



MARUAH's Second Submission on ASEAN Human Rights Declaration (AHRD)

Introduction – An overview

MARUAH (Singapore Working Committee for an ASEAN Human Rights Mechanism) has submitted an initial document on the ASEAN Human Rights Declaration (AHRD) to the ASEAN Intergovernmental Commission on Human Rights (AICHR) representatives on 31st January 2012. We held a second public consultation on the AHRD on the 9th of March 2012. The consultation resulted in a compilation of key concerns. We also then observed the process, remained connected to the issue and the discussions on AHRD. Based on the consultation and the various forums on the AHRD, MARUAH is submitting a second document to highlight areas that we see as key concerns and to also underpin essential areas that cannot be compromised if we are to remain true to the spirit of ensuring 'equal dignity' to all people in ASEAN.

Key Concerns

We ask that the terms in the AHRD be articulated in the active voice rather than in the passive. We wish to see the AHRD as an active document, one that enables action with results.

Please find feedback and comments from our consultation under three respective categories – Political, Economic and Social-cultural rights.

Political Rights

1. The AHRD ought to encapsulate the principle of universality, where all rights of individuals are inalienable, interrelated, interdependent and indivisible. Human rights is cross-cutting and therefore cannot and should not be divided up. The

responsibility to respect these rights and act accordingly is in the hands of the people who need to balance rights. Thus this principle ought to underpin the AHRD, be broad-based enough to cater to the particular needs of any one community, be they vulnerable or at various stages of development, without having special sections devoted to any one community. The particularities of various communities are also addressed in the International Conventions that ASEAN member countries have ratified or ought to.

2. The AHRD in recognising provisions for customary law ought to ensure through its Terms of Reference, that there is still alignment and harmonising between customary laws and international standards on human rights. The operating principle here is that all rights should be non-derogable.
3. We recommend alignment to the principles of Responsibility to Protect (R2P) as an approach to mediate on the 'non-interference' clause as enshrined in the ASEAN Charter. Adherence to this principle will ensure that no one community in any of the ASEAN countries will be left without protection in the face of severe violations against the citizens.
4. The drafting process of the AHRD has been an area of engagement for many civil society activists at the national and regional levels. But till today the AICHR team has yet to become more transparent in its consultations and in engaging civil society. This remains an area of grave concern.

Economic

5. We would also like to have in the AHRD principles of "Protect, Respect, Remedy" borrowed from the Guiding Principles of John Ruggie's Framework on Business and Human Rights. All three areas complement and support each other in achieving ethical business practices and achieve sustainable progress.

Socio-cultural

6. The AHRD should also enshrine and enforce full protection of all rights, especially the inherent right to life and to provide access to justice. While various ASEAN states might have differing approaches against criminal acts, we maintain that the AHRD needs to recognise the innate right to life and the right to have access to justice. Anything less will diminish the quality of the Declaration in terms of an expression and a commitment of the ASEAN governments to human rights values.
7. We should also leverage on existing Conventions on protection of rights of vulnerable communities like women and children such as Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and Child Rights Convention (CRC) and not offer terms in AHRD that are lesser than the terms in CEDAW, CRC and Convention on the Rights of Persons with Disabilities (CRPD).
8. The AHRD should acknowledge the rightful duty of States to extend protection to all individuals, including refugees and asylum seekers. Their right to nationality ought to be recognised. The Terms of Reference should reflect the right to a nationality for every person in ASEAN as everyone in the region is a person of ASEAN.

Conclusion

We hope that as the AHRD reaches its final stages where there will be a consultation with civil society and views from many civil society actors are taken into consideration for further norm-setting. We would also like to state that any 'claw-back' clauses in the Terms of Reference will sadly run the risk of making the ASEAN Human Rights Declaration, a weak document. We know that much rests on the shoulders of the first team of AICHR representatives and we wish you/them well in this process.