

# **Joint submission to the ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration**

**12 September 2012**

by Civil Society Organisations and people's movements participating in the Civil Society Forum on ASEAN Human Rights Declaration, 10-11 September 2012

## **Introduction**

This submission is made in the name of 62 representatives of civil society organizations (CSOs) and people's movements who came together at the Civil Society Forum on ASEAN Human Rights Declaration on 10-11 September 2012 in Manila, the Philippines.

The forum was jointly organised by the Philippines Alliance of Human Rights Advocates (PAHRA), Task Force Detainees of the Philippines (TFDP), Asian Forum for Human Rights and Development (FORUM-ASIA), Solidarity for Asian Peoples' Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR) and the American Bar Association Rules of Law Initiatives (ABA-ROLI) in preparation for the consultation meeting with CSOs on the ASEAN Human Rights Declaration called by the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 12 September 2012.

We welcome the effort of the AICHR in organizing the second official regional consultation on the ASEAN Human Rights Declaration in Manila, Philippines on 12 September 2012 as a follow-up to the first official regional consultation, which was held on 22 June 2012 in Kuala Lumpur, Malaysia. We encourage the AICHR to continue strengthening such consultation processes with civil society organizations and expand such practices in other aspects of the work of AICHR.

We however remain concerned that the second AICHR consultation meeting was still insufficiently broad-based and several organizations continued to be barred from participating in the meeting. Moreover, several countries have yet to organize any national consultation with their civil society organizations on the ASEAN Human Rights Declaration. We urge all AICHR representatives to ensure broad participation, more transparent and equal access by civil society organizations to AICHR in future.

Recalling the collective commitment expressed by the AICHR representatives in the first consultation meeting with CSOs on 22 June 2012 that the level of human rights protection in the ASEAN Human Rights Declaration will not be lower than that provided in international human rights laws and standards and the aspiration to provide “added value” to the body of international human rights laws, we made this joint submission for the consideration of the AICHR.

**Note on format:** Proposed additions are indicated by underlined texts; proposed deletions are indicated by struckthrough texts.

## Preamble

No.	Current wording	Suggested amendments	Explanatory Notes
2 <sup>nd</sup>	<b>REAFFIRMING</b> our adherence to the purposes and principles of ASEAN as enshrined in the ASEAN Charter, in particular the respect for and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law, and good governance;		
3 <sup>rd</sup>	<b>REAFFIRMING FURTHER</b> our commitment to the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties;	<b>REAFFIRMING FURTHER</b> our commitment <u>to upholding and realizing the international standards as prescribed by</u> the Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties;	The additions are meant to ensure that international standards are upheld and the Declaration has a concrete effect on human rights in the region.
4 <sup>th</sup>	<b>CONVINCED</b> that this Declaration will help establish a framework for human rights and cooperation in the region and contribute to the ASEAN community building process;	<b>RESOLVED</b> that this Declaration will help establish a framework for human rights <u>cooperation among all individuals, groups and peoples</u> in the region and contribute to the ASEAN community building process;	The term “convinced” was replaced by the term “resolved” to reflect more clearly a commitment from Member States.  The term “individuals, groups and peoples” was added to reflect the importance of the integral role of all

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			stakeholders in the ASEAN community building process.  See ASEAN Charter, Art. 1(13)
		<b>RECOGNIZING</b> that realization of <u>human rights and fundamental freedoms in ASEAN goes hand in hand with the reduction of poverty and the progressive narrowing of the development gap, with all peoples of ASEAN free to participate in and benefit equitably from sustainable development.</u>	This addition aims to reflect the provisions pertaining to right to development embodied in the Declaration. Moreover, it will introduce a sense of dynamism into the Preamble.  <b>ASEAN Charter, Preamble; Art. 1.</b>

## General principles

No.	Current wording	Suggested amendments	Explanatory notes
1	All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.		
2	Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind,	Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind <del>such as</del>	The list in the draft is restrictive, whereas a human rights Declaration should address all instances of

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	such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.	<del>race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.</del>	discrimination. The suggested formula will facilitate the development of inclusive interpretation.
3	Every person has the right of recognition everywhere as a person before the law. Every person is equal before the law. Every person is entitled without discrimination to equal protection of the law.		
4	The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms	The rights of women, children, the elderly, persons with disabilities, migrant workers, <u>Indigenous Peoples, minorities, Lesbian-Gay-Bisexual-Transgender (LGBT) persons, persons deprived of liberty</u> and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms	It is important to include these groups, as their human rights have been under attack both within ASEAN and globally.
5	Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law.	Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating <del>the rights granted to that person by the constitution or by law</del> <u>that person's human rights.</u>	The change reflects developments in human rights standards and is aimed at ensuring that states do not escape the obligation to provide remedy for human rights violations through discrepancies between domestic law and the human rights protections

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			<p>provided in this and other human rights instruments.</p> <p>Vienna Declaration and Programme of Action (VDPA), Art. 27 “Every State should provide an effective framework of remedies to redress human rights grievances of all violations.</p> <p>See also ICCPR, Art. 2(3)</p>
6	<p>The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect the human rights and fundamental freedoms.</p>	<p><del>The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as</del></p> <p>Every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect the human rights and fundamental freedoms.</p>	<p>While international human rights law and standards acknowledge that every person has responsibilities to his or her community, the notion of “balancing” them against human rights is alien to the concept of “inalienable” human rights (see e.g. Universal Declaration of Human Rights (UDHR), 1st preambular paragraph).</p> <p>No existing international or regional human rights instrument seeks to define a mutual relationship in terms of “balancing” the human rights of individuals on the one hand and their “duties” or “responsibilities” on the other.</p>

No.	Current wording	Suggested amendments	Explanatory notes
7	<p>All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.</p>	<p>All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. <del>At the same time, the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.</del></p>	<p>The current wording of the deleted text turns on its head, and reverses, the meaning of the text in the Vienna Declaration and Program of Action (VDPA), which reads, in the relevant part (Art. 5):</p> <p style="padding-left: 40px;">“While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”</p> <p>Regional and national contexts and different backgrounds cannot be used by states as an excuse to weaken the protection of human rights as provided in universally agreed standards. In fact, the opposite is true. For instance, Art. 5 of UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides <i>inter alia</i> that “States Parties shall take all appropriate measures:</p>

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			(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.
8	The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.	<p><u>(1)</u> The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, <del>and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples</del> in a democratic society.</p> <p><u>(2)</u> In respecting, protecting and</p>	<p>Under international law, only certain limitations, strictly and narrowly defined, may be imposed on a limited number of rights.</p> <p>International law also elaborates principles governing any acceptable restrictions on rights, whilst providing that key human rights may not be derogated from under any circumstances.</p> <p>See e.g. ICCPR, Art. 4; Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights.</p>



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		<p><u>fulfilling human rights, Member States shall at all times observe the relevant rules of international law, in particular the principle of non-derogability of fundamental human rights.</u></p>	
9	<p>In the realization of the human rights and freedoms contained in this Declaration, the paramount principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicization, should always be upheld.</p>		
		<p>Additional General Principle:  <u>Where human rights abuses are perpetrated by non-state actors, including individuals, groups and corporations at the national, regional or international levels, Member States shall exercise due diligence to prevent, punish and ensure reparation for such abuses.</u></p>	<p>This reflects the growing awareness of the human rights impact of non-state actors and correspondingly the growing awareness of the duty of states to address human rights abuses by non-state actors, from the domestic scene to transnational corporations, which should be reflected in the Declaration.</p> <p>See e.g. UN Declaration on the Elimination of Violence against Women, Art. 4(c); UN Guiding Principles on Business and Human Rights (2011)</p>

## Civil and political rights

Art.	Current wording	Suggested amendments	Explanatory Notes
10	ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights. Specifically, ASEAN Member States affirm the following rights and fundamental freedoms:		
11	Every person has an inherent right to life which shall be protected by law. No person shall be deprived of life save in accordance with law.	<p>Every person has an inherent right to life which shall be protected by law, <u>including through the abolition of the death penalty</u>.</p> <p><del>No person shall be deprived of life save in accordance with law.</del></p>	<p>This represents a progressive reading of the current state of international human rights law and standards as reflected for instance by the UN General Assembly resolutions calling for the abolition of the death penalty.</p> <p>See e.g. 65<sup>th</sup> session of the UN General Assembly, UNGA Res. 65/206 (2010); 2<sup>nd</sup> Optional Protocol to the ICCPR.</p>
12	Every person has the right to personal liberty and security. No person shall be subject to arbitrary arrest, search, detention, abduction or any other form of deprivation of liberty.	Every person has the right to personal liberty and security. No person shall be subject to arbitrary arrest, search, detention, abduction, <u>enforced disappearance</u> or any other form of <u>arbitrary</u> deprivation of liberty.	<p>Enforced disappearance is a crime under customary international criminal law.</p> <p>The addition of “arbitrary” reflects the right of State to lawfully deprive people of liberty.</p>
13	No person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose	.	

Art.	Current wording	Suggested amendments	Explanatory Notes
14	<p>of trafficking in human organs.</p> <p>No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.</p>	<p>No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p><u>Every person has the right to have his or her physical, mental and moral integrity respected.</u></p>	<p>The addition represents a progressive reading of the current state of international human rights law. It aims to capture human rights violations at the penumbra of the right to freedom from torture and ill treatment, such as the prohibition of unnecessary or excessive use of force.</p> <p>Torture should be understood as defined in Article 1(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p>
15	<p>Every person has the right to freedom of movement and residence within the borders of each State. Every person has the right to leave any country including his or her own, and to return to his or her own country.</p>		
16	<p>Every person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.</p>	<p>Every person has the right to seek and receive asylum in another State in accordance with <u>international law</u>. <del>the laws of such State and applicable international agreements.</del></p> <p><u>No Member State shall forcibly transfer a person in any manner to where his or her life would be in danger or where he or she would be at risk of persecution, torture,</u></p>	<p>Both these rights are rules of customary international law binding on all states.</p>

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		<u>enforced disappearance or other serious human rights violations.</u>	
17	Every person has the right to own, use, dispose of and give that person’s lawfully acquired possessions alone or in association with others. No person shall be arbitrarily deprived of such property.		
18	Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.	Every person has the right to a <u>name and the right to a nationality which denotes full access to citizenship</u> . No person shall be arbitrarily deprived of such <u>name or nationality</u> nor denied the right to change that <u>name or nationality</u> . <u>No one shall be rendered stateless.</u> <u>Member States shall cooperate to eliminate statelessness, including through comprehensive birth registration and granting nationality to children born in their territory who would otherwise be stateless.</u>	These rights are provided <i>inter alia</i> in the Convention of the Rights of the Child (CRC), Art. 7. The term “denotes full citizenship right” is added to prevent situations where persons have a nationality but are deprived of some or all of the rights of citizen.  See also UN Convention on the Reduction of Statelessness (1961).
19	The family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.	The family as <del>the natural and fundamental</del> <u>a key</u> unit of society is entitled to protection by society and each ASEAN Member State. <del>Every person</del> <u>Men and women</u> of full age has the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage <del>as prescribed by law.</del>	The replacement of the phrase “natural and fundamental” by “a key” and the deletion of the phrase “prescribed by law” are intended to avoid stigmatization of other forms of relationships.  “Men and women” is replaced by “every person” to make the provision gender neutral.

Art.	Current wording	Suggested amendments	Explanatory Notes
20	<p>(1) Every person charged with a criminal offence shall be presumed innocent until proven guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.</p> <p>(2) No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.</p> <p>(3) No person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each ASEAN Member State.</p>	<p>(1) Every person charged with a criminal offence shall be presumed innocent until proven guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed <del>the right to defence</del> <u>the full extent of due process of the law as provided by international human rights law and standards.</u></p>	<p>Due process is a wider concept and includes but is not limited to be tried without undue delay, the right to representation of one's choice, avoidance of self-incrimination, right to examine witnesses, appeal against conviction and sentencing and age sensitive procedures in the case of juvenile persons.</p> <p>See e.g. ICCPR, Art. 14(3).</p>
21	<p>Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to protection of the law against such interference or attacks.</p>	<p><u>(1) Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to protection of the law against such interference or attacks.</u></p> <p><u>(2) Everyone has the right to have his or her personal data protected from arbitrary or unlawful use or interference. States may only acquire, store or access personal data</u></p>	<p>The addition is intended to address developments in technology, in particular data storage, access and retrieval.</p>

Art.	Current wording	Suggested amendments	Explanatory Notes
		<u>in strict and narrowly construed circumstances defined in law, and access to such data shall be limited to the minimum number of officials or agencies necessary.</u>	
22	Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement to hatred based on religion and beliefs shall be eliminated.	Every person has the right to freedom of thought, conscience and religion; <u>this includes the freedom to change his or her religion or belief and to manifest such religion or belief in teaching, practice, worship and observance.</u> All forms of intolerance, discrimination and incitement to hatred based on religion or beliefs shall be eliminated.	Freedom to change and to manifest one's religion or belief is an integral part of this right.  See e.g. ICCPR, Art. 18; UDHR, Art. 18.
23	Every person has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.		
		<u>Everyone has the right to seek, receive and impart information through any media and regardless of international frontiers.</u>	The added Article seeks to ensure that the right to impart and receive information is protected explicitly as set out in the UDHR and subsequent international treaties is provided for in this Declaration.  Indonesia has a Law on Freedom of Public

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			Information. Malaysia has state-level legislation (two states) and the Philippines Congress is considering Freedom of Information legislation.
24	Every person has the right to freedom of peaceful assembly and association.		
25	<p>(1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.</p> <p>Every person has the right to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.</p>	<p>(1) Every person has the right to <u>meaningful participation in all spheres of social and community life, including decision making processes in both the public and private spheres.</u></p> <p>(2) Every person <u>who is a citizen of his or her country</u> has the right, without compulsion, to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.</p>	<p>This reflects UDHR Article 21 and subsequent developments in international human rights law, including the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and UN Security Council Resolution 1325.</p> <p>The phrase “without compulsion” was added to ensure the persons may exercise choice on whether or not to vote.</p>

## Economic, social and cultural rights

Art.	Current wording	Suggested amendments	Notes
26	ASEAN Member States affirm all the Economic, Social and Cultural rights in the Universal		

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	Declaration of Human Rights. Specifically, ASEAN Member States affirm the following:		
27	<p>(1) Every person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.</p> <p>(2) Every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests, in accordance with national laws and regulations.</p> <p>(3) No child or any young person shall be subjected to economic and social exploitation. Their employment in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labour should be prohibited and punished by law.</p>	<p>(1) Every person has the right to work, to the free choice of employment, <u>to security of tenure</u>, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed.</p> <p>(2) Every person has the right to form trade unions and join the trade union of his or her choice for the protection of his or her interests, <del>in accordance with national laws and regulations</del> <u>and the right to enter into collective bargaining agreements.</u></p> <p>(3) No child or any young person shall be subjected to economic and social exploitation. <del>Those in whose employment they</del> in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education, <del>shall</del> <u>ould</u> be punished by law. ASEAN Member States <del>shall</del> <u>ould</u> also set age limits below which the <del>paid employment</del> <u>recruitment and use of child labour shall</u> <u>ould</u> be prohibited and punished by law.</p>	<p>The term “security of tenure” added to prevent arbitrary termination of employment.</p> <p>The phrase “in accordance with national laws and regulations” was removed to prevent States from violating this right through national legislation.</p> <p>The changes were made to reflect the provision of the International Labour Organisation (ILO) Convention 182.</p>



Art.	Current wording	Suggested amendments	Notes
28	<p>Every person has the right to an adequate standard of living for themselves and their family including:</p> <ul style="list-style-type: none"> <li>a. The right to adequate and affordable food, freedom from hunger and access to safe and nutritious food;</li> <li>b. The right to clothing;</li> <li>c. The right to adequate and affordable housing;</li> <li>d. The right to medical care and necessary social services;</li> <li>e. The right to safe drinking water and sanitation;</li> <li>f. The right to a safe, clean and sustainable environment.</li> </ul>		
		<p><b>Right to a healthy and sustainable environment</b></p> <p><u>(1) Every person has the right to a healthy and sustainable environment that is capable of supporting human society and the enjoyment of human rights.</u></p> <p><u>(2) The rights of communities, in particular in regard to resource management and environmental conservation, shall be respected. Public participation shall be promoted prior to the implementation of activities which may have negative impact on the environment and on related communities, with a view to prevention</u></p>	<p>This is to reflect the growing awareness of the impact of the environment including environmental changes on human rights.</p> <p>See e.g. ASEAN Charter, Art. 1(9); Convention on Biological Diversity (1992)</p> <p>This also reflects, <i>inter alia</i>, Art. 59, Cambodian Constitution; Art. 28(h), Indonesian Constitution; Art. 2(16) of the Philippines Constitution; Art. 85, Thai Constitution; Art. 112(5), Vietnam Constitution; Myanmar, Environment Conservation Act (2012).</p>

Art.	Current wording	Suggested amendments	Notes
		<p><u>and attenuation of harm.</u></p> <p><u>(3) ASEAN Member States shall ensure that present and future generations can enjoy the right to a healthy and sustainable environment.</u></p>	
29	<p>(1) Every person has the right to the enjoyment of the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to the information medical facilities.</p> <p>(2) The ASEAN Member States shall create a positive environment in overcoming stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.</p>	<p>(1) Every person has the right to the enjoyment of the highest attainable standard of physical, mental, <u>sexual and reproductive health</u>, <del>to basic and affordable health-care services</del> and to have access <u>to education, information, goods and services needed to attain this.</u><del>medical facilities.</del></p> <p><u>(2) Every person has the right to make his or her own decisions concerning reproduction, free from discrimination, coercion and violence, and to have access to the full range of family planning options and methods, within a comprehensive healthcare system.</u></p> <p><u>(3)The</u>ASEAN Member States shall create a positive environment, <u>including by providing adequate resources and services,</u>to overcome stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.</p>	<p>General Comment 14 of the ICESCR recognizes the right to health as including sexual and reproductive health. Sexual health is distinct from reproductive health and therefore should be recognized. These two issues are inter-related. Lack of protection of the right to sexual and reproductive health affects both sexes.</p> <p>CEDAW Committee General Comment 24, para. 31(e).</p> <p>The addition is intended to elaborate on the State's duty.</p>

Art.	Current wording	Suggested amendments	Notes
30	<p>(1) Every person shall have the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence.</p> <p>(2) Special protection should be accorded to mothers during a reasonable period as determined by national laws and regulations before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits.</p> <p>(3) Motherhood and childhood are entitled to special care and assistance. Every child, whether born in or out of wedlock, shall enjoy the same social protection</p>	<p>(1) Every person shall have the right to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence.</p> <p>(2) Special protection should be accorded to women during <u>pre-natal, delivery and post-natal periods</u> <del>mothers during a reasonable period as determined by national laws and regulations before and after childbirth</del>. During such periods, working mothers should be accorded paid leave or leave with adequate social security benefits. <u>Working fathers should be accorded paid paternity leave.</u></p> <p>(3) <del>Motherhood and childhood are entitled to special care and assistance.</del> Mothers and every child, whether born in or out of wedlock, shall enjoy the same social protection, <u>special care and assistance.</u></p>	<p>The change is to provide for more specific precisely worded and inclusive formulation of these rights.</p>
31	<p>(1) Every person has the right to education.</p> <p>(2) Primary education shall be compulsory and made available free to all. Secondary education in its different forms shall be available and accessible to all through every appropriate means. Technical and vocational education shall be made generally available. Higher education shall be equally accessible to all on the basis of merit.</p>	<p>(1) Every person has the right to education.</p> <p>(2) Primary education shall be compulsory and made available free to all. Secondary education in its different forms shall be available and accessible to all through every appropriate means. Technical and vocational education shall be made generally available. Higher education shall</p>	

Art.	Current wording	Suggested amendments	Notes
	<p>(3) Education shall be directed to the full development of the human personality and the sense of his or her dignity. Education shall strengthen the respect for human rights and fundamental freedoms in ASEAN Member States. Furthermore, education shall enable all persons to participate effectively in their respective societies, promote understanding, tolerance and friendship among all nations, racial and religious groups, and enhance the activities of ASEAN for the maintenance of peace.</p>	<p>be equally accessible to all on the basis of merit.</p> <p><u>(3) Educational systems shall be gender sensitive. Gender and human rights education and age-appropriate sexual education shall be institutionalised.</u></p> <p><del>(4)(3) Education shall be directed to the full development of the human personality and the sense of his or her dignity. Education shall strengthen the respect for human rights and fundamental freedoms in ASEAN Member States. Furthermore, education shall enable all persons to participate effectively in their respective societies, promote understanding, tolerance and friendship among all nations, racial and religious groups, and enhance the activities of ASEAN for the maintenance of peace.</del></p>	<p>The added provisions reflect growing awareness of the need to provide for gender-sensitive education.</p> <p>The issue of participation has been dealt with elsewhere.</p>
32	<p>Every person has the right, individually or in association with others, to freely take part in cultural life, to enjoy the arts and the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or appropriate artistic production of which one is the author.</p>	<p><u>(1) Every person has the right, individually or in association with others, to freely take part in cultural life, to enjoy the arts and the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or appropriate artistic production of which one is the author.</u></p>	<p>Additional paragraphs have been inserted to deal specifically with the rights of indigenous peoples, farming, fishing and other traditional communities in relations to community cultural rights.</p> <p>See also the provision below on indigenous peoples.</p>

Art.	Current wording	Suggested amendments	Notes
		<p><u>(2) Indigenous peoples, farming, fishing and other communities have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, traditional knowledge and visual and performing arts and literature, in accordance with international human rights law and standards.</u></p>	
33	<p>ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of economic, social and cultural rights recognized in this Declaration.</p>	<p>ASEAN Member States <del>should</del> <u>shall</u> take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of economic, social and cultural rights recognized in this Declaration.</p>	<p>The use of the word “shall” is preferred, as it makes the commitment more declaratory.</p>
34	<p>ASEAN Member States may determine the extent to which they would guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organization and resources of their respective national economies.</p>	<p><del>ASEAN Member States may determine the extent to which they would guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organization and resources of their</del></p>	<p>This obligation should apply equally to non-nationals without exception.</p>

Art.	Current wording	Suggested amendments	Notes
		respective national economies.	

## Right to development

Art.	Current wording	Suggested amendments	Explanatory Notes
35	<p>The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognized human rights.</p>	<p>(1) The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably from economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.</p> <p><u>(2) Every person, community, and people are entitled to determine, participate in, contribute to, and enjoy equitably economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized as part of their inalienable right to sustainable and inclusive development.</u></p> <p><u>(3) The sustainable use of natural resources</u></p>	<p>The added paragraphs are intended to safeguard the rights of individuals and communities affected by development, including their right to participate in decision making affecting their livelihood and the need to maintain the sustainable use of natural resources.</p>

Art.	Current wording	Suggested amendments	Explanatory Notes
		<p><u>is integral of the right to development so as to meet equitably the developmental and environmental needs of present and future generations.</u> While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognized human rights.</p>	
36	<p>ASEAN Member States should adopt meaningful people-oriented and gender responsive development programmes aimed at poverty reduction, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognized in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.</p>		
37	<p>ASEAN Member States recognize that the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations, international cooperation and a favourable international economic environment. ASEAN Member States should mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community building and beyond, and shall work with the international community to promote</p>	<p>ASEAN Member States recognize that the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations, international cooperation and a favourable international economic environment. ASEAN Member States <u>shall</u> <del>should</del> mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community</p>	<p>The addition aims to highlight protection for marginalized groups, including indigenous peoples.</p>

Art.	Current wording	Suggested amendments	Explanatory Notes
	equitable and sustainable development, fair trade practices and effective international cooperation.	building and beyond, <u>while taking all necessary measures to prevent or remedy any adverse impact, particularly on marginalised groups, including Indigenous Peoples.</u> They shall work with the international community to promote equitable and sustainable development, fair trade practices and effective international cooperation.	

## Right to peace

Art.	Current wording	Suggested amendments	Explanatory Notes
38	Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realized. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region	<p><del>(1) Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realized. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.</del></p> <p>(1) ASEAN Member States undertake to formulate and implement policies towards the elimination of the threat of war among and between peoples, including nuclear</p>	<p>The first paragraph reflects more clearly the obligation of states to uphold people's right to peace as stated in UNGA resolution 39/11 (1984). The wording is taken directly from that resolution (with minor abbreviations).</p> <p>The second paragraph aims to guarantee that the right to peace is not used as a justification for Member States to deny victims their rights, including the right to truth, justice, etc.</p>



Art.	Current wording	Suggested amendments	Explanatory Notes
		<p>war, the renunciation of the use of force and peaceful settlement of disputes.</p> <p><u>(2) Member States may not invoke the right to peace to deny victims and survivors of human rights violations the right to truth, justice and reparations, or evade their duty to bring to justice perpetrators of such violations, irrespective of rank or status.</u></p>	

## Rights of specific individuals, groups and peoples

**NB:** This part does not exist in the current draft AHRD but we propose to insert it.

No.	Current wording	Suggested amendments/ articles	Explanatory notes
		<p><b>The elaboration of any and all human rights proclaimed In this Declaration, as pertaining to specific individuals or groups identified herein as rights holders is not to be read as implying the exclusion of the human rights of other individuals or groups not specifically mentioned. At all times and in all circumstances, the widest and most generous interpretation of the rights prescribed in this Declaration should be adopted, in accordance with international human rights law and standards, unless they provide wider protection than such law and standards.</b></p>	<p>This provision was added to ensure that the right of those individuals and groups whose human rights were not elaborated in this section are nevertheless fully respected, protected and fulfilled</p>

		<p><b>Right of women to equality</b></p> <p>(1) ASEAN Member States undertake to ensure the equal right of men and women to the enjoyment of the rights set forth in this Declaration and in other regional and international human rights instruments. They shall take all appropriate measures to achieve substantive equality in all aspects of life and end all forms of discrimination against women and girls, including violence and abuse in all their forms and in all situations and contexts.</p> <p>(2) ASEAN Member States shall endeavour to eliminate any form of stigma and criminalisation against victims and survivors of violence against women and girls, and to shift accountability towards those responsible for its perpetration and perpetuation.</p> <p>(3) ASEAN Member States shall take all necessary and appropriate measures in legislation, education, policy and practice to ensure full equality between men and women. Such measures will include efforts to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.</p>	<p>UDHR, Preamble; ICCPR Art. 3; ICESCR Art.3; CEDAW</p>
		<p><b>Rights of the child</b></p> <p>(1) Every child shall be entitled to the enjoyment of the human rights and fundamental freedoms recognized and guaranteed in this Declaration and other regional and international human rights instruments. Children shall</p>	<p>This suggested provision is derived from the CRC, to which all ASEAN Member States are party.</p>

		<p>be protected from all forms of violence, neglect, maltreatment, exploitation and other abuse.</p> <p>(2) Member States shall place paramount consideration on the best interest of the child in promoting and protecting the rights of all children, and shall guarantee the right of every child to be heard in any judicial or administrative proceeding affecting him or her. In developing policies affecting children, Member States shall hold consultations with children and take their views into consideration, while respecting the evolving capacity of children and their right to identity and choice.</p>	
		<p><b>Rights of older persons</b></p> <p>(1) Every older person shall be entitled to the enjoyment of human rights and fundamental freedoms recognized and guaranteed in this Declaration and other regional and international human rights instruments without discrimination.</p> <p>(2) Member States shall at all times respect and ensure respect for the autonomy and dignity of older persons as well as respect, protect and fulfil their rights.</p>	<p>The right of older persons is poorly provided for in international human rights law and standards. We suggest that ASEAN takes the lead in addressing this deficit.</p>
		<p><b>Rights of persons with disabilities</b></p> <p>(1) Every person with disabilities shall be entitled to the enjoyment of the human rights and fundamental freedoms recognized and guaranteed in this Declaration and other regional and international human rights instruments without discrimination.</p> <p>(2) Member States shall take appropriate and effective measures to</p>	<p>The suggested provision is drawn from the Convention on the Rights of Persons with Disabilities, Arts. 1 and 5(3).</p> <p>The Convention defines “reasonable accommodation” as “necessary and appropriate modification and</p>

		<p>enable persons with disabilities to live in the community, with choices equal to others, and to facilitate full enjoyment by persons with disabilities of their rights and their full inclusion and participation in the community.</p> <p>(3) Member States shall provide and ensure access by persons with disabilities to the physical, social, economic and cultural environment, to health and education, and to information and communication, so as to enable persons with disabilities to fully enjoy all human rights and fundamental freedoms.</p> <p>(4) In the development and implementation of legislation and policies to implement the present Declaration, and in other decision-making processes concerning issues relating to persons with disabilities, Member States shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.</p>	<p>adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.</p>
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	<p><b>Persons deprived of liberty</b></p> <p>(1) All persons deprived of their liberty shall have their human rights respected.</p> <p>(2) The detention shall only be in a known official place where conditions are safe and humane. The detainee shall be accorded all reasonable and proportional liberties and shall not be exposed to corporal punishment or prolonged solitary confinement.</p> <p>(3) All detention shall be managed so as to facilitate the reintegration of the detainee into society.</p> <p>Special needs of any detainee groups shall be provided and catered for. These groups shall not be discriminated against.</p> <p>Places of detention shall be subject to regular government inspection and independent monitoring, including by human rights NGOs.</p>	<p>These provisions reflect international human rights law and standards, including the Standard Minimum Rules for the Treatment of Prisoners and the UN Basic Principles for the Treatment of Prisoners</p>
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		<p><b>Rights of human rights defenders</b></p> <p>(1) Every person has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.</p> <p>(2) Member States shall take all necessary measures to ensure the protection of human rights defenders who participate in such peaceful activities.</p>	<p>Based on Human Rights Defenders Declaration, UNGA Res. 53/144 (1999).</p>
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		<p><b>Right to self-determination</b></p> <p>(1) All peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.</p> <p>(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations out of international economic cooperation, based upon mutual benefit, and international law.</p>	<p>See ICCPR, ICESCR, Art. 1; UN Declaration on the Rights of Indigenous Peoples (UNDRIP).</p>
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		<p><b>Rights of migrant workers</b></p> <p>Recalling the ASEAN Declaration on the Promotion and Protection of Rights of Migrant Workers, ASEAN Member States shall protect and promote the rights of migrant workers and their families in the entire migration process, consistent with international instruments, in particular core labour standards of the International Labour Organisation.</p>	<p>This provision is consistent with international standards reflected in the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers, the UN Convention on Migrant Workers and ILO Standards. Given that much of the global migrant workforce originates in ASEAN countries, migrant workers deserve mention in the AHRD.</p>
		<p><b>Rights of minorities</b></p> <p>(1) Persons belonging to national, ethnic, religious and linguistic minorities shall be entitled to the enjoyment of the human rights and fundamental freedoms recognized and guaranteed in this Declaration and other regional and international human rights instruments without discrimination.</p> <p>(2) Persons belonging to national, ethnic, religious and linguistic minorities have a right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.</p> <p>(3) Member States shall consult and cooperate in good faith with</p>	<p>ICCPR, Art. 27 and UN Declaration on the Rights of Minorities.</p>



		<p>minorities through their own representative institutions before the approval of any policies affecting these rights.</p>	
		<p><b>Rights of Indigenous Peoples</b></p> <p>(1) Indigenous Peoples shall be entitled to the enjoyment of the human rights and fundamental freedoms recognized and guaranteed in this Declaration and other regional and international human rights instruments without discrimination.</p> <p>(2) Indigenous peoples have the right to own, use, develop and control the lands, territories, and resources which they have traditionally owned, occupied or otherwise used, and to establish and control their own educational systems and institutions, consistent with the rights of the child.</p> <p>(3) Member States and non-state actors shall consult and cooperate in good faith with indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before the approval of any project affecting their lands, territories and resources, particularly in connection with development or exploitation of natural resources.</p>	<p>Taken from UNDRIP, for which all ASEAN member states have voted in support.</p>

## Cooperation in the promotion and protection of human rights

Art.	Current wording	Suggested amendments	Explanatory Notes
39	<p>ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organizations, in accordance with the ASEAN Charter.</p>	<p>(1) ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organizations, in accordance with the ASEAN Charter.</p> <p><u>(2) Each Member State shall ensure that its laws, policies and practices conform with the international human rights standards reflected in this Declaration, international human rights treaties to which ASEAN Member States are party, and other human rights instruments.</u></p> <p><u>(3) Member States shall take steps to adopt laws or other measures to ensure that violations of these rights are redressed through effective and enforceable remedies, including reparations.</u></p>	<p>The additions are intended to ensure that the Declaration is implemented in law, policy and practice.</p>

## Interpretation

Art.	Current wording	Suggested amendments	Explanatory Notes
	<p>Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principle of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.</p>	<p>Nothing in this Declaration may be interpreted as implying for any State, <u>non-State actor</u>group or person any right to <del>perform any act aimed at undermining the purposes and principle of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.</del><u>engage in any legislation, policy or activity which may:</u></p> <p><u>(a) undermine the purposes and principles or weaken the human rights protections of the Universal Declaration on Human Rights, the Vienna Declaration and Programme of Action or international law subscribed to by member states; or</u></p> <p><u>(b) destroy any of the rights and freedoms stipulated under this Declaration.</u></p>	<p>The amendments seek to ensure and clarify beyond doubt that the level of protection of human rights provided by this Declaration does not fall below that of international human rights law and standards.</p> <p>The current wording mixes human rights and non-human rights principles and fails to explicitly provide for no lowering of standards.</p>

**This joint submission is endorsed by:**

1. Aliansi Masyarakat Adat Nusantara
2. Amnesty International Philippines
3. ArusPelangi Indonesia
4. ASEAN Disability Forum
5. ASEAN SOGI Network
6. ASEAN Watch Thailand
7. Asian Federation Against Involuntary Disappearance
8. Asian Forum for Human Rights and Development
9. Asia Indigenous Peoples Pact
10. Asia-Pacific Solidarity Coalition (APSOC)
11. Asylum Access Thailand
12. Balay Rehabilitation Centre
13. Cambodia Youth Network
14. Cambodian Food and Service Workers Union
15. Cambodian Human Rights Action Committee (CHRAC)
16. Cambodian Human Rights and Development Association
17. Cambodian Food and Service Workers' Federation
18. Center for Advocacy, Learning and Livelihood (CALL)
19. Centre for Migrant Advocacy
20. Child Rights Coalition Asia
21. Development Environment Community Association
22. Development Alternatives with Women for a New Era
23. Disabled Peoples International /Asia Pacific
24. Global Partnership for the Prevention of Armed Conflict (GPPAC/SEA)
25. Indigenous Peoples Task Force on ASEAN
26. Initiatives for International Dialogue
27. International Gay and Lesbian Human Rights Commission
28. Kampanya Para sa Makataong Pamumuhay

29. Katipunan Ng Maykapansanansa Pilipinas, Inc.
30. Lembaga Bantuan Hukum Jakarta (Jakarta Legal Aid Institute)
31. Malaysian Bar Council
32. Mekong Legal Network
33. Migrant Forum in Asia
34. Mindanao Human Rights Action Center
35. Myanmar People's Forum (MPF)
36. Network of Indigenous Peoples of Thailand (NIPT)
37. NGO Coordinating Committee on Development (NGO-COD) – Thailand
38. People's Empowerment Foundation
39. Philippines Alliance of Human Rights Advocates
40. Philippines Coalition for the International Criminal Court
41. Philippines Coalition on the United Nations Conventions on the Rights of Persons with Disabilities
42. Philippines NGO Coalition on the UN Convention on the Rights of the Child
43. Southeast Asian Committee for Advocacy
44. Suara Rakyat Malaysia (SUARAM)
45. Sulong Comprehensive Agrarian Reform Program ER
46. Task Force Detainees of the Philippines
47. The Commission for Missing Persons and Victims of Violence (KontraS)
48. Thai Committee for Refugees Foundation (TCR)
49. Thai Working Group on ASEAN Human Rights Mechanism
50. Thai Volunteer Service Foundation
51. Think Center
52. Women's Legal and Human Rights Bureau
53. Woman Health Philippines
54. Women's Legal Education Association