

SUMMARY REPORT

“Rule of Law in ASEAN”

Presentation of the Findings of a Baseline Study

1. Background

The Human Rights Resource Center (HRRC) is a recently established non-profit organization dedicated to the furtherance of research in human rights in the ASEAN region. In 2010 the HRRC initiated a “Rule of Law for Human Rights Baseline Study” in ASEAN Member States to undertake an inventory of the implementation of rule of law in each ASEAN Member State, including how it defines and interpret the ‘rule of law’ and its relationship with ‘good governance’ and ‘human rights’. The study was conducted from August 2010 to May 2011 by a team of researchers led by Assistant Professor Mahdev Mohan from the Singapore Management University (SMU). As a “baseline survey” it provides a snapshot of the current state of knowledge about the rule of law, based upon a range of sources including surveys on the opinions of experts and the general public, information from the police, courts, attorneys and other institutions, NGO reports, and legislation. Utilizing these sources the Report provides a country-by-country analysis of the 10 Member States, as well as a comparative assessment on the overall implementation of the rule of law in ASEAN. The report can be downloaded from the HRRC’s website: <http://hrrca.org/>.

A fundamental aim of the Study was also to identify gaps in knowledge and issues requiring further sustained inquiry. In this sense, the Study serves as a foundation for future in-depth empirical studies on specific countries and specific issues where research, analysis and policy recommendations are most urgently needed. Such analysis and policy recommendations are required to promote more effective measures for fully implementing the commitment of the ASEAN Charter to the rule of law and good governance. Since its official launch in May, 2011 in Jakarta, the Study has been widely welcomed as important and as the first of its kind.

Shortly after the launch of the report, and taking into account the strong interest in the results of the study, the Governing Board of the HRRC decided that the HRRC should prioritise building upon the success of the launch of the rule of law report by promoting it actively in ASEAN member states where there is the greatest need both for follow-on studies and for establishing the HRRC as an important research institution for ASEAN. Such a ‘roadshow’ provides opportunities for stakeholders to gain awareness of the results of the rule of law baseline study and its relation to the ASEAN Charter and the ASEAN Vision

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2020. On the view of the Governing Board, the wider Mekong (CLMV) region was identified as a first priority. This is also fitting in with Cambodia's efforts to hold high profile ASEAN events during the year that it serves as Chair of ASEAN.

The KAS Cambodia office kindly agreed to co-sponsor the roadshow event in Cambodia, while the UK's FCO and British Embassies in the region have agreed to fund presentations in Thailand, Vietnam and Laos. A presentation in Phnom Penh, at the time of the country's ASEAN chair, could help to provide a new impetus for legal and judicial reform in Cambodia, in particular before the background of future legal and judicial harmonization as required by the process of ASEAN integration.

2. Presentation of the Baseline Survey at the Senate in Cambodia

The one-day event, held on 23 July 2012 at the Senate in Phnom Penh, brought together high-level stakeholders from Cambodia coming from the national judiciary, government, legislative, universities and civil society. Among the participants were members of the Senate and the National Assembly, representatives from the national judiciary (including Cambodian judges and prosecutors), representatives from the Government (including from the Council for Legal and Judicial Reform), and representatives from law faculties at Cambodian universities and some NGO workers. Overall, around 100 individuals attended the event.

The event was opened by **H.E. Mr. Tep Ngorn**, the 2nd Vice President of the Senate of Cambodia. The 2nd Vice President noted that "the research document provides an important ground for the member states of ASEAN in seeking more effective strategies to strengthen the rule of

law, good governance and democratic culture". In particular, and with view to the future, he stressed that "when ASEAN becomes one community by 2015, it is very important that we have to make more proper laws and regulations".

The work of the HRRC and the findings of rule-of-law baseline study were afterwards presented by **Mr Marzuki Darusman**, Executive Director of the HRRC and former Attorney-General of Indonesia, and **Prof. David Cohen**, Director of AIJI and member of the HRRC Advisory Board.

Mr Marzuki and Prof. Cohen both stressed that the ASEAN Charter explicitly aims to protect and promote the human rights. In addition, the 2009 Roadmap for an ASEAN Political-Security Community by 2015 stipulates that ASEAN shall promote political development in adherence to the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms, as inscribed in the ASEAN charter. That is, the Charter, Roadmap, and other instruments indicate that a consensus has emerged in ASEAN on the central principles of the rule of law as a principle of good governance.

The baseline survey analyses how the 10 ASEAN member states have defined the rule of law and how they have been implemented in government and institutions. In addition, it looks at four indicators that reflect broadly acknowledged fundamental aspects of the rule of law: (i) the government and its officials and agents are accountable under the law; (ii) laws and procedure for arrest, detention and punishment are publicly available, lawful and not arbitrary, and preserve the fundamental rights to physical integrity, liberty and security of persons, and proce-

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dural fairness in law; (iii) the process by which the laws are enacted and enforced is accessible, fair, efficient, and equally applied; and (iv) justice is administered by competent, impartial and independent judiciary. Each of these indicators is followed by a series of sub-indicators to form an analytical grid to assess the current state of development of the rule of law in each of the ASEAN member states.

The findings show that there is a broad agreement in ASEAN as to the necessity of promoting the rule of law- rule of law, good governance and human rights seen as mutually reinforcing principles. However, considerable variation exists in the nature and scope of rule of law measures adopted by ASEAN governments in their constitutions and legislation. There is even greater variation in *de facto* implementation of legal and constitutional frameworks, and significant gaps in available data pose challenges for any comparative analysis. Nevertheless, the ASEAN Charter provides a conceptual framework for understanding the rule of law, democracy and human rights as mutually reinforcing and inter-linked principles, which member states must strive to enhance and protect. The charter principles are broadly reflected in the constitutions and legislative enactments of most ASEAN member states. Coherent planning across ASEAN is required to make those principles a reality.

A subsequent panel of distinguished experts from Cambodia, coming from various branches and institutions of government and society, discussed the findings of the study in the context of Cambodia. The panel consisted of **H.E. Mr. Suong Le-anghai**, Deputy Secretary General of Council for Legal and Judicial Reform; **Prof. Kong Phallak**, Dean of Law School, PUC; **Mr. Sok Sam Oeun**, Director of Cambodian De-

fenders Project; **H.E. Mr. Phann Vanrath**, Prosecutor to Provincial Court of Banteay Mean Chhey Province; and Mr. Marzuki Darusman, Director, Human Rights Resource Center. The discussion was facilitated by **Dr. Hor Peng**, Dean of National University of Management (NUM). Given the diversity of the panel, the contributions ranged from an overview of the government's legal and judicial reform strategy, over civil society's views on the needs for further reform to insights into the challenges faced by the judiciary on its long-term path towards a society governed by the rule-of-law.

The subsequent more than one hour of discussion with participants touched on various matters addressed by the report, but also considered issues of importance to Cambodia, such as the situation of migrant workers in neighbouring countries, the death penalty in other ASEAN countries, and the inter-relationship between Cambodia's treaty obligations under various UN human rights instruments and the emerging ASEAN human rights infrastructure.

H.E. Mr. Ouk Bounchhoeun, Chairperson of Commission on Judiciary and Justice of Senate, provided the closing remarks.

The HRRC rule-of-law study was partially translated into Khmer prior to the event, in particular the Cambodia country report and the synthesis report (summarizing the main finding from a comparative perspective across all ASEAN countries). These materials were made available to all participants – spare copies were given to the participating universities for their libraries. Further follow-up events are planned in Cambodia and across the ASEAN region.