



Executive Summary

The primary objectives of the Office of the National Human Rights Commission of Thailand in commissioning this study are to compile and analyze legally binding instruments (Hard Law) related to human rights adopted by the Association of Southeast Asian Nations (ASEAN).

The research has shown that ASEAN currently adopts only one legally binding human rights instrument, namely the ASEAN Convention against Trafficking in Persons, especially Women and Children, which was adopted at the 27th ASEAN Summit in Kuala Lumpur, Malaysia in November 2015. Owing to its recent adoption, the convention is not included in the ASEAN database for this study. There are nonetheless other instruments that pertain to or have implications on human rights. These can be categorized into two groups. The first group consists of four conventions: the ASEAN Convention on Counter-Terrorism (ACCT), the Agreement on the Conservation of Nature and Natural Resources 1985 (yet to be adopted), the ASEAN Agreement on Transboundary Haze Pollution 2002, and the ASEAN Agreement on Disaster Management and Emergency Response 2005. Instruments that form the second group are those that seek to establish organizations designated to work on issues that potentially affect human rights in ASEAN; for example, the Establishment Agreement for the ASEAN Centre for Biodiversity (ACB) and the Establishment Agreement for the ASEAN Coordinating Centre for Humanitarian Assistance (AHA).

The study moreover finds that the majority of human rights-related instruments are in the form of political declarations (and as such they are not included in the legal instrument database of ASEAN). Despite imposing no legal commitment, these instruments represent manifestation of the political will of the member states to promote and protect human rights in the region and many have been further developed into legally binding commitments. Among the political instruments, the ASEAN Human Rights Declaration is the most influential and important human rights instrument in ASEAN. The Declaration not only institutionalizes the rights enshrined in Universal Declaration of Human Rights but also extensively incorporates other ‘newer’ human rights such as right to development, right to peace, right to privacy, and right to sustainable environment.

The study also shows the key development of human rights in the region, particularly on the following subjects;

1. The ASEAN Charter that became effective in 2008 provides the recognition of ASEAN’s legal personality. Even though it is not a human rights instrument *per se*, the Charter establishes

the foundation of ASEAN Community which is subject to the rule of law principle, democracy, and the promotion and protection of fundamental rights and freedom. Furthermore, it requires ASEAN to develop a regional human rights mechanism, which later became ASEAN Intergovernmental Commission on Human Rights (AICHR).

2. Founded in 2009, the AICHR is considered to be the focal human rights mechanism of ASEAN and is mandated with 14 missions prescribed in its Terms of Reference. In the initial phase, the top priority of the AICHR was to develop the AHRD. As the latest regional human rights mechanisms following those already operational in America, Europe, Africa and the Arab world, the AICHR has faced a number of challenges stemming from both its structure and practices. While its promotional mission has been extensively discharged, the protection mandate has been left relatively underdeveloped. The study also scrutinises the works of other human rights bodies of ASEAN, including ACWC and ACMW.

In addition to the current ASEAN human rights instruments and mechanism, this study provides an analysis on the tendency of the development of ASEAN human rights mechanism and emerging instruments. It also provides recommendations to the NHRCT on how to enhance the role of Thailand on human rights issues in the ASEAN Community as follows.

1. The pillarised structure of the ASEAN Community has posed and will continue to present challenges to the mainstreaming of human rights and human rights-based approaches, which permeate and crosscut all community pillars of ASEAN. The effectiveness of such mainstreaming endeavour will affect and to a large extent determine the success of the quantity and quality of ASEAN human rights instruments as well as its human rights mechanism.

2. Regarding the role of Thailand, especially the NHRCT, this study proposes national and regional approaches. The former suggests that Thailand can lead by example by ratifying more international human rights instruments, considering removing current reservations, and improving the implementation of the instruments that have been ratified. Furthermore, Thailand can assist other Member States through experience sharing and technical support on promoting and protecting human rights. The NHRCT in particular can undertake structural reform by establishing a sub-committee and supporting unit that has direct mandate on the ASEAN Community. As for the regional approach, Thailand, as one of the founding countries of ASEAN, should expedite the improvement of the ASEAN human rights mechanism and the quality of additional ASEAN human rights instruments.

