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Mainstreaming Human Rights in the Asian Judiciary

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Abstract

Human rights protection in Asia is hindered by the absence of binding human rights instruments and enforcement mechanisms, including the lack of human rights mainstreaming into the works of relevant stakeholders, notably the judiciary. Judiciary plays key roles in the realization and protection of human rights. As the guardian of the Constitution, the Indonesian Constitutional Court ('the Court') is mandated to protect the human rights of the citizens. This paper argues that the Court, which previously served as the President of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), has the potential to play a leading role in mainstreaming human rights in the region. Using normative and comparative legal research methodologies, the paper identified the Court's mandates on human rights at the national, regional and international levels; assessed the need for human rights mainstreaming in the Asian judiciary; and examined the significant potential of the AACC to house the mainstreaming project. Finally, it proposes several recommendations for the Court's consideration, namely to encourage judicial independence, recommend human rights incorporation into judicial discussions and decisions, suggest the establishment of a platform to enhance human rights expertise of the judiciary, as well as facilitate a platform for the development of binding human rights instruments and the establishment of an Asian Human Rights Court.

Keywords: AACC, Asian Human Rights Court, Indonesian Constitutional Court, Judicial Independence, Judiciary

I. INTRODUCTION

Judiciary plays important roles in the realization of human rights and justice. In practice, it has expanded the interpretation of human rights norms, serves as a checks and balances mechanism between the executive and legislative branches,

helps deliver justice to the victims of human rights violations and holds their perpetrators accountable.[1]

Human rights is guaranteed under provision XA of the 1945 Constitution of the Republic of Indonesia (the Constitution). This inclusion reflects Indonesia's commitment in the protection of human rights. As the institution set up to safeguard the implementation of the Constitution, the Court has the mandates to promote and protect human rights in line with the requirement of provision XA of the Constitution, as well as other prevailing human rights instruments at the regional and international level, notably the Universal Declaration of Human Rights (UDHR)[2] and a number of international human rights instruments to which Indonesia is a party, as well as the ASEAN Human Rights Declaration (AHRD).[3]

Since its establishment in 2003, the Court has been considered to act as the guardian of human rights.[4] This is evidenced by, inter alia, the authorization of judicial review through the Constitutional Court to ensure the protection of the rights of citizens,[5] as well as the issuance of several Court's judgments which have indicated its commitment towards the promotion and protection of human rights.[6] At the regional level, it has also played a leading role in setting the direction of Association of Asian Constitutional Courts and Equivalent Institutions (AACC), to which it previously presided for over three years.

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1 See, among others: Fahed Abul-Ethem, "The Role of the Judiciary in the Protection of Human Rights and Development: Middle Eastern Perspective," *Fordham International Law Journal* 26(3) (2003); Ackermann, L.W.H., "Constitutional protection of human rights: Judicial review," *Columbia Human Rights Law Review 21*(1) (1989): 59-71; Eugene Cotran and Adel Omar Sherif, *International Conference on the Role of the Judiciary in the Protection of Human Rights: The Role of the Judiciary in the Protection of Human Rights* (London: Brill, 1997); Frank B Cross, "The Relevance of Law in Human Rights Protection," *International Review of Law & Economics* 19, no. 1 (1999): 87-98; Saldi Isra, "The Role of the Constitutional Court of Indonesia in Strengthening Human Rights in Indonesia. Constitutional Journal," *Jurnal Konstitusi*, accessed March 25, 2018, https://ejournal.mahkamahkonstitusi.go.id/index.php/jk/article/viewFile/33/32.

2 UDHR (adopted 10 December 1948).

3 AHRD (adopted 18 November 2012), accessed April 25, 2018, http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

4 Isra "The Role of the Constitutional Court of Indonesia"; See also Arif Hidayat, Speech at the 3rd Congress of AACC in Bali, Indonesia, 8 – 14 August 2016, accessed March 25, 2018, http://www.mahkamahkonstitusi.go.id/public/content/infoumum/proceeding/pdf/Proceeding_6_PRECEEDING%20CONGRESS%20AACC.pdf.

5 The Indonesian Constitution 1945, art 24(C)(1) and 24(C)(1).

6 See e.g.: Decision No 011-017/PUU-VIII/2003 regarding the review of law No. 12/2003 on General Elections of the members of Parliament at the national and provincial levels; Decision No 6-13-20/PUU-VIII/20120 regarding the review of Law No 16/2014 on Indonesian Prosecutor; and Decision No55/PUU-VIII/2010 regarding the review of Law No 18/2004 on Plantation.

The existence of the AACC bears significance to the region. It serves not only as the only Asian platform to exchange experience and information and deliberate issues related to constitutional practice and jurisprudence beneficial for the development of constitutional courts and similar institutions in the Asian region,[7] but it also raises an aspiration on the enhancement legal frameworks and mechanisms to protect constitutional rights and human rights of Asian people in general, given the reluctance and inaction of the executive and legislative branches of sub-regional Asian bodies and mechanisms.[8]

As widely noted, legal protection of human rights in Asia has not been adequately guaranteed. Unlike in Europe, America and Africa, Asian regional's responses towards the establishment of a strong regional human rights regime have not been consolidated.[9] This is evident with the absence of a region-wide human rights mechanism with a mandate to oversee human rights protection in Asian region as a whole. In addition, Asian region lacks binding human rights instrument which ensures consistent application of human rights standards and emanates obligations to its states parties to undertake certain legislative or other possible measures to give effect to the rights or freedoms guaranteed under such instrument at the domestic, regional and/or international level.[10] Furthermore, the region also lacks enforcement or adjudicatory mechanisms which have been proven to be the prerequisite of strong mechanisms for human rights protection in the other regions.[11] Authoritative interpretation and obligatory application of human rights standards by a judicial organ are needed, since no right is genuinely assured unless it is safeguarded by a competent court.[12]

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7 AACC, "About AACC," accessed April 25, 2018, https://aacc.mahkamahkonstitusi.go.id/aacc/1.

8 See generally Hsien-Li TAN, *The ASEAN Intergovernmental Commission on Human Rights Institutionalising Human Rights in Southeast Asia* (Cambridge: Cambridge University Press, 2011); Nicholas Doyle, "The AHRD and the Implication of Recent Southeast Asian Initiatives in Human Rights Institutions-Building and Standard Setting," *International and Comparative Law Quarterly* 63(1) (2014): 67-101; SAPA TFAHR, *Report: The Future of Human Rights in ASEAN; Public Call for Independence and Protection Mandates* (Bangkok, 2014); Vitit Muntarbhorn, *Unity in Connectivity? Evolving Human Rights Mechanisms in the ASEAN Region* (Leiden, etc: Brill, 2014); Ben Saul, Jacqueline Mowbray, Irene Baghoomians, "The Last Frontier of Human Rights Protection: Interrogating Resistance to Regional Cooperation in the Asia Pacific," *Australian International Law Journal* 18 (2011): 23.

9 *Ibid*.

10 American Convention on Human Rights (adopted 22 November 1969, entered into force18 June 1979) UNTS 1144 art 2 (ACHR).

11 See e.g.: Muntarbhorn, *Unity*, 106 - 112.

12 OAS, Resolution XXXI on Inter-American Court to Protect the Rights of Man (adopted 1948).

In light of the above, this paper argues that the Court can and should play a leading role in the enhancement of legal protection of human rights in Asia. Using a normative and comparative legal research methodologies, this paper reviews the prevailing legal frameworks at the national, regional and international levels; examines the need for human rights mainstreaming in the Asian Judiciary; identifies human rights protection gaps in Asia based on a comparison with other regions; assesses the developments and the works of relevant mechanisms in Asia, notably the ASEAN Intergovernmental Commission on Human Rights (AICHR); and highlights the potential roles of the AACC in enhancing legal protection of human rights in Asia. Against this backdrop, and taking into account Indonesia's past and present roles in the AACC and in the context of regional human rights cooperation in general, it finally explores the potential roles of the Court in mainstreaming human rights in the Asian Judiciary.

II. DISCUSSION

2.1. Legal Frameworks of Court's Mandates on Human Rights

As the guardian of the Constitution, the Court is mandated among others to protect the human rights of the citizens.[13] The Constitution guarantees human rights under provision XA. This provision consists of 10 articles which regulate the rights of citizen and non-citizen as well as the obligations of the state and individuals. The articles also set the limitation to those rights and guarantee their implementation.[14]

Of those articles, there are 21 clauses that govern general rights of individuals, specific rights of the citizens and the rights of vulnerable groups, namely children[15] and indigenous people.[16] Meanwhile, the obligation of state to enhance and advance the fulfillment of human rights including the obligation of every human being to respect other's rights are governed respectively by articles 28(I)(4) and 28(J)(1) of the Constitution.

[13] Constitution (1945), provision XA; Isra, "The Role of the Constitutional Court of Indonesia".
[14] *Ibid*. arts 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I and 28J.
[15] *Ibid*. art 28(B)(2).
[16] *Ibid*. art 28(I)(3).

The Constitution also regulates rights' limitation under articles 28(J) and 28(I)(1) which provide that (i) the enjoyment of human rights and freedoms are constrained by law on the basis of respect to human rights of others as well as other grounds of consideration such as morality, religious norms, security and public order; and (ii) the non-derogability of several human rights, including, freedoms of thoughts and conscience, freedom of religion and right against the slavery at any situations.

In addition, the Constitution also governs the guarantee of human rights implementation, whereby article 28(I)(5) provides a mandate for the law to regulate the implementation of human rights in line with the principles of rule of law and democracy.

Furthermore, at the regional and international level, Indonesia has ratified numerous binding and non-binding human rights instruments. Indonesia is a state party to a majority of core human rights treaties and their optional protocols, namely International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),[17] International Covenant on Civil and Political Rights (ICCPR),[18] International Covenant on Economic, Social and Cultural Rights (ICESCR),[19] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[20] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),[21] Convention on the Rights of the Child (CRC),[22] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-CRC-AC),[23] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP - CRC - SC),[24] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW),[25] and Convention on the Rights of Persons with Disabilities

[17] ICERD (adopted 7 March 1966 entered into force 4 January 1969) 660 UNTS.
[18] ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[19] ICESCR (adopted 16 December 1966, entered into force 3 Janquary 1976) 993 UNTS 3.
[20] CEDAW (adopted 18 December 1979, entered into force 3 September 1981) 2131 UNTS.
[21] CAT (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.
[22] CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS.
[23] OP – CRC - AC (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS.
[24] OP-CRC-SC (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS.
[25] ICRMW (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS.

(CRPD).[26] As one of the main organs of the judiciary, the Court is among the key stakeholders responsible to support the domestication and implementation of the commitments stipulated under these instruments.[27]

Similarly, being the member of the United Nations (UN) and the Association of Southeast Asian Nations (ASEAN), Indonesia is also bound by human rights commitments enshrined in the UDHR as well as the AHRD. Despite the fact that the two documents are not formally binding, they entail provisions that have been recognized as a customary international law and have a *jus cogens*[28] characters and therefore could be considered as binding under international law, including those pertain to the prohibition of torture, arbitrary detention and slavery.[29]

2.2. Human Rights in Asia and the Role of the Judiciary; the Need for Human Rights Mainstreaming in the Asian Judiciary

The deterioration of human rights situation in Asia has been subject to a serious concern. Southeast Asia countries such as Cambodia, Lao PDR, Malaysia, Singapore, Vietnam and Thailand have seen governmental suppression to freedom of expression, association, opinion, peaceful assembly, press and political participation.[30] In Myanmar, Rohingya minority has faced longstanding prosecution

[26] See OHCHR, "Status of Ratification," accessed April, 25 2018, http://indicators.ohchr.org/.

[27] Pursuant to art 31 of the Vienna Convention on the Law of Treaties (VCLT), Indonesia's ratification indicates that Indonesia has consented to be bound by the terms of the ratified treaties and to perform them in good faith.

[28] *Jus cogens* is a rule or principle in international law that is of utmost fundamental and it binds all states and does not allow any exceptions. Since late 1990s, there has been an increased acceptance of this concept in doctrine, the case laws of international courts and tribunals and the works of International Law Commission (ILC). Article 53 of the VCLT considers that any treaty contradicting *jus cogens* norms is null and void. The article also perceives *jus cogens* norms as non-derogable and can be modified only by a subsequent norm of general international law having the same character. See e.g.: Raham Gooch and Michael Williams, *Oxford Dictionary of Law Enforcement* (Oxford: Oxford University Press, 2007); Christian Tomuschat and Jean-Marc Thouvenin, *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Leiden: Brill, 2006); Erika de Wet, "*Normative Evolution, Ch.23 Jus Cogens and Obligations Erga Omnes,"* in Dinah Shelton (ed), *the Oxford Handbook of International Human Rights Law*, (Oxford: Oxford Scholarly Authorities on International Law, 2013); L. Hannikainen, *Peremptory Norms (Jus Cogens) in International Law: Historical Developments, Criteria, Present Status* (Helsinki: Finnish Lawyers, 1988).

[29] A state is in violation of international law when it is found to practice, encourage and condone those rights, see James Crawford, *Brownlie's Principles of Public International Law* (Oxford: Oxford University Press, 2012) 642.

[30] See e.g: Human Rights Watch, "World Report 2018," accessed April 27, 2018, https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf; Related statement of ASEAN Parliamentarians for Human Rights (APHR) on human rights issues in the region, accessed April 27, 2018, http://www.aseanmp.org; Yuyun Wahyuningrum, "Ahead of 10th Birthday, ASEAN Rights Body Fails to Evolve," *Jakarta Post,* February 6, 2018, http://www.thejakartapost.com/academia/2018/02/06/ahead-of-10th-birthday-asean-rights-body-fails-to-evolve.html.

within Myanmar and has been increasingly deprived of a number fundamental rights and freedom, including being deprived by their Myanmar citizenship.[31] The situation significantly deteriorated with the initiation of "clearance operations" by Myanmar's security forces which was described as "a textbook example of ethnic cleansing" by the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein.[32] In the Philippines, aside from restriction, harassment and killing of journalists, grave concerns have also been raised over President Duterte's war on drugs that have allegedly killed over 12,000 people over the last two years. In Indonesia, discrimination and intimidation to minorities and vulnerable groups continue to occur in many parts of the country.[33]

Similarly, countries in South Asia, including Afghanistan, Bangladesh, India, Pakistan and Sri Lanka have signaled similar attitudes on human rights issues. Based on the record of the Amnesty International in 2017, CSOs have been subject to harassments and forced closure, press has been suppressed, government critics has been subject to crude colonial-era laws, minorities and other vulnerable groups have been threatened, new laws have been invoked against online critics and brutal treatments have occurred in the conflicts-affected areas.[34]

Furthermore, as highlighted in the World Report of Human Rights Watch, China has imposed an anti-rights agenda in multinational forums and forged stronger alliances with repressive governments.[35] Further, the report also highlights a number of serious human rights issues, including attacks to human rights defenders, suppression to freedom of expression, discrimination against religious

[31] High Commissioner for Human Rights, "Opening Statement to the 36th session of the Human Rights Council, 11 September 2011," accessed April 27, 2018, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22044; see also OHCHR, "Brutal attacks on Rohingya meant to make their return almost impossible – UN human rights report, 11 October 2017," para. 10, accessed 27 April, 2018, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22221.

[32] See e.g. OHCHR, "Brutal," paras. 1-3; OHCHR, "Mission report of OHCHR rapid response mission to Cox's Bazar, Bangladesh, 13-24 September 2017, 11 October 2017," 1, accessed 27 April, 2018, http://www.ohchr.org/Documents/Countries/MM/CXBMissionSummaryFindingsOctober2017.pdf; Human Rights Watch, "Crimes against Humanity by Burmese Security Forces Against the Rohingya Muslim Population in Northern Rakhine State since August 27, 2017, 26 September 2017," accessed 27 April, 2018, https://www.hrw.org/sites/default/files/supporting_resources/burma_crimes_against_humanity_memo.pdf.

[33] See e.g.: Human Rights Watch, "World"; Wahyuningrum, "Ahead of 10th".

[34] Biraj Patnaik, "Human Rights Violations Endemic in South Asia," accessed April 27, 2018 https://www.amnesty.org/en/latest/news/2017/02/human-rights-violations-endemic-in-south-asia/.

[35] Human Rights Watch, "World".

minorities and other vulnerable groups, as well as denial of rights of refugees and asylum seekers.[36]

Meanwhile, Asian governmental approach and position towards fundamental issues concerning the interpretation and implementation of human rights have indicated limited political will and commitments.[37] At the global level, the status of Asian countries' ratifications and reservations reveals a relatively modest acceptance towards international human rights instruments that include strong monitoring procedures or pose political sensitivities to Asian countries' domestic situations.[38] Although many Asian countries have mostly ratified the less politically sensitive instruments, i.e.: CEDAW, CRC and CRPD, their commitments are still greatly limited by their reservations and declarations. In addition, a majority of Asian countries have yet to ratify most of the OPs to these three instruments, particularly OP - CEDAW, OP - CRC on a communication procedures and OP - CRPD, all of which embody the communication procedures.[39] Furthermore, the status of Asian countries' ratifications of and reservations towards other core human rights treaties, including their OPs, has revealed even a lower level of observance by Asian countries.[40] Moreover, there exists an example of a serious discrepancy between the ratifications of international human rights instruments, notably the ICCPR, and the state of implementation of human rights obligations protected under those instruments.[41]

Ideally, if Asian countries have rendered low observance towards the global human rights framework, every attempt shall be made to address such gaps

[36] *Ibid*.

[37] OHCHR, "Status of Ratification", See also: Natalie Baird, "To Ratify or Not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific," *Melbourne Journal of International Law* 12, no. 2 (2011): 249-289; Mathew Davies, "States of Compliance? Global Human Rights Treaties and ASEAN Member States," *Journal of Human Rights* 13, no. 4 (2014): 00; Li-ann Thio, "Implementing Human Rights in ASEAN Countries: "Promises to Keep and Miles to Go before I Sleep"," *Yale Human Rights & Development Law Journal* 2 (1999): 1-215.

[38] *Ibid*.

[39] *Ibid*.

[40] *Ibid*

[41] See e.g.: Oona A Hathaway, "Do Human Rights Treaties Make a Difference?," *The Yale Law Journal* 111, no. 8 (2002): 1935-2042; UNHRC Working Group on the UPR Sixth Session (18 September 2009) UN Doc A/HRC/WG.6/6/KHM/2; UPR, 'Cambodia,' accessed April 27, 2018 https://www.upr-info.org/en/review/Cambodia/Session-18---January-2014; APHR, "Report: Death Knell for Democracy; Attacks to Lawmakers and the Threat to Cambodia's Institutions," accessed 27 April, 2018, https://aseanmp.org/cambodia-mps-report/.

through a different level of mechanism, i.e. regional mechanism. Regional framework supplement international mechanisms as different regions may entail regional particularities that cannot always be effectively solved by global instruments and mechanisms.[42] Regional human rights mechanisms and standards in Europe, Americas and Africa have contributed to safeguarding human rights and the fundamental freedoms of their people. Those regional frameworks have stronger monitoring and enforcement mechanisms as compared to universal treaties.[43] Those institutions have enhanced the legitimacy of rights within and across the regions, ensured the balance of power politics and shaped states' behavior.[44]

In light of the above, this section seeks to provide a comparative review on the status of legal protection of human rights by the international and the regional mechanisms so as to assess the gaps in the existing legal frameworks and mechanisms in Asia. In addition, the second half of the section will seek to highlight the need for the Judiciary to take the lead given the reluctance and inaction of the legislative and executive branches of sub-region bodies and mechanisms in Asia. Among the key strategies to advance human rights protection is the mainstreaming human rights into the works of relevant stakeholders. Human rights is cross cutting in nature and it requires concerted efforts from various stakeholders to take part in its realization. Judiciary is deemed as one of the key players responsible in the realization of human rights and is therefore obliged to ensure that human rights are not compromised or encroached.[45]

2.2.1. The State of Legal Protection of Human Rights in Asia; a Comparative Outlook

The fundamental revisions to the pre-Second World War order were prompted by the atrocities of the Second World War and the concern to prevent a recurrence

[42] Dinah Shelton, "The Promise of Regional Human Rights Systems," in BH Weston and SP Marks (eds), *The Future of International Human Rights* (New York: Transnational, 1999) 353.

[43] Hathaway, "Do Human Rights Treaties".

[44] A number of studies have shown the impact of international and regional institutions on state behaviours in the area of human rights, see e.g. Andre Cortell & James Davis, "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Quarterly* 40, no. 4 (1996): 451-478.

[45] Anifah Aman, Speech at the AICHR Judicial Colloquium on the Sharing of Good Practices regarding International Human Rights Law, which was convened on 13 – 15 March 2017 in Kuala Lumpur, Malaysia.

of the catastrophes associated with Axis power policies.[46] These had urged the world leaders to undertake initial steps towards the modern international human rights law.[47] Universal commitment to codify human rights and fundamental freedoms were evidenced by the inclusion of human rights under the UN Charter, which was followed by the adoptions of the International Bill of Rights.[48] Since then, regional and international codification of various binding and non-binding human rights instruments continue to take place.[49]

These standard setting has evolved in parallel with the developments of numerous supervisory and/or enforcement mechanisms at the contexts of the UN and regional mechanisms. Within the UN system, Charter-based bodies were established to fulfill the relevant mandates under the UN Charter.[50] Succeeding the Commission on Human Rights, the Human Rights Council serves as a political platform to discuss, address, decide, make recommendations and report on all thematic human rights issues and situations throughout the world. In addition, it also possesses the mandates to enhance coordination among UN entities on human rights issues and to mainstream human rights within the UN system.[51]

In addition, the treaty-based bodies were also established by their respective international human rights treaties, with the mandates to examine states parties' compliance with their treaty obligations.[52] They are comprised of independent experts, which are working on a *pro-bono* basis and nominated by the states parties. These treaty bodies include: (1) the Human Rights Committee; (2) the Committee on Economic, Social and Cultural Rights; (3) the Committee on the Elimination of Racial Discrimination; (4) the Committee on the Elimination

[46] See e.g.: Crawford, *Brownlie's principles,* 634; Chowdhury, Azizur Rahman, and Jahid Hossain Bhuiyan. *An Introduction to International Human Rights Law*. (Leiden ; Boston: Brill, 2010).

[47] Moeckli, Shah, Sivakumaran, Harris, Moeckli, Daniel, Shah, Sangeeta, Sivakumaran, Sandesh, and Harris, David. *International Human Rights Law*. Second Edition, Impression 2. ed. (New York: Oxford University Press, 2014), 28.

[48] The International Bills of Rights consist of UDHR, ICCPR and ICESCR.

[49] Moeckli, *International Human Rights Law*, 28 – 32.

[50] See Miloon Kothari, *"From Commission to the Council: Evolution of UN Charter Bodies."* in Dinah Shelton, *The Oxford Handbook of International Human Rights Law*, (Oxford: Oxford University Press, 2013).

[51] *Ibid*.; See also UNGA Res 60/251 (3 April 2006) Un Doc A/RES/60/251.

[52] *Ibid*.; See Schermers, H.G. *International Institutional Law*. 2nd Ed.]. ed. (Alphen Aan Den Rijn [etc.]: Sijthoff & Noordhoff, 1980), 443 – 446; Alston, Crawford, Alston, Philip G, and Crawford, James. *The Future of UN Human Rights Treaty Monitoring*. (Cambridge [etc.]: Cambridge University Press, 2000); OHCHR, "What are Treaty Bodies?," accessed April 28, 2018, http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx.

of Discrimination against Women; (5) the Committee against Torture; (6) the Committee on the Rights of the Child; (7) the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; (8) the Committee on the Rights of Persons with Disabilities; and (9) the Committee on Enforced Disappearance.[53]

Furthermore, in the context of regional mechanisms in Europe, Americas and Africa, various supervisory and enforcement organs had also been created to enhance legal protection of human rights in the respective region. In Europe, the Council of Europe has played significant roles in setting the European human rights norms and in establishing the supervisory and enforcement mechanisms, notably the European Court of Human Rights.[54] In Americas, the Inter-American human rights system was created by the Organization of American States (OAS),[55] which has led the development of human rights standard setting as well as the establishment of supervisory and enforcement mechanisms in the region, notably the Inter-American Commission and the Inter-American Court on Human Rights. In Africa, the Organization of African Union (OAU) and its successor, the African Union (AU) has played a leading role in setting the regional human rights norms and in the development of supervisory and enforcement mechanisms in the region, notably the African Commission and Court on People's and Human Rights.

Asian region had been a passive actor of these developments. Despite the participation of Asian countries in the ratification of international human rights instruments, as well as in the reporting procedures under the charter-based and treaty-based systems, there has been no intergovernmental effort to set up regional human rights mechanisms in Asia. Moreover, some intergovernmental

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53 *Ibid*.

54 See Steven Greer, "*Europe,*" in Moeckli, *International Human Rights Law*, 416 - 440; Jo Pasqualucci, "*The Americas,*" in Moeckli, *International Human Rights Law,* 398 - 415; Christop Heyns and Magnus Killander, "*Africa,*" in Moeckli, *International Human Rights Law,* 441 – 457; Viljoen, Frans. *International Human Rights Law in Africa*. 2nd ed. (Oxford [etc.]: Oxford University Press, 2012); Sionaidh Douglas-Scott, "The European Union and Human Rights after the Treaty of Lisbon," *Human Rights Law Review* 11, no. 4 (2011): 645-82; Harris, Livingstone, Harris, David John, and Livingstone, Stephen, *The Inter-American System of Human Rights*, (Oxford [etc.]: Clarendon Press, 1998).

55 Pasqualucci, "The Americas," 398; Livingstone, *The Inter-American System of Human Rights*.

organizations in Asia, such as South Asian Association for Regional Cooperation (SAARC), Asia Pacific Economic Cooperation (APEC), Pacific Island Forum (PIF), or Shanghai Cooperation Organization (SCO) do not place a particular attention to a regional human rights cooperation. Although a number of non-governmental movements are notable, including the adoption of an Asian Human Rights Charter by the Asian Human Rights Commission, the development of a draft Pacific Charter on Human Rights by the Law Association of Asia Pacific, the development of the Asian Charter, Commission and Court by the Law Association of Asia and Pacific; as well as the establishment of the Council of Asia and the Pacific by the International Commission of Jurist, however it is to be highlighted that Asian states as the main duty bearers of human rights were not involved in the process.[56]

In the context of sub-regional organization in Asia, a positive development was notable in 2009 when the leaders of the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights (AICHR).[57] The Commission possesses the mandate to be the overarching institution responsible for the promotion and protection of human rights in ASEAN. While the Terms of Reference (TOR) of the AICHR tasked the Commission to develop ASEAN conventions and other instruments dealing with human rights, however, the TOR does not stipulate any mandates on the development of supervisory and/or enforcement mechanism.[58]

In 2012, the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD (Phnom Penh Statement) was adopted as a significant milestone in human rights standard setting development in the Asian region. This instrument codifies basic human rights and fundamental freedoms of ASEAN people.[59] However, this development is only exclusive to the ten member countries of ASEAN as ASEAN's agreements do not represent the

[56] See e.g.: Saul, "The Last Frontier".

[57] See e.g.: Tan, *The ASEAN Intergovernmental Commission on Human Rights;* Doyle, "The AHRD"; SAPA TFAHR, *Report.*

[58] TOR of the AICHR (adopted in July 2009), accessed 30 April, 2018, http://hrlibrary.umn.edu/research/Philippines/Terms%20of%20Reference%20for%20the%20ASEAN%20Inter-Governmental%20CHR.pdf.

[59] AHRD.

Asian region as a whole. Moreover, at the level of ASEAN, there has been no significant progress on the development of ASEAN conventions and other specific instruments on human rights. In addition, the absent of legal framework for supervisory and enforcement mechanism has also appeared to be a significant gap in human rights protection in the region. Similarly, the mainstreaming of human rights into the works of other ASEAN stakeholders also remains to be seen.[60] To date, the AICHR only engaged the judiciary in one of its activities, namely at the AICHR Judicial Colloquium on the Sharing of Good Practices regarding International Human Rights Law, which was convened on 13 – 15 March 2017 in Kuala Lumpur, Malaysia.[61]

2.2.2. Why Judiciary?

The Judiciary is a key stakeholder in the implementation of human rights at the domestic level.[62] It possesses an inherent duty to protect the universal, inalienable and indivisible rights of the peoples, in line with the prevailing domestic law.[63] Within its independent function, the judiciary is authorized to effectuate the provisions of law. It also has a substantial responsibility to safeguard human rights protection and realization so as to ensure that the citizens are treated equally and the other branches of government function effectively.[64]

The equitable decisions of judiciary will set an important precedent for future resolution of disputes between individuals or between state and individuals. Such judicial process will not only allow an effective implementation of law in line with the spirit of human rights protection of the individuals and groups, but will also set an ideal standard for subsequent enforcement of law.[65]

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60 Tan, *The ASEAN Intergovernmental Commission on Human Rights*; Doyle, "The AHRD"; SAPA TFAHR, *Report*.

61 AICHR, "AICHR Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law, 13-15 March 2017," accessed April 29, 2018, http://aichr.org/press-release/press-release-aichr-judicial-colloquium-on-the-sharing-of-good-practices-regarding-international-human-rights-law-13-15-march-2017/?doing_wp_cron=1499607858.8917760848999023437500.

62 OHCHR, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, 2003, 4-5.

63 Aman, Speech at the AICHR Judicial Colloquium.

64 Abul-Ethem, "The Role of the Judiciary".

65 *Ibid*.

In addition, judiciary is equally responsible in the realization of human rights, democracy and rule of law. The rule of law is an integral requirement of human rights protection, since a functioning rule of law is required to nurture respect for human rights. The rule of law and human rights are begun with an effective and accessible legal system.[66]

Furthermore, the strengthening of judicial system and the rule of law with due regards to human rights remains high in the universal development agenda. This is evidenced with the dedication of the UN's Sustainable Development Goals (SDGs) 16 towards the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.[67]

2.3. AACC's Potentials and the Pertinent Outcomes of its 3rd Congress

Formally established in 2010, the AACC carries out the constitutional jurisdiction for the development of constitutional courts and similar institutions in Asia.[68] Presently, the AACC has 16 member countries, namely Afghanistan, Azerbaijan, Indonesia, Kazakhstan, Kyrgyztan, Malaysia, Mongolia, Myanmar, Pakistan, the Philippines, Russia, South Korea, Tajikistan, Thailand, Turkey and Uzbekistan.[69] Since its establishment, the AACC has built inter-members cooperation in the forms of an international symposium, international conferences, short courses and exchange of human resources.[70] Externally, the AACC has cooperated with the advisory body of the Council of Europe, namely the Venice Commission, which has enabled opportunity for database sharing among constitutional courts of the associations.[71] In addition, the AACC has also signed a Memorandum of Understanding (MoU) with the Conference of Constitutional Jurisdiction of Africa (CCJA) with a purpose to provide a framework

66 Aman, Speech at the AICHR Judicial Colloquium.
67 United Nations, "Goal 16 of the SDGs," Accessed April 30, 2019, http://www.un.org/sustainabledevelopment/peace-justice/. See also Aman (2016: 11).
68 AACC, "About the AACC".
69 *Ibid.*
70 *Ibid.*
71 See Mr. Gianni Buquicchio, Speech at the 3rd Congress of the AACC in Bali, Indonesia, on 8 – 14 August 2016.

for cooperation in the field of constitutional law, democracy, rule of law and human rights.[72]

To date, the AACC has convened three congresses, namely in Seoul (2012), Istanbul (2014) and Bali (2016).[73] The third congress was particularly relevant to the discussion at hand as it was themed *The Promotion and Protection of Citizen's Constitutional Rights*. The congress deliberated three main topics, namely: (1) Mechanism for the Promotion and Protection of Citizens Constitutional Rights: Different Perspectives from Countries; (2) the Regulatory Frameworks for the AACC for the Protection of Citizens' Constitutional Rights through their Landmarks Decisions; and (3) the Current Challenges and Future Direction for Strengthening Promotion and Protection of Citizen's Constitutional Rights.[74]

The third congress issued an important outcome, namely Bali Declaration on the Promotion and Protection of Citizens' Constitutional Rights. Bali Declaration reflects that the promotion and protection of human rights is an integral part of the AACC's objectives along with the implementation of rule of law and the guarantee of democracy. It acknowledges AACC's instrumental role in properly guaranteeing people's sovereignty by protecting human rights and constitutional principles for the maintenance of the democratic system of government. It also recognizes the important collaboration of regional cooperation for the protection of democracy, the rule of law and human rights. Despite being a political document without stipulating any mechanism for implementation, this commitment is timely and requires political will in term of its follow up. It can also serve as a basis for the AACC to impose its member states' commitments through the development of binding human right instrument requiring legal compliance from its states parties.

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[72] See AACC, "MoU between the AACC and CCJA," accessed April 30, 2018, https://aacc.mahkamahkonstitusi.go.id/mkri/public/fileupload/document/MOU%20AACC-CCJA%20(English%20ver.).pdf.

[73] AACC, "About the AACCC".

[74] See "Proceeding Congress AACC," 85-97, accessed April 30, 2018, http://www.mahkamahkonstitusi.go.id/public/content/infoumum/proceeding/pdf/Proceeding_6_PRECEEDING%20CONGRESS%20AACC.pdf.

2.4. Future Directions; Potential Roles of the Constitutional Court of the Republic of Indonesia in its Capacity as the Members of the AACC

Indonesia has been very keen on the discussions related to the development and the future of constitutional adjudication in the Asian region. In fact, it was closely involved in the establishment of AACC which was marked by the issuance of Jakarta Declaration.[75] At the second congress in Istanbul, in 2014, the Chief Justice of the Court was elected as the President of the AACC for the period of 2014 – 2016.[76] Appreciating the Court's success in hosting the 3rd Congress in August 2016, Indonesia's term of presidency was extended for another one year.[77] At the Board of Members Meeting which was conducted in Solo on 8 August 2017, the presidency was handed over to Malaysia.[78]

In the sector of regional human rights cooperation, it is noteworthy that Indonesia has also been progressive in advancing regional acceptance and incorporation of human rights. The drafting history of the ASEAN Charter shows that Indonesia was among those who defended the inclusion of human rights under the charter.[79] During the process of the establishment of an ASEAN human rights body, Indonesia also co-proposed the establishment of a mechanism involving only member-countries who were ready for the development.[80] After the AICHR was established, Indonesia continues to play a leading role in the development of directions and operational procedures of the commission. In fact, Indonesia is among the progressive member countries who had led and institutionalised key activities of the AICHR namely those related to mainstreaming of human rights into the works of key stakeholders and institutionalization of AICHR's engagements and dialogues with ASEAN Sectoral Bodies, the Government of

[75] Hidayat, Speech at the 3rd Congress of the AACC.
[76] AACC, "About the AACCC".
[77] Bali Declaration.
[78] See: Hukum Online, "Malaysia was Chosen as the President of AACC," accessed April 30, 2018, http://www.hukumonline.com/berita/baca/lt5989758cdf838/malaysia-terpilih-jadi-presiden-aacc.
[79] Tommy Koh, Tommy T. B. Manalo, Rosario G. Woon, Woon, Walter C. M, and ASEAN. *The Making of the ASEAN Charter* (Singapore ; Hackensack, NJ: World Scientific Pub., 2009).
[80] See Working Group for the Establishment of ASEAN Human Rights Mechanism, Rountable Discussion on Human Rights in ASEAN: Challenges and Opportunities for Human Rights in a Caring and Sharing Community – Summary of Proceedings, Jakarta, 18 – 19 December 2006, accessed April 30, 2018, http://www.aseanhrmech.org/conferences/summary_of_proceedings_final.pdf.

ASEAN Member States as well as Civil Society Organisations.[81] Indonesia has also undertaken various thematic activities, among others, human trafficking, freedom of expression, migrations as well as SDGs and Human Rights.[82]

Despite that the Court is no longer serving as the President of the AACC, the Court still has the potential to play its leading roles. The Chief Justice of the Court remains in the Board of Members which serves as a central decision-making body of the AACC.[83] Article 23 of the Statute of the AACC provides a number of competences to the Board of Members, among others, to take decisions on matters related to the association not specified in this statute.[84]

Thus, sustaining Indonesia's leading roles in the AACC and in the regional human rights cooperation in general, and taking into account the above legal frameworks and the potentials of the AACC to mainstream human rights in the Asian Judiciary, the Court may consider proposing the following recommendations for the consideration by the Board of Members:

1. *Encourage Judicial Independence*

As previously done in the Bali Declaration, the AACC needs to consistently encourage the practice of judicial independence among its member countries and consider necessary intervention when a threat to judicial independence occurs in any of its member countries. A truly independent and impartial judiciary has the potential to effectively guarantee the protection of the constitutionally promised human rights. It also has the potential to counter infringements of human rights by the other branches of government.[85] These potential roles have been acknowledged by legal scholars, political scientists, international organizations and human rights activists.[86] The link between the independence of the judiciary and human rights has been emphasized

[81] This observation is based on writer's professional service with the ASEAN Secretariat during the period of July 2012 – January 2017.

[82] See AICHR Website, April 30, 2018, www.aichr.org.

[83] The Statute of the AACC, arts 12 and 13, accessed April 30, 2018, https://aacc.mahkamahkonstitusi.go.id/fileupload/document/statute_aacc_en.pdf.

[84] *Ibid*. art 13.

[85] Keith, Linda Camp. "Judicial Independence and Human Rights Protection around the World." *Judicature* 85, no. 4 (2002): 195-200.

[86] Abul-Ethem, "The Role of the Judiciary"; Ackermann, "Constitutional Protection"; Cotran, International Conference; Cross, "The Relevance of Law"; Isra, "The Role of the Constitutional Court of Indonesia".

in the UDHR and the ICCPR. Both instruments consider the independent judiciary as one of the essential elements to safeguard human rights.[87]

The UN, which consistently plays a role in establishing systems of justice, has built standards for achieving an independent judiciary through its basic principles on the independence of the judiciary, which were adopted by the UN General Assembly in 1985. Despite the non-binding nature of the principle, the UN has considered this principle as a standard model and encouraged every lawmaker to adopt them in their respective constitutions.[88]

The principles prescribe that the independence of the judiciary are to be guaranteed by the State and to be enshrined in the Constitution or the law of the country. It also requires: (1) The decisions of matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason; (2) the conferment of jurisdiction of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law; (3) the avoidance of any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision; (4) the granting of rights of everyone to be tried by ordinary courts or tribunals using established legal procedures; (5) the guarantee that judicial proceedings are conducted fairly and that the rights of the parties are respected; and (6) the fulfillment of the duty of each member state to provide adequate resources to enable the judiciary to properly perform its functions.

In addition, the office of United Nations High Commissioners for Human Rights has appointed a Special Rapporteur on the Independence of Judges and Lawyers to help monitor the progress of implementing these principles.[89]

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87 Keith, "Judicial Independence".

88 *Ibid.*

89 For the activities and reports of the Special Rapporteur, see http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx.

Furthermore, in 2002, the Judicial Group on Strengthening Judicial Integrity adopted the Bangalore Principles of Judicial Conduct. These principles are intended to set standards for ethical conduct of judges. They are developed to provide guidance to judge and to serve as a framework for regulating judicial conduct by the Judiciary. They are also designed to help members of the executive and the legislature, lawyers as well as the general public to enhance their understanding and support to the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.[90]

2. Facilitate a Platform for the Development of Binding Human Rights Instruments and of the Establishment of Asian Human Rights Court

Having briefly compared Asia with the other regions, it could be assessed that Asian region lacks binding human rights instruments as well as enforcement and supervisory mechanisms, including a human rights court, a communication mechanism and reporting procedures. These gaps have significantly hindered the progress of legal protection of human rights in the region, as described above.[91]

In the context of ASEAN, it is noted that since the adoption of the AHRD and the Phnom Penh Statement in 2012, the AICHR has been relatively active in the dissemination and implementation of the two documents. In terms of dissemination activities, the AICHR has conducted numerous activities in line with the AHRD and interacted with relevant ASEAN stakeholders to mainstream the AHRD into their respective works. For instance, the AICHR has conducted a dialogue with the ASEAN Community Councils on the AHRD and the Phnom Penh Statement on 25-26 May 2015. The objective

[90] Bangalore Principles of Judicial Conduct, adopted in 2002, accessed April 30, 2018, http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

[91] See generally: Tan, *The ASEAN Intergovernmental Commission on Human Rights;* Doyle, "The AHRD"; SAPA TFAHR, *Report.*

of the dialogue was to identify means to mainstream human rights and values stipulated in the two documents into the works of the three pillars of ASEAN Community.[92]

In addition, the AICHR has also initiated two consultation workshops on the feasibility of developing legal instruments on human rights with relevant ASEAN Sectoral Bodies. The two workshops marked an important step by the AICHR in providing platform to identify common concerns and explore means to develop potential processes towards this endeavor.[93]

In terms of the development of specific ASEAN human rights instruments, a progress in the regional standard settings have been relatively promising in the area of commonly ratified human rights instruments, namely, CEDAW, CRC and CRPD. This is greatly contributed by the active works of relevant ASEAN Sectoral Bodies and Committee, notably, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), ASEAN Committee on Women (ACW) and ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD).

For instance, in the area of the rights of persons with disabilities, ASEAN has made substantial progress in setting the standard for the rights of persons with disabilities, notably the Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community.[94] In addition, the ASEAN leaders have also adopted the ASEAN Declaration on Strengthening Social Protection[95] that guarantees equitable access to social protection of vulnerable groups, including persons with

[92] AICHR, "The AICHR Dialogue with ASEAN Community Councils on the AHRD and the Phnom Penh Statement on the Adoption of the AHRD,' accessed April 30, 2018, http://aichr.org/press-release/press-release-the-aichr-dialogue-with-asean-community-councils-on-the-asean-human-rights-declaration-ahrd-and-the-pnom-penh-statement-on-the-adoption-of-the-ahrd-25-26-may-2015-jakarta-indones/.

[93] AICHR, AICHR Annual Report 2016, accessed April 30, 2018, http://aichr.org/report/the-aichr-annual-report-2016/; AICHR, "The Philippines Hosts 2nd AICHR ASEAN Legal Human Rights Instrument Workshop," accessed April 30, 2018, http://aichr.org/press-release/press-release-the-philippines-hosts-2nd-aichr-asean-legal-human-rights-instrument-workshop/.

[94] Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community (adopted on 17 November 2011), accessed April 30, 2018, http://www.asean.org/storage/images/2013/resources/publication/2013%208.%20aug%20-%20bali%20declaration%200n%20persons%20with%20disabilities.pdf.

[95] ASEAN Declaration on Social Protection (adopted on 8 October 2013), accessed April 30, 2018, http://www.fao.org/fileadmin/templates/rap/files/meetings/2014/141208_4_ASEAN_Declaration_on_SP.pdf.

disabilities. Since 2015, the AICHR has initiated the establishment of a task force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community. The task force is working on the development of the Regional Action Plan on Mainstreaming the Rights of Persons with Disabilities in ASEAN.[96]

Having noted those developments, it is to be highlighted that the available human rights instruments and mechanisms currently agreed by the ten member countries of ASEAN are more of general political commitment by nature. The instruments have not been enforced with monitoring and reporting procedures.[97] The process towards the development of general ASEAN convention on human rights also seems to be slowly progressing.

To date, the AICHR is not mandated to receive communication or to establish supervisory mechanisms. It has not embarked significantly on its protection mandates.[98] More fundamentally, it is also widely understood that the enhancement of legal protection of human rights in ASEAN is constrained with "domestic political security concerns, internal circumstances, the differing views of Asian values, the debate over an ASEAN human rights mechanism, the principle of non-interference[99] and the ASEAN Way".[100] This has been considered to have resulted in a growing gap between proponent countries who tend to attempt rethinking or even changing of traditional

[96] See: AICHR Press Releases pertaining to Task Force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community. http://aichr.org.

[97] Phan, Hao Duy. "A Blueprint for a Southeast Asian Court of Human Rights." *Asian-Pacific Law & Policy Journal* 10, no. 2 (2009): 384-433; See also generally: e.g.: Tan, *The ASEAN Intergovernmental Commission on Human Rights;* Doyle, "The AHRD"; SAPA TFAHR, *Report.*

[98] TOR of the AICHR.

[99] ASEAN has adopted non-interference as its guiding principle since its establishment in 1967. This is evidenced in the Bangkok Declaration establishing ASEAN which provides that "...that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities...". This cardinal principle is central to the conduct of ASEAN relations. Although some viewed that there has been positive development in the understanding and interpretation of this principle, however this principle remains the fundamental rule of ASEAN conducts as it is enshrined in the preamble of the ASEAN Charter.

[100] Jurgen Haacke (2003) defines ASEAN Way as "a code of conduct and set of diplomatic and procedural norms that have fundamentally guided interactions among regional states for a very long time". He is of the view that the ASEAN Way is decomposed into six elements: sovereign equality, quiet diplomacy, non-recourse to use or threat to use of force, non-involvement in bilateral disputes, non-interference and quiet diplomacy. Meanwhile, Hiro Katsumata (2003) and Beverly Loke (2005) mentioned that there are generally four characters of the "ASEAN Way", namely (1) respects for the internal affairs of other members; (2) non-confrontation and quiet diplomacy; (3) non-recourse to use or threat to use of force; and (4) decision making through consensus.

norms, and the opponent countries who consistently try to preserve the status quo in favor of their national interests.[101]

The human rights norms and institutions building experiences of the other regions have revealed that political instruments cannot establish a regional court which is empowered to issue binding judgements. On the other hand, it has to be established by a treaty concluded in accordance with Vienna Convention on the Law of Treaties.[102] The European Convention for the Protection of Human Rights and Fundamental Freedoms[103] established the European Court of Human Rights. The American Convention on Human Rights[104] established the Inter-American Court on Human Rights. The African Court on Peoples and Human Rights was created with the adoption and entry into force of the African Charter[105] and its Additional Protocol.[106] Asian Human Rights Court is therefore envisioned to be established by a legally binding human rights instrument agreed by Asian countries, beyond the ten member countries of ASEAN.

The Joint Communique of the 3rd Congress of the World Conference on Constitutional Justice included the proposal of President Park Han-Chul to promote discussions on international cooperation on human rights, including the possibility of establishing a human rights court in Asia.[107] Given the reluctance and inaction of other executive and legislative branch of Asian bodies and mechanisms, and being the only Asian platform whose mandate is closely related to the realization of human rights, the AACC

[101] Hao Duy, A Blueprint; Tan, *the ASEAN Intergovernmental Commission on Human Rights.*

[102] Hao Duy Phan mentioned in his above-cited article that the VCLT requires: (i) The founding treaty shall have binding force and be performed by all parties to it in good faith (art 26); (ii) member states cannot invoke their domestic laws as a justification for their failure to implement the treaty (art 27); (iii) prior to the entry into force of the founding treaty, those states that have signed shall refrain from acts which may defeat its object and purpose (art 18); articles within the treaty shall be interpreted in accordance with the ordinary meaning and in light of its object and purpose.

[103] The European Convention on Human Rights (adopted on 4 November 1950, entered into force on 3 September 1953, as amended by Protocols Nos. 11 and 14 and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13) (ECHR).

[104] American Convention on Human Rights (adopted on 22 November 1969, entered into force 18 June 1978) UNTS 1144 (ACHR).

[105] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

[106] Protocol on the African Court (adopted 10 June 1998 entered into force 25 January 2004).

[107] WCCJ, "The 3rd Congress of the World Conference on Constitutional Justice Ends Success," accessed April 30, 2018, http://english.ccourt.go.kr/cckhome/eng/introduction/news/newsDetail.do?bbsSeq=18.

may wish to consider taking the liberty to lead the process. The AICHR, the Council of ASEAN Chief Judges (CACJ), which is recognized as an Entity Associated with ASEAN under Annex II of the ASEAN Charter, as well as other relevant mechanisms in Asia shall be consulted and engaged to realize the vision. As the initial stage, the outcome of the aforementioned AICHR Judicial Colloquium to establish an inter-sectoral expert or working group on human rights and the Judiciary could be adopted.[108] This Body of Expert shall be tasked to come up with concrete steps to develop binding human rights instrument and to assess the feasibility of the establishment of Asian Human Rights Court. Academics that have undertaken in depth studies on the subject matter may be involved in the working group, notably Mr. Hao Duy Phan, who had written a comprehensive study on a blueprint for a Southeast Asian Court of Human Rights.[109]

3. ***Recommend Human Rights Incorporation into Judicial Discussion and Decisions.***

Among the strategy to mainstream human rights in the judiciary is by way of integrating human rights law into domestic law and various other branches of law. In his article regarding the potential roles of the International Court of Justice in mainstreaming human rights, Judge Bruno Simma highlighted that the Court can render human rights arguments more readily acceptable to international law generalists by interpreting and applying substantive provisions of human rights treaties in a state-of-the-art way, compared, for instance, to the reading given to such provisions by certain General Comments issued by UN human rights treaty bodies, all too often marked by a dearth of proper legal analysis compensated by an overdose of wishful thinking. Further, he mentioned that the Court is singularly capable of devising solutions for practical, more technical, legal problems which arise at the interface between human rights and more traditional international law, thus paving the way for the acceptance of human rights

[108] AICHR, "AICHR Judicial Colloquium".
[109] Hao Duy, A Blueprint.

arguments and, more generally, supporting and developing the framework of human rights protection.[110]

4. Suggest the Establishment of Platform to Enhance Human Rights Expertise of the Judiciary

Judiciary's responsibility to implement human rights obligations requires the members of these legal professions to be well-informed about the international human rights instruments that have been ratified by their respective countries.[111] To address this need, the Court may bring to the attention of Members of the Board of the AACC on the recommendation of the aforesaid AICHR Judicial Colloquium to set up an institution in the form of regional resource center to provide technical expertise and assistance to policymakers, judges and lawyers. This idea is consonant with the areas of works intended for AACC's Permanent Secretariat of Research and Development (SRD) in Seoul, which is currently in progress. At the AACC Board of Members Meeting on 8 August 2017, H.E. Mr. Jinsung Lee, Justice of the Constitutional Court of the Republic of Korea mentioned that the areas of works of the SRD included fundamental rights.[112] The intended regional resource center may hence be established under the auspices of the SRD.

Furthermore, cooperation with the Office of High Commissioner on Human Rights (OHCHR) could also be established, bearing in mind that the OHCHR has developed a Manual on human rights for judges, prosecutors and lawyers. The manual comprehensively covers the substantive issues of human rights, the overview of core human rights instruments as well as regional and international mechanisms. More importantly, it also covers practical guidance on the application of human rights at the domestic courts and elaborates thoroughly on (1) the independence and impartiality of judges, prosecutors and lawyers; (2) Human Rights and Arrests, Pre-trial

[110] Bruno Simma, "Mainstreaming Human Rights: The Contribution of the International Court of Justice." *Journal of International Dispute Settlement* 3, no. 1 (2012): 7-29.

[111] Aman, Speech at the AICHR Judicial Colloquium.; OHCHR, *Human Rights in the Administration of Justice.*

[112] AACC, Minutes of Meeting; Board of Members Meeting of the AACC, Solo, Central Java, 8 August 2017, accessed April 30, 2018, https://aacc.mahkamahkonstitusi.go.id/mkri/public/fileupload/document/MOM%20BOMM%208%20AUGUST%202017%20ANNEX.pdf.

Detention and Administrative Detention; (3) the Right to Fair Trial (covering investigation, trial and final judgement); (4) International Legal Standards for the Protection of Persons Deprived from Liberty; (5) the Use of Non-Custodial Measures in Administration of Justice; (6) the Rights of Women and Children in Administration of Justice; (7) the Rights to Equality and Non-Discrimination in Administration of Justice; (8) the Role of the Court in Protecting Economic, Social and Cultural Rights; (9) the Protection and Redress for Victims of Crimes and Human Rights Violations; and (10) the Administration of Justice during the States of Emergency.[113]

III. CONCLUSION

Legal protection of human rights in Asia will only be effectively guaranteed with binding human rights instruments, enhanced by independent and human rights-friendly judiciary, and enforced by a regional Human Rights Court.

The significant gaps of legal protection of human rights in Asia and the reluctance and inaction of the executive and legislative branches of sub-regional bodies and mechanisms in Asia makes it timely for the Court to play a leading role in the mainstreaming of human rights into the works of Asian Judiciary. Not only that the Court bears the mandates from the Constitution, but it is also obliged by a number of binding and non-binding human rights instruments mentioned above, particularly in terms of supporting their domestication, incorporation and implementation at the domestic level.

The aforementioned theme of the third congress of the AACC, as well as its outcome; the Bali Declaration on the Promotion and Protection of Citizens' Constitutional Rights, have clearly indicated AACC's commitment to safeguard constitutional rights and human rights of Asian people in general. As the active member of the association, it is pertinent for Indonesia to help concretely follow up those decisions, by proposing to the Board Members of the AACC to (1) issue more declarations which encourage the practice of judicial independence and maximum incorporation of human rights into Judiciary's discussions and decisions;

[113] See OHCHR, *Human Rights in the Administration of Justice*.

(2) establish a platform to enhance human rights expertise of the Judiciary; as well as (3) take lead in the establishment of an inter-sectoral expert or working group on human rights and the Judiciary to concretize the endeavors to develop a binding human rights instrument and establish an Asian Human Rights Court.

BIBLIOGRAPHY

AACC, 'About AACC': https://aacc.mahkamahkonstitusi.go.id/aacc/1.

AACC, Minutes of Meeting; Board of Members Meeting of the AACC, Solo, Central Java, 8 August 2017, accessed April 30, 2018, https://aacc.mahkamahkonstitusi.go.id/mkri/public/fileupload/document/MOM%20BOMM%208%20AUGUST%202017%20ANNEX.pdf.

AACC, "MoU between the AACC and CCJA," accessed April 30, 2018, https://aacc.mahkamahkonstitusi.go.id/mkri/public/fileupload/document/MOU%20AACC-CCJA%20(English%20ver.).pdf.

AACC, Proceeding Congress AACC. Retrieved from http://www.mahkamahkonstitusi.go.id/public/content/infoumum/proceeding/pdf/Proceeding_6_PRECEEDING%20CONGRESS%20AACC.pdf.

Abul-Ethem, Fahed. "The Role of the Judiciary in the Protection of Human Rights and Development: Middle Eastern Perspective," *Fordham International Law Journal,* 26(3) (2003).

Ackermann, L.W.H., "Constitutional protection of human rights: Judicial review," *Columbia Human Rights Law Review, 21*(1) (1989).

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

AICHR, AICHR Annual Report 2016, accessed April 30, 2018, http://aichr.org/report/the-aichr-annual-report-2016/.

AICHR, "AICHR Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law, 13-15 March 2017," accessed April 29, 2018, http://aichr.org/press-release/press-release-aichr-judicial-colloquium-on-the-

sharing-of-good-practices-regarding-international-human-rights-law-13-15-march-2017/?doing_wp_cron=1499607858.8917760848999023437500.

AICHR Press Releases pertaining to Task Force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community. http://aichr.org.

AICHR, "The AICHR Dialogue with A SEAN Community Councils on the AHRD and the Phnom Penh Statement on the Adoption of the AHRD,' accessed April 30, 2018, http://aichr.org/press-release/press-release-the-aichr-dialogue-with-asean-community-councils-on-the-asean-human-rights-declaration-ahrd-and-the-pnom-penh-statement-on-the-adoption-of-the-ahrd-25-26-may-2015-jakarta-indones/.

AICHR, "The Philippines Hosts 2nd AICHR ASEAN Legal Human Rights Instrument Workshop," accessed April 30, 2018, http://aichr.org/press-release/press-release-the-philippines-hosts-2nd-aichr-asean-legal-human-rights-instrument-workshop/.

Alston, Crawford, Alston, Philip G, and Crawford, James. *The Future of UN Human Rights Treaty Monitoring*. (Cambridge [etc.]: Cambridge University Press, 2000).

Aman, Anifah, Speech at the AICHR Judicial Colloquium on the Sharing of Good Practices regarding International Human Rights Law, which was convened on 13 – 15 March 2017 in Kuala Lumpur, Malaysia.

American Convention on Human Rights (adopted on 22 November 1969, entered into force 18 June 1978) UNTS 1144.

APHR, Related statements on human rights issues in the region, accessed April 27, 2018, http://www.aseanmp.org.

APHR, "Report: Death Knell for Democracy; Attacks to Lawmakers and the Threat to Cambodia's Institutions," accessed 27 April, 2018, https://aseanmp.org/cambodia-mps-report/.

ASEAN (Bangkok) Declaration (adopted on 8 August 1967).

ASEAN Declaration on Strengthening Social Protection (adopted on 8 October 2013).

ASEAN Human Rights Declaration (adopted on 18 November 2012).

Baird, Natalie. "To Ratify or Not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific," *Melbourne Journal of International Law* 12, no. 2 (2011).

Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community and Mobilisation Framework of the ASEAN Decade of Persons with Disabilities (2011 – 2020) (adopted on 17 November 2011).

Bali Declaration on the Promotion and Protection of Citizens' Constitutional Rights (issued on 12 August 2016).

Bangalore Principles of Judicial Conduct, adopted in 2002.

Basic Principles on Independence of the Judiciary (adopted and endorsed in 1985).Biraj Patnaik, "Human Rights Violations Endemic in South Asia," accessed April 27, 2018 https://www.amnesty.org/en/latest/news/2017/02/human-rights-violations-endemic-in-south-asia/.

Buquicchio, Gianni, Speech at the 3rd Congress of the AACC in Bali, Indonesia, on 8 – 14 August 2016

Chowdhury, A., and Bhuiyan, J. (2010). *An Introduction to International Human Rights Law*. Leiden: BRILL.

Constitutional Court of Republic of Indonesia, "Proceeding Congress AACC," 85 – 97, accessed April 30, 2018, http://www.mahkamahkonstitusi.go.id/public/content/infoumum/proceeding/pdf/Proceeding_6_PRECEEDING%20CONGRESS%20AACC.pdf.

Constitution of Afghanistan.

Constitution of the Philippines.

Constitution of the Republic of Indonesia.

Constitution of the Republic of Turkey.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted on 10 December 1984, entered into force on 26 June 1987) 1465 UNTS 85 (CAT).

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 2131 UNTS (CEDAW).

Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006, entered into force on 3 May 2008) 2525 UNTS (CRPD).

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS (CRC).

Cortell, Andre & James Davis. "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Quarterly* 40, no. 4 (1996): 451-478.

Cotran, Eugene and Adel Omar Sherif. *International Conference on the Role of the Judiciary in the Protection of Human Rights: The Role of the Judiciary in the Protection of Human Rights* (London: Brill, 1997).

Crawford, James. *Brownlie's Principles of Public International Law* (Oxford: Oxford University Press, 2012).

Cross, Frank B Cross. "The Relevance of Law in Human Rights Protection," *International Review of Law & Economics* 19, no. 1 (1999).

Decision No 011-017/PUU-VIII/2003 regarding the review of law No. 12/2003.

Decision No 55/PUU-VIII/2010 regarding the review of Law No 18/2004 regarding Plantation.

Decision No 6-13-20/PUU-VIII/2012 regarding the review of Law No 16/2014.

Davies, Mathew. "States of Compliance? Global Human Rights Treaties and ASEAN Member States," *Journal of Human Rights* 13, no. 4 (2014): 00.

De Wet, Erika. *"Normative Evolution, Ch.23 Jus Cogens and Obligations Erga Omnes,"* in Dinah Shelton (ed), *the Oxford Handbook of International Human Rights Law*, (Oxford: Oxford Scholarly Authorities on International Law, 2013).

Douglas-Scott, Sionaidh. "The European Union and Human Rights after the Treaty of Lisbon," *Human Rights Law Review* 11, no. 4 (2011): 645-82.

Doyle, Nicholas. "The AHRD and the Implication of Recent Southeast Asian Initiatives in Human Rights Institutions-Building and Standard Setting," *International and Comparative Law Quarterly* 63(1) (2014).

European Convention on Human Rights (adopted on 4 November 1950, entered into force on 3 September 1953, as amended by Protocols Nos. 11 and 14 and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13).

Federal Constitution of Malaysia..

Gooch, Raham and Michael Williams. *Oxford Dictionary of Law Enforcement* (Oxford: Oxford University Press, 2007).

Harris, Livingstone, Harris, David John, and Livingstone, Stephen. *The Inter-American System of Human Rights*, (Oxford: Clarendon Press, 1998).

Hathaway, Oona A. "Do Human Rights Treaties Make a Difference?," *The Yale Law Journal* 111, no. 8 (2002): 1935-2042.

Hidayat, Arif, Speech at the 3rd Congress of AACC in Bali, Indonesia, 8 – 14 August 2016, accessed March 25, 2018, http://www.mahkamahkonstitusi.go.id/public/content/infoumum/proceeding/pdf/Proceeding_6_PRECEEDING%20CONGRESS%20AACC.pdf.

Hukum Online, "Malaysia was Chosen as the President of AACC," accessed April 30, 2018, http://www.hukumonline.com/berita/baca/lt5989758cdf838/malaysia-terpilih-jadi-presiden-aacc.

Human Rights Watch, "Crimes against Humanity by Burmese Security Forces Against the Rohingya Muslim Population in Northern Rakhine State since August 27, 2017, 26 September 2017," accessed 27 April, 2018, https://www.hrw.org/sites/default/files/supporting_resources/burma_crimes_against_humanity_memo.pdf.

Human Rights Watch, "World Report 2018," accessed April 27, 2018, https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf.

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966 entered into force 4 January 1969) 660 UNTS (ICRD).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted on 18 December 1990, entered into force on 1 July 2003) 2220 UNTS (ICRMW).

Isra, Saldi. "The Role of the Constitutional Court of Indonesia in Strengthening Human Rights in Indonesia. Constitutional Journal," *Jurnal Konstitusi*, accessed March 25, 2018, https://ejournal.mahkamahkonstitusi.go.id/index.php/jk/article/viewFile/33/32.

Koh, Tommy, Tommy T. B. Manalo, Rosario G. Woon, Woon, Walter C. M, and ASEAN. *The Making of the ASEAN Charter*, (Singapore ; Hackensack, NJ: World Scientific Pub., 2009).

Kothari, Miloon. *"From Commission to the Council: Evolution of UN Charter Bodies."* in Dinah Shelton, *The Oxford Handbook of International Human Rights Law*, (Oxford: Oxford University Press, 2013).

L. Hannikainen. *Peremptory Norms (Jus Cogens) in International Law: Historical Developments, Criteria, Present Status* (Helsinki: Finnish Lawyers, 1988).

Linda Camp, Keith. "Judicial Independence and Human Rights Protection around the World." *Judicature* 85, no. 4 (2002): 195-200.

Moeckli, Shah, Sivakumaran, Harris, Moeckli, Daniel, Shah, Sangeeta, Sivakumaran, Sandesh, and Harris, David. *International Human Rights Law*. Second Edition, Impression 2.. ed. (New York: Oxford University Press, 2014), 28.

Muntarbhorn, Vitit. *Unity in Connectivity? Evolving Human Rights Mechanisms in the ASEAN Region* (Leiden, etc: Brill, 2014).

OHCHR, "Brutal attacks on Rohingya meant to make their return almost impossible – UN human rights report, 11 October 2017," para. 10, accessed 27 April, 2018, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22221.

OHCHR, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, 2003.

OHCHR, "Mission report of OHCHR rapid response mission to Cox's Bazar, Bangladesh, 13-24 September 2017, 11 October 2017," 1, accessed 27 April, 2018, http://www.ohchr.org/Documents/Countries/MM/CXBMissionSummaryFindingsOctober2017.pdf.

OHCHR, "Status of Ratification," accessed April, 25 2018, http://indicators.ohchr.org/.

OHCHR, Website of the Special Rapporteur on the Independence of Judges and Lawyers, see http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx.

OHCHR, "What are Treaty Bodies?," accessed April 28, 2018, http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx.

Optional Protocol to Convention on the Rights of the Child on the involvement of children in armed conflict (adopted on 25 May 2000, entered into force 12 February 2002) 2173 UNTS (OP to CRC on Children in Armed Conflict).

Optional Protocol to Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted on 25 May 2000, entered into force 18 January 2002) 2171 UNTS (OP to CRC on Sale of Children).

Organisation of American States (OAS), Resolution XXXI on Inter-American Court to Protect the Rights of Man (adopted 1948).

People of the Philippines *v.* Duero (1981) from the United States Supreme Decision in Miranda v. Arizona (1961).

Phan, Hao Duy. "A Blueprint for a Southeast Asian Court of Human Rights." *Asian-Pacific Law & Policy Journal* 10, no. 2 (2009): 384-433.

Protocol on the African Court (adopted 10 June 1998 entered into force 25 January 2004).

SAPA TFAHR, *Report: The Future of Human Rights in ASEAN; Public Call for Independence and Protection Mandates* (Bangkok, 2014).

Saul, Ben, Jacqueline Mowbray and Irene Baghoomians. "The Last Frontier of Human Rights Protection: Interrogating Resistance to Regional Cooperation in the Asia Pacific," *Australian International Law Journal* 18 (2011): 23.

Schermers, H.G. *International Institutional Law*. 2nd Ed.]. ed. (Alphen Aan Den Rijn [etc.]: Sijthoff & Noordhoff, 1980).

Shelton, Dinah. "The Promise of Regional Human Rights Systems," in BH Weston and SP Marks (eds), *The Future of International Human Rights* (New York: Transnational, 1999) 353.

Statute of the AACC.

Tan, Hsien-Li. *The ASEAN Intergovernmental Commission on Human Rights Institutionalising Human Rights in Southeast Asia* (Cambridge, etc: Cambridge University Press, 2011).

Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (adopted in July 2009).

Thio, Li-ann. "Implementing Human Rights in ASEAN Countries: "Promises to Keep and Miles to Go before I Sleep"," *Yale Human Rights & Development Law Journal* 2 (1999): 1-215.

Tomuschat, Christian and Jean-Marc Thouvenin. *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Leiden: Brill, 2006).

UN Charter (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119.

UNGA Res 60/251 (3 April 2006) Un Doc A/RES/60/251.

UNHRC Working Group on the UPR Sixth Session (18 September 2009) UN Doc A/HRC/WG.6/6/KHM/2;

United Nations, Goal 16 of the SDGs. Retrieved from: http://www.un.org/sustainabledevelopment/peace-justice/.

United Nations, "Goal 16 of the SDGs," Accessed April 30, 2019, http://www.un.org/sustainabledevelopment/peace-justice/.

Universal Declaration of Human Rights (adopted 10 December 1948) (UDHR).

UPR, 'Cambodia,' accessed April 27, 2018 https://www.upr-info.org/en/review/Cambodia/Session-18-January-2014.

Vienna Convention on the Law of Treaties (adopted 23 Mei 1969, entered into force 27 January 1980), 1155 UNTS (VCLT).

Viljoen, Frans. *International Human Rights Law in Africa*. 2nd ed. (Oxford [etc.]: Oxford University Press, 2012).

Wahyuningrum, Yuyun. "Ahead of 10th Birthday, ASEAN Rights Body Fails to Evolve," *Jakarta Post,* February 6, 2018, http://www.thejakartapost.com/academia/2018/02/06/ahead-of-10th-birthday-asean-rights-body-fails-to-evolve.html.

WCCJ, "The 3rd Congress of the World Conference on Constitutional Justice Ends Success," accessed April 30, 2018, http://english.ccourt.go.kr/cckhome/eng/introduction/news/newsDetail.do?bbsSeq=18.

Working Group for the Establishment of ASEAN Human Rights Mechanism, Rountable Discussion on Human Rights in ASEAN: Challenges and Opportunities for Human Rights in a Caring and Sharing Community – Summary of Proceedings, Jakarta, 18 – 19 December 2006, accessed April 30, 2018, http://www.aseanhrmech.org/conferences/summary_of_proceedings_final.pdf.