

**Civil Society Joint statement  
13 September 2012**

## **ASEAN Human Rights Declaration must not provide protections lower than international human rights law and standards**

We, the undersigned organizations, who participated at the Civil Society Forum on ASEAN Human Rights Declaration, held on 10-11 September 2012 and the consultation meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) with civil society organizations on the ASEAN Human Rights Declaration (AHRD), held on 12 September 2012 in Manila, the Philippines, comment the AICHR for holding the second consultation meeting and welcome the openness shown by the AICHR representatives in the meeting.

We regret that the participation of civil society organizations in this meeting was still limited and some organizations continued to be barred from participating in the meeting.

During the consultation, CSO representatives expressed grave concern that the draft Declaration prepared by AICHR still falls short of international human rights law and standards, despite the assurance the AICHR expressed in the first regional consultation with civil society organizations on 22 June 2012 in Kuala Lumpur that the AHRD will comply with international human rights law and standards.

The CSO representatives explained that the draft AHRD dated 23 June 2012, contains several major flaws that would prevent it from providing robust protection of human rights for the people of ASEAN. These include:

- **Imposing overarching limitations and conditionality on the enjoyment of rights:** Several “General Principles” in the draft Declaration appear to grant ASEAN Member States wide, overarching discretion to withhold respect for any or all of the rights in the Declaration on vague and sweeping grounds; including “national and regional contexts; “different cultural, religious and historical backgrounds” “national security” “public morality” and rights being “balanced with the performance of duties.” This appears to reflect a view that the interests of governments take precedence over the rights of the people – in direct contradiction to the universal principle of “inalienable” human rights.

***We recommended the removal of any overarching provisions, which limit rights across the board, balance them against duties or subject them to regional or national contexts. Instead, we proposed that the universality and inalienability of human rights be upheld, and the protection of rights should be undertaken in accordance with universally agreed principles such as the non-derogability of fundamental human rights.***

**Lack of clear commitment not to lower human rights protections:** While the draft Declaration provides an article on interpretation, as proposed by CSOs, it fails to ensure, clearly and unequivocally, that the Declaration cannot be interpreted as providing standards

of protection that are lower than universally agreed human rights standards and leaves too much room for those wishing to lower protections.

***We recommended that this important provision in the Declaration states clearly and unequivocally that the rights guaranteed in the Declaration will be interpreted and implemented in accordance with international human rights law and standards, and that no interpretation which holds otherwise may be accepted.***

- **Subjugating rights to national laws:** Several provisions subjugate the protection of certain human rights to national laws. These include the right to life, the right to seek asylum and the right to form a family. This will allow states to avoid human rights obligations by enacting legislation that would restrict these rights.

***We recommended to refrain from and remove any formulation that will subject the exercise of human rights to national legislation that provides lower standards of human rights promotion and protection.***

- **A restricted and excluding provision for non-discrimination:** the provision for non-discrimination provides a limited list of prohibited grounds for non-discrimination which fails to reflect developments in the understanding of this key human rights and may be intended to exclude certain groups.

***We recommended that the article on equality and non-discrimination should be broadly framed to prevent all forms of discrimination on any ground.***

- **Failure to protect the rights of specific groups:** The rights of individuals, groups and peoples whose rights are subject to frequent and systematic attacks in ASEAN, and therefore deserve specific protection, as developed in international human rights standards, are either mentioned in one or two words or not mentioned at all. Women, children, older persons, persons with disabilities, migrant workers are barely mentioned, whereas the rights of minorities, LGBT/Q persons, Indigenous Peoples and persons deprived of liberty get no mention at all.

***We recommended that a new section to be included in the Declaration to protect these specific groups with more elaborate protection of their rights. The submission included a detailed recommendation for the wording of this section.***

- **Provisions for specific rights which are vague, weak or otherwise fall below international standards:** While many specific provisions are clear and reflect international human rights standards, and some even provide a progressive approach, the formulation of several other rights lack clarity, precision or else fail to protect the right fully. These include the provisions on the right to life, freedom from enforced disappearances, right to health, right to sustainable developments and many others.

***We provided detailed recommendations for changes that will bring these provisions into line with current and evolving international law and standards. We also recommended the addition of several provisions.***

We call on the AICHR to continue to allow more time for consultation and inputs into the declaration in order for voices from all stakeholders be heard and taken into consideration.

The AICHR should also make public the declaration once it is submitted to the ASEAN foreign ministers. This will facilitate for civil society and the general public to continue to engage with their respective government to further improve the declaration.

We appreciate the fruitful consultation meeting held by the AICHR and encourage the AICHR to continue strengthening and broadening such engagement with civil society in future.

**For inquiry, please contact:**

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5. Ms. Ging Christobal, International Gay and Lesbian Human Rights Commission

## **Press conference of ASEAN civil society organizations on the consultation meeting with the ASEAN Intergovernmental Commission on Human Rights**

**13 September 2012**

### **Quotes from Dr. Aurora Parong, Amnesty International Philippines**

“ Filipinos and all peoples of ASEAN have the same human rights as any other person in other parts of the world. Regional and national contexts cannot be used by States as excuse to weaken protection of human rights as provided in universally agreed standards. Cultural relativism is not acceptable in human rights. “

“ It is unacceptable to place general restrictions on all rights in the AHRD. Under international law, only certain limitations, strictly and narrowly defined, maybe imposed on a limited number of rights. For example, freedom from torture and freedom from slavery must be protected and enjoyed at all times. They are non-derogable rights - in other words they are rights that cannot be limited under any circumstances.“

“ We call on President Aquino and DFA Secretary del Rosario to raise the bar on human rights in the Philippines and ASEAN through a strong ASEAN Human Rights Declaration (AHRD). We need visionary leaders who will not be content with the current status of human rights in ASEAN. We need leaders who will lead us towards a people oriented ASEAN ensuring protection of its peoples from human rights abuse and the enjoyment of all human rights. “

### **Quote from Cynthia Gabriel, SUARAM, Malaysia**

"While development facilitates the necessary enjoyment of human rights, the sustainable use of natural resources is integral to the right to development.

Every ASEAN citizen is entitled to determine, participate and contribute to and enjoy equitably , economic, social, cultural and political development in which all fundamental freedoms and human rights can be fully realised, as part of their inalienable right to inclusive and sustainable development.

ASEAN governments are duty bound to ensure that the lack of development may not be invoked to justify the violations of human rights of its people."

### **Quotes from Ging Christobal, International Gay and Lesbian Human Rights Commission**

“We believe that the decision to omit sexual orientation and gender identity from the ASEAN Human Rights Declaration signals lack of concern for lesbian, gay, bisexual and transgender persons who often suffer horrendous violence because of their sexual orientation and gender identity and have no avenues of legal recourse for widespread and institutionalized discrimination. Non-discrimination, non-violence, and equal protection of the law are critical for the well being of all people in ASEAN countries. **There is still time to right a wrong.** We ask the AICHR to include sexual orientation and gender identity in the ASEAN Declaration on Human Rights before the Declaration is adopted in November 2012.“

### **Quotes from Atnike Sigiuro, The Commission for the Disappearances and Victims of Violence (KontraS), Indonesia**

"The term public morality for example, can be used to criminalized or stigmatized minorities or to discriminate marginalized group with reason that their way of life or practice are against public morality"