Hiding Behind Its Limits
A Performance Report on the first year of the
ASEAN Intergovernmental Commission on Human Rights (AICHR)
2009 - 2010

by the
Solidarity for Asian People’s Advocacy
Task Force on ASEAN and Human Rights (SAPA TFAHR)

FORUM-ASIA
Asian Forum for Human Rights and Development
Hiding Behind Its Limits

A Performance Report on the first year
of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

by the
Solidarity for Asian People’s Advocacy
Task Force on ASEAN and Human Rights
(SAPA TFAHR)

Asian Forum for Human Rights and Development
## Contents

Foreword .................................................................................................................. v

Hiding Behind Its Limits: A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010 ................................................................. 1

**Civil Society Submissions to AICHR**
- A Proposal for the Rules of Procedure of the ASEAN Intergovernmental Commission on Human Rights ............... 24
- Submission on the Rules of Procedure of AICHR, ASEAN Declaration of Human Rights and the Work Plan of AICHR ... 57
- Submission on the Mandatory Blood Testing on HIV on Migrant Workers ................................................................. 61

**Cases of Human Rights Violations Submitted to AICHR**

- Thematic Cases ........................................................................................................ 72
  - Women ................................................................................................................. 74
  - Migrant Workers ................................................................................................. 77
  - Press Freedom ..................................................................................................... 80

- Past Human Rights Violations .............................................................................. 88
- The Ampatuan Massacre ...................................................................................... 98
- On the violation of Yong Vui Kong’s human rights ............................................ 119

**SAPA TFAHR Press Releases**
- ASEAN Human Rights Body Must Not Turn a Blind Eye on Human Rights Violations in the Region ............... 128
- Civil Society Condemns AICHR for Refusing to Meet, Calls for Draft Rules of Procedure to be Made Public and Hold Wider Consultation ............................................................. 130
HRWG and SEAPC welcomes the visit to Indonesia of UN Special Rapporteur on Situation of Human Rights in Myanmar, Tomas Ojea Quintana ........................................... 134

• 133
• “It is AICHR’s Turn to Move Forward to Promote and Protect Human Rights in Southeast Asia” ................................. 136
  AICHR: A window dressing for ASEAN’s Commitment to Human Rights! ................................................................. 139
• Southeast Asian NGOs give the ASEAN Human Rights Body a failing mark ......................................................... 142

Annex: Publicly Available Documents Released by the AICHR

• Press Statement by the Chair of the ASEAN Intergovernmental Commission on Human Rights on the First Meeting of the ASEAN Intergovernmental Commission on Human Rights ................................................................. 145
• Press Release of the Third ASEAN Intergovernmental Commission on Human Rights (Meeting) ...................... 156

About SAPA TFAHR ................................................................. 147
Preface

The Solidarity for Asian People’s Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR) presents this civil society report on the performance of the ASEAN Intergovernmental Commission on Human Rights (AICHR) during its first year of existence, and other key documents in this engagement process.

SAPA TFAHR made this compilation as a public measure of Southeast Asian civil society’s expectations on ASEAN’s historic human rights body, which took about 15 years of civil society advocacy before being established on 23 October 2009. We put out these materials as a record of TFAHR’s engagement of AICHR, and a guide of what the Task Force wants to achieve for the first regional human rights mechanism in the Asia-Pacific. Hopefully, it will also encourage a broader and more active participation of Southeast Asia’s vibrant human rights community.

In addition to the first year performance report that was initially released on 27 October 2010, this book contains the major submissions made by SAPA TFAHR for the AICHR official meetings, the cases of human rights violations submitted to AICHR, and the press releases of the Task Force during this momentous year.

In releasing this book, we thank, first of all, the members of the SAPA TFAHR for their contribution in drafting the documents contained in this compilation. Also, we thank contributions of various individuals and organisations in producing this book—the writers who in reality play the role of facilitating contributions and finalizing the documents, and members of the FORUM-ASIA staff.

Finally, we would like to acknowledge and appreciate our donors—the Southeast Asia Regional Cooperation in Human Development (SEARCH) project of the Canadian International Development Agency (CIDA), and the United Nations Democracy Fund (UNDEF)—whose generous support made this publication possible and, more importantly, for helping us realise the activities and processes that produced the contents of this book.
Through this book, we hope to convey SAPA TFAHR’s firm commitment in making the AICHR a truly responsive and effective regional mechanism to protect and promote human rights, and look forward to a more fruitful engagement with the Commission in the coming years.

On behalf of the Task Force,

Yap Swee Seng  
Co-convenor, SAPA-TFAHR  
Executive Director, FORUM-ASIA

Haris Azhar  
Co-convenor, SAPA TFAHR  
Co-ordinator, KontraS
Hiding Behind Its Limits

A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

1. Introduction

In the 43-year history of ASEAN, the year 2007 is significant for the adoption of the ASEAN Charter among 10 Member States: Brunei Darussalam, Cambodia, Indonesia, Laos (Lao PDR), Malaysia, Myanmar (Burma), the Philippines, Singapore, Thailand and Viet Nam. The momentous act of ratifying the ASEAN Charter (hereinafter the Charter) during the 13th ASEAN Summit in November 2007 has transformed the once loose association into a formal legal entity. The Charter notably contained provisions endorsing human rights promotion and protection, leading to the launching of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009. In commemorating the one-year anniversary of AICHR, it is a purpose of this report to evaluate the mandate, structure and mechanisms of AICHR and review the work that AICHR has done in its first year.

This report offers a critical performance assessment of AICHR based on its core documents, structure, appointment process of members to AICHR, institution building, implementation of mandates, handling of cases and consultation with civil society. It examines AICHR’s progress, achievements and shortcomings in addressing the human rights situation in Southeast Asia. It will conclude with key findings of the evaluation and propose recommendations to AICHR and ASEAN for the improvement of AICHR in the years to come.

2. Brief Historical Background of the AICHR

Regional initiatives for a human rights body in Southeast Asia date back to the World Conference on Human Rights in Vienna in 1993. The Vienna Declaration and Programme of Action noted needs for regional human rights
bodies that are able to pay attention to “regional particularities and various historical, cultural, and religious backgrounds”, and was signed by all 10 member countries of ASEAN. In the month following the World Conference in Vienna, the foreign ministers of member countries met in the 26th ASEAN Ministerial Meeting (AMM) on 23-24 July 1993 to publish a Joint Communiqué, which welcomed the Vienna Declaration and included, albeit ambivalently, one recommendation of action considering an arrangement of a regional human rights mechanisms.

A long period of silence ensued after the Joint Communiqué of 1993 until the drafting of the Charter which started in late 2005. The 11th ASEAN Summit in December 2005 established an Eminent Persons Group (EPG) to lay down guiding principles of the Charter. A High Level Task Force, which consisted of 10 representatives from each member, was formed in February 2007 to draft it. In the Charter, Article 14 is titled “ASEAN Human Rights Body” and spells out its establishment through a terms of reference to be determined by the ASEAN Foreign Ministers Meeting. The Charter was officially adopted during the 13th ASEAN Summit on 20 November 2007 and entered into force on 15 December 2008.

Subsequently, another High Level Panel (HLP) was appointed by ASEAN to draft the Terms of Reference (ToR) for the ASEAN human rights body on 21 July 2008. On 23 October 2009, the human rights body was officially named as the ASEAN Intergovernmental Commission on Human Rights (AICHR) and officially inaugurated during the 15th Summit in Cha-am Hua Hin, Thailand.

3. Terms of Reference of AICHR

A review of the performance of AICHR in its first year cannot be detached from its founding documents. The Terms of Reference of AICHR (hereinafter ToR) lays out the purposes, principles, roles, and mandate of AICHR, as well as its basic structure and functioning. This section will thus briefly review the problematic provisions in the ToR to examine its impact on the operation of AICHR in its first year.

a. Purposes of AICHR and cultural relativism

The ToR stipulates in Article 1.6 that one of the purposes of AICHR is “to uphold international human rights standards as prescribed by the
Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN member states are parties.” However, in Article 1.4, provides another purpose of AICHR, namely “to promote human rights within the regional context; bearing in mind national and regional particularities and mutual respect for different historical, cultural, and religious backgrounds, and taking into account the balance between rights and responsibilities.” This leaves serious concern that member states could justify human rights violations based on “regional particularities” or that cultural relativism or “Asian values” may make a comeback through this provision.

SAPA TF-AHR would like to stress, however, that nowhere does the TOR provide for Article 1.4 to have any priority over Article 1.6. AICHR should therefore adhere to international human rights law and standards and interpret Article 1.4 as a provision to be taken into consideration, but one that should give way in case of a clash between “national and regional particularities” and binding human rights law or universally upheld standards.

b. State Sovereignty

Article 2 of the TOR reiterates the principles state’s independence and sovereignty, non-interference, and respect for different cultures in Article 2 of the ASEAN Charter. This tone continues throughout the Article in their adoption of “non-confrontational” (2.4) and “evolutionary” (2.5) approach.

However, SAPA TF-AHR would like to remind AICHR that no state has a sovereign right to torture, “disappear” or starve its people. Article 2.3 of the TOR recognises, rightly, “that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State.” But when a state fails to live up to its responsibility, it can no longer claim that its sovereignty, right to non-interference or unique culture is compromised by AICHR stepping into the breach and exercise its duty to protect those whose rights have been violated or who are facing such violations.

c. Role of AICHR

Article 3 of the ToR is entitled, “Consultative inter-governmental body” and consists of two sentences. It limits the role and the nature of AICHR
to being intergovernmental and consultative. The crucial element of “independence” of the Commission is sorely missing in this determination of its role and nature.

SAPA TF-AHR would like to remind the AICHR, however, that nothing in the TOR prevents it from acting independently, impartially and objectively. In fact, all AICHR representatives are required to act impartially under Article 5.7 of the ToR. This would be the proper way for the Commission to exercise its promotion and protection mandate.

d. AICHR’s Mandate and Function

Article 4 of the ToR establishes the mandate and functions of AICHR. They are summarised as follows:

1. Develop strategies to promote and protect human rights
2. Develop ASEAN Human Rights Declaration
3. Raise public awareness on human rights
4. Promote capacity building on implementation of international human rights treaties
5. Encourage ratification of human rights treaties
6. Promote implementation of ASEAN human rights instruments
7. Provide advisory role and technical assistance to ASEAN sectoral bodies
8. Engage in dialogue and consultation with ASEAN bodies and entities associated with ASEAN
9. Consult with other national, regional and international institutions and entities concerned with human rights
10. Obtain information from member states on human rights promotion and protection
11. Develop common approaches and positions on human rights matters
12. Prepare thematic studies on human rights
13. Submit annual report
14. Perform other tasks assigned by ASEAN Foreign Ministers Meetings

Based on the above mandates and functions, SAPA TF-AHR maintains that it is the duty of AICHR to develop mechanisms and programs on both promotion and protection of human rights. Equal attention and resources should be accorded to these two areas of work.
e. Composition

The AICHR is composed of one representative from each Member State of ASEAN. The power to appoint a representative resides in the ASEAN Member State.

Article 5.6, which provides that “the appointing Government may decide, at its discretion, to replace its Representative” before the three year term is completed is of concern. Insecure tenure may compromise the representative’s independence from the government. This is a serious obstacle in protection and promotion of human rights, considering the nature of tasks that human rights bodies are expected to perform. There is also no modality to ensure gender balance in the make-up of the members of the commission.

f. Consensual Decision Making

AICHR adopts the consensual decision making process that ASEAN is known for. With concerns regarding member composition as above, it is obvious that consensual decision process may, and indeed has undermined efficiency and effectiveness of the Commission. Civil society organisations have recommended that the Commission should attempt to reach consensus, but revert to majority vote if such consensus cannot be reached.

g. Work Plan and Funding

Article 8 of the ToR provides for AICHR to produce a five-year work plan and funding. Provision 8.2 may restrict the fiscal autonomy of the AICHR, and the limit on external funding from non-ASEAN Members as provided for in Provision 8.6 may further restrict AICHR’s capacity to protect human rights. However, nothing in the TOR prevents AICHR from budgeting for protection activities and lobbying ASEAN bodies to support such budgeting.

4. Appointment Process of AICHR Members

Article 5.4 of the ToR stipulates that in terms of Member States appointing their representative to AICHR, they “should consult, if required by their internal processes, with appropriate stakeholders in the appointment of their Representatives to the AICHR”.

It is encouraging that two Member States – Indonesia and Thailand—used an open and transparent procedure to appoint their representatives. In both countries, the position was publicly advertised and public members were able to nominate candidates to the government’s select committee. As a result, two independent human rights experts, Rafendi Djamin and Dr. Sriprapha Petcharamesree were appointed for Indonesia and Thailand respectively. Rafendi Djamin of Indonesia is the Coordinator of the National Human Rights Working Group Indonesia and also the convener of SAPA TF-AHR. Dr. Sriprapha Petcharamesree is a professor and a former Director of the Office of Human Rights Studies and Social Development at Mahidol University. She has spent her 30 years of career in both academia and human rights activism.

On the other hand, appointment processes in other countries were carried behind closed doors. Moreover, most of them have had their career span in the diplomatic or civil services, often without any experience in human rights work. Many have not resigned from their government posts. Their direct or indirect affiliation with the government without necessary competency in human rights work may seriously undermine the independence and effectiveness of AICHR.

**Members of the AICHR**

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>H.E. Do Ngoc Son</td>
<td>Chairperson and Representative of Viet Nam</td>
</tr>
<tr>
<td>H.E. Pehin Dato Hamid Bakal</td>
<td>Representative of Brunei Darussalam</td>
</tr>
<tr>
<td>H.E. Om Yentieng</td>
<td>Representative of the Kingdom of Cambodia</td>
</tr>
<tr>
<td>H.E. Rafendi Djamin</td>
<td>Representative of Indonesia</td>
</tr>
<tr>
<td>H.E. Bounkeut Sangsomsak</td>
<td>Representative of the Lao P.D.R</td>
</tr>
<tr>
<td>H.E. Dato’ Sri Muhammad Shafie Abdullah</td>
<td>Representative of Malaysia</td>
</tr>
<tr>
<td>H.E. U Kyaw Tint Swe</td>
<td>Representative of Myanmar</td>
</tr>
<tr>
<td>H.E. Rosario G. Manalo</td>
<td>Representative of the Republic of the Philippines</td>
</tr>
<tr>
<td>H.E. Richard R. Magnus</td>
<td>Representative of Singapore</td>
</tr>
<tr>
<td>H.E. Sriprapha Petcharamesree</td>
<td>Representative of the Kingdom of Thailand</td>
</tr>
</tbody>
</table>

Note: The CVs of the members of AICHR may be accessed at www.aseansec.org/22769.htm
Despite provisions in the ToR that the Member State should “give due consideration to gender equality, integrity and competence in the field of human rights” (Provision 5.3), there are only two women appointed to the 10-member AICHR. This is due to the lack of clear mechanism in the ToR to ensure gender balance will be achieved in the appointment process.

5. Institution Building

5.1 AICHR Meetings Shrouded in Secrecy

Following the inauguration of AICHR, the Commission had an introductory meeting the following day with Thailand as Chair. On 18-19 December 2009, the Commission had an informal meeting in Bangkok, Thailand.

The first official regular meeting of AICHR was held on 28 March to 1 April 2010 in Jakarta, Indonesia with Vietnam as Chair, as this coincided with its term to chair the ASEAN for 2010. A press release was issued by the Chair of AICHR on the outcome of the meeting. During the meeting, the Commission discussed the formulation of the Rules of Procedures, which was to lay down comprehensive guidelines for the conduct in all aspects of AICHR’s work. The Commission also discussed development of the Five-year Work Plan which is a roadmap of programmes and major activities to be undertaken by AICHR from 2010 to 2015. Both developments were originally expected to be completed in time for adoption by the 43rd ASEAN Ministerial Meeting (AMM) in July 2010. Although the Work Plan 2010-2015 was adopted in July, there is no official information regarding the Rules of Procedure, severely obstructing the efficiency and the speed of AICHR’s work. This problem will be elaborated in detail in Section 3.2.

The second official regular meeting occurred from 28 June to 2 July, 2010 in Da Nang, Vietnam. Again, no information on the agenda, proceeding, or outcome of this meeting is publicly available to this day. Regrettably this time, the AICHR did not even issue a press release to inform the result of their meeting as a matter of public interest.

The third meeting, which was an additional meeting to the second meeting, was held in Kuala Lumpur, Malaysia, from 20-24 September, 2010. It was learned that the meeting discussed the implementation of the Priority Programmes/Activities for 2010-2011 as a follow-up to its
Work Plan adopted at the recent 43rd AMM in July 2010. There were also discussions of the process of drawing up the Indicative Budget for the remaining period 2012-2015 to finalize the Five-Year Work Plan. The meeting also discussed the preparation for the drafting of the ASEAN Human Rights Declaration.

The press releases issued at the end of AICHR meetings are posted in the ASEAN website. On the whole, these releases omit the details of the meetings, nor do they give a full account of the decisions and agreements made.

SAPA TF-AHR demands AICHR meetings to be open and effective. We request the meeting details such as agenda, minutes and outcome to be disclosed to allow civil society organizations and general public to participate in the work of AICHR. These procedures are common in the Inter-American Commission on Human Rights and the African Commission on Human and People’s Rights. Regrettably, AICHR has been to a large extent shrouded in secrecy since its establishment with scant information released to the public.

5.2 Rules of Procedure

The AICHR has so far failed to adopt its Rules of Procedures, which are crucial as an operational guideline for its effective functioning. The negotiations on the Rules of Procedure hit a snag after objections from certain representatives. They asserted that the Commission could operate based on the ToR without any Rules of Procedure. With the consensual decision making principle within AICHR, the objection of these representatives practically became a veto. The incident is a classic illustration of how consensual decision making can slow down the progress of AICHR in making important decisions.

The SAPA TF-AHR submitted a comprehensive proposal\(^1\) for a Rules of Procedure of the AICHR on 17 March 2010. The submission was circulated to all members of AICHR.

The development of Rules of Procedure is essential and necessary. The Five-Year Work Plan as a matter of fact, relies on the development of Rules

\(^1\) The full text of the SAPA-TFAHR submission for the Rules of Procedure of the AICHR is on page 25 of this book.
of Procedures. Without Rules of Procedures, the Commission will be force to draft Terms of Reference for every major activity and programme. In other words, the absence of Rules of Procedures is severely detrimental to the smooth implementation of the Work Plan. The absence of Rules of Procedures also creates ambiguity regarding how AICHR will carry out its work and establish relationship with external parties.

5.3 Inadequate Budget and its Control

In establishing the AICHR, each Member State contributed US$20,000 as a seed fund for the operation of AICHR. This amount is relatively small when taking into account the situation of human rights in the region that need to be addressed by AICHR. This is far from the adequate amount that is needed, as promised by ASEAN in its Cha Am Hua Hin Declaration on AICHR.

To access this fund, AICHR submitted its Work Plan 2010-2015 with an indicative budget for 2010-2011 for the approval of the ASEAN Foreign Ministers Meeting in July 2010. The Work Plan and budget was already vetted by the Committee of Permanent Representatives (CPR) before going to the Foreign Ministers Meeting.

This process describes how member states have total control on how what kind of activities would be allowed in the Work Plan of AICHR and how the budget is going to be expended. This process clearly indicated that there is no financial autonomy for AICHR to carry out its work.

At the time of writing this report, AICHR has yet to receive any external funding for its activities.

5.4 Secretariat Support Under-Resourced

AICHR does not operate an independent secretariat but is supported by the ASEAN Secretariat, more specifically by the Director-General of the Political Security Community of ASEAN and its team. A new position, the Assistant Director for the Promotion and Protection of Human Rights was created in 2010 within ASEAN Secretariat to support the work AICHR. However, it must be noted that the whole team, including the Assistant Director for the Promotion and Protection of Human Rights, is not responsible only for AICHR, but a whole range of issues and institutions under the Political and Security Community of ASEAN.
In order for the AICHR to operate effectively and efficiently, AICHR will need an independent Secretariat of its own, including additional financial and human resources. AICHR should be given power to determine the recruitment of its staff for its own Secretariat based on the needs of the Commission. Gender balance and thematic representation should be ensured in the composition of the secretariat.

6. Implementation of the Mandate

The mandate and functions of AICHR as outlined in Article 4 of the ToR has 14 points. However, in this first year of its existence, it only managed to develop some work in four areas, namely: developing strategies to promote and protect human rights, thematic studies, advisory role to ASEAN sectoral bodies, and ASEAN Declaration of Human Rights.

6.1 Developing strategies to promote and protect human rights: the Five Year Work Plan

In its first year of operation, the AICHR managed to adopt its five year work plan for the period of 2010-2015. The work plan was subsequently presented along with the budget and approved by the ASEAN Foreign Ministerial Meeting in July 2010. Regrettably, the text of this work plan has not been made public.

As the general purpose of the commission is to promote and protect human rights, it should strive to have equal balance of work on promotion and protection of human rights in its work plan. However, basing the Work Plan on the ToR meant working with the ToR’s limitations. Despite the structural limitation, we believe it is still AICHR’s job to look at entry points to achieve the balance of promotion and protection mandates.

6.2 Thematic Studies

According to the Work Plan, AICHR is to prepare at least one study per year on the following 11 thematic issues relating to human rights:

- corporate social responsibility
- migration
- trafficking in person, particularly women and children
- child soldiers
- women and children in conflicts and disasters
The first thematic study to be conducted is on the issue of corporate social responsibility. The terms of reference of this thematic study is still being discussed by the Commission and has yet to be finalised.

SAPA TF-AHR welcomes AICHR’s decision to conduct thematic studies. It calls on AICHR to ensure that the studies are thorough, involving country visits, dialogue with stakeholders, in particular victims of relevant human rights violations, civil society organisations and experts. Each thematic study should be concluded in a wide-ranging report that should be made public and should include specific and detailed recommendations for individual states and other entities (such as corporations), as well as to ASEAN bodies.

6.3 Advisory role to ASEAN sectoral bodies

AICHR received its first task in its advisory role to ASEAN sectoral bodies when the ASEAN Health Ministers Meeting sought the opinion of the commission on the issue of HIV mandatory blood tests on migrant workers.

SAPA TF-AHR, along with Coordination of Action Research on Aids and Mobility in Asia (CARAM-ASIA), sent a written submission\(^2\) to AICHR on the issue of the mandatory blood testing on HIV on migrant workers when the commission met in September 2010 in Kuala Lumpur. The submission was acknowledged by Do Ngoc Son, Chairperson and Representative of Viet Nam to AICHR.

However, while SAPA welcomes the initiative of the Health Ministers, it is not known how what modalities have been developed, if any, for AICHR to produce advisory opinions to the ASEAN sectoral bodies. The

\(^2\) The full text of the submission by SAPA-TFAHR and CARAM-Asia to AICHR is on page 63 of this book.
Commission has yet to deliberate on the particular issue of mandatory blood test for HIV on migrant workers.

Their advisory role should not rely on the requests from the ASEAN sectoral bodies but should be proactively provided by the AICHR in all matters (agreements, activities, etc) of the ASEAN that will have an impact to the enjoyment of the peoples of the ASEAN to their human rights and fundamental freedoms. They should also provide advice to ASEAN Member States on improving their human rights performance.

6.4 ASEAN Human Rights Declaration

AICHR is mandated to draft an ASEAN Human Rights Declaration under Article 4.2 of its ToR. As of the time of writing, the AICHR is still discussing the terms of reference of the drafting team and its processes. Again, very little information has so far been made available to the public on this very important issue of human rights standard setting in the region. SAPA-TFAHR hopes that the drafting process includes consultations at the national and regional level with civil society, national human rights institutions and other.

7. Handling of Human Rights Violation Cases

In the first year of AICHR, SAPA-TFAHR recorded a total of 16 cases of human rights violations submitted to the commission. Of these cases, 15 were submitted during the AICHR’s first meeting in Jakarta and one case during the AICHR meeting in Kuala Lumpur. The cases submitted are as follows:

<table>
<thead>
<tr>
<th>Case Submissions to the AICHR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thematic issue</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Migrant workers</td>
</tr>
<tr>
<td>Press freedom and freedom of expression</td>
</tr>
<tr>
<td>Past human rights violations on crime against humanity</td>
</tr>
</tbody>
</table>

3 Copies of the case submissions to the AICHR are compiled in the third section of this book, beginning on page 73
A Performance Report on the first year
of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

<table>
<thead>
<tr>
<th>Issue</th>
<th>Count</th>
<th>Country</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mass Killings</td>
<td>1</td>
<td>Philippines</td>
<td>Center for International Law</td>
</tr>
<tr>
<td>Women’s rights</td>
<td>1</td>
<td>Indonesia</td>
<td>Koalisi Perempuan Indonesia Untuk Keadilan dan Demokrasi</td>
</tr>
<tr>
<td>Death penalty</td>
<td>1</td>
<td>Singapore/Malaysia</td>
<td>Save Vui Kong Campaign</td>
</tr>
</tbody>
</table>

During the meeting of AICHR in March 2010, civil society organizations who made the submission of cases to AICHR were informed by the Chair of AICHR that the commission was not able to receive these cases on the ground that the Commission has yet to adopt its Rules of Procedures on how to handle cases of human rights violations submitted to them. The Chair of the Commission refused to come out from their meeting at the ASEAN Secretariat to receive these cases, instead dispatched the Director for Community Affairs Development Directorate, Dr. Anish Roy to meet with the delegation from civil society organizations. In the mean time, Rafendi Djamin, the Indonesia representative to AICHR, came out to meet with civil society delegation and received the cases in his own capacity.

ASEAN Director for Community Affairs Development Directorate, Dr. Anish Roy (left photo) relays the message to civil society the Commission was not able to meet with them as there was still no clear mechanism developed on how to engage with external parties. Meanwhile, Indonesia representative to the AICHR Rafendi Djamin (right photo) meets in his personal capacity members of civil society groups presenting cases to the AICHR outside the gates of the ASEAN Secretariat.
8. Consultation with Stakeholders, including Civil Society and NHRIs

8.1 Consultation at National Level

The performance of AICHR in engaging and consulting civil society and other stakeholders, especially on the regional level and as regards the national human rights institutions in the region, has been very disappointing.

At the national level, while there were meaningful engagement made between civil society organisations in some Member States such as Thailand and Indonesia, this is not the case in other countries. In Singapore, the AICHR representative called two meetings with civil society organizations but more meaningful sharing of information and exchange of views is needed. In Malaysia, the AICHR representative failed to organize any consultation meeting with civil society, and only met once with civil society on the work of AICHR— as a speaker at a forum of the Bar Council of Malaysia. For the rest of the countries, the representatives have yet to conduct any meaningful engagement with civil society organisations since their appointment.
8.2 Consultation at Regional Level

At the regional level, throughout the whole year since its establishment, the AICHR has failed to engage and consult with civil society organizations and other stakeholders in the process. Both the SAPA-TFAHR and the four national human rights institutions in Indonesia, Malaysia, Thailand and the Philippines had requested for a dialogue with AICHR during its meetings in March and September 2010. These requests were rejected by the AICHR on the ground again that the commission has yet to adopt the Rules of Procedure that define its engagement with external parties.

The one and only group met by the AICHR in September 2010 was the Working Group for an ASEAN Human Rights Mechanism, which is one of the 76 organizations as listed as “entities associated with ASEAN”.

The practice adopted by the AICHR pending the completion of its Rules of Procedures to only engage and consult organizations listed under Annex 2 of the ASEAN Charter is unacceptable and unjustifiable. It must be noted that Article 4.9 of the ToR also stipulates that the commission may consult with other national, regional and international institutions and entities concerned with the promotion and protection of human rights.

AICHR’s refusal over the past year to consult and meet with civil society organizations, and other stakeholders, including the four national human rights institutions in the region is therefore disappointing. As a matter of fact, consultations with civil society and other stakeholders took a step backwards, when compared with the practice of the High Level Panel that drafted the ToR. There were engagements between High Level Panel on an ASEAN Human Rights Body and civil society organizations on multiple levels throughout the drafting process of the ToR.

9. Conclusion

The inauguration of AICHR was met with mixed responses. As one researcher noted,

Does all this herald a new era of steady progress towards the realisation of human rights in Southeast Asia, or are these developments little more than a legitimacy-seeking, ‘window-dressing’ exercise, not to be followed by any concrete implemen-
Hiding Behind Its Limits

tation? Or, perhaps worse, is ASEAN on the road to launching a new, alternative and possibly more restrictive version of human rights to rival the by-and-large uniform version prevailing internationally as well as in other regions? (Ginbar 2010: p. 505)

AICHR’s performance in its first year has seen some positive developments, but overall it is disappointing and worrisome on several accounts.

First, access to official information is difficult with the Commission. In terms of transparency and accountability, little information was made available to the public on the meeting agenda of the commission, the outcome of the meetings, the decisions made by individual representatives in the commission. Many documents of the commission that are of public interest should have been circulated to enable broader participation.

Second, there was very little meaningful consultation and participation of civil society and other stakeholders, including the four national human rights institutions in the region. Only a minority of the commission’s members have conducted some form of consultation with civil society at the national level, while the commission as a whole has rejected any form of consultation or dialogue at the regional level.

Third, consensual decision making has hampered the efficiency and effectiveness of the commission. This is illustrated in its failure to adopt the Rules of Procedures at the time of writing.

Fourth, there seems to be resistance by several representatives in the commission to have clear working modalities to be outlined for the commission to conduct its work more efficiently and effectively. The fact that the commission needs to draft terms of reference for activity, such as conducting thematic studies, taking on advisory roles, and standard setting; its failure to meet with relevant stakeholders, including civil society; and its refusal to officially receive cases of human rights violations are all made on the justification that there is no rules of procedure in place. This underscores the urgent need for the commission to adopt a set of comprehensive and effective rules of procedure in order for it to function effectively and efficiently.

---

Fifth, the independence and the credibility of the commission are still unresolved with the questionable selection criteria, and appointment processes of the representatives to AICHR in many countries. This has been illustrated in the career background of the members appointed to the AICHR.

Sixth, the resources provided to the AICHR, has not been sufficient and adequate, in both financial and human resources, at both national and regional level. Without the much needed resources, the AICHR would not be able to function efficiently and effectively.

Seventh, the protection mandate of the AICHR is yet to be clearly spelled out in their Work Plan. Furthermore, there is no clear mechanism within the AICHR on how it will ensure the protection of the rights of disadvantaged and marginalized sectors.

While establishment of the Commission indeed is significant and to be congratulated, AICHR needs to critically review its work in the past year and strive to improve in the coming years.

In conclusion, SAPA TF-AHR recommends the following:

For AICHR

1. AICHR should allow civil society to observe at least some of the meetings of the commission, to ensure transparency and accountability. AICHR should make information about its activities more accessible, in line with Article 6.7 of its ToR.

2. AICHR needs to uphold Article 4.9 in its own ToR and engage and consult with civil society organizations and other stakeholders, especially the four national human rights institutions in a broad and meaningful manner at national and regional level. The consultation should not only focus on the program work of the commission, but also institution building issues such as the adoption of the rules of procedure for the commission.

3. AICHR should adopt its Rules of Procedure as soon as possible. The rules of procedure should, among others, ensure that AICHR is able to receive and investigate individual and other complaints of human
right violations, make country visits, publish annual reports assessing each member state’s human rights record and engage fully with civil society.

4. AICHR members should act impartially in their work despite being appointed by member states to ensure the independence and credibility of AICHR.

5. AICHR should establish its own separate secretariat capable of independent operation and fiscal autonomy. The composition of the secretariat should ensure gender balance and thematic representation.

6. As the mandates of the AICHR is both to promote and protect human rights, the workplan of AICHR for the period of 2010–2105 should be adjusted to reflect better balance for both promotion and protection of human rights in its work program and budget allocation. It should also reflect the monitoring of the adherence of member states to their international obligations.

7. AICHR should assign focal persons and set up working groups to handle particular issues such as indigenous peoples, refugees, and persons with disability to look into the respect, protection and implementation of the rights of these groups.

8. The ASEAN Declaration on Human Rights should be drafted in broad consultation with civil society and all stakeholders. It must fully uphold international human rights law and standards as enshrined in the Universal Declaration of Human Rights and take note of developments in human rights law since. It must contain no compromises on the level of protection and respect for all human rights for all peoples in ASEAN.

For ASEAN

1. ASEAN should rectify the deficiencies within the TOR as illustrated in this report at the earliest possibility

2. All other member states are encouraged to adopt transparent and participatory nomination and selection processes of their representative to AICHR, as in the case of Thailand and Indonesia.
3. ASEAN should develop clear mechanism to ensure that the selection of members to AICHR will be gender-balanced.

4. ASEAN should provide adequate financial resources to AICHR and allow financial autonomy in order for AICHR to carry out its mandates and functions effectively and efficiently.

5. ASEAN should support the establishment of a separate and independent secretariat for AICHR that are staffed with adequate human resources.

Solidarity for Asian People’s Advocacy
Task Force on ASEAN and Human Rights (SAPA-TFAHR)
27 October 2010
ANNEX 1: Timeline of AICHR’s Activities

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 October 2010</td>
<td>Inauguration of AICHR</td>
<td>Cha-Am, Thailand</td>
</tr>
<tr>
<td>Oct. 24, 2009</td>
<td>Introductory meeting</td>
<td>Cha-Am, Thailand</td>
</tr>
<tr>
<td>Dec. 18-19, 2009</td>
<td>First informal meeting of AICHR</td>
<td>Bangkok, Thailand</td>
</tr>
<tr>
<td>March 17, 2010</td>
<td><strong>Civil Society:</strong> SAPA TF-AHR submission of a proposal for a Rules of Procedure of the AICHR</td>
<td>Jakarta, Indonesia</td>
</tr>
</tbody>
</table>
| March 28 – April 1, 2010 | First Regular meeting of AICHR  
The Commission discussed the formulation of the Rules of Procedures, which was to lay down comprehensive guidelines for the conduct in all aspects of AICHR’s work. The Commission also discussed development of the Five Year Work Plan which is a roadmap of programmes and major activities to be undertaken by AICHR from 2010 to 2015. Both developments were originally expected to be completed in time for adoption by the 43rd ASEAN Ministerial Meeting (AMM) in July 2010.  
**Civil Society:** SAPA TF-AHR submitted 15 cases of human rights violation during the meeting. The cases were returned by the AICHR on the ground that the Commission is yet to adopt its Rules of Procedures on how to handle cases of human rights violations submitted to them. The thematic issues of the submitted cases were: migrant workers; press freedom and freedom of expression; past human rights violation on crime against humanity; killings in Maguindanao; and women’s rights. | Jakarta, Indonesia     |
| June 28- July 2, 2010 | Second Regular meeting of AICHR  
No information on agenda, proceedings or outcome is publicly available. | Da Nang, Vietnam       |
| July 15-23, 2010      | 43rd ASEAN Foreign Ministerial Meeting (AMM)  
AICHR Work Plan 2010-2015 was adopted | Ha Noi, Vietnam         |
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sep. 19, 2010</td>
<td><strong>Civil Society:</strong> CARAM-ASIA and SAPA TF-AHR presented a submission on issue of the Mandatory Blood Testing on HIV on Migrant Workers after AICHR was assigned an advisory role on the matter by the ASEAN Health Ministerial Meeting. CSOs are still waiting for a response from the AICHR.</td>
<td>Kuala Lumpur, Malaysia</td>
</tr>
<tr>
<td>Sep. 20-24, 2010</td>
<td>Additional Meeting of AICHR The meeting discussed the implementation of the Priority Programmes/Activities for 2010-2011 as a follow-up to its Work Plan adopted at the recent 43rd AMM in July 2010. There were also discussions of the process of drawing up the Indicative Budget for the remaining period 2012-2015 to finalize the Five-Year Work Plan. The meeting also discussed the preparation for the drafting of the ASEAN Human Rights Declaration.</td>
<td>Kuala Lumpur, Malaysia</td>
</tr>
<tr>
<td>Sep. 24, 2010</td>
<td><strong>Civil Society:</strong> The Save Vui Kong Campaign submitted a case of Yong Vui Kong, a Malaysian youth who was sentenced death in Singapore for drug Trafficking. The case was received by a Malaysian Representative to AICHR, Muhammad Shafee Abdullah, who indicated his will to look into the issue and also attend Yong’s judicial review in Jan. 2011.</td>
<td>Kuala Lumpur, Malaysia</td>
</tr>
<tr>
<td>Oct. 27, 2010</td>
<td><strong>Civil Society:</strong> SAPA TF-AHR launched a report reviewing the first-year performance of the AICHR in a press conference.</td>
<td>Bangkok, Thailand</td>
</tr>
</tbody>
</table>
Hiding Behind Its Limits
SAPA TFAHR Submissions to the AICHR
A Proposal for the Rules of Procedure of the
ASEAN Intergovernmental Commission on Human Rights

Submitted by
SAPA Task Force on ASEAN Human Rights*
17 March 2010

Outline
Title I: Organization Of The Commission
Chapter I Nature And Composition
Chapter II Membership
Chapter III Executive Secretariat
Chapter IV Functioning

Title II: Procedures
Chapter V Petitions To The Commission
Chapter VI On-Site Observations
Chapter VII Annual Report And Other Reports Of The Commission
Chapter VIII Hearings Before The Commission
Chapter IX Promotional Activities
Chapter X Participation Of Non-Members Of The Commission
Chapter XI Function As Overarching Human Rights Body Within Asean

Title III: Final Provisions

* Secretariat: FORUM-ASIA, 246 Times Square Building, 12 Fl., Room12-04, Sukhumvit Road, Between Soi 12-14 Khlong Toei, Bangkok 10110, Thailand. Tel: (66-2) 6532940-1 Fax: (66-2) 6532942
A PROPOSAL FOR
THE RULES OF PROCEDURE
OF THE ASEAN INTERGOVERNMENTAL
COMMISSION ON HUMAN RIGHTS

Having regard to the ASEAN Charter and;

Pursuant to the Terms of Reference of the ASEAN Intergovernmental
Commission on Human Rights;

And reaffirming and guided by the UN Charter, the Universal Declara-
tion of Human Rights, the Vienna Declaration, international bill of rights
and other international human rights instruments, principles and standards;

Adopts the present Rules:

TITLE I
ORGANIZATION OF THE COMMISSION

CHAPTER I
NATURE AND COMPOSITION

Article 1. Nature and Composition
1. The ASEAN Intergovernmental Commission on Human Rights
(the Commission) is an integral part of the ASEAN organizational structure. Its principal functions are to promote and protect
human rights and fundamental freedoms of the peoples of ASEAN
in accordance with international human rights law and standards.
2. The Commission serves as the overarching institution for human
rights for the ASEAN Community.

CHAPTER II MEMBERSHIP

Article 2. Membership and Duration of Terms of Office
1. The members of the Commission shall be appointed for three
years and may be consecutively re-appointed for only one more
term.
2. The Commission is composed of members appointed by each
ASEAN Member State giving due consideration to gender equal-
ity. They shall be persons of high moral character and recognized competence in the field of human rights.

3. Each Member State conducting the internal processes in selecting its representative to the Commission, shall consult with appropriate stakeholders and select the representative in a fair and transparent manner. Civil society may nominate candidates for the selection.

4. Each member of the Commission shall act impartially in discharging his or her duties, upholding human rights principles rather than serving any other interests.

5. The term of office of newly appointed members of the Commission shall commence on the day following the expiry date of the term of office of the members of the Commission they replace.

6. In the event that new members of the Commission have not been appointed to replace those completing their term of office, the latter shall continue to serve until the new members are appointed.

7. The appointing government may decide to replace its representative. Such a decision may only take place in the event that the incumbent is found to be seriously incapacitated, has committed a serious internationally recognizable offense, has engaged in misconduct that has brought disrepute upon the Commission, or has violated these Rules of Procedure. In such a case the appointing government shall officially notify the Commission of the reasons for such replacement. The procedure for the removal of a representative shall be transparent and just, with respect for the due process rights of the individual involved.

Article 3. Cessation of Functions

1. If in the unanimous opinion of the other members of the Commission, a member has ceased to discharge his or her duties for any reason other than a temporary absence, the Chair of the Commission shall inform the Secretary General of ASEAN, who shall then declare the seat vacant.

2. In case of the death or resignation of a member of the Commission, the Chair shall immediately inform the Secretary General who shall declare the seat vacant from the date of the death or from that on which the resignation took effect. The member of the Commission who resigns shall address a written notification of his or her resignation directly to the Chair and steps to declare his or her seat vacant shall only be taken after receiving the said notification.
Article 4. Incompatibility
1. A member of the Commission shall be deemed ‘incompatible’ if she or he undertakes activities which could adversely affect the independence or impartiality of the member in accordance with international human rights law, or the dignity or prestige of the office. Upon taking office, members shall undertake not to represent victims or their relatives, or States, in precautionary measures, petitions, communications, or hearings before the Commission for a period of two years, counted from the date of the end of their term as members of the Commission.
2. The other members of the Commission, by consensus only, shall determine whether a situation of incompatibility exists.
3. The Commission, prior to taking a decision, shall hear the member whose activities are claimed to be incompatible.
4. Where the Commission decides a situation of incompatibility exists, the decision, together with the relevant information, shall be sent to the Secretary General who shall declare the seat vacant.

CHAPTER III
EXECUTIVE SECRETARIAT

Article 5. Nature and Composition
1. The Commission shall establish an Executive Secretariat to support its work and help it fulfil its functions of promoting and protecting human rights.
2. The Executive Secretariat of the Commission shall be composed of an Executive Secretary and at least one Assistant Executive Secretary, as well as with the professional, technical and administrative staff needed to carry out its activities.
3. The Executive Secretary shall be appointed by the ASEAN Secretary General using a fair and transparent recruitment process, with due consideration to his or her competence and commitment to human rights.
4. The Executive Secretary in consultation with the Commission shall hire all staff within the Executive Secretariat using a fair and transparent recruitment process. The staff shall be independent and qualified, and be appointed with due consideration to gender equality and geographical representation.
**Article 6. Duties of the Executive Secretary**

1. The Executive Secretary shall:
   a. direct, plan, and coordinate the work of the Executive Secretariat and coordinate the operational and technical aspects of the tasks assigned to members, sub-commissions, working groups and rapporteurs.
   b. prepare, in consultation with the Chair, the draft work plan and program budget of the Commission, which shall be governed by the applicable financial rules of ASEAN, and with respect to which he or she shall report to the Commission;
   c. prepare the provisional agenda for each session in consultation with the Chair;
   d. advise and assist the Chair and members of the Commission in the performance of their duties;
   e. present a written report to the Commission at the beginning of each session on the activities of the Secretariat since the previous session, and on any general matters that may be of interest to the Commission; and
   f. implement any other activities entrusted to him or her by the Commission or its Chair.

2. The Assistant Executive Secretary shall replace the Executive Secretary in the event of his or her absence or incapacity. In the absence or incapacity of both, the Chair shall designate a member of the Executive Secretariat as a temporary replacement.

3. The Executive Secretary, Assistant Executive Secretary, and staff of the Executive Secretariat shall observe the strictest discretion in all matters the Commission considers confidential. Upon taking office, the Executive Secretary shall undertake not to represent victims or their relatives, or States, in precautionary measures, petitions, communications, or hearings before the Commission for a period of two years, measured from the time he or she ceases to discharge the functions of Executive Secretary.

**Article 7. Functions of the Executive Secretariat**

1. The Executive Secretariat shall prepare draft reports, resolutions, studies and any other work entrusted to it by the Commission. In addition, it shall receive and process correspondence, petitions and communications addressed to the Commission. The Executive Secretariat may also request that interested parties provide any
A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

information it deems relevant, in accordance with the provisions of these Rules of Procedure.

2. In accordance with Article 19 of the ASEAN Charter, members of the Commission’s Executive Secretariat shall enjoy such immunities and privileges as are necessary for the exercise of their duties.

**Article 8. Work Plan and Funding**

1. The Commission shall prepare its work plan and budget in consultation with civil society organizations, national human rights institutions and other stakeholders.

2. The Commission may periodically re-assess its financial requirements, and re-designate funds based on changing priorities with notification to the ASEAN Secretariat, or seek additional funding from the association or from external sources.

3. The Commission’s annual budget and funding should be transparent and subject to public scrutiny. The Commission shall report the identity and amount of all funding sources in its annual report.

**CHAPTER IV FUNCTIONING**

**Article 9. Mandate and Functions**

In carrying out its mandate and functions as provided in its Terms of Reference and Rules of Procedure, the Commission, its members and its staff shall at all times:

a. strictly apply and work for the application of international human rights law and standards;

b. ensure civil society participation in its processes and activities, to the greatest extent possible;

c. adhere to the human rights principles of equality and non-discrimination in its work, including in regard to civil society participation and involvement, recruitment and appointment to any bodies or mechanisms it creates;

d. whenever it receives complaints from, utilises testimonies of or in any way communicates with petitioners, victims and witnesses of human rights violations and human rights defenders, ensure that their rights are fully protected and that appropriate measures are taken to protect them and their families from any harm, taking into account considerations such as gender, cultural sensitivities and language;
e. maintain impartiality, professionalism, standards of good governance, equity and transparency; and
f. seek to benefit from the expertise and experience of groups, organizations and individuals as well as human rights best practices and positive developments within the region and internationally.

Article 10. Sessions
1. The Commission shall hold at least two regular sessions per year and as many special sessions as it deems necessary. Prior to the conclusion of each session, the date and place of the next session shall be provisionally determined, and announced.
2. Sessions shall ordinarily be open to the public.
3. Each regular session shall include a consultation meeting with civil society organizations.
4. The regular sessions of the Commission shall be held either at the ASEAN Secretariat or the Member State holding the chair of ASEAN.
5. Any member who because of illness or for any other serious reason is unable to attend all or part of any session of the Commission, or to fulfil any other function, shall notify the Executive Secretary as soon as possible. The Executive Secretary shall inform the Chair and ensure that those reasons appear in the record.
6. The Commission may decide to hold extraordinary sessions. When the Commission is not in session, the Chair may convene extraordinary sessions on his or her own motion, on the request of the majority of the Commission members, or at the request of the Secretary General of ASEAN.
7. Extraordinary sessions shall be convened as soon as possible on a date fixed by the Chair, in consultation with the Secretary General and the members of the Commission.
8. The Executive Secretary of the Commission shall inform members of the date and venue of the first meeting of each session, as well as publish this information. This notification shall be made, in the case of an Ordinary Session, at least eight (8) weeks before this session’s first meeting, and as soon as possible, in the case of extraordinary sessions.

Article 11. Provisional Agenda
1. The Provisional Agenda for each regular session shall be drawn up by the Executive Secretary in consultation with the Chair, taking into consideration items proposed by:
A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

a. the Commission at a previous Session;
b. the Chair or another member of the Commission;
c. a State party to the ASEAN Charter;
d. the ASEAN Summit or the ASEAN Foreign Minister’s Meeting;
e. civil society organizations;
f. national human rights institutions; and,
h. ASEAN sectoral human rights bodies.

2. Secretary General of ASEAN on any human rights issue relating to functions assigned to him or her by the Charter, so long as it is made in accordance with sub-article 3 of this article.

3. Items to be considered for inclusion in the provisional agenda shall be communicated to the Executive Secretary, accompanied by relevant documents, no later than eight (8) weeks before the opening of the Session.

4. The Provisional Agenda of extraordinary sessions of the Commission shall include only the item(s) proposed to be considered at that Extraordinary Session.

Article 12. Transmission and Distribution of the Provisional Agenda

The Provisional Agenda and the essential documents relating to each item shall be distributed to the members of the Commission and posted on the website of the Commission by the Executive Secretary at least six (6) weeks before the opening of the relevant session of the Commission.

Article 13. The Chair

1. The Chair shall carry out the functions assigned to him or her by the Terms of Reference, the Rules of Procedure and the decisions of the Commission, upholding human rights principles rather than serving any other interests. In the exercise of his or her functions, the Chair shall be under the authority of the Commission.

2. The Chair shall:
   a. preside over sessions of the Commission and submit to it for consideration all matters appearing on the agenda;
   b. give the floor to the members in the order in which they have requested it;
   c. decide on points of order raised during the deliberations;
   d. promote the work of the Commission and oversee compliance with its budget and work plan;
e. present a written report to the Commission at the beginning of each regular session on what he or she has done during its recesses to carry out the functions assigned to him or her by the Terms of Reference and these Rules of Procedure;
f. seek and monitor compliance with the decisions of the Commission;
g. attend, or assign other members of the Commission to attend, the meetings of the ASEAN Summit, the ASEAN Foreign Ministers Meeting and other ASEAN activities related to the promotion and protection of human rights.

Article 14. The Vice Chair
1. The Commission shall elect from among its members a Vice-Chair.
2. The elections referred to in the present Rule shall be held by secret ballot. Only the members present shall vote; the member who obtains absolute majority of the votes of the members present shall be elected.
3. If no member obtains an absolute majority in a second, third and fourth ballot, the member who obtains the highest number of votes at the fifth ballot shall be elected.
4. The Vice Chair shall be elected for a period of one year. He or she shall be eligible for re-election.

Article 15. Absence of the Chair
1. The Vice Chair shall replace the Chair during a session if the latter is unable to attend it in whole or in part.
2. In the absence of both the Chair and Vice Chair, members shall elect by an absolute majority, a temporary acting Chair.

Article 16. Functions of the Vice Chair
The Vice Chair, when acting in the capacity of the Chair, shall have the same powers and duties as the Chair.

Article 17. Cessation of the Functions of Chair and Vice Chair
1. If the Chair ceases to function, as provided in Articles 3 or 4, the Vice Chair shall act in capacity of the Chair.
2. If the Vice Chair ceases to function, as provided in Articles 3 or 4, or else resigns from the office of Vice Chair but not from the Commission, the Commission shall proceed at its earliest convenience to elect a new Vice Chair, in accordance with Article 14 of
these Rules. The Chair may appoint an interim Vice-Chair from among Commission members.

**Article 18. Establishment of Sub-Commissions and Rapporteurships**

1. The Commission may establish sub-commissions of individuals with high moral character and proven expertise to carry out specific tasks, including drafting new ASEAN human rights standards. The Commission shall determine the functions and composition of each sub-commission.

2. The Commission may appoint individuals with high moral character and proven expertise as country or thematic rapporteurs. The rapporteurs will be responsible for carrying out the mandate assigned by the Commission and will report to the Commission at least once a year on the activities undertaken.

3. The grounds for the decision to create a sub-commission or rapporteurship with a given mandate will be expressed in a resolution adopted by the Commission members in which the following will be recorded:
   a. The definition of the conferred mandate, including its functions and scope; and
   b. The description of the activities to be carried out and the methods of projected financing meant to cover the costs of these activities.

4. Prior to the appointment process, and during the exercise of their functions, sub-commission members and rapporteurs must disclose to the Commission any existing or emerging interest which may be deemed in conflict with their mandate.

5. At least every three years the Commission shall consider the functioning and mandate of the sub-commissions and rapporteurships, and decide on whether they should be continued, modified or discontinued. A decision to discontinue the work of a sub-commission or rapporteurship shall not prejudice the Commission's power to appoint a sub-commission or rapporteurship with an identical or similar mandate at a later date.

6. Rapporteurs and sub-commission members shall serve for a period of three years, renewable once, unless the mandate of the rapporteurship or sub-commission specifies otherwise. The Commission, by an absolute majority of its members, may decide to replace a rapporteur or sub-commission member at any time for a reasonable cause.
7. Rapporteurs and sub-commission members shall perform their duties in coordination with the Executive Secretary, who may delegate to them the preparation of reports on petitions and cases.

8. Sub-commissions and rapporteurs shall present their work plans to the Commission for approval. They shall report in writing to the Commission, at least annually, on the work undertaken.

9. All sub-commissions and rapporteurs shall advise the Commission with respect to issues they have become aware of that may be considered matters of controversy, grave concern or special interest for the Commission.

**Article 19. Committees and Working Groups**

1. The Commission may, if it deems necessary for the exercise of its function, establish from among its members, committees or working groups, and assign them specific tasks or mandates, including carrying out capacity building, conducting studies and other programs.

2. The members of the committees and working groups shall be appointed by the Chair in consultation with the members of the Commission.

3. The committees or working groups may appoint external persons with proven expertise to assist them, in consultation with the Chair.

4. The committees or working groups may meet when the Commission is not in session.

**Article 20. Quorum**

The presence of an absolute majority of the members of the Commission shall be necessary and sufficient to constitute a quorum.

**Article 21. Discussion, Voting and Disqualification**

1. Members of the Commission may not participate in the discussion, investigation, deliberation or decision on any matter submitted to the Commission in the following cases:
   a. if they are nationals of the State which is the subject of the general or specific consideration;
   b. if they have previously participated in any capacity in a decision concerning the same facts on which the matter is based or have acted as an adviser to, or representative of any of the parties interested in the decision; or,
   c. if they believe for any reason that they cannot be impartial on the matter at hand.
2. Any member may raise the issue of the disqualification from discussion, investigation, deliberation or decision of themselves or another member on the basis of the grounds set forth in paragraph 1 of this article. The Commission shall then decide if the disqualification is warranted.

3. When the Commission is not meeting in regular or special session, the members may deliberate and decide on matters within their competence by the means they consider appropriate and in accordance with Article 22 of these Rules.

**Article 22. Decision Making**

Decision-making in the Commission shall be based on consultation, especially with civil society organizations, and consensus among qualified and present members, bearing in mind Article 21 of these Rules. Where a consensus cannot be reached, decisions may be made by an absolute majority of qualified and present members, as per Article 20.3 of the ASEAN Charter.

**Article 23. Explanation of Vote**

1. Whether or not members agree with the decision of the Commission, they shall be entitled to present a written explanation of their vote, which shall be included following the text of any communication of that decision.

2. If the decision concerns the approval of a report or preliminary report, the explanation of the vote shall be included following the text of that report or preliminary report.

3. When the decision does not appear in a separate document, the explanation of the vote shall be included in the minutes of the meeting, following the decision in question.

4. The explanation of vote shall be presented in writing, to the Executive Secretariat, within the 30 days of the decision. In urgent cases, an absolute majority of the members may stipulate a shorter period. Once that deadline has elapsed, and no written explanation of the vote has been presented to the Executive Secretariat, the member in question shall be deemed to have desisted from submitting an explanation of his or her vote, without prejudice to his or her dissent being recorded.
**Article 24. Minutes of the Sessions**

1. Summary minutes shall be taken of each session. They shall state the day, time and place at which it was held, the names of the members and anyone else present, the matters dealt with, the decisions taken, and any statement made by a member especially for inclusion in the minutes. These minutes are confidential internal working documents, but may be posted fully, upon approval, on the Commission’s website if there is a consensus to that effect among participating members.

2. The Executive Secretariat shall distribute copies of the summary minutes of each session to the members of the Commission, who may present their observations to the Secretariat prior to the sessions at which those minutes are to be approved. If there has been no objection as of the beginning of that approval session, the minutes shall be considered approved.

**Article 25. Languages of Operation**

1. The official working language of the Commission shall be English in accordance with the ASEAN Charter.

2. All reports, key documents, and communications shall be translated and published in a timely manner by the Commission into the national languages of the ASEAN member states, as well as any other languages or mediums deemed specifically relevant to the issues discussed, taking into account the countries involved, the identities and languages of the petitioner, witnesses or victims, and the needs of peoples with disabilities.

3. Communications submitted to the Commission may be made in the language of communicator. The Commission shall be responsible for translating these communications into the Commission’s working language. Any communication sent back to this communicator shall be in the language of the original communication sent to the Commission, unless otherwise advised by the communicator in writing.
TITLE II
PROCEDURES
CHAPTER V
PETITIONS TO THE COMMISSION

Article 26. Presentation of Petitions
Any person or group of persons or nongovernmental entity may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right recognized in customary international law, the Universal Declaration of Human Rights, any treaties or other human rights instruments adopted by ASEAN, or any declaration, covenant, treaty or law ratified by the State in question. The petitioner may designate an attorney or other person or persons to represent him or her before the Commission.

Article 27. Precautionary Measures
1. In serious and urgent cases, and whenever necessary according to the information available, the Commission may, either on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.
2. If the Commission is not in session, the Chair, or, in his or her absence, the Vice Chair, shall consult with the other members, through the Executive Secretariat, on whether or not to make a request in line with the previous paragraph. If it is not possible to consult within a reasonable period of time under the circumstances, the Chair or, where appropriate, the Vice Chair shall take the decision on behalf of the Commission and shall so inform its members.
3. The Commission may request information from the Member State and other interested parties on any matter related to the adoption and observance of the precautionary measures.
4. The requesting of such measures and their adoption by the Member State shall not constitute a prejudgment on the merits of a case.

Article 28. Initial Review of petitions or communications
1. The Executive Secretariat of the Commission shall be responsible for the study and initial processing of petitions or communications
lodged before the Commission that fulfil all the requirements set forth in these Rules of Procedure.

2. If a petition or communication does not meet the requirements called for in these Rules of Procedure, the Executive Secretariat may request that the petitioner or his or her representative satisfy those requirements that have not been fulfilled.

**Article 29. Requirements for the Consideration of Petitions**

Petitions addressed to the Commission shall contain the following information:

a. the name, nationality and signature of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, the name and signature of its legal representative(s);

b. whether the petitioner wishes that his or her identity be withheld from the State;

c. the address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;

d. an account of the act or situation that is being denounced, specifying the place and date of the alleged violations;

e. the rights violated, and, if possible, where these rights are recognized in the Universal Declaration of Human Rights, any treaties or other human rights instruments adopted by ASEAN or any declaration, covenant or treaty relevant to legal obligations of the State(s) in question;

f. if possible, the names or identity of the victim(s) and of any public authority who has taken cognizance of the fact or situation alleged;

g. the Member State(s) and its institutions that the petitioner considers responsible, by act or omission, for the violation;

h. any steps taken to exhaust domestic remedies, or an indication of the impossibility of doing so; and,

i. an indication of whether the complaint has been submitted to another international settlement proceeding.

**Article 30. Initial Processing**

1. The Commission, acting initially through the Executive Secretariat, shall receive and carry out the initial processing of the petitions presented as follows:

   a. it shall receive the petition, register it, record the date of receipt
on the petition itself and acknowledge receipt to the petitioner;

b. if the petition on the face of it does not meet the requirements of these Rules of Procedure, it may request that the petitioner or his or her representative complete them in accordance with Article 29 of these Rules;

c. if the petition sets forth distinct facts, or if it refers to more than one person or to alleged violations not interconnected in time and place, the claims may be divided and processed separately, so long as all the requirements of Article 29 of these Rules are met;

d. if two or more petitions address similar facts, involve the same persons, or reveal the same pattern of conduct, they may be joined and processed together;

e. in the situations provided for in subparagraphs c and d, it shall give written notification to petitioners.

2. In serious or urgent cases, the Executive Secretariat shall immediately notify the Commission.

**Article 31. Admissibility Procedure**

1. The Commission, through its Executive Secretariat, shall process the petitions that meet the requirements set forth in Article 29 of these Rules.

2. It shall forward the relevant parts of the petition to the State in question, requesting a response, including the applicable deadline, contact information, and postal address of the Commission. The identity of the petitioner or named witnesses shall not be revealed without his or her express authorization. The request to the State for information shall not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition or its merits.

3. The State shall submit its response within two months from the date the request is sent. The Executive Secretariat shall evaluate requests for extensions of this period that are duly founded. However, it shall not grant extensions that exceed three months from the date of the first request for information sent to the State.

4. In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, the Commission shall request the promptest reply from the State, using for this purpose the means it considers most expeditious.

5. Prior to deciding upon the admissibility of the petition, the Com-
mission may invite the parties to submit additional information, either in writing or through a hearing, as provided for in Chapter VIII of these Rules.

6. Once the information has been received or the period set has elapsed with no information received, the Commission shall verify whether the grounds for the petition are valid. If it considers that they are not, it shall order the case archived without prejudice.

7. In the cases envisioned in sub-paragraph 4 of this Article, the Commission may request that the State present its response and observations on the admissibility and the merits of the matter. The response and observations of the State shall be submitted within a reasonable period, to be determined by the Commission in accordance with the circumstances of each case.

**Article 32. Exhaustion of Domestic Remedies**

1. To decide on the admissibility of a matter, the Commission in accordance with Article 21 of these rules shall decide whether the remedies of the domestic legal system, if such exist, have been pursued and exhausted in accordance with the generally recognized principles of international law.

2. The provisions of the preceding paragraph shall not apply when:
   a. the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
   b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or,
   c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

3. When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

**Article 33. Deadline for the Presentation of Petitions**

1. The Commission shall consider those petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the
domestic remedies.

2. In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case, bearing in mind that the continued denial of justice to victims of past violations may in itself constitute an ongoing human rights violation.

**Article 34. Duplication of Procedures**

1. The Commission shall not consider a petition if its subject matter:
   a. is pending settlement pursuant to another procedure before an international human rights dispute settlement procedure of which the State concerned is a member; or,
   b. essentially duplicates a petition pending or already examined and settled by the Commission or by another international inter-governmental organization of which the State concerned is a member.

2. However, the Commission shall not refrain from considering petitions referred to in paragraph 1 when:
   a. the procedure followed before the other organization is limited to a general examination of the human rights situation in the State in question and there has been no decision on the specific facts that are the subject of the petition before the Commission, or it will not lead to an effective settlement; or,
   b. the petitioner before the Commission or a family member is the alleged victim of the violation denounced and the petitioner before the other organization is a third party or a non-governmental entity having no mandate from the former.

**Article 35. Other Grounds for Inadmissibility**

The Commission shall declare any petition or case inadmissible when:

a. it does not state facts that tend to establish a violation of the right referred to in Article 26 of these Rules;

b. the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or,

c. supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.
**Article 36. Working Group on Admissibility**

A working group shall meet prior to each regular session in order to study the admissibility of petitions and make recommendations to the plenary of the Commission.

**Article 37. Decision on Admissibility**

1. Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the matter based on the conditions mentioned in this Chapter. The reports on admissibility and inadmissibility shall be public and the Commission shall include them in its Annual Report to the ASEAN Foreign Minister's Meeting.

2. When a petition is deemed admissible, the determination of it shall be registered and the proceedings on the merits shall be initiated. The determination of admissibility does not constitute a prejudgment as to the merits of the matter.

3. Admissibility decisions shall suspend the consideration of the petition on merits with the possibility of re-consideration when the petitioner had purged him or herself of the shortcomings in the earlier decision.

**Article 38. Procedure on the Merits**

1. Upon admitting the petition, the Commission shall notify petitioners that they have a period of three months to submit additional observations on the merits. The pertinent parts of those observations shall be transmitted to the State in question so that it may submit its observations within three months. The identity of the petitioner or named witnesses shall not be revealed to the State without his or her express authorization.

2. The Executive Secretariat shall evaluate requests for an extension of the periods established in the preceding subparagraph that are duly founded. However, it shall not grant extensions that exceed four months from the date the initial request for observations was sent to each party.

3. In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, and once the petition has been admitted, the Commission may request that the State forward its additional observations on the merits within a reasonable period, established by the Commission taking into account the circumstances of each case.
4. Prior to making its decision on the merits of the petition, the Commission shall set a period for the parties to express whether they have an interest in initiating the friendly settlement procedure provided for in Article 41 of these Rules. In serious and urgent cases, the Commission shall request the parties to respond in a more expeditious manner. The Commission may also invite the parties to submit additional observations in writing.

5. If it deems it necessary in order to advance in its consideration of the case, the Commission may convene the parties for a hearing, as provided for in Chapter VIII of these Rules.

Article 39. Presumption
The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission, as long as other evidence does not lead to a different conclusion.

Article 40. On-site Investigation
If it deems it necessary and advisable, the Commission may carry out an on-site investigation, for the effective conduct of which it shall request and the State concerned shall furnish all pertinent facilities. In serious and urgent cases, the submission of a petition or communication that fulfils all the formal requirements of admissibility shall suffice for the Commission to conduct an on-site investigation with the prior consent of the State in whose territory a violation has allegedly been committed.

Article 41. Friendly Settlement
1. On its own initiative or at the request of any of the parties, the Commission shall place itself at the disposal of the parties concerned, at any stage of the examination of a petition, with a view to reaching a friendly settlement of the matter on the basis of respect for internationally recognized human rights.
2. The friendly settlement procedure shall be initiated and continue on the basis of the consent of the parties.
3. When it deems it necessary, the Commission may entrust to one or more of its members the task of facilitating negotiations between the parties.
4. The Commission may terminate its intervention in the friendly settlement procedure if it finds that the matter is not susceptible to such a resolution or any of the parties does not consent to its application, decides not to continue it, or does not display the will-
ingness to reach a friendly settlement based on respect for human rights.

5. If a friendly settlement is reached, the Commission shall adopt a report with a brief statement of the facts and of the solution reached, shall transmit it to the parties concerned and publish it. Prior to adopting that report, the Commission shall verify that the victim(s) of the alleged violation or, as the case may be, his or her successors, have consented to the friendly settlement agreement. In all cases, the friendly settlement must be based on respect for internationally recognized human rights.

6. If no friendly settlement is reached, the Commission shall continue to process the petition.

**Article 42. Desistance and Withdrawal**

The petitioner may at any time desist or withdraw his or her petition, to which effect he or she must so state in writing to the Commission. Where relevant, this statement shall include the consent and signature of the victim(s). The statement by the petitioner shall be analyzed by the Commission, which may archive the petition without prejudice if it deems this appropriate, or continue to process it in the interest of the wider protection of human rights.

**Article 43. Archiving of Petitions**

1. At any time during the proceedings, the Commission may decide to archive the petition without prejudice whenever:

   a. the grounds for the petition or case are insufficient or invalid; or
   b. the information necessary for the adoption of a decision is unavailable.

2. Before considering the archiving of a petition, the Commission shall notify the petitioners of the possibility of a decision to archive and request that they submit the necessary information within a specified period. Once that period has expired, the Commission shall proceed to adopt the corresponding decision.

3. A petition may be reactivated from the archive given a written request from the petitioner and consent of victim(s), and when appropriate, any pertinent information addressing and rectifying the reasons for archiving the petition.
Article 44. Decision on the Merits

1. The Commission shall deliberate on the merits of the case, to which end it shall prepare a report examining the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site investigations. In addition, the Commission may take into account other information that is a matter of public knowledge.

2. The Commission shall deliberate in private, and all aspects of the discussions shall be confidential.

3. The minutes of the Commission’s deliberations shall reflect the debate and the range of opinions expressed. Decision approved, as well as any separate opinions and any statements made for inclusion in the minutes. If any member feels that they do not, he or she may add their opinion separately, following the procedure established in Article 23 of these Rules.

Article 45. Report on the Merits

After the deliberation and vote on the merits of the case, the Commission shall proceed as follows:

a. If it establishes that there was no violation in a given case, it shall so state in its report on the merits. The report shall be transmitted to the parties, and shall be published and included in the Commission’s Annual Report.

b. If it establishes one or more violations, it shall prepare a preliminary report with the proposals and recommendations it deems pertinent and shall transmit it to the State in question. In so doing, it shall set a deadline by which the State in question must report on the measures adopted to comply with the recommendations.

c. It shall notify the petitioner of the adoption of the report and its transmittal to the State.

Article 46. Publication of the Report

1. If within three months from the transmittal of the preliminary report to the State in question the matter has not been resolved the Commission, by an absolute majority of votes, may issue a final report that contains its opinion and final conclusions and recommendations.

2. The final report shall be transmitted to the parties, who, within the time period set by the Commission, shall present information on compliance with the recommendations.
3. The Commission shall evaluate compliance with its recommendations based on the information available, and shall decide on the publication of the final report by the vote of an absolute majority. The Commission shall also make a determination as to whether to include it in the Annual Report or to publish it in any other manner deemed appropriate.

**Article 47. Follow-Up**

1. Once the Commission has published a report on a friendly settlement or on the merits in which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and its recommendations.

2. The Commission shall report on progress in complying with those agreements and recommendations as it deems appropriate.

**Article 48. Certification of Reports**

The originals of the reports signed by the members who participated in their adoption shall be deposited in the files of the Commission. The reports transmitted to the parties shall be certified by the Executive Secretariat.

**Article 49. Petitioner Information**

1. The Commission shall seek to keep each petitioner duly informed of the status, and any change of status, of their petition.

2. A petitioner may request information on the status of their petition from the Executive Secretary in writing. The Executive Secretary shall respond to all such requests in a timely manner.

**CHAPTER VI**

**ON-SITE OBSERVATIONS**

**Article 50. Designation of the Special Committee**

On-site observations shall in each situation be conducted by a Special Committee named for that purpose. The number of members of the Special Committee and the designation of its President shall be determined by the Commission. In cases of great urgency, such decisions may be made by the Chair subject to the approval of the Commission.

**Article 51. Disqualification**

A member of the Commission who is a national of or who resides in the
A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

territory of the State in which the on-site observation is to be conducted shall be disqualified from participating in it.

Article 52. Schedule of Activities

The Special Committee shall organize its own activities. To that end, it may assign any activity related to its mission to its own members and, in consultation with the Executive Secretary, to any staff members or necessary personnel of the Executive Secretariat.

Article 53. Necessary Facilities and Guarantees

In extending an invitation for an on-site observation or in giving its consent thereto, the State shall furnish the Special Committee with all necessary facilities for carrying out its mission. In particular, it shall commit itself to protect and not to take any measures before or during the visit, or any reprisals of any kind after it, against any persons or entities cooperating with or providing information or testimony to the Special Committee.

Article 54. Other Applicable Standards

Without prejudice to the provisions in the preceding article, any on-site observation agreed upon by the Commission shall be carried out in accordance with the following standards:

a. the Special Committee or any of its members shall be able to interview any persons, including members of groups, entities or institutions freely and in private; including civil society organisations;

b. the State shall grant the necessary guarantees, including those of protection, to persons who provide the Special Committee with information, testimony or evidence of any kind;

c. the members of the Special Committee shall be able to travel freely throughout the territory of the country, for which purpose the State shall extend all the corresponding facilities, including the necessary documentation;

d. the State shall ensure the availability of local means of transportation;

e. the members of the Special Committee shall have access to the jails and all other detention and interrogation sites and shall be able to interview in private those persons imprisoned or detained;

f. the State shall provide the Special Committee with any document related to the observance of human rights that the latter may consider necessary for the presentation of its reports;

g. the Special Committee shall be able to use any method appropria-
ate for filming, photographing, collecting, documenting, scanning, recording, or reproducing the information it considers useful;
h. the State shall adopt the security measures necessary to protect the Special Committee;
i. the State shall ensure the availability of appropriate lodging for the members of the Special Committee;
j. the same guarantees and facilities that are set forth in this article for the members of the Special Committee shall also be extended to the staff of the Executive Secretariat;
k. the expenses incurred by the Special Committee, each of its members and the staff of the Executive Secretariat shall be borne by the Commission, subject to the pertinent provisions.

CHAPTER VII
ANNUAL REPORT AND OTHER REPORTS OF THE COMMISSION

Article 55. Preparation of Reports
The Commission shall submit an annual report to the ASEAN Foreign Minister’s Meeting and publish it. In addition, the Commission shall prepare the studies and reports it deems advisable for the performance of its functions and shall publish them as it sees fit. Once their publication is approved, the Commission shall transmit them, through the General Secretariat, to the Member States of ASEAN and its pertinent organs and publish them.

Article 56. Annual Report
1. The Annual Report shall be presented by the Commission to the ASEAN Foreign Ministers Meeting and published. It shall include the following:
   a. an analysis of the human rights situation in Southeast Asia, along with recommendations to the States and organs of ASEAN as to the measures necessary to strengthen respect for human rights;
   b. a brief account of the origin, legal bases, structure and purposes of the Commission, as well as the status of ratifications of the International human rights treaties and all other applicable instruments, including international humanitarian law treaties, ILO conventions and the Rome Statute of the International Criminal Court;
   c. a summary of the mandates and recommendations conferred upon the Commission by the ASEAN Foreign Minister’s
Meeting and the other competent organs, and of the status of implementation of such mandates and recommendations;
d. a list of the sessions held during the period covered by the report and of other activities carried out by the Commission to achieve its purposes, objectives and mandates;
e. a list identifying each source of funding and the amount, or description in the case of in-kind donations, of its contribution.
f. a summary of the activities of the Commission including those carried out in cooperation with other ASEAN organs and with other regional, national, or international organizations, and the results achieved;
g. an overview of petitions and communications with due consideration to the well-being of the complainants as well as a list of the precautionary measures granted and extended;
h. any general or special report the Commission considers necessary with regard to the situation of human rights within Member States, cross-border or regional situations and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; and,
i. any other information, observation or recommendation that the Commission considers advisable to submit to the ASEAN Summit, as well as any new activity or project that implies additional expenditures.

2. For the preparation and adoption of the reports provided for in paragraph 1.h of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the respective States and relevant stakeholders. Any State may send the Commission the views it deems pertinent within a maximum time period of one month from the date of transmission. The contents of the report shall be within the exclusive discretion of the Commission.

*Article 57. Report on Human Rights within a State*

The preparation of a general or special report on the status of human rights within a specific State shall meet the following standards:
a. after the draft report has been approved by the Commission, it shall be transmitted to the government of the Member State in question so that it may make any observations it deems pertinent; 
b. the Commission shall indicate to that State the deadline within which it must present its observations; 
c. once the Commission has received the observations from the State, it shall study them and, in light thereof, may maintain or modify its report and decide how it is to be published; 
d. if no observation has been submitted by the State as of the expiration of the deadline, the Commission shall publish the report; 
e. the Commission shall transmit the report through the General Secretariat to the Member States and representatives attending the ASEAN Summit and publish it.

Article 58. General Considerations

1. In the preparation of its reports, the Commission shall give due considerations to information provided by civil society. 
2. The Commission may receive both geographic and thematic reports from civil society organizations, national human rights institutions and other stakeholders on issues relevant to the Commission’s mandate. Such reports may be used to supplement the information of the Commission and may be published on the Commission’s website. 
3. The right to privacy and security of victims and witnesses of human rights violations shall be respected and protected in the preparation and distribution of information materials including reports and thematic studies.

CHAPTER VIII
HEARINGS BEFORE THE COMMISSION

Article 59. Initiation of Hearings

1. The Commission may decide to hold hearings on its own initiative or at the request of an interested party. The decision to convocate hearings shall be made by the Commission. 
2. Requests for hearings must be submitted in writing to the Executive Secretariat at least 50 days prior to the beginning of the respective session of the Commission. Requests for hearings shall indicate their purpose and the identity of the participants. Persons making general requests to provide general information to the commission should also include in their request a summary of the
information they will furnish, the approximate time required for that purpose, and indicate whether relevant States should be called to the hearing. If this last is not specified in the request, the Commission shall presume that the presence of relevant States is not desired.

3. If the Commission accedes to the request or decides to hold a hearing on its own initiative, it shall convene all relevant parties. If one party, having been duly notified, does not appear, the Commission shall proceed with the hearing. The Commission shall adopt the necessary measures to maintain in confidence the identity of the experts and witnesses if it believes that they require such protection.

4. The Executive Secretariat shall inform the parties as to the date, place and time of the hearing at least one month in advance. However, under exceptional circumstances, that period may be reduced.

Article 60. Purpose

Hearings may have the purpose of receiving information from the parties with respect to a petition being processed before the Commission, follow-up to recommendations, precautionary measures, or general or particular information related to human rights in one or more Members States of ASEAN or throughout the region.

Article 61. Guarantees

Member States shall grant the necessary guarantees to protect all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission. Members States shall not intimidate, prosecute or take any other action against witnesses or experts, or carry out reprisals against them or their family members in relation to their statements or expert opinions given before the Commission.

Article 62. Presentation and Production of Evidence

1. During a hearing, the parties may present any document, testimony, expert report or item of evidence. At the request of a party or on its own initiative, the Commission may receive the testimony of witnesses or experts.

2. With respect to the documentary evidence submitted during the hearing, the Commission shall grant the parties a ample time for submitting their observations.

3. A party that proposes witnesses or experts for a hearing shall so state in its request. For this purpose, it shall identify the witness or expert and the purpose of his or her witness or expert testimony.
4. Upon deciding on the request for a hearing, the Commission shall also determine whether to receive the witness or expert testimony proposed.

5. When one party offers witness and expert testimony, the Commission shall notify any other parties to that effect.

6. In extraordinary circumstances and for the purpose of safeguarding the evidence, the Commission may, at its discretion, receive testimony in hearings without satisfying the terms of the previous paragraph. In such circumstances, it shall take the measures necessary to guarantee the procedural balance between the parties in the matter submitted for its consideration.

7. The Commission shall hear one witness at a time; the other witnesses shall remain outside the hearing room.

8. Prior to giving their testimony, witnesses and experts shall identify themselves and take an oath or make a solemn promise to tell the truth. At the express request of the interested person, the Commission may maintain the identity of a witness or expert in confidence when necessary to protect him or her or other persons.

Article 63. Participation of the Commission Members

The Chair of the Commission may form working groups to conduct the program of hearings.

Article 64. Public Nature of Hearings

Hearings shall be public. When warranted by exceptional circumstances, the Commission, at its own initiative or at the request of an interested party, may hold private hearings and shall decide who may attend them. This decision is exclusively the Commission's, which shall notify the parties in this regard prior to the beginning of the hearing, either orally or in writing. Even in these cases, the minutes shall be prepared in the terms set forth in Article 66 of these Rules.

Article 65. Expenses

The party that proposes the production of evidence at a hearing shall cover all of the necessary attendant logistical expenses, exclusive of those of the Commission, its staff and its logistics.

Article 66. Documents and Minutes of the Hearings

1. A summary of the minutes of hearing shall be prepared and shall record the day, time and place it was held, the names of the participants, the decisions adopted, and the commitments assumed by
the parties. The documents submitted by the parties in the hearing shall be attached as annexes to the minutes.

2. The minutes of the hearings are internal working documents of the Commission. If a party so requests, the Commission shall provide a copy, unless, in the view of the Commission, its contents could entail some risk to persons. These minutes are confidential internal working documents, but may be posted fully, upon approval, on the Commission's website if there is a consensus to that effect among participating members.

3. The Commission shall make a tape of the testimony and shall make it available to the parties that so request.

CHAPTER IX
PROMOTIONAL ACTIVITIES

Article 67. Promotional Activities
The Commission shall organize and conduct activities, such as workshops, trainings, seminars and produce publications on its own motion or in collaboration with other organizations in relation to executing the full scope and function of its mandates included in its Terms of Reference.

CHAPTER X
PARTICIPATION OF NON-MEMBERS OF THE COMMISSION

Article 68. Participation of States in Deliberations
The Commission or its subsidiary bodies, including sub-commissions, rapporteurs, committees or working groups may invite any State to participate in the discussion of any issue that shall be of particular interest to that State. Any State thus invited shall have no voting rights.

Article 69. Participation of Other Persons or Organisations
1. The Commission may invite any persons or organisation capable of contributing to its deliberations to attend its meetings without voting rights.
2. In the exercise of its mandate and functions, the Commission shall facilitate the meaningful participation of civil society and other stakeholders.
3. The Commission shall conduct frequent and regular consultations with civil society.
4. In the exercise of its mandate and functions, members of the Commission shall conduct frequent and regular country-level consultations in their home countries.

5. The Commission shall create mechanisms to ensure meaningful participation of marginalised and vulnerable groups.

6. The Executive Secretary shall inform, no later than 4 weeks before a session any organisations with observer status of the days and agenda of a forthcoming session.

7. Representatives of inter-governmental organisations to which ASEAN has granted permanent observer status and other organisations recognised by the Commission, may participate, without voting rights, in the deliberations of the Commission on issues falling within the framework of the activities of these organisations.

CHAPTER XI
FUNCTION AS OVERARCHING HUMAN RIGHTS BODY WITHIN ASEAN

Article 70. Relations with all ASEAN Bodies

1. The Commission shall take steps to ensure that other bodies within ASEAN are adhering to international human rights law and standards.

2. The Commission may provide advice and assistance to other bodies within ASEAN in relation to its mandate to promote and protect human rights. This includes, but is not limited to, information on human rights law, principles, standards, and best practices.

3. The Commission may assign members to observe other bodies within ASEAN to make sure that their work is in line with international human rights law and standards. These observations may be included in the Annual Report, or other official reports and communications.

4. The Commission shall develop, in consultation with sectoral human rights bodies and civil society organizations, practical human rights guidelines for other ASEAN bodies to help ensure that they function according to international human rights law and standards.

5. The Commission may assign a member or a working group to conduct periodic human rights audits of other ASEAN bodies. Findings of these audits may be included in the Annual Report, or other official reports and communications.
Article 71. Alignment with Sectoral Human Rights Bodies

1. The Commission shall assign members to observe the sectoral human rights bodies within ASEAN to make sure that their work is in line with international human rights law, principles, and standards. These observations may be included in the Annual Report, or other official reports and communications.

2. The Commission may appoint a member to liaise with ASEAN sectoral human rights bodies.

3. The Commission shall convene an annual meeting of all ASEAN sectoral human rights bodies.

4. When addressing or considering subject matter that is within the remit of an ASEAN sectoral human rights body, the Commission shall consult with and take into consideration the input from that body.

TITLE III
FINAL PROVISIONS

Article 72. Availability of Information

1. The Commission will maintain a website where it will post its key documents and communications, with due consideration for confidentiality and sensitive information.

2. The public has a right to request from the Commission any information related to the work of the Commission not posted on the commission’s website. Such requests shall be made in writing to the Executive Secretary of the Commission. For such a request to be considered it shall include:
   a. A request for specific information or specific documentation. Requests of an unnecessarily broad or general nature shall not be valid.
   b. The name of the requesting person or organizations, the postal or email address where the information shall be sent, and other relevant contact information of the requestor.

3. Where the Commission is in possession of the requested information it shall provide it to those requesting it in a timely manner so long as the information is not confidential or would not threaten the safety and security of individuals or organizations discussed in or alluded to in the requested information.
4. Where the Commission is unable to fulfil the request, it shall send communication in writing to the requestor explaining the reason for its inability to comply with the request.

Article 73. Definitions
1. Unless particularly specified, any reference to ‘civil society’ or ‘civil society organizations’ in these Rules of Procedure is not limited to those specifically referenced in Chapter V of the ASEAN Charter.
2. The term ‘subsidiary body’ in these Rules refers to any body or office set up by the Commission or its Chair.

Article 74. Calendar Computation
All periods set forth in the present Rules of Procedure in numbers of days will be understood to be counted as calendar days.

Article 75. Interpretation
Any doubts that might arise with respect to the interpretation of these Rules of Procedure shall be resolved by the members of the Commission.

Article 76. Amendment of the Rules of Procedure
The Rules of Procedure may be amended by consensus, or failing that by an absolute majority of the members of the Commission.

Article 77. Assessment of the Terms of Reference
A year prior to the official review of its Terms of Reference of the Commission as specified in Article 9.6 of the Terms of Reference and in preparation for Article 9.7 of the Terms of Reference, the Commission shall compose a working group to assess the Terms of Reference in consultation with civil society organizations and other stakeholders.

Article 78. Transitory Provision
This Rules of Procedure, whose official text in English, shall enter into force on XXXX. The amendments to these Rules of Procedure, approved at the XXXX regular session of the Commission, held from XXXX to XXXX.
Submission on the Rules of Procedure of AICHR, ASEAN Declaration of Human Rights and the Work Plan of AICHR
20-24 September, Kuala Lumpur

1. WE represent more than 50 civil society and people’s organizations from Southeast Asian region participating in the Third Regional Consultation on ASEAN and Human Rights, organized by the Solidarity for Asian Peoples’ Advocacy Task Force on ASEAN and Human Rights (SAPA-TFAHR), from 16-18 September in Kuala Lumpur, Malaysia.

2. We wish to express our disappointment on the failure of AICHR to respond to requests from the SAPA-TFAHR and the Southeast Asian National Human Rights Institution Forum (SEANF) to meet with their delegations. This failure is in contradiction to the ideal of a people-oriented ASEAN, as envisioned in Article 13 of the ASEAN Charter, “To promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.”

3. We would like to make this submission to the ASEAN Intergovernmental Commission on Human Rights ahead of its meeting on 20-24 September 2010 in Kuala Lumpur. This submission concerns the status of AICHR’s Rules of Procedure, its work plan and the drafting process of the ASEAN Human Rights Declaration.

On the Rules of Procedure of the AICHR

4. We are concerned that after almost a year since its inauguration, the AICHR has yet to adopt a set of rules of procedure. The presence of the rules of procedure is important to determine how the AICHR will carry out its work and lay out its relations with other parties. However, we reiterate that the absence of the rules of procedure should not stop AI-
CHR from meeting with civil society organizations and other stakeholders who wish to provide input and recommendations on the rules of procedure of AICHR and other related matters. We urge AICHR to adopt as soon as possible, procedures which will enable it to work effectively for the protection and promotion of human rights in ASEAN in accordance with international law and standards.

5. The rules of procedure should also provide space for dialogue and engagement with civil society as stipulated in the Terms of Reference, Article 4.8 and modalities on consultation with civil society on the work of AICHR as stipulated in Article 4.9 of the Terms of Reference.

6. The rules of procedure should acknowledge the existence of different stakeholders on the protection and promotion of human rights in ASEAN region, including civil society organizations, people’s organizations and the national human rights institutions.

7. We strongly urge the AICHR to consider the proposal submitted by the SAPA Task Force on ASEAN and Human Rights on the rules of procedure of AICHR during the 1st AICHR meeting in Jakarta, March 2010.

On the Work Plan of AICHR

8. We welcome the adoption of the first workplan of AICHR by the ASEAN Ministerial Meeting in July 2010. We call upon AICHR to apply fully international human rights standards in implementing the workplan. For meaningful participation and transparency, we urge AICHR to inform the public about its planned activities and the progress as stipulated in Article 6.7 of the Terms of Reference that “the AICHR shall keep the public periodically informed of its work and activities through appropriate public information materials produced by the AICHR”

9. We urge AICHR to include regular and frequent consultations by commissioners with civil society in their respective countries in the workplan. Representatives should report back to AICHR on feedbacks from the stakeholders.

10. The workplan should include a review of human rights situation in each member state.
11. We welcome the decision to embark on a first thematic study by AICHR on the issue of corporate social responsibility. The terms of reference of this thematic study should include the objective of examining corporate responsibility in the region and the role of states in ensuring corporate responsibility. The thematic study should produce recommendations on ensuring corporate responsibility to human rights, including a legally binding regional instrument in ASEAN.

12. The workplan should also include thematic studies and other programs addressing the human rights situation of disadvantaged and marginalized individuals, groups and peoples, including women, children, the elderly, indigenous peoples, persons with disabilities, migrants, refugees, homeless and displaced peoples and ethnic minorities, as well as lesbian, gay, bisexual and transgender people and people in detention. This should include:
   a. Conduct of dialogues and meetings with the leaders and representatives of affected groups to develop effective strategies.
   b. Designation of a focal person within the AICHR for each disadvantaged and marginalized group to address specific issues.
   c. Measures to ensure ASEAN states adopt minimum standards for the recognition and protection of the rights the disadvantaged and marginalized sectors, including recognition of the collective rights of Indigenous Peoples, as set out by international human rights instruments.

13. The workplan should allow flexibilities that will enable AICHR to deal with urgent and serious human rights developments promptly and in a timely manner.

14. In view of the continuing widespread and systematic violations of human rights and international humanitarian laws in Burma, and the intensification of suppression of freedom of expression, association and assembly in the run-up to the elections, we call upon the AICHR to address this appalling situation as a matter of urgency. This should include obtaining information from the Burmese authorities, under Article 4.10 of the Terms of Reference, on the human rights situation. In particular, information should be sought on the steps taken to ensure that human rights law and standards are respected and protected during the election period and beyond, that political prisoners are released unconditionally, and that systematic violations of the human rights of ethnic nationalities cease.
On the ASEAN Human Rights Declaration

15. Members of the Task Force that will draft the ASEAN Human Rights Declaration must be independent, competent and possess the necessary expertise in human rights. External independent experts working on different fields of human rights should be appointed to the Task Force to ensure that the universality, indivisibility and interdependence of all rights, in line with international standards, are safeguarded. The selection of the task force members should be conducted with participation and consultation of civil society.

16. The Terms of Reference for the Task Force should provide for an inclusive, transparent process. It should provide for regular consultations with civil society and other stakeholders at national and regional levels, and publish drafts widely to allow comments from stakeholders. Experts from inside the region and outside it should also be consulted.

17. The Terms of Reference should ensure that the ASEAN Human Rights Declaration complies with international human rights laws and standards, in line with AICHR’s obligation under Article 1.6 of its Terms of Reference, “to uphold international standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.”

Kuala Lumpur, 19 September 2010
SAPA Task Force on ASEAN & Human Rights
Submission on the Mandatory Blood Testing on HIV on Migrant Workers

Submission to the AICHR Meeting
Kuala Lumpur 20-24 September 2010

Removal of Mandatory HIV Testing For Migrant Workers

The policy and practice of mandatory HIV testing for migrant workers is discriminatory, dehumanising and violates migrants’ rights. Based on lack of actual public health rationale, policies of mandatory testing and related deportation ignore pragmatic HIV prevention interventions and widely available treatments in favour of punitive measures. Moreover, the practice of mandatory HIV testing for migrant workers contravenes international guidelines and national laws on HIV testing by totally disregarding the established best practices of consent, confidentiality, counselling and referral to treatment and support services.

In light of the inherent rights violations that occur under policies of mandatory HIV testing for migrants, CARAM ASIA and SAPA Task Force on ASEAN & Human Rights (SAPA TF-AHR) recommend the AICHR to call on the ASEAN member states of both origin and destination countries to:

Remove policies that require migrant workers to undergo mandatory HIV testing as a condition of entry, stay or employment in destination countries;

Stop deported migrant workers for HIV and other treatable health conditions; and

Implement “Migrant-Friendly” HIV prevention measures that include proper Voluntary and Confidential Counselling and Testing (VCCT) linked to services and treatment.
RECOMMENDATION ACTIONS FOR GOVERNMENTS

Furthermore, CARAM Asia and SAPA TF-AHR recommend the AICHR to call on the ASEAN Member States to adopt the following recommendations in order to ensure that their policies and practices on HIV and non-nationals, especially migrant workers, are aligned with their international rights obligations, including their ability to meet “Universal Access” targets:

- Repeal policies that require migrant workers or any non-nationals to reveal their HIV status as a condition of entry or stay for any purpose including employment, especially under conditions of mandatory or compulsory HIV testing.

- Destination countries should immediately cease detention and deportation of migrant workers for health conditions including HIV status and pregnancy.

- Harmonise all policies and practices on HIV testing to ensure that any HIV testing provided to migrant workers adheres to internationally accepted standards including: informed consent, confidentiality, pre and post-test counselling, and proper referral to treatment, care and support services.*

- Strengthen and promote pre-departure and post-arrival orientation for migrant workers on HIV risks and vulnerability as well as on how to access services.*

- Put into place necessary policies and legislations, including workplace programs, to ensure that migrant workers are not subjected to stigma and discrimination, and have equal access to HIV prevention measures and sexual and reproductive health services.*

- Make health care information and services accessible and relevant for both documented and undocumented migrants through collaboration or cooperation with relevant stakeholders including non-governmental organizations and by allowing migrants to associate with greater freedom.*

- Provide migrant workers equal access to anti-retroviral treatments (ART) in both origin and destination countries, supported by ef-
fective and holistic mechanisms for the return and reintegration of migrant workers to their home country that uphold standards of confidentiality.¹

• Respect and protect all migrants’ rights, including the Right to Health, by identifying migrants in National AIDS Plans and budgets or other operational plans that protect and promote migrants’ health and include a special focus on HIV.

Kuala Lumpur, 19 September 2010
CARAM Asia & FORUM-ASIA

FOOTNOTE: Referring to the recommendations by the “High Level Multi-Stakeholder Dialogue on HIV Prevention, Treatment, Care and Support for Migrants in the ASEAN Region” February 2009, Bangkok, Thailand.

ANNEX 1: Cover Letter

September 19, 2010

H.E. Do Ngoc Son
Chairperson and Representative of Viet Nam to the ASEAN Intergovernmental Commission on Human Rights (AICHR)

Re: Submission on the Mandatory Blood Testing on HIV on Migrant Workers

Excellency Mr. Do Ngoc Son,

On behalf of Coordination of Action Research on Aids and Mobility (CARAM-ASIA) and the Solidarity for Asian Peoples’ Advocacy (SAPA) Task Force on ASEAN and Human Rights, we would like to present our submission to the ASEAN Intergovernmental Commission

¹ - Referring to the recommendations by the “High Level Multi-Stakeholder Dialogue on HIV Prevention, Treatment, Care and Support for Migrants in the ASEAN Region” February 2009, Bangkok, Thailand.
on Human Rights on the issue of mandatory blood testing on HIV on migrant workers. We hope the submission will be given due consideration in the deliberations of the commission on this important issue.

Should you have any further inquiries, please kindly contact Mr. Mohammad Harun Al Rashid, Regional Coordinator of CARAM-ASIA at +603 2697 0708 or e-mail harun@caramasia.org.

Your kind attention and cooperation in this matter is much appreciated.

Sincerely yours,

Mohamad Harun Al Rashid
Regional Coordinator
CARAM-ASIA

Yap Swee Seng
Executive Director of
FORUM-ASIA
Co-convener of
SAPA TF-AHR

CC:
H.E. Pehin Dato Hamid Bakal
Representative of Brunei Darussalam
H.E. Om Yentieng
Representative of the Kingdom of Cambodia
H.E. Rafendi Djamin
Representative of Indonesia
H.E. BOUNKEUT SANGSOMSAK
Representative of the Lao P.D.R
H.E. Dato’ Sri Muhammad Shafee Abdullah
Representative of Malaysia
H.E. U Kyaw Tint Swe
Representative of Myanmar
H.E. Rosario G. Manalo
Representative of the Republic of the Philippines
H.E. Richard R. Magnus
Representative of Singapore
H.E. Sriprapha Petcharamesree
Representative of the Kingdom of Thailand
ANNEX 2: Policy Brief

Removal of Mandatory HIV Testing for Migrant Workers

The policy and practice of mandatory HIV testing for migrant workers is discriminatory, dehumanising and violates migrants’ rights. Based on a false public health rationale, policies of mandatory testing and related deportation ignore pragmatic HIV prevention interventions and widely available treatments in favour of punitive measures. Moreover, the practice of mandatory HIV testing for migrant workers contravenes international guidelines and national laws on HIV testing by totally disregarding the established best practices of consent, confidentiality, counseling and referral to treatment and support services.

In light of the inherent rights violations that occur under policies of mandatory HIV testing for migrants,

CARAM Asia hereby calls on governments of both origin and destination countries to immediately:

• Remove policies that require migrant workers to undergo mandatory HIV testing as a condition of entry, stay or employment in destination countries;
• Stop deporting migrant workers for HIV and other treatable health conditions; and Implement “Migrant-Friendly” HIV prevention measures that include proper Voluntary Counselling and Testing (VCT) linked to services and treatment.

---

2 - The contents of this annex is a reformatted version of a pamphlet published by CARAM-Asia
Mandatory Testing of Migrants

Many developed countries in Asia and the Middle East that rely on migrant workers to keep their economies functioning have instituted migration policies that use health as a primary criterion for permitting migrants entry and stay for employment. The crux of these policies is that migrant workers coming from less developed countries must undergo mandatory or compulsory health testing as a screening process to identify those with exclusionary health conditions. Under these policies, migrants are being screened for up to twenty-two diseases and conditions including pregnancy and HIV.

Migrants must undergo health screening that includes HIV testing in their country of origin during the work permit and visa application procedure. Those who pass must then undergo testing again upon arrival and semi-annually to renew their work permit in most destination countries. If one of the exclusionary conditions is found during pre-departure, the migrant is disallowed from traveling for work; if a condition is found while the migrant is in the destination country, that person may be summarily deported back to his or her home country. In other words, mandatory HIV testing is not intended to benefit migrants’ health – it is used simply as a screening device.

Findings of CARAM Asia’s Report on Mandatory Testing

In 2007, CARAM Asia - a regional network of twenty-seven members - released the report, State of Health of Migrants: Mandatory Testing. The report, based on research conducted in sixteen origin and destination countries spanning across Asia and the Middle East, looks at the policies and practices of mandatory health and HIV testing for migrant workers and, through direct input from key stakeholders and migrant workers themselves, exposes the negative impacts this testing has on migrants. The findings are as follows:

Mandatory Testing is discriminatory and contradicts national laws on HIV testing

The policies and practices of mandatory testing for HIV and other health conditions are discriminatory because unskilled migrant workers who come from developing countries are singled out for this testing, and
those found with HIV or other treatable conditions are refused entry and stay by the destination countries that impose such restrictions.

National laws and policies that protect nationals against compulsory or mandatory HIV testing for employment or other reasons exist in both origin and destination countries. Migrant workers, however, are commonly excluded from these protections. Origin countries willingly submit to destination countries’ demands for compulsory HIV testing, making their own laws irrelevant; while destination countries’ laws, which protect nationals from this practice, do not provide migrants similar guarantees. There are even special policies that explicitly single out migrant workers for mandatory HIV testing in some destination countries.

**Standards of HIV testing are disregarded**

All countries have national laws, policies and guidelines that dictate standard practices for HIV testing. These policies establish that all testing should be done voluntarily and should include the following components: explicit consent, provision of pre-test and post-test counselling, protection of confidentiality, and when available, referral to proper services and treatment. Yet, due to various factors related to conducting large-scale testing of migrants and the association of the tests as a requirement for migration - these standard practices are ignored.

**Pre-departure:** In origin countries, the first violation is a lack of informed consent. Prospective migrants feel obliged to sign whatever documents are required to go abroad even if they do not read or understand them; while health officials, with the understanding that the health exam is compulsory, assume that there is implicit consent to HIV testing. In the end, the list of conditions tested is not elaborated, leaving prospective migrants unaware that they are being tested for HIV. Prospective migrants do not receive any pre- and post-test counselling. A combination of factors including assumptions about migrants’ awareness of HIV, the volume of people testing and a lack of counselling skills by medical staff are cited for this omission.

Prospective migrants rarely see their reports and may only be notified of whether they can work abroad or not, with those deemed “unfit” commonly not even informed of the condition that was found. In some cases, “unfit” migrants with HIV are referred to other testing centres for confirmation and counselling, but most are simply left to their own devices.
Part of the problem is that test results always go directly to the recruitment agency, which is responsible for informing prospective migrants of their eligibility status. Not only does this practice further eliminate any chance for meaningful counselling, it is a routine breach of confidentiality as the health conditions found, including HIV, are usually listed. Rejection by a Gulf Country Council Approved Medical Centres Association (GAMCA) clinic is categorical and systematic. Migrants’ results are fed into a database that is shared with all other GAMCA centres, effectively banning a “permanently unfit” person - a category that includes HIV - from ever legally migrating to a Gulf country again.

In destination countries: Those who are allowed to travel for work are tested again upon arrival and regularly throughout their stay in the destination country. Again, all standard practices for voluntary HIV testing are disregarded, and results go directly to employers.

In destination countries, not only is the volume of migrants testing an issue, but there are also language and cultural barriers which negate any potential for meaningful consent or pre- and post-test counselling, if any attempts are even made.

Mandatory Testing leaves migrants vulnerable to unethical deportation

When a result is found, especially HIV, some destination countries in Asia and the Middle East will treat the migrant like a criminal by immediately confining and deporting that person without explanation. This unethical treatment obviates any chance for counselling and is a terrible emotional shock to the individual. In most cases, migrants are deported without being made aware of what health condition was found that led to their deportation; in other cases, they are notified of their HIV status under the worst conditions.

Although there are a few destination countries that do not require mandatory testing, there are loopholes used by employers to impose testing. In these cases, although there may be no direct linkage between immigration and testing centres, the legal right to remain in the country is linked to employment status. Thus, an unfit result either leaves migrants at the mercy of their employers or undocumented.

Once returned home, a migrant may receive paltry financial compensation, and on rare occasions, referral to HIV services. Generally though,
the individual is simply left to return to his or her family bewildered and devastated.

For those with HIV, there are serious implications regarding spousal transmission as the returned migrant may not be aware of his or her status, may not know how to prevent transmission, or may be afraid of revealing their status for fear of the negative social impact.

**ACTIONS FOR GOVERNMENTS**

Mandatory testing for HIV flies in the face of international conventions and guidelines; has no proven effective role as a means for preventing the spread of HIV; and contributes to the stigmatisation of migrants and people living with HIV. Under conditions of mandatory testing, migrant workers are treated as criminals for something that should be a basic human right – health. Medical testing should not be used as a screening mechanism to determine which migrants are allowed to work; it should be used to improve migrants’ health by acting as a gateway to access health services and treatment. Accordingly, CARAM Asia and member organisations call on governments to take the following actions:

Governments of all origin and destination countries should adopt the following recommendations:

- All Memorandum of Understanding (MOUs) on migration should explicitly include migrants’ right to health with special attention to HIV.
- States should repeal policies that require or permit mandatory HIV testing for migrant workers as a condition of entry or stay for employment by making HIV and other treatable conditions non-exclusionary.
- Destination countries should immediately cease deportation of migrant workers for health conditions or HIV status.
- Migrants should be provided equal access to anti-retroviral treatments (ART) in both origin and destination countries, especially when ART is available to the general public under a subsidised rate.
- States should provide appropriate health care information and services for both documented and undocumented migrants including: treatment of contagious diseases, HIV prevention, and sexual and reproductive health.
As a step towards these goals, governments should institute “Migrant-Friendly” testing by:

• Harmonising all laws and policies on HIV testing to ensure that any testing migrants must undergo adheres to internationally accepted standards that include: informed consent, confidentiality, pre and post-test counselling, and proper referral to treatment, care and support services;
• Providing all health services, especially HIV counselling and prevention information, in a way that migrants understand, taking into consideration their language and literacy level;
• Ensuring that all HIV positive test results are confirmed through independent testing.
Cases of Human Rights Violations Submitted to the AICHR
Hiding Behind Its Limits

Thematic Cases

Members of the SAPA TFAHR submitted cases of human rights violations during the first official meeting of the AICHR on 28 March to 2 April 2010. The cases include descriptions of chronic situations of human rights violations affecting women, migrant workers and media. Submissions followed a uniform format, and were submitted to AICHR in Bahasa Indonesia.

Case submissions were premised on the mandate of the AICHR based on the following:

Article 14: ASEAN Human Rights Body of the ASEAN Charter:
1. In conformity with the purposes and principles of the ASEAN Charter
relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

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

Terms of Reference of the AICHR:

• The Purposes of AICHR:

  1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN

  1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Program of Action, and international human rights instruments to which ASEAN Member States are parties

• The Mandate and Functions of AICHR

  4.8 To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders, as provided for in Chapter V of the ASEAN Charter

  4.9 To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;

Members of the Indonesian Police in Jakarta block the entrance to the ASEAN Secretariat headquarters to prevent groups from entering the premises.
1. Women and the right to decent employment

The lives of many women in Indonesia and in the ASEAN countries are relatively stable, even though the quality of life is still below the standard. A lot of women still have jobs that are not protected by law, which causes difficulties in meeting basic needs such as basic nutrition, as well as some social needs such as education and other self-development. These jobs are commonly found in wage-labour industries, such as agriculture and domestic work. Some who are not able to find good employment within the country, find work outside as migrant workers. Generally, policies on employment concern jobs within the formal sector, so that women who work outside this sector are more vulnerable to violations of labor rights, commonly: wages below the minimum standard, absence of any safety guarantee, and no allowance for any leave (menstrual, maternity and holidays). In addition, women workers are also more prone to abuse and violence from co-workers, agents or employers. Many workers also begin work as children (under 18 years of age).

2. Women in conflict areas

Indonesia has experienced a number of conflicts, such as in Aceh, Central Sulawesi, Maluku, North Maluku and Papua, which has left lasting scars on society, especially among women and children. Although conflicts have officially ended in some areas such as Aceh and Maluku, despite peace agreements, most communities still feel threatened owing to the inequitable distribution of resources and deprivation of general benefits brought by the peace. In particular, injustices against women and children during the conflict still remain. These injustices are systemically embedded within the various parties of the conflict, and tend to regard women and children as a homogenous entity or single group. For instance, assistances are usually
A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

directed at the victims of conflict, but exclude women and children who were combatants, and are not regarded as victims.

In fact, in conflict situations, women and children play various roles and positions. Most of them are victims of various forms of violence during the conflict. However, there are women and children who became combatants in the conflict, which may have also arose from experiences of violence, traditional or systemic norms, or from multidimensional factors. Many survivors of the conflict become agents in building peace.

In other parts of Indonesia, conflicts emerged because of unfair distribution and control of the resources and human rights violations. Among the biggest driving factors of conflicts in Indonesia is the control of resources by the outsiders, referring to parties who do not belong to the local community. For example, opening up the land for investment purposes often results in land tenure disputes as they often initiate conflicts by having people living in the local communities vacate the lands marked for investment.

Women as victims in conflict areas

In the conflicts in Aceh, Central Sulawesi, Maluku, North Maluku and Papua, women and children are a particularly vulnerable group who are targets of various forms of gender-based violence and crimes arising from the unequal status and discrimination of women and children in society.

The General Recommendation Number 19 on Violence Against Women is a result of the 11th Session in 1992 of the UN Committee on the Elimination of All Forms of Discrimination against Women. General Recommendation No. 19 states that gender-based violence damages, impedes or negates women’s the enjoyment of human rights and fundamental freedoms guaranteed under the international law or under human rights conventions. Gender-based violence is also a form of discrimination, based on its definition in Article 1 of Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). The rights and freedoms listed in CEDAW include:

- The right to life
- The right to not experience persecution, cruelty, acts or degrading and inhumane punishment
- The right to equal protection according to humanitarian norms in
time of armed conflict, international or domestic
- The right to liberty and security of person
- The right to equal protection of law
- The right to equality in the family
- The right to mental and physical health in accordance with highest achievable standards
- The right to fair and decent working conditions.

States are accountable for acts of discrimination and violence by the security forces and individuals. It is considered a violation if the state does not act decisively to prevent violations of the rights, investigate and punish the perpetrators, and provide compensation for acts of violence. By definition, women as victims of conflict, should not be limited to those who have experienced physical, mental or sexual violence, but also those who have experienced post-conflict violence, for example, women who become widows and who lost property and livelihood because of the conflict.

In addition to direct forms of violence (such as sexual abuse and rape), the various forms of discrimination in terms of services and assistance exist, and the women in conflict areas are particularly vulnerable to violence by the military. For example, women experience unwanted pregnancies, broken promises to marry, and are neglected by the military personnel to become victims of “military seduction”. This is a common scenario in conflict areas as the environment exposes women and girls to be more vulnerable to manipulation. Many cases were reported where the military used women and children to satisfy their sexual needs through military dominance, persuasion, allurement to marry, or providing protection and security, which results in relationships that are “voluntary” in appearance but manipulative in essence. Research conducted by the Anti-Gender-Based Violence Coalition recorded around 200 such cases in Ambon and more than 300 cases in Atambua. This is a problem that has yet to find any solution, for even activists who accompanied the victims are terrorized by relevant institutions.

3. Women and customary and cultural violence

There are many cultural practices that are harmful to physical well-being of women in Indonesia. One of these is the practice of female circumcision which is still enforced for customary and cultural reasons in some areas such as West Nusa Tenggara, Madurese, and some areas in central Java and East Java. Several studies have concluded that female circumcision had no
health benefits, aside from being unhygienic and painful. Moreover, some respondents claimed to have been circumcised in infancy and as children they felt intense pain during circumcision. This has a damaging impact on their sexual relationships in adulthood as almost all respondents report their inability to enjoy sexual activities.

The Department of Health has issued a letter to health workers prohibiting female circumcision. These policies, however, are rejected by religious groups who claim that circumcision of women is in accordance with their beliefs and culture.

Recommendations:

1. AICHR must study and address problems faced by women at the regional level, whether it is caused by policy, conflicts (and failure to protect from the conflicts), or the local culture, since these forms of violence prevent women from enjoying their deserved human rights.
2. AICHR must encourage member governments to address the issues of human rights violations against women and children.

Migrant Workers

Submitted by:
Muhammad Chairul Hadi
Secretary General, Serikat Buruh Migran Indonesia (SBMI)

Issue 1: Blackmail

Case Description: This main issue is the lack of transparency in the management of the Special Terminal for migrant workers, who are required to pay many costs at unfair prices, including excessive transportation fees. For example, Indonesian migrant workers who use government provided transportation have to pay fees which are 3.5 times more expensive than regular costs. There are other extra expenses they need to pay additionally.

Issue 2: Death

Case Description: A number of migrant workers have died in receiving countries because of a number of causes, including poor working condi-
tions as a result of malnutrition; torture or ill-treatment by employers and agents; stress that can lead to suicides and accidents. Some have received the death penalty for certain crimes committed. Data from the SBMI and Migrant Care records about 1,000 deaths among migrant workers in receiving countries. In the first quarter of 2010, these groups have already noted five deaths.

**Issue 3: Deportation**

Case Description: In many cases, travel documents of migrant workers are kept by their employers. Some of them who suffer from ill-treatment from their employers run away, leaving these documents behind them. They are then placed in a vulnerable situation and face deportation if caught by authorities.

One of the examples is when Malaysia use to deport some 100-300 migrant workers approximately twice a week. There are 96 deportation cases reported each year, totalling more than 28,800 persons.

**Issue 4: Fraud**

Case Description: SMBI has recorded some 700 cases of fraud committed against migrant workers from 2009 to 2010. This is caused by the lack of proper and sufficient information that can prevent crimes by persons who try to take advantage of the dreams of migrant workers to improve their lives.

**Issue 5: Missing workers**

Case Description: Governments take no responsibility over cases of workers who lose contact with their families at home. Agents and employers are not encouraged to create reporting mechanisms for cases of workers who disappear from their places of work because of the surplus of workers available for replacement. At present, SBMI’s data indicates that there are 10 such workers who have gone missing and could not be contacted.

**Issue 6: Rapes**

Case Description: Rape can occur at any point of a migrant worker’s travel: before departure while housed in pre-departure processing centres or after arrival. While working they can become victims of their employers or
agents; and on their journey home, some deported migrant workers were reported to have been raped by the unscrupulous police or detention wardens.

**Issue 7: Early termination of employment**

Case Description: The global economic crisis resulted in the early dismissal of many migrant workers. Many did not receive proper separation benefits from their employers, and some did not even pay for their return trip home.

**Issue 8: Torture and ill-treatment**

Case Description: Many migrant workers become victims of torture by their employers and family members. This may be caused by several factors including perceived incapacity of the worker, jealousy, or discrimination.

**Issue 9: Unpaid or under-paid salaries**

Case Description: Many migrant workers often experience non-payment or under-payment of their salaries. This is caused by chaotic placement systems, and unscrupulous agents who sometimes connive with employers to extract higher profits by exploiting migrant workers. Information from SBMI and AMC shows that about 20% of Indonesian migrant workers in Hong Kong receive wages below the minimum standard. This phenomenon is not specific to Hong Kong or to Indonesian workers, but occurs in other places and to other migrant workers as well.

**Recommendations**

2. ASEAN members should establish a proper and transparent transportation mechanism for migrant workers that will facilitate travel and help protect migrants from abuses and becoming victims.
3. An agreement between the sending and receiving countries to address the issue of deportations, in order to clarify responsibilities on which agency in each country will handle migrant worker deportation cases.
4. Governments should establish effective information systems to inform citizens about potential threats and risks that migrant labour imposes.
5. Embassies of sending countries should establish monitoring and extension services for migrant workers in receiving countries in order to better inform the workers about the situations and also address the cases of missing workers when they arise.

6. Governments should establish protection mechanisms, especially for women, to prevent rapes from being committed against migrant workers.

7. An agreement between the sending and receiving Countries to protect migrant workers against arbitrary dismissals, and provide better job security and benefits.

8. Establishment of legal protection and support systems that can improve the safety of migrant works from torture and ill-treatment.

9. An agreement between sending and receiving countries that will set clear standards about wages that migrant workers will actually receive.

Press Freedom

Submitted by:
The Legal Aid Foundation - Press
Sholeh Ali, S.H. (Kepala Divisi Litigasi)
Adiani Viviana, SH. (Staff Advocacy)

Case 1: Foreign intervention against a local radio station

21 June 2004: Radio Erabaru obtained a recommendation from the Mayor of Batam for frequency licenses from the Department of Transportation and Telecommunications of Indonesia c/q Transportation Agency of Riau Province;

21 August 2004: Radio Erabaru obtained a recommendation from the Governor of Riau;

3 September 2004: Radio Erabaru received a frequency license to operate at 106.1 MHz from the Department of Transportation Province of Riau;

01 March 2005: Radio Erabaru began broadcasting. Target listener segments are people speaking Mandarin Chinese with a common format (music, entertainment, news, cultural, commercial, etc.); the language of
broadcast is Indonesian (20%) and Mandarin (80%); the broadcast area covered Batam, Bintan, Karimun, Singapore and Johor (Malaysia);

New programmes included, among others, topics of human rights abuses in China, such as the alleged murder and organ harvesting of Falun Gong members, the unrest in Tibet, the persecution of Muslim Uighurs, etc.;

28 June 2005: KPID - Indonesian Broadcasting Commission of the islands Riau Province was officially established;

17 September 2005: KPID Riau Islands Province announced the opening of registration for radio and television broadcasters who want to get IPPs (Operating License for Broadcasting), as mandated in the Law 32/2002;

22 December 2005: Radio Erabaru IPP submitted a request addressed to KPID Islands and Minister of Communications and Informatics with the proposed frequency/ channel 106.5 MHz, and attached a feasibility studies proposal (technical, programming, management, etc.);
18 April 2006: Officials from the KPID Islands came to the office of Radio Erabaru to make factual verification. Several members of the commission of KPID Islands expressed support for Radio Erabaru to remain as a dominant Mandarin-language radio station to compete with Singapore and Johor stations.

19 April 2006: KPID Kepri held a Hearing Evaluation (EDP), which was attended by different sectors of society (parliamentarians, cultural, economic experts, activists, women, and NGOs) in order to process the request from Radio Erabaru IPP;

29 April 2006: After going through the process of Administrative Verification, Factual Verification and EDP, Radio Erabaru managed to get a Certificate of Eligibility Recommendation from KPID Islands to broadcast at a frequency of 106.5 MHz; they were expected to have the IPPs issued;

18 May 2006: KPID Islands requested the Radio Ad Lips Erabaru to broadcast information about the “Socialization Content Monitoring Broadcast Television”

13 November 2006: Kepri asked KPID Erabaru Radio to broadcast Public Service Announcements about “socialization role and function KPID” and “healthy television viewing guide”;

06 December 2006: KPID Islands officials paid a visit to Radio Erabaru to assess the completeness of the broadcasting infrastructure to match the IPP request for proposals that have been filed;

08 May 2007: A news item on the Indonesian Broadcasting Commission (IBC) website appeared saying that the Chinese Embassy requested IBC to close Radio Erabaru for broadcasting political propaganda and discrediting the Chinese government, and accused Radio Erabaru as being financed by the Falun Gong;

09 May 2007: KPID Islands requested for the archives of Radio Erabaru’s broadcasts between 1 May 1 2006 until 10 May 2007;

May 23, 2007: Radio Erabaru with Legal Aid Institute-Press (LBH-Pers) and AJI-Jakarta visited the Chinese embassy to assess the efforts the
Chinese embassy as a conceited act of the communist system that tried to interfere with the press freedom in Indonesia;

28 May 2007: Radio Erabaru visited the Press Council, which firmly rejects the act of foreign intervention against Indonesian press;

30 May 2007: The Coalition of Concerned Press and Broadcasting, which includes LBH-Press, Radio Erabaru, AJI-Jakarta, GHURE, and journalists as members, staged a demonstration to “Reject Foreign Intervention against the Indonesian Press” in front gate of the Chinese embassy;

28 June 2007: KPID Islands releases its assessment that Radio Erabaru used “too much” Mandarin in its programming, and requested that fundamental changes are made. (Note: Law 32/2002 and IEC rules do not expressly mentioned limits on the use of foreign languages);

18 September 2007: IBC Regulation No. 3 / 2007 concerning changes Broadcast Standards Program came into effect. These regulations specified the use of foreign languages (including Mandarin) at up to 30% of the total broadcast time. Radio Erabaru subsequently also changed its programming to adjust to this provision;

December 5, 2007: KPID through Batam Pos daily announced the result of the Forum Joint Meeting (FRB) of the IEC with Depkominfo on October 5, 2007 that five radio stations qualified for the IPP, excluding Radio Erabaru;

07 December 2007: Radio Erabaru requested for the minutes of the FRB to KPID (also to the IBC and Kominfo) to determine the reasons for the refusal of the IPP. Until now, they have not received an official answer. It is noteworthy that many aspects of the radio profile of Erabaru—management, technical, human resources, financial, etc.—are superior to the five stations that were qualified for IPPs;

28 March 2008: Hall Monitor Frequency Batam - Depkominfo gave the first warning letter to Radio Erabaru ordering to stop broadcasting for not having the required permit;

22 April 2008: Legal Aid Institute (LBH) Jakarta Press, Radio Erabaru’s legal counsel, sent a letter to the Communications and Informatics, KPI, KPID, requesting for the minutes of the FRB and to clarify the
reasons for rejection of the IPP to Radio Erabaru. Until now LBH has not received any response;

25 July 2008: Hall Monitor Frequency Batam - Depkominfo give the second warning letter to Radio Erabaru ordering to stop broadcasting for not having the required permit;


18 August 2008: Radio Erabaru received a letter from the Minister of Communications and Informatics on refusal to grant the request of Radio Erabaru, but did not include the reason for rejection.

16 October 2008: National Human Rights Commission sent a letter to the Minister of Communications and Informatics on protection of Radio Erabaru problem, and demanded an explanation;

21 October 2008: The Frequency Spectrum Monitoring Center in Batam sends the third and final warning Letter to Radio Erabaru to stop broadcasting;

23 October 2008: Radio Erabaru gave authorisation powers to LBH Press to file a lawsuit to the Administrative Court;

14 April 2009: The lawsuit of Radio Erabaru in the Administrative Court was declared lost for the reason that they broadcast using foreign language usage in excess of the 30% limit and the limited frequency;

24 April 2009: Radio Erabaru filed an appeal to the High Administrative Court;

03 August 2009: Frequency Spectrum Monitoring Agency Class II Batam sent a letter ordering termination of radio broadcast of Erabaru on the basis of the State Administrative Court decision on 14 April 2009 to reject all claims of Radio Erabaru;

20 October 2009: The claims appeal of Radio Erabaru at the State Administrative High Court was declared lost;
11 November 2009: Radio Erabaru filed an appeal to the Supreme Court;

December 16, 2009: Radio Erabaru sent an open letter to the President of the Republic of Indonesia;

February 15, 2010: Frequency Spectrum Monitoring Agency Class II Batam again sent a letter of warning to Radio Erabaru to terminate broadcast;

February 22, 2010: The director of Radio Erabaru with a member of LBH Pers responded to the 15 February orders for cessation of broadcasts that until a Supreme Court decision is handed down, all parties must abide by the rule of law, respect judicial processes and not resort to vigilantism.

Radio Erabaru also held a press conference saying that the warning letters for cessation of broadcasts only served to strengthen the alleged intervention of the Chinese communist government;

March 9, 2010: In response, the Batam Frequency Spectrum Monitoring Agency sent a new warning letter for broadcast cessation;

March 10, 2010: Radio Erabaru complained to the Indonesian National Human Rights Commission, requesting protection from the Chinese communist government’s intervention on the Radio Erabaru;

March 10, 2010: Radio Erabaru held a press conference at the National Human Rights Commission (Komnas HAM) Indonesia, explicitly stating that their plight is a result of Chinese government intervention against Indonesia, and will lodge a protest against the Chinese embassy.

Case Recommendations:

1. Protection and respect for press freedom against foreign intervention, particularly by the Chinese government;
2. Protection and respect for the right of Indonesian people to obtain information, which is essential to uphold justice and truth;
3. Encourage all concerned parties to use the Act No. 40/1999 on the Press and Act No. 32/2002 on Broadcasting to resolve issues concerning the press and broadcasting.
Case 2: Lawsuit against a complaint published in the media

The case arose from a letter from Khoe Seng Seng on Kompas daily, which reported complaints to the police about the alleged fraud committed by the PT Duta Pertiwi Tbk Associated about buying and selling of kiosks at the ITC Mangga Dua. In the purchase transaction, Duta Pertiwi did not reveal the status of the actual objects being bought and sold. Khoe Seng Seng intends to inform the public to be careful and wary of the actions of Duta Pertiwi regarding the status of the kiosks being sold at ITC Mangga Dua. Duta Pertiwi did not say that it was only selling the rights to land management and not the rights to construct a building, which can be misleading.

There are 19 similar cases about this issue, and Khoe Seng Seng’s complaint is just one of them. PT Duta Pertiwi filed a counter-complaint to the police on the basis of insult and defamation. Additionally, Duta Pertiwi also sued for civil damages for compensation of 10 billion to 17 billion rupiah. PT Duta Pertiwi used the Indonesian Civil Code’s article 1365 on unlawful acts and article 1372 on defamation. Duta Pertiwi regarded the letters made by Khoe Seng Seng as libellous. Actually, the letter of the plaintiff which appeared in daily Kompas, Voice Updates and Warta Kota was attempting to clarify the right of reply. Thus, contrary to its objections, Duta Pertiwi should have used the right to answer to the complaint.

If Duta Pertiwi felt aggrieved by a letter in a newspaper, the proper procedure should have been the mechanism under Law no. 40 (1999) on the Press, which is the lex specialis for news media matters. The “appropriate” course of action would have been for Duta Pertiwi to take its complaint to the Press Council.

Update: On Wednesday, July 15, 2009, East Jakarta District Court sentenced Khoe Seng Seng with a penalty of six months to one year probation for defamation. The East Jakarta District Court decision required Khoe Seng Seng to pay an indemnity of one billion Indonesian rupiah (1b IDR). Khoe Seng Seng appealed to the Jakarta High Court, which overturned the verdict. Duta Pertiwi filed an appeal on the criminal case to the Supreme Court.
Case Recommendations

1. Transfer of the case jurisdiction under the law concerning the press.
2. Provide protection for the people to be able to freely express their aspirations, complaints, information and opinions especially in the media as a public space.
Past Human Rights Violations

Submitted by:
Komisi untuk Orang Hilang dan Korban Tindak Kekerasan
(Commission for Disappearances and Victims of Violence, KontraS)
Jl. Borobudur No.14 Menteng
Jakarta Pusat 10320
Phone: 021-3926983, 3928564
Fax: 021-3926821
Site: www.kontras.org
Email : Kontras_98@kontras.org

Tanjung Priok, 1984

Tanjung Priok was the site of a severe case of human rights violation on 12 September 1984, during which the Indonesian military opened fire upon thousands of people who were attending a mass prayer. On that day,
the routine sermon was about the community’s refusal to accept the *Pancasila* as the sole ideology of the country. At the same time, some members of the congregation went to the Military District Operations Command (Kodim) of North Jakarta to demand the release of Musholla As Saadah officials and were detained after a riot erupted in response to a soldier who posted a government pamphlet on a mosque wall using gutter water, and without taking off his shoes.

Indiscriminate shooting at the crowd caused the victims to run in all directions. Those who suffered from gunshot wounds were collected at RS-PAD. Other victims were arbitrarily arrested as they escaped to other parts of Indonesia, all at once at the dawn of the following morning. Among the victims were also those who were not involved in the incident, but were actively preaching about it. Without any notification to the families, the victims were detained and tortured, whether in Kodim North Jakarta, Military police area office (Mapomdam) Guntur or RTM Cimanggis. Many underwent a court process and were sentenced to between one and three years of prison, on charges of subversion and resisting arrest.

After the incident, the victims experienced stigmatisation from the community, who considered them criminals against the nation. Many of the victims lived in poverty because they lost their jobs or had difficulty finding jobs or continuing school.

The victims and the community demand for resolution of the case was only heard in 1998, when the National Commission on Human Rights (Komnas HAM) of Indonesia formed a special team to investigate the case. This was followed by the formation of a commission of inquiry on the human rights violation at Tanjung Priok (KP3T) in year 2000. Through these two investigation processes, one of which was *pro justicia*, Komnas HAM found that severe human rights violations occurred, including killing, arbitrary detention and arrest, torture and forced disappearance. Komnas HAM’s report concluded that the incident was the responsibility of the armed forces, not only the perpetrators on the field but also the operational command and including (higher) command responsibility.

Komnas HAM submitted its final report to the office of the Attorney General. The investigation at the Attorney General’s office was only finished in July 2003. In September 2003, the human rights court was established. The court charged 15 defendants who were responsible as the field perpetrators and as operational commanders. The case, however, excluded President
Soeharto as the highest military commander, LB Moerdani as the Commander of ABRI (armed forces) and Tri Sutrisno as Pangdam Jaya.

At the same time, during the investigation process, monetary gifts were distributed as part of Islamic “reconciliation” by the perpetrators to several victims of Tanjung Priok case beginning on 1 March 2001. As the result, while the hearings were in progress, many victims changed their testimony in favor of the perpetrators. However, some victims remained consistent with their fight to uphold the law through a fair court process to fulfil the quest for truth and justice for the victims.

In 2003, the first trial for the Tanjung Priok case was be held with Sutrisno Masung and 10 members, including Pranowo, R. A. Butar-Butar and Sriyanto as defendants. In 2004, the ad hoc trial in the first level sentenced RA Butar-Butar to 10 years in prison and Sutrisno Masung to three years in prison, and two years each to soldiers under his command. Meanwhile, the prosecutor failed to prove the guilt of of Pranowo and Sriyanto. In second level of trials in 2005, the judge released of RA Butar Butar and Sutrisno Masung. By 2006, Supreme Court released all defendants. On the first level of the trials, the fulfilment of compensation for the victims affected the sentencing. However, in the second level of the trial and the Supreme Court, the impact of reparation is less clear. Significantly, the judge did not make any mention of the victims’ rights in the release sentences. In fact, the guilt of the defendants depended on the fulfilment of compensation, although it is not a part of the main rights claims of the victims.

In 2007, an effort to fulfil victim’s rights was made by a group of victims in an appeal to the Central Jakarta Court for compensation for the victims of the Tanjung Priok Massacre. They appealed for compensation of 658 million Indonesian rupiah (IDR), and immaterial costs of 357.5 million IDR, totalling 1.015 billion IDR in claims. The court became confused with this appeal, since this was the first time for the judges to receive this type of a request. Unfortunately, the court did not grant the defendants’ demand because the primary source of the appeal came from the statement of human rights court of Tanjung Priok which stated that the court already annulled the matter at the level of the high court and Supreme Court.

On 26 March 2008, several members of the victim’s families—representatives of tragedy Semanggi I, May 1998 Riots, 1997 disappearance activist, the Tanjung Priok massacre 1984 and KontraS—reported directly
to President about the difficulties in resolving the case and pinpointing the responsibility for all these cases. In response, the President said he would conduct a special cabinet meeting to be attended by all ministers and Presidential assistants on how to handle and resolve human rights cases. In the meeting, President also promised to ask clarifications from the Attorney General, Mr Hendarman Supanji, about the matter of the lost documents of Trisakti Semanggi, as well as the statement of the Minister of Defence, Mr Juwono Sudarsono who said that it was not essential for military officers and former members of TNI to fulfil of Komnas HAM invitation to be a witness in the inquiry team.

On July 1, 2008 KontraS and Ikatan Keluarga Orang Hilang Indonesia (IKOHI or Indonesian Association of Families of the Disappeared) visited the Third Commission of the Parliament and demanded that the Attorney General (AG) be called upon to explain why he is not implementing the MK decision to conduct further investigation on the four cases of gross human rights violations. Specifically, the group’s calls were: (1) Demand the AG to investigate enforced disappearance cases which occurred in 1997-1998 especially that of 13 persons who remain missing up to this day. Since these cases are continuing crimes, these should be handled by the permanent human rights tribunal and not necessarily by an ad hoc tribunal; (2) The President must establish an ad hoc human rights tribunal for past cases based on the documents which Komnas HAM submitted to the AG. The victims’ families and surfaced victims are now closely monitoring the developments related to their calls.

Talangsari Massacre in Lampung, 1989

On 7 February 1989, the military launched an attack in the residential village of Talangsari in Lampung province, resulting in arbitrary arrests and detentions, torture, and forced disappearances. In the attack, the shooting resulted in hundreds of casualties in terms of deaths, injuries and disappearances. The Talangsari residence was also burnt down and closed to the public. After the attack, hundreds of persons were unfairly prosecuted and were charged with subversion. This applied to all victims of Lampung incidents who are in Lampung, Jakarta, Bandung, Central Java, East Java and West Nusa Tenggara.

In 1998 after the national political scene experienced change, some of the victims and their families started litigation against past abuses to de-
mand for justice. The fight for justice is carried out through various efforts such as meetings members of Indonesia’s House of Representatives and the government, or by pressuring the National Commission on Human Rights (Komnas HAM) to conduct investigations.

In its course, this fight encountered many obstacles, especially those political in nature. Furthermore, there is a strong effort by perpetrators to use divide and conquer politics to escape culpability. For instance, those responsible took advantage of the victim’s poverty by offering them money made available through the Islamic “reconciliation” principles. Even if others insist on a legal process as the proper solution, some of those who accepted money tried to stop other victims from demanding the resolution of this case.

Government efforts to stop the case resolution included the appointment of AM Hendropriyono as the head of National Intelligence Body (BIN) in 2001. As a result, there have been interventions from military officials to close the case. Later, local military and civil officials, active or retired, started to visit the victims, telling them not to bring up the case ever again. Village officials who took part in the guerrilla movement in Talangsari also visited other victims one by one and asked them to forget about resolving the case while they handed money to the victims.

In 2001, Komnas HAM formed the Inquiry Team for the Talangsari Massacre of 1989, with Mr. Koesparmono Irsan as chairperson. The investigations, however, were not immediately started. Among the many obstacles to resolving the case of Talangsari were the deals made with the victims by parties responsible for the massacre which were based solely on “islah,” or Islamic peace agreements in the form of monetary compensation. While some victims received “islah,” others preferred to resolve the issue in the legal arena.

In January 2004, the inquiry process for Talangsari began and Komnas HAM appointed Hasballah M. Saad as the new chairperson. By early 2005, the Inquiry Team failed to make progress beyond analyzing pre-existing data. In February 2005, Komnas HAM proceeded to re-establish the Inquiry Team under law No.39/1999. The team included members Enny Suprapto, Samsudin, Ruswiyati Suryasaputra and Muhamad Farid. The group conducted field research around Talangsari Lampung and began interviewing witnesses. After preliminary witness interviews, the team determined that human rights violations had occurred in the form of
Summary killings, torture, arbitrary detention and arrest, as well as violations of the freedom of expression. The team did not finish their report until 2006 as they were waiting for replies from the Military Sub-Area Command (Korem) Garuda Hitam and the Commander of Military Area Command Sriwijaya.


During a six-month period beginning in June 2007, the team determined that there were at least 94 victims of the massacre in Lampung, Central Java and Jakarta. The team is currently waiting for permission from the Attorney General to begin an exhumation process in Talangsari Village in search of additional victims. The Inquiry Team called former members of the military and police department to serve as witnesses in their continuing investigation. Individuals who have answered the team’s call include B. Suyitno (former Vice Head of Local Police in Lampung),
Edward Aritonang (former Head of Regional Police of South Sumatera) and Soedome (former Chief of Command for the Restoration of Security and Order/Pangkobkamtib). Soedome’s account indicated that the Military Sub-District Command (Koramil), the Military Sub-Area Command (Korem), the Military Area Command (Kodam), the former Chief of Armed Forces Staff (KSAD) and the former Commander of Armed Forces (Panglima ABRI) were responsible for the events of the Talangsari Massacre of 1989. Soedome stated that he did not know exactly what had occurred in the field but placed the blame on Mr Hendropriyono, acting Commander of Military Sub-Area Command at the time.

Subsequently, the Komnas HAM Inquiry Team called three military officials as witnesses: Wismoyo Arismanandar (former Chief of Military Area Command of Diponegoro), Mr. Hendropriyono (former Commander of Military Sub-Area Command 043 Garuda Hitam) and Try Soetrisno (former Commander of Armed Forces). However, despite multiple calls, none of these individuals appeared before the inquiry.

There has been an effort by Komnas HAM to subpoena the witnesses under Law No. 39/1999 of the National Commission on Human Rights article 95 and the Law No. 26/2000 on the Human Rights Court. The Central Court of Jakarta as a body in the general judicial system has authority to implement subpoena. Komnas HAM has met with the Head of Central Court Jakarta, Mrs. Andriyani Nurdin, three times, most recently on 25 June 2008. In the June 25th meeting, Mrs. Andriyani stated that the Central Jakarta Court does not have authority to implement a subpoena, but the Human Rights Court does.

In a meeting with several victims and members of Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS) on 26 March 2008, President SBY gave his support to efforts to resolve cases of past abuse, including the Talangsari Massacre of 1989. However, the campaign still faces opposition as evidenced by the warning by the Minister of Defense to former military officers not to attend the meeting with the Komnas HAM Inquiry Team for the lack of legal jurisdiction in the Talangsari case.

On July 1, 2008, KontraS and Ikatan Keluarga Orang Hilang Indonesia (IKOHI or Indonesian Association of Families of the Disappeared) visited the Third Commission of the Parliament. The group demanded that the Attorney General (AG) be called to explain why he was not implementing the MK decision to conduct further investigation on the four gross human rights violations.
rights violations. Specifically, the group’s calls were: (1) Demand the AG to investigate enforced disappearance cases which occurred in 1997-1998 especially that of 13 persons who remain missing up to this day. Since these cases are continuing crimes, these should be handled by the permanent human rights tribunal and not necessarily by an ad hoc tribunal; (2) The President must establish an ad hoc human rights tribunal for past cases based on the documents which Komnas HAM have already submitted to the AG. The victims’ families and surfaced victims are now closely monitoring the developments related to their calls.

On 23 June 2008, Kontras sent a letter to Komnas HAM to ask the progress of the Inquiry Team of the Talangsari case. Kontras took note that Komnas HAM still faced obstacles in terms of delivering subpoena in order to call the former official military and police at the time.

**May 1998 Tragedy**

May 1998 was a dark period in Indonesia’s history. There were mass riots in almost all parts of Indonesia during which shops were destroyed and robbed; houses, vehicles and other possessions were burnt; forced disappearances and killings occurred; and abuse and rape were committed against the Chinese ethnic minorities. These incidents cannot be separated from the context of Indonesia’s political situation and dynamics, which were 1997 general election, kidnapping of several activists, monetary crisis, General Meeting of People’s Consultative Assembly, and massive student demonstrations. The May 1998 riots were closely related to the shift in allegiance of the political elites at that time which was followed by Soeharto’s stepping down as President on 21 May 1998--a victorious moment for reformation movement.

Many in the local and international community demanded the government to resolve the case. In 1998 Tim Gabungan Pencari Fakta or Fact Finding Joint Team was formed with the task of revealing the facts and the background of the incident. This team concluded that not only was the riot not an accidental or isolated incident but part of a political shift, exhibiting a similar pattern pattern of incidents occurring all over Indonesia. There was an early indication of severe human rights violations especially crimes against humanity. A lack of follow up to this report made the victims, victims’ families, accompanying NGOs, several community
organizations, political parties and press groups demand Komnas HAM to investigate the case.

In 2003 Komnas HAM formed an Ad Hoc Team for the investigation of 13-15 May 1998 riots, working *pro justicia*. In this report, it stated that this incident was an inseparable part of repressive ways employed by Soeharto’s New Order regime in managing the nation’s problems, with the aim of eliminating all potential opposition from the community groups. It had to be seen as part of a long series of intelligence operations during the end of New Order power. Considering the wide and systematic nature of these incidents, and their sequence, it can be seen that there was a deliberate and designed riot which occurred in 88 locations in all Jakarta, Bogor, Tangerang and Bekasi (Jabotabek).

The systematic nature can be seen from the attacks against a certain ethnic group, discriminatory policies and various criminal acts. The riots followed a certain pattern: the trigger is provided by a group of people with similar characteristics appearing at every riot location; and the pattern of official ignorance towards the riots could be seen from the fact that many officials are absent at these locations, thus allowing the riots to continue. It is therefore necessary to demand a legal accountability of the parties suspected to be responsible for the crimes against humanity in May 1998 incidents, which are TNI, Polri and civil officials.

Komnas HAM report was then submitted to the Attorney General’s office. Early January 2004, the Attorney General’s office stated that the investigation report was incomplete and would be returned to Komnas HAM because there was no explanation on the probable responsibility of the parties mentioned. In mid 2005, Komnas HAM submitted the inquiry report to the Attorney General, but it cannot be followed up because the case was deemed “too political” and limitations on legal technicalities, since no explanations on the responsibility of the parties was provided. This stagnation of the inquiry continued until two years ago.

On 26 March 2008, there were several of victim’s families who met with President Susilo Bambang Yudhoyono. The representatives of Semanggi I tragedy, May 1998 Riots, disappeared activists 1997, 1984 Tanjung Priok massacre and KontraS reported directly to President about the difficulties to resolve the case and to determine the responsibility of all cases that occurred. In response to their report, the President said would conduct a special limited meeting of cabinet membets to be attended by all ministers
and other assistants of President who handle the human rights cases. At the meeting, President also promised to ask clarifications from Attorney General Hendarman Supanji about his statement on the loss of documents related to Trisakti Semanggi, as well as the statement of Defence Minister Juwono Sudarsono for saying that it was not essential for military officers and former members of TNI to fulfil the Komnas HAM invitation to be witnesses in the inquiry team.

On July 1, 2008, KontraS and IKOHI visited the Third Commission of the Parliament. The group demanded that the Attorney General (AG) be called to explain why he is not implementing the MK decision to conduct further investigation on the four gross human rights violations. Specifically, the group’s calls were: (1) Demand the AG to investigate enforced disappearance cases which occurred in 1997-1998 especially that of 13 persons who remain missing up to this day. Since these cases are continuing crimes, these should be handled by the permanent human rights tribunal and not necessarily by an ad hoc tribunal; (2) The President must establish an ad hoc human rights tribunal for past cases based on the documents which Komnas HAM have already submitted to the AG. The victims’ families and surfaced victims are now closely monitoring the developments related to their calls.
The Ampatuan Massacre

**Preliminary Request for an Urgent Pronouncement on the 23 November 2009 Massacre in Sito Masalay, Barangay Salaman, Ampatuan Town, Maguindanao Province, the Philippines, Calling on the State to Ensure that the Perpetrators of the Heinous Human Rights Violation—who are All Agents of the Philippine State—are Brought to Justice and that Adequate Reparations and Satisfaction are Made to the Heirs of the Victims Under Applicable Rules of International Law**

A group of relatives of the victims of the Ampatuan massacre and their lawyers present their case submission to the media, prior to submitting the case to the AICHR.
3 February 2010

The ASEAN Intergovernmental Commission on Human Rights (AICHR)
c/of the ASEAN Secretariat
70A Jl. Sisingamangaraja
Jakarta 12110, Indonesia
Tel: (6221) 7262991, 7243372 •
Fax: (6221) 7398234, 7243504J

I. PETITIONERS

1. This preliminary request is being filed on behalf of the following Petitioners:

   a. MA. REYNAFE MOMAY-CASTILLO
   b. ZENAIDA O. DUHAY
   c. JULIET PALOR EVARDO
   d. MA. CIPRIANA GATCHALIAN
   e. GLENNIA G. LEGARTA
   f. ARLYN D. LUPOGAN
   g. DODIE LUPOGAN
   h. MARY JEAN M. MERISCO
   i. CATHERINE NUÑEZ
   j. NOEMI E. PARCON
   k. MYRNA P. REBLANDO
   l. RAMONITA S. SALAYSA
   m. EDITHA MIRANDILLA TIAMZON
   n. ERLYN IDALO UMPAD

All the Petitioners have the following contact details:

CENTER FOR INTERNATIONAL LAW
1904 Antel 2000 Corporate Center
121 Valero Street, Salcedo Village,
1227 Makati City, the Philippines
Email: administration@centerlaw.org
Tel. Nos: (632)887-4445/887-3894
Fax No: (632)887-3893
4. Petitioners hereby make a preliminary request for an urgent declaration from the Commission calling on the Philippine State to ensure that the perpetrators of the heinous human rights violation – who are all agents of the Philippine State – are brought to justice and adequate reparations are made to the heirs of the victims under applicable rules of international law.

The request is being made under Article 14 of the ASEAN Charter and pursuant to the relevant goals of the Commission, namely,

(1.1) To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

(1.2) To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

(1.3) To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

(1.4) to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;

(1.5) to enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and

(1.6) To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.
II. ASEAN MEMBER STATE AGAINST WHICH THE PRELIMINARY REQUEST IS BROUGHT.

Republic of Philippines

III. FACTS DENOUNCED

1. Petitioners are heirs of some of the journalists slaughtered in the 23 November 2009 massacre in Masalay, Brgy. Salman, Ampatuan, Maguindanao, Philippines.

2. On 23 November 2009, Buluan Vice Mayor Esmail “Toto” Mangudadatu (hereinafter “Vice Mayor Mangudadatu”) was scheduled to file his certificate of candidacy (COC) for the forthcoming Philippine May 2010 elections before the Commission on Elections office in Shariff Aguak town, Maguindanao, Philippines, for the position of Governor of Maguindanao.

3. In order to cover the supposedly landmark filing of the COC, thirty two (32) journalists and media workers from all over Mindanao were invited to join the convoy to Shariff Aguak town. They are:

3.1 Adolfo, Benjie, Gold Star Daily, Koronadal City
3.2 Araneta, Henry, dzRH, General Santos City
3.3 Arriola, Mc Delbert “Mac-Mac,” UNTV, General Santos City
3.4 Bataluna, Rubello, Gold Star Daily, Koronadal City
3.5 Betia, Arturo, Periodico Ini, General Santos City
3.6 Cabillo, Romeo Jimmy, Midland Review, Tacurong City
3.7 Cablitas, Marites, News Focus / dxDX, General Santos City
3.8 Cachuela, Hannibal, Punto News, Koronadal City
3.9 Cadagdagon, Jephon, Saksi News, General Santos City
3.10 Caniban, John, Periodico Ini, General Santos City
3.11 Dalmacio, Lea, Socsargen News, General Santos City
3.12 Decina, Noel, Periodico Ini, General Santos City
3.13 Dela Cruz, Gina, Saksi News, General Santos City
3.14 Duhay, Jhoy, Gold Star Daily, Tacurong City
3.15 Evardo, Jolito, UNTV General Santos City
3.16 Gatchalian, Santos, DXGO, Davao City
3.17 Legarte, Bienvenido, Jr., Prontiera News, Koronadal City
3.18 Lupogan, Lindo, Mindanao Daily Gazette, Davao City
3.19 Maravilla, Ernesto “Bart,” Bombo Radyo, Koronadal City
3.20 Merisco, Rey, Periodico Ini, Koronadal City
3.21 Montaño, Marife “Neneng,” Saksi News, General Santos City
3.22 Morales, Rosell, News Focus, General Santos City
3.23 Nuñez, Victor, UNTV, General Santos City
3.24 Perante, Ronnie, Gold Star Daily correspondent, Koronadal City
3.25 Parcon, Joel, Prontiera News, Koronadal City
3.26 Razon, Fernando “Ranny,” Periodico Ini, General Santos City
3.27 Reblando, Alejandro “Bong,” Manila Bulletin, General Santos City
3.28 Salaysay, Napoleon, Mindanao Gazette, Cotabato City
3.29 Subang, Francisco “Ian”, Socsargen Today, General Santos City
3.30 Teodoro, Andres “Andy,” Central Mindanao Inquirer, Tacurong City
3.31 Tiamzon, Daniel, UNTV, General Santos City
3.32 Momay, Reynaldo “Bebot”, Midland Review, Tacurong City, remains missing and is presumed dead.

4. Between 7:30 AM and 8:00 AM of that fateful day, Buluan town Vice Mayor Esmael “Toto” G. Mangudadatu (hereinafter “Vice Mayor Mangudadatu”), requested by phone Col. Medardo Geslani (hereinafter “Col. Geslani”), Commander of the 601st Infantry Brigade, for security escorts. Vice Mayor Mangudadatu explained thoroughly to the official the verified information he received on a possible ambush against the convoy, the heated political atmosphere in the province of Maguindanao, and the overwhelming support the military and police have been extending to the Ampatuans.

5. Vice Mayor Mangudadatu made these requests for security escorts several times.

6. Nevertheless, according to Vice Mayor Mangudadatu, Col. Geslani of the 601st Infantry Brigade refused to provide even a single military personnel. At that time, the Army officer commanded an Army unit which has immediate jurisdiction over Ampatuan town.

7. At this point, Vice Mayor Mangudadatu realized that the officer had no plans of ever providing security to the Vice Mayor’s representatives.

8. Journalists on the convoy also called the commanding general of the 6th Infantry Division of the Philippine Army, which has responsibility
over the entire province of Maguindanao, for security.

9. Indeed, the Vice Mayor’s statements are supported by the testimony of Manila Standard Today correspondent Joseph T. Jubelag, one of the journalists invited to cover the convoy.

10. Jubelag said that just a few hours before the convoy took off, he heard Alejandro “Bong” Reblando relay to the group of journalists and media workers invited to the convoy that Maj. Gen. Cayton had just told him (Alejandro “Bong” Reblando) that the reason why Respondent Col. Geslani had to turn down the request of the Mangudadatus is that his troops had to attend a send-off ceremony that morning for the 46th Infantry Battalion, which was to be sent to Samar.


12. Zonio told Jubelag and that Maj. Gen. Cayton gave him (Aquiles Zonio) assurances that it was safe to travel through the national highway to Shariff Aguak from Buluan because there was a deployment of soldiers and Cafgu there.

13. Jubelag said he was sitting only an arms-length away from both Alejandro “Bong” Reblando and Aquiles Zonio so he could hear their telephone conversations with Respondent Maj. Gen. Cayton.

14. He said after hearing Maj. Gen. Cayton’s assurances, he felt relieved, as everyone in the group was, considering that the assurances came from no less than the highest military commander in the area.

15. Joseph T. Jubelag also assumed, on the basis of such assurances, that Respondent Maj. Gen. Cayton was in touch with his man in the area, Col. Geslani, commanding officer of the 601st Brigade, which had jurisdiction over the provinces of Maguindanao and Sultan Kudarat.

16. Jubelag could sense the immediate relief felt by everyone upon hearing that Maj. Gen. Cayton had in fact given such assurances of a safe journey through the national highway after two hours of trying to get a firm hold on the security situation in the area.
17. In order to ease the tension between the Mangudadatus and the Ampatuans, Vice Mayor Mangudadatu decided to send his wife, two sisters, aunt and two female lawyers in the belief that their womanhood will be respected.

18. According to Vice Mayor Mangudadatu, he received reports that the Ampatuans, whom he will challenge in the gubernatorial race in next year’s elections, had threatened to chop him into pieces once he filed his candidacy.

19. So Vice Mayor Mangudadatu sent an all-woman team and journalists, the Vice Mayor reasoning that “Under our tradition, Muslim women are being respected. They should not be harmed just like innocent children and the elders.”

20. According to Buluan Councilor Toy Khadafi Mangudadatu, “We really decided to send the women to file the CoCs on our behalf thinking that they will be protected and spared from violence and the men won’t hurt them.”

21. The Mangudadatu women who were in the convoy are:

(a) Bai Genalin Mangudadatu (his wife);
(b) Bai Eden Mangudadatu (his sister);
(c) Bai Farina Mangudadatu (his sister);
(d) Bai Rowena Mangudadatu (his aunt);
(e) Atty. Cynthia Oquendo-Ayon (his lawyer); and
(f) Atty. Connie Brizuela (his lawyer).

22. The convoy of Vice Mayor Mangudadatu was composed of six (6) vehicles:

(a) 4 Toyota Grandia vans (one grey, one green, and two white); and
(b) 2 two media vehicles – a Pajero owned by a DZRH broadcast journalist and a Mitsubishi L-300 van owned by UNTV.

There was a seventh vehicle, a Grandia boarded by mediamen, but it lagged behind and decided to turn around once the passengers sensed something was wrong.
23. Two (2) other vehicles were not part of the Mangudadatu convoy but happened to be traveling on the same highway:

(a) a red Toyota Vios; and
(b) a light blue Toyota Tamaraw FX.

24. The Vios had five (5) passengers: Eduardo Lechonsito, a government employee who was bound for a hospital in Cotabato City after suffering a mild stroke Monday morning. He was with his wife Cecille, co-workers Mercy Palabrica and Daryll delos Reyes, and driver Wilhelm Palabrica. The FX was driven by Anthony Ridao, employee of the National Statistics Coordination Board, and son of Cotabato City councilor Marino Ridao.

25. The Mangudadatu convoy, along with the Vios and Toyota Tamaraw FX, was intercepted in Ampatuan, Maguindanao by more than a hundred (100) armed men. Everyone in the convoy was brought to a nearby killing field in a hilly area of Sitio Masalay, Barangay Salman, Ampatuan town, Maguindanao province, the Philippines.

26. At about 10:30 in the morning of 23 November 2009, 1st Lt. Gempesao received a phone call from his intelligence personnel, in the person of Cpl. Emelio Ysita, informing him that they are in the vicinity of Brgy. Salman, Ampatuan town, and that they have observed several persons clad in police camouflage uniforms on board a vehicle marked with “PNP.” Further, they have also observed a number of vehicles mostly vans escorted by armed men on board a pick-up and a Sports Utility Vehicle (SUV) vehicle going to the hilly part of the area.

27. Immediately after receiving the said phone call, 1st Lt. Gempesao informed his Commanding Officer, Lt. Col. Rolando Nerona, that their intelligence personnel who were dispatched to the area observed that several vehicles were taken at gunpoint and were moved to the hilly part of the area.

28. At about 10:40 in the morning, Staff Sergeant Coronel received a call from 1st Lt. Gempesao for him, together with Cpl. Ysita and Sgt. Rodriguez, to proceed to the Masala Detachment in Brgy. Masalay, Ampatuan, Maguindanao, to confirm if there were captured Mangudadatu supporters.
29. But before they can proceed to the Masalay Detachment they were blocked on the highway by numerous armed men consisting of uniformed policemen and militamen.

30. According to Staff Sergeant Coronel's estimate, there were about five hundred (500) armed men who blocked them, together with the armed men on high ground surrounding the checkpoint.

31. At this point, Staff Sergeant Coronel's group turned around and stopped about 100 meters away to observe. They have observed that there was a back hoe being unloaded from a long bed truck or heavy equipment carrier parked near the road that was facing them or towards Shariff Aguak.

32. The back hoe was running and entering the crossing to Brgy. Salman, Ampatuan, Maguindanao. After about twenty (20) minutes, Staff Sergeant Coronel's group was permitted to enter, and they proceeded to the Masalay detachment.

33. On the other hand, at about 11:00 o'clock, Buka Sakilan Ali (a member of the Cafgu Active Auxiliary (CAA) based along the National Highway of Sitio Masalay, Brgy. Matagabong, Ampatuan, Maguindanao) observed that police personnel of the Regional Mobile Group of the ARMM flagged down eight (8) units of vehicles loaded with passengers along the National Highway of Sitio Masalay, Barangay Matagabong, Ampatuan, Maguindanao.

34. He told investigators the vehicles were signaled by two (2) patrol police vehicles going to the mountainous area of Barangay Salman, Ampatuan, Maguindanao more or less FIVE (5) kilometers away from the national highway of the said place wherein their detachment is located. After several minutes, he heard simultaneous gun fire believed to be within their area of responsibility.

35. Upon hearing the said simultaneous gun fire, Ali stated that their Commanding Officer sent a message through mobile cellular phone to the 38th Infantry Battalion Headquarters located at Brgy. Semba, Dos Shariff Kabungsuan, Maguindanao.

36. On the other hand, at about 10 minutes later from 10:30 in the morning of 23 November 2009, 1st Lt. Gempesao again received another
cell phone call from Cpl. Ysita again informing him that they have sighted a trailer loaded with a “backhoe” going to the same direction where the several vans were sighted.

37. During 1st Lt. Gempesao’s conversation with his intelligence personnel, in the person of Cpl. Ysita, 1st Lt. Gempesao’s cellphone was on a loudspeaker mode, thus, his Commanding Officer together with Ex-Officer in the person of Major Navarro, and 1st Lt. Reyes, overheard their conversation hence their Commanding Officer, in the person of Lt. Col. Nerona, immediately called up the 601st Infantry Brigade and talked to the Brigade Commander, in the person of Col. Medardo Geslani, explaining the whole situation that took place in Brgy. Salman, Ampatuan.

38. At least fifty-seven (57) women and men were brutally murdered by the perpetrators at the massacre scene. Amongst the victims of the carnage were ALL of the 32 journalists and media workers who joined the Magundadatu convoy.

39. Of 32 journalists and media workers, thirteen (13) are represented by their respective heirs in this preliminary request, namely:

(a) McDELBERT ARRIOLA (for UNTV in General Santos City);
(b) JHOY DUHAY (for Goldstar Daily in Cagayan De Oro City);
(c) JULITO EVARDO (for UNTV in General Santos City);
(d) SANTOS “JUN” P. GATCHALIAN, JR. (for Metro Gazette in Davao City);
(e) BIENVENIDO LEGARTA (for Periodico Ini in Koronadal City);
(f) LINDO T. LUPOGAN (for Metro Gazette in Davao City);
(g) REY MERISCO (for Periodico Ini in Koronadal City);
(h) VICTOR NUÑEZ (for UNTV in General Santos City);
(i) JOEL V. PARCON (for Prontiera News in Koronadal City);
(j) ALEJANDRO “Bong” M. REBLANDO (for Manila Bulletin in General Santos City);
(k) NAPOLEON SALAYSAY (for Clearview Gazette in Cotabato City); and
(l) DANIEL BECOLLADO TIAMZON (for UNTV in General Santos City).
(m) ROBERT “Bebot” MOMAY (for Midland Review in Tacurong City) who is still missing but is presumed dead, based on available forensic evidence.
40. The slaughtered journalists and media workers are represented in this suit by:

(a) PETITIONER MA. REYNAFE MOMAY- CASTILLO, the daughter of ROBERT “Bebot” MOMAY (for Midland Review in Tacurong City);

(b) PETITIONER ZENAIDA O. DUHAY, wife of JHOY DUHAY (for Goldstar Daily in Cagayan De Oro City);

(c) PETITIONER JULIET PALOR EVARDO, mother of JULITO EVARDO (for UNTV in General Santos City);

(d) PETITIONER MA. CIPRIANA GATCHEALIAN, wife of SANTOS “JUN” P. GATCHEALIAN, JR. (for Metro Gazette in Davao City);

(e) PETITIONER GLENNA G. LEGARTA, wife of BIENVENIDO LEGARTA (for Periodico Ini in Koronadal City);

(f) PETITIONERS DODIE LUPOGAN & ARLYN D. LUPOGAN, brother and wife, respectively, of LINDO T. LUPOGAN (for Metro Gazette in Davao City);

(g) PETITIONER MARY JEAN M. MERISCO, wife of REY MERISCO (for Periodico Ini in Koronadal City);

(h) PETITIONER CATHERINE NUÑEZ, mother of VICTOR NUÑEZ (for UNTV in General Santos City);

(i) PETITIONER NOEMI E. PARCON, wife of JOEL V. PARCON (for Prontiera News in Koronadal City);

(j) PETITIONER MYRNA P. REBLANDO, wife of ALEJANDRO “Bong” M. REBLANDO (for Manila Bulletin in General Santos City);

(k) PETITIONER RAMONITA S. SALAYSAY, wife of NAPOLEON SALAYSAY (for Mindanao Gazette in Cotabato City);
109

A Performance Report on the first year
of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

(l) PETITIONER EDITHA MIRANDILLA TIAMZON, wife of DANIEL BECOLLADO TIAMZON (for UNTV in General Santos City); and

(m) PETITIONER ERLYN IDALO UMPAD, mother of the minor Japhet Elidan Umpad Arriola, her child with McDELBERT ARRIOLA (for UNTV in General Santos City).

41. Indeed, various members of the Ampatuan clan, which includes two governors and several mayors, have been pointed to by witnesses as masterminds and direct participants in the mass murder.

42. They were allegedly part of a conspiracy in which the leading figures were former governor Andal Ampatuan Sr. and Mayor Andal “Unsay” Ampatuan Jr.

43. Paradoxically, both the Magundadatus and the Ampatuans are close allies of the present Arroyo administration and belong to the same ruling party, the Lakas-NUCD-CMD. However, it is to the Ampatuans that President Gloria Macapagal-Arroyo are heavily indebted.

44. During the 2004 Presidential elections, President Gloria Arroyo was caught on tape talking with election commissioner Virgilio Garcillano asking the latter to ensure that she wins by one million votes.

45. The commissioner mentioned Maguindanao, ruled by the Ampatuans, as a vote-rich region that will ensure that she will win by said number of votes.

46. True enough, in the last senatorial elections, the Ampatuans delivered a 12–0 win for the administration ticket even if the administration consistently lost in virtually all the other provinces. Because of terrorism by the Ampatuans, there are consistent reports that voters were not actually allowed to vote in Maguindanao and that Ampatuan goons just filled up the ballots.

47. Consequently, opposition candidates incredibly received zero votes in many of Maguindanao towns. There were also consistent reports that the Arroyo administration channelled large chunks of government funds to ghost projects in Maguindanao, and a substantial part of said funds are paid back to Arroyo, her relatives, and favored allies.
48. The Arroyo administration armed the Ampatuans against the secessionist Moro Islamic Liberation Front (MILF) in the region, granting the clan much leeway to establish its own paramilitary units.

49. In the end, it was the key members of the Ampatuan political clan who are local chief executives of various LGUs in Maguindanao who would be involved in the planning, staging, and execution of the gruesome massacre.

50. Militiamen and officers and members of the Philippine National Police (PNP) under the direct control of the Ampatuans were among the perpetrators. In addition, officers and men of the Armed Forces of the Philippines (AFP) were also complicit in the carnage.

51. Mrs. Gloria Macapagal-Arroyo, as President of the Republic of the Philippines, has general supervision over these officials of Philippine LGUs.

52. Mrs. Gloria Macapagal-Arroyo, as President of the Republic of the Philippines, has supervision, control and command responsibility over officers and members of the PNP who were among the perpetrators of the Ampatuan Massacre.

53. Mrs. Gloria Macapagal-Arroyo, as Commander-In-Chief of the AFP, has supervision, control and command responsibility over members of the militia who were among the perpetrators of the Ampatuan Massacre.

54. Mrs. Gloria Macapagal-Arroyo, as Commander-In-Chief of the AFP, has supervision, control and command responsibility over officers of the Philippine Army who refused to give security to the Mangudadatu convoy heading to Shariff Aguak.

55. Clearly, all of those responsible for the carnage are agents of the Philippine State; as such, their acts in connection with the 23 November 2009 Maguindanao massacre are attributable under international law to the Republic of the Philippines, herein represented by its head of State, Mrs. Gloria Macapagal-Arroyo.
IV. AVAILABLE EVIDENCE

56. Petitiones submit the following documentary evidence:

(ANNEX A) Corporal Zaldy V. Raymundo’s *Sinumpaang Salaysay* [Sworn Affidavit] dated 02 December 2009.

(ANNEX B) 1st Lt. Rolly Stefan A. Gempesao’s Sworn Statement dated 29 November 2009.

(ANNEX C) Staff Sergeant Jimmy Coronel’s *Sinumpaang Salaysay* [Sworn Affidavit] dated 28 November 2009.

(ANNEX D) Buka Sakilan Ali’s Sworn Affidavit dated 26 November 2009.

(ANNEX E) Vice Mayor Esmael “Toto” G. Mangudadatu’s Affidavit Complaint dated 30 November 2009.

(ANNEX F) Manila Standard Today correspondent Joseph Jubelag’s Affidavit.

(ANNEX G) testimony of Vice Mayor Esmael Magudadatu in the bail hearings before the Quezon City Regional Trial Court, given on 28 January 2010.

V. Factual grounds for the preliminary request

57. The urgency in this preliminary request for the appropriate declaration is based on strong evidence of complicity on the part of agents of the Republic of the Philippines – including those who occupy top posts of the Arroyo cabinet – in the massacre. At the very least, these agents of the Philippine State had been complicit in the massacre through failure to prevent the massacre, which they had clearly foreseen, as well as their failure to protect the Right to Life of the victims.

58. In his testimony last January 28, 2010 in the bail hearings before the Quezon City Regional Trial Court, Vice Mayor Esmael “Toto” Magudadatu said that just before his wife Genalyn was killed, she managed to place a call on her mobile to him to inform him that armed men led by Andal “Unsay” Ampatuan Jr. had just waylaid their convoy. She also told him that Unsay slapped her on the face.

59. In his tearful testimony, Vice Mayor Magundadatu also said that then Defense Secretary Gilbert Teodoro (the administration’s Presidential
candidate in the forthcoming elections) and other Presidential Palace of-
ficials knew of the violent nature of the Ampatuans but failed to stop them
from bullying their political rivals in Maguindanao.

60. He told the court that weeks before the massacre, former Con-
gressman Prospero Pichay, also of the ruling Lakas-Kampi-CMD party, 
told him to be careful because the Ampatuans are given to violence.

61. In his one-and-a-half-hour testimony, Vice Mayor Mangudadatu 
said President Gloria Macapagal-Arroyo’s chief political adviser, Gabriel 
Claudio, brokered two “reconciliatory meetings” on July 20 and Aug. 11 
last year between the Mangudadatus and the Ampatuans.

62. In those meetings, Andal Ampatuan Sr. strongly demanded that 
he declare that he would not contest Ampatuan Jr.’s gubernatorial run, 
Mangudadatu said. He said he replied to clan patriarch that he was run-
ing for governor because of the clamor from his constituents.

63. Moreover, complicity by the Philippine State in the carnage is es-
tablished by the following points:

64. First, the Republic of the Philippines could have disarmed the 
Ampatuans. Its top officials have pronounced that they are “violent people” 
but continued to supply them with high-powered firearms so that the clan 
could maintain a private army.

65. Second, the Republic of the Philippines could have sent police and 
military personnel to accompany Mangudadatu’s supporters to the capitol 
but it did not, despite intelligence reports received from personnel on the 
ground of the massing of armed men along the highway leading to Shariff 
Aguak.

66. This security provision could have prevented the massacre. Yet 
the Republic of the Philippines’ top Army officers in the region refused 
to heed requests by the Mangudadatus and their media companions, on 
the lame excuse that they did not have enough personnel for the purpose. 
Worse of all, they gave assurances that the highway leading to the capitol 
is safe and secure.

67. The avoidance by both the police and the military officials in the 
region of security duty on that ill-fated day is inexplicable, given that the
violent tendencies of the Ampatuans are well-known to them and to the high civilian officials of the Republic of the Philippines and the abundant intelligence information passed on from the ground to the chain of command about the massing of armed men along the highway.

68. Too, this avoidance of duty by responsible officers and men of the Philippine national police and armed forces constitutes a failure to prevent impunity under international law.

69. It is clear from the above-discussion that the Philippine State is responsible under international law for the acts of its agents who were either complicit in the 23 November Massacre or were its direct perpetrators.

70. By reason of the above, there are well-founded fears that the Philippine State will be under very heavy pressure from the Ampatuans to whitewash the investigation or to cover up crucial evidence and witnesses. Thus, the need on the part of the Commission to issue an urgent declaration calling on the Philippine State to abide with its obligations under international law and ensure the prosecution and conviction of the perpetrators of the massacre as well as the provision of adequate reparations, including compensation and satisfaction, to the victims and their heirs.

VI. Legal grounds for the preliminary request

71. As a member of the ASEAN, the Republic of the Philippines pledged to support the aims and objectives of the Commission towards the protection and promotion of human rights within its territory and in the region as a whole.

72. Indeed, it gave its full support to the creation of the Commission, signing on 23 October 2009 the “Cha-am Hua Hin Declaration on the Inauguration of the AICHR, pledging full cooperation with this new ASEAN body and emphasizing the member-States’ commitment to further develop cooperation to promote and protect human rights in the region.

73. The slaughter of innocents perpetrated by agents of the Philippine State in the 23 November Maguindanao massacre violated the Right to Life of the victims under Art. 6(1) of the International Covenant on Civil
74. Indeed, it has the obligation under international law to protect the fundamental rights of individuals, especially the rights to life, to dignity, and to be provided with adequate remedies for the violation of fundamental rights.

75. Moreover, it also violated the duty of the Philippine State not to provide impunity, considering that its very own agents were behind the slaughter and it failed to prevent them from carrying it out.

76. This obligation is rooted in human rights treaties to which the Philippines is a party. In particular, the International Covenant on Civil and Political Rights and the United Nations Charter— as interpreted by the subsequent practice of State Parties -- impose the obligation to promote and protect human rights.

77. Moreover, the Philippines has the same obligation under customary international law, as evidenced by the widespread acceptance of numerous international conventions and instruments stating this hallowed principle, such conventions being evidence of the existence of a customary norm.

78. All the nations of the world would be entitled to invoke the liability of the Philippines if it violates this duty.

79. It is in the interest of the Commission and of the ASEAN to express its concern on behalf of the victims of the massacre and their heirs, and to engage the commitment of the Republic of the Philippines to ensure that (a) all its agents responsible for the egregious human rights violation are brought to justice; and (b) adequate reparations are given to the heirs of the victims of the carnage, including compensation and satisfaction.

80. Under international law, Every State has a legal duty to respect and enforce human rights and humanitarian law, and this obligation includes the duty to “afford remedies and reparation to victims.”

81. The Permanent Court of International Justice ruling in the 1928 Chorzow Factory case that the obligation to make prompt, effective and
adequate reparation for an international wrongful act is a “general principle of law” has now developed into a legal and moral duty.

82. Indeed, the Women’s International War Crimes Tribunal, citing what is now known as the 1993 Van Boven guidelines, has ruled that in regard to reparation, “particular attention must be paid to gross violations of human rights and fundamental freedoms, which include at least the following: genocide, slavery and slavery-like practices…and systematic discrimination, in particular based on gender.”

83. The acts committed in the slaughter of civilians by State agents belong to this class of gross human rights violations for which the State must answer.

84. Moreover, the Republic of the Philippines also has a duty to provide compensation and satisfaction to the victims and their families under international law.

85. According to current international law, satisfaction covers public acknowledgement of the State’s wrongdoing, along with concrete steps to repair the relationship between the victim and the State and the civil society as a whole.

86. It embraces symbolic measures taken for moral and collective reparation and arises in part from the duty to remember. This may include:

(a) XXXX;

(b) verification of the facts and full public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;

(c) the search for bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;

(d) an official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely associated with the victim;
Hiding Behind Its Limits

(e) apology, including public acknowledgement of the facts and acceptance of responsibility;

(f) judicial or administrative sanctions against persons responsible for violation of memory;

(g) commemoration and tributes to the victims;

(h) inclusion of an accurate account of the violations that have occurred in international human rights and humanitarian law training and in educational materials at all levels;

(i) preventing the recurrence of violations.

87. This preliminary request is consistent with the principle enunciated in the Commission’s Terms of Reference, which adopts an evolutionary approach that would contribute to the development of human rights norms and standards in the region.

Petitioners: (signed)

GLENNA G. LEGARTA
MA. REYNAFE MOMAY-CASTILLO
ZENAIDA O. DUHAY
JULIET PALOR EVARDO
MA. CIPRIANA GATCHALIAN
ARLYN D. LUPOGAN
DODIE T. LUPOGAN
MARY JEAN M. MERISCO
CATHERINE NUÑEZ
NOEMI E. PARCON
MYRNA P. REBLANDO
RAMONITA S. SALAYSAY
EDITHA MIRANDILLA TIAMZON
ERLYN IDALO UMPAD
By the counsel for Petitioners:

CENTER FOR INTERNATIONAL LAW  
1904 Antel 2000 Corporate Center  
121 Valero Street, Salcedo Village  
Makati City 1200  
Email: administration@centerlaw.org  
Tel. Nos. 887-4445/887-3894  
Fax No: 887-3893

By:  
H. HARRY L. ROQUE, JR.  
PTR No. 0008545/Jan 13, 2010/Makati City  
IBP No. 499912/Lifetime/Makati City  
Roll No. 36976  
MCLE Exemption No.II-002169

JOEL RUIZ BUTUYAN  
PTR No. 0008546/Jan 13, 2010/Makati City  
IBP No. 500459/ Lifetime/Makati City  
Roll No. 36911  
MCLE Compliance No.II-0000571

ROMEL REGALADO BAGARES  
PTR No. 0016687/Jan 13, 2010/Makati City  
IBP No. 775414/Jan 12, 2009/Socsargen  
Roll No. 49518  
MCLE Compliance No.II-0015132

DEXTER DONNE B. DIZON  
PTR NO. 0030502/Jan 13, 2010/Makati City  
IBP No. 775415/Jan 12, 2009/Laguna  
Roll No. 54013

ALLAN JONES F. LARDIZABAL  
PTR No. 0029705/Jan 13, 2010/Makati City  
IBP No. 775417/Jan 12, 2009/Pangasinan  
Roll No. 54011
Hiding Behind Its Limits

GILBERT TERUEL ANDRES  
PTR No. 0037173/ Jan 13, 2010/Makati City  
IBP No. 788044/April 15, 2009/ Neg. Occ.  
Roll No. 56911

BENJAMIN S. LUIS  
PTR No. 0037202/January 13, 2010/Makati City  
IBP No. 788531/April 22, 2009/Makati City  
Roll No. 57355
On the Violation of Yong Vui Kong’s human rights

Submission to ASEAN Intergovernmental Commission on Human Rights (AICHR)

24 September 2010, Kuala Lumpur

H.E. Do Ngoc Son
Chairperson and Representative of Viet Nam

H.E. Pehin Dato Hamid Bakal
Representative of Brunei Darussalam

H.E. Om Yentieng
Representative of the Kingdom of Cambodia

H.E. Rafendi Djamin
Representative of Indonesia

H.E. Bounkeut Sangsomsak
Representative of the Lao P.D.R

H.E. Dato’ Sri Muhammad Shafee Abdullah
Representative of Malaysia

H.E. U Kyaw Tint Swe
Representative of Myanmar

H.E. Rosario G. Manalo
Representative of the Republic of the Philippines

H.E. Richard R. Magnus
Representative of Singapore

H.E. Sriprapha Petcharamesree
Representative of the Kingdom of Thailand

A campaign poster to raise awareness about Yong Vui Kong’s case.
RE: On the Violation of Yong Vui Kong’s human rights

1. Yong Vui Kong, a Malaysia citizen, is now awaiting execution following a conviction for trafficking 47g of drug into Singapore.

2. The law, s5(1) (Cap 185) of the Misuse of Drug Act, in which he was charged and convicted carries mandatory death penalty, leaving the judge no discretion to consider any mitigating factors when passing sentence. This has violated human rights principles and the right to life as enshrined in Article 3 of the Universal Declaration of Human Rights.

3. For the purpose of presenting Yong’s legal case, kindly refer to the attachment in respect of the chronology of events. (Annex 1, on page 124)

4. As a person facing death penalty, Yong has a right to a fair and impartial clemency proceeding. This is accepted in international law and practice and a right granted to him pursuant to Article 22(p) of the Constitution of the Republic of Singapore.

5. On 9 May 2010, before even the Court of Appeal gave its verdict, the Law Minister, K. SHANMUGAM, made this public statement when asked:

   “Yong Vui Kong (who was sentenced to hang for trafficking 47g of Heroin) he is young. But if we say we let you go what’s the signal we’re sending? We’re sending a signal to all drug barons out there…just make sure you choose a victim who’s young or a mother of a young child and use them as the people to carry drugs into Singapore. With the sympathy generated after these people are caught he added, there will be a whole unstoppable stream of people coming through as long as we won’t enforce our laws”.

6. This statement was never denied. Instead, the Law Minister repeated the above statement and explained that it is a government policy on drugs.

7. The Law Minister’s statement has a far-reaching implication on Yong’s case. It has indeed offended the rules of natural justice, due
process and Yong’s right to a fair and impartial clemency proceeding under international law and the country’s Constitution.

8. The statement had specifically named Yong Vui Kong and literally said that his life should not be spared. This is not a statement pertaining to the general anti-drug policy of Singapore, but a statement directed to Yong’s case.

9. The Law Minister made the above statement before Yong filed his 2nd petition for clemency. The rejection of Yong’s 1st petition for clemency in November 2009 shall not in any way be deemed that Yong’s 2nd petition for clemency, which has yet to be filed and heard, will be rejected. Yong’s right to be heard must be upheld and due process must be adhered to.

10. The decision of the Singapore High Court in dismissing Yong’s application for judicial review, ruled that the President does not have discretion on clemency but must act on the advise of the Cabinet has reinforced the arguments above, that the Cabinet had made a decision on Yong’s 2nd petition for clemency before Yong is heard, Yong was denied his right to be heard, and right to a fair and impartial clemency proceeding.

11. This is indeed a clear incident of a serious violation of human rights.

We, the Save Vui Kong Campaign, urge the AICHR to:

A. Exercise its mandate to obtain information from Singapore on the violation of human rights of Yong Vui Kong

B. Exercise its mandate to conduct a thematic study on the mandatory death penalty in this region

C. Exercise its function in advising ASEAN countries to stop execute and abolish death penalty

Save Vui Kong Campaign
No 1, Jalan Maharajalela,
50150 Kuala Lumpur.
Tel: 603-2274 6645
Fax: 603-2272 4089
## ANNEX 1: Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.6.2007</td>
<td>Yong Vui Kong (&quot;Yong&quot;) arrested</td>
<td>Charged under s5(1) (Cap 185) of the Misuse of Drug Act, which carry a Mandatory Death Sentence</td>
</tr>
<tr>
<td>7.1.2009</td>
<td>Convicted by the High Court and sentenced to death</td>
<td></td>
</tr>
<tr>
<td>23.4.2009</td>
<td>Mr Kelvin Lim (Yong’s counsel then) via a letter to the Registrar of the Supreme Court of Singapore (“the Registrar”) informed that he was instructed to apply for leave to withdraw the appeal</td>
<td></td>
</tr>
<tr>
<td>29.4.2009</td>
<td>The Court of Appeal (“CA”) affirmed the decision of the court below (i.e., High Court) after receiving confirmation that Yong was withdrawing his appeal</td>
<td></td>
</tr>
<tr>
<td>7.8.2009</td>
<td>Yong filed for the 1st petition for clemency to the President of the Republic of Singapore</td>
<td></td>
</tr>
<tr>
<td>4.12.2009</td>
<td>Yong due to be executed</td>
<td></td>
</tr>
<tr>
<td>3.12.2009</td>
<td>Yong newly appointed counsel Mr M Ravi obtained a stay of execution pending the leave to appeal</td>
<td></td>
</tr>
<tr>
<td>31.12.2009</td>
<td>Court of Appeal granted leave to appeal</td>
<td>Held that Yong’s withdrawal of appeal was a nullity</td>
</tr>
<tr>
<td></td>
<td>Yong appeal against the sentence, challenging the constitutional validity of the mandatory death penalty</td>
<td></td>
</tr>
<tr>
<td>14.5.2010</td>
<td>Court of Appeal dismissed Yong’s appeal</td>
<td>Ruled that Mandatory Death Sentence is not unconstitutional</td>
</tr>
<tr>
<td>9.5.2010</td>
<td>Law Minister’s Mr K Shunmugan comments</td>
<td>Refer to paragraph 5</td>
</tr>
</tbody>
</table>
### A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.7.2010</td>
<td>Yong filed leave for judicial review (pertaining to Law Minister’s remarks)</td>
<td>Amongst others, Yong pray that the law minister remarks has deprived him a fair and impartial determination of the clemency process, thus he is entitled not to be deprived of his life on account thereof.</td>
</tr>
<tr>
<td>13.8.2010</td>
<td>High Court dismissed Yong’s application for judicial review</td>
<td>Euled that, amongst others, the President has no power to grant clemency and there is no apparent biasness in Yong clemency process. The court invited the Prison Authority to extend the deadline for Yong to file the 2nd petition for clemency until after appeal against this decision is heard and disposed off.</td>
</tr>
<tr>
<td>18.8.2010</td>
<td>M Ravi wrote to the Prison Authority to extend time period for Yong to file his 2nd petition for clemency</td>
<td></td>
</tr>
<tr>
<td>26.8.2010</td>
<td>Last day for Yong to file his 2nd petition for clemency</td>
<td>In usual circumstance, the President will take 3 months to consider and decide on the clemency. If rejected, the President will sign an execution order and inform the family of the execution date.</td>
</tr>
<tr>
<td>25.8.2010</td>
<td>Notice of Appeal against the High Court decision filed</td>
<td></td>
</tr>
<tr>
<td>25.8.2010</td>
<td>Prison Authority replied that the time limit for Yong to file his 2nd petition for clemency be extended until further notice</td>
<td></td>
</tr>
<tr>
<td>17.1.2011</td>
<td>Appeal against the High Court decision dismissing Yong’s application for judicial review</td>
<td></td>
</tr>
</tbody>
</table>

---

123
ANNEX 2: Press Statement

SAVE VUI KONG CAMPAIGN
Press Statement
27.9.2010

MEMORANDUM HIGHLIGHTING VUI KONG CASE
SUBMITTED TO ASEAN INTERGOVERNMENTAL
COMMISSION ON HUMAN RIGHTS (AICHR)

Save Vui Kong Campaign, represented by Ngeow Chow Ying and Tah Moon Hui, had successfully submitted a memorandum highlighting Yong Vui Kong’s case to the representatives of AICHR, on 24.9.2010 at 230pm at J.W Marriot Hotel, Kuala Lumpur.

The memorandum highlights Yong Vui Kong’s case and in particular, Singapore Law Minister K Shunmugan’s public statement and its implications. The memorandum urges AICHR to exercise its mandate to look into the violation of rights of Yong, to conduct a thematic study on mandatory death sentence and to impose moratorium on death penalty.

The memorandum was received by the Malaysia’s representative, Dato’ Sri Muhammad Shafee Abdullah on behalf of the Chairperson of AICHR.

Dato Sri Shafee, while receiving the memorandum, indicated that he is aware of Yong’s case and that he will attend Yong’s appeal against the dismissal of the judicial review application, which is fixed for hearing on 17.1.2011.

Dato Sri Shafee further said that a copy of the memorandum will be handed to all representatives of AICHR and bring to their attention the urgency of Yong’s case.

We were also told that a thematic study on mandatory death penalty had been proposed to the AICHR.

Save Vui Kong Campaign appreciates the actions taken and urges Dato Sri Shafee and AICHR to treat Yong’s case on an extremely urgent basis and appropriate actions be taken to address the issues raised in the memorandum.
Save Vui Kong Campaign maintains that beside Yong’s right to life, his right to a fair and impartial clemency proceeding, which is an accepted international law and practice and a right granted to him pursuant to Article 22(p) of the Constitution of the Republic of Singapore, had been denied.

Save Vui Kong Campaign
No 1, Jalan Maharajelela,
50150 Kuala Lumpur.
Tel: 603-2274 6645/016 -6731909/012 720 9981
Fax: 603-2272 4089
SAPA TFAHR Press Statements
28th March 2010

ASEAN Human Rights Body
Must Not Turn a Blind Eye on
Human Rights Violations in the Region

JAKARTA, INDONESIA, 28 March 2010.

Today, in Jakarta, non-governmental organizations in South-east Asia call on the ASEAN Inter-Governmental Commission on Human Rights (AICHR) to address severe violations of human rights in the South East Asia region. “AICHR has to protect us, the peoples in ASEAN”, said Khin Ohmar of Burma. “For instance, crimes against humanity and war crimes such as extra-judicial killing and military rape against ethnic minorities in Burma occur on daily basis with impunity.”

From Indonesia, a group of women survivors from the 1965 mass killing of suspected communists expressed their frustration over the Indonesian government for lack of acknowledgement and addressing the injustice. “We want the AICHR to push the Indonesian government to answer our calls to redress justice and reparation”, said Sumini, 81 years old.

Sawart Pramoonsilp, the representative of persons with disabilities from Thailand said, “I would like the AICHR to push the ASEAN countries to sign and ratify the UN Convention on the Rights of Persons with Disabilities.” She also calls on the AICHR to pressure the ASEAN governments to provide equal access to facilities such as transportation, education and employment for persons with disabilities and elderly people.
Temme Lee, the representative from APRRN (Asia Pacific Refugee Rights Network) based in Malaysia briefed on the situation of refugees in the SEA region and urged the AICHR to work towards a regional solution for the protection of asylum seekers and refugees based on international human rights standards including large population of Burmese refugees in ASEAN states, stateless persons such as the Rohingyas and internally displaced persons.

With regards to migrant issue, the Task Force on ASEAN Migrant Workers wants AICHR to engage with the civil society on the process of protecting the rights of migrant workers and their families. “We want the Rules of Procedure to formalize the engagement with civil society in their planning and implementation of their mandate”, said Ted.

Noemi E. Parcon, the widow of Filipino journalist slaughtered in Ampatuan, Maguindanao massacre said, “I appeal to the Commission to help our families to seek justice. The killing of 32 journalists is the worst ever happened in the world for journalists and the Philippines government is not responsive to our petition. We, therefore, come here to appeal to the AICHR.”

Cambodia, represented by Nay Vanda, proposed the AICHR to have a protection mandate to deal with all human rights violations and the AICHR representatives to engage with the civil society organizations at regional and national level to discuss case submissions and on-site investigations among others.

The AICHR is set to meet today to draft the Rules of Procedure. The Solidarity for Asian Peoples’ Advocacy Task Force on ASEAN and Human Rights (SAPA TF-AHR) calls on the AICHR to adopt a set of RoP that will ensure its own independence and effectiveness in dealing with human rights protection and promotion in the region.

Among the key mechanisms and procedures recommended by the SAPA TF-AHR that must be adopted in dealing with human rights include:

- Petition mechanism, which will receive and respond to cases of human rights violations;
- On-site observation;
- Public hearing or inquiry; and
- Friendly settlement.
Civil Society Condemns AICHR for Refusing to Meet, Calls for Draft Rules of Procedure to be Made Public and Hold Wider Consultation

Today at Jakarta, the ASEAN Inter-governmental Commission for Human Rights (AICHR) rejected the request of civil society organisations from the Solidarity for Asian Peoples Advocacy Taskforce on ASEAN Human Rights (SAPA TFAHR) to meet with them. The purpose of the requested meeting was to present the civil society proposal for the AICHR Rules of Procedures (RoP) as AICHR meets to draft the RoP. Representatives of civil society organizations from Cambodia, Indonesia, Burma, Malaysia and Thailand went to the ASEAN Secretariat to present the civil society proposal but were disappointed to be informed that the AICHR would not be meeting them.

The SAPA TFAHR sent a letter on 9 March 2010 to the Chair of AICHR, Mr. Do Ngoc Son from Vietnam, requesting for an official meeting with the AICHR during its first official meeting. However, until yesterday, the Task Force had yet to receive any reply from the AICHR.
The decision was relayed by Dr. Anish Roy from the ASEAN Secretariat to the civil society representatives, who were waiting at the main entrance of the ASEAN Secretariat. The Chair of AICHR conveyed that the Commission was not able to meet with civil society as there was still no clear mechanism developed on how to engage with external parties. He said the Commission received many request for meeting, including from international organizations. The Commission did not respond to these requests and had not met with any groups. He said the Commission will meet with civil society in due course once the mechanism of engagement has been clarified within the Commission.

The civil society delegation is extremely disappointed with the turn of events and views this as a beginning of a worrying sign of the rejection of civil society participation in the AICHR. We condemn the decision of the AICHR that runs in contradiction with the vision of ASEAN being a "People Oriented ASEAN" in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building, as stipulated in Article 1.13 of the ASEAN Charter.

We wish to remind the AICHR that one of its purposes as set out in its own Terms of Reference as stipulated in Article 1.3 is to contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter, which includes the promotion of the participation of ASEAN peoples in community building.

"As a human rights institution, the refusal to meet with civil society is in itself a contradiction of the spirit and principles of human rights. How can we expect this institution to promote and protect human rights in future? The AICHR must take an inclusive and participatory approach especially at these early stages that would determine how the body will operate," said Yap Swee Seng, the co-convener of SAPA TFAHR and the Executive Director of Asian Forum for Human Rights and Development.

"The High Level Panel that drafted the Terms of reference (ToR) of the AICHR met with civil society and national human rights institutions three times before they finalized the ToR, I don’t see why the AICHR cannot meet and consult with civil society before they finalize the RoP. This is definitely a regression in terms of civil society participation," said Yap.

In light of the developments today, the SAPA TFAHR calls on AICHR to postpone the adoption of the RoP to the next meeting in June. The SAPA
TFAHR demands for the draft RoP to be made public. Following which, AICHR must hold consultations with civil society on national and regional level. The final draft of the RoP must incorporate the feedback made by civil society during the consultations.

Earlier, several non-governmental organizations from the Philippines, Indonesia and Burma submitted cases of human rights violations to the AICHR through Dr. Anish Roy and Rafendi Djamin, the representative of Indonesia to the AICHR. According to Dr. Anish Roy, the Chair of AICHR again cited that there was no clear mechanism on how to handle cases submitted to the AICHR and there is a principle on non-interference in ASEAN, therefore the AICHR would not be able to receive the cases submitted.

"We stand in solidarity with the victims of human rights violations from Indonesia and the Philippines who attempted to submit their cases to the AICHR today. This is an indication of the people's need for the AICHR to establish mechanisms that will address human rights violations where domestic legal redress had failed the victims," said Haris Azhar from KontraS, the other co-convener of the SAPA TFAHR.

"This is exactly why we are here to meet with the AICHR and provide our inputs on issues of rules of procedure such as case handling and engagement with all stakeholders by the AICHR. It would be too late if the AICHR only consult all stakeholders after they have clarified the mechanism and finalised them in the RoP," Haris further added.

Unfortunately, AICHR refused to accept the submission of cases by CSOs and Victim groups. The ASEAN Secretariat will keep the submissions and await the AICHR to establish the mechanism on cases, before the ASEAN Secretariat can handover the submissions to AICHR.

SAPA TFAHR urges the AICHR to take into consideration the concerns and recommendations made by civil society in the proposal of RoP of the SAPA TFAHR. (The Civil Society Proposal of the Rules of Procedure for the AICHR can be found at www.forum-asia.org) We urge the AICHR that the display of reluctance to meet with civil society today will not be repeated.

SAPA TF-AHR was established during the first Regional Consultation on ASEAN and Human Rights in Kuala Lumpur on 26-28 August 2007.
A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010

It is a network of more than 70 civil society organizations from the region which aims to hold ASEAN member states accountable to their international and domestic human rights obligations and to make the ASEAN human rights mechanisms independent, credible, accountable and effective.

For more information, please contact the following persons:

1. Mr Yap Swee Seng, Executive Director, Asian Forum for Human Rights and Development
2. Mr. Haris Azhar, Deputy Coordinator, KontraS,
Press Release
11 August 2011

HRWG and SEAPC welcomes the visit to Indonesia of UN Special Rapporteur on Situation of Human Rights in Myanmar, Tomas Ojea Quintana

In a meeting held on Tuesday, August 10, 2010 at the Hotel Aryaduta, just two days after the 43rd anniversary of ASEAN, Tomas Ojea Quintana said that the world is awaiting with great expectations on the general elections to be held by the Government of Myanmar at the end of this year.

Reiterating the findings of his report to the UN Human Rights Council in March 2009, he said that there are some important things related to human rights that is needed to be done by the Myanmar Government to ensure that the coming elections will be free, honest, fair and credible. First, all political prisoners must be released, including Aung San Suu Kyi. Second, ethnic minorities must be given full opportunity to take part in the election. Third, basic freedoms such as freedom of expression and assembly must be guaranteed.

In his research for the said report, Quintana discovered a pattern of systematic human rights violations in Myanmar. Thus, to be able to be a truly democratic government, the Myanmar government, in addition to holding free, honest and fair elections, also needs to show accountability by investigating human rights violations, punishing perpetrators, and providing remedies to victims.
He also said that since Myanmar is a member of ASEAN, the ASEAN should be able to play an important role, particularly through ASEAN Human Rights Body (AICHR), to support the ongoing process in Myanmar and ensure that these rights be respected and protected.

In the same meeting, Rafendi Djamin, HRWG Executive Director, said that Myanmar could learn from Indonesia’s experience in the latter’s transition from authoritarian rule to democratic governance, including both successes and failures of the elections, and bringing perpetrators of gross human rights violation to court.

Atnike Sigiro, Manager of SEAPC, noting the ASEAN anniversary, hoped that progress made in ASEAN can provide a positive effect on the human rights situation in Myanmar. Recent changes in the ASEAN human rights mechanism, could not be imagined in the past, she said, so that changed in Myanmar must also be encouraged for the sake of promotion, fulfillment and protection of human rights in Myanmar.

Jakarta, August 11, 2010
Human Rights Working Group (HRWG)
Southeast Asian People’s Centre (SEAPC)

Note: The Southeast Asian People’s Centre is serves as the focal point of SAPA Working Group on ASEAN. Ms. Sigiro is FORUM-ASIA Programme Manager for ASEAN Advocacy.
Hiding Behind Its Limits

September 19, 2010

SAPA TF-AHR PRESS STATEMENT:

“It is AICHR’S Turn to Move Forward to Promote and Protect Human Rights in Southeast Asia”

We, the Solidarity for Asian Peoples’ Advocacy Task Force on ASEAN and Human Rights (SAPA TF-AHR), would like to highlight that ASEAN’s human rights body has yet to implement responsibilities outlined in its own Terms of Reference (TOR) and the ASEAN Charter. These concerns are relevant to the meeting of ASEAN Inter-Governmental Commission on Human Rights (AICHR) which will be held on 20-24 September 2010 in Kuala Lumpur, Malaysia.

At the 3rd Regional Consultation Meeting on ASEAN and Human Rights, held in Kuala Lumpur during 16-19 September 2010, representatives of more than 50 civil society organizations from the region had in-depth discussions concerning AICHR’s lack of Rules of Procedure, its Work Plan and the drafting of the ASEAN Declaration of Human Rights. Also discussed was the deteriorating situation in Burma, and the situation of disadvantaged and marginalized groups in ASEAN including persons with disabilities, women and children, indigenous peoples, migrants, refugees, people in detention, the homeless and victims of forced displacements.

While the SAPA TF-AHR welcomes the adoption of AICHR’s Work Plan by the ASEAN Ministerial Meeting in July in Hanoi, we wish to emphasise that it is increasingly urgent that AICHR adopt Rules of Procedure (RoP) that will function as a transparent, inclusive and systematic framework for the implementation of the plan. It is essential that the AICHR establishes a process of regular dialogue and consultation with ASEAN civil society organizations through the RoP. It is of grave concern, that a year after the AICHR was established, this key element has yet to be institutionalised. We are disappointed that AICHR has yet to meet the SAPA-TFAHR and the Southeast Asian National Human Rights Institution Forum (SEANF) despite repeated requests. This failure is in contradiction to the ideal of a people-oriented ASEAN, as envisioned in Article 13 of the ASEAN Charter.
On the issue of Burma, we remain deeply concerned that AICHR has stayed silent on the ongoing widespread and systematic violations of human rights that constitute crimes against humanity and war crimes, as defined by international law. These violations include torture, extrajudicial killings, sexual violence, forced labour and the recruitment of child soldiers, and are committed in a pervasive culture of impunity.

The regime’s exclusive elections scheduled for November 7 combined with its oppressive constitution have been designed to intensify Burma’s prevailing problems, which continue to impact on regional stability and human security. The regime has stepped up suppression of people’s right to freedom of expression, assembly and association. We urge AICHR to address this appalling situation as a matter of urgency, as consistent with its mandate.

Tens of millions of ASEAN disadvantaged and marginalized constituents including women, children, the elderly, indigenous peoples, persons with disabilities, migrants, refugees, homeless, people in detention, displaced peoples and ethnic minorities, as well as lesbian, gay, bisexual and transgender people, continue to be discriminated and denied their rights.

Among the issues they are facing are lack of access to health and education facilities; loss of land and territories and forced displacement due to development aggression and government policies; violence and economic deprivation; hate crimes and non-recognition of their rights. The AICHR must accord special protection for these particular groups due to vulnerability brought about by physical challenges, historical injustices committed against them, conflicts, economic hardships and oppressive government policies.

Given the mandate of the AICHR provided in their Terms of Reference and guided by the general principle of the ASEAN Charter of promoting and protecting the human rights and fundamental freedoms of the peoples of ASEAN, we call on the AICHR to:

1. Incorporate regular and frequent consultations by commissioners with civil society in their respective countries and regionally in the workplan.

2. Assess, review and address the general human rights situation of each ASEAN member state.
3. Address the human rights situation of disadvantaged and marginalized individuals, groups and peoples. Strategies to address these include:
   a. Conduct of dialogues and meetings with the leaders and representatives of affected groups to develop effective strategies.
   b. Designation of a focal person within the AICHR for each disadvantaged and marginalized group to address specific issues.
   c. Measures to ensure ASEAN states adopt minimum standards for the recognition and protection of the rights the disadvantaged and marginalized sectors, including recognition of the collective rights of Indigenous Peoples, as set out by international human rights instruments.

4. Include civil society in an independent, transparent and participatory drafting process of the ASEAN Declaration of Human Rights. In particular, the declaration must:
   a. Comply with international human rights laws and standards,
   b. Promote the principles of non-discrimination, equality and justice.

The SAPA Task Force of ASEAN and Human Rights will be making a detailed submission to the AICHR during its meeting.

Kuala Lumpur, September 19, 2010
SAPA Task Force on ASEAN & Human Rights
PRESS STATEMENT
27 October 2010

On the first year of AICHR

AICHR:
A window dressing
for ASEAN’s Commitment to Human Rights!

Launching of the Civil Society Report
On the Performance of the AICHR on its 1st Anniversary

One year since the ASEAN Inter-governmental Commission on Human Rights (AICHR) was inaugurated in on 23 October 2009, we, the Solidarity for Asian Peoples’ Advocacy Task Force on ASEAN and Human Rights (SAPA TF-AHR), have prepared a report to review the performance of the AICHR in its first year, as part of our commitment to follow up and push forward the improvement of human rights in ASEAN. Our review encompasses several dimensions: the AICHR’s core documents, structure, institution building, implementation, handling of cases, and external relations.

In releasing this report, we realize that the AICHR is a new body that seeks to address the long-standing human rights problems in the entire ASEAN region. We, however, regret to observe AICHR’s apparent negligence in attending to some achievable goals that the body has set for itself this past year. There are several important findings worth highlighting:

First, we find fundamental flaws in the core documents of the AICHR — namely the Term of Reference (ToR) — which suggest that the AICHR has a defective mandate to start with. Hereditary resemblance to ASEAN is inscribed in the core documents in a manner that interferes with time-efficient and productive operation of the AICHR. The non-interference principle, the consensual decision making practice, and the cultural-relativist bias for “regional particularities” all comprise what has been called the “ASEAN Way” which the AICHR has apparently inherited. The problem is further complicated by the ToR’s prioritization of human rights promotion over the urgent need to provide protection mechanisms. In its first year, AICHR has operated within the framework of its flawed founding architecture and has not demonstrated any apparent effort to address or overcome them.
In terms of institution building, we noted a lack of commitment from the ASEAN Member States to ensure sufficient resources for the AICHR. This is manifested in, first, an absence of a full fledged support for an independent AICHR secretariat, and, second, a lack of fiscal autonomy to control its own programmes.

When examining the “work” that AICHR performed, one cannot help but wonder: what has AICHR done and for whom? The easy but unfortunate answer to this is “we don’t know”, as very little information has been made available to the public on the series of regular and informal meetings of the AICHR this past year. AICHR has been reluctant to hold any form of interface or dialogue with civil society at the regional level.

We also regret that the absence of the Rules of Procedure is frequently used as an excuse to avoid engagement with external stakeholders, including the National Human Rights Institutions and civil society organizations in ASEAN countries.

Even though the AICHR adopted its Five Year Work Plan, the process of implementation has been painfully slow. More time is needed for planning and decision making among the AICHR representatives. The ‘consensual way’ in their decision making has prevented the AICHR from a prompt delivery and speedy programme planning of any activity in its agenda. There is no better example of this than the delay of the adoption of the Rules of Procedure. What should have been a core institutional mechanism of the Commission has stayed on the AICHR’s table since its first official meeting in Jakarta in May 2010. The absence of the Rules of Procedure does not only show that the AICHR lacks initiative but also is slow in fulfilling its tasks.

Another impact of the absence of the Rules of Procedure is the inability of the AICHR to respond to a number of human rights violation cases submitted to some of its Representatives. Without agreed-upon modalities, the Representatives cannot place the cases on the table of discussion, let alone act in response to them.

One year since its inauguration, the AICHR could not just hide behind its structural limitation. Instead of taking its fundamental flaws as given, the AICHR should employ a critical review of its own mandate for improvement. Moreover, the AICHR should identify entry points in its ToR to concretely promote and protect human rights in ASEAN countries.
We believe that the AICHR cannot keep working in secrecy. They have to start dealing with civil society and other stakeholders of ASEAN. Without this, the AICHR will be not more than just the “window-dressing” of ASEAN in its commitment to human rights.

In conclusion, in commemorating the AICHR’s first year, through the launching of the Report on the Performance of the AICHR, we want to urge the AICHR and the Member States of ASEAN:

1. AICHR should allow civil society to observe the meetings of the commission for transparency and accountability.

2. AICHR should make information more accessible to the public through websites, press releases, and consultation meetings about their meeting agenda, Work Plan, and decisions made.

3. AICHR should engage and consult with civil society organizations and other stakeholders, especially national human rights institutions in a broad and meaningful manner at the national and the regional level.

4. AICHR should immediately develop and adopt its Rules of Procedures (or the Guidelines) to facilitate effective decision making and the operation of the Commission.

5. AICHR should carry self-assessment on their founding architecture to improve its capacity to work independently and effectively.

6. The Member States of ASEAN should ensure the process of selecting members of AICHR to be transparent and participatory for the independence and effectiveness of the AICHR.

7. The AICHR should have its own secretariat to carry out the commission’s decisions and implement day-to-day activities.

Bangkok, 27 October 2010
SAPA Task Force on ASEAN & Human Rights
Southeast Asian NGOs give the ASEAN Human Rights Body a failing mark as govt leaders meet in Hanoi for the 17th ASEAN Summit

Bangkok - Members of the Solidarity for Asian Peoples’ Advocacies (SAPA) Task Force on ASEAN and Human Rights, a network of human rights organizations and advocates in Southeast Asia, said the ASEAN Intergovernmental Commission on the Human Rights (AICHR) was in danger of being dismissed as just a “window dressing for ASEAN’s Commitment to Human Rights” and gave the one-year old human rights body a failing mark.

“Because of its inaction on the increasing and systematic human rights violation in Burma where thousands of people are held in prisons for exercising their political rights I gave AICHR a negative score,” said Cheery Zahau, program coordinator of Human Rights Education Institute of Burma and a member of the SAPA Task Force on ASEAN and Human Rights.

The Burmese activist said that they submitted cases of human rights violation in Burma and heard nothing from the ASEAN body. “While I see little hope with AICHR as a body I urge other member-countries of AICHR
such as Indonesia and Thailand to help us by conducting public hearings and exacting accountability from the military regime in Rangoon and call for an end to human rights violation in the country,” Zahau said. She was speaking at a press conference to launch a “report card” on the AICHR’s performance in its first year.

Meanwhile, Ms. Atnike Sigiro, ASEAN Advocacy Department Manager for Forum Asia, said that they found fundamental flaws in the core documents of AICHR, namely its Terms of Reference, adding that the human rights body has a defective mandate to start with.

Quoting the statement of the SAPA Task Force on ASEAN and Human Rights, she declared “the AICHR has operated within the framework of its flawed founding architecture and has not demonstrated any apparent effort to address or overcome them.” She also noted that the absence of Rules of Procedures (RoP) was being used as an excuse to avoid engagement with external stakeholders such as the National Human Rights institutions and civil society organizations in the region.

Ms. Wanee Bangprapha Thitiprasert of the Asia Pacific Forum on Women, Law and Development lamented the slow pace of the adoption of the RoP as well as the reluctance of the Commission to recognize and engage with civil society stakeholders in the region.

“We call on AICHR to ensure adherence to the principles of human rights for all and accountability to all women and the peoples of Southeast Asia and to ensure meaningful and substantive participation and representation of women in all ASEAN processes and structures,” Ms. Thitiprasert said.

Debbie Stothard of the ALTSEAN Burma said that AICHR’s poor performance reflected most ASEAN government’s stance on human rights and their views on civil society participation.

“During last month’s ASEAN Peoples’ Forum in Hanoi we felt, experienced and saw increased interference and constraints on civil society. There were censorship and intimidation of legitimate civil society actors by government representatives to the Forum,” Ms. Stothard said and added that because of this some Thai NGOs withdrew from the meeting with the Vietnamese Vice Premier at the end of the Forum, which was arranged by the local host.
“All the statements of ASEAN about them being people-oriented are contradictory with the actions of some ASEAN governments,” she said.

Mr. Ryan Silverio of the Southeast Asia Coalition to Stop the Use of Child Soldiers agreed with Ms. Stothard and said that the same thing happened during the ASEAN Children’s Forum held in the Philippines earlier this month where most participants were selected by the governments and not selected by the children and young people themselves.

“The ASEAN Children’s Forum was organized in a non-transparent way. Some of the participants were chosen by the ASEAN governments. Participation is a right. The children and the young people should be given the opportunity to identify their own representatives to the Forum and at the same time provide wider opportunities for other children to engage in these formal processes,” Mr. Silverio said. He added that the organizers of the ASEAN Children’s Forum only allowed children and young people involved in the parallel workshop to participate in their cultural night.

A parallel workshop was organized by Southeast Asian child rights organizations last 19 to 22 October 2010 in Manila, Philippines to provide a space for children who are excluded in the official ASEAN Children’s Forum to articulate their concerns and recommendations to ASEAN.

The leaders of the ASEAN member-countries are set to meet in Hanoi on October 28-30, 2010 for the regional grouping’s 17th summit. AICHR, meanwhile, just turned one year old last October 23, 2010.

The “report card” on AICHR is available at www.forum-asia.org. The SAPA Taskforce on ASEAN and Human Rights will hold another press conference tomorrow October 28 at 10am, Foreign Correspondents Club of Thailand. Speakers will present on the topics of environment, freedom of information, trade agreements, indigenous peoples and migrant domestic workers.

For more information please contact:

Ms. Atnike Nova Sigiro, ASEAN Advocacy Programme Manager, FORUM-ASIA
Mr. Joey Dimaandal, SAPA Working Group on ASEAN
Annex

Publicly Available Documents Released by the AICHR

Below is a compilation of all the publicly-available documents released by the ASEAN Intergovernmental Commission on Human Rights (AICHR), which can be found in the ASEAN Secretariat website. AICHR has issued only two brief press releases, despite having three official meetings.

Press Statement by the Chair of the ASEAN Intergovernmental Commission on Human Rights on the First Meeting of the ASEAN Intergovernmental Commission on Human Rights

ASEAN Secretariat, 1 April 2010

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened the First Meeting from 28 March – 1 April 2010 at the ASEAN Secretariat, during which the Representatives had extensive discussions among themselves and with other relevant ASEAN bodies on how to ensure its effective operations as the overarching human rights institution in ASEAN.

The Meeting discussed among others, the formulation of the Rules of Procedure which will lay down the operational guidelines for the conduct of AICHR’s work in all aspects. The Meeting also discussed the development of the Five-Year Work Plan to provide a comprehensive roadmap of programmes and activities to be undertaken by AICHR in the next five years. It is expected that the Rules of Procedure and the Five-Year Work Plan will be completed in time to be submitted to the 43rd ASEAN Ministerial Meeting (AMM) in July 2010 for adoption.

AICHR Representatives also had fruitful consultations with the relevant ASEAN sectoral bodies, including the Committee of Permanent
Hiding Behind Its Limits

Representatives to ASEAN (CPR), the Senior Officials Meeting on Social Welfare and Development (SOMSWD) and the ASEAN Committee on Women (ACW). Of notable importance was the agreement reached among AICHR and SOMSWD and ACW on the necessary steps to ensure the proper alignment of the would-be ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) with AICHR.

The Second Meeting of AICHR will be held from 28 June – 2 July 2010 in Viet Nam.

(Source: http://www.aseansec.org/24445.htm)

Press Release of the Third ASEAN Intergovernmental Commission on Human Rights (Meeting)

Kuala Lumpur, 24 September 2010

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened its Third Meeting from 20-24 September 2010 in Kuala Lumpur, Malaysia.

The Meeting discussed the implementation of the Priority Programmes/Activities for 2010-2011 as a follow-up to its adoption at the recent 43rd ASEAN Ministerial Meeting (Ha Noi, July 2010). The Representatives also discussed the process of drawing up the Indicative Budget for the remaining period 2012-2015 to finalize the Five-year Work Plan.

The Meeting also discussed, the preparation for the drafting of the ASEAN Human Rights Declaration (AHRD). The next Meeting of AICHR is expected to take place in November in Thailand.

On the sidelines of the Third Meeting, AICHR also met with the Working Group for an ASEAN Human Rights Mechanism, which is an entity associated with ASEAN. The two sides exchanged views on the directions for their future cooperation.

(Source: http://www.aseansec.org/25238.htm)
About SAPA TFAHR

SAPA, short for Solidarity for Asian People’s Advocacy, is a loose, horizontal forum and platform for information and resource sharing among Asian civil society advocates who are engaging intergovernmental processes, as well as alternative processes/spaces at sub-regional, regional and global arenas. SAPA’s members are organised around Working Groups on the following issues/themes/groupings:

- Association of Southeast Asian Nations (ASEAN)
- United Nations human rights mechanisms
- South Asia
- Northeast Asia
- Rural development
- Labour and migration

TFAHR is short for the Task Force on ASEAN and Human Rights within SAPA’S Working Group on ASEAN, which promotes civil society engagement of ASEAN, as a regional intergovernmental organisation. SAPA TFAHR was created in 2007 to engage ASEAN in the latter’s creation of a human rights body as stated in the ASEAN Charter.

SAPA-TFAHR Convenors

- Mr. Yap Swee Seng – Director of FORUM-ASIA
- Mr. Hariz Azhar – Coordinator of KontraS

Country Focal Points

- Burma - Mr. Aung Myo Min, Human Rights Education Institute of Burma (HREIB) and Ms. Anelyn De Luna, Alternative ASEAN Network on Burma (ALTSEAN Burma)
- Cambodia - Mr. Nay Vanda, Cambodian Human Rights and Development Association (ADHOC)
- Indonesia - Mr. Haris Azhar, Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS)
- Malaysia - Mr. Moon Hui, Suara Rakyat Malaysia (SUARAM) and Ms. Honey Tan, Persatuan Kesedaran Komuniti, Selangor - (PKKS Empower)
• Philippines - Sister Crescencia Lucero, Task Force Detainees of the Philippines, (TFDP)
• Singapore - Mr. Tan Kong Soon (Think Centre)
• Thailand - Ms. Chalida Tajaroensuk, Peoples Empowerment Foundation (PEF)

Thematic Focal Points
• **Children** - Mr. Ryan Silverio, Southeast Asia Coalition to Stop the use of Child Soldiers, and Ms. Irene V. Fonacier – Felizar
• **Persons with Disability** - Ms. Sureeporn Yupa and Mr. Miyamoto Taisuke, Disable Peoples’ International Asia – Pacific (DPI – AP)
• **Indigenous Peoples** - Ms. Joan Carling, Asia Indigenous Peoples Pact (AIPP)
• **Migrant Workers** - Mr. Sinapan Samydorai, Task Force on ASEAN Migrant Workers (TF – AMW)
• **Refugees** - Mr. Anoop Sukumaran, Asia Pacific Refugee Rights Network (APRRN)
• **Housing Rights** - Mr. Sammy Gamboa, Center on Housing Rights and Evictions (COHRE)
The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009, is a milestone in the history of the regional organisation and deserves congratulations. The Solidarity for Asian People’s Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR) offers this critical performance assessment of first year of AICHR based on its core documents, structure, appointment process, institution building, mandate implementation, handling of cases and external relations. It examines AICHR’s progress, achievements and shortcomings in addressing the human rights situation in Southeast Asia.

This book also compiles documents submitted by SAPA TFAHR to the AICHR, including proposals for its Rules of Procedure and Work Plan, cases of human rights violations, and press releases that accompany these submissions.

In its second year and beyond, SAPA TFAHR believes that AICHR needs to transcend its structural limits in order to be better able to fulfill its mandate of protecting and promoting human rights in Southeast Asia.