



# RECORD OF PROCEEDINGS

## ASEAN Intergovernmental Commission on Human Rights (AICHR) Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law

13 – 15 March 2017

Sheraton Imperial Hotel, Kuala Lumpur



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## Foreword

The inaugural *ASEAN Intergovernmental Commission on Human Rights (AICHR) Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law* held in Kuala Lumpur provided a platform to encourage peer-to-peer interaction among ASEAN Judiciaries, Representatives of the AICHR and other relevant ASEAN Sectoral Bodies and international experts, and to share good practices and challenges in the implementation of international human rights laws. Judicial cooperation was also explored.

The Colloquium was significant in a number of ways:

1. The Council of ASEAN Chief Justices (CACJ), which was formed following the 4<sup>th</sup> ASEAN Chief Justices Meeting (ACJM) meeting in Ho Chi Minh City in April 2016, had recently been inducted as an Entity Associated with ASEAN in Part 1 of Annex 2 of the ASEAN Charter.
2. Recognising the crucial role of the ASEAN Judiciaries in realising the ASEAN Community Vision 2025 to be a rules-based, people-oriented, and people-centred organisation, this was the first occasion in which the AICHR could discuss issues of the rule of law, judicial systems and infrastructure, and human rights with the ASEAN Judiciaries.
3. The commonality among ASEAN Member States (AMS) is that every country has ratified three core international human rights instruments, which are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and Convention on the Rights of Persons with Disabilities (CRPD). Many of these rights have been affirmed in the ASEAN Human Rights Declaration (AHRD). The Colloquium was able to build on this commonality to robustly discuss the current state of play in their implementation.
4. Each session of the Colloquium addressed the key responsibilities of the ASEAN Judiciaries. It has now been widely acknowledged that the courts are best placed to promote and protect human rights, to enlarge access to justice and remedies, and to advance the rule of law. On reflection, part of this acceptance is evidence of the progress made by the region in internalising the values that human rights are universal, indivisible, inter-dependent and inter-related.
5. The convening of the Colloquium allowed an interface among the participants to establish and to continue institutional links with the ASEAN Judiciaries that would stand the region in good stead. The AICHR's human rights mainstreaming project, which began in 2009, will gain the more for it.

The wealth of knowledge shared at the Colloquium should not be wasted.



Sourced from the comprehensive presentations at the Colloquium, this Record of Proceedings compiles the views, experiences, best practices and challenges regarding the implementation of international and regional human rights laws in the region.

It documents the relevant inputs and material to function as a reference point, and further as a baseline for stakeholders to work from in support of ASEAN's efforts to strengthen judicial cooperation on the important matters of the rule of law and human rights in the region.

Keeping at the forefront of our minds that we should not be reinventing the wheel every time the issues of the rule of law and human rights are raised, I trust that this Record will be used by everyone interested in this area of the AICHR's work.

I wish to extend my deep appreciation and gratitude to Andika Ab Wahab, Michelle Ng and Carolyn Hong who assisted in different ways to produce and complete this Record. And to the AICHR Malaysia team at our Ministry of Foreign Affairs led by Adlan Mohd Shaffieq and Nurul Aliaa Md Nor Azman for running the show behind the scenes to ensure the Colloquium was a success.

**H.E. Edmund Bon Tai Soon**

Representative of Malaysia to the ASEAN Intergovernmental Commission on Human Rights (AICHR)



## Executive Summary

The ASEAN Intergovernmental Commission on Human Rights (AICHR) organised the first AICHR Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law, from 13 to 15 March 2017 at the Sheraton Imperial Hotel in Kuala Lumpur.



Photo 1: Convening of the AICHR Judicial Colloquium [Session 1], 13 March 2017 in Kuala Lumpur

The Colloquium was jointly organised by AICHR Malaysia, AICHR Lao PDR and AICHR Thailand, with support from the ASEAN-U.S. Partnership for Good Governance, Equitable and Sustainable Development and Security (ASEAN-U.S. Progress), Regional Europe-ASEAN Dialogue Instrument Human Rights Facility (READI HRF), Henrich Böll Stiftung (South East Asia), Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), and Human Rights Commission of Malaysia (SUHAKAM).

The main objective of the Colloquium was to encourage peer-to-peer interaction among the relevant stakeholders, especially senior judges across the ASEAN Member States (AMS), Representatives of AICHR and other relevant ASEAN Sectoral Bodies such as the ASEAN Law Ministers Meeting (ALAWMM) and ASEAN Senior Law Officials Meeting (ASLOM). It also aimed to share the good practices and challenges in the implementation of international human rights laws, and to explore potential judicial cooperation between AICHR and other stakeholders.





## **Key Issues, Good Practices & Recommendations**

The two-and-a-half-day Colloquium comprised 10 sessions made up of six panel sessions (Sessions 1, 2, 3, 5, 6 & 7), two observatory sessions (Sessions 4 & 9), one working group session (Session 8) and a plenary from working group session (Session 10) (refer to the Programme of Activities - **Annex 1**).

The following is the list of key issues, good practices and recommendations that had arisen throughout the convening of the Colloquium. These issues, good practices and recommendations are derived from and arranged based on the set themes from Panel Sessions 1, 2, 3, 5, 6 & 7.

### **Implementation of International Human Rights Instruments**

**Fact:** All AMS have acceded to the three international human rights instruments namely CRC, CEDAW and CRPD.

**Good Practice:** Malaysia, Singapore, Indonesia, Brunei Darussalam and Lao PDR have done the harmonisation of their respective national laws in order to give effect to these instruments, and to strengthen protection towards vulnerable groups such as children, women and persons with disabilities.

Some AMS, for instance, Singapore has created national policy and programmes to support its human rights obligations under CRPD. These include the establishment of master plan policy and national mentorship programmes in order to support the persons with disabilities to access public facilities and housing scheme.

Some other AMS, for instance, Lao PDR partnered with international organisations such as the United Nations Children's Fund (UNICEF) and neighbouring States such as Thailand and Viet Nam in order to strengthen management of juvenile cases and judicial education and training.

### **Judicial Competence in the Implementation of International Human Rights Instruments**

**Issue:** Lack of awareness, knowledge and empathy among the judiciaries with regard to the protection of human rights have been an issue for judicial competence in the implementation of international human rights instruments.

**Good Practice:** However, some AMS (judiciaries) have begun to collaborate with academic and judicial institutions as well as independent bar associations to raise awareness and enhance understanding among judicial practitioners on the implementation of new international human rights treaties ratified by the Member States. These include provision of training for judicial officials that encapsulates



aspects of human rights, and participation of human rights experts in judicial training programmes.

**Recommendation:** The ASEAN judiciaries are strongly encouraged to enhance understanding, and to use or refer to the Bangalore Principles (1988) in their day-to-day duties.

### **Judicial Training on Human Rights**

**Issue:** The lack of standard or common training module on human rights for judicial practitioners in ASEAN.

**Good Practice:** At country-specific level, some AMS have training modules dedicated to different levels of judicial practitioners such as new judicial officials or senior level judges. Some training modules such as those in Myanmar incorporate aspects of human rights whereby international and regional human rights experts are invited as resource persons to conduct training for new judges / judicial officials.

**Recommendation:** Given the commonality among the AMS with regard to the ratification of CRC, CEDAW and CRPD, it is now possible for ASEAN to develop a common or standard training module on the protection of human rights, to be used and referred to by the ASEAN Judiciaries.

### **Prosecution and Conviction of Offenders Involving Vulnerable Victims**

**Issue:** It is relatively easy to prosecute offenders of child exploitation (or any other cases involving vulnerable people) but difficult to convict them. This is linked to the inability of prosecutor to provide concrete evidence, even more so if such offences are committed transnationally or cross-border.

**Best Practice:** Some AMS, for instance, the Philippines' judiciary has put strong measures in place to ensure that individuals under investigation or being prosecuted are prohibited from leaving the country for a certain period. Some other countries provide appropriate services such as interpreters or public facilities such as private waiting rooms for children and women in courts.

**Recommendation:** Judiciaries must be well-equipped to better understand the nature, consequences and sensitivities of criminal cases involving vulnerable victims such as children and women. Judiciaries must also strengthen the provision of legal aid services, and work towards establishing more courts in remote areas to increase access to justice among vulnerable segments of the population.





## African & ASEAN Regional Mechanisms

**Fact:** In the African region, there are three regional institutions with human rights mandates namely (1) African Commission on Human and Peoples' Rights; (2) African Committee of Experts on the Rights and Welfare of the Child; and (3) African Court on Human and Peoples' Rights. While in ASEAN, other than the AICHR, there are three other human rights-based regional institutions namely the ASEAN Committee on Women (ACW), ASEAN Commission on the Promotion and Protection of the Rights of Women & Children (ACWC) and ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).

**Issue:** Unlike in Africa, ASEAN does not have a regional human rights court, and the AICHR (and other regional human rights institutions such as ACW, ACWC and ACMW) have very limited functions and mandate compared with the African Commission.

**Recommendation:** Considering the commonality of approaches and cultural diversities in the two regions, the African and ASEAN Commissions are strongly encouraged to collaborate in human rights fields of common interest including developing a human rights complaint mechanism.

## Rule of Law and Human Rights

**Issue:** Lack of enforcement or selective enforcement of laws have been the major challenges to the effective implementation of the rule of law and human rights in ASEAN. This results in unfair prosecution towards vulnerable segments of society, and may impede their access to justice.

**Recommendation:** The other two branches of Government, namely the Legislature and Executive, must play an equal role in ensuring effective implementation of the rule of law and human rights in the region. In the meantime, the judiciaries must continue to play their role in striking a judicious balance between the competing interests of the community and the individual whose rights are being infringed, while being consistent with the values and culture of AMS.

## ASEAN Judicial & Human Rights Cooperation

**Fact:** The ASEAN Judiciaries are now included in Part 1 of Annex 2 of the ASEAN Charter, as an entity associated with ASEAN, and referred to as the Council of ASEAN Chief Justices (CACJ).

**Recommendation:** As an ASEAN organ with an overarching human rights mandate, it is time for the AICHR to establish institutional links with the CACJ in



order to develop strategies to strengthen the rule of law, promotion and protection of human rights, judicial systems and legal infrastructure in the region.



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## Abbreviations

ACHPR	African Court on Human & People's Rights
ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women & Children
AHRD	ASEAN Human Rights Declaration
AJP	ASEAN Judicial Portal
ALAWMM	ASEAN Law Ministers Meeting
ASLOM	ASEAN Senior Law Officials Meeting
CACJ	Council of ASEAN Chief Judges
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DEVAWC	Declaration on the Elimination of Violence Against Women and Violence Against Children
ICCPR	International Covenant on Civil & Political Rights
ICESCR Rights	International Covenant on Economic, Social & Cultural Rights
MDG	Millennium Development Goals
RPA	Regional Plan of Action
SDG	Sustainable Development Goals
SOMRI	Senior Officials Meeting Responsible for Information
SUHAKAM	Human Rights Commission of Malaysia
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights



## Opening Session

### Welcome Remarks

- I. H.E. Edmund Bon Tai Soon, Representative of Malaysia to AICHR
- II. H.E. Leo M. Herrera-Lim, Chairperson of AICHR, Representative of the Philippines to AICHR
- III. Jennifer Wilson, ASEAN Affairs Advisor to the U.S. Mission to ASEAN
- IV. Manfred Hornung, Director, Heinrich Boll Stiftung, Southeast Asia Office
- V. H.E. Dag Juhlin-Dannfelt, Ambassador of Sweden to Malaysia



Photo 2: Convening of the AICHR Judicial Colloquium [Opening Session], 13 March 2017, Kuala Lumpur



Photo 3: Convening of the AICHR Judicial Colloquium [Opening Session], 13 March 2017, Kuala Lumpur

1. **H.E. Edmund Bon**, Representative of Malaysia to AICHR, said as the AICHR has now reached its eighth year since its inception, it needs to consider extending its protection mandate towards receiving communications and seeking information regarding possible violations of human rights in the region. This will enable ASEAN to address problems before they escalate to full-blown crises.
2. He said despite the limitations of human rights treaties, their implementation has had an impact through their influence on norms, laws, values and practices in states around the world. Bon said the Judiciary plays an important role in interpreting human rights laws, as the ratification of international human rights conventions creates a 'legitimate expectation' that could be enforced by the courts. He noted that the jurisprudence undergirding human rights instruments may assist judges as an aid to interpretation. The Australian High Court's decision in *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh* is instructive on this point. In Malaysia, the Malaysian High Court, in *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors*, had used CEDAW to guide its interpretation. Bon further noted that judges in Europe and Africa use the proportionality test to determine whether legislative or executive restrictions of human rights were valid.
3. He also said the progress in collaboration among ASEAN Judiciaries was evident from the establishment of the CACJ, while the Judiciaries of the Philippines, Thailand, Indonesia and Timor-Leste are also looking into implementing the Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia.
4. Bon said the AICHR can establish institutional links among ASEAN bodies to bring into the mainstream the human rights norms of the AHRD. This may be in the form of inter-sectoral expert or working groups on human rights and



the Judiciary, or a regional resource centre to provide technical expertise and assistance to policymakers, judges and lawyers.

5. **H.E. Leo M. Herrera-Lim**, Chairperson of AICHR and Representative of the Philippines to AICHR, said ASEAN has a strong commitment towards protecting human rights in the region. As Chair of AICHR during the 50<sup>th</sup> Anniversary of ASEAN, he said the AICHR will hold several programmes this year relating to the rights of children, women and persons with disabilities. These include a thematic study and workshop on women affected by natural disasters, a training workshop between AICHR and ACWC, a workshop on education for children with disabilities, and the launch of a regional action plan on mainstreaming the rights of persons with disabilities.
6. He said as no judicial or legislative system was perfect, this Judicial Colloquium was a good platform to share best practices and lessons learnt among judges, AICHR Representatives and other legal professions.
7. **Jennifer Wilson**, ASEAN Affairs Advisor to the U.S. Mission to ASEAN, said the partnership between ASEAN and the U.S. revolved around strengthening democracy, enhancing good governance and the rule of law as well as promoting and protecting human rights and fundamental freedoms. The U.S. looked forward to continuing this partnership in the area of judicial cooperation with relevant stakeholders in ASEAN.
8. **Manfred Hornung**, Director of Heinrich Boll Stiftung, Southeast Asia Office, said this first AICHR initiative to engage directly with civil society organisations (CSOs) alongside judicial experts and legal officials across AMS, opened up space for meaningful interaction between CSOs and the Judiciary on the implementation of international laws.
9. **H.E. Dag Juhlin-Dannfelt**, Ambassador of Sweden to Malaysia, said the success of the sustainable development goals (SDGs) rests on the respect for human rights. The Judiciaries are among the important stakeholders in realising these goals especially SDG 16 which speaks of the creation of strong and independent institutions such as the Judiciary and SDG 5 on gender equality. He noted that judges played an important role in ensuring equality among citizens including equality before the law, non-discrimination, the right to a fair trial, and equal access to justice. Judges are the key players in upholding accountability and respect for human rights.



## Opening Statement

By the Right Honourable Tun Arifin bin Zakaria, Chief Justice of Malaysia



Photo 4: The Right Honourable Tun Arifin Zakaria, Chief Justice of Malaysia, delivering his Opening Statement at the AICHR Judicial Colloquium, 13 March 2017, Kuala Lumpur

10. **Justice Arifin Zakaria**, Chief Justice of Malaysia, said in the present system of government, the Judiciary plays a critical role in upholding and enforcing the rule of law, and providing the necessary checks and balance to the Legislature and Executive for a functioning democracy.

11. He said as a result of ASEAN's rapid development as a regional hub for trade, there will continue to be many human rights challenges facing the region. The judicial arms of each AMS should therefore be equipped with the appropriate tools and mechanisms to deal with such challenges in a manner that is fair, just, efficient and consistent with the rule of law.
12. Justice Arifin took note of several commonalities among the Judiciaries in the region such as a common system of domestic trial and appellate courts presided by judges, and with the jurisdiction to decide on matters pertaining to human rights and fundamental freedoms in cases brought before them.
13. He said ASEAN, as a community, should build on these commonalities and through this Colloquium by sharing good practices, in particular on how each Judiciary views the implementation of human rights commitments in its domestic context.
14. He said as there is currently a dearth of jurisprudential articles on how human rights enshrined in the AHRD are to be interpreted, the AICHR should find ways to assist in clarifying the human rights concepts and to collaborate with ASEAN Judiciaries.
15. He also said as the CACJ has now been included as an entity associated with ASEAN, it would give greater footing to the CACJ to work to strengthen individual Judiciaries in the AMS and judicial cooperation in the region. A working group will be formed within the CACJ to identify training needs and capacity building, develop a common ASEAN judicial portal, strengthen case management and court technology, as well as resolve child cross-border disputes and civil processes.
16. In addition, a study group will also be established to study the future work of the CACJ, and to submit their recommendations at the next CACJ Meeting which will be held in Brunei Darussalam.



## Keynote Address

By H.E. Dato' Ramlan Ibrahim, Secretary General of the Ministry of Foreign Affairs of Malaysia



Photo 5: H.E. Dato' Ramlan Ibrahim, Secretary General of the Ministry of Foreign Affairs of Malaysia, delivering the Keynote Address at the AICHR Judicial Colloquium, 13 March 2017, Kuala Lumpur

1. **H.E Dato' Ramlan Ibrahim**, Secretary General of the Ministry of Foreign Affairs of Malaysia, delivered the Keynote Address. He called on the AICHR to actively devise methods and strategies to become the human rights standard-setting institution of ASEAN as it was important to have a common baseline on the definition and implementation of the rights in the AHRD, in order to accelerate its economic, political, social and cultural development.

2. With ASEAN's commitment to being a rules-based organisation with an emphasis on the rule of law, human rights, democracy and good governance as the foundations of regional peace and security, Ramlan said it followed that the conduct of each AMS will be a matter of public interest and attention.
3. He said as a policymaker, he was fully aware of the tensions that can arise when decisions have to be made to balance competing interests. Such decisions are never easy, and it falls on the Judiciary to interpret the law and scrutinise the facts. As such, any functioning and effective democracy must have an independent Judiciary that decides cases without fear or favour.
4. Ramlan noted that the Judiciary has, at its core, an inherent duty to promote and protect the universal, inalienable and indivisible rights of the people pursuant to the law of the land. In the Malaysia context, he said its courts had on various occasions decided against the Executive, in what may be termed as 'progressive judgments'. For example, the courts had decided in favour of the indigenous peoples in relation to their native customary land rights as well as recognised women's rights to non-discrimination in employment.
5. He stressed that a functioning rule of law is the key to building respect for human rights which in turn creates sustainable stability in the region.
6. Judges are the central players in maintaining the rule of law. The rule of law and human rights thus begins with an effectively accessible and just legal system. To build more robust judicial systems and to extend the rule of law further and deeper in the region, concerted efforts to enhance the functioning of rule of law institutions must be undertaken.
7. This is a multi-layered process that requires the efforts of a wide range of stakeholders in ASEAN – Legislative, Executive and Judicial branches of governments, local and regional authorities, ombudsman institutions and civil society.



## Session 1 - Role of the Judiciary in the Promotion & Protection of Human Rights – CEDAW, CRC, CRPD

### Discussants:

- I. The Right Honourable Justice Tun Arifin bin Zakaria, Chief Justice of Malaysia
- II. The Honourable Justice Tay Yong Kwang, Judge of Appeal, Supreme Court of Singapore
- III. The Honourable Justice Dr. H. Muhammad Syarifuddin, S.H., M.H., Vice-Chief Justice of the Supreme Court of the Republic of Indonesia for Judicial Matters
- IV. The Right Honourable Dato Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli, Chief Justice of the Supreme Court of Brunei Darussalam
- V. The Honourable Justice Sengsouvanh Chanthalonnavong, Justice of the People's Supreme Court of the Lao PDR and President of Vientiane Capital Court

### Facilitator:

- H.E. Leo M. Herrera-Lim, Chairperson of AICHR, Representative of the Philippines to AICHR

### Rapporteur:

- Niphonekham Khammounheuang, Assistant to the Representative of Lao PDR to AICHR







Photo 6: Discussants and Facilitator at the AICHR Judicial Colloquium [Session 1], 13 March 2017, Kuala Lumpur

1. The first session discussed the role of the Judiciary in the promotion and protection of human rights, in particular CEDAW, CRC and CRPD.
2. **Justice Arifin Zakaria**, Chief Justice of Malaysia, was the first speaker, and gave an overview of Malaysian laws relating to the rights of children, women and persons with disabilities. He explained that Malaysian laws governing the rights of women and children overlap because both groups share similar vulnerabilities. He also said it may be the right time for Malaysia to ratify the ASEAN Convention Against Trafficking In Persons, Especially Women And Children (ACTIP), in order for Malaysia to align itself with ASEAN's agenda against trafficking in persons in the region. More importantly, it would also accord comprehensive protection for trafficked victims.
3. He said the CRPD has been given effect through the Persons with Disabilities Act 2008. Malaysia has made reservations to the CRPD in relation to the freedom from torture or cruel, inhuman or degrading treatment or punishment, and liberty of movement as well as nationality. On the implementation of the CRC in Malaysia, Justice Arifin said Malaysia has enacted the Child Act but its provisions could be improved especially with regard to unaccompanied and separated minors, and migrant children. For example, Malaysia needs to review its laws on the detention of migrant children.
4. Following the ratification of CEDAW, Malaysia amended Article 8(2) of the Federal Constitution on equality by adding the word 'gender', in order to give effect to CEDAW.



5. He said while the Federal Constitution is the supreme law of the land, Malaysia has yet to enact a full Act of Parliament to implement CEDAW in the domestic context. However, the courts have used CEDAW as an aid to interpretation. This was seen in **Noorfadilla bt Ahmad Saikin v Chayed bin Basrun & Ors** [2012] where the High Court used CEDAW as an aid to interpret 'gender discrimination' in Article 8 of the Federal Constitution. The Court held that it was its duty to take into account the government's commitment and obligations at the international level, and especially under an international convention. He also cited two other cases, i.e. the Court of Appeal's judgment in **AirAsia Bhd v Rafizah Shima bt Mohamed Aris** [2014] and **Mohd Ridzwan bin Abdul Razak v Asmah Binti Hj. Mohd Nor** [2016].
6. Until the case of **Mohd Ridzwan**, there was no civil cause of action for sexual harassment under Malaysian law. There was also no legislation on sexual harassment prior to the Employment (Amendment) Act 2012 which came into force on the 1 April 2012, which provided for the manner in which employers should deal with complaints of sexual harassment at the place of work.
7. Justice Arifin said to further strengthen the Judiciaries in the implementation of international treaties, he would support collaboration between CACJ and AICHR through a Technical Working Group on Human Rights and the Judiciary. This would aid in sharing of information such as judicial decisions (for the Judiciary) and best practices (for government agencies).
8. **Justice Tay Yong Kwang**, Judge of Appeal in the Supreme Court of Singapore, was the next speaker. Giving an overview of Singapore's laws in relation to these international treaties, he said the Republic had acceded to CEDAW and CRC in October 1995, and CRPD in July 2013, with certain declarations and reservations made.
9. Pursuant to its international obligations, Singapore has put in place numerous measures that seek to protect women, children and persons with disabilities, and to promote their well-being.
10. On CEDAW, he said Singapore has a Women's Charter which was first introduced in 1961 to protect the rights of women and girls. The Women's Charter focuses not only on matrimonial matters but also provides for criminal sanctions for specific offences against women and girls such as prostitution and human trafficking. The recently enacted Family Justice Act established special procedures for the adjudication of family disputes. Among others, it allows for hearings *in camera* and also provides women with access to remedies such as protection orders from the court.



11. On CRC, Singapore's Children and Young Persons Act (CYPA) provides for the care of children and young persons below the age of 16, and protects children from abuse, neglect and abandonment. There are also legal provisions dealing with children and young persons in criminal law, and provide a degree of immunity from prosecution. For young offenders aged 12 to below 16, there are special procedures and restrictions on the types of punishment, with the emphasis being on the rehabilitation of offenders. Justice Tay also said amendments to the Penal Code which came into force in 2008 enhance the protection of young persons against exploitation for commercial sex in Singapore and other countries.
12. In respect of the CRPD, Singapore has laws, policies and programmes that seek to improve the lives of persons with disabilities. For example, the Mental Capacity Act provides a legal framework for empowering and protecting persons with disabilities or who lack the mental capacity to make decisions for themselves. Justice Tay said Singapore has also put into place policies such as 'Enabling Masterplans' to serve as roadmaps in building an inclusive society for persons with disabilities. Additionally, new buildings and amenities in Singapore are designed to ensure that persons with disabilities can use them independently while old infrastructure undergoes constant upgrading to cater to the needs of persons with disabilities, including those who are aged or aging.
13. The Housing and Development Board (HDB), which manages public housing in Singapore, regularly upgrades existing public housing and communal areas to improve accessibility to persons with disabilities such as the building of ramps and installation of lifts that stop at every floor in high-rise apartments. Train stations in Singapore have tactile ground surface indicators to guide the visually impaired, and lifts for persons who are unable to use the escalators.
14. On matters relating to judicial approach, Justice Tay said Singapore adheres to a dualist approach whereby international law and local law are regarded as separate legal systems. Courts in Singapore are required to use a purposive approach when interpreting laws made by Parliament. Purposive interpretation, as stated under the Interpretation Act, requires that an interpretation of a statute that promotes its purpose or object be preferred over one that does not.
15. The third speaker, **Justice Dr H. Muhammad Syarifuddin**, Vice-Chief Justice of the Supreme Court of the Republic of Indonesia for Judicial Matters, explained Indonesia's efforts to implement these treaties. On the rights of women, it has Law No. 23 (2014) concerning the prevention of domestic violence against women. With regard to the rights of children, it has national Law No. 23 (2002) on child protection, and Law No. 11 (2012) on children in the criminal system.



16. Justice Muhammad said in relation to the rights of persons with disabilities, Indonesia has enacted national laws to give effect to CRPD, in particular Law No. 19 (2011) which protects the rights of persons with disabilities. He said there was already a national law to protect the rights of persons with disabilities prior to Indonesia's ratification of CRPD, referring to Law No. 4 in 1966. However, it was not a human rights-based law pursuant to CRPD.
17. **Justice Kifrawi Dato Paduka Haji Kifli**, Chief Justice of the Supreme Court of Brunei Darussalam, explained that Brunei Darussalam has established several national laws and policies to implement the country's commitments relating to its international obligations under CRC, CEDAW and CRPD.
18. On the rights of women, he said Brunei Darussalam has established a specific national law namely Women and Girls Protection Act to strengthen protection from any form of exploitation of women and girls in the country. Brunei Darussalam also has an Anti-Trafficking Law to protect women and girls from commercial and non-commercial exploitation in the country. Additionally, there is the Married Women Act to protect married women as well as a Family Law Act.
19. On the rights of children, Brunei Darussalam has a Compulsory Education Act to provide for compulsory education to all children in the country. Justice Kifrawi said Brunei Darussalam has ratified the CRC with several reservations in relation to the freedom of thought, conscience and religion (Article 14), child protection without a family, and on adoption (Articles 20 & 21).
20. On the rights of persons with disabilities, he said Brunei Darussalam had ratified the CRPD on April 2016, and was currently drafting national instruments to give effect to this convention.
21. He said although human rights are not clearly enshrined in the Constitution, Brunei Darussalam is closely guided by these international conventions as well as the teachings of Islam which is its national religion.
22. **Justice Sengsouvanh Chanthalounnavong**, Justice of the People's Supreme Court of the Lao PDR and President of Vientiane Capital Court, said Lao PDR has established and amended existing national laws to give effect to these three international conventions.
23. These include domestic laws concerning the prevention of violence to women and children, and criminal laws to provide protection to vulnerable segments of societies such as women and children. On the rights of children, Lao PDR has established a criminal law and judicial procedural law to strengthen juvenile case management where children under 18 are protected from punishment and sent to training centres instead. It has also established juvenile chambers / juvenile courts in the Family Court, Magistrate's Court, High Court and Supreme Court to handle these cases.



24. He said the Judiciary played an important in tackling the trafficking of vulnerable people including children and women, by imposing heavy sentences upon offenders. He cited a case where an offender was sentenced 16 years' imprisonment for trafficking and exploiting Lao workers in Thailand and Malaysia.
25. The Government of Lao PDR has also initiated national initiatives to strengthen the provision of legal aid to its citizens, with particular emphasis to the rural society as well as women and children in need of legal assistance. It has partnered with international organisations such as the United Nations' Children Fund (UNICEF) to make improvements in areas such as juvenile case management.
26. Other than international organisations, Lao PDR is also working with neighbouring countries such as Viet Nam and Thailand in the areas of judicial cooperation, and strengthening education, skills and training modules for its Judiciary. In 2016, Lao PDR sent 35 judges to Thailand and Viet Nam to attend training courses to build their capacity in writing decisions and judgments in courts.

### Key Highlights during the Open Session

**Question:** How can the lower courts better integrate or implement international human rights instruments that have been ratified by a member State?

**Response:** In many ASEAN Member States, the Judiciaries collaborate with academic and judicial institutions to raise awareness and understanding among judicial practitioners on the international human rights treaties ratified by Member States. Education is the key in effective implementation of international treaties in courts.

**Question:** How and what type of training are provided to judicial practitioners on implementing international human rights treaties?

**Response:** Training provided to judicial practitioners include classroom training, development of modules and text books, and practical guidance such as 'how to conduct interviews with victims among women and children'.

**Question:** How difficult or complex is the application of international treaties such as CRC and CEDAW in the lower courts especially when they involve social conflict, security and other aspects of culture or religion?

**Response:** Judicial practitioners, especially senior judges, are innovative, and do not make interpretation or judgement without proper research and investigation



especially on issues that are sensitive to public, certain groups of people or the government. Judges are also capable of balancing between local statutes and treaty obligations.

**Question:** How can Member States optimise the best practices employed by other countries on the implementation of international treaties?

**Response:** It is understood that international treaties such as CRC and CEDAW are universal. However, Member States have different historical backgrounds, political systems, socio-economic status and religious/cultural norms. Hence, the implementation of such treaties may differ from one to another. Countries have to implement the treaties in accordance with their national interests and agenda.

**Question:** What would be the potential areas of judicial cooperation between CACJ, AICHR and other human rights bodies and organisations in the region?

**Response:** Discussants and participants (in Session 1) suggested a number of potential initiatives to be further explored by the Judiciaries, AICHR and other human rights organisations. These include:

- Development of a database (repository) of human rights cases;
- Regular interface between CACJ and AICHR (using existing platforms such as Meeting of AICHR / Meeting of CACJ);
- Establish a human rights technical working group under CACJ to lead the work on human rights for the Judiciaries; and
- Strengthen the syllabus and training modules to incorporate aspects of international treaties and human rights.



## Session 2 - Role of the Judiciary in the Promotion & Protection of Human Rights – ASEAN Instruments

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### Discussants:

- I. The Honourable Justice Aung Zaw Thein, Judge of the Supreme Court of the Union of Myanmar
- II. The Honourable Justice Wichai Euaungkanakul, President of the Labour Division of the Supreme Court of Thailand
- III. The Honourable Justice Amparo M. Cabotaje-Tang, Presiding Justice of the Sandiganbayan of the Philippines
- IV. The Honourable Nguyen Tri Tue, Justice of the Supreme People's Court of Viet Nam

### Facilitator:

- H.E. Dr. Seree Nonthasoot, Representative of Thailand to AICHR

### Rapporteur:

- H.E. Dinna Wisnu, Representative of Indonesia to AICHR
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Photo 7: Discussants and Facilitator at the AICHR Judicial Colloquium [Session 2], 13 March 2017, Kuala Lumpur

27. The second session was a discussion on the role of the Judiciaries in the implementation and promotion of the ASEAN human rights instruments.
28. **Justice Aung Zaw Thein**, Judge of the Supreme Court of the Union of Myanmar, said the current Myanmar Constitution (2008) has inscribed human rights into a number of chapters such as in Chapters 1 and 8, in accordance with the norms enshrined in the UDHR and AHRD.
29. In relation to the rights of women and children, Myanmar has established and amended national laws relating to violence against women and children, and an anti-trafficking law pursuant to its international commitments. He said to further protect the rights of women and children, the cases of ordinary citizens are administered by the Township Courts established to handle minor cases and offences.
30. Justice Aung Zaw noted that as the CACJ is now included in the ASEAN family, it is in a position to strengthen cooperation not just among the Judiciaries but also with other ASEAN bodies such as the AICHR. He said proposals relating to judicial cooperation between CACJ and other human rights bodies such as the AICHR should be made and presented to the CACJ for its consideration.
31. The second speaker **Justice Wichai Euaungkanakul**, President of the Labour Division of the Supreme Court of Thailand, discussed the AHRD in the context of ASEAN. He noted that the most important component of the AHRD is 'cooperation', as the AMS have committed to promoting and





protecting human rights by means of cooperation with one another and relevant organisations. He said the AHRD was a good starting point towards developing human rights instruments in ASEAN, and pointed out that ASEAN already has the Declaration on the Elimination of Violence Against Women and Violence Against Children (DEVAWC) 2013 and recently, also the ASEAN Convention Against Trafficking in Persons Especially Women and Children (ACTIP) 2016.

32. Justice Euaungkanakul said the Thai Constitution spelt out clearly its human rights obligations under Article 4 (human dignity, rights, liberty and equality), Article 30 (equality before the law) and Article 40 (vulnerable populations to have the right to proper protection during judicial process and proper treatment in cases relating to sexual violence). He said Thailand recognises that the vulnerable segments of society require attention and support. Their vulnerability may stem from different reasons including age, their mind, strength and/or physical condition.
33. Thailand's national laws to protect and promote the rights of vulnerable people, include the Child Protection Act (2003), Act on Rehabilitation of Disabled Person (1991), Anti-Human Trafficking Act (2008), Act on Gender Equality and Human Trafficking Criminal Procedure Act (2016).
34. He said the Judiciary was ready to support the implementation of policies concerning vulnerable people as long these do not run contrary to the Constitution. He added that although many of the human rights norms specified in the Constitution or legislation are in accordance with internationally recognised principles, some exceptions may arise and it is the court's duty to ensure that those exceptions are exercised based on reasonable grounds and without unacceptably intruding into the rights of the people. To achieve this goal, the courts in Thailand often need to strike a balance between public interest and individual rights.
35. He noted that the Judiciary exists not merely to resolve disputes or to provide the solutions for disputing parties. Their primary aspiration is to maintain the rule of law, and to give guidance to the people and the public. The courts therefore provides effective advice, education and direction to individuals and groups whose rights have been abused, and can also set a valuable precedent for future resolution of disputes.
36. Based on the national practices of Thailand's courts, Justice Euaungkanakul shared several good practices which he said may be given consideration as recommendations to the Colloquium. First, according to the Thai court system, the President of the Supreme Court is empowered to give a written recommendation relating to court proceedings or administration to all judges. In 2014, the President of the Supreme Court gave his recommendation on the administration of human trafficking cases where he reminded judges to appropriately use pre-trial hearings and to



exercise care when allowing defendants to exercise the right to confront witnesses.

37. Second, the Judiciary can provide advice and recommendations in relation to any law which may cause injustice in its implementation. The Judiciary may recommend that the government or Parliament review any action or revise any legislation. This advisory role of the Judiciary can also be useful in supporting the promotion and protection of human rights.
38. **Justice Amparo M. Cabotaje-Tang**, Presiding Justice of the Sandiganbayan of the Philippines, spoke about a survey that he had conducted in the Philippines. The survey found that a number of ASEAN human rights instruments have yet to be cited in the courts' decisions and resolutions, with the exception of the conventions relating to children, women and persons with disabilities. He said this may be due to a lack of awareness among the judges regarding these human rights instruments.
39. The jurisprudence of the Philippines has cited international human instruments. In the case of **Republic v. Sandiganbayan**, the Supreme Court of the Philippines emphasised the binding commitment of the Philippines to uphold civil and political rights based on the UDHR and the International Covenant on Civil and Political Rights (ICCPR) during the interregnum when there was no operational Bill of Rights under the Freedom Constitution after the peaceful People Power Revolution of 1986.
40. On the DEVAWC, the Philippines has the Republic Act No. 9262 or the Anti-Violence Against Women and Children Act of 2004. This law defines violence against women and children as an act or a series of acts committed by any person against his wife, former wife, a woman with whom he has or had a sexual or dating relationship, or with whom he has a child; or against the woman's child. To aid in the implementation of the law, the Philippine Supreme Court promulgated the Rule on Violence Against Women and Children in 2004. The rule lays down the manner for litigating cases under Republic Act No. 9262. Notably, it provides that hearings on petitions for protection orders must be summary in nature and as far as possible, completed within one day.
41. Justice Cabotaje-Tang said there is also the Republic Act No. 9710, or the Magna Carta for Women which was passed on 14 August 2009. This is a comprehensive human rights law relating to women that seeks to eliminate discrimination through the recognition, protection, fulfilment and promotion of the rights of Filipino women, especially those belonging to the marginalised sectors of society. To implement this, a GAD Focal Point System was created in each government office to catalyse and accelerate gender mainstreaming, and to formulate and implement GAD-related programmes, activities and projects.



42. He also gave the example of a case decided by the Philippine Supreme Court in 2015 involving women's rights. In the case of ***Saudi Arabian Airlines (Saudia) v. Rebesencio***, the court ruled in favour of several dismissed flight attendants whose employment contracts were terminated on the sole ground of their pregnancy.
43. He said the Philippines also has a law for the protection of children, i.e. Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act of 1992. The law provides for stiffer penalties for crimes involving children, to emphasise the greater need to protect them from cruelty and other abuses.
44. With regard to the ACTIP, he said the Philippines has punished trafficking in persons since 2003 under the Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003. The statute created the Inter-Agency Council Against Trafficking (IACAT), a multi-sectoral body to coordinate and monitor the implementation of the law. The law was revised under Republic Act No. 10364, also known as the Expanded Anti-Trafficking in Persons Act of 2012, to take into account new situations discovered since the passage of the Anti-Trafficking in Persons Act of 2003.
45. Justice Cabotaje-Tang stressed that cooperation is the key to strengthening the role of the Judiciaries in promoting and protecting human rights in the region. He said they can share their experiences in applying international human rights in their decisions, through capacity building programmes and workshops. It would also be helpful to have a 'bench book' on the use of international human rights law in the ASEAN Region.
46. The next speaker Justice Nguyen Tri Tue, Justice of the Supreme People's Court of Viet Nam, was represented by Mr **Tran Ngoc Thanh**, Head of General Affairs Divisions in the International Cooperation Department of the Supreme People's Court. Tran spoke on four themes: (1) the effect of international instruments (CRC, CEDAW & CRPD) on cases and laws in Viet Nam; (2) the impact of these instruments on judicial decisions; (3) good practices in promoting and protecting human rights and, (4) collaboration among ASEAN Judiciaries and bodies.
47. First, he said following the adoption of new Constitution in 2013, several codes and laws have been amended to ensure their consistency with the Constitution and for effective implementation of human rights. These include the Penal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code and Administrative Litigation Law.
48. Second, he said the judges follow not only domestic law but also international treaties where Viet Nam is a member country. He said judges



are not required to comply with statements or guiding instructions in other instruments which are not considered as 'law' but these non-binding international instruments may influence the perception of the judges on relevant issues.

49. Third, on the good practices in promoting and protecting human rights, Mr Tran said the Supreme People's Court of Viet Nam had collaborated with UNICEF on a study on family and juvenile courts. With the adoption of the Law on Court Organisation, family and juvenile courts have been established as specialised divisions in the local courts. Cases falling under the jurisdiction of family and juvenile courts include: (i) marriage and family cases; (ii) criminal cases in which the defendants are juvenile (under 18 years of age); (iii) criminal cases in which the victims are under 18 and suffer from severe mental disorder; (iv) administrative disciplinary cases against juveniles. With this new model, Viet Nam aimed to provide women and children with a more litigant-friendly environment to assist in overcoming their difficulties, to facilitate smooth rehabilitation into the community and to reduce mental stress connected to court proceedings.
50. Fourth, on collaboration among ASEAN Judiciaries and bodies, he said the AMS have begun to strengthen their cooperation through different channels, both bilaterally and multilaterally, including the CACJ. He said cooperation between the AICHR and CACJ will provide a good opportunity to encourage greater implementation of these instruments in the region.

### Key Highlights during the Open Session

**Question:** Is there a common or standard training on human rights for judicial practitioners?

**Response:** In general, there is no common training module for judicial practitioners across the region, let alone a training module that incorporates the aspect of the promotion and protection of human rights.

Some countries in ASEAN have training modules dedicated to different levels of judicial practitioners such as fresh or new judges / judicial officials or senior level judges / officials. Some training modules in certain countries such as Myanmar incorporate aspects of human rights whereby international and regional human rights experts are invited as resource persons to conduct training for new judges / judicial officials.



In other countries in ASEAN, aspects of human rights are integrated into training modules, such as on the implementation of international treaties such as CRC, CEDAW and CRPD.

Given the commonality among the AMS with regard to the ratification of CRC, CEDAW and CRPD, it is now possible for ASEAN to develop a common or standard judicial training module and syllabus incorporating the promotion and protection of human rights especially for children, women and persons with disabilities.

**Question:** It is relatively easy to prosecute offenders of child exploitation but difficult to convict them. How can the Judiciaries address this?

**Response:** Discussants generally acknowledged the challenges in providing concrete evidence which can lead to the conviction of offenders in cases of child exploitation. This is even more so if such offences were committed transnationally or cross-border.

However, in several countries (for instance, the Philippines), strong measures have been put into place to ensure that individuals under investigation or prosecution are prohibited from leaving the country for a certain period. Discussants also stressed that child exploitation is a criminal case that requires strong evidence and an understanding of the nature of such crimes. Hence, the Judiciaries must well aware of both the nature and consequences of such crime towards the victim(s), and be committed in protecting their rights and ensuring effective access to justice especially for vulnerable people.

**Question:** How can the Judiciaries ensure that the vulnerable segments of the population such as the poor, trafficked women or children have fair and equal access to justice in courts?

**Response:** Apart from understanding the sensitivities involving vulnerable people, the Judiciaries play an important role in ensuring adequate public facilities for the victims or survivors. This includes access to interpreters or translators, provision of legal aid, proper public infrastructure in courts such as private waiting rooms for children and women as well as the establishment of courts in remote areas. These measures help increase access to justice and remove institutional barriers facing vulnerable segments of society in gaining access to courts.

**Question:** Persons with disabilities face various challenges in accessing justice, right from the start. For instance, it is challenging for a person with a disability to even lodge a report and provide evidence to the authorities (e.g. police) due to his/her disability. How can this be addressed?



**Response:** It was widely accepted during the Colloquium that the role of the Judiciary in promoting and protecting human rights must be complemented by the other branches of the government including Executive and Legislature. To fully actualise effective access to justice especially for vulnerable people such as persons with disabilities, government officials and enforcement personnel have to find ways to enable every single citizen to access complaint mechanisms and to receive a fair investigation.

### **Session 3 - Effective Access to Justice & Remedies – Sustainable Development Goal 16**

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**Discussants:**

- I. The Honourable Michael Donald Kirby AC CMG, former Judge of the High Court of Australia
- II. Dr Phillip Tahmindis, Director, Human Rights Institute, International Bar Association (IBAHRI)
- III. Brian Gorlick, Deputy Representative (Protection), United Nations High Commissioner for Refugees (UNHCR), Malaysia

**Facilitator:**

- H.E. Amb. U Hla Myint, Representative of Myanmar to AICHR

**Rapporteur:**

- Representative of ASEAN Senior Law Officials (ASLOM)
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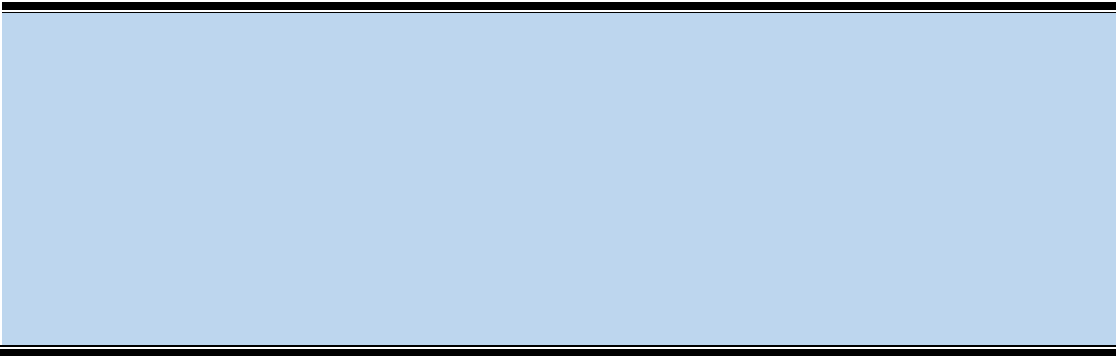


Photo 8: Discussants and Facilitator at the AICHR Judicial Colloquium [Session 3], 13 March 2017, Kuala Lumpur

51. The third session was a discussion on Sustainable Development Goal 16 relating to the effective access to justice and remedies.
52. **Michael Donald Kirby**, former Judge of the High Court of Australia, was the first speaker, and shared his 10 injunctions on the matter for the consideration of the AICHR, Judiciaries and other relevant ASEAN sectoral bodies.
53. First, he called for the wide distribution of the Bangalore Principles 1988, which were adopted by the judicial meeting held in Bangalore concerning the domestic application of international human rights norms.
54. Second, to encourage the participation of judges (particularly judges in final and appellate courts) in international legal conferences where they may be exposed to fresh knowledge and opinions, including on current issues concerning international human rights norms.



55. Third, to encourage national, regional and international professional association of judges, advocates and law teachers to promote awareness of international human rights and law and practice.
56. Fourth, to encourage judicial education and training to include awareness of Sustainable Development Goal 16 and the Bangalore Principles, and to include cases involving the application of each.
57. Fifth, to encourage the AICHR to establish an online service to list national and relevant international judicial decisions concerning international human rights norms and their application in national case decisions. The service should be open to judges, advocates, law teachers, civil society and citizens.
58. Sixth, to encourage professional journals circulating among the Judiciary, advocates and law teachers to promote awareness of the Bangalore Principles, and national regional and international cases involving the application of such Principles.
59. Seventh, to encourage law deans, law schools and other judicial professional and legal institutions to include in their curricula awareness of international human rights law and the Bangalore Principles.
60. Eighth, to encourage those who host and organise regional and national judicial and legal conferences to include in their programmes agenda items concerning international and regional human rights principles and the Bangalore Principles.
61. Ninth, to encourage those who host and organise regional and national judicial and legal conferences to invite as speakers those who are, or have been, judges and tribunal members of international courts and tribunals, who have practical experience and awareness of developing jurisprudence on international and regional law of human rights.
62. Tenth, to encourage and circulate to judges, advocates, law teachers, officials of civil society and citizens awareness about the existence, location and general provisions of international and regional human rights law and the Bangalore Principles on the domestic application of international and regional human rights law.
63. He said no one should left out from the benefits of the Injunctions of Kuala Lumpur 2017, the UN Sustainable Development Goals 2015, and relevant and applicable norms of international and regional human rights law.

Note: In his presentation, former judge Michael Donald Kirby referred to a number of Australian legal decisions as follows:-

- ***Gradidge v Grace Bros Pty Ltd*** (1988) 93 FLR 414 (NSW CA)
- ***Mabo v Queensland [No 2]*** (1992) 175 CLR 1 at 42 (HCA)
- ***Roach v Electoral Commissioner*** (2007) 233 CLR 162 (HCA).

64. **Dr Phillip Tahmindis**, Director of the Human Rights Institute, International Bar Association (IBAHRI), said the Sustainable Development Goals (SDGs) are built upon the Millennium Development Goals (MDGs) established by the United Nations Development Programmes (UNDP). But unlike the SDGs, the MDGs did not include the aspects of access to justice and rule of law because these were considered at that time to be too political in nature.
65. He said as the rule of law and access to justice have a direct relationship to the promotion and protection of human rights, the best way of actualising these principles is by strengthening the institutions and delivery of justice. Dr Tahmindis said to create effective access to justice, it is important that significant efforts be taken to reduce corruption and to improve access to legislation and applicable case law through the use of modern technology.
66. He noted that the International Bar Association (IBA) has published the Minimum Standards of Judicial Independence, aimed at ensuring the impartiality of the Judiciary whereby the Judiciary should enjoy autonomy and independence vis-à-vis the Executive. He highlighted, in particular, Standard No. 10 which stated that it is the duty of the State to provide adequate financial resources to allow for the due administration of justice.
67. Dr Tahmindis also said training for the Judiciary should include aspects of human rights and humanitarian laws. It is also important to have an independent Bar Association to help strengthen access to justice.
68. He highlighted the strong relationship between poverty and tax abuses including by multinational enterprises, and said improving tax enforcement especially in developing countries should be a key focus in the international efforts to combat poverty. In this context, the Judiciary has an important role in tackling poverty, and ensuring that human rights are respected.
69. Dr Tahmindis also judges should consider and apply international instruments such as the UN Guiding Principles on Business and Human Rights (2011), Guiding Principles on Human Rights Impact Assessment (2011) and Guiding Principles on Human Rights and Foreign Debt (2012).
70. **Brian Gorlick**, Deputy Representative of the United Nations High Commissioner for Refugees (UNHCR), said exclusion, division and



discrimination hamper sustainable development in significant ways, and is often a trigger for political fragility, instability and conflict in various forms.

71. He said exclusion also leads to enormous inefficiencies in development assistance, with large amounts of resources spent on relatively expensive parallel systems that can disturb economies and trigger frustrations.
72. Exclusion of migrants from legally working for example, or a refugee child from attending public school creates its own costs in respect of law enforcement and lost opportunities for future generations. He cited Malaysia's experience where refugee children are unable to attend public school. As a result, a parallel structure of an estimated of 124 learning centres with UN support has been put in place. While these refugee learning centres, often run and supported by dedicated Malaysian professionals and the refugee communities themselves, offer a degree of access to largely primary education for displaced and migrant children, there are limitations in terms of access "for all".
73. He pointed out that many undocumented workers in Southeast Asia contribute to the economy but risked being arrested and subjected to immigration control measures. This carries its own costs to the State and individuals concerned. In this regard, recent developments promoted by some AMS including Malaysia to develop legal pathways for migrant and refugee employment is a positive example for the region, and a very direct example of the implementation of international human rights goals.
74. Gorlick noted that while the ADHR is a non-binding instrument, it represents the most recent articulation of human rights standards to which all 10 ASEAN Member States have explicitly consented. For that reason alone, the Declaration has importance and weight. While not a regional human rights treaty, the Declaration sets aspirational standards that inform the development and enactment of public policy in the ASEAN region, and aid the implementation and enforcement of domestic law.
75. He also noted the challenges faced by ASEAN Judiciaries in ensuring effective access to justice and remedies. First, he said, it was extremely important to promote awareness of the SDGs and other international human rights standards among members of the Judiciary, civil society, civil service, and law and policy makers. Teaching about SDGs and human rights in professional and public schools, and public discussions and information campaigns are also of value.
76. Second, a real obstacle to the implementation of human rights norms is corruption. Corruption, bribery, theft and tax evasion equals to more than five per cent of the global GDP (US\$2.6 trillion) with over US\$1 trillion paid in bribes each year. This money could have been used to uplift those living on less than US\$1.25 a day for several years.



77. Third, ensuring inclusion for every person within the frameworks of the SDGs and AHRD is not only good public policy, it is also good law. Whether through providing legal identify by birth registration, granting citizenship to stateless persons, or access to the right to work or public schools or public healthcare to migrants and refugees, or accessible pathways to the police and courts to enforce legal rights, or exercising judicial or prosecutorial discretion to avoid criminalising an asylum-seeking child - these are all reasonable goals within grasp.
78. He noted that there are many good examples in Malaysia and ASEAN of the right things being done in relation to these issues. However, ensuring consistent implementation, accountability and monitoring achievements through data collection, developing a body of guiding jurisprudence and disseminating knowledge about achievements, good practices and obstacles are matters that AMS, AICHR and Judiciaries can further pursue.

### Key Highlights during the Open Session

**Question:** It was discussed in previous sessions that some judges have made specific references to specific international human rights conventions during court sessions, and it is considered a positive development. However, the Judiciaries and courts do not work alone. They need the public prosecutors and lawyers to also be able to make references to these human rights instruments. The question is, how best can judicial practitioners and prosecutors use their discretion to integrate and refer to such international human rights instruments?

**Response:** ASEAN has its uniqueness, bringing together common law and civil law traditions as practiced among the member States. That directs the way in which the Judiciaries play their day-to-day duties. In both traditions, judicial practitioners and prosecutors are in a position to use their discretion. For judges, the exercise of discretion is an aspect of judicial independence. Similarly, prosecutors are also in a position to exercise prosecutorial discretion in pursuing cases. Hence, awareness, exposure and an understanding of international human rights treaties would enable both judicial practitioners and prosecutors to exercise their discretion positively.



## Session 4 - Observations (Day 1)

Rapporteurs for Sessions 1-3 to report.

**Facilitator:**

- Firdaus Husni, Co-Chairperson of the Bar Council Human Rights Committee, Malaysia





Photo 9: Rapporteurs and Facilitator at the AICHR Judicial Colloquium [Session 4], 13 March 2017, Kuala Lumpur

### **Observations for Sessions 1 & 2 [Role of the Judiciary in the Promotion and Protection of International and Regional Human Rights Instruments]**

79. The discussants noted that all AMS have acceded to the three international human rights instruments, namely CRC, CEDAW and CRPD, and have undertaken the necessary harmonisation in their national laws pursuant to their commitments under the three instruments. They have also enacted various national laws in order to strengthen protection for vulnerable groups such as children, women and persons with disabilities.
80. Several AMS established national policies and programmes to give effect to these instruments. For instance, Singapore established a master plan policy and national mentorship programmes to support persons with disabilities in relation to their access to public facilities and housing. The discussants noted that one progressive achievement made by Brunei Darussalam was its national policy commitments to ensuring all children have access to education at primary and secondary levels.
81. It was also highlighted that several AMS have established strategic collaboration with international organisations in the actualisation of their commitments under such international instruments. One example is Lao PDR which collaborated with the United Nations Children's Fund (UNICEF) in the management of juvenile cases in the country. Lao PDR's Judiciary is also collaborating with Viet Nam's judicial entity in the areas of judicial education and training.





82. It is noted that the key principles of the UDHR and AHRD are well reflected in many member States' Constitutions. Some discussants said the AHRD was a good starting point to further develop human rights instruments in the region. Although the nature of the courts differ across the region, this should not be seen as a stumbling block to the development of regional human rights instruments with a common vision and shared values.
83. Overall, the discussants stressed the need to continue judicial cooperation mainly in the areas of education, training and capacity building programmes to ensure that judges of all levels stay abreast with the international human rights instruments ratified by the AMS.
84. It was noted that in general, there is a lack of awareness, knowledge and empathy among the Judiciaries with regard to the protection of human rights. Hence, it is important to stress and recall the Bangalore Principles, and to deeply integrate them into the day-to-day duties of the Judiciaries.

### **Observations for Session 3 [Effective Access to Justice & Remedies – Sustainable Development Goal (SDG) 16]**

85. Premised on the common challenges faced by the Judiciaries, the discussants in Session 3 emphasised the need to strengthen judicial education at all levels of the Judiciaries including by the development of training modules, syllabus and engaging competent human rights experts in judicial training programmes.
86. Members of the Judiciaries were also encouraged to participate in national, regional and international conferences to facilitate learning and networking with other legal and judicial practitioners, as well as human rights advocates and experts.
87. To be a truly independent, impartial and effective institution, the Judiciaries must fulfil at least the minimum standards of judicial independence. These include a good governance system and delivery of justice.
88. Another area which must be fully embraced by the Judiciaries and other branches of the Government is 'inclusivity'. Inclusivity, as emphasised by the discussants, referred to being 'inclusive' not just in judgments but also in the development and implementation of laws and policies pursuant to the principle of 'no one left behind'.



**Session 5 - From Promotion to Protection – Case Studies of the European  
& African Regional Mechanisms**



**Discussant:**

- I. The Honourable Justice Ben Kioko, Vice-President of the African Court on Human & Peoples' Rights (ACHPR)

**Facilitator:**

- H.E. Dinna Wisnu, Representative of Indonesia to AICHR

**Rapporteur:**

- Representative of ASEAN Law Association (ALA)



Photo 10: Discussant and Facilitator at the AICHR Judicial Colloquium [Session 5], 14 March 2017, Kuala Lumpur

89. **Justice Ben Kioko**, Vice-President of the African Court on Human & Peoples' Rights (ACHPR), was the only discussant at this session. He spoke about the experience of the African mechanisms for the protection and promotion of human rights. Justice Kioko, who is one of the 11 elected judges of the African Court, said the African human rights system is composed of four strata: (1) African Charter; (2) African Children's Charter system; (3) judicial tribunals of Regional Economic Communities (REC) and; (4) domestic legal systems of the member States. There are three main institutions with human rights mandates: (1) African Commission on Human and Peoples' Rights (ACHPR); (2) African Committee of Experts

on the Rights and Welfare of the Child; and (3) African Court on Human and Peoples' Rights.

90. He said the relationship between the Commission and Court is defined under Article 2 of the Protocol Establishing the Court which states the purpose of the Court was to complement the protective mandate of the Commission. The Commission can seize the Court of contentious matters and transfer cases to the Court. It is also possible for the Court to request the opinion of the Commission on the admissibility of a case, thereby, transferring cases to the Commission.
91. As of March 2017, only 30 African States have ratified the Protocol Establishing the Court, while 52 States have signed it. In the meantime, eight member States have deposited the Declaration allowing individuals and NGOs to institute cases but one State has withdrawn it. He said the fact that only a few States have filed the Declaration is a major impediment to access to the Court.
92. The Court received its first case in 2008.
93. Jurists must be of high moral character with recognised practical, judicial and academic competence and experience in human and people's rights. They are nominated by State Parties, elected by the Executive Council and appointed by the Assembly of Heads of State and Government of the AU. Each judge serves for six years, with one possible renewal of term.
94. Entities entitled to file applications before the Court include (1) the Commission; (2) State parties to the Protocol; (3) African intergovernmental organisations and; (4) individuals and NGOs from States which have made a Declaration accepting the competence of the Court to hear cases filed by individuals and NGOs. The African Court also has an advisory jurisdiction whereby a relevant entity can request the Court to provide an opinion on a provision of the Charter or any other human rights instrument.
95. A statistical summary of cases, as of February 2017, is shown below.



## STATISTICAL PRESENTATION OF CASES AS AT STATUS AS AT 13 FEBRUARY 2017

### SUMMARY OF CONTENTIOUS APPLICATIONS.

- ▶ TOTAL APPLICATIONS RECEIVED: **133**
- ▶ Applications by Individuals – 120
- ▶ Applications by NGOs – 9
- ▶ Applications from the Commission – 3
- ▶ Total finalized Applications – 29
- ▶ Transferred to Banjul Commission – 4
- ▶ Pending – 94
- ▶ NB; among total Applications received, Applications against non-state entities – 5 and Applications against Tanzania – 86.

96. Among the challenges facing the African Court are the low rate of ratification of the Protocol Establishing the Court, limited access to court by individuals and NGOs, lack of sufficient resources and lack of public awareness about the court.
97. Justice Kioko said its establishment has nevertheless brought hope that the protection of human rights on the continent will continue to improve, and victims of human rights abuses will have their plight redressed.
98. He said the African Court, as an institution of the African Union, regards its collaboration with ASEAN as a continuation of the spirit of the first African-Asian Conference held in Bandung, Indonesia in 1955. He said the African Court has also established close collaboration with the European Court of Human Rights as well as the Inter American Court.

### Key Highlights during the Open Session

**Question:** To what extent are the African regional mechanisms especially the African Commission and African Court on Human & Peoples' Rights (ACHPR) relevant to ASEAN?

**Response:** The African Commission and ACHPR are among the most recent regional mechanisms established globally. Additionally, the ACHPR contains relatively similar provision to the AHRD. However, unlike in Africa, ASEAN does

not have a regional human rights court, and its Commission has very limited powers compared with the African Commission. Considering the commonality of approaches and the cultural diversities in the two regions, it is important that closer collaboration is encouraged.

**Question:** In ASEAN, at regional level, there is no human rights complaint mechanism that can be used by an individual, organisation or State member to lodge a report or complaint. Is it time for the regional human rights organisations such as the AICHR to develop complaint mechanisms, and how best can this be done?

**Response:** In Africa, the African Commission has a clear mandate to receive and adjudicate on complaints. In considering the complaints, it will give a hearing to State representatives as well as receive shadow reports from various stakeholders including NGOs. In the end, the Commission issues recommendations to States. Although not strictly binding, many States have acted on the recommendations.

ASEAN ought to have an independent complaints mechanism with powers to adjudicate on complaints. Presently and for a start, all complaints received should be circulated to the States concerned and their responses should also be circulated to other States for information.

**Question:** How does the Court conduct its day-to-day duties?

**Response:** In brief, the Court is required to apply the African Charter on Human & Peoples' Rights and other human rights instruments ratified by the State concerned. The Court applies the adversarial system for contentious matters and delivers judgments that are binding. The Court normally appoints a Judge Rapporteur for each case who works with a designated legal officer. For the preparation of a judgment, the Judge Rapporteur is assisted by two other judges. The draft judgment is then discussed by plenary and signed by all judges and Rapporteur. It should be noted that cases cannot come to the Court until all domestic remedies have been exhausted.

**Question:** What is the status and difference between the Commission and the Court, and the National Human Rights Institutions?

**Response:** Article 2 of the Protocol Establishing the Court provides that the Court is established to complement and reinforce the protective mandate of the Commission. For instance, the Commission can seize the Court of contentious matters. The Court is also empowered to request the opinion of the Commission on the admissibility of a case. Hence, the Court and the Commission are required to





consult closely through, among others, the holding of annual meetings. The Commission makes recommendations while the Court makes binding decisions. The Commission has both promotional and protective mandate while the Court has only a protective mandate.

All African countries have their own national human rights institutions (NAHRI), some more independent and well-resourced than others. These institutions collaborate with the Commission on issues pertaining to the promotion and protection of human rights, and may submit cases to the Commission by virtue of their observer status with the latter.

**Question:** How have the Commission and Court helped in strengthening the national capacity of the Judiciaries in upholding and enforcing the African Human & Peoples' Rights Charter?

**Response:** Various initiatives have been undertaken by the Commission together with other international, regional and national institutions to strengthen the judicial capacity to uphold and enforce the African Human & Peoples' Rights Charter. The Commission conducts seminars and workshops and sensitisation visits to State authorities, Judiciaries, universities, CSOs and prisons. The Rapporteurs also undertake visits at the national level. However, such initiatives are not sufficient and some countries face serious resource constraints in organising training and capacity building programmes for their Judiciary.

On its part, the Court interacts closely with the national Judiciaries and organises a biennial Continental Judicial Dialogue, bringing together chief justices of all African countries, constitutional courts, regional courts and tribunals, and with representation from the Inter American and European Courts of Human Rights, to exchange views on best practices and to discuss issues of common interest. The Court also undertakes seminars, workshops and sensitisation visits to State authorities, Judiciaries, universities and CSOs.



## Session 6 - Rule of Law & Human Rights – Challenges & Opportunities

### Discussants:

- I. H.E. Tan Sri Razali Ismail, Chairperson of the Human Rights Commission of Malaysia (SUHAKAM)
- II. H.E. Leo M. Herrera-Lim, Representative of Philippines to AICHR, Chair of AICHR 2017
- III. The Honourable Justice Lee Seiu Kin, Judge, Supreme Court of Singapore
- IV. The Honourable Justice Montri Sillapamahabundit, Research Justice of the Supreme Court of Thailand

### Facilitator:

- Mikael Johansson, Senior Policy Advisor on Anti-Corruption & Human Rights, Raoul Wallenberg Institute of Human Rights & Humanitarian Law (RWI)

### Rapporteur:

- Laurent Meillan, Officer-in-Charge, Regional Office for South East Asia, Office of the High Commissioner for Human Rights (OHCHR)

99. This session discussed the challenges and opportunities in the implementation of the rule of law and human rights.

100. **H.E. Tan Sri Razali Ismail**, Chairperson of the Human Rights Commission of Malaysia (SUHAKAM), as the first speaker, noted that if the rule of law truly prevailed, there would be no need for human rights enforcement as these would already be respected. In the case of ASEAN, despite the many achievements of the member States, there was still a great deal of work to be done in relation to the promotion and protection of human rights, and the rule of law. The AMS have signed a number of international human rights treaties such as CRC, CEDAW and CRPD.

101. Malaysia, in particular, has signed relatively fewer international treaties than the other AMS. Upon ratification of CRC, CEDAW and CRPD, Malaysia has taken several national initiatives to ensure compliance with these international instruments. On the CRC, Malaysia has amended its national laws to give effect to its commitments under the convention. However, due to certain reservations made by the Government of Malaysia, not every child in this country is able to enjoy full access to education. Razali recommended that this reservation be removed to make primary education



compulsory for all children in the country regardless of their background. On the rights of persons with disabilities, he noted that there are still gaps in the existing laws that could impede the full implementation of CRPD, and restrict full enjoyment of rights among persons with disabilities.

102. He emphasised that Malaysia and other AMS need to strengthen their efforts to promote and protect the rights of indigenous people and their rights to nature. He said indigenous people are the original people of a particular state and part of the larger society. They must be given full rights to enjoy their fundamental rights and access to livelihood. In Malaysia, SUHAKAM plays an important role in ensuring that indigenous people's rights are protected and their livelihood preserved despite rapid development.
103. On the rule of law, he said all government agencies including enforcement authorities, must exercise their power in good faith, and not excessively. Enforcement agencies and other stakeholders must ensure that there is a checks-and-balance mechanism in place to ensure that the use of power did not go beyond the reasonable amount. Action must be taken against anyone misusing their powers while their victims must be given access to justice and protected.
104. Razali referred to the use of power in relation to preventive detention laws in Malaysia such as the Prevention of Terrorism Act (POTA 2015), Security Offences (Special Measures) Act (SOSMA), Prevention of Crime Act (POCA) and National Security Act. He said SUHAKAM does not support any form of prevention detention. He also highlighted the issue of deaths in detention in Malaysia, despite the existence of standard operating procedures (SOPs) in place to administer detention centres and prisons throughout Malaysia. He said SUHAKAM plays an important role in educating enforcement personnel who administer these detention centres and prisons, to remind them to value the dignity and life of prisoners.
105. **H.E Leo M. Herrera-Lim**, Representative of Philippines to AICHR and Chair of AICHR 2017, as the second speaker, shared his thoughts about the rule of law in the Philippines. There, he said it is understood as the principles of governance which make all institutions accountable to international human rights standards and norms. These principles include the aspects of fairness, separation of powers, participation and decision making, legal certainty, procedural and legal transparency.
106. Many practitioners in the Philippines are well aware that the rule of law and human rights cannot be applied independently, and have to co-exist in various levels of the government. He said human rights norms are well reflected in Constitution of the Philippines, derived from key international bills of human rights.



107. In terms of challenges to the rule of law and human rights in ASEAN, Herrera-Lim highlighted the lack of consistency among the AMS in the promotion and protection of human rights. The AHRD also remains a non-enforceable instrument within the region.
108. In the context of ASEAN, there are also problems relating to the lack of enforcement or selective enforcement towards particular groups of people such as indigenous people or migrant workers. This results in unfair prosecution towards these segments of society, and may impede their access to justice. Selective application of laws against certain groups was also a matter of concern especially when action is taken in the name of national security or public safety.
109. Education and capacity building are the two key aspects that could help address the issue of selective enforcement and prosecution. The Judiciaries are also a key checks-and-balance mechanism in ensuring effective access to justice.
110. In relation to the implementation of international instruments such as CRC, CEDAW and CRPD across the AMS, Herrera-Lim said the AICHR and other sectoral bodies play important roles to educate, organise capacity building programmes and raise awareness among the various sectors of government and society in the region.
111. Apart from the rights of children (CRC), women (CEDAW) and persons with disabilities (CRPD), the AICHR also plays an important role in addressing other rights such as the right to water, rights of migrant workers and refugees, freedom of expression, rights of journalists, right to development, right to property, right to healthcare and education.
112. The third speaker was **Justice Lee Seiu Kin**, Judge of Supreme Court of Singapore, who said the rule of law is an important component in the struggle to realise human rights. He observed that the world was facing a period of upheaval, noting in particular the events in the United States and Europe in the past months. These marked a remarkable period of change, with those who have been frustrated that their views have gone unheard now rising up. In making their feelings known, they had no compunction about bringing down the social and economic order that had brought stability and progress to the world in the past decades.
113. Justice Lee said there was deep disenchantment with globalisation, and this had caused political changes that had adversely impacted progress made not just in economic terms but also in the area of human rights. With this comes the question as to how the Judiciaries should tackle these challenges and make use of the opportunities that come with them.



114. He said the answer lies in strengthening the rule of law and in judges enforcing the law with a strong empathy for the promotion of human rights. He addressed three main areas of concern, namely, (1) needs of migrant workers; (2) sensitivities surrounding privacy in the technological age and; (3) gender equality.
115. First, the needs of migrant workers. He noted that the recent rise of populism had seen the focus of States shift from economic globalisation back to their own citizens. Immigrants and migrant workers had become collateral damage in the process. However, these feelings of nationalism fuelled by populist rhetoric failed to take into account migrant workers' contributions to society. In February 2017, tens of thousands of migrants and their supporters staged a protest in Britain – termed One Day Without Us - to highlight migrant workers' contributions to the UK economy.
116. Justice Lee said as early as 2007, ASEAN had reiterated the importance of the UDHR in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Through this Declaration, ASEAN reaffirmed its shared responsibility in improving the quality of life of its peoples including protecting and promoting the rights of migrant workers.
117. While ASEAN recognised the sovereignty of each member State in determining their own policies relating to migrant status, the grouping sought to promote the full potential and dignity of these migrant workers by, among others, cooperating to help migrant workers who became undocumented through no fault of their own.
118. He said the first step is to transform these instruments into binding legal obligations under the national laws of AMS. This was the task of the Legislature. For example, Singapore has enacted legislation such as the Employment of Foreign Manpower Act which required employers to have a valid work pass to employ foreign workers. This work pass provides a minimum level of protection for the employee as the employer cannot reduce the worker's pay below what is stated on the pass. This safeguards the rights of migrant workers who may not enjoy the bargaining power to enter into written contracts with their employers.
119. Nevertheless, legislation without effective enforcement are mere words on paper. Effective and constant enforcement are also required, as well as adequate knowledge by migrant workers of their rights.
120. On the issue of privacy, Justice Lee noted that ASEAN and its citizens are now in the age of technology which had the potential to increase their efficiency in many ways. he ability to access personal data was not necessarily bad as such information can be harnessed for useful purposes. However, the right to privacy demands that there be safeguards to such access, and when the access is found to have gone overboard, the courts must be able to curtail such access.



121. The challenge lies in balancing this right to protection of one's personal data with the legitimate aims of society at large, especially when such data may be useful in accomplishing larger aims. For instance, following the 2015 Bangkok bombings, the police were able to arrest a terrorist suspect because they had access to footage from a CCTV which showed the suspect wearing a yellow shirt. He quoted another example relating to the San Bernardino shootings in December 2015, where the FBI was of the view that it needed information from the suspect's iPhone but Apple refused to decrypt the phone's security system. These sort of incidents will increase with the permeation of IT into every aspect of our lives, and illustrate the inherent tension between human rights and the broader interest of the community.
122. Third, on gender equality, Justice Lee said as gender equality was becoming effectively attainable, the challenge was to see its complete realisation so that the full potential of every human being might be achieved, regardless of gender.
123. The issue of same sex marriage, however, is not expressly referred to in the AHRD. It provides that the family is entitled to protection as the natural and fundamental unit of society. It also provides that men and women have the right to marry based on their free and full consent. He said in Singapore, the Women's Charter defined a marriage as a union between one man and one woman. It did not prevent persons who have undergone a sex reassignment procedure from being recognised as a member of the new sex. In that sense, it upholds the universality of human rights while recognising that these rights must be considered in the particular social, cultural and historical background of the State, as enshrined in the AHRD.
124. He, however, stressed that gender equality must be seen as more than the right to marry. It also extends to the role of each individual within the marriage, and whether the law facilitates these roles. In this regard, Singapore's Women Charter has recently been amended to give equal rights and responsibilities to both husband and wife in the care of their children and home, and also extends spousal maintenance to incapacitated husbands or former husbands, instead of just wives.
125. Justice Lee said these are only a very small part of the challenges of this new age. The women's march in January 2017 in Paris, Los Angeles and Washington, among other places, may mark the beginning of an awakening as society became acutely aware of problems including immigration reforms, technological developments, and the interaction between individuals within a family unit.
126. He also pointed out that the promotion of the rights of one group may be at the expense of another. While the AMS have diverse political traditions,





ideals and historical freedoms, they can still work together towards a rule of law that will facilitate the enjoyment of the rights and freedoms.

127. The challenge for judges is to strike a judicious balance between the competing interests of the community and the individual whose rights are being infringed, while being wholly consistent with the values and culture of each of our nations.
128. **Justice Montri Sillapamahabundit**, Research Justice of the Supreme Court of Thailand, spoke about law as a tool of governance which may limit the rights of people. Thus, the rule of law must be the backbone in governing the country and people, in order that lives and property are treated with fairness and equality. The rule of law must be part of the entire legal structure from the enactment of laws, legal interpretation to adjudication.
129. He said while human rights are the basic or fundamental rights of a person, the rule of law is the tool or mechanism to protect these rights. The rule of law turns human rights from legal principles into practice.
130. He said each AMS has an obligation to get its domestic laws, through the rule of law, in compliance with regional standards of human rights namely the elimination of discrimination against women, protection of the child and the rights of people with disabilities.
131. He said access to justice meant that every person has the right to bring his case to justice or to defend himself in court. However, vulnerable segments of society such as the poor, children and persons with disabilities may not have effective access to justice without assistance from the State. To achieve this goal, Justice Sillapamahabundit said AMS have to work together to educate the people, develop or implement domestic law according to the conventions, train their officials and share their experiences.
132. He said in Thailand, several mechanisms have been put in place to ensure that human rights are protected not just by state agencies but also by NGOs. In general, the administrative branch plays the role of investigator into actions that violate human rights. The Government had initiated the promulgation of the Administrative Practice Act 1996 as a guideline for officials in implementing the Act which seeks to achieve and promote good administration and access to justice in administrative matters.
133. As the institutional mechanism, the Government of Thailand has established the Dhumrongdhuma Centre within the Ministry of Interior, and the Department of Rights and Liberty Protection within the Ministry of Justice to receive complaints from people throughout the country as well



as facilitate the protection of workers, women and children. Violations of human rights are investigated and reported to the Prime Minister.

134. On the role of ASEAN Judiciaries in promoting and protecting the rule of law and human rights, he said the CACJ was established through the development of the ASEAN Law Association (ALA) meeting and Chief Justices Meeting held annually. He said this came about because the ASEAN Charter and ASEAN Economic Community (AEC) promoted the connectivity and free movement of trade and investment.
135. As a result, Justice Sillapamahabundit said the ASEAN Judiciaries will have to focus not just on its citizens but also on all ASEAN citizens as well. Access to justice and the right of defence will become cross-border issues. The possibility of collaboration and support have been discussed at the Chief Justices' Meetings with the aim of guaranteeing the rule of law as the cornerstone of the ASEAN judicial practice.

### Key Highlights during the Open Session

**Question:** How best should the country strengthen access to justice for the vulnerable segments of the population?

**Response:** Each AMS has its own way of strengthening access to justice for various segments of vulnerable people including by enhancing the role of the Judiciaries. For example in Malaysia, the strengthening of the native courts and establishment of mobile courts are two examples in which access to justice has been improved. The introduction of mobile courts is particularly crucial to ensure that rural communities in remote areas have effective access to justice. In the Philippines, for instance, the role of the paralegal is also important to fill the gaps in legal aid or provision. This ensures that everyone including the poor community has access to legal assistance and advice.

**Question:** How should the Judiciaries play their role of checks-and-balances between the three branches of Government (Judiciary, Legislature and Executive)?

**Response:** Judicial independence is key to the courts' ability to exercise an effective role. Judicial discretion can be used by judicial practitioners to promote and protect human rights, including their role as a checks-and-balance mechanism. However, the exercise of judicial discretion has limits as set by legislation, binding precedent or the constitution.



**Question:** There is now a greater number of refugees seeking asylum in the Southeast Asian region. How can the Judiciary better protect the rights of refugees in the region?

**Response:** It has been acknowledged that only two AMS have ratified the Refugee Convention in the region, namely Cambodia and the Philippines. The rest of the AMS have yet to ratify the convention. In these non-State parties to the convention, refugees are technically referred to as “irregular immigrants”.

In the Philippines, for instance, refugees are recognised by the law and hence, there are no institutional barriers for the Judiciary to protect the rights of refugees in the country.

However, in non-State parties to the convention, the roles of the Judiciaries are limited. But there is still room for the Judiciaries to use their discretion to uphold the rights of refugees. Nevertheless, such an effort requires the same understanding and initiative to be undertaken by the prosecutors, lawyers and other government officials.



## Session 7 - The Future of Judicial Cooperation on Human Rights Protection in ASEAN – Recommendations & The Way Forward

### Discussants:

- I. The Right Honourable Justice Tan Sri Dato' Seri Zulkefli bin Ahmad Makinudin, Chief Judge of Malaya, Malaysia
- II. The Honourable Justice Zaldy V. Trespeses, Associate Justice of the Sandiganbayan of the Philippines
- III. The Honourable Justice Dr. Ridwan Mansyur, S.H., M.H., Justice of the Supreme Court of the Republic of Indonesia

### Facilitator:

- Dato' Mah Weng Kwai, Former Judge of the Court of Appeal of Malaysia & Commissioner, Human Rights Commission of Malaysia (SUHAKAM)

### Rapporteur:

- Andika Ab. Wahab, Consultant to AICHR Malaysia



Photo 11: Discussants and Facilitator at the AICHR Judicial Colloquium [Session 7], 14 March 2017, Kuala Lumpur

136. **Justice Zulkefli Ahmad Makinudin**, Chief Judge of Malaya in Malaysia, was the first speaker on the topic of judicial cooperation in human rights protection. He stressed the need for the Judiciaries and judges in ASEAN to speak a common language on this subject, and to be steadfast and independent in providing purposive interpretations of their country's fundamental rights.

137. He said there were already platforms for judicial cooperation in ASEAN, where this initiative could be advanced. Since 1979, ASEAN judges, law teachers, law practitioners and government lawyers have met among themselves at the ALA gatherings. In August 2013, the ASEAN Chief Justices convened an informal meeting in Singapore, called the ASEAN Chief Justices Meeting (ACJM).
138. At the 3rd ACJM in the Philippines in 2015, the Chief Justices issued the Boracay Accord which formally stated their determination to take further steps towards strengthening strategic partnerships with one another and forming technical working groups, as well as emphasised their resolve to focus on technical issues, continued cooperation and regular meetings.
139. As a follow-up to the Boracay Accord, a Technical Working Group Workshop of the 3rd ACJM was held in Tagaytay, the Philippines in 2016. Senior judges representing the Chief Justices discussed strategies to further institutionalise the work of ASEAN Judiciaries, and to come up with an independent ASEAN judicial cooperation framework that can be recognised under the ASEAN Charter. The Technical Working Group looked into matters relating to the institutional structure of such a framework, terms of references of the entities within the structure, and ways to get the institution recognised and accredited under the ASEAN Charter.
140. At the 4th ACJM held in Ho Chi Minh City, Viet Nam in 2016, the Chief Justices issued a watershed pronouncement in the form of the Ho Chi Minh City Declaration. It declared the agreement to rename the 'ASEAN Chief Justices Meeting' to the CACJ, setting the foundation for a long-term, stable and sustainable cooperation among the ASEAN Judiciaries within the spirit of institutional independence and principled partnerships.
141. It was further agreed that the CACJ would become an entity associated with ASEAN under the ASEAN Charter; and that representatives be designated to form a Study Group to study the future work of the CACJ and submit a report at the following meeting of the CACJ.
142. Justice Zulkefli said one of the functions of the newly established CACJ is to oversee the implementation of ASEAN's legal instruments. The formation of CACJ will enable ASEAN to address judicial issues from a regional perspective and make specific recommendations to move the ASEAN Judiciaries forward.
143. In the context of human rights and its institutional linkage with the ASEAN Judiciaries, he said it was important to note that the region has adopted the AHRD which is to be read with the Phnom Penh Statement on the Adoption of the AHRD in 2012.



144. It is in this context that this Colloquium is useful to create a concrete platform where the AICHR, members of the ASEAN Judiciaries and related bodies can exchange information, share best practices and lessons learnt for the purpose of forging strategies to develop and internalise human rights into the principles and practices of the region's judicial systems.
145. He said the CACJ would be the appropriate forum for the sharing of best practices regarding international human rights.
146. In relation to proceedings before the court in respect of the infringement of human rights, Justice Zulkefli said this is the area in which the Judiciaries can cooperate towards achieving uniformity in addressing issues. He said the Judiciaries and courts should be vested with the powers to redress wrongdoings. In addition, there needs to be provisions in the law such as the right to judicial review or writ of *habeas corpus* to enable citizens to challenge any form of abuse or infringement of human rights.
147. He said as the first step on this long journey, the Judiciaries and AICHR could begin with capacity building activities to generate a greater understanding of the interpretation and application of ASEAN and international human rights laws, and move towards more substantive collaboration which should be planned in consultation with each other.
148. **Justice Zaldy V. Trespeses**, Associate Justice of the Sandiganbayan of the Philippines, said the recognition of fundamental human rights represents a recognition of the great value of human life, and one way of upholding human rights is by preserving the role of the Judiciary in society.
149. He said the Judiciary develops standards which significantly contributes to the uplifting of people's lives. These standards ensure a better understanding of the relationship between the people and their government, and among the members of the international community.
150. Every AMS has an Executive branch of government that holds extensive governing privileges, and which may possibly lead to misuse or abuse. Thus, each system of government should have a separation of powers with a system of checks and balances, with due respect to the independence of each branch.
151. He said the Judiciary, being a third but co-equal branch, should therefore institute limitations to restrain the powers of the branches in their own domains to ensure that the acts of governments remain within bounds, as much as possible.
152. Justice Trespeses shared the experience of the Philippines in relation to the role of Judiciary in the promotion and protection of human rights. The





Philippines is a signatory to the UN's International Bill of Human Rights such as the UDHR, ICCPR, ICESCR, CEDAW, CRC and CRPD.

153. In the current Constitution of the Philippines, the Bill of Rights is found in Article III, declaring that every citizen's rights and privileges are entitled to state protection. The Judiciary's role under the present Constitution was made even more prominent when the rule-making power of the Supreme Court was expanded. Pursuant thereto, the Supreme Court promulgated the Rules on the twin writs of Amparo and Habeas Data. Thus, from its classical role of being a passive observer in a dispute, it took a proactive role in enhancing the protection of human rights.
154. He said under the leadership of Chief Justice Maria Lourdes Sereno, the Supreme Court further demonstrated its commitment to the protection of human rights by conceptualising the Justice Sector Coordinating Council (JSCC). The JSCC interlinks the Judiciary with the Department of Interior and Local Government (DILG) and Department of Justice (DOJ) to simplify the prosecution process and provide ease of access to justice to litigants. This link is important because DILG and DOJ, though vital components in the prosecution of cases and enforcement of judgments, are part of the Executive branch of government.
155. On judicial cooperation in ASEAN, he said the Philippine Supreme Court has been a very active participant in efforts to foster judicial cooperation at the regional level, especially among the AMS.
156. In March 2015, the Philippines hosted the 3<sup>rd</sup> ACJM in Boracay Island chaired by Chief Justice Sereno. In that meeting, the ASEAN Chief Justices and/or their representatives reaffirmed their commitment to strengthening partnerships and regional solidarity among ASEAN Judiciaries in various areas such as (1) training needs; (2) establishing the ASEAN Judicial Portal (AJP); (3) sharing best practices in case management and court technology; (4) tackling child cross-border disputes and civil processes; (5) monitoring developments on environmental law; (6) a commitment by the ASEAN Judiciaries to be a constant voice in upholding the rule of law in their respective jurisdictions.
157. Justice Trespeses said while the different legal systems, culture and languages pose a daunting challenge in establishing a human rights system for all AMS, they are clearly not insurmountable. There are ways to overcome these perceived obstacles, although it may take time.
158. He said sustaining the conversation on human rights and frequent knowledge sharing on best practices may be an effective way in attaining the goal of judicial cooperation on the topic of human rights. The continued leadership provided by the AICHR in this field, the cooperation of the different Judiciaries and the assistance of development partners may be the formula in making the significant steps towards achieving that goal.



159. **Justice Dr Ridwan Mansyur**, Justice of the Supreme Court of the Republic of Indonesia, said Indonesia's Constitution upholds human rights and fundamental freedoms in line with international standards and norms.
160. He shared his first experience as a judge in 1991 in handling a sexual abuse case involving a victim who was a young girl and the perpetrator who was an older man. The victim had difficulty in bringing witnesses to court as well as securing an interpreter to assist her case. He said this highlighted the issue of ineffective access to justice which would have a significant impact on the victim, and society at large.
161. The poorer segments of the community face difficulties in accessing legal services or assistance, while those who live in remote and rural areas have difficulty in access to the courts due to geographical barriers. He gave the example of Indonesia where there are thousands of inhabited islands. Due to the geographical distance, their communities have difficulties in accessing the courts.
162. On the rights of women, Justice Ridwan said the Government of Indonesia has made the necessary amendments to its national laws pursuant to its international commitments. Such laws aim to strengthen protection for vulnerable women including victims of trafficking, domestic violence or any other form of exploitation. He also explained the importance of special measures to protect victims of domestic violence, and the provision of legal aid for individuals (women and girls) who need legal assistance. He noted that many incidents of domestic violence against women in Indonesia are perpetrated by their own husbands. Some cases are classified as criminal while the rest are private cases that involve family separation. Domestic violence affects not just the mental and physical state of the women but also their children.
163. On the rights of the child, he said every child has a right to basic education, and to be protected from any form of exploitation including economic exploitation or a working environment where their life and health are in danger, and any form of risks to their mental and spiritual development. He said measures must be undertaken not just by the Judiciaries but also other branches of the government to ensure that children are not victimised in modern day exploitation including the removal of their organs, abduction, sexual exploitation and prostitution. He said Indonesia's current laws uphold and protect all children in the country from known as well as emerging risks and challenges.
164. In order to reduce the number of rights abuses including domestic violence towards women and children, initiatives must be taken to disseminate information about national laws concerning domestic violence to the wider



public. For the Judiciaries, peer-to-peer gatherings through seminars, workshops and fora should be organised to encourage interaction among judicial and legal practitioners, and to discuss possible solutions that can better protect the rights of women and children.

165. On the rights of persons with disabilities, Justice Ridwan pointed out a number of challenges facing the Judiciaries in their day-to-day duties in courts, among which is the lack of interpreters to assist persons with disabilities during court sessions. He also acknowledged that there is still a high number of enforcement and government personnel who are not sensitive to the needs of persons with disabilities. He said there are however efforts to improve the facilities in court such as the construction of special waiting rooms for children, women and persons with disabilities, and to simplify administrative procedures for persons with disabilities in court in Indonesia.
166. He made three recommendations for the consideration of the AICHR and Judiciaries. First, to encourage the exchange of knowledge and achievements among judicial practitioners on the implementation of CRC, CEDAW and CRPD. Second, to encourage the exchange of views and engagement between judicial and legal practitioners with officials from other branches of the government (Legislative and Executive). Third, to encourage Judiciaries and other human rights bodies and organisations to organise gatherings and expert group discussions to discuss issues of cross-border cases where the victims may include women and children.

### Key Highlights during the Open Session

**Question:**

Is it possible to have more appropriate rules of court to deal with child exploitation across the region (apart from Indonesia and the Philippines)?

**Response:** It was noted that the Philippines and Indonesia have developed appropriate rules of court to guide the handling of children and child exploitation cases in court. Given that all AMS are party to the CRC, it is possible to have a standard set rules of court to deal with child exploitation.

In Malaysia, the procedures and facilities in court have been improved to strengthen access to justice and better protect the children during court sessions. For instance, children can avoid being physically present in court, and are allowed to remain in a different room where they can follow the court session on a screen. This is to avoid a face-to-face encounter between the child and offender.



**Question:** What can be done to strengthen the justice system in relation to cross-border child exploitation for commercial reasons?

**Response:** The key in strengthening the justice system in relation to cross-border child exploitation is by strengthening the legislation. Since all AMS are party to the CRC, and the fact that ACTIP has now come into force, the governments should first strengthen their national legislation to address the transnational nature of child exploitation.

Innovation and the use of technology can also be utilised by the Judiciaries to share information and simplify administrative procedures. However, it must be noted that there are still many differences in the legal systems of the different AMS.

**Question:** The physical presence of offender(s) in court is necessary in many cases including that of child exploitation. However, in many cross-border child exploitation cases, the offenders can easily escape from one country to another, thus impeding the conviction process and causing injustice towards the victim. How can the Judiciaries best address this issue?

**Response:** In the Philippines, if a person is charged in court in a child exploitation case, the accused person will usually be issued with a “hold departure order”. The “hold departure order” is considered as an advisory note to the Department of Foreign Affairs and Bureau of Immigration to prevent the offender from leaving for other countries.



## Session 8 – Working Group Session

167. The discussants and participants were divided into four groups and tasked to come up with practical suggestions based on the following four themes:

- (a) How can AMS strengthen the role of the Judiciary and the rule of law (Group 1)?
- (b) How can ASEAN Judiciaries promote and apply CEDAW, CRC, CRPD and ASEAN instruments (Group 2)?
- (c) How can AMS achieve Sustainable Development Goal (SDG) 16 – effective access to justice and remedies (Group 3)?
- (d) What are the ASEAN institutional mechanisms that can be established to support judicial cooperation on human rights protection (Group 4)?



Photo 12: Focus group discussion at the AICHR Judicial Colloquium [Working Group Session], 14 March 2017, Kuala Lumpur



Photo 13: Focus group discussion at the AICHR Judicial Colloquium [Working Group Session], 14 March 2017, Kuala Lumpur



168. Each group was led by one representative who later presented their findings in Session 10 (refer to Session 10).



Photo 14: Focus group discussion at the AICHR Judicial Colloquium [Working Group Session], 14 March 2017, Kuala Lumpur



## Session 9 – Observations (Day 2)

Rapporteurs for Sessions 5 - 7 to report.

**Facilitator:**

- Dr. Shashi Jayakumar, Alternate Representative of Singapore to AICHR



Photo 15: Rapporteurs and Facilitator at the AICHR Judicial Colloquium [Session 9], 14 March 2017, Kuala Lumpur

### **Observations for Session 5 [From Promotion to Protection – Case Studies of the African Regional Mechanisms]**

169. Justice Ben Kioko shared that the African human rights system is composed of four strata namely the African Charter, African Children's Charter system, Regional Economic Communities' (REC) judicial tribunals and domestic legal systems of the member States. There are three main African institutions with human rights mandates: the African Commission on Human and Peoples' Rights (ACHPR), African Committee of Experts on the Rights and Welfare of the Child, and African Court on Human and Peoples' Rights.
170. As of March 2017, only 30 African States have ratified to the Protocol Establishing the Court, while 52 States signed it. Eight African member States have deposited the declaration allowing individuals and NGOs to institute cases before the court.
171. Amongst the challenges facing the court, as shared by discussant, is the low rate of ratification of the Protocol Establishing the Court, limited access to court by individuals and NGOs as well as lack of sufficient resources and awareness among the public about the court. Despite such challenges and limitations, the establishment of the Court has brought hope for the protection of human rights to victims and their defenders.



## **Observations for Session 6 [The Rule of Law and Human Rights: Challenges & Opportunities]**

172. In this session, the discussants shared a common view on the need to improve the tools and administration of justice around the region. A lack of enforcement or selective enforcement of laws have been major challenges in the implementation of the rule of law and human rights among AMS. Thus, an effective implementation of the rule of law and human rights requires concerted efforts not just by the Judiciaries but also the other two branches of Government namely the Executive and Legislature.
173. It was also noted that globalisation has affected the implementation of the rule of law and human rights. This can be witnessed in at least three aspects. First, the movement of migrant workers from sending to receiving countries such as Singapore, Malaysia and Brunei Darussalam. Second, privacy issues in the use of technology which generates both advantages and disadvantages. Third, the importance of ensuring gender equality especially in the implementation of the rule of law and human rights.
174. The discussants also exchanged views on the important role played by independent and impartial Bar Associations at national level in the effective implementation of the rule of law and human rights, while noting that the Judiciaries must continue serve as a checks-and-balance entity between two other branches of the Government.

## **Observations for Session 7 [Future Judicial Cooperation on Human Rights in the Region]**

175. During this session, the discussants shared their views about the development of the CACJ, and future plans for this newly included entity in the ASEAN family. They discussed the works that have been undertaken or are currently being implemented by the CACJ such as the conduct of judicial training on transborder issues, and development of a common judicial portal and platforms for the sharing of good practices among ASEAN Judiciaries.
176. Several suggestions were made for the consideration of the ASEAN Judiciaries. These include the need for the Judiciaries to speak a common language when it comes to matters relating to human rights; that the CACJ be deemed the most appropriate platform for regional judicial cooperation with other bodies; and that the CACJ to step up efforts to institutionalise collaboration with regional human rights bodies such as the AICHR to strengthen protection of human rights in the region.



177. There were also specific suggestions for the consideration of AICHR and CACJ. These include (1) the need to promote awareness and empathy among the Judiciaries on matters relating to human rights, and that can be done by strengthening judicial training and education; (2) the CACJ and AICHR should play a proactive role in providing recommendations for the ratification of international and regional human rights instruments; (3) the AICHR should step up its protective mandate by establishing effective complaints procedures and communication strategies; (4) the CACJ and AICHR should explore ways to collaborate in the areas of judicial education and training, and that can be done through organising workshops and capacity building programmes targeting fresh and mid-level judicial officials.



## Session 10 - Plenary from Working Group Session & Concluding Observations

### Facilitator:

- H. E. Edmund Bon Tai Soon, Representative of Malaysia to AICHR



Photo 16: Representatives of four working groups and Facilitator at the AICHR Judicial Colloquium [Session 10], 15 March 2017, Kuala Lumpur

178. Upon completion of the working group's discussions, representatives from the four groups presented their practical suggestions in Session 10.

**Group 1: How can AMS strengthen the role of the Judiciary and the rule of law?**

179. Group 1 suggested that the ASEAN judicial institutions be fully independent, be it financially, in the appointment of judges and their terms of office, as these will enhance judicial independence.
180. In addition, the Group also suggested that CACJ, AICHR and ALA collaborate in the area of judicial training to enhance judicial function in the protection of human rights (refer **Annex 4**).

**Group 2: How can ASEAN Judiciaries promote and apply CEDAW, CRC, CRPD and ASEAN instruments?**

181. Group 2 suggested that the CACJ, AICHR and ALA develop a 'bench book' with contents relating to CEDAW, CRC and CRPD with a view to harmonising AMS's national regulations.
182. The Group also suggested that the three bodies develop a list of good practices in building and equipping the courts to be accessible to women, children and disabled, as a regional reference material (refer **Annex 4**).

**Group 3: How can AMS achieve Sustainable Development Goal (SDG) 16 – effective access to justice and remedies?**

183. Group 3 suggested that the ASEAN Judiciaries develop a common platform to share knowledge and establish guidelines of conduct for judges.
184. The Judiciaries, human rights institutions and international organisations are also encouraged to strengthen legal aid systems including the provision of affordable legal aid and establishing a system of financial aid to vulnerable persons (refer **Annex 4**).

**Group 4: What are the ASEAN institutional mechanisms that can be established to support judicial cooperation on human rights protection?**

185. Group 4 suggested that the AICHR engages with ALA. As a regional legal think-tank, ALA is well placed to assist the AICHR and other human rights



bodies to establish and/or strengthen judicial and legal cooperation in the region. This may include cooperation in the areas of education and training for judicial and legal officials across the region.

186. At the end of Session 10, the discussants and participants discussed a set of the Colloquium's conclusion and recommendations. These recommendations included the suggestions made by the four working groups which were presented in Session 10 (refer to **Annex 4**).





## Closing Session

### Closing Remarks

By the Right Honourable Tan Sri Dato' Seri Md Raus bin Sharif, President of the Court of Appeal, Malaysia



Photo 17: The Right Honourable Tan Sri Dato' Seri Md Raus Sharif, President of the Court of Appeal, Malaysia, delivering his Closing Remarks at the AICHR Judicial Colloquium [Closing Session], 15 March 2017, Kuala Lumpur

187. **Justice Md Raus Sharif**, President of the Court of Appeal of Malaysia, presented the closing remarks, in which he called upon the Judiciaries to stay abreast of developments in order to anticipate future developments that could cause injustices.

188. He said it was universally acknowledged that the law often develops at a slower pace than society, especially in today's technologically-driven world. Any gaps risk injustice being caused, and there are concerns that judgments handed down may not sufficiently reflect the moral, societal, economic or political developments of the time. In order to bridge those gaps, the ASEAN Judiciaries must stay one step ahead.
189. Therefore, the Judiciaries must anticipate future developments and be prepared to address them now. If there is insufficient legal knowledge or interpretative tools relating to the AHRD, the Judiciaries must seek to draft, publish and disseminate ASEAN's shared understanding of the rights therein.
190. He said this Colloquium has benefited the region by going beyond just allowing the Judiciaries to share good practices, challenges and experiences in strengthening, interpreting and implementing human rights law. It has also facilitated valuable peer-to-peer interaction between ASEAN human rights stakeholders such as judges, lawyers, experts and sectoral bodies and agencies.
191. Justice Md Raus said the rapid integration being undertaken by ASEAN through the implementation of its economic, political-security and socio-cultural community creates both challenges and opportunities for ASEAN Judiciaries to advance the rule of law, and to apply international human rights norms in their daily work. He also said ASEAN Judiciaries need to play a key role in preparing their respective domestic legal and judicial sectors to meet the requirements of an increasingly complex ASEAN legal framework.
192. He made five recommendations for the consideration of the AICHR.
- First, to conduct capacity building programmes (such as training and workshops) with a view of providing technical support, obtaining information, developing common approaches and positions, and sharing good practices.
  - Second, to conduct more peer-to-peer interaction sessions among relevant stakeholders through consultations, dialogues and reviews.
  - Third, to compile a regional reference guide in respect of the AHRD, CEDAW, CRC & CRPD and the role of the Judiciary in the promotion and protection of the rule of law and human rights. The guide should contain good practices, guidelines or explanatory notes, relevant jurisprudence and laws, and the applicable baseline standards.
  - Fourth, to enhance effective access to justice and legal remedies by strengthening the provision of legal aid in the region.



- Fifth, where appropriate or necessary to realise the above, and within the framework of ASEAN judicial and legal cooperation, to consult and/or collaborate with other ASEAN sectoral bodies such as ASLOM, ALA and entities associated with ASEAN such as CACJ including civil society organisations, national, regional and international institutions.

193. He further suggested the establishment of a regional cooperation framework - a technical working group comprising representatives of AICHR, CACJ, ASLOM and other human rights bodies - with clear terms of reference for judicial cooperation.

194. He encouraged the AICHR to convene this Colloquium annually as part of its annual work plan to promote and protect human rights in the region.



## Annexures

### Annexure 1: Programme of Activities & List of Discussants, Facilitators & Rapporteurs

#### 1<sup>st</sup> Day – 13 March 2017

Time	Subject
8.00–8.30	Registration
8.30–9.30	<p><b>Welcome Remarks</b></p> <ul style="list-style-type: none"> <li>• H. E. Edmund Bon Tai Soon, Representative of Malaysia to AICHR</li> <li>• H.E. Leo M. Herrera-Lim, Chairperson of AICHR, Representative of the Philippines to AICHR</li> <li>• Jennifer Wilson, ASEAN Affairs Advisor to the U.S. Mission to ASEAN</li> <li>• Manfred Hornung, Director, Heinrich Boll Stiftung, Southeast Asia Office</li> <li>• H.E. Dag Juhlin-Dannfelt, Ambassador of Sweden to Malaysia</li> </ul> <p><b>Opening Statement</b></p> <ul style="list-style-type: none"> <li>• The Right Honourable Tun Arifin bin Zakaria, Chief Justice of Malaysia</li> </ul> <p><b>Keynote Address</b></p> <ul style="list-style-type: none"> <li>• H.E. Dato' Ramlan Ibrahim, Secretary General of the Ministry of Foreign Affairs of Malaysia</li> </ul>
10.30–10.45	Group Photograph & Coffee Break
<p><b>Session 1:</b>  <b>Role of the Judiciary in the Promotion &amp; Protection of Human Rights – CEDAW, CRC, CRPD</b></p>	
10.45 – 12.30	<p><b>Discussants:</b></p> <ul style="list-style-type: none"> <li>• The Right Honourable Justice Tun Arifin bin Zakaria, Chief Justice of Malaysia</li> <li>• The Honourable Justice Tay Yong Kwang, Judge of Appeal, Supreme Court of Singapore</li> <li>• The Honourable Justice Dr. H. Muhammad Syarifuddin, S.H., M.H., Vice-Chief Justice of the Supreme Court of the Republic of Indonesia for Judicial Matters</li> </ul>



- The Right Honourable Dato Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli, Chief Justice of the Supreme Court of Brunei Darussalam
- The Honourable Justice Sengsouvanh Chanthalonnavong, Justice of the People's Supreme Court of the Lao PDR and the President of Vientiane Capital Court

**Facilitator:**

- H.E. Leo M. Herrera-Lim, Chairperson of AICHR, Representative of the Philippines to AICHR

**Rapporteur:**

- Niphonekham Khammounheuang, Assistant to the Representative of Lao PDR to AICHR

12.30–1.30 Lunch

**Session 2:  
Role of the Judiciary in the Promotion & Protection of Human Rights – ASEAN  
Instruments**

1.30–3.15 **Discussants:**

- The Honourable Justice Aung Zaw Thein, Judge of the Supreme Court of the Union of Myanmar
- The Honourable Justice Wichai Euaungkanakul, President of the Labour Division of the Supreme Court of Thailand
- The Honourable Justice Amparo M. Cabotaje-Tang, Presiding Justice of the Sandiganbayan of the Philippines
- The Honourable Nguyen Tri Tue, Justice of the Supreme People's Court of Viet Nam

**Facilitator:**

- H.E. Dr. Seree Nonthasoot, Representative of Thailand to AICHR

**Rapporteur:**

- H.E. Dinna Wisnu, Representative of Indonesia to AICHR

13.00–14.00 Lunch



**Session 3:  
Effective Access to Justice & Remedies – Sustainable Development Goal 16**

14.00–15.45

**Discussants:**

- The Honourable Michael Donald Kirby AC CMG, former Judge of the High Court of Australia
- Dr Phillip Tahmindis, Director, Human Rights Institute, International Bar Association (IBAHRI)
- Brian Gorlick, Deputy Representative (Protection), United Nations High Commissioner for Refugees (UNHCR), Malaysia

**Facilitator:**

- H.E. Amb. U Hla Myint, Representative of Myanmar to AICHR

**Rapporteur:**

- Representative of ASEAN Senior Law Officials (ASLOM)

15.45–16.00

Coffee Break

**Session 4:  
Observations (Day 1)**

16.00–17.00

Rapporteurs for Sessions 1-3 to report back.

**Facilitator:**

- Firdaus Husni, Co-Chairperson of the Bar Council Human Rights Committee, Malaysia

18.00–19.00

Welcome Dinner





**2<sup>nd</sup> Day – 14 March 2017****Session 5:  
From Promotion to Protection – Case Studies of the European & African  
Regional Mechanisms****8.30–10.15 Discussants:**

- The Honourable Justice Ben Kioko, Vice-President of the African Court on Human & Peoples' Rights (ACHPR)

**Facilitator:**

- H.E. Dinna Wisnu, Representative of Indonesia to AICHR

**Rapporteur:**

- Representative of ASEAN Law Association (ALA)

**10.15–10.30 Coffee Break****Session 6:  
Rule of Law & Human Rights – Challenges & Opportunities****10.30–12.15 Discussants:**

- H.E. Tan Sri Razali Ismail, Chairperson of the Human Rights Commission of Malaysia (SUHAKAM)
- H.E. Leo M. Herrera-Lim, Representative of Philippines to AICHR, Chair of AICHR 2017
- The Honourable Justice Lee Seiu Kin, Judge, Supreme Court of Singapore
- The Honourable Justice Montri Sillapamahabundit, Research Justice of the Supreme Court of Thailand

**Facilitator:**

- Mikael Johansson, Senior Policy Advisor on Anti-Corruption & Human Rights, Raoul Wallenberg Institute of Human Rights & Humanitarian Law (RWI)



**Rapporteur:**

- Laurent Meillan, Officer-in-Charge, Regional Office for South East Asia, Office of the High Commissioner for Human Rights (OHCHR)

12.15–14.30 Lunch

**Session 7:**

**The Future of Judicial Cooperation on Human Rights Protection in ASEAN – Recommendations & The Way Forward**

13.00-14.30 **Discussants:**

- The Right Honourable Justice Tan Sri Dato' Seri Zulkefli bin Ahmad Makinudin, Chief Judge of Malaya, Malaysia
- The Honourable Justice Zaldy V. Trespeses, Associate Justice of the Sandiganbayan of the Philippines
- The Honourable Justice Dr. Ridwan Mansyur, S.H., M.H., Justice of the Supreme Court of the Republic of Indonesia

**Facilitator:**

- Dato' Mah Weng Kwai, Former Judge of the Court of Appeal of Malaysia & Commissioner, Human Rights Commission of Malaysia (SUHAKAM)

**Rapporteur:**

- Andika Ab. Wahab, Consultant to AICHR Malaysia

**Session 8:**

**Working Group Session**

14.30–16.15 Participants will be divided into four working groups and tasked to draft a set of outcome messages on the four themes of the Colloquium, based on the key observations from the roundtable sessions.

**Themes:**

1. Role of Judiciary & Rule of Law
2. Application of International Human Rights Law
3. Effective Access to Justice & Remedies
4. Regional Human Rights Mechanism



16.15-16.30 Coffee Break

**Session 9:  
Observations (Day 2)**

16.30-17.00 Rapporteurs for Sessions 5 - 7 to report.

**Facilitator:**

- Dr. Shashi Jayakumar, Alternate Representative of Singapore to AICHR

**3<sup>rd</sup> Day – 15 March 2017**

**Session 10:  
Plenary from Working Group Session & Concluding Observations**

9.00-11.00 Chairperson / Representative of each Working Group to present a draft outcome document in respect of each of the themes at Session 8 for discussion, feedback and concluding observations

**Facilitator:**

- H. E. Edmund Bon Tai Soon, Representative of Malaysia to AICHR

11.00-11.30 **Closing Remarks**

- The Right Honourable Tan Sri Dato' Seri Md Raus bin Sharif, President of the Court of Appeal, Malaysia



## Annexure 2: List of Attendance



### Annexure 3: Colloquium's Conclusion & Recommendations

#### AICHR Judicial Colloquium On the Sharing of Good Practices Regarding International Human Rights Law

Kuala Lumpur, 13 - 15 March 2017

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**Commending** the ASEAN Intergovernmental Commission on Human Rights (AICHR) for the successful convening of the Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law;

**Noting** that the ASEAN Human Rights Declaration 2012 (AHRD) has established a framework for human rights cooperation in the region and contributed to the ASEAN community building process;

**Reaffirming** ASEAN's commitment to respect, promote and protect human rights, and to the full implementation of the AHRD;

**Reaffirming** the ASEAN principle of adherence to the rule of law and good governance, and that human rights are upheld through the rule of law;

**Noting** the Bangalore Principles of Judicial Conduct 2002 and the indispensable role of the Judiciary in the promotion and protection of human rights;

**Noting** the contemporary challenges to the rule of law and human rights, and the need to strengthen the rule of law and human rights including enhancing effective access to justice and legal remedies;

**Noting** the mandate and functions of the AICHR which are, among others, to promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States; and,

**Recommending** for AICHR's consideration the following:

1. The matters reported by the four Working Groups on (a) the strengthening of the role of the Judiciary and the rule of law; (b) the promotion and application of CEDAW, CRC, CRPD and ASEAN instruments by ASEAN Judiciaries; (c) the realisation of SDG 16 on effective access to justice and remedies; and (d) the ASEAN institutional mechanisms that could be established to support judicial cooperation on human rights protection. A summary of Working Groups' deliberation is in 'Annex A' hereto.
2. To conduct capacity building programmes (such as training and workshops) with a view of providing technical support, obtaining information, developing common approaches and positions, and sharing good practices.



3. To conduct greater peer-to-peer interaction between relevant stakeholders by engaging in consultations, dialogues and reviews.
4. To compile a regional reference guide in respect of the AHRD, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD), and the role of the Judiciary in the promotion and protection of the rule of law and human rights. The guide should contain good practices, guidelines or explanatory notes, relevant jurisprudence and laws, and the applicable baseline standards.
5. To enhance effective access to justice and legal remedies by strengthening the provision of legal aid in the region.
6. Where appropriate or necessary to realise the above, and within the framework of ASEAN judicial and legal cooperation, to consult and/or collaborate with other ASEAN sectoral bodies, such as the ASEAN Law Ministers Meeting (ALAWMM) and ASEAN Senior Law Officials Meeting (ASLOM); and entities associated with ASEAN such as the Council of ASEAN Chief Justices (CACJ) and the ASEAN Law Association (ALA); and civil society organisations; national, regional and international institutions.

- Dated this 15<sup>th</sup> day of March 2017





## Annexure 4: Presentation of the Working Groups

### WORKING GROUP 1

#### How can AMS Strengthen the Role of the Judiciary & The Rule of Law?

The Judiciary plays a critical role in the enforcement of the rule of law, and the promotion and protection of human rights. Thus, the priority is to implement measures to enhance and support judicial institutions of AMS.

#### 1. Enhancing Judicial Independence

- Judiciary should be financially independent from the Executive branch;
- Judiciary should have sufficient financial resources and full control of resources;
- The appointment of judges should not be determined by the Executive but by an independent body;
- Selection of the most qualified and suitable persons as judges;
- Judges must be sufficiently remunerated and have security of tenure during currency of office and sufficient financial resources upon retirement.

Implementation: Council of ASEAN Chief Justices (CACJ) in consultation with the Governments of AMS.

#### 2. Judicial Training

A recurrent theme in the sessions is the importance of judicial training in order to enhance the judicial function. The following initiatives are recommended.

- Each AMS to contribute to a fund under CACJ for the purpose of judicial training;
- CACJ to set up a 'working group' to coordinate the implementation of the following initiatives in each AMS:
- Undertake a 'Needs Analysis' to identify judicial training institutions, resources and training modules.
- Access to and utilisation of a legal database e.g ASEAN LIC, e-portal on legal materials and case law;
- If required, translation of materials into the respective native languages of AMS.
- Draw up an initial two-year programme on the syllabus to be implemented by AMS judicial training institutions;
- Undertake periodic review of programmes with feedback from relevant parties;
- Initiate collaborations among AMS judicial training institutions;
- Schedule an annual review of AMS training programmes and related initiatives as an agenda in the annual CACJ meetings. The purpose is to monitor, lend support, and share best practices among AMS.



Implementation: CAJC, AICHR, Working Group under CACJ, ALA, judicial training institutions of AMS.



## WORKING GROUP 2

### Recommendations for ASEAN Judiciaries to Promote & Apply CEDAW, CRC, CRPD & ASEAN Instruments

#### Implementing Body and Partners

#### Key Documents

No	Key Documents		Recommendations	Timeline	Implementing Body and Partners		
	Regional Instruments	International Instruments			ASEAN Organ/Body	International Organisations/ Non-ASEAN Entity	CSOs
1	AHRD	CEDAW, CRC, CRPD	Develop a 'Bench Book' with content relating to CEDAW, CRC and CRPD to harmonise ASEAN Member States' national regulations.	N.A	CACJ, ALA, AICHR	N.A	N.A
2	AHRD	CEDAW, CRC, CRPD	Develop a list of good practices in building and equipping the courts with suitable facilities for women, children and the disabled, to be used as a regional reference.	N.A	CACJ, ALA, AICHR	N.A	N.A
3	AHRD	CEDAW, CRC, CRPD	Conduct capacity building (training, workshop, etc) to disseminate material contained in the Bench Book and the	N.A	CACJ, ALA, AICHR	N.A	N.A

Guidelines on women, children  
and disabled-friendly courts to  
ASEAN Judiciaries and  
relevant stakeholders.



### WORKING GROUP 3

#### How can AMS Achieve SDG 16 – Effective Access to Justice & Remedies?

1. Information / Knowledge Sharing **[Judiciary]**
  - a. Portal of human rights cases to be accessible to AMS
  - b. Sharing of best practices and policies
  
2. Guidelines of Conduct for Judges **[Judiciary]**
  - a. AMS to develop common Guidelines of Conduct for Judges to promote trust in the integrity of the Judiciary
  
3. Legal aid systems **[Judiciary / Executive / National Human Rights Institutions / International Bodies]**
  - a. To provide affordable legal aid to vulnerable persons
  - b. To establish a system of financial aid for vulnerable persons to complement legal aid
  - c. To raise awareness of such schemes by the State and Judiciary
  
4. Capacity building and training of judges on human rights treaties and laws **[Judiciary / Law Faculties]**
  - a. To provide common training for AMS judges to establish a consistent approach in interpreting human rights treaties and decisions
  
5. Role of the Executive
  - a. To establish policies (and penalties) to encourage clean, honest and transparent governance through the Executive, Legislature and Judiciary

## WORKING GROUP 4

### **What are the ASEAN institutional mechanisms that can be established to support judicial cooperation on human rights protection?**

The group had decided to adopt one course of action instead of the proposed three recommendations, which is for AICHR to write to the ASEAN Law Association (ALA) Governing Council requesting to present a proposal on establishing judicial cooperation between AICHR and legal practitioners. ALA is recognised by ASEAN as its Annex II entity. The AICHR will draft a comprehensive proposal on the different methodologies that it deems fit to attain the said cooperation based on the output of the Colloquium.

ALA's Governing Council will evaluate and reply in writing whether AICHR will be accommodated to make its presentation. Should AICHR and ALA find common ground/s, the Governing Council of ALA may decide to form a standing committee or technical working group to further study AICHR's proposal.

Through the standing committee or technical working group, AICHR can utilise ALA's standing as a think tank to collaborate on projects such as training programmes and the introduction of a human rights curriculum for university students across ASEAN. Since the ASEAN Chief Justices lead ALA, they will also be apprised of the judicial cooperation projects of AICHR and ALA.

### TO-DO LIST

1. AICHR to draft a letter to ALA requesting to meet and present its proposal
2. AICHR to draft a concept note to circulate to ALA's Governing Council

