. ASEAN's action in the late 1980s and early 1990s on the Vietnamese occupation of Cambodia, and in 2004 on the Burma/Myanmar issue were based on the need to allow the people to decide on the political leadership in government as required by international law. Also, ASEAN "encouraged all concerned parties in Myanmar to continue their efforts to effect a smooth transition to democracy."²⁰

Human rights mechanisms

ASEAN member-states have national institutions/committees/offices/agencies whose functions range from monitoring the realization or protection of particular rights to provision of services to human rights violations victims. Many of them have the mandate to implement state obligations under the ratified international human rights instruments.

While national human rights institutions have largely been highlighted in discussing national human rights mechanisms, the other offices/agencies that should be given equal attention. In Southeast Asia, there are government offices that deal with the two major human rights instruments ratified by all ASEAN member-states (i.e., CRC and CEDAW). There are likewise judicial entities and "truth commissions" that address the issue of documenting human rights violations and providing a basis for holding the violators accountable.

These national mechanisms, with their limitations and weaknesses,²¹ should be supported or pressured into playing their part in human rights promotion, protection and realization. In the case of defunct bodies such as those related to the human rights violations in Timor-Leste by members of the Indonesian military and its Timorese allies, there are serious lessons to learn from a study of the laws that created them and their performance.²² Table 4 provides a list of such institutions, offices and judicial bodies that address different human rights issues.

In addition to these existing mechanisms, there are a number of initiatives at the Southeast Asian level regarding particular issues (such as education, trafficking, child labor, HIV/AIDS, migrant workers) that involve ASEAN governments, non-governmental organizations and international organizations (such as UNICEF, UNESCO, UNDP, and UNESCAP). The ASEAN human rights structures should build on these experiences and be able to link and coordinate these initiatives to ensure the

appropriate participation of the ASEAN governments.

Multi-level human rights approach

The resolution of human rights violations, particularly those involving significant number of victims of violations perpetrated by the security forces and/or government agencies, require complicated and time consuming processes. Their resolution is best achieved at the national level where victims and perpetrators are found. Thus the national human rights mechanisms should be able to provide the means to hold human rights violators accountable and the victims protected, compensated or provided with other relief measures. In the same manner, these national human rights mechanisms should support measures that realize or fulfill the human rights of the vulnerable, disadvantaged and marginalized sections of society.

But when the national human rights mechanisms are ineffective or unable to provide the services

Table 4. National institutions, offices and bodies with human rights functions

State	NHRI/General Human Rights Body	Child Rights Commission	Women's Rights Commission	Human Rights Tribunal
Brunei Darussalam	-----	- National Children's Council - National Committee for Handling Social Issues	National Committee for Handling Social Issues	-----
Cambodia	National Human Rights Committee	Cambodian National Council for Children (CNCC)	Cambodian National Council for Women	Extraordinary Chambers in the Courts of Cambodia
Indonesia	National Human Rights Commission (Komnas HAM)	National Commission for Child Protection (Komnas Anak)	National Commission on Violence against Women (Komnas Perempuan)	- Ad Hoc Human Rights Court for East Timor - Indonesia-Timor Leste Joint Commission for Truth and Friendship (CTF) - Human Rights Courts
Lao PDR	National Committee of Human Rights	- National Commission for Mother and Child - National Supervising Committee on the abolition of the use of child labor	National Committee for the Advancement of Women	-----
Malaysia	Human Rights Commission of Malaysia (SUHAKAM)	-----	-----	-----
Myanmar	-----	- National Committee on the Rights of the Child - Committee for the Prevention of Military Recruitment of Under-Age Children	Myanmar National Committee for Women's Affairs	-----
Philippines	Commission on Human Rights (CHR)	Philippine Council for the Welfare of Children	National Commission on the Role of Filipino Women (NCRFW)	Specially-designated courts for the issuance of the writ of amparo; some courts with power to issue writ of habeas data
Singapore	-----	-----	-----	-----
Thailand	National Human Rights Commission	Office of Welfare Promotion and Protection of Children, Youth, the Vulnerable, the Disabled and the Elderly	National Commission on Women's Affairs	-----
Viet Nam	-----	National Committee on Population, Family and Children	National Committee for the Advancement of Women	-----

expected of them, the victims should have recourse beyond the national borders. The ASEAN human rights body is one extra-territorial recourse, in addition to the United Nations human rights mechanisms. But the functions and powers, composition of members, and the corresponding secretariat and logistical resources to be provided to the ASEAN human rights body are still unclear.

The current activities among the existing national institutions, offices and bodies at the Southeast Asian level should continue and improve even more. Their initiatives on issues affecting children, women, and other vulnerable groups deserve full support. The involvement of the different government agencies in these Southeast Asian level initiatives (such as those on trafficking, child labor, migration, etc.) should be sustained and become more intensive over time.

Political will of the governments

The effective implementation of all ASEAN initiatives on human rights depends on the political will of its member-states. There are doubts on the political will of some ASEAN member-states when it comes to human rights issues. But this problem should not hinder the human rights initiatives within Southeast Asia. The ratification of the ASEAN Charter by all ASEAN member-states, and the adoption of several human-rights-related declarations should provide the legal bases for a serious approach to addressing human rights issues.

In this case, the support/pressure from the human rights community as well as other sectors is crucial in keeping the human rights mechanisms (at national and Southeast Asian levels) agenda on the ASEAN table.

ASEAN peoples and human rights

The first clause of the ASEAN Charter that states "**WE, THE PEOPLES** of the Member States of the Association of Southeast Asian Nations

(ASEAN)" has a very significant meaning. It brings to the fore the primary object and subject of the document. This is almost an affirmation of the idea of "ASEAN citizens."

Will an integrated Southeast Asia also lead to a united people - the ASEAN citizens - who equally enjoy not merely economic prosperity but also social security and human rights?

Human rights are affected by the cultural, economic, political and social structures in any society. There are human rights issues in economic development measures that the ASEAN member-states undertake individually and as ASEAN. Many human rights violations occur in the context (and in a number of cases because) of economic development programs and projects. Many human rights violations occur due to undemocratic political systems. Equally notable are the social and cultural structures that traditionally lead to discrimination of sections of society.

"**THE PEOPLES**" of ASEAN have to have the power to take action to resolve these issues through, among others, the human-rights-rules-based structures that ASEAN should create.

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Endnotes

1. "ASEAN at 41," editorial, *The Jakarta Post*, 8 July 2008, in www.thejakartapost.com/news/2008/08/07/editorial-asean-41.html
2. *Ten As One: Challenges and Opportunities for ASEAN Integration*, Bangkok: UNESCAP, 2007.
3. "One ASEAN at the Heart of Dynamic Asia," Joint Communique of the 41st ASEAN Ministerial Meeting Singapore, 21 July 2008.
4. ASEAN has Dialogue Partners with whom it enters into agreements on a number of economic development projects. These Dialogue Partners are Australia, Canada, China, the European Union, India, Japan, the Republic of Korea, New Zealand, the Russian Federation, the United States of America, and the United

Nations Development Programme.

5. Joint Communiqué, op. cit.

6. Joint Communiqué, op. cit.

7. Based on Think Centre, "Singapore: Constitutional Rights" in <http://www.thinkcentre.org/article.cfm?ArticleID=2486>

8. See Maria Socorro Diokno, "Extrajudicial, Summary or Arbitrary Executions in the Philippines, 2001-2006" in issue number 48 of this newsletter for more discussion on this issue. This article is also available in www.hurights.or.jp/asia-pacific/048/05.html

9. See *Report on ASEAN + 3 Human Security Symposium on Women and Poverty Eradication*, Ministry of Foreign Affairs of Japan and the Association for Human Rights of Women (Osaka: Association for Human Rights of Women, 2007), for more information on the situation of women in Southeast Asia.

10. *Trafficking and Related Labour Exploitation in the ASEAN Region* (Utrecht: International Council on Social Welfare, 2007) page 22.

11. See the *Call For Regional Standard-Setting on the Human Rights of Migrants in An Irregular Situation and Migrant Domestic Workers - Appeal to the Asia-Pacific Forum* issued by the Jakarta Process on 31 July 2008 in Kuala Lumpur about the need for standards on the human rights of migrants in an irregular situation and migrant domestic workers, available in www.komnasperempuan.or.id/metadot/index.pl?id=2927

12. Ayaka Matsuno and Jonathan Blagbrough, *Child Domestic Labour in South-East and East Asia: Emerging Good Practices to Combat It* (Bangkok: ILO-SRO Bangkok, 2005), page 34.

13. For a survey of the stigma and discrimination suffered by PLHIVs in the Mekong region see *Baseline Survey of GIPA and stigma and discrimination in the Greater Mekong Region* (Bangkok: POLICY Project and APN+, 2005).

14. *AIDS Discrimination in Asia* (Bangkok: Asia-Pacific Network of People with HIV/AIDS, 2004), page 15.

15. *Slipping and Sliding - The State of the Press in Southeast Asia* (Bangkok: Southeast Asian Press Alliance, 2008), page 3.

16. The information in this table on the status of ratification of the human rights instruments is based on the information found in the website of the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org).

The international instruments shown in Table 2 are the following:

ICERD - International Convention on the Elimination of All Forms of Racial Discrimination

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

CRC - Convention on the Rights of the Child

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

ICRMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

CPD - Convention on the Rights of Persons with Disabilities

17. The information in this table on the status of ratification of ILO conventions is taken from ILO website (http://www.ilo.org/global/What_we_do/InternationalLabourStandards/lang--en/index.htm) accessed on 17 October 2008.

18. See Joint Communiqué of The Fourteenth ASEAN Labour Ministers Meeting, 11-12 May 2000, Manila, Philippines, available in www.aseansec.org/8652.htm.

19. Article 2j, Principles, *ASEAN Charter*.

20. See Joint Communiqué of the 37th ASEAN Ministerial Meeting, Jakarta, 29-30 June 2004, available in www.aseansec.org/16192.htm.

21. For an assessment of the Southeast Asian national human rights institutions see *2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia* (Bangkok: FORUM Asia), and available at www.forum-asia.org.

22. For a review of the Ad Hoc Human Rights Court for East Timor see ELSAM's (Institute For Policy Research and Advocacy) *Final Report: The Failure of Leipzig Repeated in Jakarta*, as well as the Monitoring Reports for the Ad Hoc Human Rights Court for East Timor in Jakarta, Indonesia by U.C. Berkeley War Crimes Studies Center and Institute for Policy Research and Advocacy (ELSAM) in <http://warcrimescenter.berkeley.edu>. For the Indonesia-Timor Leste Joint Commission for Truth and Friendship (CTF) see the "Joint NGO Statement on the Handover of the Report of the Commission of Truth and Friendship" (July 15, 2008). Also see TAPOL, <http://tapol.gn.apc.org/statements/st080724.html>.

The Process of Establishing an ASEAN Human Rights Body

HURIGHTS OSAKA

A body that addresses the human rights issues in 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 Viet Nam poses a big challenge to the Association of Southeast Asian Nations (ASEAN). There are differences in the human rights situation among its member-states, and there is no common approach to human rights promotion and protection at the national level.

ASEAN Charter

The ASEAN Charter, now ratified by all ASEAN member-states, provides the following:

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. (Article 14)

One can argue that the ASEAN Charter's broad principle of promoting and protecting human rights (Article 2 [2i]) should relate to the other principles that impact on human rights. The other principles in the ASEAN Charter provide at least the appropriate environment for human rights promotion and protection. Two principles are particularly related:

(h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;

xxx xxx xxx

(j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States.

The ASEAN Foreign Ministers Meeting, which is

tasked to determine the terms of reference for the operation of this body, faces the challenge of finding the appropriate mechanism that effectively serves human rights.

But what is an effective human rights body?

Proposals from the civil society

The civil society in Southeast Asia is made up of different formations and categories. ASEAN's roster of affiliated civil society organizations (CSOs) consists mainly of business groups and organizations on particular fields (various professions, and industries [shipping, furniture-making, tourism, mining, etc.]).¹ These organizations are hardly heard on human rights issues. A few CSOs in the ASEAN roster have the capacity and likely mandate to raise human rights concerns such as the ASEAN Law Association (ALA), ASEAN Law Students Association (ALSA), Southeast Asia Regional Institute for Community and Education (SEARICE), Southeast Asian Studies Regional Exchange Program (SEASREP) Foundation, and ASEAN Confederation of Women's Organisations (ACWO). But they do not seem to have any involvement in human rights issues so far. One ASEAN-affiliated CSO (the Asian Partnership for the Development of Human Resources in Rural Asia [AsiaDHRRA]), however, has been active in one network of NGOs lobbying the ASEAN on human rights issues.

At the moment, civil society proposals on the powers and functions of an ASEAN human rights body mainly come from three main CSO activity and groups: The ASEAN People's Assembly (APA), the Working Group for an ASEAN Human Rights Mechanism (Working Group), and the Solidarity for Asian People's Advocacy (SAPA) Working Group on ASEAN (WG on ASEAN).

The APA is supported by a network of strategic studies institutes in Southeast Asia (ASEAN Institutes of Strategic and International Studies or ASEAN-ISIS) and is "among a number of non-governmental activities intended to enable the ASEAN peoples from various sectors in and out of government to discuss common concerns, to generate responses and solutions to these concerns, to build trust and confidence among the participants, to raise knowledge and awareness about ASEAN and its activities, and to contribute to community building in ASEAN." It has been holding its assembly since 2000.²

The Working Group for an ASEAN Human Rights Mechanism or Working Group, established in 1995, has the primary goal of having an intergovernmental human rights commission for ASEAN. It is a coalition of national working groups from ASEAN member-states that are composed of representatives of government institutions, parliamentary human rights committees, the academe, and NGOs. The Working Group follows a step-by-step, constructive and consultative approach when it engages governments and other key players in the region. It submitted to the ASEAN senior officials in 2000 a Draft Agreement for the Establishment of the ASEAN Human Rights Commission.³

The SAPA WG on ASEAN, established in 2006, is a "common platform for collective action on ASEAN advocacy." It "respects and promotes the multiplicity of perspectives, strategies and forms employed by its individual members, even as it strives for specific unities in ASEAN-related advocacy and action."⁴ It has a Task Force on an ASEAN Human Rights Mechanism that serves as a "forum for Members to strategize on a human rights agenda for ASEAN, and to complement the work of the WG on an ASEAN HR Mechanism and national human rights institutions in ASEAN, etc."

The activities of APA, Working Group and SAPA

are not exclusive to their respective "members." Their members attend each other's meetings. Collectively, they cover NGOs, the academe, government agencies (particularly the Ministries of Foreign Affairs), and national human rights institutions in Southeast Asia.

SAPA Working Group on ASEAN

The SAPA Working Group on ASEAN held its Second Regional Consultation on ASEAN and Human Rights on 3-5 August 2008 in Jakarta. The main agenda of the consultation was the collation of the results of national consultations regarding the terms of reference of the ASEAN human rights body.

The Jakarta consultation resulted in a submission to the High Level Panel on the establishment of the ASEAN human rights body. The submission proposes that the ASEAN human rights body:

- a. Not only promotes and protects human rights but also fulfils them
- b. Be guided by international human rights standards as well as by international labor standards and international humanitarian laws
- c. Perform a number of functions such as
 1. Human rights education covering the officials/members of the "judiciary, police, military," government agencies, parliaments, civil society organizations, national human rights institutions, schools, universities, faith-based organizations, vulnerable groups and communities
 2. Provide advise on "national and regional policies and legislations in order to ensure synchronisation, harmonisation and compliance with international human rights laws and standards"
 3. Encourage reporting to United Nations human rights treaty bodies, and the ratification of international human rights instruments (including the Rome Statute of the International Criminal Court)



4. Promote the implementation of the ASEAN human rights-related declarations
 5. Assist ASEAN member-states in establishing national human rights institutions
 6. Initiate discussions on the establishment of an ASEAN human rights court
 7. Inquire on complaints of human rights violations cases in ASEAN member-states and urgently communicate its findings and recommendations to concerned ASEAN member-states for their action within a specified period
 8. Assess and review the general human rights situation in the ASEAN region
 9. In cases of widespread and systematic human rights violations, refer them to the ASEAN Summit as a serious breach of the ASEAN Charter under article 27(2) on non-compliance
 10. Request the suspension of the application of any legislative and executive steps that have created or may create blatant human rights violations such as the Internal Security Act or National Security Act
 11. Create mechanisms for the protection of human rights defenders based on the United Nations Declaration on Human Rights Defenders
- d. Promote its work and mandate through civil society organizations, other relevant non-state institutions, and the media
- e. Be constituted as a "Commission" and operate as an independent body similar to the mandate-holders of the United Nations special procedures and following the Paris Principles
- f. Create sub-commissions on children, migrant workers, women, indigenous peoples, and others
- g. Have members who have the integrity, impartiality, professionalism, commitment and competence in human rights. Representatives from civil society sectors, based on geographical and gender balance, shall be duly considered. The members shall act as independent experts, not representing any government
- h. Serve as an overarching mechanism for all matters and conduct of the three ASEAN community councils.

High Level Panel

A High Level Panel (HLP), created by the ASEAN Foreign Ministers Meeting, is currently in the process of consulting people in the different ASEAN member-states on the "powers and functions" of this human rights body. It has held meetings with members of the civil society and other sectors in Singapore (July 2008), Thailand (August 2008), and the Philippines (September 2008). The next monthly meetings will be held in the other ASEAN member-states.

The ten-member HLP is composed of representatives of the ASEAN member-states.

The SAPA submission requests that the HLP ensures that the "consultative process is meaningful and effective through appropriate procedures" and reaches out to the "widest sections and largest groups of peoples of society as much as possible at the national level through creative forms of communication that enable concerned peoples not otherwise able to participate directly in the process to register their views."

The Chairperson of HLP, Mr. Bilahari Kausikan, described the discussion among the HLP members during its first meeting:⁵

Our discussions were held in a cordial and cooperative spirit. We aim to achieve a result that is realistic, balanced and credible, and which would be in the best collective interest of ASEAN. We all agreed that we are not starting on a blank page. ASEAN has a history of discussing human rights and the High Level Task Force (HLTF) on the ASEAN Charter had already achieved a fair degree of consensus on several issues. We will build upon the work of the HLTF, as well as ASEAN's previous agreements and declarations on human rights.

The core job of the HLP should be to propose a set of terms of reference of the ASEAN human rights body that apply the international human rights standards (even though many ASEAN member-states have not ratified most of the core international human rights instruments) to the Southeast Asian context. The extent of powers and functions to be proposed for such body remains to be seen. But the need for an effective ASEAN human rights body exists without doubt.

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Endnotes

1. See www.aseansec.org/4986.htm
2. See www.asean-isis-aseanpeoplesassembly.net/about.htm
3. See www.aseanhrmech.org/aboutus.html
4. See www.asiasapa.org/index.php?option=com_content&task=view&id=48&Itemid=76
5. Press Comments by the Chairman of the High Level Panel (HLP) on the Establishment of an ASEAN Human Rights Body in www.4lamm.sg/amm/index.php/web/press_room/press_releases/press_comments_by_the_chairman_of_the_high_level_panel_hlp_on_the_establishment_of_an_asean_human_rights_body

2008 Study Tour to South Korea

*Nobuki Fujimoto**

HURIGHTS OSAKA organized a study tour to South Korea from 19 to 24 August 2008 to learn about the human rights situation of migrant women in that country and the initiatives of non-governmental organizations (NGOs) toward establishing multicultural co-existence in Korean society. The first HURIGHTS OSAKA study tour to South Korea was held in August 2007 with the same purpose, and included visits to government offices and NGOs in Seoul. For the 2008 study tour, the group visited two provinces and a city near Seoul.

As part of the tour program, the group participated in a symposium entitled "Asian Women and Family Change in the Era of Migration," organized by the Asian Center for Women's Study (Ewha Womans University) and in collaboration with HURIGHTS OSAKA and the Women's Study Center, Osaka Prefecture University.

Professor LEE Bae Yong, president of Ewha Womans University, gave the opening address at the symposium, while eight academics from Vietnam, the Philippines, China, Sri Lanka (all sending countries of migrant women), Korea and Japan (both receiving countries of migrant women) gave presentations on migrant women issues.

Ms. LEE Jae Kyung, Professor of Ewha Womans University and Ms. OISHI Nana, Associate Professor of International Christian University (Japan), gave the keynote addresses entitled "Love Goes to the Market?: The Meaning of Love and Intimacy in Migrant Marriage" and "Family Without Borders?: Asian Women in Migration and the Transformation of Family Lives" respectively.

The group went to a community in Ansan City, known as Borderless Village, which is considered to have the highest concentration of foreign

migrants in South Korea. The group visited the Ansan Migrant Community Service Center, managed by the city government, and the Ansan Immigrant Center, a church-based NGO. The group learned from the two organizations about the involvement of local governments and many NGOs in the activities aimed at creating a society where ethnic and religious groups are able to live together in harmony.

The group also went to the provinces of Jeollanam-do and Jeollabuk-do to visit the Yeongkwang Women's Hot Line and Kunsan Women's Hot Line respectively, two of the twenty-six branches of Korea Women's Hot Line (KWHL). KWHL, as a women's rights activist group, tries to protect women from all kinds of violence, advance the women's social position as well as establish gender equality in the spheres of family, work, and society. Its program includes support for married migrant women and victims of domestic violence.

The staff members of the Kunsan Women's Hot Line brought the group to the ruins of former brothels where fires broke out in 2000 and 2002. The two fires killed nineteen women who were confined and forced to engage in prostitution by the brothel owners. The incidents ignited the anger of the women's groups and led to a lobby movement for the enactment of laws on sex trade. In 2004, the lobby led to the enactment of the Act on the Punishment for Intermediation in Sex Trade and Associated Acts, and the Act on the Prevention of Sex Trade and Protection of Victims Thereof.

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HURIGHTS OSAKA CALENDAR

HURIGHTS OSAKA has moved to a new office location. It is in now on the third floor of piaNPO, a building owned by the Osaka City government and used mainly by Japanese non-governmental or non-profit organizations (NGOs/NPOs). Many of the NGOs/NPOs in piaNPO have international programs. The HURIGHTS OSAKA library has moved to the second floor library of piaNPO. The telephone and fax numbers of HURIGHTS OSAKA remain the same.



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May be opened for inspection by the postal service.

HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.



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