



MARUAH’s Position on an ASEAN Human Rights Declaration (AHRD)

1 Introduction – An overview

MARUAH (Singapore Working Committee for an ASEAN Human Rights Mechanism) worked on this proposal and held a public consultation to gather views on the ASEAN Human Rights Declaration (AHRD). We, then, floated this document to experts and reviewed the draft.

We see the AHRD as an instrument that will now give the region a foundation to engage in human rights for all people in ASEAN. We also believe that the AHRD will function as a signifier to enable human rights to deepen across the ASEAN Member States, bringing more practices into a normative mode of the universally-accepted code of the Universal Declaration on Human Rights (UDHR). This means that the AHRD will also view human rights as being universal, indivisible, interdependent and inalienable. In addition the AHRD can be no less than the two International Conventions - CEDAW and CRC – that all 10 Member States have ratified. Neither can it be too far from the provisions of the International Convention on Civil and Political Rights or the International Convention on Economic, Social and Cultural Rights, which are two fundamental treaties that arose from the UDHR. Admittedly the Constitutions of ASEAN Member States can limit the breadth and depth of what the AHRD can become.

But the AHRD has to function to the provisions in the ASEAN Charter too. We are heartened as the Preamble of the ASEAN Charter already states that ASEAN Heads of State are committed “to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms”. In addition they are also to “enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice” and “to promote a people-oriented ASEAN

in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community-building”.¹

These provisions augur well for AHRD to embrace the principles fundamental to the four tenets (economical, social, cultural and political) of human rights. We also reiterate that the ASEAN Charter binds Member States through a mutual respect for a rule-based approach that ought to translate into a “respect for and protection of human rights and fundamental freedoms”. We hope that this constructive spirit and perseverance will deepen through the 10 representatives of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the 20 representatives of the ASEAN Commission for the Protection of Women and Children (ACWC), who will have to use the AHRD as a foundational and guiding document to act on protecting the rights of 600 million in ASEAN in the years ahead.

2 Recommendations for the ASEAN Human Rights Declaration

We suggest that the ADHR be categorized in three parts; a Preamble, the Articles and Provisions for Implementation.

2.1 AHRD Preamble

A preamble is crucial to set the tone for the evolution of the region’s human rights agenda in the years to come. It has to set the vision for principles of the AHRD so that it can become a living document for the people.

The preamble ought to highlight the multi-faceted and interconnectedness of human rights across various thematic issues. Like the Declaration for the Americas, the preamble also ought to express an equal emphasis on duties and responsibilities of individuals. Without responsible citizens, successful societies cannot be developed. It is also important to ensure that the rule of law is observed as spelt out in the Bangkok Declaration (1967) which states that there must be “abiding respect for justice and rule of law in the relationship among countries of the region.”

MARUAH’s Suggested Preamble

We ask ASEAN Member States to:-

Reaffirm respect for all international human rights principles and fundamental freedoms - universality, indivisibility, interdependence and inalienability;

¹ Articles 7, 11 and 13, respectively of ASEAN Charter

Adhere to the principles of right to life and human dignity as inalienable and non-derogable rights under international law;

Commit to the principles of human and peoples' rights and freedoms contained in the various ASEAN Declarations and International Conventions adopted by Member States;

Adhere to the ASEAN Charter Principles of “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice” (Article 2(i));

Recommit to the pledge made in the Charter to “alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation”; and “to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of Member States of ASEAN” (ASEAN Charter, Article 1. 6; 1.7);

Resolve to use the principle of the right to development as central to ASEAN’s aim in achieving equitable economic growth for all. In addition, civil and political rights cannot be dissociated from economic, social and cultural rights;

Observe that the enjoyment of rights and freedoms also implies the performance of duties on the part of all stakeholders of our societies and communities;

Commit to implementing both the promotion and protection of human and people' rights and freedoms in a pro-active and meaningful manner;

Commit to being transparent and accountable to the people on adherence processes to human rights;

Recognise the need of human rights procedures to be democratic and inclusive of ALL people in ASEAN community and their respective perspectives and opinions;

Uphold the access to justice as well as dispute and redress mechanisms for all people;

Aspire to uphold the Responsibility to Protect (R2P) principle to protect the people in ASEAN Member States if ever they are to be facing severe internal threats to life.

2.2 The Articles

We say the AHRD articles need to reflect the values of the UDHR, the terms of the International Conventions, ASEAN Charter, ASEAN Declarations and the Terms of Reference (TOR) of the three ASEAN human rights bodies.

MARUAH urges that the following to be considered for the AHRD by the drafting committee:-

A. Equality Rights

1. Every individual shall have the right to dignity inherent in a human being.

This would mean that the Article in the proposed AHRD ought to include the following concepts;

- a. Non-discrimination - direct or indirect - by public or private actors, on any ground whatsoever, such as race, colour, gender, sexual orientation, political or other opinion, national or social origin, social and economic status, marital status, age, disability, ethnicity, religion, nationality, language, birth or any other condition.
 - b. Equal protection of the human being under the law.
 - c. Recognition for the individual as someone born free and equal in dignity and rights.
 - d. Equality from a substantive perspective (CEDAW principles) and one that takes into account equality in opportunity, equality in access, and equality of results.
 - e. Recognition that an individual has an inherent potential to contribute meaningfully to society.
 - f. Acceptance that dignity means enabling empowerment of the individual.
2. Every individual shall have the right to access justice – both in the formal and informal systems - fairly and be presumed innocent until proven guilty.

This would mean that the Article in the proposed AHRD ought to include the following:-

- a. A justice system that is transparent, expedient in processing.
- b. Availability of Legal Aid - everyone shall have the possibility of being advised, defended and represented (European Charter; Article 47).

- c. Punishments must not be disproportionate to the criminal offence (European Charter; Article 49).
 - d. Recourse processes for any miscarriage of justice during the trial or mismanagement in the investigation processes.
3. Every individual has a right to a nationality.

B. Civil Rights

4. Every individual has the right to free movement

This would mean that this Article in the proposed AHRD ought to include the following:-

- a. Trans-border movement of people needs to be taken into account.
- b. Freedom to leave his country and return.

5. Every individual has the right to express views without fear

This would mean that this Article in the proposed AHRD ought to include the following:-

- a. The freedom to hold opinions and impart information and ideas
- b. Provisions for Censorship where needed for moral protection of the young
- c. Establishing the need for Media Freedom

6. Every individual has the freedom of assembly and Association

This could mean that the Article in the proposed AHRD could include the following caution:-

- a. That this freedom, asserted through pursuits of being a democratic society, is also subject to legal processes when the rights and freedoms of others have been violated.

C. Political Rights

7. Every individual has the right to participate freely in the government of his country, taking part in free and fair elections, or to stand as a candidate.

This would mean that this Article to be proposed for the AHRD ought to include the following:-

- a. Respecting the rights of individuals to access public services (African Charter; Article 13.2).
 - b. Ensuring that processes are transparent and information be made available when an individual faces damage by public institution.
8. Every individual has the right to protect intellectual property.
9. Every individual has the right to protection of personal data concerning him/her (European Charter: Article 37).

D. Economic Rights

10. Every adult has the right to self-determination and therefore the right to access work and pursue an occupation of their choice.
11. Every adult has the right to working conditions that respect his/her health, safety and dignity (European Charter; Article 31).

This means that this Article would include the following terms:

- a. Offering Decent work conditions, aligning with definition of International Labour Organisation (ILO).
- b. Offering protection measures against structural unemployment
- c. Offering living wages for the individuals.
- d. Offering substantive social security benefits.
- e. Recognizing informal work and thus eliminating discrimination against informal workers.
- f. Providing Adequate Rest hours.
- g. Balancing conditions for individuals to enjoy family life and work.
- h. Providing opportunities for vulnerable communities such as the disabled so that they have options to work and live with dignity.
- i. Ensuring there is no place for forced labour conditions or slave labour through trafficking.
- j. Ensuring that there is no place for child labour.
- k. Offering favourable work conditions for those with varying workloads and capabilities (for example the elderly, the disabled).
- l. Ensuring there are provisions for adequate leisure.
- m. Ensuring there are provisions for well-being of the individual at the workplace
- n. Protecting individuals from dismissals connected with maternity or caregiving duties.

12. Every individual has the right to access financial resources such as bank loans, mortgages or other forms of non-predatory financial credit especially on humanitarian grounds when communities are trying to recover from disasters or displacements by development projects.
13. Every individual has a right to own wealth and property and to also bequeath it under respective conditions of the law.

E. Social/Cultural Rights

14. Every individual has the right to access the public sphere for basic necessities such as food, affordable housing, clean water, sanitation, healthcare and education.
15. Every individual has the right to a clean environment, which requires that the drivers of environmental marginality and associated negative externalities be effectively addressed.
16. Every individual has the right to access legislated social protection measures that alleviate their financial distress in a dignified manner. This assistance must be at a decent level to maintain the dignity of the individual.
17. Every individual has the right to be free from any form of violence, exploitation and other forms of abuse.
18. Every individual, especially the most vulnerable such as human rights defenders, media practitioners, migrant workers, refugees, sex workers etc, need more protection measures.
19. Every individual has the right to family life and to make choices on their lifestyle.
20. Every individual has the right to live.
21. Every spouse-to-be must be able to give free and full consent to enter their marriage.
22. Every individual has the right to access sexual and reproductive health services.

23. Every child, woman or man must be protected legally in ASEAN against being trafficked.
24. Every father and mother has the same rights and responsibilities as a parent and should balance their responsibilities in raising a family.
25. Every individual and community has the right to survive and be offered temporary special measures to help them cope with natural and climatic disasters, especially when exacerbated by anthropogenic climate change..
26. Every affected marginalised community and/or affected individuals ought to receive compensation as part of climate justice measures.

F. Personal Responsibility

27. Every individual has the right to national and international peace and security and to protection.
28. Every individual and nations within ASEAN have the right to equal and sustainable human development and to enjoy its benefits.
29. Every individual person has responsibilities to preserve and strengthen the harmony in a community, pay taxes promptly and contribute to the democratic process to achieve ASEAN unity.

2.3 Implementation

Observations

- a. At National Levels - MARUAH is concerned that the terms of AHRD are not accepted and reinforced in the respective jurisdictions of ASEAN Member States, with an acceptable level of governance and accountability. A key part of the AHRD has to be dedicated to sustained implementation, which means sufficient institutional, financial, human resources will be needed.
- b. Education - Education and public awareness of Human Rights are critical in allowing people at all levels to understand the rights they possess and their subsequent empowerment to defend and hold on to them. Human Rights, ASEAN education, ASEAN Human Rights Education be implemented in all schools in ASEAN. Specialist research groups or think-tanks could help with the documentation of human rights abuses.

- c. To enable this process it is essential that the allocation of adequate resources and financing of human rights work be greatly increased. It is also important that the AICHR becomes more prominent and visible in the public eye. This will build confidence amongst our populations that human rights issues are being taken seriously and that the AICHR has the potential to be a catalyst for change.
- d. Evolution of AHRD – There ought to be a degree of flexibility for the human rights agenda to evolve. A clear elucidation of medium and long term reviews (possibly every 5 years) needs to be institutionalised. The declaration must also transmute into a full-fledged and legally binding charter or convention in the future, accompanied by a regional court that will be able to handle cases itself.
- e. Autonomy of AICHR representatives – This first batch of AICHR representatives are the pace-setters. We also assert that the TOR for the AICHR needs to be reviewed to increase the efficiency of the AICHR representatives and to increase the autonomy of the representatives to assert with a long-term view of bringing ASEAN Human Rights onto a universal plane. AICHR representatives need to be able to “obtain information” on key human rights violations and even issue an investigation.
- f. Civil Society Actors – With accreditation there will be more opportunities for formal interactions of civil society organisations (CSOs) with AICHR on matters related to the AHRD. For effective implementation of the AHRD, CSOs play a very useful role by being watchful on human rights violations and also in protecting the vulnerable. CSOs need to be seen as constructive partners with the aim of making the human rights agenda as ambitious and robust as possible. No doubt, there will be controversies and conflicts along the way, but these must be seen as inevitable if ASEAN desires to be seen as a credible international player both internally by ASEAN citizens and externally at the international level.. Participatory decision-making processes are seen as part of governance. It is essential to incorporate CSO participation at key AICHR meetings to ensure that governments and CSOs are engaged in interactive dialogues on the AHRD and the broader human rights agenda.
- g. National Human Rights Institutions (NHRIs) – The AHRD will also become an area of monitoring for the four NHRIs. NHRIs can play a role to increase capacity at the national level and work more closely with the legal fraternity in each country.

- h. Regional and International Human Rights Bodies - AICHR's active engagement with regional and international human rights bodies, UN Special Rapporteurs, UN Human Rights Council, International NGOs such as Amnesty International will aid in capacity-building and in the implementation of the AHRD.
- i. Dedicated Session – There ought to be a Human Rights Day at the ASEAN level annually so that there is stock-taking of the region with regard to the implementation outcomes of the AHRD. These sessions should be participatory in nature, allowing for full participation of Non-governmental organisations (NGOs) and international organisations (IOs) to contribute their perspectives in a constructive and unrestricted manner. Proceedings from these sessions and other relevant AICHR meetings should be comprehensively recorded and the subsequent information should be publicly and freely disseminated.

3 Conclusion

At the beginning of last year, much attention was placed on the Middle East as popular uprisings revolted against long-time dictatorial governments. People, especially the youth began to recognize and exercise their inalienable rights that catalyzed large scale democratic revolutions, bringing systemic, irreversible and permanent change to the region. It is evident that the use of state-sanctioned intimidation and force will not deter the aspirations of individuals to fight for change and reform. It showed a wider yearning for greater participation of people in the processes that shape countries. The desire for democracy and true representation is seen to be something universal which applies to all people and societies regardless of national circumstances.

We urge the governments through this AHRD process to firmly and steadfastly commit to a progressive and ambitious human rights agenda that genuinely serves to enhance the protection and promotion of human rights.