

OPEN LETTER TO ASEAN FOREIGN MINISTERS AT INFORMAL ASEAN FOREIGN
MINISTERS MEETING (IAMM) ON THE ASEAN HUMAN RIGHTS DECLARATION

To,

1. His Royal Highness Prince Mohamed Bolkiah, Minister of Foreign Affairs, Brunei Darussalam
2. His Excellency Hor Namhong, Minister of Foreign Affairs, Cambodia
3. His Excellency Dr. Marty Natalegawa, Minister of Foreign Affairs, Indonesia
4. His Excellency Dr. Thongloun Sisoulith, Minister of Foreign Affairs, Laos PDR
5. His Excellency Dato' Sri Anifah Aman, Minister of Foreign Affairs, Malaysia
6. His Excellency U Wunna Maung Lwin, Minister of Foreign Affairs, Myanmar
7. His Excellency Albert F. Del Rosario, Secretary of Foreign Affairs, the Philippines
8. His Excellency K. Shanmugam, Minister of Foreign Affairs, Singapore
9. His Excellency Dr. Surapong Tovichakchaikul, Minister of Foreign Affairs, Thailand
10. His Excellency, Pham Binh Minh, Minister of Foreign Affairs, Vietnam

Cc to

1. His Excellency Om Yenteng, Chair of ASEAN Intergovernmental Commission on Human Rights
2. His Excellency Surin Pitsuwan, Secretary General of ASEAN

Date: 26 September 2012

Your Excellencies,

We, the undersigned organizations, thank the ASEAN Intergovernmental Commission on Human Rights (AICHR) for holding the second consultation meeting with civil society on the ASEAN Human Rights Declaration (AHRD) in Manila on 12 September 2012. For the first time in this meeting, civil society organizations were able to make comments and inputs based on the actual official draft of the declaration dated 23 June 2012. This is a positive step in the right direction in enhancing transparency and public participation and the AICHR must be encouraged to continue to strengthen and expand such practices in the future and in other areas of its works.

In reviewing the draft declaration dated 23 June 2012, we are however very concerned with some of what we perceive are serious flaws in the document. If the draft declaration is to be adopted in its current form, it will fall below international human rights law and standards. This certainly does not bode well for the reputation and credibility of the ASEAN human rights mechanism, the first of its kind in the Asia Pacific region.

In view of your upcoming meeting on 27 September 2012 in New York to review the AHRD and that the AHRD will be adopted officially at the 21st ASEAN Summit in November 2012, we would like to urgently draw your attentions to some of these infirmities in the draft declaration.

Firstly, Article 7 of the draft declaration attempts to bring back the discourse of “Asian Values” and “regional particularities” by stipulating “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.” This clearly runs contrary to the principle of the universality of human rights as enshrined in the Vienna Declaration and Program of Action in 1993, which stated that “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.”

Secondly, Article 6 of the draft declaration stipulates “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.” 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 as enshrined in the Universal Declaration of Human Rights (UDHR). 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. ASEAN must not denigrate itself in the international community by adopting this stance.

Thirdly, Article 8 subjects all the rights proclaimed in the declaration to limitations based on considerations such as “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.” This sweeping provision ignores the non-derogability of certain rights as well as the very narrow scope for restrictions allowed under international law and standards on others.

Fourthly, several universally recognised rights are not included in the draft declaration, among them the right to self-determination and the prohibition of enforced disappearance. Rights of specific marginalised groups, such as indigenous peoples, persons with disabilities, minorities, migrant workers, domestic workers (both local and migrant) and gay, lesbian, bi-sexual and transgender peoples are glaringly missing from the document as well.

ASEAN should learn the lessons from the Arab League of States and avoid proclaiming regional human rights declaration that is below international human rights law and standards. The Arab Charter of Human Rights released by the Arab League of States in 1994 ran in contradiction with human rights and stirred controversial debates on its credibility. This resulted in no ratification by Member States of the said Charter.

We therefore urge you to immediately address the flaws of the draft declaration by adopting our recommendations as outlined in our submission to AICHR to remedy the serious flaws in the draft declaration. This shall include amending the sub-standard General Principles, ensuring that it includes the full spectrum of human rights and adopting a final clause that explicitly and unequivocally precludes the interpretation of the Declaration as providing lower protections than the Universal Declaration of Human Rights (UDHR), Vienna Declaration and Program of Action (VDPA) or international human rights treaties to which ASEAN Member States are party.

For other concerns with regards to the draft declaration and our corresponding recommendations, we encourage you to refer to our submission made to the AICHR on 12 September 2012 as attached.

We entreat you to uphold the highest standards in your deliberation of the ASEAN Human Rights Declaration. It is our hope that the Declaration will result in both the promotion and protection of human rights such that the full realization of human dignity and a higher quality of life for ASEAN peoples can be truly achieved.

It is time for ASEAN to be in step with the rest of the world in Human Rights promotion and protection.

Sincerely,

1. Aliansi Masyarakat Adat Nusantara
2. Amnesty International Philippines
3. Arus Pelangi 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. Cambodian Human Rights Action Committee (CHRAC)
14. Cambodian Human Rights and Development Association
15. Cambodian Food and Service Workers' Federation (CFSWF)
16. Cambodian Workers Centre for Development (CWCD)
17. Cambodia Youth Network (CYN)
18. Center for Advocacy, Learning and Livelihood (CALL) Foundation of the Blind Inc.
19. Centre for Migrant Advocacy
20. Child Rights Coalition Asia

21. Coalition of Cambodian Farmer Community (CFCC)
22. Development Environment Community Association
23. Development Alternatives with Women for a New Era
24. Disabled Peoples International /Asia Pacific
25. Global Partnership for the Prevention of Armed Conflict (GPPAC/SEA)
26. Government Union for the Integration of Differently-Abled Employees of the Philippines(GUIDE)
27. Independent Democratic of Informal Economic Association (IDEA)
28. Indigenous Peoples Task Force on ASEAN
29. Indonesian LGBTIQ Forum
30. Initiatives for International Dialogue
31. International Gay and Lesbian Human Rights Commission (IGLHRC)
32. Kampanya Para sa Makataong Pamumuhay
33. Katipunan Ng Maykapansanansa Pilipinas, Inc.
34. Lembaga Bantuan Hukum Jakarta (Jakarta Legal Aid Institute)
35. Malaysian Bar Council
36. Mekong Legal Network
37. Migrant Forum in Asia
38. Mindanao Human Rights Action Center
39. Myanmar People's Forum (MPF)
40. Network of Indigenous Peoples of Thailand (NIPT)
41. NGO Coordinating Committee on Development (NGO-COD) – Thailand
42. People's Empowerment Foundation
43. Philippines Alliance of Human Rights Advocates
44. Philippines Coalition for the International Criminal Court
45. Philippines Coalition on the United Nations Conventions on the Rights of Persons with Disabilities
46. The Philippine NGO Coalition on the UN Convention on the Rights of the Child
47. Southeast Asian Committee for Advocacy
48. Suara Rakyat Malaysia (SUARAM)
49. Sulong Comprehensive Agrarian Reform Program ER
50. Task Force Detainees of the Philippines
51. The Commission for Missing Persons and Victims of Violence (KontraS)
52. Thai Committee for Refugees Foundation (TCR)
53. Thai Volunteer Service Foundation
54. Think Center
55. Women's Legal and Human Rights Bureau
56. Woman Health Philippines
57. Women's Legal Education Association