

Statement of The 4th Regional Consultation of ASEAN and Human Rights

Quest Hotel Kuta Central Park – Bali – Indonesia

27-29 November 2011

We, more than 40 representatives of civil society organizations (CSOs) and people's movements met for the Fourth Regional Consultation on ASEAN and Human Rights, held between 27-29 November 2011 in Bali, Indonesia. The consultation reviewed human rights developments within ASEAN during the past year, focusing on the ASEAN human rights mechanisms, in particular the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). High-level officials from the UN and regional human rights mechanisms, as well as from National Human Rights Institutions (NHRIs) in the region, participated in this regional workshop.

The regional consultation appreciates the participation and substantive interaction of Ms. Navi Pillay, the UN High Commissioner for Human Rights, Mr. Rafendi Djamin, the Chair of AICHR, Madam Kanda Vajrabhaya and Mr. Ahmad Taufan Damanik, the Chair and Vice-Chair of ACWC respectively, and four NHRI delegates, with civil society.

Participants in the regional consultation welcome the statement by Ms Pillay that “no discussion of human rights can be complete [nor] credible without significant input from civil society and national human rights institutions.” We also welcome her call on the AICHR to ensure true engagement with civil society, and for it to be more transparent, in particular in the drafting process of the ASEAN Human Rights Declaration (AHRD), as well as her insistence that the Declaration adheres to internationally-accepted human rights standards.

We warmly welcome the ACWC Commissioners' statements during the consultation that the ACWC is committed to transparency and accountability and to engagement with civil society organisations at both the national and regional levels, as they consider participation of CSOs a vehicle for people participation. We also welcome the fact that this openness to and inclusiveness of civil society has not remained on paper only but has already been manifested in practice, not least in two meetings held between the ACWC and CSOs during ACWC's last two official meetings.

Participants in the Consultation also welcome the set of priorities for ACWC's 5-year plan, adopted by the Commission following consultations with CSOs.

We also warmly welcome the continuing meaningful dialogue with the four NHRIs in the region.

The participants also welcome the Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN community, endorsed at the 19th ASEAN Summit in November 2011.

We also welcome the engagement with CSOs at the national level of some of the AICHR commissioners, in particular from Indonesia and Thailand, who have held frequent and meaningful dialogue with national CSOs, including on the drafting of the AHRD.

However, Participants remain deeply concerned about ongoing widespread violations of human rights throughout the region, involving every single ASEAN member state and a wide array of civil, political, economic, social and cultural rights, especially of those most vulnerable and marginalised, such as the Indigenous Peoples, migrant workers, refugees, women, children, lesbian, gay, bisexual and transsexual (LGBT) people and religious and ethnic minorities. Among those violations are extrajudicial executions and the death penalty; torture and other ill-treatment, including violence against women and violence against children; discrimination in all its forms; economic policies and trade agreements that destroy communities and ecosystems and violate the rights of Indigenous People, farmers, fisherfolk and labour rights; militarisation; violations of international humanitarian law, repression - and the list goes on.

We call on ASEAN leaders to put an immediate end to all human rights violations, including by exercising due diligence to prevent and punish abuses by non-state actors. ASEAN member states must adhere strictly to their respective obligations under international human rights law, ratify all international human rights, ILO and international humanitarian law treaties as well as the Rome Statute of the International Criminal Court. All these treaties must be incorporated into national laws and fully implemented in policy and practice. Law enforcement officials, judges, prosecutors, other relevant officials and the public should be trained or educated on human rights values and standards so that they respectively know their duties and their rights.

Regarding AICHR, the participants express grave concerns on certain key aspects of its work at the regional level, including in drafting the AHRD:

1. The lack of transparency in the operation of AICHR, which has to date kept all the documents it has produced confidential and inaccessible;
2. The persistent reluctance of the AICHR to engage with all stakeholders, especially CSOs and NHRIs. While citing the ASEAN Charter as an excuse for refusing to meet CSOs in their own region, AICHR has met international NGOs (which in itself is welcome) without any reservations, limitations or invocations of the Charter;
3. The failure to include ACWC in relevant activities or even inform them of their existence, including refraining from seeking ACWC participation in the drafting of the AHRD;
4. The extremely slow pace of progress in the work of AICHR, which has resulted in the fact that two years after its establishment AICHR has yet to point to a single

meaningful achievement in the protection or promotion of human rights in ASEAN.

As noted, some of these concerns have been also voiced by The UN High Commissioner for Human Rights. The participants in the consultation acknowledge the political constraints to which AICHR members are subjected, but believe they should be more proactive and creative in overcoming such restraints, remembering that their priority must be the human rights of the people of ASEAN, not the narrow interests of politicians.

RECOMMENDATIONS

The participant of 4th Regional Consultation of ASEAN and Human Rights, representing dozens of civil society organizations, make the following recommendation to ASEAN leaders, AICHR, ACWC, NHRIs, and the OHCHR:

To ASEAN Leaders:

- Suspend the decision to grant Burma/ Myanmar Chairship of ASEAN in 2014 pending tangible improvement in key human rights matters;
- Accelerate the acceptance of the membership of Timor Leste;
- Mainstream human rights in all the three pillars by equally empowering the ACWC and AICHR to access and collaborate with all the three community councils;
- Ensure that the ACMW conclude its work to adopt a legally binding instrument for the protection of the rights of migrant workers and their families, including undocumented and migrant domestic workers.
- Develop freedom of information policies at regional level, ensuring transparency and inclusiveness of all three community councils, to ensure transparency and enable CSOs carry out advocacy activities, especially on issues relating to trade, investment and mega projects which will have impact on economic, environmental and social justice, and encourage legislation guaranteeing of freedom of information within ASEAN member states;
- Accelerate the review process of accreditation procedure to ensure effective CSOs engagement with ASEAN;
- In view of the fact that the community blueprints were prepared without any consultation with CSOs, leaving critical gaps in addressing human rights in all the pillars, initiate human rights impact studies on the three community blueprints before the review of the blueprints in 2015, aimed at closing these gaps.

To AICHR (I) - procedures:

- Ensure its independence in fulfilling its mandate;
- Engage with ACWC to ensure coordination and alignment on the basis of independence and equality;

- Be transparent about its operation and make all information public, especially summaries of discussions and drafts of the AHRD;
- Engage with CSOs and NHRIs
- Learn from the best practices and experiences of regional human rights institutions in Europe, Africa, Latin America and elsewhere, as well as UN human rights bodies.

To AICHR (II) - substantive issues:

We call on AICHR take concrete steps to fulfill its obligation to protect (as well as promote) human rights in the region. The following is a non-exhaustive list of human rights issues that AICHR should address:

- *Refugees and internally displaced persons (IDPs):* address root causes of the human rights concerns involving refugees, asylum-seekers IDPs and their various manifestations across the region, help develop regional burden-sharing mechanisms, and encourage the development of national mechanisms and legislation consistent with international law and standards.
- *Statelessness:* study the problem across the region and provide recommendations for both preventing situations of statelessness and resolve existing ones, in particular by granting citizenship to stateless Indigenous persons and stateless children;
- *Migrant workers:* take steps and recommend measures to ensure the full implementation by member states of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, for which purposes undocumented migrant workers and domestic migrant workers should be considered to be fully covered by that Declaration. The human rights of families of migrant workers must also be protected. In planning and ensuring the implementation of these measures, ensure the meaningful involvement of Civil Society and Trade Unions, in particular those representing migrant workers.
- *LGBTIQ people:* recommend the establishment of national level mechanisms and review existing regional human rights instruments to ensure they address the promotion and protection of equal rights of all people, regardless of sexual orientation and gender identities (SOGI), with the active engagement of the LGBTIQ community;
- *Persons with disabilities:* Work for the full respect of the rights of persons with disabilities, including through countering and eliminating negative stigma; ensuring their meaningful involvement in developing, planning and monitoring policies which affect their lives and environment; guaranteeing full political participation, including by providing access to persons with disability to enable participation in election processes; and safeguarding equal treatment and

opportunity for people with disabilities to develop their independent living, including through the provision of accessibility facilities and access to information and reasonable accommodation.

- *Women:* Advance women's human rights and gender equality, bearing in mind the immense impact of the intersectionality of gender with class, citizenship, ethnicity, race, age and other social categories on women's multiple identities, bodily integrity, relationships and other aspects of their lived experience; safeguard women's human rights against the systematic and systemic violence such as rape and other forms of violence, exploitation and abuse, perpetrated by state and non-state actors in both the public and private spheres; ensure substantive equality in both opportunities and results through but not limited to temporary special measures; work towards the full compliance of all ASEAN member states to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol.
- *Indigenous Peoples:* Study and conduct workshops on the situations of indigenous peoples in ASEAN countries. Establish a working group on indigenous issues to look into the issues and concerns of indigenous peoples in the ASEAN countries, and recommend a mechanism on how to deal with problems pertaining peoples.
- *Child's rights:* Set mechanisms to ensure the engagement of children in AICHR process, develop a common understanding and minimum standards for the promotion and protection of children's rights that is consistent with the UN CRC and other international human rights standards and that reflects the diverse perspectives, experiences and contributions of local civil society actors and children. Mainstream child rights in the AICHR work plan.

To AICHR (III) - the AHRD:

III(a) addressing misconceptions of human rights: before and during the consultation, participants have been apprised of what appear to be gross misconceptions of key human rights principles which, we are concerned, may become tools by certain states to create an AHRD with "downgraded" human rights provisions and protections. **The AHRD must fully uphold international human rights law and standards without qualification.** In particular, we urge AICHR and the Drafting Group to refrain from undermining the human rights of individuals, groups and peoples in ASEAN, by giving in to such misconceptions, as explained below:

- **Individual vs. collective rights:**

We emphasise the importance of certain collective rights, such as the rights of Indigenous Peoples as well as ethnic, religious and linguistic minorities. Collective rights complement and enhance individual rights - they must never

provide a justification for governments to trample upon the human rights of the few in the name of serving the interests of the many.

The AHRD must reflect the human rights based approach to collective rights, not least as regards Indigenous Peoples, whose rights should be enshrined in the following way:

“All peoples are equal in dignity and rights. Recognizing the distinct identities and their right to be different, to consider themselves different and to be respected as such. Measures shall be undertaken to promote and protect the rights of indigenous peoples consistent with the UN Declaration on the Rights of Indigenous Peoples”

- **“National and regional particularities” and “different backgrounds”:**

We are proud of the rich variety of cultures, traditions, languages and peoples in ASEAN. This diversity can and should enhance and deepen ASEAN’s contribution to human rights in the region and globally. However, we are concerned that certain governments use the notion of “national, regional and cultural particularities” as a code for imposing restrictions on human rights within the AHRD. For example, when women’s bodies are deemed as extension of the community in the name of a culture or a tradition, women’s mobility within and outside the community tends to be restricted. Yet it is the same mobility, which must be protected, to allow women to access and participate in their culture and its transformation away from those practices which infringe on their human rights.

The cultural relativist approach to “particularities” and “backgrounds” must be firmly rejected, as human rights are universal and the people of ASEAN deserve the same level of respect, protection and fulfilment of their human rights that is provided universally and in other regions.

- **“balancing rights and responsibilities”**

We emphasise that the notion of “balancing rights and responsibilities” does not accord with human rights principles. International law ensures that the most fundamental human rights, including the rights to life, freedom from slavery, torture and other ill-treatment, the right to equality before the law and non-discrimination and freedom of religion or belief cannot be subject to any “balancing” and must be fully respected even during war and other emergencies. Other rights may be restricted, but only in very specific circumstances, under reasonable considerations such as national security or other people’s rights, not as a result of “balancing”.

- **Responsibilities of non-state actors**

Both individuals and other non-state actors must respect the human rights of others. Where they fail to do so, it is the duty of the state to exercise due diligence to prevent and stop such abuses, prosecute and punish perpetrators and ensure reparations for victims. We emphasise that the fact that non-state actors may abuse human rights must never be an excuse for governments to evade their responsibility to protect them.

Thus respect, protection and fulfilment of the human rights of LGBTIQ people must be ensured through laws and policies promulgated and enforced by the authorities, be they through general legislation against all discrimination or through measures specifically addressing the needs of the LGBTIQ community. However, the responsibilities of the state do not stop there – it must ensure that discrimination, harassment, marginalisation and violence against LGBTIQ people –by officials but also by non-state actors such as homophobic individuals or community leaders – are never tolerated. This involves not only laws and law enforcement but also measures such as education and training, which should be planned and carried out with the participation of LGBTIQ people. These principles should be reflected in the ADHR, both regarding the state’s general obligation to exercise due diligence to protect human rights from abuses irrespective of the identity of perpetrators and regarding the human rights of LGBTIQ people specifically.

Another particularly acute form of non-state-actor abuse prevalent in the ASEAN region is by powerful national, foreign and transnational corporations who exploit the weakness, corruption or irresponsible policies of governments to embark on agribusiness, industrial or extractive projects at the expense of the human rights of the local population, the environment and indeed the long-term prosperity of the country. Here too governments have the duty to exercise due diligence to protect the human rights of affected people, often Indigenous Peoples, including to land and natural resources, to adequate standard of living and to self-determination, and ensure respect for the principle of free, prior and informed consent. Those who abuse human rights must be stopped and brought to justice, irrespective of how affluent or influential they may be.

III(b) ensuring a transparent, inclusive and thoughtful drafting process. We call on AICHR to:

- Make public any and all documents material to the drafting of the AHRD, including the Terms of Reference of the Drafting Groups, detailed summaries of discussions within the Drafting Groups and AICHR and any drafts of the AHRD, in time for CSOs NHRI’s and any other stakeholders, including children to make comments which should be considered by the drafters;
- Conduct broad consultations with all stakeholders, including CSOs, NHRIs, the ACWC, UN and other experts, both at the national and regional levels.

To the ACWC:

- Continue and strengthen its engagement with civil society and NHRIs and National Women Machineries through regular interface, both formal and informal;
- In particular pursue collaboration with women and children's organizations. In response to regional human rights concerns, including through the development of common indicators and mechanisms for violence against women and violence against children;
- Engage with AICHR to ensure coordination and alignment, on the basis of equality;
- In particular, engage with AICHR on the drafting of the AHRD, to provide it not only input on the rights of women and children but also guidance on how the AHRD should address discrimination, marginalisation, violence and stigmatisation generally.

To NHRIs:

- Continue and enhance meaningful engagement with civil society on the national and regional levels;
- Consider developing procedures for receiving, registering and communicating to governments and/or regional or UN human rights mechanisms complaints of human rights violations by individuals and groups at the regional level, through the South East Asia National Human Rights Institutions Forum (SEANF);
- Strive to work closely with AICHR and ACWC;
- Ensure that key human rights issues are dealt with thoroughly and professionally, including, where necessary and possible, through specialised mechanisms and/or specially trained persons. Non-exhaustive examples of issues which may require specialised mechanisms and/or staff: persons with disabilities, women, children, LGBTIQ people, persons deprived of liberty, Indigenous Peoples, ethnic, linguistic or religious minorities, the elderly, migrant workers, refugees and asylum seekers, internally displaced persons, stateless persons, victims of forced evictions.

To the OHCHR:

- Provide, both from offices in the region and from the Geneva offices, technical and professional assistance to AICHR and ACWC including, where necessary, advise on international human rights law and standards, and help enhance the local capacity of the AICHR and ACWC Commissioners and their staff;
- Monitor the progress of regional human rights mechanism, - in particular, as a matter of urgency, AICHR in drafting the AHRD – and more generally help ensure that the ASEAN regional human rights mechanism develop in a progressive

- direction including increased independence, effectiveness and accountability in fulfilling their mandates of protecting and promoting human rights in the region;
- Provide support for the establishment of a permanent secretariat of the SEANF.
 - Continue the dialogue with regional and national CSOs, as well as NHRIs.

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