

Regional Seminar on the ASEAN Human Rights Declaration
2-3 December 2011
Bali, Indonesia

SUMMARY OF PROCEEDINGS

I. Introduction

1. The **Regional Seminar on the ASEAN Human Rights Declaration** was held in Bali, Indonesia on 2-3 December 2011. The Roundtable was organized by the ASEAN Intergovernmental Commission on Human Rights (AICHR) and supported by the Ministry of Foreign Affairs of Indonesia, United Nations Development Program (UNDP) and the Office of the High Commissioner for Human Rights (OHCHR).
2. The Seminar was attended by participants from AICHR, Drafting Group for the ASEAN Human Rights Declaration, ASEAN Secretariat, Working Group for an ASEAN Human Rights Mechanism, UNDP, OHCHR, UN Women, UN High Commissioner for Refugees, and experts from the Inter-American and African Human Rights Systems.
3. The **Welcome Remarks** were delivered by Mr. Rafendi Djamin, Indonesian Representative and Chair of the AICHR. Mr. Djamin stressed the importance of the Seminar as the first of its kind being hosted by the AICHR pursuant to its mandate to draft the ASEAN Human Rights Declaration (AHRD). He shared that AICHR formed a drafting group in June 2011 to come up with a basic draft of the AHRD to be submitted to the AICHR by end of December 2011. The AICHR is then to provide a progress report of the drafting of the AHRD to the ASEAN Foreign Ministers Meeting (AMM) on 10-11 January 2012. The process of drafting the AHRD is one of the more important agenda items of the AMM, and is also being closely monitored by ASEAN civil societies which are demanding for a proper engagement in the process. He emphasized the desire of civil society to have a more formal, inclusive and institutional engagement with AICHR. He highlighted that AICHR representatives may have their respective national consultations like what had been done in Indonesia. Mr. Djamin shared that this will not be the only seminar on the AHRD as the process of negotiation will still be continued next year as Cambodia assumes the Chairmanship of ASEAN. He emphasized that the AHRD should be inspirational, gives value-added to existing international human rights standards, and reflects the context of ASEAN while enriching existing international standards. Finally, he stressed that AICHR is moving towards informal standard-setting, and laying the foundation for future human rights-related declarations and conventions.
4. The **Opening Remarks** were delivered by Dr. Homayoun Alizadeh, OHCHR

Regional Representative for Southeast Asia. Dr. Alizadeh shared that the regional seminar will provide an opportunity to reflect on the AHRD, including why it is important for ASEAN to get it right. He explained that human rights instruments are primarily there to guard against the abuse and misuse of state power. He stressed that states have an obligation to ensure that state actors and third parties do not violate human rights and furthermore, states have obligations to promote and fulfil human rights. Dr. Alizadeh further emphasized that the AHRD can cement the priority of the countries that place the interest of the people at its heart taking note of the interrelatedness and interdependence of human rights. He highlighted the opportunity of regional human rights instruments not only to be consistent with international human rights standards, but more so enrich these standards. He concluded that the AHRD is a historic opportunity to set human rights standards for ASEAN Member States to aspire to and improve the lives of the people in Southeast Asia.

II. Sessions

5. The Seminar was divided into four sessions covering the following topics: (a) Experiences from Other Regional Human Rights Mechanisms on the Development of Human Rights Declarations/Conventions, particularly in the Inter-American and African Systems; (b) Human Rights and Human Responsibilities; (c) Notions of Collective Rights and Individual Rights; and (d) Exploring National and Regional Particularities of ASEAN Countries in the Context of Human Rights.
6. In **Session One**, “Experiences from Other Regional Human Rights Mechanisms on the Development of Human Rights Declarations/Conventions, particularly in the Inter-American and African Systems”, Prof. Dinah Shelton, Professor of International Law at the George Washington University Law School and Commissioner of Inter-American Commission on Human Rights, shared how the Inter-American Human Rights System evolved, in its norms, institutions and procedures into what it is today. She highlighted that since the adoption of the Universal Declaration of Human Rights (UDHR), every instrument adopted by the Inter-American system made explicit reference to it and the UN Charter. She mentioned the different declarations and instruments eventually adopted by the Inter-American System including the circumstances at that time. Prof. Shelton particularly pointed out that the more recent instruments adopted involved a collaborative process with different stakeholders. Dr. Melakou Tegegn, Expert Member of Working Group on Indigenous Populations of the African Commission on Human and Peoples’ Rights, gave a background as to the evolution of human rights issues in Africa. He further focused on the development of indigenous peoples’ rights leading to the setting up of the Working group on Indigenous Populations with a three-point mandate: (a) examine the concept of indigenous populations, (b) study the relevance of the African Charter to the right of indigenous peoples, and (c) consider appropriate recommendations for monitoring and protection of the rights of indigenous

peoples. During the open forum, inquiries included the provision in the African Charter on Human and Peoples' Rights as to the of satisfaction of economic, social and cultural rights as a guarantee to enjoy civil and political rights, the move to independence from governments of the African Commission, the challenges encountered in drafting the charter, and engagement with stakeholders. The session was moderated by Ambassador Rosario Manalo, Philippine Representative to the AICHR.

7. In **Session Two**, "Human Rights and Human Responsibilities," Ms. Christine Cerna, Principal Human Rights Specialist, Inter-American Commission on Human Rights, enumerated the rights and duties as provided for in the American Declaration of the Rights and Duties of Man and stressed that, interestingly, the duties have never been invoked. She stressed that states are the duty bearers when it comes to the promotion and protection on human rights and that they need to comply with the standards that they have bound themselves with. Mr. Ramaswamy Sudarshan, Policy Advisor of UNDP Asia-Pacific Regional Centre, discussed the connectivity of individuality and collectiveness of people and rights. He emphasized that although the most important thing is the value and richness of identity, central to that is the notion of freedom. He further stressed that responsibilities of individuals are a moral and ethical concern of theirs and the States should not prescribe duties and responsibilities. He further stressed that although the UDHR itself is a collective achievement of civilization, the importance of collective duty must not be imposed at the expense of human rights. Dr. Sriprapha Petcharamesree, Thai Representative to the AICHR, mentioned the levels of relationship of an individual: with other individuals, with the group and with the State. Among these levels, she discussed that the most problematic is the relationship of the individual with the State since the latter has a duty to protect and promote human rights of the people within its territorial jurisdiction. She emphasized the dominating power of the State which raises the fundamental question of who will be protecting the people if the State itself violates human rights using its power. She stressed that the duty of each individual is to respect the rights of others, while the duty of the state is to use its power and very existence to protect and promote human rights. During the open forum, interventions included the role and value of an AHRD, the balance between rights and duties, and the role of culture in a human rights declaration. The session was moderated by Mr. Rafendi Djamin.
8. In **Session Three**, "Notions of Collective Rights and Individual Rights," Prof. Dinah Shelton explained in the Inter-American system, that the topic remains quite controversial since there are states which take an individualistic approach. Despite the absence of the recognition of the collective rights by the American Declaration and Convention, some rights especially the right to property have been redefined to include a collective dimension.. She particularly discussed several cases, such as that of indigenous peoples, to highlight the relationship of individual and collective rights. Dr. Melakou Tegegn expressed that the conceptualization of human rights is related to the

notion of democracy and freedom in each state. He also stressed that although there is necessity to look into collective rights, current practices reveal that collective rights are not assumed as important as individual rights. He also emphasized that the realization of human rights is very much related to development and social change. Dr. Tegegn finally concluded that individual and collective rights should go together and that there must not be any dichotomy on this aspect; advocating for collective rights do not mean undermining individual rights as it should go hand in hand. During the open forum, interventions included the concept of the right to development and the contextualization of the right to self-determination. The session was moderated by Dato' Sri Muhammad Shafee, Malaysian Representative to the AICHR.

9. In **Session Four**, "Exploring National and Regional Particularities of ASEAN Countries in the Context of Human Rights," Dr. Homayoun Alizadeh shared his insights on diversity and complexity of culture and backgrounds of states and regions but reiterated that there are fundamental rights that apply to all. Ms. Cerna discussed particularities as highlighted by cases that have been decided under the Inter-American human rights system and how decisions have set the standards within the region. The inclusion of a substantive regional particularity (Article 4.1 "in general, from the moment of conception") in relation to the right to life in the American Convention has impeded universalisation of adherence to the American Convention. During the open forum, interventions included discussion on particularities on substantive rights, particularities that must be realistically dealt with and those that add value to human rights standards in the region, and particularities in the implementation of human rights. The session was moderated by Mr. Phoukhong Sisoulath, Lao P.D.R. Alternate Representative to the AICHR. It was affirmed that national and regional particularities should add value and not undermine the universally accepted values of human rights norms.

III. Conclusions and Recommendations

10. The seminar acknowledged the importance of the ASEAN Human Rights Declaration, recognizing its standard-setting role in the region.
11. The seminar recognized the important role of civil society in the promotion and protection of human rights in the region and welcomed the possibility of a more constructive and open engagement of the AICHR with them.
12. The seminar welcomed the importance that the ASEAN Foreign Ministers are giving to the process and progress of the drafting of the AHRD.
13. The seminar recommended that the AHRD should be inspirational and should add value to existing international human rights standards while reflecting the contextuality of ASEAN.

14. The seminar recognized that the ASEAN Member States are the primary duty bearers in promoting and protecting human rights as stated in the Terms of Reference of the AICHR when it stated that the states have the primary responsibility on human rights.
15. The seminar reiterated the interrelatedness and interdependence of human rights and recommended that this be properly reflected in the AHRD.
16. The seminar recognized that the AHRD can set the standards that the ASEAN Member States can aspire to for the people of ASEAN.
17. The seminar appreciated the role that independent regional human rights mechanisms play not only in the promotion and protection of human rights but also in continuously improving human rights standards.
18. The seminar acknowledged the importance of an evolutionary approach in the promotion and protection of human rights and the need to develop more effective mechanisms to achieve these goals.
19. The seminar recognized that although individual and collective rights co-exist together, collective rights must not be at the expense of human rights.
20. The seminar appreciated that the duty of the people with regard to human rights is to respect the rights of others.
21. The seminar recognized the subsidiary role of regional human rights mechanisms since the primary responsibility to promote and protect human rights lie with the state.
22. The seminar acknowledged that only certain human rights can be limited for the sake of public order and safety regulated by law.
23. The seminar recommended that if the formulation of duties and responsibilities of individuals were to be included in the AHRD, it must not be done in a way that could undermine human rights.
24. The seminar appreciated that collective rights are as important as individual rights especially in the context of indigenous peoples.
25. The seminar recognized that there are national and regional particularities that need to be addressed and recommended that the particularities that maybe reflected in the AHRD must be those that are consistent with and add value to international human rights standards.
26. The seminar recommended that positive particularities be reflected in the AHRD that are conducive to and supportive of international human rights standards.

27. The seminar recommended that the AHRD should not dichotomize individual and collective rights since these should be consistent with each other.
28. The seminar recommended that human rights should not be seen as something abstract in the AHRD and called on the ASEAN Member States that human rights must be related to development and social change.
29. The seminar appreciated the necessity to consult with civil society, especially, to determine how rights are to be reflected in the AHRD.
30. The seminar recommended that the rights of stateless persons, refugees, internally displaced persons, and other vulnerable groups could be considered in the AHRD.
31. The seminar appreciated that development and human rights are not incompatible but there must be a participative approach to development.
32. The Seminar recommended that the interpretation and implementation of human rights, nationally, regionally and universally, must not be carried out on a double standard basis and politicised. This observation should be made a principle in the AHRD. It will be a unique distinction of the Declaration. With this principle, the Declaration can be pushed forward as a universal model.
33. The Seminar recognized that human rights are best realised through various forms of democratic society that fundamentally respects the rule of law.

This Seminar is the start of consultations which will provide substantive inputs towards the AHRD.

IV. Acknowledgment

34. The seminar participants expressed their appreciation to the ASEAN Intergovernmental Commission on Human Rights for organizing the Regional Seminar on the ASEAN Human Rights Declaration; to the government of the Republic of Indonesia, the United Nations Development Programme and the Office of the High Commissioner for Human Rights for supporting the seminar; and to the members of the organizing committee for their hard work.