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**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS**

**Regional arrangements for the promotion and protection
of human rights in the Asian and Pacific region**

Report of the Secretary-General

Addendum

**Conclusions and recommendations of the Expert Meeting on National
Human Rights Plans of Action and Human Rights Education in the
Asia-Pacific Region (Bangkok, 20-22 October 2005) and the
subregional workshop for judges and lawyers on the justiciability
of economic, social and cultural rights in South-East Asia
(Manila, 3-5 November 2004)**

I. CONCLUSIONS AND RECOMMENDATIONS OF THE EXPERT MEETING ON NATIONAL HUMAN RIGHTS PLANS OF ACTION AND HUMAN RIGHTS EDUCATION IN THE ASIA-PACIFIC REGION

Introduction

1. Experts on national human rights action plans and human rights education from the Asia-Pacific region, representing Governments, national human rights institutions and non-governmental organizations, met in Bangkok from 20 to 22 October 2004. The meeting took place within the Framework for Regional Cooperation for the Promotion and Protection of Human Rights in the Asian and Pacific region (The Asia-Pacific Framework).

2. The objectives of the meeting, in summary, were:

- To assess the usefulness of national action plans for the promotion and protection of human rights;
- To identify the key steps and components of national action plans, with a particular focus on human rights education as a potential priority area;
- To share and discuss experiences in order to identify best practices;
- To provide guidance on a revision of the handbook on national action plans published by the Office of the United Nations High Commissioner for Human Rights.

3. The meeting considered the concept of national action plans, the preparation of national action plans, implementation processes, the components of national action plans and national plans of action for human rights education. The meeting gave detailed consideration, through a working group approach, to three issues:

- Human rights education in the school system;
- National human rights institutions;
- The administration of justice.

In these three separate working groups, the meeting focused on processes and components relevant to national action plans, including the responsibilities of various actors, strategies for effective implementation and monitoring, linkage with other planning processes and human rights education as a potential priority area.

4. The Working Group on Human Rights Education in the School System identified various challenges and strategies concerning national plans of action for human rights education and human rights education in general. The Working Group stressed that the development of a national plan for human rights education or relevant components of general human rights action plans could provide a platform for enhanced dialogue among all actors involved and a tool for

marking their commitment. In addition to developing specific plans, other useful planning approaches would be the infusion of human rights education in other sectoral plans, policies and legislation, such as those concerning the educational system as a whole, as well as development plans.

5. The Working Group on National Human Rights Institutions considered the advantages and disadvantages of various levels of involvement of national institutions in the national action plan process and made focused recommendations on the role of such institutions.

6. The Working Group on the Administration of Justice made general recommendations drawing on experiences of work on this sector within the framework of national action plans. It was recognized that access to justice could be one of the priorities of the action plan.

Conclusions

The value of national human rights action plans

7. The meeting concludes that national human rights action plans (including plans relating to human rights education) are potentially a useful mechanism for the promotion and protection of human rights. The meeting notes that work on national action plans has been going on for 10 years, but data on successful experience are still limited. Experiences so far suggest, therefore, that national action plans have considerably greater potential than has yet been realized.

8. In order to realize the full potential of national human rights action plans, both the people and the Government of a country must be jointly committed to bringing about genuine improvements in human rights. For this to happen, the Government and the people of the country need to work together to develop and implement the action plan.

The preparatory process

9. To date, the more productive aspect of the national action plan processes has been found to be in the preparation rather than in the implementation or evaluation. Preparatory phases have often produced good consultation and awareness-raising.

10. The preparation of an honest and thorough baseline study is essential for the development of a focused and effective national action plan.

11. National action plans should take a comprehensive approach to human rights and fully reflect international human rights standards. The observations of United Nations treaty bodies on reports by States under the various treaties and those of the United Nations special procedures would be a useful basis for the development of national action plans.

12. The preparation process should be participatory, inclusive and accessible in terms of the various sectors involved. It should encompass the full range of government agencies, national human rights institutions, civil society organizations and parliaments.

Implementation

13. The meeting recognizes that successful implementation of the national plans of action is one of the major challenges. In this context, it underlines the importance of effective coordination and monitoring at the national level.

14. Implementation of national action plans requires the commitment and engagement of the Governments and people of a country.

15. Strategies for implementation should be included in the preparatory phase of the development of a national action plan.

16. Because a national action plan represents a set of government commitments, government ownership is essential. Accordingly, the Government should be involved in the preparation and drafting as well as implementing.

17. In order for the action plans to be meaningful and productive, and effectively implemented, government leaders and officials should be familiarized with human rights. Human rights education for government agencies, in particular security authorities, is vital.

18. The people, as rights holders, have a key role in assessing as well as contributing to the implementation of national action plans. This requires widespread human rights education and capacity-building and wide dissemination of the action plan.

19. There should be an effective coordinating and monitoring mechanism that is operational throughout the life of the plan.

20. Objectives, priorities and performance indicators are important to the success of national action plans. They need to be carefully considered, so that they combine long-term goals with achievable targets within clear time frames.

21. Planning is a common feature of government and civil society activity. As human rights are integral to the planning process of various action plans, it is therefore important to ensure that human rights action plans and other action plans are linked in such a way that they are not only consistent but also mutually reinforcing, and promote efficiency.

National human rights institutions

22. The involvement of national human rights institutions is important to the development and implementation of national action plans because:

- National human rights institutions are particularly suited to conducting the baseline study;
- National human rights institutions have an important role in drafting national action plans;

- National human rights institutions have an important role to play in monitoring the drafting of action plans and in their implementation, as well as in their eventual evaluation.

In order to fulfil this role, national human rights institutions must be adequately resourced.

Civil society

23. The integral involvement of civil society, particularly human rights non-governmental organizations and the media, is essential at all stages of the national action plan. The process should be public and transparent, and ensure that all sectors of society have full and meaningful access to the process.

Recommendations

To Governments

24. Governments should ensure that the considerations outlined above are fully addressed in the preparation, implementation and evaluation stages of national action plans.
25. Government should involve all relevant governmental institutions, national human rights institutions and civil society in all stages of the national plan.
26. National human rights plans of action should be linked to national development plans.
27. The national human rights plans under implementation should be periodically revisited with a view to updating and upgrading, as required.
28. A national strategy concerning human rights education in the school system should include:
- The inclusion of human rights within all curriculum subjects (social studies, literature, geography, foreign languages, sciences, etc.) and revision of related textbooks;
 - The development of culturally specific and accessible human rights education materials;
 - The training of teachers and other education personnel;
 - The establishment of mechanisms to ensure a school environment conducive to human rights, which ensures respect among all actors and promotes participatory approaches and methodologies.

In this context, it is important that all relevant actors are involved, such as ministries (Ministry of Education as well as, as appropriate, the Ministry for Foreign Affairs, the Ministry of Culture, the Ministry of Justice, etc.), national human rights institutions, teachers and other education

personnel, students, parents/family, academics and researchers, cultural workers (artists), specific groups (such as organizations of disabled people), religious institutions and the media. These actors should work together in a spirit of mutual respect and active participation.

29. Human rights education for public and other critical target groups, including the police and the military, should be included in national human rights plans of action as a preventive measure.

30. The major actors involved in developing and implementing plans of action, in particular Governments, should document their experiences and make this information available, through the Office of the High Commissioner for Human Rights, to the Asia-Pacific Framework and any other interested parties.

To the Framework on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian and Pacific Region

31. Governments should pay closer attention to the original objective of the Asia-Pacific Regional Framework, namely examining the possibility of establishing subregional/regional human rights arrangements for Asia and the Pacific. The meeting strongly encourages the Governments of the region to strengthen their efforts to develop subregional mechanisms for the promotion and protection of human rights within the existing cooperation structures.

32. In this connection, the meeting encourages the Governments of the region to reinvigorate the Tehran Framework, in particular by revisiting its original intent to establish a regional human rights arrangement for Asia and the Pacific, and to strengthen efforts toward this end.

To the United Nations

33. The United Nations should strengthen support for work on national action plans, including, where appropriate, support for their implementation, through its technical cooperation and advisory services, field offices and the OHCHR Regional Representative for Asia and the Pacific based at the Economic and Social Commission for Asia and the Pacific (ESCAP).

34. The High Commissioner for Human Rights or her senior representatives should encourage senior officials of countries that have adopted a plan of action by congratulating them on the plan and encouraging its speedy implementation. This may be done on a meaningful commemorative occasion, such as the day of adoption.

35. The United Nations should disseminate lessons learned from other regions on the preparation and implementation of national human rights plans of action, which could serve as a reference for such work in the Asian and Pacific region.

36. The United Nations should:

- Disseminate policy guidelines and methodologies for human rights education, including good practices in the implementation of human rights education;

- Encourage cooperation and coordinating mechanisms in the implementation of human rights education at all levels;
- Encourage Governments to elaborate and implement human rights education at the policy level and promote grass-roots and civil society participation;
- Support networking and experience-sharing between countries in the area of human rights education;
- Increase its budget and staff, for instance through the posting of staff dealing with human rights education in the OHCHR Asia-Pacific Regional Office based at ESCAP.

II. CONCLUSIONS AND RECOMMENDATIONS OF THE SUBREGIONAL WORKSHOP FOR JUDGES AND LAWYERS ON THE JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN SOUTH-EAST ASIA

Introduction

1. The Subregional Workshop for Judges and Lawyers on the Justiciability of Economic, Social and Cultural Rights in South-East Asia was organized in Manila from 3 to 5 November 2004 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Commission on Human Rights of the Philippines, in cooperation with the Supreme Court of the Philippines, the Department of Foreign Affairs of the Philippines, the International Bar Association, the International Commission of Jurists, the Centre on Housing Rights and Evictions (COHRE) and the University of the Philippines Women Lawyers Circle, as well as with the support of the United Nations Development Programme (UNDP), the Philippines.
2. The workshop was organized in the context of the Framework for Regional Cooperation for the Promotion and Protection of Human Rights in the Asian and Pacific Region (The Asia-Pacific Framework), whose aim is to examine the possibility of establishing regional and/or subregional human rights arrangements for Asia and the Pacific.
3. The workshop was attended by 35 judges and lawyers from the following nine countries belonging to the Association of South-East Asian Nations (ASEAN): Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore and Thailand. The workshop also welcomed 50 observers from organizations in the Philippines. Justice Bhagwati (India), Justice Manohar (India), Justice Pillay (Mauritius), Ms. Dandan (Philippines), Ms. Srivastava (India), Ms. Goldie (COHRE, Australia), Mr. Fernandes (COHRE, Australia) and Ms. Quisumbing (Philippines) offered their human rights expertise for the workshop as resource persons.
4. Participants at the workshop expressed their gratitude to the Government of the Philippines, in particular the Human Rights Commission and the Supreme Court of the Philippines, for hosting the workshop, to OHCHR and their partner organizers for organizing and supporting the workshop.

Conclusions

5. The participants at the workshop reaffirm the universality, interdependence and interrelatedness of all human rights - civil, cultural, economic, political and social - which was affirmed at the World Conference on Human Rights held in Vienna in 1993. The participants also note article 5 of the 1998 Bangalore principles, which laid down that “both civil and political rights and economic, social and cultural rights are integral, indivisible and complementary parts of a coherent system of global human rights”.

6. The participants stress the importance of universal ratification of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights. They note that an open-ended working group was established to develop an optional protocol to the Covenant to enable individuals to lodge petitions to an international body in relation to violations of economic, social or cultural rights. The participants support the development of an international individual complaints mechanism regarding the Covenant. They recognize that an optional protocol would enhance State accountability, continue to clarify the nature and content of State obligations under the Covenant, and motivate improvements in the effectiveness of domestic legal remedies.

7. The participants note that the realization of human rights, in particular economic, social and cultural rights, is closely linked to the effective achievement of the United Nations Millennium Development Goals. The effective realization of economic, social and cultural rights could provide an environment conducive to the flourishing of good governance as well as the promotion of the rule of law.

8. The participants note the increasing recognition of the justiciability of economic, social and cultural rights as a firmly rooted legal reality the world over. Moreover, the participants note the wealth of jurisprudence on economic, social and cultural rights cases at the national, regional and international levels.

9. The participants recognize that States parties have the obligations to respect, protect and fulfil economic, social and cultural rights and that:

- The obligation to respect requires States parties to refrain from actions that violate economic, social and cultural rights;
- The obligation to protect requires States parties to take steps to prevent other individuals or groups (third parties) from violating economic, social and cultural rights;
- The obligation to fulfil requires States parties to take positive steps to progressively realize economic, social and cultural rights to the maximum of available resources.

10. The participants recognize that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child is

incumbent upon every State party. They further recognize that the determination as to whether a State has satisfied its minimum core obligation should be made by taking into account the level of resources available within the country concerned and their appropriate use.

11. The participants note that economic, social and cultural rights must be realized progressively through all appropriate means, including in particular the adoption of legislative measures, within the maximum resources available in the country concerned. The States parties thus have the obligation to move as expeditiously and effectively as possible towards the full realization of such rights. At the same time, the participants emphasize that certain aspects of economic, social and cultural rights such as non-discrimination and equality are to be applied immediately.

12. The participants note the important work of treaty monitoring bodies, including the Committee on Economic, Social and Cultural Rights, in particular its general comments, which provide an authoritative source for interpretation of the nature and content of those rights.

13. The participants recognize the important role that the judiciary plays in the enforcement of economic, social and cultural rights through the provision of judicial remedies for violations of these rights. The participants note a host of possible creative means that can be used by the judiciary for the effective implementation of economic, social and cultural rights, which should include public interest litigation and an innovative and expansive interpretation of rights already guaranteed under existing constitutional frameworks and national legislation, such as the right to life, in such a way that encompasses economic, social and cultural rights, as has been successfully done by some courts of the Asian and Pacific region.

14. The participants note that some countries permit judicial review of government policies and programmes in the economic, social and cultural arenas, while the courts of other countries felt that such action is beyond their jurisdiction. In this regard, the participants feel that a prima facie denial of the possibility of judicial review is incompatible with the rule of law and the principle of the indivisibility, interdependence and interrelatedness of all human rights.

15. The participants note the variety of ways in which international human rights standards are applied by domestic courts, including by referring to constitutional protections and to the recommendations, general comments and decisions of treaty bodies, which they use as a source of interpretation in deciding cases within their national jurisdiction.

16. Human rights should be protected within the domestic legal framework to ensure the availability of judicial remedy in case of violations.

17. The participants recognize the important role that national human rights institutions can play in monitoring the realization of economic, social and cultural rights. They also recognize the importance of strengthening the independence, mandate and functions of national human rights institutions to enable them to monitor and promote the protection of all human rights, including economic, social and cultural rights.

18. The participants recognize that an independent judiciary is essential for the protection and promotion of all human rights, in particular for effective domestic legal remedies.

19. The participants recognize the vital role that human rights defenders play in the protection and promotion of human rights.

20. The participants stress the importance of raising awareness among the general public about their rights and the remedies available to them, including judicial remedies. They underscore the role of NGOs and the media in this regard.

Recommendations

To Governments

21. The participants consider that a regional and/or subregional human rights mechanism can reinforce the justiciability of economic, social and cultural rights in all countries. Consequently, Governments should pay closer attention to the original intent of the Asia-Pacific Framework, namely examining the possibility of establishing subregional/regional human rights arrangements for Asia and the Pacific. The participants thus strongly encourage the Governments of the Asian and Pacific region to strengthen their efforts to develop regional and/or subregional instruments and mechanisms for the promotion and protection of human rights within existing cooperation structures, including ASEAN.

22. The participants recommend that Governments ensure judicial independence by strengthening or reforming the procedures and mechanisms that are intended to guarantee such independence.

23. The participants recommend that Governments take all necessary steps to ensure that their domestic legal framework provides for effective legal remedies regarding violations of human rights, including economic, social and cultural rights.

24. The participants emphasize the crucial significance of human rights education at all levels, with a view to mainstreaming human rights. In this regard, they recommend that efforts be taken to develop human rights curricula, with international assistance if necessary, and to integrate such curricula within existing educational programmes and professional training.

25. The participants recommend that Governments move expeditiously to develop and adopt an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

26. The participants further encourage the Governments of those ASEAN countries in which a national human rights institution is yet to be established to take steps towards the establishment of such an institution in accordance with the Paris Principles.

To United Nations and all other international organizations

27. The participants recommend that the United Nations and all other international organizations actively promote sensitization of judges and lawyers in the field of human rights by periodically conducting national-level workshops and seminars in cooperation with

Governments, national human rights institutions, appropriate professional bodies, relevant international NGOs and national organizations. They recommend that such training cover the following topics: general human rights, specific rights, national principles concerning mechanisms for ensuring the fulfilment of State obligations. It should include experts from diverse professional backgrounds who can engage in a dialogue from various perspectives, not limited to the legal.

28. The participants support the desire of national human rights institutions for a clearer and more formal status in the United Nations system.

29. The participants recommend that OHCHR, COHRE and other interested NGOs collaborate closely to develop their databases of case law from the ASEAN region on economic, social and cultural rights, in particular those relating to the justiciability of economic, social and cultural rights.

30. The participants recommend that international financial institutions such as the International Monetary Fund, the World Bank and the Asian Development Bank adjust their policies, programmes and practices by incorporating economic, social and cultural rights, whereby the fulfilment and enjoyment of these rights are promoted, rather than impaired.

To national human rights institutions

31. The participants encourage national human rights institutions of the ASEAN region to collaborate more closely to promote their effectiveness in promoting human rights within their own countries, as well as to foster regional action and to exchange tools and experiences.

32. The participants recommend that national human rights institutions educate and sensitize the public, government officials, lawyers and judges in the area of human rights, particularly in respect of the justiciability of economic, social and cultural rights.

33. The participants recommend that national human rights institutions strengthen their role in applying the concept of the justiciability of economic, social and cultural rights by appropriate methods such as provision of supporting documentation and taking the role of amicus curae, where appropriate.

To judges and lawyers

34. The participants recommend that law societies, bar associations and judicial training bodies ensure that the legal profession, including the judiciary, is kept abreast of current developments in international and comparative human rights jurisprudence in local languages.

35. The participants recommend that continuing legal and judicial education about human rights be made available for judges and lawyers with the support of international and regional agencies and NGOs, if necessary.

36. The participants welcome the encouraging intention of the ASEAN Law Association to get more proactively involved in human rights work, including the work on the justiciability of economic, social and cultural rights.

37. The participants encourage judges and lawyers to contribute to academic analysis and discourse on human rights, for example by publishing treatises in legal journals and by participating in the development of case databases on the justiciability of economic, social and cultural rights.
