

MRSK – 30 November, 2013

AMERICAN BAR ASSOCIATION INTERNATIONAL LEGAL

ROUNDTABLE

COMMENTS FROM THE HUMAN RIGHTS RESOURCE

CENTRE (FOR ASEAN)

TUESDAY, 3RD DECEMBER 2013

Good afternoon. I wish to thank the American Bar Association for inviting me to join this discussion today. I sincerely appreciate the opportunity to be here, in Geneva, and amongst such esteemed peers.

My name is Michelle Staggs Kelsall, and I am the Deputy Director of the Human Rights Resource Centre, based in ASEAN. The Human Rights Resource Centre is headquartered at the University of Indonesia in Jakarta, and is linked to a network of partner institutions, comprising University Law Schools and think tanks throughout Southeast Asia. Through our network, we engage with lawyers and legal academics, all of whom share our mission to support a rights-based approach to ASEAN integration – a

process which began at the start of the new millennium, with the primary aim of narrowing the development gap amongst ASEAN's ten member states.¹

Business and human rights is a key pillar of the Centre's research and capacity-building efforts. It is also at the heart of building a peaceful, just and prosperous ASEAN community, as the region's governments are committed to do in their blueprints for economic, socio-cultural, and political integration.

Home to 600 million people, with a combined gross domestic product of approximately \$2.3 trillion, ASEAN is generally considered the third largest regional economic community in the world and the fastest growing.² The 'good

¹ The ten member states of the Association of Southeast Asian Nations are: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the

² For example, in Indonesia alone, which comprises 40% of ASEAN's population and 2/3 of its GDP, nearly 14 per cent of the population lives below the poverty line, and approximately half of all households remain clustered around the national poverty line, set at \$22 / month. At the same time, rising inequality continues to deny quality education, healthcare, and proper sanitation to many of ASEAN's citizens.

news' story of ASEAN's economic performance, however, must be seen against a backdrop of violent disputes over land ownership; serious forms of migrant labour abuse, including forced and child labour, and trafficking in persons; and the adverse impact on the environment and communities of extractive industries and trans-boundary dam projects, to name a few.

Lawyers and legal academics working as part of civil society remain amongst the key players attempting to bring about a paradigm shift in the conduct of business relations in ASEAN. In a region where establishing the rule of law is still a work in progress in many countries, the role of the lawyer in civil society is as much to advocate and educate as it is to interpret.

One of the HRRC's central aims is therefore to raise awareness about the United Nations Guiding Principles, and their pertinence for businesses and their lawyers operating

in ASEAN. We also aim to both map and identify gaps in legislation, which leave communities open to human rights abuses from business, as has been identified as a priority for governments by the UNWG on Business & Human Rights. Additionally, our work with businesses and their lawyers, through the SHIFT/MAZARs Reporting and Assurance Frameworks Initiative, seeks to facilitate the responsibility to respect human rights embedded in the Guiding Principles. The reporting framework endeavours to create an important tool for companies to utilize when issuing periodic human rights reports, or when they choose to formalize their reporting on human rights or sustainability disclosure. The assurance framework provides both internal auditors and external assurance provider with a guide for their work as they audit the extent to which a company is identifying, preventing, mitigating and accounting for adverse human rights impacts. Consultations held in ASEAN just last month showed both the challenges and complexities related in

developing this framework, and the need for greater engagement in these issues from the legal community.

In our 2013 study focusing on the first and third pillars of the UN Framework, we found that the legal and regulatory environment throughout the region is slowly changing. For instance, all ASEAN states, except Singapore, now require environmental and social impact assessments to be conducted before certain project or business licenses will be granted.³

The ongoing challenge for civil society lawyers, then, continues to communicate the central message of the UN Guiding Principles in a manner that fosters a new view of the old order: one that continues to turn business' risk-aversion into concrete action; that moves civil society's calls from the mode of naming and blaming, to knowing and showing; and that provides for actual remedies for victims of abuses, wherever and whenever they occur.

In this regard, while we are not alone, we are still very much in the minority. Those in the legal profession comprise less than 0.01% of the population in many ASEAN states (as

³ This includes an element of public consultation in the laws of Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Viet Nam and Thailand.

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compared to around 0.4% of the population in the United States); and human rights lawyers comprise an even smaller number. We therefore welcome the increasing attention being given to the role of lawyers worldwide in ensuring companies do not adversely infringe upon the human rights of individuals and communities, and commend the American Bar Association, and others, for their efforts in supporting a new approach to legal advice by law firms and in-house counsel. We stand ready to work with you on these efforts.