



A Performance Report on the Third Year of the ASEAN Intergovernmental Commission
on Human Rights (AICHR) 2011-2012

Solidarity for Asian People's Advocacy
Task Force on ASEAN and Human Rights (SAPA TFAHR)



Asian Forum for Human Rights and Development

Still Window-Dressing

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STILL WINDOW-DRESSING

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Contents

Acronyms and abbreviations /vi

Foreword /viii

Chapter 1: Introduction /1

Chapter 2: Institutional Building /3

Chapter 3: Implementation of Mandates and Functions /20

Chapter 4: Engagement with Stakeholders /51

Chapter 5: Conclusions and Recommendations /62

Annexes

- **A. Press Releases issued by AICHR during 2012 /71**
- **B. Statements by ASEAN CSOs on the AHRD in 2012 /94**
- **C. Statements by INGOs on the AHRD in 2012 /138**
- **D. Statement by NHRI on the AHRD in 2012 /150**
- **E. Statements by ASEAN Dialogue Partners /152
on the AHRD in 2012**
- **F. Statements by the UN on the AHRD in 2012 /154**
- **G. Additional Resources /165**

About SAPA TFAHR /189

Acronyms and abbreviations

ACSC/APF	ASEAN Civil Society Conference/ASEAN Peoples' Forum
ACW	ASEAN Committee on Women
ACWC	ASEAN Commission for the Protection of the Rights of Women and Children
ADSOM	ASEAN Defence Senior Officials Meeting
ACHPR	African Commission on Human and Peoples' Rights
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIPP	Asian Indigenous Peoples Pact
AMM	ASEAN Ministerial Meeting or ASEAN Foreign Ministers Meeting
ASEAN	Association of Southeast Asian Nations
CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CIDA	Canadian International Development Agency
CRC	UN Convention on the Rights of the Child
CSO	Civil Society Organisation
EU	European Union
FIDH	International Federation for Human Rights
FORUM-ASIA	Asian Forum for Human Rights and Development
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists

ILO	International Labour Organisation
INGO	International non-governmental organisation
NGO	Non-Governmental Organisation
NHRIs	National Human Rights Institutions
OAS	Organisation of American States
OHCHR	Office of the UN High Commissioner for Human Rights
RoP	Rules of Procedures
SAPA	Solidarity for Asian Peoples' Advocacy
SAPA TFAB	SAPA Task Force on ASEAN Burma
SAPA TFAHR	Solidarity for Asian People's Advocacy - Task Force on ASEAN & Human Rights
SEA	Southeast Asia
SEACA	South East Asia Committee for Advocacy
SEAPA	Southeast Asia Press Alliance
SEAWC	Southeast Asia Women's Caucus on ASEAN
SLOM	Senior Labour Officials Meeting
SOM-HD	Senior Officials Meeting on Health Development
ToR	Term of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDP	United Nations Development Programme
UN WOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	Universal Periodic Review
VDPA	Vienna Declaration and Programme of Action (1993)

Foreword

The year under review, 2012, saw AICHR take limited steps in the direction of transparency and consultation with civil society. Some of these steps addressed criticism and reflect recommendations that our previous reports had highlighted:

- *We called for AICHR to launch an official website to share developments in its work with the public* – such a website was indeed launched in October;
- *We encouraged AICHR to conduct more national and regional consultation meetings with civil society* – 2012 saw more consultations at the national level, focusing largely on the ASEAN Human Rights Declaration (AHRD), and which varied widely, from extensive, inclusive consultations in a very small number of member states, through limited consultations in others to no consultations at all in several states. On the regional level AICHR held, for the first time, two official consultations with civil society, both focusing on the AHRD;
- *We criticised AICHR for its failure to announce publicly the change of a national representative* – in 2012 AICHR started providing information on the changing of national representatives in its press statements.

These developments have been encouraging and AICHR should continue and make further efforts towards greater transparency and participation of civil society, as there is still much room for improvement. For example important information and updates are missing from the official website, and the regional consultations with civil society were marred by the rejection of some civil society organizations from participating, due to vetoes by certain member states which meant no consensus was reached for their participation. This arbitrary, selective and discriminatory policy must stop. AICHR should provide equal access to all civil society organizations that wish to engage with it.

Unfortunately, any positive developments were been overshadowed and undermined by the AHRD, which AICHR drafted, and which was adopted by ASEAN's leaders in November. The AHRD offers human rights provisions and protections that fall far below international human rights law and standards – a major disappointment and a setback to human rights in the region. This failure by AICHR in its first major project owes much to the consensus-based decision-making, which governs AICHR and ASEAN as a whole. “Consensus” ensures that the lowest common denominator is the basis of any decision – in this meant a triumph to the view that respecting or ignoring human rights is ultimately a matter for the discretion of governments. In retrospective it has become clear that the regional consultations with civil society only took place after the AHRD was practically finalised and little if any room was left for significant changes.

The deeply flawed declaration has been widely criticised by the international community and civil society, both within the region and internationally. It will need a serious review and thorough revision if it is to become relevant to the needs of the peoples of ASEAN and enshrine truly and fully their inalienable human rights.

In light of the secrecy which surround much of the AICHR's operations during its first three years and continues to it we believe that this series of annual performance reports will provide a useful tool for reviewing AICHR's work, and that our recommendations will serve as a foundation for much-needed improvements. This is particularly important in view of the upcoming review of AICHR's Terms of Reference in 2014.

The performance reports are also important in ensuring that the public in ASEAN has access to as much information as is possible to obtain on developments in the Commission's work. ASEAN's mantra of building a 'people-oriented' community lacks any credibility as long as its human rights commission is incapable of properly and fully engaging with non-governmental human rights organizations or of disclosing the vast majority the documents that it produces. It is extremely disappointing that the AICHR has yet to take even minimal steps towards promoting and protecting human rights on the ground, as violations continue unabated and often with impunity throughout the region.

During 2012, SAPA TFAHR, its members and other national, regional and international partners continued their efforts to engage with the AICHR, despite limited openings and the fundamental flaws of the Commission's Terms of Reference. This report chronicles much of this often-frustrating engagement, especially during process of drafting the AHRD. Statements by a wide range of stakeholders, both within and outside ASEAN, concerning the AHRD are included in the annexes, as are official AICHR statements. Also included in an annex is a table comparing the key recommendations by civil society on the AHRD and the final text as adopted in November 2012, by way of illustrating the AICHR's failure to incorporate most of them in the Declaration.

The Declaration's failure to meet international human rights standards has lead to its rejection by civil society, not only within the region but also by leading international human rights NGOs and the expression of reservations by key human rights figures, including the UN High Commissioner for Human Rights.

We would like to express our sincere gratitude to those individuals and organizations who have contributed to the drafting of this report, including all members of SAPA TFAHR and FORUM-ASIA's members and its Secretariat. We thank Mr. Shiwei Ye, who was the researcher responsible for drafting this report and the review conducted by Dr. Yuval Ginbar of Amnesty International. We are also thankful for the contribution and input from other observers and partners of SAPA TFAHR, including the ASEAN LGBTIQ Caucus, Southeast Asia Press Alliance (SEAPA), the American Bar Association Rule of Law Initiative (ABA Roli) and Amnesty International. Our special appreciation and thanks to Yap Swee Seng (former Executive Director of FORUM-ASIA) and Haris Azhar (Coordinator

of KontraS) for their leadership and dedication as the convenors of SAPA TFAHR for the past years and for their hard work to make this report possible.

We also would like to acknowledge and appreciate the financial support provided by the Open Society Institute (OSI) and Swedish International Development Cooperation Agency (SIDA), whose generosity made this report possible and ensures that we can sustain our advocacy to strengthen ASEAN's human rights mechanisms.

As the AICHR's second three-year term begins, this report, alongside previous and subsequent ones, will form a part of our advocacy toolbox to ensure the Commission can be reformed and progressively strengthened to become a truly independent and effective body that is both able and willing to help protect and realise all human rights for everyone in ASEAN. SAPA TFAHR is fully committed to achieving this goal.

On behalf of the SAPA TFAHR,

Giyoun Kim

Co-Convenor of SAPA TFAHR
Acting Executive Director
of FORUM-ASIA

Chalida Tajaroensuk

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Chapter 1: Introduction

"I encouraged AICHR not to react defensively to civil society partners, but to open the doors and harness their energy and contributions. This has been the key to success for similar mechanisms in all other regions of the world. ... I remain concerned, therefore, when I hear continued frustration from civil society partners about a lack of transparency and willingness by AICHR to engage with them in taking forward the human rights agenda."

(UN High Commissioner for Human Rights, Navanethem 'Navi' Pillay)

2012 marked the final year of the first three-year term of the ASEAN Intergovernmental Commission on Human Rights (AICHR). The high expectations and optimism generated by the AICHR's establishment in 2009 have dissipated over the course of these three years. While few expected it to become a strong, independent and effective regional mechanism overnight, the AICHR has done little to adequately implement even its already paltry and weak mandate, let alone try to work creatively to exploit the ToR use to the maximum so as to meaningfully defend human rights. This, despite the best intention and efforts of a minority of AICHR representatives, whose voices were often stifled by the "consensus" approach to decision-making.

Civil society went into 2012 with both hopes and concerns, as the AICHR was drafting and later finalizing, a human rights declaration, the first of its kind in Asia. Sadly, the drafting was done largely in secrecy, with no consultation with the public and civil society until very late in the day, when the declaration was all but finalized. The end-result is a declaration that falls far below international standards and is unworthy of its name.

2012 was also marked by gross human rights violations in a number of ASEAN countries, including in Cambodia, the country chairing ASEAN in general and the AICHR in particular. The AICHR failed to take any action to address human rights violations taking place throughout the region and documented by civil society, despite the Commission's mandate to both protect and promote human rights.

This is the third annual report on the AICHR's performance by the Solidarity of Asian Peoples' Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR). These annual reports assess the work of the AICHR, with a view to providing the public regular monitoring and evaluation of development involving the region's first human rights body. SAPA TFAHR hopes that these reports contribute to the strengthening of the AICHR and turning it into a genuine human rights body that protects and promotes universal human rights.

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SAPA TFAHR's first performance review of the AICHR, *Hiding Behind Its Limits*, was written in the context and understanding that the Commission was at its institution-building stage as a newly-established body.¹ It was thus understandable, merely one year after its inauguration, that its main activities were focused on giving flesh to its mandate and functions. However, the second performance report, *A Commission Shrouded in Secrecy*, concluded that 2011 was a disappointing year in which the AICHR did not release a single document it adopted, held any regional consultation meeting with civil society, conclude a single thematic study, or improve the human rights of a single person in the region.²

Although the AICHR has conducted slightly more activities in 2012 when compared to its dismal record in 2011, these were insufficient for the Commission to truly live up to its mandate to protect and promote human rights. The adoption of a deeply flawed "human rights declaration", far from a crowning achievement, is an unfortunate legacy of the AICHR's first term.

This present report continues to assess the AICHR's performance in key areas, including the implementation of its work plan, especially the drafting of the ASEAN human rights declaration (AHRD), and engagement with stakeholders. It covers the period from January 1st to December 31st, 2012.

The assessment is based on information gathered from different sources, including publicly available official documents of the AICHR, communications between non-governmental organisations (NGOs) and the AICHR and the ASEAN Secretariat, other stakeholders that engage with the AICHR, unofficial sources, news media reports, and other relevant information. As was the case when the first two reports were written, there is very little official and publicly information on the AICHR. Requests for information made to the AICHR often elicited no response or a limited one.

1 The first performance report is available at: <http://www.forum-asia.org/?p=5451>.

2 The second performance report is available at: <http://www.forum-asia.org/?p=12507>.

Chapter 2: **Institutional Building**

2.1 Changes of the AICHR's Representatives

At the closing ceremony of the 19th ASEAN Summit in Bali on 19 November 2011, Indonesia handed the chair of the regional bloc to Cambodia. Accordingly, Cambodia's Representative, Mr. Om Yentieng, took over as Chairperson of the AICHR from Indonesia's AICHR representative, Mr. Rafendi Djamin.

The three-year term of the original batch of AICHR representatives came to an end in October 2012. Article 5 of the Term of Reference (ToR) of the AICHR stipulates that representatives serve a three-year term, may be consecutively re-appointed only once, and may be replaced at any time at the discretion of his or her government. Vietnam and Brunei replaced their representatives abruptly in 2011 before their first term officially ended, without providing any reasons to the public. Some other ASEAN governments made appointments only one or two months after the term of their representatives officially ended. Some governments appointed new representatives or re-appointed the incumbent ones, but did not immediately and publicly announce their decisions.

Article 5.3 of the ToR stipulates that ASEAN governments "shall give due consideration to gender equality, integrity and competence in the field of human rights" when selecting their representatives to the Commission. However, governments that have chosen new representatives to the AICHR, like Brunei and Vietnam in 2011, continued to select current or former civil servants who are closely linked to the government and whose past positions do not appear to indicate substantive experience or expertise in human rights protection.

Brunei

Brunei has re-appointed Mr. Pehin Dato Dr. Awang Hj. Ahmad bin Hj. Jumat to a second term. Mr. Jumat replaced Brunei's first representative, Abdul Hamid Bakal in 2011 without any explanation from the Brunei government. Dato Jumat was a minister at three ministries in the past ten years: the Ministry of Culture, Youth and Sport, the Ministry of Industry and Primary Resource, and Ministry of Development. There is no publicly available information indicating that there has been an open nomination and selection process leading up to his re-appointment.

Burma/Myanmar

The Burmese government has re-appointed Mr. Kyaw Tint Swe to a second term. He is a career diplomat who had been the former military junta's permanent representative to the UN in New York and is currently the vice chair of the Myanmar National Human Rights Commission, which has been widely criticized

Still Window-Dressing

by Burmese civil society as not in compliance with the Paris Principles. As the military regime's envoy to the UN between 2001 and 2010, he often defended the junta's dismal human rights record, including the Depayin massacre in 2003, in which a government-affiliated mob killed as many as 70 members of the main opposition party who were accompanying the convoy of their leader Aung San Suu Kyi. In a speech before the UN General Assembly's Third Committee, he infamously denied any government involvement in the massacre and also dismissed allegations of rape and attacks against civilians by the Burma/Myanmar Army as part of a "disinformation campaign." There is no publicly available information indicating that there has been an open nomination and selection process leading up to his re-appointment.

Cambodia

Senior government official Om Yenteng, Cambodia's first AICHR representative, continues to serve as his country's representative to the AICHR, but may be replaced pending a final decision. There has been no official announcement of an open nomination and selection process. He holds various high-level positions within the Cambodian government, including as President of the Cambodian Human Rights Committee, chief of the Cambodian Anti-Corruption Unit under the Office of the Council of Ministers, and Senior Minister and Vice President of the Council for Legal and Judicial Reforms.

Indonesia

On 13 August 2012, at the second national consultation on the AHRD organized by the Indonesian representative to the AICHR, the selection process was also discussed. Initially, the representative from the ministry of foreign affairs suggested the reappointment of Rafendi Djamin as Indonesia Representative to the AICHR. However, civil society organizations that attended the consultation recommended to the government to set up an open selection process to select a representative for the 2013-2015 term. The participants also recommended that the government establish a selection panel, as it did in 2009.

In late August 2012, the Indonesian MFA announced that it would, together with the Ministry of Law and Human Rights, select Indonesia's representative to the AICHR, "in an open and transparent manner by promoting democratic principles."³ The MFA announcement stated that qualified candidates should:

1. have high integrity and competence in the promotion and protection of human rights;
2. have played an active role in the promotion and enforcement of human rights in Indonesia;
3. have a strong knowledge of human rights and have extensive networks at the national and international levels; and
4. have an understanding of the development and dynamics of ASEAN.

3 See: <http://www.hrwg.org/en/asean/aichr/agenda/item/3871-announcement-from-mfa-indonesia-on-aichr-rep-selection-process-pengumuman-pemilihan-wakil-indonesia-untuk-aichr>.

The MFA asked interested candidates to submit by 21 September a CV, a statement of support from a minimum of three human rights organisations, a paper in English on the promotion and protection of human rights in ASEAN (maximum two-page) and a recent photograph. The Ministry of Foreign Affairs did not appear to have disclosed to the public the identity or the number of candidates who applied, but the two known candidates were the incumbent, Mr. Rafendi Djamin, and Mr. Todung Mulya Lubis, a reknown human rights lawyer.

One of the requirements for nomination as AICHR representative in Indonesia is a statement support from at least three human rights organizations. After collecting information from different sources, this report finds that Rafendi Djamin was nominated by the Human Rights Working Group - Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG). On the other hand, Todung Mulya Lubis was nominated by the Commission for the Disappeared and Victims of Violence (KontraS), Imparsial, and YLBHI (Indonesia Legal Aid Foundation, and was later supported in separate recommendation letters by Yayasan Perlindungan Anak Indonesia (YPHA), and Migrant Care.

Both candidates were invited to a meeting with the selection team, which interviewed both candidates at the same time. This meeting was not open to the public or other civil society representatives. Although the nomination stage of the selection process was open, there is no information to indicate that the MFA has sought further input from civil society during the assessment stage nor did it disclose how the decision to choose one candidate over the other was reached.

The MFA originally announced that a decision would be made by the end of October 2012, when the three-year term of Mr. Djamin officially ended. However, the MFA only announced its decision in January 2013 and did not provide a reason for the delay. On 4 January 2013, the MFA announced that it has re-appointed Mr. Djamin to a second term as its representative to the AICHR.⁴ The decision was made by the Foreign Ministry, based on what the ministry described as “the consideration of the selection team,” which, according to government information, is comprised of representatives from the Ministry of Foreign Affairs, Ministry of Law and Human Rights, National Human Rights Commission (Komnasham), and a journalist.

Lao

The Lao government has appointed another career diplomat, Mr. Phoukhong Sisoulath, as its new representative to the AICHR. Mr. Sisoulath is Project

4 See AICHR press release, “Re-Appointment of Mr. Rafendi Djamin as Indonesian Representative for the ASEAN Intergovernmental Commission on Human Rights (AICHR),” 4 January 2013, <http://aichr.org/press-release/re-appointment-of-mr-rafendi-djamin-as-indonesian-representative-for-the-asean-inter-governmental-commission-on-human-rights-aichr/>.

Still Window-Dressing

Manager at the Department of Treaties and Law under the Ministry of Foreign Affairs. He succeeds Lao's first AICHR representative, Mr. Bounkeut Sangsomsak, a career diplomat who had served as his country's ambassador to Thailand and permanent secretary of the Ministry of Foreign Affairs. There is no publicly available information indicating that there has been an open nomination and transparent selection process leading up to his appointment.

Malaysia

The Malaysian government has re-appointed lawyer Dato' Sri Muhammad Shafee Abdullah to a second term. He was a member of the Human Rights Committee of the Bar Council and the National Human Rights Commission of Malaysia (SUHAKAM). There is no publicly available information indicating that there has been an open nomination and transparent selection process leading up to his re-appointment.

Singapore

On 1 November 2012, the Singaporean Ministry of Foreign Affairs announced that it has appointed career diplomat Ms. Chan Heng Chee as its new AICHR representative, replacing Mr. Richard R. Magnus, who was a retired judge and served as chairman of several Singaporean corporations.⁵ Chan is Ambassador-at-Large with the Foreign Ministry and chairs the Lee Kuan Yew Centre for Innovative Cities in the Singapore University of Technology and Design (SUTD). She held several ambassadorial posts prior to her AICHR appointment, including as Singapore's ambassador to the United States and, before that, its Permanent Representative to the United Nations in New York City. There is no publicly available information indicating that there has been an open nomination and transparent selection process leading up to her re-appointment.

The Philippines

Ambassador Rosario G. Manalo has been re-appointed for a second term. A career diplomat and a former ambassador to several European countries, she is a Senior Foreign Service Adviser to the Secretary of Foreign Affairs of the Philippines and a lecturer at Philippine universities. There is no publicly available information indicating that there has been an open nomination and transparent selection process leading up to her re-appointment.

Thailand

On 3 January 2013, the Thai Ministry of Foreign Affairs decided to appoint Mr. Seree Nonthasoot as its new AICHR representative, replacing Dr. Sriprapha Petchamesree, who decided not to seek a second term.

The Thai MFA circulated a call for application to its contacts, including some Thai NGOs, on 15 October 2012. The application period was open from the

⁵ See Press Release of Ministry of Foreign Affairs of Singapore, http://www.mfa.gov.sg/content/mfa/over-seasmission/asean/press_statements_speeches/2012/201210/press_20121031.html

date of announcement to 15 November 2012. The appointment was agreed on by a selection committee, which was chaired by the Permanent Secretary of the MFA, and comprised of other government agencies, the government-created Law Reform Commission, the National Human Rights Commission of Thailand, Thai representatives to the ASEAN Commission on the Protection and Promotion of the Rights of Women and Children (ACWC), a journalist and an NGO representative. Following the call for application, at least four individuals are known to have submitted their candidacies, including long-time human rights activist Mr. Boonthan Veerawongse..

According to publicly available information, Dr. Seree is a lawyer, university lecturer, and currently Legal Counsel at the State Enterprise Policy Office (SEPO) under the Ministry of Finance of Thailand since 2003. He was previously Legal Counsel to the Treasury of Thailand from 2006-2008, reviewing legal issues related to the reform of state-owned land. He was also Legal Advisor to the Council of State from 1995-2000. A barrister at law holding law degrees from Thai, British and American universities, Dr. Seree most recently received certificates from the Harvard University Kennedy School of Government on infrastructure in a market economy and in trade negotiation. In 2011, he was appointed to be Thailand's representative to the AICHR Drafting Group of the AHRD.

Vietnam

Ms. Le Thi Thu has been appointed to succeed Ambassador Nguyen Duy Hung, for whom she had worked as an assistant while he was Vietnam's AICHR representative. Ms. Le Thi Thu is Vietnam's third representative, and first woman, to the AICHR. She is the Vice Head of the ASEAN Department under the Ministry of Foreign Affairs. There is no publicly available information indicating that there has been an open nomination and transparent selection process leading up to her appointment.

2.2 Official AICHR Meetings

Article 6.2 of the ToR of the AICHR stipulates that the Commission shall have at least two meetings in a year and each meeting shall not exceed five days. These meetings remained closed to civil society in 2012. Article 6.5 gives ASEAN foreign ministers the authority to instruct the AICHR to meet and this authority was exercised for the first time in 2012. In the period covered by this report, the AICHR held three regular meetings, one special meeting, and one interface meeting with ASEAN foreign ministers. In drafting the ASEAN human rights declaration (AHRD), the Commission held ten internal meetings, one post-meeting press conference, two regional consultations with ASEAN sectoral bodies, and two regional consultations with civil society organisations (CSOs). However, many CSOs were left out, some through "blacklisting". (see Chapter 3).

The AICHR did not announce or publish in advance the agenda of any of their various official meetings and other activities held in 2012. Before the launch of the AICHR's website in late October 2012 (see Chapter 2.6), the meeting calendar on

Still Window-Dressing

ASEAN's website provided the dates for some but not all of the AICHR meetings and activities in 2012. The AICHR's Guidelines on Operations (see Chapter 2.3) require that the provisional agenda be circulated to all Member States 15 working days prior to each meeting, but there is no provision requiring its publication or circulation to civil society for input and suggestions.

Table 1: Official Meetings of the AICHR in 2012

Date	Session	Location
8-9 January 2012	1 st Meeting on the AHRD	Siem Reap, Cambodia
17-19 February 2012	2 nd Meeting on the AHRD	ASEAN Secretariat, Jakarta, Indonesia
9-13 March 2012	8 th Regular Meeting; Interface Meeting with the Committee of Permanent Representatives (CPR); 3 rd Meeting on the AHRD	ASEAN Secretariat, Jakarta, Indonesia
2 April 2012	Interface Meeting with ASEAN Foreign Ministers at the ASEAN Foreign Ministers' Meeting and the 20 th ASEAN Summit	Phnom Penh, Cambodia
9-11 April 2012	4 th Meeting on the AHRD	Jakarta, Indonesia
6-10 May 2012	9 th Regular Meeting; 5 th Meeting on the AHRD; 1 st Regional Consultation on the AHRD with ASEAN Sectoral Bodies	Bangkok, Thailand
3-6 June 2012	6 th Meeting on the AHRD; post-meeting press conference (6 June)	Yangon, Burma/Myanmar
22-23 June 2012	7 th Meeting on the AHRD; 1 st Regional Consultation on the AHRD with CSOs	Kuala Lumpur, Malaysia
24-26 August 2012	Special Meeting; 2 nd Regional Consultation on the AHRD with ASEAN Sectoral Bodies; 8 th Meeting on the AHRD	Bandar Seri Begawan, Brunei Darussalam
12-14 September 2012	2 nd Regional Consultation on the AHRD with CSOs; 9 th Meeting on the AHRD	Manila, Philippines
21-24 September 2012	10 th Meeting on the AHRD; 10 th Regular Meeting	Siem Reap, Cambodia

Press conferences

Article 7.1 of the Guidelines of Operations adopted by the AICHR authorizes the Chairperson to hold a press conference if the Commission agrees to do so. On 6 June, following the 6th Meeting on the AHRD, the AICHR held its first-ever press conference at the Park Royal Hotel in Yangon. However, six out of ten

AICHR representatives did not attend, including Mr. Chet Chealy, the Alternate Representative of Cambodia who chaired the Yangon meeting. The AICHR representatives who conducted the press conference were Mr. Kyaw Tint Swe (Burma), Mr. Rafendi Djamin (Indonesia), Ambassador Rosario G. Manalo (the Philippines), and Dr. Sriprapha Petcharamesree (Thailand). The press conference was not mentioned in the official press release of the 6th Meeting on the AHRD, but it was covered in short articles that appeared in the State mouth-piece *New Light of Myanmar* on 6 June and the Burmese-language newspaper *Kyaymon* (the Mirror) on 7 June.

2.3 Guidelines on the Operations of the AICHR

The AICHR first adopted its Guidelines on Operations in its 4th regular meeting in February 2011, more than a year after the Commission's creation. However, according to sources, the Guidelines did not immediately go into force due to an ASEAN member state's disagreements with some of the provisions.⁶ As a result, it appears the Guidelines⁷ were reviewed and adopted again more than a year later on 12 March 2012 during the AICHR's 8th regular meeting (see Annex 3). The Guidelines were uploaded to the AICHR official website, shortly after it was launched in late October 2012 (see Section 2.6).

The Guidelines contain 15 sections:

1. Format of Meeting
2. Agenda
3. Notification of Representation
4. Chairmanship
5. Documentation
6. Summary Record
7. Public Communication
8. Establishment of Working Group or Task Force
9. Reporting Procedures
10. Relationship with Other ASEAN Bodies
11. Interaction with Entities Associated with ASEAN and Other Stakeholders
12. Representation at Regional and International Events
13. Resource Mobilization and Utilization
14. Support from ASEAN Secretariat
15. General and Final Provisions

Consensus decision-making

The Guidelines repeat the ASEAN mantra of decision-making being "based on consultation and consensus" (Article 1.5), thus further enshrining this debilitating

6 SAPA TFAHR, *A Commission Shrouded in Secrecy: A Performance Report on the ASEAN Intergovernmental Commission on Human Rights 2010-2011*, p 4. http://www.forum-asia.org/uploads/books/acsis_final-online-version.pdf.

7 See Guidelines on the Operations of the AICHR: http://aichr.org/?dl_name=Guidelines_on_the_Operations_of_AICHR.pdf.

Still Window-Dressing

notion, which results in the pursuit of the lowest common denominator, as illustrated in the drafting of the AHRD.

Any future amendments of these restrictive Guidelines, while theoretically possible under Section 15, can only be made, again, by consensus.

Civil society organisations and observers have long criticized this approach as effectively giving each representative, and the member state to which they report, a de facto veto power over any decisions, even when they may be supported by a majority of other representatives. SAPA TFAHR has recommended that while the AICHR should seek consensus when making decisions, the Commission should revert to majority voting if a consensus cannot be reached.⁸

Regressive re-interpretation of international human rights law and standards

The Guidelines also enshrine the same problematic principles found in the ASEAN Human Rights Declaration (see Chapter 3.1), including the concept that the protection of human rights is subject to considerations of “national and regional particularities,” “historical, cultural and religious backgrounds,” and “the balance between rights and responsibilities.” Not only is the AICHR thereby espousing principles that significantly depart from international human rights law and standards, it creates tension and contradictions within the Guidelines themselves, as Article 10.1(i) instructs the AICHR to recommend that other ASEAN bodies “adhere to the international human rights standards”..

Restrictions on funding for protection activities

The AICHR has both a protection and a promotion mandate, as confirmed in both its ToR and the Guidelines. However, Article 13.1.2 of the Guidelines, following Article 8.6 of the ToR, restricts funding and other resources from non-ASEAN countries exclusively to promotion, capacity building and education. The omission of protection from the clause is most likely an attempt by ASEAN governments to ensure the AICHR does not acquire independent sources of funding for activities that they would rather it did not engage in, such as documentation of individual cases or policies involving human rights violations, public advocacy, field visits, and urgent appeals.

2.4 Budget

Despite previous calls for financial transparency by civil society,⁹ the AICHR has not published any of the following financial documents:

1. its annual budget for 2010, 2011 and 2012, which was approved by ASEAN foreign ministers;

8 SAPA TFAHR, *Hiding Behind Its Limits: A Performance Report on the first year of the ASEAN Intergovernmental Commission on Human Rights 2009-2010*, p. 5. http://forum-asia.org/2010/Report%20on%20AICHR's%20first%20year%20_for_dist.pdf.

9 SAPA TFAHR, *Hiding Behind Its Limits*, p. 17; *A Commission Shrouded in Secrecy*, p. 36-37.

2. its indicative budget for its priority programme for 2013, which was approved by ASEAN foreign ministers;
3. its budget for specific activities, including thematic studies and trainings, which was approved by ASEAN foreign ministers;
4. the Rules of Procedure of the AICHR Fund.

According to the Guidelines on Operations, the accounts of the funds under the purview of the AICHR are “entrusted” to the ASEAN Secretariat. The Guidelines allow the AICHR to “mobilize resources” not only from ASEAN Member States, but also from other sources, including:

1. The Endowment Fund;¹⁰
2. Dialogue Partners;¹¹
3. Donor countries;
4. International agencies;
5. The private sector;
6. NGOs.

Since the budget and expenses of the AICHR have not been disclosed, it is difficult to determine whether and to what extent the Commission has sought and/or received funding from any of these entities since the Guidelines came into effect in March 2012.

Article 13.4.1 of the Guidelines requires the auditing of accounts of the AICHR’s funds, in accordance with its ToR, the ASEAN Secretariat Financial Rules and Procedures, and the Rules of Procedure of the AICHR Fund. However, the latter two could not be found on ASEAN’s website and do not appear to be publicly accessible. There is also no information on whether any funders, be they ASEAN Member States or otherwise, have conducted monitoring and evaluation of the use of funds received by the AICHR.

Co-sponsors of several training programs and workshops organized by the AICHR may have contributed financially to these events. The two training programs organized by the AICHR’s Thai representative in December 2012 in Bangkok were co-sponsored by the Institute of Human Rights and Peace Studies of Mahidol University (Thailand), the Canadian International Development Agency (CIDA), and UN WOMEN (see Annexes 19 and 20). The Australian Human Rights Commission held a joint workshop with the AICHR on corporate social responsibility, 28-29 November 2012 in Singapore, with the support of Germany’s Friedrich Naumann Stiftung (see Annex 17). UN WOMEN and the Working Group for an ASEAN Human Rights Mechanism co-sponsored the Regional Workshop

10 Article 8.5 of the ToR of the AICHR stipulates that an endowment fund consists of voluntary contributions from ASEAN Member States and other sources.

11 The ten Dialogue Partners are Australia, Canada, China, EU, India, Japan, New Zealand, ROK, Russia, and the United States. The United Nations Development Program (UNDP) also has dialogue partner status.

Still Window-Dressing

and Consultation on Business and Human Rights in ASEAN, organized by the Philippine representative on 11 – 12 December 2012 in Singapore (see Annex 18). The AICHR's failure to provide any public information regarding financial resources and their use, most of which possibly come from taxpayers' money in ASEAN member states and other donor countries, poses a serious challenge in ensuring accountability and transparency in resource utilization.

As a comparison, the Inter-American Commission for Human Rights (IACHR) publishes its annual financial resources and expenses on its website.¹² The financial reports also list the amount of financial contribution from each Organisation of American States (OAS) member states, permanent observer states, non-member states, international organisations, donor agencies, and civil society organisations. The Commission also includes details of financial contributions and their utilization in its annual reports presented to the OAS General Assembly and publishes them on its website.¹³

2.5 Secretariat Support

Under the adopted Guidelines on Operations, the ASEAN Secretariat is tasked with supporting the implementation of a number of the AICHR's functions.¹⁴

In its five-year work plan (2010-2015), the AICHR determined, among other things, to “strengthen the ASEAN Secretariat’s support for AICHR, and consider the establishment of a dedicated secretariat that should evolve with the work of AICHR.” In the Chairman’s Statement of the 20th ASEAN Summit¹⁵, held in Phnom Penh, Cambodia from 3-4 April 2012 (shortly after the adoption of the Guidelines), ASEAN leaders “noted the AICHR’s requirement for the support of a dedicated unit within the ASEAN Secretariat.” Despite this recognition, the AICHR continues to operate on extremely limited secretarial support provided by the ASEAN Secretariat’s AIPA, ASEAN Foundation, AICHR and Other ASEAN Associated Division, which is still staffed by only a few persons. According to sources and observation, the foreign ministries of member state governments also provide support to AICHR representatives, but the extent of such support is most likely limited to matters of an administrative, rather than substantive, nature.

Since the inception of the AICHR, SAPA TFAHR has consistently recommended that ASEAN member states provide additional financial resources to the AICHR and, in particular, allow the Commission to establish its own independent secretariat.¹⁶ Since the AICHR’s financial documents are not publicly disclosed,

12 See: http://www.oas.org/en/iachr/mandate/financial_resources.asp.

13 See the IACHR’s 2011 Annual Report: <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>.

14 See Guidelines on the Operations of the AICHR articles 1.3, 2.1, 4(i), 5.1, 6.1, 6.3, 13.2.1, and 14.1.

15 Chairman’s Statement of the 20th ASEAN Summit Phnom Penh, 3 – 4 April 2012, <http://www.asean.org/archive/documents/20th%20summit/FINAL%20Chairman%20Statement1330.pdf>.

16 SAPA TFAHR, *Hiding Behind Its Limits*, p. 18-19; *A Commission Shrouded in Secrecy*, p. 38.

it is not possible to determine accurately the level of financial support the AICHR has received. There is no publicly available information on whether the recommendation to set up a separate, independent secretariat has been seriously considered or acted upon by ASEAN governments.

2.6 Making Information Public and Creating a Website

Although Article 6.7 of the AICHR's ToR requires it to "keep the public periodically informed of its work and activities," the Commission has failed to do so meaningfully. Based on information contained in its official press releases as of December 2012, the AICHR has reviewed, adopted or concluded at least 18 documents, in addition to several drafts of the AHRD and the Summary Records of its meetings. However, the AICHR has not released 15 of these 18 documents (or 83%). Nor has it released the Summary Record, prepared by and deposited with the ASEAN Secretariat, of any of the 26 official AICHR meetings so far, as AICHR considers them internal documents. The public and civil society are thus kept in the dark regarding the details of the deliberations. The press releases issued following the AICHR's largely secretive meetings continue to contain only succinct and scant information.

Table 2: Documents reviewed, adopted or concluded by the AICHR in 2011 and 2012

No	Name of documents	Date of adoption/ conclusion	Public accessibility
1	Guidelines on the Operations of the AICHR (GO)	4 th Meeting, Solo, Indonesia, (14 February 2011) and reviewed at the 8 th Meeting (9-13 March 2012)	Available on website since late October 2012
2	Terms of Reference of the Drafting Group of the ASEAN Human Rights Declaration	5 th Meeting, Jakarta, Indonesia (25-29 April 2011)	Not publicly accessible
3	Terms of Reference of the baseline study on Corporate Social Responsibility and Human Rights in ASEAN	5 th Meeting, Jakarta (25-29 April 2011)	Not publicly accessible
4	Rules of Procedure for the AICHR Fund	5 th Meeting, Jakarta (25-29 April 2011)	Not publicly accessible
5	First Annual Report of the AICHR	Submitted to the 44 th ASEAN Ministerial Meeting in Bali, Indonesia (July 2011)	Not publicly accessible
6	AICHR Work Plan (2013-2015)	7 th Meeting, Bali (28 November–1 December 2011)	Available on website since late October 2012
7	Priority Programme 2012 and its Budget	7 th Meeting, Bali (28 November–1 December 2011)	Not publicly accessible

Still Window-Dressing

8	Terms of Reference of the thematic study of Right to Peace	7 th Meeting, Bali (28 November –1 December 2011)	Not publicly accessible
9	Progress report by the Chair of the Drafting Group of the AHRD	7 th Meeting, Bali (28 November –1 December 2011)	Not publicly accessible
10	Final report of the Drafting Group of the AHRD	1 st Meeting on the AHRD, Siem Reap (8-9 January 2012)	Not publicly accessible
11	Progress Report on the AHRD to the ASEAN Foreign Ministers	1 st Meeting, Siem Reap (8-9 January 2012)	Not publicly accessible
12	Concept Paper and budget on the thematic study on Migration and Human Rights in ASEAN	9 th Meeting, Bangkok (6-9 May 2012)	Not publicly accessible
13	Second Annual Report covering July 2011 – June 2012	7 th Meeting on the AHRD, Kuala Lumpur (22-23 June 2012)	Not publicly accessible
14	AICHR Priority Programmes/ Activities for 2013 with its indicative annual budget	Special Meeting, Brunei Darussalam (24-26 August 2012)	Not publicly accessible
15	Concept Paper on the AICHR Training Program on Promoting Access to Justice and Human Rights	Special Meeting, Brunei Darussalam (24-26 August 2012)	Not publicly accessible.
16	Concept Paper on the AICHR Advanced Training Program on Human Rights Training of the Trainers	Special Meeting, Brunei Darussalam (24-26 August 2012)	Not publicly accessible.
17	Draft Proposed Statement of the ASEAN Leaders on the Adoption of the AHRD	10 th Meeting on the AHRD, Siem Reap (21-24 September 2012)	Not publicly accessible
18	AICHR Booklet: What You Need to Know	10 th Meeting on the AHRD, Siem Reap (21-24 September 2012)	Published in English and launched on 23 October 2012. Available on website.

In its second performance report on the AICHR, SAPA TFAHR recommended that the Commission create a website as one means to inform the public of its work.¹⁷ In its 10th regular meeting, the AICHR finalized the content of its website and an information booklet on the Commission, which were subsequently launched in an official ceremony in Cambodia on 23 October 2012, exactly three years after the Commission's creation.

As of the end of 2012, the AICHR website contains sections on the Commission' background, calendar, activities, documents, press releases, and external relations. The "Documents" section, at the time of writing, contains the PDF files of seven documents:

¹⁷ SAPA TFAHR, *A Commission Shrouded in Secrecy*, p. 37.

1. Phnom Penh Statement on the Adoption of the ASEAN human Rights Declaration;
2. ASEAN Human Rights Declaration (in English, Indonesian and Thai);
3. AICHR Booklet;
4. Guidelines on the Operations of the AICHR;
5. First Five-Year Work Plan 2010-2015;
6. ToR of AICHR;
7. Biographies of AICHR Representatives 2009-2012.

The website also contains reports of four seminars/workshops the AICHR organized with UN agencies in 2010 and 2011:

1. Report of the OHCHR-UNDP Workshop on "Strengthening of Secretariat Support for the AICHR, ASEAN Secretariat, Jakarta, 30 November-1 December 2012"¹⁸
2. Report of the AICHR-UN WOMEN Seminar on Towards Achieving Substantive Gender Equality, Jakarta, Indonesia, 5-6 September 2011;¹⁹
3. Summary Report AICHR-UNHCR Regional Workshop on Statelessness and the Rights of Women and Children, Manila, Philippines, 18 - 19 November 2011;²⁰
4. Report of the AICHR-UNDP-OHCHR Regional Seminar on the ASEAN Human Rights Declaration, Bali, Indonesia, 2-3 December 2011;²¹

It is disappointing that it took the Commission and the ASEAN Secretariat three years to publish a simple booklet containing the most basic information about the Commission, its mandates and functions, and the background of its Representatives. The biographies of the Representatives are already outdated two months following publication, when Laos, Singapore, Thailand and Vietnam appointed new representatives. While the release of a few documents on the website is to be welcomed, the information made public thus far is still extremely limited, general and vague. Such scant information undermines the ability of the public, civil society and other stakeholders to adequately understand, assess, and contribute substantively to the AICHR's work.

Transparency is key to the credibility and effectiveness of regional human rights mechanisms in Africa, the Americas and Europe, as well as the UN human rights system. It is also essential to encourage public and civil society participation, which is crucial to the work of regional and UN human rights mechanisms. These mechanisms all currently have their own dedicated websites and, more importantly, make public a wide range of information, both from government

18 See http://aichr.org/?dl_name=Doc-1-Report-ASEAN-Secretariat-Workshop-30-Nov-1-Dec.pdf.

19 See: <http://aichr.org/external-relations/aichr-with-un-women/>.

20 See: <http://aichr.org/external-relations/aichr-and-unhcr/>.

21 See: <http://aichr.org/external-relations/aichr-with-undp-and-ohchr/>.

Still Window-Dressing

and non-government sources, about or relevant to their work. For example, in addition to its official website (www.oas.org/en/iachr/), the IACHR even has its own Flickr site, YouTube channel, Facebook page and Twitter account (in both English and Spanish), which are frequently updated to inform the public and States of its work and to enhance its visibility.

The African Commission on Human and Peoples' Rights (ACHPR)'s website makes public information such as decisions on communications sent to the Commission; agenda of meetings; statements by Commissioners, State representatives, and NGOs; annual activity and intersession activity reports; reports of the members of the Commission and its Special Mechanisms; final communiqués; and adopted resolutions. Similarly, the IACHR publishes petitions and cases it has received (including decisions on their admissibility or lack thereof), strategic plans, financial resources, annual reports, thematic reports, and country reports.

The AICHR pales in comparison. More alarmingly, the AICHR's lack of transparency is now institutionalized by its restrictive Guidelines on Operations, which introduce restraints on what the AICHR as a whole and its representatives can disclose to the public. The AICHR's ToR states that the AICHR "shall" keep the public informed of its work, denoting an obligation rather than an option at the discretion of the Commission. However, the section on public communication in the Guidelines seems to back away from the ToR by stipulating that the AICHR "may agree" to keep the public informed about the outcome of its meetings through a press release or press conference (Article 7.1) and that the content of the Commission's press releases, press conferences, and publications must be "determined by" the AICHR (Article 7.2). Moreover, the Guidelines provides that "The issue of any public statement or communication, written or oral, by the Chair or AICHR as an institution must have the approval of all Representatives" (Article 7.4), which means that any single representative could effectively block any attempt to share information with civil society and the wider public.

Under the Guidelines, the only entities who could request and receive the Summary Records of all AICHR meetings are Member States' Permanent Missions to ASEAN and ASEAN National Secretariats. The AICHR's annual reports and other reports are submitted to the ASEAN foreign ministers, who have the authority to release or not release them publicly. The Guidelines are silent on procedures for publishing the reports and the Summary Records.

Three years into its work, the AICHR as a whole continues to operate mostly in secrecy, avoiding substantive contact and communication with civil society and with the public as a whole. The AICHR did not appear to have changed its position, relayed in a message from the Indonesian representative in 2011, that AICHR documents sought by civil society organisations are considered

“internal working documents” that cannot be disclosed publicly.²² The lack of transparency is directly linked to the AICHR’s lack of institutional independence from ASEAN governments, without whose approval no decisions can be taken.

As a matter of comparison, the Rules of Procedure of the ACWC allow for greater transparency and independence in deciding what documents to disclose. For instance, the ACWC is granted sole discretion to decide on the content of the reports submitted to the ASEAN Ministerial Meeting for Social Welfare and Development (AMMSWD) as well as to publish them (see Article 44 of the Rules of Procedure of the ACWC).

The AICHR’s lack of transparency became apparent in the most glaring fashion during the drafting of the AHRD. Although civil society has called for full transparency since the very beginning of the drafting process, the drafting was done in total secrecy throughout 2011 and well into 2012. In a joint statement released in April 2012, over 120 civil society organisations and networks across the ASEAN region again called on the AICHR to release the draft AHRD so that the broader public could meaningfully participate in the drafting process.²³ There was no official and adequate response from the AICHR to this and subsequent requests (see Chapter 3.2 below for more details). Not a single draft of the declaration was officially presented to civil society until late August 2012, when the Philippines representative provided an official draft at a meeting with civil society, although “elements”, “summaries” and the like had been provided earlier by representatives from Thailand and Indonesia to their respective civil society organisations.

The AICHR even refused to share the full draft with other ASEAN sectoral bodies, including the ACWC, and only provided them with elements of the draft in August 2012, less than three months before its adoption.

It is difficult to escape the conclusion that the late official openness, which also involved two consultations with civil society (see Chapters 3.1 and 4.2), was allowed because negotiations over the key elements of the declaration had been completed before the consultations took place and drafts released, rendering these little more than meaningless gestures.

It should be emphasised that a few AICHR representatives were individually much more open and inclusive, provided information and held extensive consultations with civil society in their respective countries. However, the best intentions and efforts of these human rights-friendly representatives, were ultimately thwarted by the institutional resistance to transparency, open engagement and acceptance

22 SAPA TFAHR, *A Commission Shrouded in Secrecy*, p. 6-7.

23 Civil Society Demands Transparency and Consultation on the ASEAN Human Rights Declaration, 8 April 2012, <http://www.forum-asia.org/?p=12449>.

Still Window-Dressing

of international human rights standards. As a result, during 2012 the AICHR as a whole continued to fall far short of standards of transparency exercised by regional and international human rights bodies elsewhere in the world..

2.7 Working Groups or Task Forces

In March 2010, SAPA TFAHR submitted to the AICHR a “Proposal for the Rules of Procedure of the AICHR”, which calls for, among other things, the establishment of sub-commissions, rapporteurships, committees and working groups to assist the Commission in implementing specific tasks within its mandate in the promotion and protection of human rights.²⁴

Up to December 2012, the AICHR is known to have established two working groups/task forces²⁵:

1. Drafting Group of the AHRD
2. Study Team of the Thematic Study on Corporate Social Responsibility and Human Rights in ASEAN

Section 8 of the AICHR's Guidelines on Operations provides for the AICHR to establish a working group or task force where this is deemed necessary. The Guidelines provide only working groups or task forces be on an *ad-hoc* basis, ruling out the option of the AICHR creating permanent sub-commissions or other bodies. Working groups and task forces may consult with other persons only with the approval of the AICHR. Even if the establishment of a working group or task force is proposed, its mandate, functions and duration will be subject to the de facto veto of each AICHR representative, and its eventual creation, if achieved, is thus likely to be the result of significant compromise. In other words, a working group or task force created under such restrictive conditions will most likely be powerless and its independence and impact severely limited.

For comparison, in the UN, Inter-American and African human rights systems, working groups and special rapporteurs play a crucial role in activities such as considering individual communications, investigating country or thematic situations, and developing recommendations to States. They operate independently and impartially and their mandates are based on resolutions adopted by the respective inter-governmental bodies.

As long as the AICHR lacks institutional independence and operates solely on consensus, it will be extremely difficult for any working group or task force established under the current Guidelines to operate with the same level of independence, impartiality and professionalism that are the hallmarks of special procedures of the other regional and UN systems.

²⁴ SAPA TFAHR, *Hiding Behind Its Limits*, p. 26-57.

²⁵ There is no information to indicate that the AICHR has established a drafting group for the thematic studies of migration and the right to peace which have been discussed at meetings in 2012.

2.8 Alignment with ACWC and ASEAN Sectoral Bodies

Both the AICHR and ACWC have committed to an on-going dialogue on the matter of alignment and coordination at their first bilateral meeting in December 2011.²⁶ Section 10 of the AICHR's Guidelines on Operations includes ten modalities for the Commission to consider in determining its alignment with other ASEAN sectoral bodies. However, there is very little publicly available information about any interaction between the AICHR and the ACWC, and other ASEAN sectoral bodies, on the issue of alignment and coordination in 2012. All the publicly known meetings in 2012 between the Commission and other ASEAN sectoral bodies were focused on the AHRD.

At the 8th regular meeting of the AICHR in March 2012, the Commission met with the Committee of Permanent Representatives (CPR) and “exchanged views on further strengthening the coordination and cooperation” between the two bodies, information sharing with the AICHR, and the Commission’s interaction with ASEAN Dialogue Partners (see Annex 3). No further public information is available on the details of the discussion or any decisions taken.

At its 5th meeting on the AHRD in May 2012, the AICHR organized the first regional consultation on the AHRD with ASEAN sectoral bodies, who were invited to “share their views, expertise and concerns” (see Annex 5) The press release of this meeting does not specify which sectoral bodies were present, but it was reported that the ACWC was among them. ACWC attended the AICHR’s second regional consultation with sectoral bodies on the AHRD, along with the ASEAN Committee on Women (ACW), the ASEAN Defence Senior Officials Meeting (ADSOM), the Senior Labour Officials Meeting (SLOM), and the Senior Officials Meeting on Health Development (SOM-HD). ACWC representatives from Brunei, Cambodia, Indonesia, Lao PDR and the Philippines also attended the Regional Workshop and Consultation on Business and Human Rights in ASEAN, on 11 – 12 December 2012 in Singapore. However, alignment was not discussed at these events.

Beyond these few interactions between AICHR and ACWC, there is no further publicly available information on whether and to what extent the dialogue specifically on the alignment issue has progressed since the December 2011 meeting.

26 SAPA TFAHR, *A Commission Shrouded in Secrecy*, p. 9.

Chapter 3: Implementation of Mandates and Functions

To implement its 14 mandate and functions items under Article 4 of the ToR, the AICHR adopted its first Five-Year Work Plan (2010-2015) and formulated 52 activities. The work plan was only published in late October 2012. The 14 mandate and functions items as well as the status of the implementation of activities in the work plan are summarized in Table 3:

Table 3: Status of implementation of the First Five-Year Work Plan of the AICHR

4.1 To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community	
1. Develop Rules of Procedure of AICHR	Completed with the adoption of the Guidelines on the Operations of the AICHR
2. Complete the Five-Year Work Plan	Completed
3. Develop and complete the various activities in the immediate and longer term that will support the implementation of the Five-Year Work Plan	On-going. No sufficient information.
4. Dialogue and consult with the three Communities on their respective Blueprints concerning the promotion and protection of human rights, and submit to each of them recommendations for their consideration upon the review of their respective Blueprints	No sufficient information to indicate the review of the Blueprints or any meetings with the three Communities on this matter has taken place.
5. Start in 2014 the review of the TOR of AICHR, and in this process, identify ways and means that will strengthen the functions of AICHR in the promotion and protection of human rights	Not yet started.
6. Strengthen the ASEAN Secretariat's support for AICHR, and consider the establishment of a dedicated secretariat that should evolve with the work of AICHR	No sufficient information.
7. Exchange visit(s) with international and other regional human rights bodies (as necessary or on invitation)	Undertaken in 2011 (to Europe and the Americas)
4.2 To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights	

1.	Set up an <i>ad hoc</i> task force on drafting an ASEAN Human Rights Declaration (ADHR) with the TOR to be prepared by AICHR	Completed in 2011.
2.	Take stock of and assess status of existing human rights mechanisms and instruments in ASEAN	No information disclosed.
3.	Work towards ASEAN conventions on Human Rights upon the adoption of the ASEAN Human Rights Declaration	No information disclosed following adoption of AHRD.
4.	Support the development of other ASEAN legal instruments on human rights undertaken by other ASEAN sectoral bodies	No information disclosed.
5.	Support and strengthen the framework of legal cooperation on ASEAN human rights	No information disclosed.
4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information		
1.	Develop general basic information about AICHR including translation in each national language	Website, information booklet, and the ToR booklet were developed in English, Thai
2.	Disseminate information relating to the work of AICHR as it may be approved, including publications in both English and national languages	AICHR Booklet published in late October in English.
3.	Organise AICHR Road-Shows on human rights and AICHR	Road-shows were organized in Indonesia, Thailand, and the Philippines by their respective AICHR representatives.
4.	Organise workshops/seminars with track I, II and III, either on its own or in cooperation with other institutions/organisation, at regional and national levels	4 workshops/roundtables. See Chapter 3.4.
5.	Taking stock of existing human rights education/studies programs in the region	No information.
6.	Support the efforts of ASEAN Education Ministers Meeting (ASEM) to develop a regional education programme on human rights	No information.
7.	Support the efforts to develop common media programmes on AICHR and ASEAN human rights, in close consultation and cooperation with ASEAN Ministers Responsible for Information (AMRI) and ASEAN Ministers Responsible for Culture and Arts (AMCA)	No information.
8.	Develop a website of AICHR both at the regional and national level that is accessible to the public	Regional website completed.

Still Window-Dressing

4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States	
<u>ASEAN activities</u>	No information.
1. Undertake needs assessment for capacity building	
2. Design and organise a general course/ advanced annual training program on human rights for government officials, law enforcement officers, teachers etc.	First two training programs completed.
3. Design and organize an annual thematic workshop	It is not clear whether one of the four workshops/roundtables held thus far is considered an annual thematic workshop.
4. Design and organise annually specific courses for target groups	No information.
5. Share best practices among ASEAN Member States	No information.
4.5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments	
1. Complete a stocktaking of existing human rights instruments acceded and ratified by ASEAN Member States	No information.
2. Identify priority for accession and ratification of international human rights instruments for ASEAN Member States	No information.
3. On request of the ASEAN Member State concerned, provide necessary assistance to facilitate the accession and ratification of international human rights instruments	No information.
4.6. To promote the full implementation of ASEAN instruments related to human rights	
1. Compile ASEAN instruments related to human rights including translation into the national languages	No information.
2. Coordinate with relevant ASEAN sectoral bodies to ensure the effective implementation of ASEAN instruments related to human rights	No sufficient information on whether this was discussed during meetings with AMM, CPR, ACWC, and ASEAN sectoral bodies.
4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request	
1. Identify resources and areas of competence where AICHR may provide advisory services and technical assistance to ASEAN sectoral bodies	No sufficient information. ASEAN health officials and education officials have requested AICHR's advice.

2.	Hold consultations with relevant ASEAN sectoral bodies to identify their needs for assistance	No sufficient information on whether this was discussed during meetings with AMM, CPR, and ASEAN sectoral bodies.
3.	Organise joint meetings as needed with ASEAN sectoral bodies concerned.	AICHR met with ASEAN sectoral bodies met twice for consultations on the AHRD.
4.8. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter		
1.	Develop in the Rules of Procedure the modalities and guidelines for engagement with different stakeholders associated with ASEAN, as provided for in Chapter V of the ASEAN Charter	Was under preliminary discussion as of the 8 th meeting in Jakarta (March 2012). No subsequent information available.
4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights		
1.	Develop in the Rules of Procedure the modalities and guidelines for consultation with other national, regional and international institutions and entities concerned with the promotion and protection of human rights	Was under preliminary discussion as of the 8 th meeting in Jakarta (March 2012). No subsequent information available.
2.	Study visits to other regional human rights mechanisms	Visits conducted in 2011 (see previous performance report). None known to be conducted in 2012. Invitation reportedly came from ACHPR.
3.	Participate in regional and international events on promotion and protection of human rights	AICHR participated in the following events: <ol style="list-style-type: none"> 1. Enhancing Cooperation with Regional and Sub-regional Human Rights Mechanisms", organized by OHCHR together with the permanent missions of Armenia, Belgium, Mexico, Senegal, Qatar and Thailand, Geneva, 18 June 2012. 2. UN Forum on Business and Human Rights, Geneva, Switzerland, 4-5 December 2012. 3. Workshop on Enhancing Cooperation between the UN and Regional Mechanisms for the Promotion and Protection of Human Rights, Geneva, 12-14 December 2012.

Still Window-Dressing

<p>4. Jointly organise events with other regional and international human rights mechanisms</p>	<p>AICHR participated in the following events:</p> <ol style="list-style-type: none"> 1. Joint AICHR--Australian Human Rights Commission (AHRC) Workshop on Corporate Social Responsibility (CSR), Singapore, 28-29 November 2012 2. Regional Workshop and Consultation on Business and Human Rights, Singapore, 11-12 December 2012, organized by the Working Group for an ASEAN Human Rights Mechanism in partnership with the Philippine Representative to the AICHR
<p>5. Meeting with other human rights mechanisms and entities as agreed to by AICHR</p>	<p>There was interaction with UN WOMEN, OHCHR, the Australian Human Rights Commission, a member of the UN Committee on the Rights of the Child, the UN Independent Expert on International Solidarity and Human Rights, and the UN Human Rights Council</p>
<p>6. Share best practices on the implementation of human rights with other regional human rights mechanisms</p>	<p>No information.</p>
<p>4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights</p>	
<p>1. Obtain a copy of country reports submitted by ASEAN Member States to the human rights bodies in the UN system</p>	<p>No information. See Chapter 3.4.</p>
<p>2. Invite ASEAN Member States to share additional and updated information on their country reports</p>	<p>No information.</p>
<p>4.11. To develop common approaches and positions on human rights matters of interest to ASEAN</p>	
<p>1. Identify the current and potential human rights matters of interest to ASEAN</p>	<p>No sufficient information, except the identification of topics for thematic studies.</p>
<p>2. Develop and make recommendations on the common ASEAN approaches and positions on these matters</p>	<p>No information.</p>
<p>3. Support the efforts of ASEAN Committees in Geneva and New York to arrive at a common ASEAN position on the review of the UPR mechanism and the review of the UN Human Rights Council</p>	<p>No information.</p>

4.12. To prepare studies on thematic issues of human rights in ASEAN;	
1. Initiate thematic studies on issues relating to human rights, at least one issue per year, in close consultation with sectoral and other relevant ASEAN bodies. <u>Regional-base study</u> <ul style="list-style-type: none"> • Corporate Social Responsibility • Migration • Trafficking in person particularly women and children • Child soldiers • Women and children in conflicts and disasters • Juvenile justice • Right to information in criminal justice • Rights to health • Rights to education • Right to life • Right to peace 	Thematic studies on CSR, Migration, and Right to Peace at undefined stages of development. No information on plans for the other thematic studies.
2. Hold workshop upon completion of the draft of the relevant thematic studies for discussion and consultation with the relevant stakeholders as provided for in the Guidelines on the Conduct of Thematic Studies for purposes of obtaining further inputs	Pending the conclusion of the thematic studies.
3. AICHR shall publish and disseminate the studies, as appropriate (as part of human rights education & raising awareness as well as for building AICHR's visibility, release periodic publications)	Pending the conclusion of the thematic studies.
4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting	
1. Meet with AMM	Meetings took place, but content of discussion not disclosed, although some of them are understood to have focused on the AHRD.
2. Prepare annual report on activities of AICHR, and other appropriate reports as deemed necessary	Two annual reports submitted, but contents remain unknown. No information regarding the submission of other reports.
3. Submit thematic report(s) for further guidance	No information.
4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting	
1. Meet with AMM	Meeting took place, but no information on any task assignments by AMM.

3.1 Drafting and adoption of the ASEAN Human Rights Declaration (AHRD)

“It’s probably not up to universal standards, it’s probably subjecting to rights of the government rather than absolute rights of the individual, but politics is the art of the possible.”

Dr Surin Pitsuwan, former Secretary General of ASEAN, commenting on the ASEAN Human Rights Declaration²⁷

On 18 November 2012, a deeply flawed process led to a deeply flawed ASEAN human rights declaration being adopted by ASEAN leaders. In adopting the declaration, the leaders ignored repeated calls by civil society on the national, regional and international levels, as well as the United Nations for further consultations and significant amendments to the text of the declaration before adopting it. The AHRD contains key provisions that depart significantly from international human rights law and standards, some of which pertain to the declaration as a whole, and weaken its protections considerably. This is despite assurances given by some ASEAN governments and AICHR representatives that the document would not fall below international standards.

It is difficult to separate the result from the process. Only a few AICHR representatives held national consultations, while the Commission as a whole only held two one-day regional consultations with a limited number of selected NGOs towards the end of the drafting process. As noted, these consultations were held only after an apparently unassailable consensus was reached on the wording of key provisions. As a result, the adopted Declaration ignored civil society’s core recommendations.

The first, or “basic” draft of the AHRD was prepared by a Drafting Group, composed of one representative from each of the ten ASEAN Member States. Each Drafting Group member was appointed by his or her country’s Representative to the AICHR. In 2011, the Drafting Group, chaired by Professor Harkristuti Harkrisnowo, the Director-General of Human Rights-Ministry of Law & Human Rights of Indonesia, met five times. Under Cambodia’s chairmanship of ASEAN, the Drafting Group met formally for the sixth and final time in Manila from 4-6 January 2012, where it presented a first basic draft of the AHRD to the AICHR.

As noted in the 2011 Performance report, the ToR of the Drafting Group – which was never published but was nevertheless obtained by the SAPA TFAHR²⁸ - included instructions that were extremely regressive and were to sow the seeds of the AHRD’s key weaknesses. For instance, the ToR included the instruction that the

27 Hanna Hindstrom, “ASEAN Adopts ‘Flawed’ Human Rights Declaration,” 18 November 2012. available at: <http://www.dvb.no/news/asean-adopts-%E2%80%98flawed%E2%80%99-human-rights-declaration/24844>. Ellipses omitted.

28 SAPA TFAHR, *A Commission Shrouded in Secrecy*, p. 12-14.

Drafting Group bear in mind “the national and regional particularities and mutual respect for different political, historical, cultural and religious background within ASEAN, and take into account the balance between rights and responsibilities.” On the positive side, the ToR also provided that the Drafting Group must also uphold international human rights standards. This last instruction, however, seems to have fallen by the wayside as the drafting progressed into 2012, while the cultural relativist principles prevailed.

Problematic first draft

In January, despite the refusal of the AICHR to release any documents, CSOs informally obtained a copy of what appeared to be the basic draft of the declaration. This draft²⁹, dated 8 January 2012, was not a single agreed text, but rather a compilation of alternative formulations for each provision as suggested by various representatives, with footnotes indicating the proponents and opponents of each formulation. The document showed that on several occasions Indonesia, the Philippines and Thailand proposed a number of provisions or formulations that are in line with international law and standards. However, other ASEAN member states often made regressive proposals that deviate from or fall short of international human rights law and norms.

For instance, the leaked draft showed that while Thailand proposed the inclusion of “sexual orientation” in the non-discrimination clause, Malaysia, on the other hand, insisted that the definition of “other status” in that clause be “determined in the context of ASEAN Common Values and should not be governed by the definition of other status and sex as determined by [the UN] Human Rights Committee under the ICCPR and the Committee on Economic, Social and Cultural Rights under the ICESCR.” Both Malaysia and Vietnam proposed a provision that explicitly subjects the enjoyment of human rights to “the fulfilment of duties and responsibilities towards other individuals, societies, future generations and the State.” Singapore expressed reservations on clauses on the prevention of statelessness and on guaranteeing compulsory and free primary education, even though all ten ASEAN member states – including Singapore - are party to the Convention on the Rights of the Child and thereby took upon themselves a legal obligation (under Article 28(a)) to provide exactly that, i.e. “Make primary education compulsory and available free to all”. The footnotes also revealed that Lao was particularly active, making 16 proposals or amendments, including the inclusion of “regional and national particularities” in a provision on the universality of human rights. Another proposal by Laos read: “The exclusive insistence on rights can result in conflict, division, and endless dispute and can lead to lawlessness and chaos.”

29 Available online at <http://www.scribd.com/doc/79941926/Working-Draft-of-the-AHRD-as-of-8-Jan-2012-0400hrs>.

Still Window-Dressing

Some of the most regressive clauses were not included in the final text. Nevertheless, the leaked draft clearly revealed not only where support for the most problematic provisions came from, but also the considerable gap between certain ASEAN member states' position on human rights, on the one hand, and international human rights law on the other.

Lack of transparency and inadequate consultations

The drafting process was marred by the Commission's persistent resistance to publish any drafts of the ASEAN human rights declaration and consult officially with civil society – until it was too late to make any significant difference. The Drafting Group's ToR included a “confidentiality clause” that prevented the Group from disclosing the draft AHRD. The confidential nature of the drafting process was carried over into 2012 when the AICHR took over the drafting of the declaration in January.

AICHR representatives held ten formal meetings between January and October in 2012 to negotiate, and eventually finalize, the AHRD, but civil society were not invited before the end of June. Even then only two consultations were carried out, with four CSOs from each ASEAN Member State allowed participating. On the other hand, some AICHR representatives, in particular from Thailand, the Philippines and Indonesia used the allocation of two representatives for each CSO to allow in more CSOs than four, although the added representatives did not officially attend in the name of their respective organisations

The AICHR similarly held only two consultations on the AHRD with ASEAN sectoral bodies in May and in August. It was reported that some sectoral bodies wrote to the AICHR officially to request a copy of the draft, but the AICHR decided against it and shared instead only “elements” of the draft, and this only at the second consultation. Some sectoral bodies came to the consultations with input related to their own sector. However, other sectoral bodies reportedly told the AICHR that inviting them to provide input into a document that the Commission refused to share was “disrespectful”. There is no information to indicate that the AICHR has shared a full draft or any parts of it to any ASEAN sectoral bodies after these two consultations.

Throughout the 17-month process from June 2011 to November 2012, civil society organisations across the region, as well as the UN and European Union, had repeatedly called, publicly and privately, on ASEAN governments and the AICHR to ensure full transparency and meaningful consultations (see Annexes 21-36, 37-40, 45-48).³⁰

³⁰ See also OHCHR press release, “Next two years key to human rights development in ASEAN region – UN human rights chief,” 28 November 2011. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11649&LangID=E>.

At the national level, only the AICHR representatives from Indonesia, Malaysia, the Philippines, and Thailand held national consultations with CSOs on the AHRD. The Thai and Indonesian representatives were particularly active, open and inclusive, holding five and six national consultations, respectively. In Cambodia, a one-day consultation was organized on 3 July in Phnom Penh, under the aegis of the government's Human Rights Committee (CHRC). There is no information indicating that national consultations on the AHRD were held in the remaining ASEAN member states by their AICHR representatives.

In April and May, at national consultations organized by the Thai AICHR representative, "summaries" of the AHRD drafts in Thai were provided to participants. Similarly, at a national consultation in June, the Philippine AICHR representative made a slide presentation of the "salient features" of the draft AHRD and provided it to participants. On 25 June, Indonesia's AICHR representative organized a national consultation in Jakarta and provided participants with a document listing the "key elements" of the draft AHRD in Bahasa Indonesia. These translated and/or abridged versions of the drafts were handed out to CSOs at the national level; they were never published on ASEAN's or the AICHR's websites or through any other media for the benefits of the wider public. The other AICHR representatives did not share any translated or abridged versions of the draft declaration. No such documents were given to the participants of the Cambodian national consultation in July and the AICHR regional consultation with CSOs in June.

However, at a national consultation in late August, the Philippines AICHR representative provided CSOs with the full text of the draft AHRD current at the time, as agreed on 23 June. The text was distributed in both hardcopy and electronic forms. Since this was done at an official meeting and without any request of confidentiality, the 62 CSOs who met at the Civil Society Forum in preparation for the second consultation with the AICHR in September in Manila decided to make this text the basis for their joint submission to the consultation.

The Manila Joint Submission included extensive quotations from the 23 June Draft, comments and proposed amendments. At the consultation itself, the AICHR representatives determined that the Joint Submission become the basis of that day's Consultation, thus very belatedly conducting, for the first and last time, a formal discussion with CSOs on a draft text of the AHRD. As already noted, this came at a time when negotiations over the text had all but concluded. So while CSO representatives made a very strong case for changes in the text that would bring it up to international human rights standards, they inevitably hit the brick wall of the ASEAN rule that decision-making would be carried out by "consultation and consensus" which in this case, as in others, came at the expense of the human rights of the peoples of ASEAN.

Table 4: National-level consultations with civil society organisations on the AHRD in 2012

Country	Venue/Date	Disclosure of full drafts, “elements” or “summaries” of the AHRD
Brunei	No information available	None
Burma	No information available	None
Cambodia	Phnom Penh (3 July 2012)	None
Indonesia	<ol style="list-style-type: none"> 1. Yogyakarta (10-12 February 2012) 2. Jakarta (19-20 February 2012) 3. Makassar (27-28 February 2012) 4. Jakarta (12 April 2012) 5. Jakarta (25 June 2012) 6. Jakarta (13 August 2012) 	Only “elements” of the draft were shared and translated into Bahasa Indonesia at the June consultation.
Lao PDR	No information available	None
Malaysia	Kuala Lumpur (16 June 2012)	None
Philippines	<ol style="list-style-type: none"> 1. Makati City (15 June 2012) 2. Manila (29 August 2012) 	<p>A PowerPoint presentation of the salient features of the draft AHRD was distributed at the June consultation.</p> <p>A full draft was distributed at the August consultation.</p>
Singapore	No information available	None
Thailand	<ol style="list-style-type: none"> 1. 3rd Focused Group Consultation on the AHRD, Chachoengsao Province, 23 January 2012 2. 4th Focused Group Consultation on the AHRD, Ubonratchathani Province, 6 February 2012 3. 5th Focused Group Consultation on the AHRD, Ratchaburi Province, 19 March 2012 4. 6th Focused Group Consultation, Trang Province, 23 April 2012 5. 7th Consultation (National Consultation) on AHRD, Bangkok, 25 May 2012 	Thai translation of “a summary” – but in effect the full texts of the respective drafts - were distributed to participants in April and May.
Vietnam	No information available	None

On 26 May, the Southeast Asian Press Alliance (SEAPA), in cooperation with Institute of Security and International Studies (ISIS) and People’s Empowerment Foundation (PEF), organized an informal regional consultative forum on the AHRD in Bangkok, Thailand. Dr. Sriprapha Petcharameesree and Dato’ Seri Muhammad Shafee Abdullah, the then AICHR representatives of Thailand and Malaysia respectively, participated in the forum, but they insisted that they

were doing so in a personal capacity rather than representing the AICHR. This insistence could only be taken as an indication of the resistance of the majority of the AICHR representatives towards formal engagement with civil society and non-governmental organisations.

Both Dr. Sriprapha and Dato' Shafee agreed that engagement with civil society was important, and Dr. Sriprapha told the forum that important suggestions received would be conveyed to the AICHR. They told the forum that all AICHR representatives agreed that the declaration would not go below international standards and would instead add value to them.

Regional consultations too little, too late, too restrictive

Following its 6th meeting on the AHRD in early June, the AICHR announced it would hold a regional consultation with CSOs on 22 June in Kuala Lumpur. A number of regional and international human rights organisations then wrote to the AICHR and the ASEAN Secretariat expressing their wish to participate in this consultation. However, these organisations either did not get a response at all or were told by the ASEAN Secretariat that the Commission “could not reach a consensus” to invite them. Representatives of certain ASEAN member states reportedly exploited the “consensus” rule to veto invitations to reputable human rights groups.

The organisations which were barred from participating or did not receive an invitation included the Asian Forum for Human Rights and Development (FORUM-ASIA), Southeast Asia Press Alliance (SEAPA), Asian Indigenous Peoples Pact (AIPP), the International Federation for Human Rights (FIDH) and Amnesty International (as a global organisation). SEAPA's official request to participate in the consultation was acknowledged but it never received a final response. Nevertheless, SEAPA made a submission on freedom of expression³¹ to the AICHR and the ASEAN Secretariat on the eve of the June regional consultation, but it received no response at all.

Following a regional civil society meeting in Kuala Lumpur on 20-21 June, organized by SAPA TFAHR, CSOs published a joint submission with proposed languages for amendments, including based on limited information found in the

abridged and translated versions of the draft declaration.³² Malaysia's AICHR representative, Dato' Shafee, came and talked to the CSOs at the meeting on 21 June. Dato' Shafee said the Commission could not agree on publishing

31 See SEAPA submission to the AICHR on the Right to Freedom of Opinion and Expression in ASEAN, 21 June 2012, <http://seapabkk.org/seapa-campaigns/asean-a-freedom-of-expression/100621-seapa-submission-to-the-aichr-on-the-right-to-freedom-of-opinion-and-expression-in-asean.html>.

32 See Kuala Lumpur joint submission to the ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration by Civil Society Organisations and people's movements participating in the Fifth Regional Consultation on ASEAN and Human Rights, 22 June 2012, <http://www.forum-asia.org/?p=14184>.

Still Window-Dressing

the draft AHRD because doing so would risk the body being accused of “changing the goal posts” as the text was constantly being revised. The fact that countless drafts – of laws, of human rights documents and of international treaties - have been shared with civil society during their drafting nationally, regionally and internationally without such accusations being levelled at the bodies concerned seem to have escaped the AICHR’s attention.

The Kuala Lumpur joint submission by 48 CSOs was presented to the AICHR at its first official regional consultation with CSOs on 22 June. In both their written and oral submissions, CSOs suggested amendments to existing provisions as they emerged from the “elements” and “summaries” they had received, suggested adding provisions that were missing, and in particular called for the removal of overarching “General Principles” which imposed severe restrictions on all human rights in the Declaration by allowing governments to “balance rights and duties”; “take into account regional and national contexts” and imposing “limitations on rights”. The CSOs also suggested that a clause on interpretation be added to ensure that the AHRD cannot be interpreted so as to “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 destroy any of the rights and freedoms stipulated under this Declaration.”

During this consultation, the AICHR representatives were listening most of the time and did not take to the floor much. However, they expressed appreciation of the joint submission. In particular, some representatives told the participants they supported civil society’s position that the ill-defined concept “public morality” or “public morals” are no longer an acceptable ground for imposing limitations of human rights. The Chair of the AICHR (Cambodia) assured the CSOs that the AHRD will not be lower in standards than the UDHR. In fact the AHRD should have an added value to the people of ASEAN, and the representative for Vietnam said that he found the meeting very informative and that this kind of meeting should have been convened earlier.

The AICHR’s press release after the Kuala Lumpur consultation stated that the submission “brought many fresh ideas and different perspectives for the AICHR’s consideration for the further enrichment of the draft AHRD.” Unfortunately, all this goodwill was not translated into the concrete, substantial changes that the draft text required when the AICHR met behind closed door the following day and finalized the draft AHRD, which was subsequently submitted to the ASEAN Foreign Ministers’ Meeting in July.

On 29 June, the Indonesian Foreign Minister, Dr.Marty Natalegawa met with CSOs in Jakarta. The CSOs, coming from most ASEAN member states, requested that Indonesia push other ASEAN foreign ministers to instruct the AICHR to release the draft declaration and allow time for further consultations. However, Dr.Natalegawa suggested that the non-disclosure of the draft declaration would leave more

room for “diplomatic negotiations” and prevent the “hardening of positions” that may result if the inclusion of certain provisions were attributed to certain member states. Dr. Natalegawa assured the CSOs, however, that the “elements” of the declaration would be published and this would be the same as the actual draft.

On 8 July, ASEAN foreign ministers, who had received the final draft AHRD from the AICHR, told reporters in Cambodia that ASEAN would publish “key elements” of the AHRD as a part of a public consultation process. The then ASEAN Secretary General, Dr Surin Pitsuwan, also said he wanted the drafting to be as transparent as possible. Mr. Sihasak Phuangketkeow, the Thai MFA’s permanent secretary who once chaired the UN Human Rights Council in his former capacity as Thai ambassador to the UN in Geneva, told the media that ASEAN member states expected the AHRD to meet international standards and that it “makes no sense” that ASEAN member states would adopt a declaration lower than the human rights instruments which they have ratified.

According to participants in the national consultation on the AHRD on 13 August in Jakarta, Indonesia’s AICHR representative, Rafendi Djamin, told them that Indonesia was committed to ensuring that the declaration will not be lower than the UDHR and the Vienna Declaration. He also said Indonesia wanted to ensure there would be references to all marginalized groups, “gender identity,” and non-derogable rights. Indonesia was also committed, he said, to make sure there would be no repetitive clauses imposing limitations on rights, such as “in accordance with national law” or “as prescribed by law.”

As noted, on 29 August, late into the drafting process, the Philippine AICHR representative provided the Philippines’ NGOs with a full draft of the AHRD during a national consultation. The draft was dated 23 June, a day after the first regional consultation with CSOs in Kuala Lumpur. It showed that none of the core recommendations put forth was accepted and the text still contained numerous problematic clauses while marginalized groups and key human rights norms were omitted, despite the assurances made by several AICHR representatives and some ASEAN governments in the preceding months.

On 12 September, the AICHR met CSOs in Manila for the second regional consultation on the AHRD. The same organisations who could not attend the first consultation remained barred from participating. In addition to individual submissions, CSOs presented their second joint submission³³ by 62 CSOs (Manila joint submission). Because no significant changes were made as a result of the first consultation, this joint submission to an extent repeated the calls of the first one. However, because CSOs worked with a full draft, they were able to provide

33 Joint submission to the ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration by Civil Society Organisations and people’s movements participating in the Civil Society Forum on ASEAN Human Rights Declaration, 10-11 September 2012, <http://www.forum-asia.org/?p=15341>.

Still Window-Dressing

more concrete recommendations for deletions, changes and additions to the 23 June draft, each accompanied by an explanatory note.

This consultation was more interactive than the first, with AICHR representatives more actively taking to the floor and responding to specific concerns raised by CSOs. The Malaysian AICHR representative defended the retention of the term “public morality” and further stressed that specific reference to the rights of LGBT persons was “one of those things” that Malaysia, Brunei and Singapore “cannot accept in the declaration.” The Indonesian representative told participants that the term remained in the text because the AICHR “could not reach a consensus” to remove it.

While the representatives of Indonesia, Philippines and Thailand said they were not in favour of including “national and regional contexts” in the declaration, the Lao AICHR representative defended its inclusion by arguing that the AHRD should not copy the UDHR and should instead take into account the “diversities” as a unique trait of ASEAN. It was also worrying that the representative of Malaysia, when responding to the recommendation on including “abolition of the death penalty” in the declaration, stated that even though most representatives agreed to include it, the Commission decided in the end not to do so because it was “too sensitive” and should be left to the governments to decide.

An official press release indicated that the Commission met for the 9th time to discuss the AHRD following the Manila regional consultation and considered the CSO input “to further refine the draft AHRD.” It also stated that “an improved draft AHRD” was submitted to the ASEAN foreign ministers, who met in New York to consider the text on the sidelines of the UN General Assembly. No further details were given and no further draft published.

In an interview with the *Jakarta Post* on 20 September, Indonesia’s AICHR representative acknowledged that discussions of LGBTIQ and indigenous peoples’ issues had often become “intense” within the Commission. He admitted that AICHR representatives defended his or her national interests during the negotiation over the text, but he also told reporters that the representatives “have agreed not to let the upcoming AHRD fall short of the Universal Declaration of

Human Rights and the UN-backed 1993 Vienna Declaration.”³⁴ On 11 October, a group of Thai CSOs met with the Director-General on ASEAN of the Thai foreign ministry, who reiterated Thailand’s position that it would only accept the AHRD if it is consistent with international human rights standards.

³⁴ “AHRD won’t be perfect, says Marty,” *The Jakarta Post*, 20 September 2012, <http://www.thejakartapost.com/news/2012/09/20/ahrd-won-t-be-perfect-says-marty.html>.

On 7 November 2012, the UN High Commissioner for Human Rights, Ms. Navi Pillay, told a gathering of Asian government leaders that she remained concerned about “a lack of transparency and willingness by the AICHR to engage with them in taking forward the human rights agenda.” She said this had been “particularly the case with the new draft ASEAN human rights declaration, which has still not been published formally in its entirety for comments and reaction” (see Annex 45). On 16 November, a committee representing all the UN Human Rights Council’s special procedures wrote an open letter to the AICHR, stressing that “the Declaration should, as a minimum, maintain international standards if not add to these standards,” and that one way of “ensuring this would be to consult further with the people of the region, including civil society organisations, to take on board their concerns and aspirations.” The experts strongly opposed the inclusion of “General Principles” on balancing rights and duty, considering regional and national context and imposing limitations on rights, stating that these “Principles” did not accord with international human rights law and standards (see Annex 47).

In a meeting with Indonesian CSOs on 14 November, senior officials from the Indonesian foreign ministry, including Foreign Minister Marty Natalegawa, informed the CSOs that there have been attempts in late October by senior officials in other ASEAN countries to further water down the draft AHRD submitted by the AICHR, including the removal of freedom of association. The last draft leaked to civil society towards the very end of the process in November showed that not only did the AICHR and other ASEAN officials fail to heed civil society’s proposals and the most problematic clauses remained, but in addition freedom of association was indeed removed. The proposal to remove freedom of association reportedly was made by an ASEAN country that is state party to the ICCPR, which guarantees this freedom. Despite statements made by some AICHR representatives that they support the removal of “public morality” as a ground for limitation of rights, the term remained, alongside the other “limitations of rights”, “balance of duties and rights” and “consideration of regional and national context” in the November draft and eventually in the final adopted text.

The persistent failure of the AICHR as a whole to fully disclose any drafts AHRD, despite the best intention of its more progressive members, illustrates the de facto “gagging order” resulting from the consensus rule, whereby no documents could be released formally without the unanimous agreement among representatives. At the same time, by sharing abridged versions and “summaries” of AHRD drafts, the progressive AICHR representatives showed that they were willing to test the strict boundaries imposed by the ToR and the Guidelines on Operations. However, these creative efforts were insufficient to prevent the adoption of a declaration that not only falls below international standards on several fronts, but also contains regressive provisions that could be used to justify human rights violations.

Input from civil society

Although attempts to dialogue with the AICHR on the AHRD remained largely difficult throughout the drafting process, civil society organisations continued to submit to the AICHR their input and recommendations on the formulation of the AHRD. In addition to the submissions in 2011,³⁵ the submissions made in 2012 included:

1. Amnesty International Thailand: Submission regarding provisions restricting rights in the ASEAN Declaration on Human Rights³⁶
2. ASEAN Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) People's Caucus Statement: Inclusion of SOGI issues and Rights in the ACSC/APF and in the ASEAN Human Rights Declaration³⁷
3. ASEAN Disability Forum Statement³⁸
4. Asia Pacific Forum on Women, Law and Development (APWLD) Position Paper: Adding Value: Removing morality from the ASEAN Human Rights Declaration³⁹
5. Child Rights Coalition Asia (CRC Asia) Submission on the ASEAN Human Rights Declaration⁴⁰
6. Human Rights Working Group of Indonesia (HRWG) Submission on ASEAN Human Rights Declaration (AHRD) based on Constitutions of ten ASEAN Member States⁴¹
7. HRWG's Submission on the inclusion of the promotion, protection and enjoyment of human rights on the Internet in ASEAN Human Rights Declaration (AHRD)⁴²
8. Submission from Indonesia's Civil Society Organisations on ASEAN Human Rights Declaration (AHRD)⁴³Three submissions by MARUAH (Singapore)⁴⁴

35 SAPA TFAHR, *A Commission Shrouded in Secrecy*, Annexes 13-19, p. 92-181.

36 See Annex 18 in SAPA TFAHR, *A Commission Shrouded in Secrecy*, p. 156-176. Also available at: <http://amnesty.org/en/library/info/IOR64/004/2012/en>. <http://maruah.org/2012/07/09/3rd-maruah-submission-on-asean-human-rights-declaration/>

37 See <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1510.html>.

38 See http://www.dpiap.org/reports/doc/ADF_Statement_2nd_Regional_Consultation_AICHR_CSOs_Manila_12_11_01.doc.

39 See http://www.apwld.org/wp-content/uploads/APWLD-paper-on-Morality_final.pdf.

40 See <http://www.crin.org/docs/CRC%20Asia%20Submission%20for%20AHRD%20-%20Final.pdf>.

41 See [http://sithi.org/admin/upload/law/2012_04_26_HRWG_Submission%20on%20ASEAN%20Human%20Rights_\(ENG\).pdf](http://sithi.org/admin/upload/law/2012_04_26_HRWG_Submission%20on%20ASEAN%20Human%20Rights_(ENG).pdf).

42 See <http://www.burmapartnership.org/2012/07/hrwg-calls-for-aichr-to-adopt-human-rights-on-the-internet/>.

43 See <http://www.hrwg.org/en/asean/civil-society-activities/asean-human-rights-declaration/item/download/46>.

44 See MARUAH, Position on an ASEAN Human Rights Declaration (AHRD), http://maruahsg.files.wordpress.com/2012/07/ahrd_maruah-singapore-submission-2012.pdf; Second Submission, http://maruahsg.files.wordpress.com/2012/07/ahrd_maruah-singapore-second-submission-2012.pdf; and Third Submission, .

9. Philwomen on ASEAN's Position on the Adoption of the AHRD: A Challenge to ASEAN: Be at the Forefront of Human Rights Building in Southeast Asia⁴⁵
10. SEAPA submission to the AICHR on the Right to Freedom of Opinion and Expression in ASEAN⁴⁶
11. Two Addenda to the submission⁴⁷ by the Southeast Asia Women's Caucus on ASEAN: Women's Human Rights Advocates on the ASEAN Human Rights Declaration
12. Kuala Lumpur joint submission endorsed by CSOs participating in the 5th Regional Consultation on ASEAN and Human Rights, organized by SUARAM, SAPA TFAHRD, and FORUM-ASIA⁴⁸
13. Manila joint submission endorsed by CSOs participating in the Civil Society Forum on the AHRD, organized by FORUM-ASIA, American Bar Association Rule of Law Initiative, Task Force Detainees Philippines (TFDP), and Philippine Alliance of Human Rights Advocates (PAHRA)⁴⁹
14. Joint Submission from Center for International Environmental Law and EarthRights International to the AICHR Regarding Human Rights And Environment⁵⁰
15. Draft AHRD Prepared by the Mekong Legal Network, EarthRights International and the Sydney Centre for International Law, University of Sydney⁵¹
16. Experts' Note on the ASEAN Human Rights Declaration by the American Bar Association Rule of Law Initiative⁵²

A declaration far below international human rights standards

The AHRD as adopted on 18 November not only falls far below but also undermines international human rights law and standards. CSOs have roundly denounced it as a "declaration of government powers disguised as a declaration of human rights." The final text failed to incorporate the key recommendations and proposed amendments from CSOs. Other proposed additions to the declaration not found in any earlier drafts were ignored.

45 See <http://ilga.org/ilga/static/uploads/files/2012/11/9/09133331.pdf>.

46 See <http://www.seapabkk.org/seapa-campaigns/asean-a-freedom-of-expression/100621-seapa-submission-to-the-aichr-on-the-right-to-freedom-of-opinion-and-expression-in-asean.html>.

47 See Annex 14 in SAPA TFAHR, *A Commission Shrouded in Secrecy*, p. 103-113. Also available at: <http://womenscaucusonasean.files.wordpress.com/2012/06/wc-submission-publisher.pdf>.

48 See <http://www.forum-asia.org/?p=14184>.

49 See <http://www.forum-asia.org/?p=15341>.

50 See <http://www.earthrights.org/sites/default/files/documents/ERI-CIEL-submission-AICHR-April-2012.pdf>.

51 See <http://www.earthrights.org/sites/default/files/documents/Draft-AHRD-Sept-2012.pdf>.

52 See http://www.americanbar.org/content/dam/aba/directories/roli/indonesia/asia_aba_rol_i_expert_note_asean_human_rights_declaration_05121.authcheckdam.pdf.

Still Window-Dressing

Civil society criticized the declaration for enshrining “ready-made justifications” for human rights violations by:

- Balancing the enjoyment of fundamental rights with government-imposed duties on individuals;
- Subjecting the realization of human rights to “regional and national contexts”;
- Introducing broad and all-encompassing limitations on rights in the Declaration, including rights that should never be restricted;
- Subjecting the enjoyment of rights to national laws in many articles, instead of requiring that the laws be consistent with international human rights standards;
- Omitting several key basic rights and fundamental freedoms, including the right to freedom of association, the right to be free from enforced disappearance, and the right to self-determination;
- Including a sub-minimal list of prohibited grounds for discrimination, in particular omitting sexual orientation and gender identity;
- Making minimal or no reference to the human rights of individual belonging to specific groups, including women, children, older people, Indigenous Peoples, minorities, migrant workers, LGBTI/Q people, people with disabilities and people deprived of liberty.
- Annex 50 summarizes and compares some of the key recommendations and proposed languages made by CSOs with the corresponding provisions of the final adopted AHRD.

A day after the adoption of the declaration, UN High Commissioner for Human Rights Navi Pillay expressed concerns that the document “retains language that is not consistent with international standards.” She stressed that the “international human rights mechanisms will continue to hold ASEAN member states to their international obligations and encourage ASEAN to strengthen further its regional human rights framework” (see Annex 49).

The United States Department of State also expressed deep concerns that “that many of the ASEAN Declaration’s principles and articles could weaken and erode universal human rights and fundamental freedoms as contained in the UDHR” (see Annex 43). The EU foreign policy chief, Catherine Ashton, also emphasized, “the need to ensure that implementation [of the AHRD] addresses adequately any problems of compatibility with international standards, notably the Universal Declaration of Human Rights and the relevant United Nations human rights treaties” (see Annex 44).

The Malaysian National Human Rights Commission (SUHAKAM) expressed its disappointment that the ‘general principles’ of the AHRD “permit restrictions to be made on grounds wider than what are accepted internationally” and regret that “the Declaration was drafted with limited openness and transparency, and inadequate extended consultations with various stakeholders, including the National Human Rights Institutions (NHRIs)” (see Annex 42).

For CSOs and others with human rights close to their hearts, it was deeply frustrating that, as it appeared, only those member states that wanted a weakening and dilution of human rights protections exploited ASEAN's consensus rule to their full advantage. Member states with regressive views of human rights seemed to be the only ones willing to go to the brink, to issue ultimatums, to the effect that there would be no AHRD if, say, the substandard "General Principles" were removed. In contrast, it appears that the more progressive member states did their best, through their AICHR representatives, to convince the other states to make the text of the AHRD reflect international human rights standards, but faced with a stubborn opposition they did not pose their own ultimatums. Instead they preferred to compromise heavily, indeed surrender - including on the key principle of not going below international human rights standards. This is very disappointing, not least because the progressive member states in question were some of the key founding members of ASEAN, in particular Indonesia and Thailand.

CSOs have predicted that the discreet and persevering process in drafting the AHRD would be likely to be resulted in the AHRD that falls below international human rights standard. Therefore, before the adoption on the AHRD during the 21st ASEAN Summit in Phnom Penh, CSOs from different countries of ASEAN, regional and international issued a statement that vowed not to invoke the declaration in addressing ASEAN or ASEAN member states (Annex 32)⁵³. Instead, they will continue to rely on international human rights law and standards in promoting and protecting human rights.

53 Annex 32, Civil society denounces adoption of flawed ASEAN Human Rights Declaration: AHRD falls far below international standards, 19 November 2012

3.2 Thematic studies



ASEAN Grassroot People Assembly - Phnom Penh, Cambodia, 2012
(source: Licadho).

Very little information is publicly available about the three thematic studies initiated by the AICHR since 2011. The terms of references of these three thematic studies, the selection criteria and process of study team members and national focal points, and the names of these persons have never been published by the AICHR.

Table 5: Progress on the AICHR’s thematic studies in 2012

Thematic Study	Progress
Corporate Social Responsibility and Human Rights in ASEAN	First Coordination Meeting for the Study Team members and National Focal Points, Singapore (17 May 2012) Joint ASEAN Intergovernmental Commission on Human Rights (AICHR) – Australian Human Rights Commission (AHRC) Workshop on Corporate Social Responsibility (CSR), Singapore (28-29 November 2012) Regional Workshop and Consultation on Business and Human Rights in ASEAN, Singapore (11-12 December 2012)
Migration and Human Rights in ASEAN	Concept Paper and budget approved by the AICHR at its 9 th regular meeting, Bangkok (6-10 May 2012) Roundtable Discussion and First Coordination Meeting, Bandung, Indonesia (5-6 November 2012)
Right to Peace	Preparatory Regional Workshop on the Right to Peace, Vientiane, Laos (2 October 2012)

Corporate Social Responsibility and Human Rights

It has been more than one and a half years since the AICHR adopted the terms of reference of this thematic study and appointed a Study Team. However, the AICHR has not provided details on the progress of this study beyond the few general and passing references to the study in its press releases.

The thematic study has been conducted largely in secrecy, but civil society managed to obtain information related to it from various sources. The Study Team reportedly consists of Singapore, Malaysia, Indonesia and the Philippines, with Singapore as the lead country. There are ten National Focal Points (NFP), one from each ASEAN member state, which is appointed by their respective AICHR representative. The NFP's duty was to research and submit a national study on CSR to the Study Team by late July 2012. These national reports would then be consolidated into a comprehensive draft report for further input and comments by ASEAN governments.

At its first Coordination Meeting in Singapore on 17 May 2012, the Study Team agreed on the framework of the study and the issues it would look into, including national policies/legislation, the main CSR actors, business practices, access to remedies, challenges and best practices. According to a document obtained by civil society, the study is to use the following methods⁵⁴:

1. Review of relevant literature and studies from the ASEAN region and beyond;
2. Review of relevant international, regional and industry norms and frameworks;
3. Review of information from a variety of sources, including subject matter experts, civil society and business;
4. Meetings and consultations with relevant experts from all stakeholder groups;
5. With the consent of the country concerned, conduct field studies in the respective ASEAN Member States where relevant;
6. Base its study on established frameworks such as the UN "Protect, Respect and Remedy" Framework on Business and Human Rights and the accompanying Guiding Principles.

These methods seem reasonable enough. However, there is no information indicating that the Study Team members or the National Focal Points has conducted any field studies. Besides two regional workshops held in Singapore in November and December on corporate social responsibility (see below), there is insufficient information on whether and to what extent civil society, experts, business and communities have been consulted at the national and regional levels since the thematic study began.

54 See HRWG, "Update on the AICHR's Study on CSR and Human Rights," 4 July 2012, <http://www.hrwg.org/en/asean/aicHR/on-going-advocacy/item/3705-update-on-aichrs-study-on-csr-human-rights>.

Still Window-Dressing

The national focal points were to submit their national study by late July 2012, but according to various sources, not all the NFPs have submitted their reports on time and some are reportedly still overdue at the time of writing, thus preventing the study from moving forward.

At the regional level, civil society continued to investigate and solicit input from communities affected by business-related human rights violations, with the aim of providing informed input into the AICHR study. On 12-13 November, a group of national, regional and international NGOs⁵⁵ organized a workshop entitled “Demanding Accountability In ASEAN; A Workshop on Rights Protection and Accountability Standards in Sovereign, Multilateral and Corporate Investments in ASEAN”, in Phnom Penh, Cambodia. The workshop was a follow up to the two public hearings (Jakarta, 4 May 2011 and Bali, 25 November 2011) and a one-day consultation of Corporate Social Responsibility in ASEAN (Bangkok, 5 October 2012). The Phnom Penh workshop finalized a draft civil society report on Corporate Accountability in ASEAN, which has been prepared based on cases presented at the two public hearings and at the one-day consultation in Bangkok⁵⁶. A preliminary summary of this report was sent to the AICHR on 27 November as a substantive input into the Commission’s study, but to date neither AICHR nor the ASEAN Secretariat has responded.

On 28-29 November, the Australian Human Rights Commission held a joint workshop with the AICHR in Singapore on corporate social responsibility. A short four-paragraph press release relating to this workshop was published on the AICHR’s website only on 18 January 2013. The press release said the workshop had “aimed to provide participants with conceptual understanding and practical experiences on link between business and human rights and relevant international standards and frameworks; knowledge of different approaches to address CSR issues in ASEAN and Australia including mechanisms for monitoring and enforcement, and providing access to remedies; and understanding on multi stakeholder engagement” (see Annex 17).

In late December, the Working Group for an ASEAN Human Rights Mechanisms collaborated with the Ambassador Rosario G Manalo, the Philippine AICHR representative, in organizing the Regional Workshop and Consultation on Business and Human Rights in ASEAN” in Singapore. The workshop discussed the human rights and gender implications of business activities in the context of Corporate Social Responsibility (CSR), and was aimed at offering further input to the AICHR’s study. The participants included Ambassador Manalo;

55 Asian Forum for Human Rights and Development (FORUM-ASIA) in cooperation with Towards Ecological Recovery and Regional Alliance (TERRA), Bank Information Center (BIC), Institute for Essential Services Reform (IESR), Alternative ASIAN Network on Burma (ALTSEAN-BURMA), Burma Partnership (BP), Focus on the Global South (FOCUS), Southeast Asian Committee for Advocacy (SEACA), Action for Gender, Social, and Ecological Justice (AKSI), and Village Focus International (VFI).

56 Civil Society Statement on Corporate Accountability in ASEAN, 14 November 2012, <http://www.forum-asia.org/?p=15594>.

representatives of the ACWC; some members of the AICHR Study Team for the thematic study on CSR; ASEAN Secretariat staff; National Human Rights Institutions from Burma, Malaysia, the Philippines and Thailand; the ASEAN CSR-Network; civil society and the academe. The workshop produced 12 recommendations, which Ambassador Manalo said would be presented to the AICHR and the Study Team. Recommendations from the joint civil society statement of the Phnom Penh workshop in November mentioned above were also conveyed to the AICHR at this Singapore workshop.

Migration and Human Rights in ASEAN

Not much more information was made available on this study since 2011.⁵⁷ The terms of reference of the thematic study on migration and human rights were first discussed at the 5th regular meeting of the AICHR in April 2011.⁵⁸ It was not until a year later that the Commission finally approved the Concept Paper and budget for this thematic study at its 9th regular meeting in Bangkok in May 2012. Neither of these documents is publicly accessible. There is no information on whether or not a Study Team has been appointed.

On 5-6 November 2012, Indonesia hosted the Round Table Discussion and First Coordination Meeting of the AICHR thematic study on Migration and Human Rights in Bandung. According to a press release posted on the AICHR's website (see Annex 14), the roundtable and coordination meeting served as an initial discussion of the AICHR thematic study on migration, for which Indonesia is the lead country. Rafendi Djamin, Indonesia's AICHR representative, organised and facilitated the meeting, which was attended by representatives from international and "different stakeholders in Southeast Asia." There is no information on whether the AICHR provided participants with the ToR of the study.

The AICHR has also remained silent in the face of the on-going plight of refugees and asylum-seekers in the region, including tens of thousands of ethnic minorities displaced by the on-going conflict in Kachin State in northern Burma as well as the Rohingya Muslims displaced from their homes in Arakan State by communal violence. In an op-ed in the *Jakarta Post* in September 2012, Indonesia's former Director-General for Human Rights of the Ministry of Law and Human Rights urged ASEAN to optimize the protection mandate of the AICHR and address the ethnic cleansing of the Rohingyas, warning that the AICHR will lose its credibility if it fails to address such gross violations.⁵⁹

57 See SAPA TFAHR, *A Commission Shrouded in Secrecy*, p. 18-20.

58 See Press Release of the Fifth Meeting of the ASEAN Intergovernmental Commission on Human Rights, 25-29 April 2011, <http://aichr.org/press-release/press-release-of-the-fifth-asean-intergovernmental-commission-on-human-rights-asean-secretariat/>.

59 See Opinion by Hafid Abbas, "The Rohingya crisis: ASEAN vs Red Cross," *The Jakarta Post*, 6 September 2012, <http://www.thejakartapost.com/news/2012/09/06/the-rohingya-crisis-asean-vs-red-cross.html>.

Right to Peace

Even less information is available on the thematic study on the right to peace, despite its inclusion in the ASEAN human rights declaration. The only available information is that the AICHR organized a workshop on the right to peace in Vientiane, Lao PDR, on 2 October. Only a one-paragraph press release was issued following the workshop, which indicated that the workshop is only a preparatory step for the thematic study (see Annex 11).⁶⁰ There is no other information in the press release about the facilitator, participants, topics discussed, outcomes or follow up.

The press release, although short, is revealing in two aspects. First, the press release stated that the participants of the workshop discussed the term “right to peace” and the current regional peace promotion efforts, while bearing in mind “ASEAN’s unique history and regional particularities.” The press release ended by stating that the objective of the workshop was to understand to what extent “each ASEAN Member State enjoys” the right to peace. This formulation appears to suggest that the “right to peace”, rather than a human right, is understood by the AICHR to be a State right, to be enjoyed by governments rather than by individuals.

The invocation of “regional particularities” and the seeming characterization of the right as one to be enjoyed by States bode ill for what may be included in the thematic study. Although the right to peace is not yet defined in a legal instrument internationally, there is a body of authoritative opinions, UN resolutions and reports by UN human rights bodies on elements of a right to peace. For instance, at its 5th session, the UN Human Rights Council’s Advisory Committee established a drafting group to prepare a draft UN declaration on the right of peoples to peace, which was submitted in the Advisory Committee’s report to the Council at its 20th Session in April 2012.⁶¹ The draft declaration on the right of peoples to peace stated that individuals and peoples have a right to peace, and that States are the principal duty-holders of the right to peace. The draft goes on to state that the right to peace is universal, indivisible, interdependent and interrelated.

3.3 Advisory Services to ASEAN Sectoral Bodies

Since the establishment of the AICHR, two ASEAN sectoral bodies have approached the AICHR requesting its advisory services or technical assistance, as per Article 4.7 of the Commission’s ToR:

1. The ASEAN Health Ministers Meeting (AHMM) requested the AICHR’s advice on the issue of mandatory HIV/AIDS testing for migrant workers;
2. The ASEAN Senior Official Meeting on Education (SOM-ED) requested advice and assistance on the development of human rights curriculum for universities in ASEAN.

60 See “Lao voices support for human right to peace,” *Lao Voices*, 3 October 2012, <http://laovoices.com/laos-voices-support-for-human-right-to-peace/>.

61 See Report of the Human Rights Council Advisory Committee on the right of peoples to peace (A/HRC/20/31), 16 April 2012, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/20/31.

There is no publicly available information on whether the AICHR is preparing or has rendered its advice or assistance to either of these sectoral bodies.

3.4 Obtaining Information on State Reporting to UN Bodies

Article 4.10 of the ToR provides that the AICHR may “obtain information from ASEAN Member States on the promotion and protection of human rights.” In the absence of any institutionalized mechanisms to receive and consider individual communications, the AICHR could concretely realize its mandate by implementing Article 4.10 to address country-specific or thematic human rights issues in ASEAN countries.

Sections 4.10.1 and 4.10.2 of the First Five-Year Work Plan indicate that the AICHR plans to obtain country reports submitted by ASEAN Member States to the UN human rights bodies and invite the states to share additional and updated information on these reports. However, the work plan fails to specify what the AICHR would do with these reports and information, and the exercise may wind up as little more than “paper-pushing.”

A number of ASEAN Member States have undergone reviews by UN human rights mechanisms in 2012, as summarized in Table 6:

Table 6: Examination of state reports of ASEAN Member States by UN human rights mechanisms in 2012

Country	UN Human Rights Mechanism	Date
Burma	Committee on the Rights of the Child	19 January 2012
Indonesia	Second Universal Periodic Review	23 May 2012
	Committee on the Elimination of Discrimination against Women	11 July 2012
Lao PDR	Committee on the Elimination of Racial Discrimination	28-29 February 2012
Philippines	Second Universal Periodic Review	29 May 2012
	Human Rights Committee	15-16 October 2012
Thailand	Committee on the Elimination of Racial Discrimination	9-10 August 2012
	Committee on the Rights of the Child	24-25 January 2012
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 January 2012
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 January 2012
Vietnam	Committee on the Elimination of Racial Discrimination	21-22 February 2012

However, there is no information on whether the AICHR has requested and obtained a copy of the national reports from these reporting states, or whether additional information was sought and received. The State reports are publicly available on the UN's website in any case.

Still Window-Dressing

A number of ASEAN Member States will submit reports to various UN human rights mechanisms in 2013:

- Cambodia will be examined by the Committee on the Elimination of Discrimination against Women (CEDAW) in October; it will also undergo its second UPR in early 2014 and will submit its national UPR report in the last quarter of 2013
- Indonesia will be examined by the Human Rights Committee (HRC) in July and by the Pre-session Working Group of the Committee on Economic, Social and Cultural Rights (CESCR) in December
- Malaysia will undergo its second UPR in October or November and will submit its national UPR report in mid-2013
- Vietnam is running for a seat on the Human Rights Council (2014-2016) and may submit voluntary pledges to support its candidature; it will also undergo its second UPR in early 2014 and will submit its national UPR report in the last quarter of 2013

These multiple reports represent important opportunities for the AICHR to seek, review and comment on not only the state reports but also submissions by civil society and NHRIs.

3.5 Training programs and conferences

In addition to the four workshops related to its three on-going thematic studies, the AICHR also organized several other training programs and workshops:

1. AICHR Training Program on Promoting Access to Justice and Human Rights, in cooperation with and supported by the Institute of Human Rights and Peace Studies (IHRP), UN WOMEN, and the Canadian International Development Agency (CIDA) (Bangkok)
2. AICHR-UNHCR Regional Workshop of National Registrars on Best Practices in Birth Registration (Bangkok)
3. AICHR Advanced Training Program on Human Rights Training of the Trainers, in cooperation with and supported by the Institute of Human Rights and Peace Studies (IHRP), UN WOMEN, and CIDA (Bangkok)

The two training programs were first agreed upon by the AICHR in its 8th regular meeting in March. The programs' concept papers and budget were approved during a special meeting of the AICHR in August, and it was agreed that the Thai representative, Dr. Sriprapha Petcharamesree, would implement them.

Regional Workshop of National Registrars on Best Practices in Birth Registration

On 7 December 2012, the AICHR co-organized, with the UN High Commissioner for Refugees (UNHCR), a regional workshop of national registrars on best practices in birth registration. As of the time of writing, the AICHR has not issued a press release or any other statement on this workshop. It appears that the workshop is a follow up to the AICHR-UNHCR Regional Workshop on

Statelessness and the Rights of Women and Children in November 2011, where participants agreed that “ensuring the registration of all children at birth is one of the most important measures to protect the right of the child to a nationality and noted universal accession to the Convention of the Rights of the Child in the region.”⁶² One recommendation from the 2011 workshop was for the AICHR to “encourage the adoption of good practices that were highlighted during the discussions, as well as to identify other effective approaches.”

AICHR Training Program on Promoting Access to Justice and Human Rights,

On 3-6 December 2012, the AICHR, with the Institute of Human Rights and Peace (IHRP), Mahidol University (Thailand) and UN WOMEN organized a Training Program on Promoting Access to Justice and Human Rights. The workshop received partial funding from CIDA. 15 participants from five ASEAN Member States and an ASEAN Secretariat staff attended. The training was designed for law enforcement officers, judges and lawyers from all ASEAN Member States. Three participants were selected by their own respective agencies to participate in the training. Most of the participants were civil servants, judges and government lawyers, while a small number of them were lawyers working for civil society organisations. No civil society organisations were invited to observe the training. However, the invited resource persons included representatives from human rights NGOs, UN agencies, and a UN treaty body. Participants made presentations on justice and the judicial system in their respective countries while resource persons discussed case studies and background on the topics from a regional and international perspective. The discussions put an emphasis on access to justice for marginalized groups, including victims of domestic violence and children in conflict with the law. the AICHR issued a press release on the training in January 2013 (see Annex 19).

AICHR Advanced Training Program on Human Rights Training of the Trainers

On 13-18 December 2012, the AICHR, in cooperation with and supported by the Institute of Human Rights and Peace Studies (IHRP), UN WOMEN, and CIDA, organized a human rights training of trainers in Bangkok. 18 participants from Burma, Cambodia, Indonesia, Lao PDR, the Philippines, Thailand, Vietnam, as well as an ASEAN Secretariat staff, attended the training. According to the training program given to resource persons, the training was designed for “potential trainers in human rights” and targeted “government officers, staff of human rights institutions and academics desiring to build capacity to become human rights educator in her/his own country.” Their respective AICHR representatives selected the participants. The Thai AICHR representative invited a number of resources persons, including representatives from UN agencies, Thai university professors, a former UN special rapporteur and several NGOs, some of whom had been barred from participating in the AICHR’s two regional consultations on the AHRD in June and September.

62 See Summary Report of the AICHR-UNHCR Regional Workshop on Statelessness and the Rights of Women and Children, p. 5, http://aichr.org/?d_name=Doc-4-StatelessnessManila-SummaryFINAL22Nov12.pdf.

Still Window-Dressing

According to a press release issued in January 2013 (see Annex 20), the training covered “concepts and principles of human rights; international and regional human rights standards and mechanisms, ongoing debates on human rights; ASEAN regional human rights mechanisms; roles of national human rights institutions and civil society as well as rights of some specific groups.”

Representatives of the AICHR also participated in other international events organized by third parties, including:

1. High-Level Side Event at the UN Human Rights Council on “Enhancing Cooperation with Regional and Sub-regional Human Rights Mechanisms” (Geneva)
2. First UN Forum on Business and Human Rights (Geneva)⁶³
3. Workshop on Enhancing Cooperation between the UN and Regional Mechanisms for the Promotion and Protection of Human Rights (Geneva)⁶⁴

High-Level Side Event at the Human Rights Council on “Enhancing Cooperation with Regional and Sub-regional Human Rights Mechanisms”

On 18 June 2012, the office of the Presidency of the UN Human Rights Council co-hosted a high-level side event at the 20th Session of the Council, jointly with OHCHR and the Permanent Missions of Armenia, Belgium, Mexico, Senegal, Qatar, and Thailand, on ‘enhancing cooperation with regional and sub-regional human rights mechanisms’. The panellists included the UN High Commissioner for Human Rights along with representatives from the African Commission on Human and Peoples’ Rights, the Inter-American Commission on Human Rights, the Council of Europe, the League of Arab States, and the AICHR, which was represented by the Cambodian representative Mr. Om Yentieng.

Mr. Om Yentieng gave a short introduction to the AICHR, particularly on its thematic studies and the drafting of the AHRD. He told the audience about the AICHR’s study tours to the UN as well as input from international agencies into its thematic studies on CSR, migrant workers and the right to peace. During the question and answer session, civil society participants asked him whether the AICHR plans to share the draft Declaration with UN Special Procedures and Treaty Bodies to solicit their insights and comments, as a way to enhance cooperation with the UN human rights mechanisms. He did not answer the question directly, but said the Commission would continue to receive input and suggestions from interested parties “over emails, conversations, etc,” in the lead up to the adoption of the Declaration at the ASEAN Summit in November.

Civil society representatives also raised the issue of the AICHR’s rejection of requests by regional and international NGOs to participate in the first regional consultation on the AHRD in Malaysia, and reminded Om Yentieng of a statement

63 See: <http://www.ohchr.org/EN/Issues/Business/Pages/ForumonBusinessandHR2012.aspx>.

64 See: <http://www.ohchr.org/EN/Countries/NHRI/Pages/RHRMIndex.aspx>.

by the UN High Commissioner for Human Rights Navi Pillay in which she had called for “a meaningful consultation on the draft with the widest spectrum of people in the region before it is presented to ASEAN’s foreign ministers in July.”⁶⁵ In response, Om Yentieng said that AICHR members could not reach a consensus over the participation of some NGOs.

First UN Forum on Business and Human Rights

On 4-5 December 2012, the Human Rights Council in Geneva convened the first annual UN Forum on Business and Human Rights.. In a session on 4 December entitled “Taking Stock of the Role of Global Governance Frameworks,” Mr. Rafendi Djamin, as Indonesia’s AICHR representative, made a presentation on the “groundwork laid by the ASEAN for implementation of a corporate social responsibility policy and its alignment with the Guiding Principles, noting that there was a very low level of awareness of the Guiding Principles in the region.”⁶⁶

Workshop on Enhancing Cooperation between the UN and Regional Mechanisms for the Promotion and Protection of Human Rights

On 12-14 December 2012, the OHCHR organized a workshop on enhancing cooperation between UN and regional human rights mechanisms, focusing on cooperation in information sharing, joint activities and follow-up to recommendations of United Nations and regional mechanisms. ASEAN was represented by Mr. Rafendi Djamin, the Indonesian AICHR representative, and Madam Kanda Vajrabhaya, Thailand’s representative to the ACWC. Mr. Djamin spoke at a panel entitled “Taking stock of developments in the cooperation activities between UN and regional human rights mechanisms. Madam Vajrabhaya spoke at a panel entitled “Joint activities between UN and regional human rights mechanisms.” Their presentations or remarks at these sessions are not publicly accessible on the AICHR ‘s or ASEAN’s websites at the time of writing.

3.6 Handling of Human Rights Violations Cases

Despite having a mandate to both promote and protect human rights, the AICHR continues to insist that it cannot consider or address complaints of human rights violations. The AICHR Booklet launched in October 2012 stated that in its “current” ToR, the Commission “does not have the mandate to handle individual cases.”⁶⁷ The Booklet goes on to state that groups or individuals may send complaints to the AICHR through the Chair, with all other AICHR representatives and the ASEAN Secretariat in copy. However, the Booklet does not say anything about how the Commission and the Secretariat would handle and respond to such communications, if at all. The AICHR has not responded to any of the cases submitted to it since its founding in 2009.

65 See OHCHR, “Pillay urges ASEAN to set the bar high with its regional human rights declaration,” 11 May 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12142&LangID=E>.

66 Summary of discussions of the Forum on Business and Human Rights, prepared by the Chairperson, John Ruggie (A/HRC/FBHR/2012/4), para. 36.

67 See AICHR Booklet, pg 19.

Still Window-Dressing

The following are some of the cases brought to the attention of the AICHR in the course of 2012:

Forced eviction of the Borei Keila community (Cambodia)

On 23 January 2012, five regional and international human rights groups wrote to the leaders of the Cambodian government and Mr. Om Yentieng, Cambodia's AICHR representative and chair of the Commission, to protest against the forced eviction of the Borei Keila community in Phnom Penh and the arbitrary detention on 12 January of 22 women and six children while peacefully protesting their eviction. There was no statement by the AICHR in response. Three women were released on 16 January and another woman on the following day, after signing a contract to accept land in a remote relocation site. On 18 January, the remaining women and children climbed the fences around the center and escaped from Prey Speu during a visit to the facility by two opposition parliamentarians and the media. Victims of the forced evictions at Borei Keila have not received adequate compensation and redress for the gross violation of their land and housing rights, while community leaders protesting against their treatment have faced harassment. Despite the numerous other cases of land and housing rights violations and intimidation of activists in 2012 in Cambodia, the AICHR, under the country's chairmanship, failed to take any action to protect and promote these rights.

The Case of Somyot Prueksakasemsuk (Thailand)

In September 2012, 21 national, regional, and international civil society organisations send a joint letter to foreign ministers of over 40 countries with diplomatic presence in Thailand as well as to the AICHR, expressing their serious concerns about the harsh and unjustified verdict against Thai magazine editor and human rights defender Mr. Somyot Prueksakasemsuk, as a result of the Thai government's use of Article 112 of the Criminal Code (the *lèse-majesté* law) to criminalise speech and peaceful dissent, in violation of international human rights law. At time of writing, the AICHR has not made any statement in response and Somyot was convicted and harshly sentenced on 23 January 2013 to 11 years of imprisonment.

Chapter 4: Engagement with Stakeholders



AICHR 2nd Consultation with CSOs on the ASEAN Human Rights Declaration - Manila, 12 September 2012 (source: Ging Christobal)

4.1 Provisions on engagement in the Guidelines on the Operations of the AICHR

In the adopted Guidelines on the Operations of the AICHR, there are several provisions governing its engagement with other entities. Section 10 of the Guidelines governs the AICHR's relationship with other ASEAN bodies and stipulates that it "shall work with all ASEAN sectoral bodies dealing with human rights to be in alignment and consistent with the AICHR" (Article 10.1(ii)). Article 10.1(iii) has a non-exhaustive list of methods by which the AICHR could work with ASEAN sectoral bodies to "determine the modalities for their ultimate alignment" with the Commission.

It is interesting to note that, in addition to being able to provide advisory services and technical assistance to other ASEAN bodies upon request, the AICHR is also empowered by the Guidelines to request such services and assistance from other ASEAN bodies (Article 10.2). Aside from the two consultations with ASEAN sectoral bodies on the AHRD, there is no information on whether other forms of interaction as stipulated in the Guidelines were held or whether ASEAN sectoral

Still Window-Dressing

bodies and the AICHR have requested advice and assistance from each other in the period covered by this report.

Section 11 of the Guidelines governs interaction with “entities associated with ASEAN and other stakeholders.” The two provisions under this section largely reflect the wording of corresponding Articles 4.8 and 4.9 of the AICHR’s ToR, with Article 11.1 restricting consultations to organisations accredited to ASEAN – now under the new and extremely restrictive ‘Revised Guidelines on Accreditation of Civil Society Organisations (CSOs)’.⁶⁸ Article 11.2, on the other hand, allows the AICHR, when it deems appropriate, to consult with other non-accredited “national, regional, and international institutions.” The manner and modality of such consultation are to be “mutually agreed upon by both the Commission and the national institutions/entities concerned.”

Article 9.2 stipulates that the AICHR could gather relevant information when preparing and adopting reports other than the annual reports it is required to submit to the foreign ministers, but that the information gathered must be “deemed appropriate” by the Commission. There is no publicly available information on whether the AICHR has produced any reports other than their annual reports.

SAPA TFAHR is deeply worried that the “consensus and consultation” clauses of the ASEAN Charter, the ToR and the Guidelines, essentially give any AICHR representative a de facto veto over any engagement, which the member state that they represent opposes. The barring of certain NGOs from attending the regional consultations on the AHRD is a harbinger of how the AICHR may use the Guidelines to exclude CSOs.

4.2 Consultations with Stakeholders at the Regional Level

During the period covered by this report, the AICHR met and consulted with selected stakeholders within and outside ASEAN. The stakeholders engaged by the AICHR during its official meetings, workshops and trainings are listed in Table 7.

⁶⁸ See: <http://www.asean.org/images/2012/documents/Guidelines%20on%20Accreditation%20of%20CSOs.pdf>.

Table 7: Overview of meetings with stakeholder(s) during the official meetings, workshops, and trainings of the AICHR⁶⁹

Regular or AHRD Meetings	Stakeholder(s)	Output/Issues discussed
8 th Meeting (9-13 March 2012)	Committee of Permanent Representatives (CPR)	Further strengthening the coordination and cooperation between the CPR and AICHR, information sharing with AICHR, and AICHR's engagement of ASEAN Dialogue Partners
Interface Meeting (2 April 2012)	ASEAN Foreign Ministers	Guidance to the AICHR on how to move forwards to complete the draft of the AHRD by July 2012
1 st regional consultation with ASEAN Sectoral Bodies (6-10 May 2012)	ASEAN Sectoral Bodies (unspecified)	Views, expertise and concerns on their respective sectors that will contribute to enriching the draft AHRD
1 st regional consultation with CSOs (22 June 2012)	36 selected national, regional, and international civil society organizations	CSO joint submission and input into the draft AHRD
2 nd regional consultation with ASEAN Sectoral Bodies (24-26 August 2012)	ASEAN Sectoral Bodies, including the ACWC, ASEAN Committee on Women (ACW), the ASEAN Defence Senior Officials Meeting (ADSOM), the Senior Labour Officials Meeting (SLOM), and the Senior Officials Meeting on Health Development (SOM-HD)	Further inputs and comments on the draft AHRD
2 nd regional consultation with CSOs (12 September 2012)	Representatives from selected national, regional, and international civil society organizations	Further CSO joint submission, inputs and comments on the AHRD
9 th AHRD Meeting (13-14 September 2012)	Unspecified regional experts from Indonesia, the Philippines, and Thailand	Seeking their views and inputs on the AHRD
Regional Workshop on Right to Peace (2 October 2012)	Unspecified national, regional and international experts on the term of the Right to Peace and the current state of affairs in regional peace promotion efforts	Overall understanding about the Right to Peace as a collective right and to what extent each ASEAN Member State enjoys it and to identify the various aspects constituting the Right to Peace

69 Compiled from press releases of the AICHR on its new website, <http://www.aichr.org>.

Still Window-Dressing

<p>Round Table Discussion and First Coordination Meeting of the AICHR thematic study on Migration and Human Rights (5-6 November 2012)</p>	<p>Unspecified speakers from various International Organizations as well as representatives of different stakeholders in Southeast Asia</p>	<p>Discussion of a framework regarding the steps to be taken by ASEAN to protect all parties involved in the migration process, especially the vulnerable groups, including migrant workers, trafficked people including women and children, Internally Displaced Persons (IDPs), stateless and near-stateless people, asylum seekers and refugees; and inter-national marriages</p>
<p>Joint Workshop on CSR (28-29 November 2012)</p>	<p>Australian Human Rights Commission; Mr. Edgardo Amistad, Chairman of the ASEAN CSR Network; Mr. Thomas Thomas, CEO of the ASEAN CSR Network and executive director of Singapore Compact for CSR; Ms. Vanessa Zimmerman, Business and Human Rights Expert</p>	<p>Conceptual understanding and practical experiences on link between business and human rights and relevant international standards and frameworks; knowledge of different approaches to address CSR issues in ASEAN and Australia including mechanisms for monitoring and enforcement, and providing access to remedies; and understanding on multi stakeholder engagement.</p>
<p>Regional Training Program on Promoting Access to Justice and Human Rights (3-6 December 2012)</p>	<p>Participants included government, academe and CSO representatives working directly on access to justice issues from Cambodia, Indonesia, Lao PDR, Thailand, and Vietnam. Resources persons included representatives from the International Commission of Jurists (ICJ), International Women's Rights Action Watch Asia Pacific (IWRAP-AP), FIDH, Thai activist Mr. Jon Ungphakorn, UNDP, UN WOMEN, and UN Committee on the Rights of the Child.</p>	<p>Understanding the concepts of access to justice and human rights and administration of justice in ASEAN Member States including the assessment of challenges access to justice of the poor and some marginalized groups, e.g. victims of domestic violence and children in conflict with the law.</p>

Regional Workshop and Consultation on Business and Human Rights in ASEAN (11-12 December 2012)	UN WOMEN; Working Group for an ASEAN Human Rights Mechanism; representatives from the AICHR; ACWC representatives from Burma, Cambodia, Indonesia, Lao PDR, and Philippines; the ASEAN Secretariat; the ASEAN Foundation; ASEAN-CSR Network; National Human Rights Institutions (NHRIs) from Burma, Malaysia, Philippines, and Thailand; the AICHR "CSR and Human Rights" Study Team and National Focal Points; and civil society organisations (CSOs), including Cambodian Women's Crisis Center, EarthRights International, Singapore Compact for CSR, Verite Southeast Asia, De La Salle University, and the UN Independent Expert on Human Rights and Solidarity	Discussion of the human rights and gender implications of business activities in the context of Corporate Social Responsibility (CSR); assessment of the "United Nations Guiding Principles on Business and Human Rights" in the ASEAN context, gender equality in labour practices, business and the environment, consumer rights, and access to remedies; presentation of initial findings on the on-going AICHR thematic study on CSR and human rights; assessing the "United Nations Guiding Principles on Business and Human Rights" in the ASEAN context, gender equality in labour practices, business and the environment, consumer rights, and access to remedies.
Advanced Training Program on Human Rights: Training of the Trainers (13-18 December 2012)	Participants included government, academe and CSO representatives from Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, and Vietnam Resource persons included AICHR representatives, AIPP, FIDH, Pusat Komas, SUARAM, Chulalongkorn University (Thailand), Thammasat University (Thailand), OHCHR, UNHCR, and UN WOMEN	Concepts and principles of human rights; international and regional human rights standards and mechanisms, the International Criminal Court, ongoing debates on human rights; ASEAN regional human rights mechanisms; roles of national human rights institutions and civil society as well as rights of some specific groups. A field visit to migrant workers was conducted.

Regrettably, the AICHR continues to conduct its regular meetings behind closed doors, barring participation by or interface with civil society. Civil society organisations have made requests to the ASEAN Secretariat to access the Summary Records of the regular meetings, but have been told that these documents are not public and therefore cannot be shared. No explanation has been given as to why such records are treated as internal and confidential documents.

All ten of its official meetings on the AHRD, where the substantive drafting and revision took place, were conducted in the same secretive and exclusive manner. Other than the four regional consultations with ASEAN Sectoral Bodies and CSOs, It appears that the only time the AICHR engaged with stakeholders during its AHRD meetings was at the 9th meeting in September 2012, where they met with "regional experts" from Indonesia, Philippines and Thailand, whose identities were not revealed.

Still Window-Dressing

The holding of regional consultations with CSOs is a step in the right direction, and will hopefully herald more, and more regular, consultations. However, these one-day consultations were too short, too late, with a draft to comment on only at the second consultation, and with civil society only partially represented and some organisations excluded. The first regional consultation in June came one year after the drafting began and a mere day before the AICHR was scheduled to finalize a draft and submit it to ASEAN foreign ministers the following month. This left no time for meaningful deliberation of civil society's recommendations.

The organisation of the first consultation was further undermined by the lack of transparency and procedural inadequacies, with some states selecting organisations that are known to lack independence from the government. Furthermore, some CSOs received formal invitations very late and as a consequence did not have time to secure the resources for their participation. The rejection and refusal to invite several reputable human rights groups illustrates a continued resistance, even hostility, within the Commission towards independent human rights advocacy groups..

In an open letter to ASEAN foreign ministers on 7 July (see Annex 26), more than 60 civil society organisations in ASEAN countries called on the AICHR and ASEAN to postpone the finalization of the draft declaration, publish the current draft, make it widely available, and allow more time for further consultations with civil society at the national and regional levels. No formal response was ever received. After July and up to the adoption of the declaration in November, only two national consultations (one each in Indonesia and Philippines) and one more regional consultation were held. The full draft of the AHRD was only made available in late August, as noted and it was only then that CSOs realized that none of their core recommendations was taken on board.

Following the regional consultation in June, the AICHR waited another three months before holding a second and final regional consultation with CSOs in September. The consultation in Manila in September was better organised in some regards, though the same organisations remained barred. Both consultations were held in a friendly and businesslike atmosphere. However, a crucial outcome that was missing from the consultations: as noted, the AICHR refused to take on board any of the core recommendations made by civil society. This enabled the AICHR to "tick the 'consultation with CSOs' box" without carrying out what consultations should be about: rethinking and re-examining the text, in particular as it became clear to all that the drafts were drifting away from accepted universal standards.

Five regional and one international human rights groups were invited to the two regional consultations on the AHRD.⁷⁰ However, during the period covered by this report, the AICHR also has yet to formally engage at the regional level with regional networks, such as the SAPA TFAHR and the Southeast Asia National Human Rights Institutions Forum (SEANF), both of which have long-standing written requests to the AICHR for an official interface.⁷¹ This refusal to meet is inconsistent with Article 4.9 of the Commission's ToR, which stipulates it should meet with "national, regional, and international organizations" working on human rights, regardless of whether they are accredited to ASEAN under Chapter V of the ASEAN Charter.

The AICHR's selective engagement with only a few regional and international CSOs is most likely due to some AICHR representatives' resistance towards engaging with CSOs known for their public advocacy on and exposure of human rights violations in the representatives' own countries. It is extremely difficult to foresee how the AICHR could credibly present itself as a body with a mandate to promote and protect human rights when they refuse to engage with or even acknowledge human rights groups .

4.3 Consultations with Stakeholders at the National Level

Unlike 2011 (see Chapter 4 of the 2011 performance report), consultations with stakeholders at the national level took place only in some, but not all, ASEAN countries. Indonesia and Thailand continued to hold national consultations more regularly than the other countries. In 2012, most of the national consultations in countries, which had them, were devoted to the AHRD. In total, 17 national-level consultations were held by the AICHR representatives, which happened in Indonesia, Malaysia, Philippines, and Thailand.

70 These were: the Asia Pacific Forum on Women, Law and Development (APWLD), Child Rights Coalition Asia (CRC Asia), General Election Network for Disability Access (AGENDA), International Women's Rights Action Watch Asia Pacific (IWRAW-AP), Working Group for an ASEAN Human Rights Mechanism, and International Commission of Jurists (ICJ).

71 See SAPA TFAHR, *A Commission Shrouded in Secrecy*, pp. 27-28.

Table 8: National consultations with stakeholders in 2012

Country	Name of Meeting, Venue and Date	Organizer(s)
Indonesia	Consultation with CSOs on AHRD for the western region, Yogyakarta, 10-12 February 2012	Ministry of Foreign Affairs and the Representative of Indonesia to the AICHR
	Consultation with CSOs on AHRD for the central region, Jakarta, 19-20 February 2012	
	Consultation with CSOs on AHRD for the eastern region, Makassar, 27-28 February 2012	
	Publication dissemination and consultation, UNIMED-Medan, 19 March 2012	
	Consultation with Women's Organisations on AHRD, Jakarta, 12 April 2012	
	Publication dissemination and consultation, Universitas Jember, 2 May 2012	
	Publication dissemination and consultation, Surabaya, 14 June 2012	
	First National Consultation on AHRD, Jakarta, 25 June 2012	
	Second National Consultation on AHRD, Jakarta, 13 August 2012	
Malaysia	Consultation on AHRD, Kuala Lumpur, 16 June 2012	Representative of Malaysia to the AICHR
Philippines	2nd Consultation on the ASEAN Human Rights Declaration (AHRD), Makatai City, 15 June 2012	The Philippine Working Group for an ASEAN Human Rights Mechanism, together with the Representative of the Philippines to the AICHR
	3rd Consultation on the AHRD, Manila, 29 August 2012	The Philippine Working Group for an ASEAN Human Rights Mechanism, together with the Representative of the Philippines to the AICHR

Thailand	3 rd Focused Group Consultation on the AHRD, Chachoengsao Province, 23 January 2012	Representative of Thailand to the AICHR in collaboration with Pro-rights Foundation and the Friend of East Network
	4 th Focused Group Consultation on the AHRD, Ubonratchathani Province, 6 February 2012	Representative of Thailand to the AICHR in collaboration with Pro-rights Foundation and the NGO Coordinating Committee on Development-Northeast
	5 th Focused Group Consultation on the AHRD, Ratchaburi Province, 19 March 2012	Representative of Thailand to the AICHR in collaboration with Pro-rights Foundation and the Karen for Cultural and Environmental Network
	6 th Focused Group Consultation, Trang Province, 23 April 2012	Representative of Thailand to the AICHR in collaboration with Pro-rights Foundation and the Cross-ethnic Integration in Andaman under Sathirakoses-Nagapradjpa Foundation (SNF)
	7 th Consultation (National Consultation) on the AHRD, Bangkok, 25 May 2012	Representative of Thailand to the AICHR in collaboration with Pro-rights Foundation and the National Human Rights Commission

The multiple national consultations on the AHRD in some countries, especially Indonesia and Thailand, are to be commended. The practice by Dr. Sriprapha Petcharamesree, the Thai representative, of collaborating with grassroots and community-based civil society organisations, as well as the National Human Rights Commission, to organize these consultations are especially welcome. These consultations are an example of positive realization of Article 4.9 of the ToR, consistent with ASEAN’s purpose to promote a “people-oriented ASEAN.”

The Cambodian Human Rights Committee, a government office, held one meeting on 3 July in Phnom Penh on the AHRD, but it did not appear to be an official AICHR event. The Cambodian representative to the AICHR was not present at the meeting. Unfortunately, no other ASEAN countries are known to have conducted any open national consultation with independent CSOs on the AHRD or on any other human rights related issues during the period covered by this report.

It is extremely concerning and not entirely coincidental that most of the ASEAN countries where the AICHR representative did not hold national consultations in 2012 also experienced widespread and serious human rights violations, although human rights violations occurred in all ASEAN member states. Victims of these violations often have little or no recourse to effective domestic remedies because of entrenched impunity, the lack of an independent judiciary, government intimidation, on-going armed conflict, abusive application of draconian legislation, and/or deep-seated and state-condoned or tolerated discrimination.

Still Window-Dressing

4.4 Engagement with International Stakeholders at the International Level

The AICHR engaged with a number of international organisations, UN agencies, and UN human rights mechanisms by inviting them as resource persons at official workshops or trainings:

1. OHCHR
2. UNDP
3. UNHCR
4. UNICEF
5. UN WOMEN
6. UN Committee on the Rights of the Child
7. UN Independent Expert on Human Rights and Solidarity

The AICHR also engaged with the following international NGOs by inviting them to either the regional consultations on the AHRD or to an official workshop or training:

1. EarthRights International
2. International Commission of Jurists (ICJ)
3. International Federation for Human Rights (FIDH)
4. Verité Southeast Asia

The CSR workshop that the AICHR jointly held with the Australian Human Rights Commission (AHRC) in Singapore was the former's first official collaboration with a national human rights institution. While the AICHR's openness to work with the AHRC is to be welcomed, it is inexplicable at the same time that the AICHR has yet to collaborate substantively with any of the four NHRIs within the region. The AHRC reportedly has considered providing international technical assistance to the AICHR,⁷² but at time of writing, there is no publicly available information on the AHRC's website detailing its cooperation with the AICHR.

At the 19th ASEAN-EU Ministerial Meeting on 26-27 April 2012 in Brunei, EU and ASEAN ministers adopted the Bandar Seri Begawan Plan of Action to Strengthen the ASEAN-EU Enhanced Partnership (2013-2017).⁷³ The Plan includes one section on "cooperation on human rights," which reads in full as follows:

Support the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR), as the overarching body for the promotion and protection of human rights in ASEAN through regional dialogues, seminars, awareness raising activities, exchange of best practices and other capacity building initiatives aimed at enhancing the promotion and protection of

72 See Australian Human Rights Commission File ID #2011/46-1, 1 February 2011. http://www.humanrights.gov.au/about/senate_listing/2011.html.

73 See full text: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/129884.pdf.

human rights through technical cooperation programmes as well as giving support to the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) (section 1.3.1)

The European Commission is reportedly negotiating a technical assistance package with ASEAN to operationalise the Plan of Action's various sections, including assistance to the AICHR and ACWC. However, details of the negotiation are not publicly accessible. Human rights groups have advised the EU to move cautiously in extending assistance to the AICHR so as not to be seen as encouraging or somehow condoning the Commission's lack of independence, secretive way of operating, its resistance to engagement with CSOs, as well as the problematic principles found in the AHRD.⁷⁴ The European Parliament's Subcommittee on Human Rights requested a briefing paper on the development of ASEAN human rights mechanisms. The paper was prepared by Mr. Vitit Munthaborn, Professor at the Faculty of Law - Chulalongkorn University (Bangkok, Thailand). He presented it to the European Parliament in September 2012. Professor Vitit emphasised that "ASEAN still lacks a human rights treaty entrenching [human rights] and there is as yet no regional court nor a regional procedure to enable individuals to seek redress." The paper made a number of recommendations to European institutions to help strengthen ASEAN human rights mechanisms, while building other checks and balances, including national human rights institutions and civil society.⁷⁵

74 See FIDH submission to the European Parliament Sub-committee on Human Rights (DROI) on AICHR, 17 September 2012, <http://www.fidh.org/FIDH-submission-to-the-European-12186>.

75 European Parliament Directorate-General for External Policies, A Briefing Paper by Vitit Munthaborn: "Development of the ASEAN Human Rights Mechanism," 25 September 2012, <http://www.europarl.europa.eu/committees/en/droi/studiesdownload.html?languageDocument=EN&file=76531>.

Chapter 5: Conclusions and Recommendations

At the outset of 2012, anticipating the introduction of a landmark regional human rights declaration, civil society across ASEAN was determined to press the Commission into taking urgent steps towards becoming more engaging and transparent in implementing its mandate to promote and protect human rights, in line with international human rights law and standards. However, the AICHR remained largely resistant towards civil society's recommendations.

When compared to its performance in 2011, the AICHR has certainly held a few more activities and a number of CSOs were able to participate in a few of these. While the importance of these slight openings should not be underestimated, they in and of themselves do not constitute a major reform of the structural and operational deficiencies of the Commission. The slight quantitative increase in activities and CSOs engaged, as well as the best efforts by a minority of the AICHR representatives, did little to remedy the institutionalised barriers to transparency and engagement and the Commission's fundamental lack of independence from ASEAN governments.

Despite persistent and painstaking efforts by civil society across ASEAN to formulate and contribute constructive input into the draft AHRD, CSOs were generally sidelined in the drafting process and the end product blatantly ignored their most pressing concerns. Ultimately, the drafting of AHRD fell prey to the political whims of the ten ASEAN governments, in particular those for whom human rights is little more than an alien construct to which lip service – and nothing more than lip service – must be paid. The declaration is thus not of the people, for the people and by the people of ASEAN.

Civil society remains convinced that far-reaching reform is needed if the AICHR is to become more independent from the governments, more effective in responding to human rights violations and more relevant to the needs of the peoples in the region. They are equally convinced that the AICHR's main product to date – the ASEAN Human Rights Declaration – needs similar far-reaching reform in order to be worthy of its name.

In summary, we reiterate the key findings of this assessment report:

- 1. The AICHR continues to work largely in secrecy.** Its official meetings are not open to the public and their summary records are not publicly accessible. 15 of the other 18 documents adopted by the AICHR to date have not been published. The Commission had failed to officially published any drafts of the AHRD until the very end of the process,

sharing only elements of them which limited the public's and civil society's ability to provide detailed comments.

2. **The AICHR only engages selectively and restrictively with some stakeholders while continuing to sideline a large number of others,** especially civil society, grassroots and advocacy organisations. The Commission's barring of reputable human rights groups from attending its two AHRD regional consultations betrays ASEAN's purpose of creating a people-oriented community by 2015.
3. **The AICHR's institutional lack of independence from ASEAN governments has undermined its ability to truly implement its protection and promotion mandate.** It was clear from the AHRD drafting process that the ultimate decision-making not only follows the "consensus and consultation" rule but also lies with the ASEAN governments rather than the AICHR representatives. This approach effectively gives States free rein to interfere with the Commission's work and dictate its outcomes.
4. **Progress in implementing its mandate and functions continues to be slow and lacks effective accountability mechanisms.** The AICHR is accountable only to the ASEAN foreign ministers, who have been largely content in letting the Commission operate under the current problematic status quo.

The first three-year term of the AICHR concluded on a sour and disappointing note, not only because it adopted a deeply flawed "human rights declaration," but also because it has betrayed its protection and promotion mandate by failing to acknowledge or address any human rights violation in the last three years, which saw a large number of well-documented violations across ASEAN. Although a minority of the AICHR representatives understood the many shortcomings of the Commission and made efforts to overcome them at the national level, any benefits of such commendable efforts were ultimately constrained and negated by the "consensus" rule that governs AICHR decision-making. In the end, the AICHR should and will be judged collectively as a whole and all AICHR representatives bear responsibility for both successes and failures in implementing its mandate.

In light of the findings of this report, SAPA TFAHR respectfully makes the following recommendations:

To the AICHR:

- **Be transparent:** Through its website, the ASEAN Secretariat and National Secretariats in each Member States, should publish all relevant information, including drafts, working documents, summary records of all meetings, detailed financial statements, ToRs of thematic studies and the contact information of study team members and national focal points; it should publish in advance the agenda of its meetings and other official activities and allow civil society to participate meaningfully in them;

Still Window-Dressing

- **Engage more broadly and inclusively with civil society and other stakeholders:** Implement Article 4.9 of the ToR of the AICHR immediately by conducting frequent, regular, broad-based, and meaningful meetings with civil society organisations of all types, at the grassroots, national and regional levels, both during AICHR official meetings and between them; share drafts of reports and instruments with CSOs, and actively solicit and seriously consider their input (both orally and in writing) before finalizing them; recognize and engage with other key human rights stakeholders, such as national human rights institutions in ASEAN Member States, ASEAN sectoral bodies, and individual human rights defenders; institutionalize engagement mechanisms with all stakeholders in line with international standards and best practices, including through the adoption its own a set of guidelines on engagement with CSOs that facilitate, rather than restrict, the ability of the AICHR and CSOs to engage meaningfully with each other. These engagements and consultations should take place at both national and regional level. We especially encourage AICHR representatives that have not conducted any consultation meetings with their national CSOs to start conduct national consultations and on a regular basis;
- **Uphold, not undermine, international human rights law and standards:** Refrain from invoking, and publicly reject, principles that purport to balance the enjoyment of human rights with government-imposed duties, subject the realisation of human rights to regional and national contexts”, impose broad and all-encompassing limitation on human rights, including non-derogable rights, and subject the enjoyment of rights to national laws without requiring these laws to be compliant with international human rights law and standards;
- **Respect and protect all human rights:** Commit to and take effective actions to promote *and* protect all universally recognised human rights for all peoples of ASEAN without selectively ignoring certain human rights, such the right to freedom of association, the rights to be protected from enforced disappearances, right to self-determination, the right of indigenous peoples, and right to be free from discrimination on the basis of sexual orientation and gender identity; the AICHR should urgently establish mechanisms to receive, consider and follow up on communications on human rights violations from individuals, groups and member states; establish a database of cases of human rights violations received; protect human rights defenders at risk; engage with the state concerned and take effective actions to prevent, halt, and remedy human rights violations, as well as by ensuring that the right of victims and survivors to reparations including truth, justice, restitution, compensation, rehabilitation and guarantees of non-repetition are fully and promptly upheld;
- **Make the thematic studies relevant to the peoples of ASEAN:** Ensure their main reference point is international human rights law and standards and that they add value, rather than undermine, these law and standards;

that they are conducted by experts competent in human rights and in the relevant thematic area and that these experts conduct the studies free from all political interference; that they include country studies of each member state; work with and regularly solicit input from victims, affected communities, human rights defenders, independent national and regional CSOs and other experts so ensure the studies produce clear recommendations with meaningful indicators both on the national and regional levels and undertake to publicly and periodically monitor their implementations by Member States;

- **Actively obtain, consider, and make recommendations on information from governments and civil society on the promotion and protection of human rights in ASEAN Member States:** Article 4.10 of the AICHR's ToR and Section 4.10 of the Five-Year Work Plan provide that the AICHR can obtain state reports to UN human rights bodies; the AICHR should actively obtain and publish on its website not only state reports but also parallel reports by CSOs and NHRIs; it should also review and discuss these reports in broad-based and transparent consultations with the state concerned, CSOs, NHRIs and other stakeholders, as well as to publicly make recommendations to Member States and monitor their implementation;
- **Work together with ASEAN sectoral and human rights bodies:** Develop meaningful collaboration with ASEAN sectoral and human rights bodies, particularly the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, in order to complement each other's work and mainstream human rights across the Three Pillars of the ASEAN Community, in line with international human rights law and standards;
- **Initiate a process to review and amend the Terms of Reference** in consultation with other ASEAN sectoral and human rights bodies, civil society, and the broader public with a view to overcome the flaws of the current ToR, especially its lack of independence and the primacy of the 'consensus' rule, which undermine the AICHR's capacity to protect and promote human rights in a transparent and accountable manner. First and foremost, the AICHR should immediately consult civil society and other stakeholders on the modalities and process of the review of the Terms of Reference of the AICHR and announce publicly as early as possible once they are finalised to facilitate meaningful engagement of civil society and other stakeholders.

To ASEAN Member States:

- **Radically revise the ASEAN Human Rights Declaration:** initiate a transparent, inclusive process of reviewing the AHRD with a clear mandate to bringing it into line with international human rights law and

Still Window-dressing

standards, including the removal of the “General Principles” which place unacceptable limitations on the protection of human rights as well as ensure that specific rights are revised to unsure updated and progressive provisions on all human rights;

- **Reconsider the “Revised Guidelines on Accreditation of CSOs” in consultation with civil society:** The current Revised Guidelines are vague, restrictive, and vulnerable to abuses; they should be drastically revised in close and meaningful consultation with civil society across the region with a view to institutionalise civil society participation and consultation in the work of ASEAN and the AICHR without CSOs losing their independence and ability to offer robust criticism, and through mechanisms that will encourage free, non-discriminatory, and broad-based involvement of civil society organisations of all types at all levels;
- **Release all reports the AICHR submitted to the ASEAN Foreign Ministers Meeting:** The AICHR’s annual reports and other reports are submitted to the foreign ministers, who have the authority to release them under Article 9.3 of the Guidelines on the Operations of the AICHR; the reports should be translated into national language and widely distributed in order to enhance transparency and public ownership over the AICHR; ultimately, the Guidelines should be revised so that the AICHR is required to independently publish these reports and seek public input before finalising them;
- **Institutionalise support for the AICHR:** Allocate sufficient financial resources for the AICHR to strengthen its capacity, allow it to independently raise funds in addition to the support given by ASEAN, and enable it to establish and independently recruit staff for its own independent secretariat;
- **Allow space for the AICHR to work more independently and transparently:** Support and encourage the AICHR to finalise and publicise its institutional working procedures, enable it to make decisions independently without the need for approval from the ASEAN Ministerial Meeting, and be transparent and inclusive in carrying out its work;
- **Cooperate with AICHR research and investigations:** Declare readiness and instruct all state institutions to cooperate fully with any thematic or country-specific studies or fact-finding and requests for information undertaken by the AICHR; allow and facilitate country visits by the AICHR and its representatives, and ensure that individuals and groups are able to communicate human rights violations and other information to the AICHR freely and without being subjected to reprisal.

List of Annexes

Annexes A. Press Releases issued by AICHR during 2012

- Annex 1: Press Release of the First Meeting of ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration, 9 January 2012 /
- Annex 2: Press Release of the Second Meeting of the ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration, 19 February 2012 /
- Annex 3: Press Release of the Eighth Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Third Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), 13 March 2012 /
- Annex 4: Press Release of the Fourth Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on the ASEAN Human Rights Declaration (AHRD), 11 April 2012 /
- Annex 5: Fifth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), Ninth Meeting of AICHR, and First Regional Consultation on the AHRD, 10 May 2012 /
- Annex 6: Press Release of the Sixth Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on the ASEAN Human Rights Declaration (AHRD), 6 June 2012 /
- Annex 7: The Seventh Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on an ASEAN Human Rights Declaration (AHRD) and the Second Regional Consultation of AICHR on the AHRD, 23 June 2012 /
- Annex 8: Special Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR), the Second Regional Consultation of AICHR with ASEAN Sectoral Bodies, and the Eighth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), 26 August 2012 /
- Annex 9: The Second Regional Consultation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) with Civil Society Organisations (CSOs), and the Ninth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), 14 September 2012 /
- Annex 10: The Tenth Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on the ASEAN Human Rights Declaration (AHRD) and the 10th Meeting of AICHR, 24 September 2012 /

Still Window-dressing

- Annex 11: Regional Workshop on the Right to Peace, 22 October 2012 /
- Annex 12: The Launch of the ASEAN Intergovernmental Commission on Human Rights (AICHR) Regional Website and Booklet, 23 October 2012 /
- Annex 13: Appointment of Singapore's Representative to the ASEAN Intergovernmental Commission on Human Rights, 1 November 2012 /
- Annex 14: Press Release of the Round Table Discussion and the First Coordination Meeting of the AICHR Thematic Study on Migration and Human Rights, 11 November 2012 /
- Annex 15: The Adoption of the ASEAN Human Rights Declaration (AHRD) at the 21st ASEAN Summit and the Special Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 26 November 2012 /
- Annex 16: Re-Appointment of Mr. Rafendi Djamin as Indonesian Representative for the ASEAN Intergovernmental Commission on Human Rights (AICHR), 4 January 2013 /
- Annex 17: Joint ASEAN Intergovernmental Commission on Human Rights (AICHR) – Australian Human Rights Commission (AHRC) Workshop on Corporate Social Responsibility (CSR), 18 January 2013 /
- Annex 18: Regional Workshop and Consultation on Business and Human Rights in ASEAN, 18 January 2013 /
- Annex 19: Regional Training Program on Promoting Access to Justice and Human Rights, 23 January 2013 /
- Annex 20: AICHR Advanced Training Program on Human Rights: Training of the Trainers, 23 January 2013 /

Annexes B. Statements by ASEAN CSOs on the AHRD in 2012

- Annex 21: Joint Statement: Calling AICHR to release ASEAN Human Rights Declaration, 8 April 2012 /
- Annex 22: Joint Press Release: Civil Society Demands Transparency and Consultation on the ASEAN Human Rights Declaration, 8 April 2012 /
- Annex 23: AICHR's Consultation on ASEAN Human Rights Declaration: Too Little Too Late, 16 April 2012 /
- Annex 24: Civil society organisations meet ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration, call for universal standards to be upheld, 22 June 2012 /

- Annex 25: FORUM-ASIA Oral Statement at the 20th Human Rights Council Regular Session, Item 8: Follow-up to and Implementation of the Vienna Declaration and Programme of Action (VDPA) – General Debate, 3 July 2012 /
- Annex 26: Open Letter to the ASEAN Foreign Ministers' Meeting (AMM) on the ASEAN Human Rights Declaration, 7 July 2012 /
- Annex 27: Southeast Asian Women's Caucus on ASEAN Letter to ASEAN's foreign ministers on the AHRD, 7 July 2012 /
- Annex 28: CSOs Indonesia Highlight 8 Priority Issues on Improving AHRD, 9 September 2012 /
- Annex 29: ASEAN Human Rights Declaration must not provide protections lower than international human rights law and standards, 13 September 2012 /
- Annex 30: Open letter to ASEAN Foreign Ministers at Informal ASEAN Foreign Ministers Meeting (IAMM) on the ASEAN Human Rights Declaration, 26 September 2012 /
- Annex 31: Statement from the ASEAN LGBTIQ Caucus: ASEAN Human Rights Declaration Refuses to Protect LGBTIQ Rights! 16 November 2012 /
- Annex 32: Civil society denounces adoption of flawed ASEAN Human Rights Declaration: AHRD falls far below international standards, 19 November 2012 /
- Annex 33: Southeast Asian Women's Caucus on ASEAN Statement: ASEAN Human Rights Declaration Limited by 'morality' Say Women's Organisations, 19 November 2012 /
- Annex 34: SEAPA Press Release: ASEAN limits free speech scope in rights declaration, says regional media group, 19 November 2012 /
- Annex 35: IWRAW-AP Statement on the AHRD, 21 November 2012 /
- Annex 36: Statement by the Indigenous Peoples Task Force on ASEAN and Asia Indigenous Peoples Pact Statement on the ASEAN Human Rights Declaration, 4 December 2012 /

Annexes C. Statements by INGOs on the AHRD in 2012

- Annex 37: Joint INGO Statement: The ASEAN Human Rights Declaration: Drafts must be published and subject to meaningful consultations with local, national and regional civil society and human rights defenders, 2 May 2012 /
- Annex 38: Joint INGO Statement: Less than Adequate: AICHR Formal Consultation with Civil Society on the ASEAN Human Rights Declaration, 21 June 2012 /

Still Window-Dressing

- Annex 39: Joint open letter to ASEAN foreign ministers on the draft ASEAN Human Rights Declaration, 7 July 2012 /
- Annex 40: Joint INGO Statement: Postpone deeply flawed ASEAN Human Rights Declaration, 5 November 2012 /
- Annex 41: ITUC/ITUC –Asia Pacific Statement on ASEAN Human Rights Declaration, 29 November 2012

Annex D. Statement by NHRI on the AHRD in 2012

- Annex 42: SUHAKAM Press Statement: ASEAN Human Rights Declaration Falls Short of Expectation, 19 November 2012 /

Annexes E. Statements by ASEAN Dialogue Partners on the AHRD in 2012

- Annex 43: Statement by Victoria Nuland, Spokesperson of the United States Department of State, on the ASEAN Human Rights Declaration, 20 November 2012 /
- Annex 44: Statement by European Union's High Representative Catherine Ashton on the adoption of the ASEA Human Rights Declaration, 22 November 2012 /

Annexes F. Statements by the UN on the AHRD in 2012

- Annex 45: Statement by the High Commissioner for Human Rights at the Bali Democracy Forum, 7 November 2012 /
- Annex 46: OHCHR Press Release, "UN rights chief welcomes focus on human rights and democracy, calls for review of ASEAN draft human rights declaration," 8 November 2012/
- Annex 47: Open Letter from the Coordination Committee of the Special Procedures of the Human Rights Council on the draft ASEAN Human Rights Declaration, 16 November 2012 /
- Annex 48: OHCHR Press Release, ASEAN Human Rights Declaration should maintain international standards, urge key UN expert group, 16 November 2012 /
- Annex 49: OHCHR Press Release: Pillay encourages ASEAN to ensure Human Rights Declaration is implemented in accordance with international obligations, 19 November 2012 /

Annexes G. Additional resource

- Annex 50: Comparison of key civil society recommendations and the final text of the adopted AHRD

***Annexes A. Press Releases issued
by AICHR during 2012
Annex 1***

**Press Release of the First Meeting of ASEAN
Intergovernmental Commission on Human Rights
on the ASEAN Human Rights Declaration,
9 January 2012**

Siem Reap, Cambodia, 8 – 9 January 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened its First Meeting on the ASEAN Human Rights Declaration (AHRD) from 08 – 09 January 2012 in Siem Reap, Cambodia. This was the first meeting under the Cambodian Chairmanship and chaired by H.E. Om Yentieng, Senior Minister and President of the Cambodian Human Rights Committee (CHRC), the Cambodian Representative, the Chair of AICHR, in 2012.

The Chair's Statement of the 19th ASEAN Summit noted the task given by the Foreign Ministers to AICHR to finalize the drafting of the ASEAN Human Rights Declaration and to submit a Progress Report to the AMM Retreat in January 2012. Pursuant to this task, the Meeting held discussion and adopted the Progress Report on the AHRD to the ASEAN Foreign Ministers. In the Progress Report, AICHR reaffirmed its commitment and determination to finalize the AHRD in 2012 and set out the way it will achieve that aim. AICHR also appreciated the hard work of the Drafting Group to produce the basic draft of the AHRD and their Final Report.

The Meeting also discussed its tentative 2012 calendar for deliberation on the AHRD. The 2012 calendar for AICHR sets out the agreed dates and venues for AICHR meetings on the AHRD and the three regular meetings of AICHR.

The Meeting expressed appreciation to the Host for the hospitality and excellent arrangements for the Meeting.

The Second Meeting of AICHR on the AHRD will be held from 17 – 19 February 2012 at the ASEAN Secretariat in Jakarta, Indonesia.

Annex 2

**Press Release of the Second Meeting of the
ASEAN Intergovernmental Commission on
Human Rights on the ASEAN Human Rights
Declaration, 19 February 2012**

ASEAN Secretariat, 17 – 19 February 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened the Second Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD) from 17 – 19 February 2012 in Jakarta, Indonesia. The Meeting was chaired by H.E. Chet Chealy, Member of the Cambodian Human Rights Committee, the Alternate Representative of Cambodia to AICHR.

The Meeting discussed and agreed on the structure and the elements of the AHRD. The Meeting also agreed on the framework for discussion of the draft AHRD. The framework sets out the common understanding on the nature of the AHRD, the drafting modalities and the timeline, in line with the directions from the ASEAN Foreign Ministers at their AMM Retreat in Siem Reap, Cambodia in January 2012. The AHRD is to be a political document that reflects the aspirations and commitments of ASEAN to the promotion and protection of human rights.

The Meeting has completed deliberations on the Preamble of the AHRD, and is now deliberating on the General Principles for the AHRD.

The AICHR has received inputs from civil society groups on the AHRD. AICHR plans to hold regional consultations on the AHRD in the coming months to encourage more inputs.

The Meeting expressed appreciation to the Chair and the ASEAN Secretariat for the hospitality and excellent arrangements for the Meeting.

The next Meeting of AICHR will be held on 9 – 13 March 2012 at the ASEAN Secretariat in Jakarta, Indonesia which will be the regular meeting of AICHR and the meeting will continue its deliberations on the AHRD.

*Annex 3***Press Release of the Eighth Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Third Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), 13 March 2012**

ASEAN Secretariat, 9 – 13 March 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened the Eighth Meeting of AICHR and the Third Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD) from 9 – 13 March 2012 in Jakarta, Indonesia. The Meetings were chaired by H.E. Chet Chealy, Member of the Cambodian Human Rights Committee, the Alternate Representative of Cambodia to AICHR.

AICHR has reviewed and adopted the Guidelines on the Operations of AICHR. AICHR also had preliminary discussion on the guidelines for engagement with stakeholders, including civil society organisations (CSOs). The Meeting also discussed the implementation of the Priority Programmes/Activities 2012. AICHR has agreed on the Advanced Programme on Human Rights and the AICHR-Training programme on promoting Access to Justice. These two trainings are scheduled to be implemented later in the year. In addition to this, the AICHR Thematic Study on Corporate Social Responsibility (CSR) is scheduled to hold its first Coordination Meeting for the Study Team members and National Focal Points in May 2012 in Singapore.

The Meeting discussed the preparation for AICHR's interface meeting with the ASEAN Foreign Ministers at the upcoming ASEAN Foreign Ministers' Meeting and 20th ASEAN Summit on 2 April 2012, as well as the progress report of AICHR on the drafting of the ASEAN Human Rights Declaration. AICHR also had its regular interface meeting with the Committee of Permanent Representatives (CPR) where the two bodies exchanged views on further strengthening the coordination and cooperation between the CPR and AICHR, information sharing with AICHR and AICHR's engagement of ASEAN Dialogue Partners.

AICHR also held their Third Meeting to deliberate on the draft AHRD. AICHR is currently negotiating the provisions under the section of Civil and Political Rights.

The next AICHR Meeting on 9 – 11 April 2012 in Jakarta, Indonesia will continue the deliberations on the draft AHRD.

Annex 4

**Press Release of the Fourth Meeting of the
ASEAN Intergovernmental Commission on
Human Rights (AICHR) on the ASEAN Human
Rights Declaration (AHRD), 11 April 2012**

Jakarta, Indonesia, 9 – 11 April 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) convened the Fourth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD) from 9 – 11 April 2012 in Jakarta, Indonesia. The Meeting was chaired by H.E. Chet Chealy, Member of the Cambodian Human Rights Committee, the Alternate Representative of Cambodia to AICHR.

The Meeting has concluded deliberations on most parts of the sections on Economic, Social and Cultural Rights, the Right to Development and Cooperation in the Promotion and Protection of Human Rights. The Meeting also discussed preparations for its upcoming Fifth Meeting on the AHRD and AICHR's first consultation with ASEAN Sectoral Bodies to gather inputs to the draft AHRD. AICHR will conduct another consultation with the civil society organisations in late June 2012.

AICHR appreciated the opportunity to meet and have a productive discussion with the ASEAN Foreign Ministers prior to the 20th ASEAN Summit in Phnom Penh, Cambodia. The interface meeting between the ASEAN Foreign Ministers and AICHR provided guidance to AICHR on how to move forward to complete the draft of the AHRD by July 2012.

The Meeting thanked the host, the Representative of Indonesia, for the warm hospitality extended to all the delegations. The next AICHR Meeting will be in Bangkok, Thailand on 6 – 10 May 2012 to continue the deliberations on the draft AHRD.

*Annex 5***Fifth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), Ninth Meeting of AICHR, and First Regional Consultation on the AHRD, 10 May 2012**

Bangkok, Thailand, 6 – 10 May 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) has concluded a series of meetings from 6 to 10 May 2012 in Bangkok, the Kingdom of Thailand; the Fifth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), the Ninth Meeting of AICHR and the first Regional Consultation on the AHRD. The meetings and consultation were chaired by H.E. Om Yentien, Senior Minister and President of the Cambodian Human Rights Committee (CHRC), the Representative of Cambodia and Chair of AICHR.

The Fifth Meeting on the AHRD discussed the various sections of the AHRD, and they will resume their discussion at the Sixth Meeting in Yangon, Myanmar on 3 – 6 June 2012.

AICHR held their Ninth Meeting where they discussed the Annual Report of AICHR, covering AICHR activities from July 2011 – June 2012, which will be submitted to the ASEAN Foreign Ministers Meeting (AMM). AICHR had discussed the priority programmes/activities for 2013, as well as discussed the implementation of the priority programmes/activities in 2012. AICHR has approved the Concept Paper and budget on the thematic study on Migration and Human Rights in ASEAN.

In relation to AICHR's mandate to develop the AHRD, AICHR conducted the first Regional Consultation on the AHRD with various ASEAN Sectoral Bodies. The Sectoral Bodies were invited to share their views, expertise and concerns on their respective Sectoral that will contribute to enriching the draft AHRD.

The Meeting expressed appreciation to the Host, the Ministry of Foreign Affairs of the Kingdom of Thailand, for the hospitality and excellent arrangements for the Meeting.

Annex 6

Press Release of the Sixth Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on the ASEAN Human Rights Declaration (AHRD), 6 June 2012

Yangon, Myanmar, 3 – 6 June 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) held its Sixth Meeting on the draft ASEAN Human Rights Declaration (AHRD) on 3 – 6 June 2012 in Yangon, Myanmar. The Meeting was chaired by H.E. Dr. Chet Chealy, Member of the Cambodian Human Rights Committee, the Alternate Representative of Cambodia to AICHR and Chair of AICHR.

AICHR continued its deliberations on the draft AHRD along the guidelines given by the ASEAN Foreign Ministers Meeting (AMM) and also taking into consideration the many inputs it has received from the Sectoral Bodies during the first Regional Consultation in May 2012 in Bangkok, Thailand.

The Meeting continued to finalise the draft so as to submit to the ASEAN Foreign Ministers at the 45th ASEAN Foreign Ministers Meeting (AMM) in July, 2012.

AICHR will have its Seventh Meeting on the AHRD in Kuala Lumpur, Malaysia on 22 – 23 June 2012. During the course of the Meeting, AICHR will conduct a Regional Consultation with civil society organisations (CSOs) on 22 June. With the fruitful discussion AICHR had with the ASEAN Sectoral Bodies in Bangkok, AICHR also looks forward to the consultation it will have with the CSOs in Kuala Lumpur as well as their constructive contributions to the development of the draft AHRD.

The Meeting expressed appreciation to the Host, the Representative of the Republic of the Union of Myanmar to AICHR, for the hospitality and excellent arrangements for the Meeting.

*Annex 7***The Seventh Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on an ASEAN Human Rights Declaration (AHRD) and the Second Regional Consultation of AICHR on the AHRD, 23 June 2012**

Kuala Lumpur, Malaysia, 22 – 23 June 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) held its Seventh Meeting on the draft ASEAN Human Rights Declaration (AHRD) on 22 – 23 June 2012 in Kuala Lumpur, Malaysia. The Meeting was chaired by H.E. Dr. Chet Chealy, Member of the Cambodian Human Rights Committee, the Alternate Representative of Cambodia to AICHR and Chair of AICHR.

During the course of the Meeting, on 22 June 2012, AICHR conducted their Second Regional Consultation with 53 representatives from 36 national, regional and international civil society organizations (CSOs) in order to get their inputs and contributions to the development of the AHRD. The consultation was engaging, constructive and productive as it brought many fresh ideas and different perspectives for AICHR's consideration for the further enrichment of the draft AHRD. Both AICHR and the civil society representatives highly appreciated the consultation and looked forward to more consultation in the future.

At this Meeting, the AICHR has finalized the draft AHRD, a landmark document that provides a framework on human rights cooperation in ASEAN as well as their 2012 Annual Report which will be submitted to the ASEAN Foreign Ministers' Meeting (AMM) in July 2012. The draft AHRD will be adopted by the ASEAN Leaders in November 2012 in Cambodia.

The Meeting expressed appreciation to the Representative of Malaysia to AICHR, the Host, for the hospitality and excellent arrangements for the Meeting.

Annex 8

Special Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR), the Second Regional Consultation of AICHR with ASEAN Sectoral Bodies, and the Eighth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD), 26 August 2012

Bandar Seri Begawan, Brunei Darussalam, 24 – 26 August 2012

From 24 to 26 August 2012, the ASEAN Intergovernmental Commission on Human Rights (AICHR) conducted a series of meetings in Bandar Seri Begawan, Brunei Darussalam. They held their Special Meeting of AICHR, the Second Regional Consultation of AICHR with ASEAN Sectoral Bodies, and the Eighth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD). The meetings and consultation were chaired by H.E. Om Yentieng, Senior Minister and President of the Cambodian Human Rights Committee (CHRC), the Representative of Cambodia and Chair of AICHR.

During its Special Meeting, AICHR concluded the formulation of the AICHR Priority Programmes/Activities for 2013 with its indicative annual budget and the concept papers as well as budget on the two trainings that will be implemented by the Representative of Thailand.

At the Second Regional Consultation with ASEAN Sectoral Bodies, AICHR further consulted with the ASEAN Sectoral Bodies, as directed by the ASEAN Foreign Ministers following the submission of the first draft of the AHRD to the ASEAN Foreign Ministers Meeting (AMM) in July 2012. The purpose of this Consultation is to get further inputs and comments from the ASEAN Sectoral Bodies. During the Consultation, AICHR shared the elements of the draft AHRD. Among the Sectoral Bodies present at the consultation was the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), the ASEAN Committee on Women (ACW), the ASEAN Defence Senior Officials Meeting (ADSOM), the Senior Labour Officials Meeting (SLOM) and the Senior Officials Meeting on Health Development (SOM-HD).

At the Eighth Meeting on the AHRD, AICHR discussed the inputs from the ASEAN Sectoral Bodies for the further improvement of the draft AHRD before submission to the Foreign Ministers at the Informal AMM (IAMM) at the end of September 2012.

The Meeting expressed appreciation to the Host, the Government of Brunei Darussalam and the Representative of the Brunei Darussalam to AICHR for the hospitality and excellent arrangements for the Meeting.

Annex 9

**The Second Regional Consultation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) with Civil Society Organisations (CSOs), and the Ninth Meeting of AICHR on the ASEAN Human Rights Declaration (AHRD),
14 September 2012**

Manila, Philippines, 12 -14 September 2012

The ASEAN Intergovernmental Commission on Human Rights (AICHR) has concluded the Second Regional Consultation with Civil Society Organisations (CSOs) on the ASEAN Human Rights Declaration (AHRD), and the Ninth Meeting on the AHRD, from 12 – 14 September 2012 in Manila, Philippines. The Consultation and Meeting were chaired by H.E. Dr. Chet Chealy, Member of the Cambodian Human Rights Committee (CHRC), the Alternate Representative of Cambodia to AICHR and Chair of AICHR.

The Second Regional Consultation was conducted with stakeholders after the submission of the first draft of the AHRD to the ASEAN Foreign Ministers Meeting in July 2012. Throughout the consultation, AICHR received inputs from representatives of national, regional and international CSOs on the AHRD. The consultation enabled a constructive dialogue between AICHR and the representatives of CSOs.

At their Ninth Meeting on the AHRD, AICHR discussed and considered the inputs received from CSOs to further refine the draft AHRD. In addition, AICHR also met with Regional Experts from Indonesia, Philippines and Thailand to seek their views and inputs on the AHRD. AICHR will submit an improved draft AHRD for the consideration of the Informal ASEAN Foreign Ministers Meeting (IAMM), end of September in New York, USA.

The Meeting expressed appreciation to the Host, the Representative of the Philippines to AICHR, and the Department of Foreign Affairs of the Philippines, for the hospitality and excellent arrangements for the Meeting. The next Meeting of AICHR is expected to take place next week in Siem Reap, Kingdom of Cambodia.

Annex 10

**The Tenth Meeting of the ASEAN
Intergovernmental Commission on Human Rights
(AICHR) on the ASEAN Human Rights Declaration
(AHRD) and the 10th Meeting of AICHR,
24 September 2012**

Siem Reap, Cambodia, 21 – 24 September 2012

At their Tenth Meeting on the AHRD, AICHR drafted the Proposed Statement of the ASEAN Leaders on the Adoption of the AHRD. The Statement will be submitted to the ASEAN Foreign Ministers for their consideration in preparation for the expected adoption of the AHRD by the ASEAN Leaders during the 21st ASEAN Summit in November 2012.

At their 10th regular Meeting, AICHR discussed among other things the AICHR Priority Programmes/Activities for 2013, including their budget details, as well as the proposed Guidelines for AICHR's Engagement with civil society groups. AICHR finalized the content of their regional website and booklet, which will be launched in conjunction with their third anniversary on 23 October 2012 in Phnom Penh, Cambodia.

These Meetings are the last regular meetings of AICHR in the year 2012 under the Chairmanship of the Representative of Cambodia before it will be handed over to Brunei Darussalam whose Chairmanship will start in January 2013.

The AICHR Representatives expressed their high appreciation to the Representative of Cambodia, H.E. Dr. Om Yentieng and his Alternate Representative, H.E. Dr. Chet Chealy, for their leadership, hard work and commitment as the Chair of AICHR and the tremendous support and warm hospitality from the Government and the people of the Kingdom of Cambodia given to the delegations.

Annex 11
**Regional Workshop on the Right to Peace,
22 October 2012⁷⁶**

As a preparatory step for the thematic study, AICHR conducted a workshop on the Right to Peace with the aim to share ideas and exchange experiences among experts from national, regional and international experts on the term of the Right to Peace and the current state of affairs in regional peace promotion efforts, bearing in consideration of ASEAN's unique history and regional particularities. The objective of this activity is to provide an overall understanding about the Right to Peace as a collective right and to what extent each ASEAN Member State enjoys it and to identify the various aspects constituting the Right to Peace.

⁷⁶ The workshop took place on 2 October 2012 in Vientiane, but the press release was posted on the AICHR's website on 22 October 2012.

*Annex 12***The Launch of the ASEAN Intergovernmental Commission on Human Rights (AICHR) Regional Website and Booklet, 23 October 2012**

Tuesday, 23 October 2012

Phnom Penh, Kingdom of Cambodia

On Tuesday, 23 October 2012, the ASEAN Intergovernmental Commission on Human Rights (AICHR) officially launched its very own Regional Website and Booklet at Sofitel Phnom Penh Phookethra Hotel, Kingdom of Cambodia.

The regional website provides general information, news and updates on AICHR, as well as access to AICHR's calendar, activities and contact information, and some of AICHR's public documents. Meanwhile, the AICHR booklet provides general information on ASEAN, history and development of human rights in the region, the inception and early years of AICHR, as well as brief profiles for each of the ASEAN Member States' Representative to AICHR. Both the regional website and booklet are in fulfilment of the activities in AICHR's Five Year Work Plan of 2010-2015.

H.E. Dr. Om Yentheng, Senior Minister, the Representative of Cambodia and Chair of AICHR, and the Head of the Cambodian Human Rights Committee (CHRC), remarked that the launch of the AICHR Website and booklet is another new milestone and historical event, both for AICHR and for ASEAN. The Senior Minister took the opportunity to thank all AICHR Representatives, H.E. Hor Namhong (Deputy Prime Minister and the Minister of Foreign Affairs of the Kingdom of Cambodia) as well as all ASEAN Foreign Ministers, the ASEAN Secretariat, and all stakeholders in the region for their continued support and contribution to AICHR during Cambodia's chairmanship.

The Chair invited H.E. Mr. Khieu Kanharith, Minister of Information of the Kingdom of Cambodia, to the stage as they officially launched the regional website of AICHR. H.E. Mr. Cham Prasit, Minister of Commerce of the Kingdom of Cambodia, was also in attendance. Afterwards, the Chair was joined by H.E. Chet Chealy, the Alternate Representative of Cambodia to AICHR, in presenting the first copies of the AICHR Booklet to the guests, signifying the official launch of the Booklet. H.E. Mr. Rafendi Djamin, the Representative of Indonesia to AICHR who was also present at the launch, congratulated Cambodia in achieving "an important stage of AICHR's evolutionary process in terms of providing access to information" and is looking forward to receiving feedback from stakeholders on this recent development.

Still Window-Dressing

The event, which was in conjunction with the third year commemoration of AICHR's inauguration, brought together government officials of the Kingdom of Cambodia, Ambassadors and the diplomatic community in Phnom Penh, representatives of dialogue partners, civil society organisations, the academic community, and the media.

*Annex 13***Appointment of Singapore's Representative to the ASEAN Intergovernmental Commission on Human Rights, 1 November 2012**

The Government has appointed Ambassador-at-Large Chan Heng Chee as Singapore's Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR).

The AICHR is an organ of ASEAN established in accordance with the ASEAN Charter as the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights. In line with its Terms of Reference, the AICHR has submitted a draft ASEAN Human Rights Declaration to the ASEAN Foreign Ministers. The Declaration is expected to be adopted at the 21st ASEAN Summit in Phnom Penh in November 2012.

Ambassador Chan succeeds Singapore's first AICHR Representative, Mr Richard R. Magnus, who will complete his three-year term of service on 31 October 2012. Ambassador Chan brings with her a wealth of experience from her previous appointments in academia and public service, including as Singapore's former Permanent Representative to the United Nations and Ambassador to the United States.

MINISTRY OF FOREIGN AFFAIRS SINGAPORE

31 OCTOBER 2012

BIOGRAPHICAL SUMMARY

Ambassador Chan Heng Chee is currently Ambassador-at-Large with the Singapore Foreign Ministry and Chairman of the Lee Kuan Yew Centre for Innovative Cities in the Singapore University of Technology and Design (SUTD). She is a Member of the Presidential Council for Minority Rights.

She has served as Singapore's Ambassador to the United States from July 1996 to 14 July 2012. She was Singapore's Permanent Representative to the United Nations from 1989 to 1991 and was concurrently High Commissioner to Canada and Ambassador to Mexico. Previously, she was Executive Director of the Singapore International Foundation (which created a Singapore version of the Peace Corps) and Director of the Institute of Southeast Asian Studies. She was the founding Director of the Institute of Policy Studies and Head of the Department of Political Science, National University of Singapore.

Still Window-Dressing

Ambassador Chan received a number of awards including The Public Administration Medal (Gold) in 1999; The Meritorious Service Medal in 2005; The Distinguished Service Order in 2011; Honorary Degrees of Doctor of Letters in 1994 from the University of Newcastle, Australia; and the University of Buckingham (United Kingdom) in 1998. She was named Singapore's first "Woman of the Year" in 1991, and was twice awarded the National Book Awards in 1986 for "A Sensation of Independence: A Political Biography of David Marshall" and in 1978 for "The Dynamics of One Party Dominance: The PAP at the Grassroots".

When Ambassador Chan left Washington at the end of her appointment, she received the Inaugural Asia Society Outstanding Diplomatic Achievement Award, the Inaugural Foreign Policy Outstanding Diplomatic Achievement Award 2012 and the United States Navy Distinguished Public Service Award.

Ambassador Chan has been a member of the International Advisory Board of the Council on Foreign Relations, New York and a Council Member of the International Institute for Strategic Studies (IISS), London.

Ambassador Chan holds a B.Soc.Sc (Hons) First Class from the National University of Singapore, a M.A. from Cornell University and a Ph.D from the National University of Singapore.

*Annex 14***Press Release of the Round Table Discussion
and the First Coordination Meeting of the AICHR
Thematic Study on Migration and Human Rights,
11 November 2012**

Indonesia has hosted the Round Table Discussion and First Coordination Meeting of the AICHR thematic study on Migration and Human Rights in Bandung on 5-6 November 2012. Both meetings serve as an initial discussion of the AICHR thematic study on migration and human rights in ASEAN, for which Indonesia is the lead country for this thematic study. The Round Table Discussion was facilitated by the Indonesian Representative to AICHR and was attended by several speakers from various International Organizations as well as representatives of different stakeholders in Southeast Asia.

The AICHR thematic study on migration and human rights aims to address challenges of the migration process in the region. It is understood that the inequality of world distribution of opportunities has been a key drive for migration. Nevertheless, migration has been recognized as an essential component of the economic and social life of every State, and that properly managed migration can be beneficial for individuals and societies, as well as sending and receiving countries.

Many complex challenges have accompanied the process of migration. Some problems are mostly related to the lack of access to regular forms of migration and safe migration channels. In ASEAN countries, migration has taken various forms, such as regular and irregular migration, whereby most individuals in both categories are vulnerable to human rights abuses and in dire need of protection. The most vulnerable groups that have been identified in the migration processes within ASEAN are, among others: migrant workers, trafficked people including women and children, Internally Displaced Persons (IDP's), stateless and near-stateless people, asylum seekers and refugees; and inter-national marriages.

The Round Table Discussion and the First Coordination Meeting have discussed a framework regarding the steps to be taken by ASEAN to protect all parties involved in the migration process, especially the vulnerable groups.

Annex 15

The Adoption of the ASEAN Human Rights Declaration (AHRD) at the 21st ASEAN Summit and the Special Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR), 26 November 2012

Phnom Penh, Cambodia, 17 – 18 November 2012

ASEAN marks another milestone achievement with the adoption of an important document. The ASEAN Intergovernmental Commission on Human Rights (AICHR) has accomplished one of its main mandate: the development of an ASEAN Human Rights Declaration (AHRD). The ASEAN Leaders has adopted the AHRD at their Plenary session at the 21st ASEAN Summit in Phnom Penh, Cambodia on 18 November 2012. To reaffirm the commitment of the ASEAN Member States, the ASEAN Heads of State/Government signed the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration.

In his Opening Remarks, Prime Minister Hun Sen stated that the adoption of the ASEAN Human Rights Declaration will further promote peace, security, reconciliation and protection of human rights in the ASEAN region.

Prior to the commencement of the 21st ASEAN Summit, AICHR conducted a Special Meeting to prepare for the Adoption of the AHRD as well as to discuss the progress of their work. The Special Meeting was chaired by H.E. Dr. Om Yentieng, Senior Minister and the Representative of Cambodia to AICHR. AICHR also had a discussion with several representatives from ASEAN Sectoral Bodies on matters related to cooperation with external partners. AICHR also held a handover ceremony of the chairpersonship of AICHR from the Representative of Cambodia to the Representative of Brunei Darussalam. Several other AICHR Representatives expressed their appreciation for the leadership and the hard work of the Cambodian AICHR Chair in 2012, especially during the deliberation of the AHRD, and the hospitality of the people of Cambodia that has been extended to the delegates. The AICHR Representatives expressed their support for the incoming Chairpersonship of Brunei Darussalam in 2013.

The first Meeting of AICHR in 2013 is expected to be held in late January 2013.

*Annex 16***Re-Appointment of Mr. Rafendi Djamin as Indonesian Representative for the ASEAN Intergovernmental Commission on Human Rights (AICHR), 4 January 2013**

After going through an open selection process since August 2012, the Ministry of Foreign Affairs, Republic of Indonesia has decided to re-appoint Mr. Rafendi Djamin as Indonesian Representative to AICHR for the 2013-2015 period. The selection, which has been conducted over the past five months, was not an easy process as the candidates have an extensive background and experience in the field of promotion and protection of human rights at the national, regional, and international levels.

Based on the consideration of the selection team which is comprised of the representative from the Ministry of Law and Human Rights, Komnas HAM, journalist/mass media, and the Ministry of Foreign Affairs, the selection team has decided to re-elect Mr. Rafendi Djamin to serve as the Indonesian Representative to the AICHR for 2013-2015.

AICHR was founded in 2009 and is only three years old. At such a relatively early stage, ASEAN is committed to continue encouraging and strengthening the AICHR mechanism so as to meet the expectations of the people, including the need to establish a regional mechanism to promote and protect human rights in the ASEAN region.

During its three years of existence, AICHR as the ASEAN human rights body which was set up under Article 14 of the ASEAN Charter, needs to be strengthened and to have its role enhanced. With the election of Mr. Rafendi Djamin, it is hoped that the AICHR institutional strengthening process could be pursued. In addition, this selection is also important in light of the various AICHR programs which are currently ongoing and require follow up, including the implementation of the ASEAN Human Rights Declaration (AHRD), adopted at the 21st ASEAN Summit in Phnom Penh in November 2012.

Annex 17

Joint ASEAN Intergovernmental Commission on Human Rights (AICHR) – Australian Human Rights Commission (AHRC) Workshop on Corporate Social Responsibility (CSR), 18 January 2013⁷⁷

The ASEAN Intergovernmental Commission on Human Rights, in collaboration with the Australian Human Rights Commission (AHRC), held a Joint Workshop on Corporate Social Responsibility on 28 – 29 November 2012 in Singapore.

The joint workshop aimed to provide participants with conceptual understanding and practical experiences on link between business and human rights and relevant international standards and frameworks; knowledge of different approaches to address CSR issues in ASEAN and Australia including mechanisms for monitoring and enforcement, and providing access to remedies; and understanding on multi stakeholder engagement. Participants and resource speakers represented various stakeholders from government, business, academe and CSOs from ASEAN countries and Australia.

Mr. Edgardo Amistad, Chairman of the ASEAN CSR Network expressed that given their years of experience in promoting CSR within the ASEAN Region, “philanthropy”, often driven by cultural and religious views, remains the norm in implementing CSR in business. Also Mr. Thomas Thomas, CEO of the ASEAN CSR Network and executive director of Singapore Compact for CSR, stressed that businesses in ASEAN often focused on “how money is made” and not about “how money is spent”.

Ms. Vanessa Zimmerman, Business and Human Rights Expert was also invited as keynote speaker to present John Ruggie’s UN Protect, Respect and Remedy Framework for Business and Human Rights & Guiding Principles (UNGPs).

⁷⁷ The workshop took place 28-29 November 2012, but the press release was posted on the AICHR’s website on 18 January 2013.

Annex 18
**Regional Workshop and Consultation on
Business and Human Rights in ASEAN,
18 January 2013⁷⁸**

The Representative of the Philippines to the ASEAN Intergovernmental Commission on Human Rights (AICHR), H.E. Amb. Rosario G. Manalo, in collaboration with UN Women and the Working Group for an ASEAN Human Rights Mechanism conducted the “Regional Workshop and Consultation on Business and Human Rights in ASEAN” on 11 – 12 December 2012 at the Bayview Hotel, Singapore.

The Workshop aimed to discuss the human rights and gender implications of business activities in the context of Corporate Social Responsibility (CSR); as well as to present initial findings on the on-going AICHR thematic study on CSR and human rights. Participants include representatives from AICHR, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), the ASEAN Secretariat, the ASEAN Foundation, ASEAN-CSR Network, National Human Rights Institutions (NHRIs), the AICHR “CSR and Human Rights” Study Team and National Focal Points, and civil society organisations (CSOs). Also in attendance were observers from the United Nations and embassies in Singapore.

In her welcome remarks, Amb. Manalo emphasised that for ASEAN to become a region of economic growth, shared prosperity and social progress, there should be a steadfast commitment to promote and protect human rights and fundamental freedoms in the Region. Discussions in the two-day Workshop – which included, among others, assessing the “United Nations Guiding Principles on Business and Human Rights” in the ASEAN context, gender equality in labour practices, business and the environment, consumer rights, and access to remedies – resulted in recommendations for ASEAN and AICHR to consider in their promotion and advocacy of “business and human rights” among the ASEAN Member States.

⁷⁸ The workshop took place on 11-12 December 2012, but the press release was posted on the AICHR’s website on 18 January 2013.

Annex 19

Regional Training Program on Promoting Access to Justice and Human Rights, 23 January 2013⁷⁹

The ASEAN Intergovernmental Commission on Human Rights held a Regional Training Program on Promoting Access to Justice and Human Rights at Sukosol Hotel, Bangkok from 3 – 6 December 2012. The training program is jointly organised by AICHR, Institute of Human Rights and Peace (IHRP), Mahidol University, Thailand and UN Women with partial support from the CIDA. Participants included government, academe and CSO representatives working directly on access to justice issues from ASEAN Members States – Cambodia, Indonesia, Lao PDR, Thailand, and Vietnam.

The program aimed to provide participants with an understanding on the concepts of access to justice and human rights and administration of justice in ASEAN Member States including the assessment of challenges access to justice of the poor and some marginalized groups, e.g. victims of domestic violence, children in conflict with the law, etc.

The workshop also provided an opportunity for participants to share and exchange their country experiences and challenges in addressing access to justice issues. This training program is part of the series of capacity building and awareness raising activities organized by AICHR on the topic of access of justice and human rights. Key experts and resource persons were invited to give background and case studies on access to justice from an international and regional perspectives.

⁷⁹ The training took place on 3-6 December 2012, but the press release was posted on the AICHR's website on 23 January 2013.

*Annex 20***AICHR Advanced Training Program on Human Rights: Training of the Trainers, 23 January 2013⁸⁰**

The ASEAN Intergovernmental Commission on Human Rights (AICHR) organised a one week Regional Advance Training Programme on Human Rights: Training of the Trainers from 13 – 18 December 2012, in Sukosol Hotel, Bangkok, Thailand. The training programme is jointly organised by AICHR, Institute of Human Rights and Peace (IHRP), Mahidol University, Thailand and UN Women (with the partial support of CIDA). Participants included government, academe and CSO representatives from ASEAN Members States – Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, and Vietnam.

The Programme was specifically designed for human rights trainers, advocates and practitioners to strengthen their knowledge, skills and tools required for advancing human rights in the Region. Topics included in the one-week intensive program ranged from concepts and principles of human rights; international and regional human rights standards and mechanisms, ongoing debates on human rights; ASEAN regional human rights mechanisms; roles of national human rights institutions and civil society as well as rights of some specific groups. Participant-oriented training methodologies were utilised combined with interactive lectures and discussions as well as sharing of experiences and field study facilitated by human rights experts drawn mainly from Southeast Asian region.

This training program is part of the series of capacity building and awareness raising activities organised by AICHR on the topic of access of justice and human rights.

80 The training took place on 13-18 December 2012, but the press release was posted on the AICHR's website on 23 January 2013.

Annexes B. Statements by ASEAN CSOs on the AHRD in 2012
Annex 21

**Joint Statement: Calling AICHR to release ASEAN
Human Rights Declaration, 8 April 2012**

We, the undersigned civil society organizations and networks from Southeast Asia, express our grave concern and disappointment over the continuing secrecy in the drafting process of the ASEAN Human Rights Declaration (AHRD).

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is mandated under Article 4.2 of its Terms of Reference to develop an ASEAN Human Right Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights. At the 6th meeting of the AICHR in Vientiane on 28 June – 2 July 2011, a Drafting Group was officially established by the AICHR to prepare a draft of the ASEAN Human Rights Declaration. In January 2012, the Drafting Group submitted to the ASEAN Inter-governmental Commission on Human Rights (AICHR) a draft AHRD for deliberation and debate.

To this date, the draft AHRD remains confidential while the public has been excluded from any meaningful participation in the drafting process. There has not been any substantive and broad-based regional consultation with the peoples in the region on the draft AHRD.

While we commend the representatives of the AICHR from Thailand, Indonesia, Malaysia and the Philippines for holding consultation with their civil society at national level, we are disturbed that no such initiative has taken place in the rest of the ASEAN countries.

If ASEAN's aspiration to be "People-Oriented" is to be achieved, the AICHR that is tasked to defend the fundamental freedoms of the peoples in the region must set a good example in ensuring meaningful and substantive consultation and people's participation in the drafting of the historic AHRD.

We therefore strongly urge the AICHR to heed the recommendation of the United Nations High Commissioner for Human Rights, Navi Pillay, that "no discussion of human rights can be complete or credible without significant input from civil society and national human rights institutions" and immediately begin dialogues and consultations with civil society organizations on the AHRD.

We further call upon AICHR to implement the following steps to ensure that the drafting process of the ASEAN Human Rights Declaration will be credible, inclusive, transparent, reflective and consistent with universal human rights standards:

- 1) To immediately publicize the draft AHRD so that the public can meaningfully participate in the drafting process. Consultations will remain meaningless if the draft declaration is kept confidential and out of reach of the peoples.
- 2) AICHR representatives who are already conducting national consultations in their respective countries must continue to do so, and ensure that these consultations are held nation-wide and in an inclusive and more regular manner. They should further encourage other AICHR representatives that have not taken such initiatives to do the same. The AICHR should also conduct consultations both at national and regional levels, especially if national consultations are not applicable yet in particular places.
- 3) To translate the draft AHRD into national languages and other local languages of the ASEAN countries in order to encourage broader public participation in the region.
- 4) To ensure that consultation meetings of the AICHR will be inclusive of all stakeholders, especially civil society organizations and national human rights institutions.

Until and unless the AICHR consults and engages with all stakeholders in a transparent, meaningful and substantive manner, the AICHR should postpone its submission of the final draft of AHRD to the AESAN Ministerial Meeting (AMM), which is scheduled to take place in July 2012.

This call is made to public as wide as possible in the ten countries of ASEAN and is endorsed by different sectors of civil society organizations such as youth organizations, women's organizations, child rights organizations, LGBT organizations, migrant workers network organizations, labour unions, farmers organizations, environmental organizations, human rights organizations, development organizations and some academic institutions. The joint statement is also translated into ASEAN major languages, Burmese, Bahasa-Indonesian, Bahasa-Malay, Khmer, Lao, Thai and Vietnamese to indicate our commitment to promote the basic human rights of the people that they are entitled to receive information and awareness about ASEAN and its works.

List of endorsers:

4. Aceh Human Rights Coalition of NGO, Indonesia
5. Action for Environment and Community (AEC), Cambodia
6. All Arakan Students and Youth Congress (AASYC), Burma
7. All Burma Students Democratic Front (ABSDF), Burma
8. All Burma Students League (ABSL), Burma
9. All Kachin Students and Youth Union (AKSYU), Burma
10. All Women's Action Society (AWAM), Malaysia
11. Alternative ASEAN Network on Burma (Altsean Burma)
12. Arakan League for Democracy (Exile) Youth (ALD-Youth), Burma

Still Window-Dressing

13. ASEAN WATCH, Thailand
14. Asian Forum for Human Rights and Development
15. Asian Indigenous People's Pact
16. Assistance Association for Political Prisoners – Burma
17. Back Pack Health Worker Team
18. Banteay Srei, Cambodia
19. Boat People SOS
20. Building Community Voice (BCV), Cambodia
21. Burma Issues, Burma
22. Burma Medical Association, Burma
23. Burma Partnership, Burma
24. Burmese Women Union, Burma
25. Cambodia Indigenous Youth Association (CIYA), Cambodia
26. Cambodian Centre for Human Rights (CCHR), Cambodia
27. Cambodian Confederation of Unions (CCU), Cambodia
28. Cambodian Food Service Workers Federation (CFSWF), Cambodia
29. Cambodian Independent Teachers' Association (CITA), Cambodia
30. Cambodian League for the promotion and defense of Human Rights (LICADHO), Cambodia
31. Cambodian Watchdog Council (CWC), Cambodia
32. Cambodian Youth Network (CYN), Cambodia
33. Center for Migrant Advocacy Philippines
34. Child Rights Coalition-Asia
35. Chin Human Rights Organization (CHRO), Burma
36. Chin Students Union (CSU), Burma
37. Christians for Social Justice (CJS), Cambodia
38. Coalition of Cambodian Farmer Community (CCFC), Cambodia
39. Commission for Disappeared and Victims of Violence (Kontras), Indonesia
40. Community Action Network, Malaysia
41. Community Resource Centre (CRC), Thailand
42. Democratic Party for a New Society (DPNS), Burma
43. Dignity International, Malaysia
44. EarthRights International, Burma
45. Ecological Alert and Recovery Thailand (EARTH), Thailand
46. Education and Research Association for Consumers (ERA Consumer), Malaysia
47. EMPOWER Foundation, Thailand
48. Empowering Youth in Cambodia (EYC), Cambodia
49. Ethnic Community Development Forum (ECDF-Burma)
50. FOKER LSM, Papua
51. Foundation for Consumers (FFC), Thailand
52. Foundation for Ecological Recovery, Thailand
53. Foundation for Sustainable Development, Thailand
54. Foundation for Women, Law and Rural Development (FORWARD), Thailand
55. Foundation for Women, Thailand
56. EMPOWER Foundation, Thailand

57. Highland Peoples Task force (HPT), Thailand
58. Homenet, Thailand
59. Housing Rights Task Force, Cambodia
60. Human Rights Documentation Unit, Burma
61. Human Rights Education Institute of Burma
62. Human Rights Foundation of Monland, Burma
63. Human Rights Lawyers Association, Thailand
64. Humanum, Indonesia
65. Independent Democracy of Informal Economic Association (IDEA), Cambodia
66. Indigenous People Task Force on ASEAN
67. Institute for Policy Research and Advocacy (ELSAM), Indonesia
68. International Gay and Lesbian Human Rights Commission (IGLHRC)
69. JATAM, Indonesia
70. Kachin Women's Association – Thailand (KWAT), Burma
71. Karen Youth Organization (KYO), Burma
72. Kayan New Generation Youth (KNGY), Burma
73. Khmer Ahimsa Organisation, Cambodia
74. KIARA, Indonesia
75. KontraS (National Office, Jakarta, Indonesia)
76. Kuki Students Democratic Front (KSDF), Burma
77. Lahu Women's Organization, Burma
78. Lao Movement for Human Rights (MLDH)
79. LPSHAM, Indonesia
80. M Plus Foundation, Thailand
81. Messenger Band (MB), Cambodia
82. Migrant Forum in Asia
83. Migrante International, Philippines
84. Mon Youth Progressive Organization (MYPO), Burma
85. My Village Organization (MVi), Cambodia
86. Naga Youth Organization (NYO), Burma
87. National League for Democracy-Liberated Area (Youth), Burma
88. Network for Democracy and Development (NDD), Burma
89. Network for Human Rights Documentation in Burma
90. Network of Eastern Democracy, Thailand
91. NGO Coordinating Committee on Development (NGO-COD), Thailand
92. Northern Development Foundation, Thailand
93. One-2-One, Cambodia
94. Pa O Youth Organization (PYO), Burma
95. Palang Thai, Thailand
96. Palaung Women's Organization, Burma
97. People's Action for Change (PAC), Cambodia
98. People's Defense Force (Burma)
99. People's Empowerment Foundation
100. Persatuan Masyarakat Selangor & Wilayah Persekutuan (PERMAS), Malaysia
101. Pokja 30, Indonesia

Still Window-Dressing

102. Project for Ecological Awareness Building (EAB), Thailand
103. Pro Rights Foundation, Thailand
104. Pusat Komunikasi Masyarakat (PUSAT KOMAS), Malaysia
105. Quê Me: Action for Democracy in Vietnam
106. Rainbow Community Kampuchea (RoCK), Cambodia
107. Sahakum Teang Tnaut (STT), Cambodia
108. Sex Workers Organization, Thailand
109. Shwe Gas movement
110. SILAKA, Cambodia
111. Social Action for Change (SAC), Cambodia
112. Social Agenda Working Group, Social Research Institute, Chulalongkorn University, Thailand
113. Society of Transsexual Women of the Philippines (STRAP), Philippines
114. South East Asia Working Group/ Asia-Pacific Refugee Rights Network
115. South East Asian Committee for Advocacy (SEACA)
116. Southeast Asia Coalition to stop Child Soldiers
117. Southeast Asia Popular Communications Programme (SEAPCP)
118. Students and Youth Congress of Burma
119. Suara Rakyat Malaysia (SUARAM), Malaysia
120. Sustainable Agriculture Foundation, Thailand
121. Sustainable Development Foundation, Thailand
122. Ta'ang Students and Youth Organization (TSYO), Burma
123. Tavoy Youth Organization (TYO), Burma
124. Thai Committee for Refugees Foundation, Thailand
125. Thai Working Group for Climate Justice (TCJ), Thailand
126. The Cambodian Center for Human Rights, Cambodia
127. The Cambodian Human Rights and Development Association (ADHOC), Cambodian
128. The Northeastern Women's Network, Thailand
129. Think Centre, Singapore
130. Union for Civil Liberty (UCL), Thailand
131. United Lahu Youth Organization, Burma
132. Vietnam Committee on Human Rights
133. Volunteers for Sustainable Development (VSD), Cambodia
134. Women and Children Protection Foundation, Thailand
135. Women's Global Network for Reproductive Rights (WGNRR)
136. YLBHI, Indonesia
137. Yoma3 News Service, Burma
138. Youth for Social Change, Myanmar
139. Zomi Students and Youth Organization (ZSYO), Burma

*Annex 22***Joint Press Release: Civil Society Demands Transparency and Consultation on the ASEAN Human Rights Declaration, 8 April 2012**

In a joint statement released today, over 100 civil society organizations and networks across the ASEAN region have called for the release of the draft ASEAN Human Rights Declaration and the initiation of meaningful public consultations on its content. The Declaration is being drafted by the ASEAN Inter-governmental Commission on Human Rights (AICHR), which is meeting in Phnom Penh, Cambodia, April 9-11, 2012.

The draft has been in development for nearly a year, but has not yet been released to the public.

Civil society has been largely excluded from the drafting process as well. Only the AICHR representatives of Indonesia, Malaysia, Philippines and Thailand have solicited input from civil society on the historic Declaration. Meanwhile, civil society organizations that have submitted recommendations on the Declaration have received no official response from the AICHR.

“The peoples of ASEAN, whose human rights the Declaration is supposed to uphold, are being left in the dark,” said Yap Swee Seng, the Executive Director of Bangkok based Asian Forum for Human Rights and Development (FORUM-ASIA). “They are not being given any meaningful way to ensure that their concerns are presented, received and reflected in the Declaration.

“This threatens to fundamentally undermine the legitimacy of the Declaration.”

The joint statement also calls upon AICHR to implement specific steps to ensure that the process of drafting the Declaration will be credible, inclusive, transparent, reflective and consistent with universal human rights standards. These steps include the immediate release of the draft, public consultations, and the translation of the draft into national and local languages.

“Consultations without a draft of the AHRD at hand are meaningless, and a Declaration adopted without meaningful and broad-based consultations will not be legitimate,” said Dr. Pung Chhiv Kek, President of LICADHO “ASEAN and AICHR risk making themselves an outcast among regional organizations if they ignore civil society and impose a Declaration drafted without public input.”

The joint statement has so far been endorsed by 122 organizations and networks representing a wide range of sectors in ASEAN member states, including

Still Window-Dressing

youth organizations, women's organizations, child rights organizations, LGBT organizations, migrant workers network organizations, labour unions, farmers organizations, environmental organizations, human rights organizations, development organizations and some academic institutions.

The AHRD is widely predicted to be adopted at the 45th ASEAN Ministerial Meeting (AMM) in July in Phnom Penh. "The AICHR should postpone its submission of the ASEAN Human Rights Declaration to the AMM in July if no meaningful public consultations were held in the finalization of this document," said Haris Azhar, coordinator of the Commission for the Disappeared and Victims of Violence of Indonesia (Kontras).

*Annex 23***AICHR's Consultation on ASEAN Human Rights Declaration: Too Little Too Late, 16 April 2012**

The ASEAN human rights Commission appears to plan a one-off, token "consultation" with civil society, and only after it will have finalized, most if not all, the ASEAN Human Rights Declaration – this is outrageous and utterly unacceptable, said the Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR), a coalition of non-governmental organizations in Southeast Asia.

On 12 April, The ASEAN Intergovernmental Commission on Human Rights (AICHR) announced that it will hold one consultation with civil society organizations on the ASEAN Human Rights Declaration (AHRD) in late June. The AHRD is scheduled to be submitted to the ASEAN Ministerial Meeting (AMM) in early July.

"On the theoretical level, we welcome the AICHR responding positively to the calls of civil society to have consultations on the AHRD. However, we are appalled that the AICHR hopes to finalize such an important regional document, that is supposed to enshrine the rights of the peoples in the region, by holding merely one consultation with civil society at this late hour," said Haris Azhar, the coordinator of the Commission for the Disappeared and Victims of Violence of Indonesia (KontraS) and co-convenor of the SAPA TFAHR.

Prior to the 4th meeting of the AICHR on April 9-11 in Jakarta, 136 civil society organizations released a joint statement calling for the immediate release of the draft AHRD and consultations with civil society.

Azhar said the plan of the AICHR to hold the consultation weeks before the submission of the draft AHRD to the ASEAN Ministerial Meeting provides no guarantee for the input from civil society to be considered in the text. "Rather than engage meaningfully with civil society on such a crucial issue, it appears that the AICHR prefers to engage in a symbolic, "box-ticking" exercise so it can then claim to have consulted civil society."

"The timing of the consultation with civil society indicates how the AICHR gives least priority to hearing and considering the voices of the people," added Azhar.

Chalida Tajaroensuk, Executive Director of the People's Empowerment Foundation of Thailand (PEF) said it was disturbing that the AICHR has made no mention about releasing any drafts of AHRD for public consultation in its recent press release. "Will AICHR release now the current draft AHRD immediately for public consultation, since there is little time left before the scheduled submission to

Still Window-Dressing

the AMM? Will AIHCR provide the draft AHRD to the civil society for comments during its consultation meeting scheduled in late June?"

"There will be no meaningful consultation if the draft is not made available to the public," said Tajaroensuk.

She further suggested the AICHR to create a website to release the draft AHRD and an email to receive public comments in order to ensure broad public consultation. "This will allow those who cannot attend the consultation in late June to still be able to participate in the process."

The AICHR announced in its press release that it will consult ASEAN sectoral bodies and civil society organizations in two separate meetings, but conspicuously left out the region's national human rights institutions. There are national human rights commissions in Thailand, Indonesia, Malaysia, Philippines and Burma.

"The AICHR should include national human rights institutions in any consultation process of the AHRD. "It cannot be right that national human rights commissions are being excluded from this important process, especially since half of ASEAN countries have such commission and Cambodia is in discussion of establishing one," said Nalini Elumalai, the executive director of Suara Rakyat Malaysia (SUARAM).

"We reiterate our calls to the AICHR to hold broad and meaningful consultations at national and regional level with the draft AHRD made available to the public. Otherwise, the AICHR should postpone its submission of the AHRD to the AMM, now scheduled for July," said Naly Pilorge, Director of Cambodian League for the Promotion and Defense of Human Rights (LICADHO).

*Annex 24***Civil society organisations meet ASEAN Intergovernmental Commission on Human Rights on the ASEAN Human Rights Declaration, call for universal standards to be upheld, 22 June 2012**

(Kuala Lumpur, 22 June 2012): Representatives of civil society organisations (CSOs) have today met the AICHR for the first time for a consultation on the drafting of the ASEAN Human Rights Declaration. The organisations have welcomed the Consultation as a positive step in the right direction. They also welcome the constructive and friendly atmosphere in which the Consultation was held, and the openness of AICHR representatives to the comments and suggestions by CSO representatives.

We nevertheless regret that the Consultation was short, late, without a draft to comment on and with civil society only partially represented and some organizations rejected. The organisations urged the AICHR to ensure that the Declaration provides at least the same level of human rights protections as that enshrined in universal human rights standards.

Representatives of the 48 CSOs who had participated in the Fifth Regional Consultation on ASEAN and Human Rights submitted a detailed [joint statement](#) with specific recommendations on a large variety of issues and rights. These recommendations were both provided in writing and conveyed verbally during today's Consultation. During the meeting, several AICHR representatives expressed their appreciation of the submission.

The organisations reiterated their concern over the procedural issues that have plagued the drafting process:

1. CSOs in most member states, especially grassroots organisations, have been sidelined from the process, as their AICHR representatives did not hold national-level consultations. However, we commend those national AICHR representatives who have held largely informal consultations with CSOs at the national level;
2. There has been no comprehensive, meaningful, institutionalised consultation at the regional level with CSOs to this point. With the present Consultation coming so close to the scheduled submission of the draft AHRD to the ASEAN Ministers' Meeting, it will only partially mitigate this problem, unless time and space are allocated for further consultations;

Still Window-Dressing

3. It is unfortunate that no drafts or summaries of deliberations have been issued by AICHR. At this stage of the process, where AICHR is discussing the actual wording of each provision, this seriously hampers CSOs ability to contribute to the process in a meaningful way.

Our procedural concerns were compounded by the lack of transparency and organisation of today's Consultation itself, with some states nominating non-independent organisations and formal invitations being issued very late, resulting in certain CSOs not having time to secure the resources for their participation.

Most worryingly, several national and regional as well as international organisations were barred from participating in the Consultation, the only official explanation provided being that "there was no consensus" over allowing them to participate.

All ASEAN member states have committed, under their Charter, 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" We remind those censoring states that "all sectors" means that they cannot pick and choose who they want to talk to. AICHR must accept that dialogue also means exposing it to different views and criticism.

In essence, our substantive message has been, and remains: to ensure that the level of human rights protections in the ASEAN Human Rights Declaration does not fall below that of international standards.

This call was echoed on several occasions by the UN High Commissioner for Human Rights, Navi Pillay. In a statement last month, Ms Pillay said that "Regional human rights instruments should complement and reinforce international human rights standards."

During the Consultation, all the AICHR representatives who spoke undertook to ensuring that no lowering of standards occurs in the Declaration. We warmly welcome this commitment. We call on AICHR to ensure this by adopting the strong recommendation in our submission for the inclusion of a specific provision that will guarantee that the Declaration cannot be interpreted as a licence to lower human rights standards, and the formulation contained in the submission.

Moreover, several AICHR representatives emphasised that the Declaration should offer "added value" beyond well-established international instruments. We warmly welcome these remarks and urge AICHR to consider the many recommendations in the CSO submission which provide either for rights that have only been recently elaborated or current formulations of more "traditional" rights. We believe that the incorporation of these recommendations into the Declaration would indeed provide such added value and contributing to the development of international human rights standards.

Among many other recommendations, the submission included:

1. Rejection of any overarching provisions set to limit all the human rights in the Declaration, “balance” them against “responsibilities” or constrain them under “national or regional particularities”;
2. Specific provisions for the human rights of certain groups, including Indigenous Peoples, refugees, women, children, migrant workers and persons with disabilities;
3. Provisions for guarantees of access to justice, effective remedies and substantive equality;
4. A provision ensuring that the principle of non-discrimination is fully inclusive of all types of adverse distinction;
5. A provision setting out duties of states to exercise due diligence against human rights abuses by non-state actors, be they individuals, groups or corporations;
6. Provisions ensuring that economic development and agreements do not come at the expense of human rights, especially of those affected by such development, such as Indigenous Peoples.

We call upon AICHR and the AMM (ASEAN Ministers’ Meeting) that is scheduled to receive the draft Declaration from AICHR in early July to:

1. Seriously consider both our general and our specific concerns and recommendations with a view to incorporating them into the Declaration;
2. Publish the current draft of the ASEAN Human Rights Declaration and make it widely available throughout the region;
3. Allow more time for further consultations with civil society. These should include national consultations, especially in states which have not had consultations, and regional consultation.

Speaking during the Consultation, the Cambodian representative to AICHR stressed the importance of the ASEAN Human Rights Declaration as a document “that will affect the lives of the many millions who live in ASEAN”. We welcome and share this recognition, and hope that AICHR, the AMM and other involved ASEAN authorities live up to the heavy responsibility that this statement places on their shoulders. This they can do by bringing civil society on board through inclusive and transparent procedures, and by producing a Human Rights Declaration worthy of its name and worthy of the ASEAN peoples.

Annex 25

**FORUM-ASIA Oral Statement at the 20th
Human Rights Council Regular Session, Item 8:
Follow-up to and Implementation of the Vienna
Declaration and Programme of Action (VDPA) –
General Debate, 3 July 2012**

Oral Statement Delivered by Mr. Yap Swee Seng on Behalf of Asian Forum for Human Rights and Development (FORUM-ASIA)

Thank you, Madam President. FORUM-ASIA draws the attention of the Council to the recent developments on the drafting of a sub-regional human rights declaration by the Association of Southeast Asian Nations (ASEAN). We echo the call from the UN High Commissioner for Human Rights Navi Pillay in her 11 May press release, that a transparent process of inclusive and meaningful consultation on the draft is key in ensuring that the ASEAN Human Rights Declaration has the ownership and support of the peoples of Southeast Asia. [1] In this light, we welcome the first formal regional-level consultation held by the ASEAN Intergovernmental Commission on Human Rights (AICHR) in Kuala Lumpur on 22 June 2012. However, we regret that the consultation was far too late and impaired by the non-disclosure of the draft Declaration to comment on. Moreover, civil society was only partially represented and some human rights groups were barred from participation in the consultation. While we commend the efforts of the AICHR representatives from Indonesia, Malaysia, the Philippines and Thailand for organizing national consultations with civil society in recent months, we strongly urge the other ASEAN States to follow in this example. Additionally, wherever consultations take place, ASEAN States must ensure broad participation of civil society and the public as well as national human rights institutions.[2]

Madam President, FORUM-ASIA is encouraged by the AICHR's efforts to "add value" in the Declaration by emphasizing such rights as the right to development. We also appreciate AICHR's aspirations expressed at the regional consultation that the Declaration will not go below international human rights standards. However, taking into account the extremely limited ratifications of core human rights treaties by ASEAN States, their commitment to drafting a robust Declaration is not far-reaching enough. Moreover, we remain concerned that important rights such as right to self-determination, rights of indigenous peoples, right to sexual orientation and gender identity, and prevention of enforced disappearances, may be missing or inadequately recognized. Provisions on national and regional particularities, restrictions to rights on ground of public morality, balancing of rights and responsibilities of individuals, qualifying the rights in the Declaration

to the limitations of national laws are also questionable. We urge AICHR to include a provision that guarantees the Declaration will not be implemented in a manner that undermines international human rights norms and standards. We call on AICHR to work closely with the Office of the High Commissioner for Human Rights (OHCHR) in this regard. Finally, we call on the ASEAN Ministerial Meeting (AMM) in July to postpone the finalization of the Declaration to allow more time for meaningful and extensive public consultation.^[3] The AMM must make public the draft Declaration. Thank you, Madam President.

[1] UN Press Release, "Pillay Urges ASEAN to Set the Bar High with Its Regional Human Rights Declaration", 11 May 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12142&LangID=E>

[2] Press Release, "Civil Society Organisations Meet AICHR on the ASEAN Human Rights Declaration, Call for Universal Standards to be Upheld", 22 June 2012, <http://www.forum-asia.org/?p=14181>

[3] Joint Submission to the AICHR on the ASEAN Human Rights Declaration by Civil Society Organisations and People's Movements Participating in the Fifth Regional Consultation on ASEAN and Human Rights, 22 June 2012, <http://www.forum-asia.org/?p=14184>

Annex 26

Open Letter to the ASEAN Foreign Ministers' Meeting (AMM) on the ASEAN Human Rights Declaration, 7 July 2012

To,

His Royal Highness Prince Mohamed Bolkiah, Minister of Foreign Affairs, Brunei Darussalam

His Excellency Hor Namhong, Minister of Foreign Affairs, Cambodia

His Excellency Dr. Marty Natalegawa, Minister of Foreign Affairs, Indonesia

His Excellency Dr. Thongloun Sisoulith, Minister of Foreign Affairs, Laos PDR

His Excellency Dato' Sri Anifah Aman, Minister of Foreign Affairs, Malaysia

His Excellency U Wunna Maung Lwin, Minister of Foreign Affairs, Myanmar

His Excellency Albert F. Del Rosario, Secretary of Foreign Affairs, the Philippines

His Excellency K. Shanmugam, Minister of Foreign Affairs, Singapore

His Excellency Dr. Surapong Tovichakchaikul, Minister of Foreign Affairs, Thailand

His Excellency, Pham Binh Minh, Minister of Foreign Affairs, Vietnam

Cc to

His Excellency Om Yenteng, Chair of ASEAN Intergovernmental Commission on Human Rights

His Excellency Surin Pitsuwan, Secretary General of ASEAN

Your Excellencies,

We, the undersigned organizations, welcome the important initiative of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in drafting the ASEAN Human Rights Declaration (AHRD) and the determination that the Declaration will not be lower than international human rights norms and standards, as expressed in AICHR's first official consultation meeting with civil society organizations on 22 June 2012 in Kuala Lumpur. We understand that the draft prepared by the AICHR will be presented at the 45th ASEAN Foreign Ministers' Meeting (AMM) on 9 July 2010. As such, we appeal to you to take into considerations our following concerns in discussing the draft of the AHRD at the AMM.

Firstly, we regret that the draft AHRD was prepared without sufficient and meaningful public consultation. Throughout the entire drafting process of the Declaration, only one regional-level consultation was held by AICHR – and even that was only partially represented by civil society as several national and regional as well as international organizations were barred from the consultation. This,

coupled with the absence of national-level consultations in at least half of all ASEAN member states, has resulted in many civil society organizations, especially grassroots organizations, being totally sidelined from the entire process.

Secondly, the continued non-disclosure of the draft Declaration by AICHR has rendered all previous limited consultations largely meaningless, and has hindered civil society's substantive contributions and input to the contents of the AHRD.

Without the benefit of the Declaration at hand and based on the very limited information gathered from the national consultation meetings with civil society in several countries and the meeting in Kuala Lumpur, we are further alarmed by some of the problematic provisions in the Declaration that may run counter to international human rights standards. These include the provisions on national and regional particularities in promoting and protecting human rights, the concept of balancing of rights and duties of individual that is alien to international human rights instruments, and the superimposing of overarching restrictions of rights on broad terms such as national security and public morality. Furthermore, we also learned that certain rights, such as the right to self determination, rights of the indigenous peoples, right to sexual orientation and gender identity, and the prevention of enforced disappearances may not be included or adequately recognized in the Declaration.

We also recall that all ASEAN member states have committed, under the ASEAN Charter, 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”. This commitment is far from being met in the drafting process of the AHRD to date.

Thus, in view of the upcoming submission of the draft AHRD by AICHR to the 45th AMM on 9 July 2012, we urge the AMM to:

1. Postpone the finalization of the AHRD at the upcoming 45th AMM;
2. Make public the draft AHRD after the 45th AMM without further delays;
3. Allow AICHR to organize more public consultations after the 45th AMM with all stakeholders in a transparent, meaningful and inclusive manner, and ensure the participation of all relevant stakeholders, especially civil society organizations, national human rights institutions, independent human rights experts, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and other ASEAN sectoral bodies and the public members that are to be the beneficiaries of this Declaration;
4. Secure expert assistance and technical support from the United Nations Office of the High Commissioner for Human Rights (OHCHR), UN Women, United Nations Children Fund (UNICEF) and other UN specialized agencies in order to ensure that the AHRD will not be lower than international human rights standards.

Still Window-Dressing

We believe that only once these steps are taken by ASEAN and the AICHR will the AHRD be a regional human rights declaration that is authoritative, credible, legitimate, and more importantly, enjoying the support and sense of ownership by the peoples in the Southeast Asian region.

Thank you

List of organizations that endorsed this open letter

1. Alternative Asean Network on Burma (ALTSEAN-BURMA)
2. Amnesty International Philippines
3. Amnesty International Thailand
4. Asia Pacific Refugee Rights Network (APRRN) Secretariat
5. Asian Center for the Progress of Peoples (ACPP)
6. Asian Forum for Human Rights and Development (FORUM-ASIA)
7. Asian Federation Against Involuntary Disappearance (AFAD)
8. Asia Indigenous Peoples Pact
9. Boat People SOS (BPSOS)
10. Building and Wood Workers Trade Union Federation of Cambodia (BWTUC), Cambodia
11. Burma Partnership
12. Cambodian Committee on CEDAW (NGO-CEDAW), Cambodia
13. Cambodian Human Rights Action Committee (CHRAC), Cambodia
14. Cambodian Human Rights and Development Association (ADHOC), Cambodia
15. Cambodian Food and Service Workers' Federation (CFSWF), Cambodia
16. Cambodian's Independent Civil-Servant Association (CICA), Cambodia
17. Cambodian Labour Confederation (CLC), Cambodia
18. Cambodian League for The Promotion and Defense of Human Rights (LICADHO), Cambodia
19. Cambodian Tourism Service Workers Federation (CTSWF), Cambodia
20. Cambodian Workers Center for Development (CWCD), Cambodia
21. Cambodian Youth Network (CYN), Cambodia
22. Center for Migrant Advocacy, Philippines
23. Claimants 1081, Philippines
24. Coalition to Abolish Modern-day Slavery in Asia (CAMSA)
25. Coalition of Cambodian Farmer Community (CCFC), Cambodia
26. Community Action Network (CAN)- Pax Romana ICMICA Malaysia
27. Community Legal Education Center (CLEC), Cambodia
28. Development Alternatives with Women for a New Era (DAWN)
29. Housing Rights Task Force (HRTF), Cambodia
30. Human Rights Education Institute of Burma (HREIB)
31. Independent Democracy of Informal Economy (IDEA), Cambodia
32. Indigenous Peoples Task Force on ASEAN
33. International Gay and Lesbian Human Rights Commission (IGLHRC)
34. Justice and Peace-Social Action Center – Marbel, Philippines

35. Koalisi Rakyat untuk Keadilan Perikanan (KIARA), Indonesia
36. Makabayan-Pilipinas
37. Messenger Band (MB), Cambodia
38. Migrant Forum in Asia (MFA)
39. Mplus Foundation, Thailand
40. People's Action for Change (PAC), Cambodia
41. People's Empowerment Foundation (PEF), Thailand
42. Persatuan Masyarakat Selangor & Wilayah Persekutuan (PERMAS), Malaysia
43. Philippine Alliance of Human Rights Advocates (PAHRA), Philippines
44. Philippine Human Rights Information Center (PHILRIGHTS), Philippines
45. Philippine Misereor Partnership, Inc., Philippines
46. Pokja 30, Indonesia
47. Positive Change for Cambodia, Cambodia
48. Pusat Komang (KOMAS), Malaysia
49. Rainbow Community Kampuchea (RoCK), Cambodia
50. Rainbow Sky Association of Thailand, Northern Office, Thailand
51. Social Action for Change (SAC), Cambodia
52. South East Asia Popular Communications Programme (SEAPCP), Malaysia
53. Suara Rakyat Malaysia (SUARAM), Malaysia
54. Sumpay Mindanao, Philippines
55. Task Force Detainees of the Philippines
56. The Alliance of Independent Journalists (AJI), Indonesia
57. The Commission for the Disappeared and Victims of Violence (KontraS), Indonesia
58. The South East Asian Committee for Advocacy (SEACA)
59. Think Center, Singapore
60. Volunteers for Sustainable Development (VSD), Cambodia
61. Women's Aid Organization (WAO), Malaysia
62. Worker's Information Centre (WIC), Cambodia
63. Women's Network for Unity (WNU), Cambodia

Annex 27

**Southeast Asian Women’s Caucus on ASEAN
letter to ASEAN’s foreign ministers on the AHRD,
7 July 2012**

H.E. Hor Namhong
Deputy Prime Minister and Minister of Foreign Affairs
Ministry of Foreign Affairs - Cambodia and Chair, ASEAN Ministerial Meeting

Dear Your Excellency,

Warmest greetings from the Southeast Asia Women’s Caucus on ASEAN.

We write regarding the ASEAN Human Rights Declaration (AHRD). We note that in the forthcoming ASEAN Foreign Ministers Meeting (AMM) in July in Phnom Penh, Cambodia, ASEAN’s foreign ministers will meet the ASEAN Intergovernmental Commission on Human Rights (AICHR) to review the draft AHRD. We urge AMM to ensure that the concerns of Southeast Asian women are fully incorporated into the declaration.

We are grateful that AICHR invited the Women’s Caucus, along with its regional and national members to their consultation with civil society on 22 June 2012 in Kuala Lumpur, Malaysia. AICHR acknowledged our submissions, including the addendum which we presented recently during AICHR’s consultation with civil society. These submissions are attached to this letter. We welcome the determination of states to ensure the AHRD upholds existing international human rights standards and indeed that the AHRD “adds” value’ and advances the interpretation of the normative framework.

We appreciate the responses from AICHR representatives who welcomed our recommendations. We were particularly pleased to gain support from members who shared our position that “public morality” or “public morals” are no longer acceptable as limitations of human rights.

After consulting with our members as well as international law experts globally, we contend that the inclusion of “public morality” would serve to undermine the potential enjoyment of women’s human rights. The term has not been defined at law and has served to excuse grave violations against women, including sexual violence. While “public morality” is mentioned in Article 29 of the Universal Declaration of Human Rights and in some national constitutions, we believe that ASEAN can strengthen women’s rights by removing the term in this important declaration, as was done in the Charter of Fundamental Rights of the European Union.

We urge you to integrate women's human rights around substantive equality, non-discrimination, right to decent work for all sectors and all people regardless of status, the right to bodily integrity, sexual and reproductive health and rights, sexual orientation and gender identity, rights in marriage and family life and freedom of movement and citizenship, especially in a region that is marked by increasingly feminized migration. The region's particularities must inspire ASEAN to set the bar higher for women's human rights.

Women from Southeast Asia look forward to proudly promoting a declaration that reflects their aspirations. In order to do that, the declaration needs to be transparently and democratically developed. We are concerned that the draft has not been released for public comment. Communities in most member states have not had the chance to engage in the consultative process. As a foundational human rights document of ASEAN, the AHRD should be owned by ASEAN, the community, not just ASEAN, the body. As we formally communicated to AICHR, ensuring such ownership is a better legacy than a rushed AHRD.

We hope that you will consider these points in reviewing the draft AHRD.

Respectfully yours,
Nina Somera Secretariat

Annex 28

CSOs Indonesia Highlight 8 Priority Issues on Improving AHRD, 9 September 2012

[Jakarta, 9 September 2012] – Civil Society Organizations (CSOs) from Indonesia highlight 8 priority issues on improving the ASEAN Human Rights Declaration (AHRD) in the Second Regional Consultation with ASEAN Inter-governmental Commission on Human Rights (AICHR) in Manila, Philippine, 12 September 2012. The CSOs from Indonesia are going to address the critical issues related to the AHRD that still have a non-consensus status within AICHR, meaning to say that there have been no agreement among the AICHR commissioners, which must be seriously revisited by the AICHR.

The 8 priority issues are limitation of rights (including public morality), principles of self determination and respect to non-derogable rights, indigenous people rights, right to impartial and independent judiciary, migrant workers, and sexual and reproductive rights.

“We urge AICHR to include our recommendations into the AHRD provisions. We believe that the AHRD is made to meet the basic and fundamental rights of ASEAN people and moreover to reach the ASEAN vision to be people-centered,” it is like what was hoped for by the Indonesian CSOs as mentioned in their executive summary.

The recommendations from the Indonesian CSOs to improve the AHRD are all based on the legal justification, the actual situation or the practice on each issue in ASEAN countries, and the recommendations.

The legal justification is the set of international human rights standards. By using legal justification, the CSOs from Indonesia want to make sure that the set bar of AHRD will be higher than the existing international human rights standards. Before making the recommendations, CSOs from Indonesia analyzed the legal justification with the actual situation of the implementation of human rights in ASEAN countries.

Regarding to process of the regional meeting AICHR with the CSO itself in Manila next week, the CSOs from Indonesia will post questions and argue with AICHR Representatives rather than reading the statements only.

“This consultation shows a step forward for ASEAN in engaging with the civil society. This should be a human rights debate. The AHRD should set up a common standard of achievement on human rights for all peoples and nations

in Southeast Asia, “said Yuyun Wahyuningrum one of the delegates from CSOs from Indonesia.

Those recommendations were prepared through the participative process on the national level by Indonesian CSO and finalized by Human Rights Working Group (HRWG), Indigenous Peoples Alliance of the Archipelago (AMAN), Jakarta Legal Aid (LBH Jakarta), and Kalyanamitra.

Annex 29

**ASEAN Human Rights Declaration must not provide protections lower than international human rights law and standards,
13 September 2012**

We, the undersigned organizations, who participated at the Civil Society Forum on ASEAN Human Rights Declaration, held on 10-11 September 2012 and the consultation meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) with civil society organizations on the ASEAN Human Rights Declaration (AHRD), held on 12 September 2012 in Manila, the Philippines, comment the AICHR for holding the second consultation meeting and welcome the openness shown by the AICHR representatives in the meeting.

We regret that the participation of civil society organizations in this meeting was still limited and some organizations continued to be barred from participating in the meeting.

During the consultation, CSO representatives expressed grave concern that the draft Declaration prepared by AICHR still falls short of international human rights law and standards, despite the assurance the AICHR expressed in the first regional consultation with civil society organizations on 22 June 2012 in Kuala Lumpur that the AHRD will comply with international human rights law and standards.

The CSO representatives explained that the draft AHRD dated 23 June 2012, contains several major flaws that would prevent it from providing robust protection of human rights for the people of ASEAN. These include:

- **Imposing overarching limitations and conditionality on the enjoyment of rights:** Several “General Principles” in the draft Declaration appear to grant ASEAN Member States wide, overarching discretion to withhold respect for any or all of the rights in the Declaration on vague and sweeping grounds; including “national and regional contexts; “different cultural, religious and historical backgrounds” “national security” “public morality” and rights being “balanced with the performance of duties.” This appears to reflect a view that the interests of governments take precedence over the rights of the people – in direct contradiction to the universal principle of “inalienable” human rights.

We recommended the removal of any overarching provisions, which limit rights across the board, balance them against duties or subject them to regional or national contexts. Instead, we proposed that the universality and inalienability of human rights be upheld, and the protection of rights should be undertaken in accordance with universally agreed principles such as the non-derogability of fundamental human rights.

Lack of clear commitment not to lower human rights protections: While the draft Declaration provides an article on interpretation, as proposed by CSOs, it fails to ensure, clearly and unequivocally, that the Declaration cannot be interpreted as providing standards of protection that are lower than universally agreed human rights standards and leaves too much room for those wishing to lower protections.

We recommended that this important provision in the Declaration states clearly and unequivocally that the rights guaranteed in the Declaration will be interpreted and implemented in accordance with international human rights law and standards, and that no interpretation which holds otherwise may be accepted.

- **Subjugating rights to national laws:** Several provisions subjugate the protection of certain human rights to national laws. These include the right to life, the right to seek asylum and the right to form a family. This will allow states to avoid human rights obligations by enacting legislation that would restrict these rights.

We recommended to refrain from and remove any formulation that will subject the exercise of human rights to national legislation that provides lower standards of human rights promotion and protection.

- **A restricted and excluding provision for non-discrimination:** the provision for non-discrimination provides a limited list of prohibited grounds for non-discrimination which fails to reflect developments in the understanding of this key human rights and may be intended to exclude certain groups.

We recommended that the article on equality and non-discrimination should be broadly framed to prevent all forms of discrimination on any ground.

- **Failure to protect the rights of specific groups:** The rights of individuals, groups and peoples whose rights are subject to frequent and systematic attacks in ASEAN, and therefore deserve specific protection, as developed in international human rights standards, are either mentioned in one or two words or not mentioned at all. Women, children, older persons, persons with disabilities, migrant workers are barely mentioned, whereas the rights of minorities, LGBT/Q persons, Indigenous Peoples and persons deprived of liberty get no mention at all.

Still Window-Dressing

We recommended that a new section to be included in the Declaration to protect these specific groups with more elaborate protection of their rights. The submission included a detailed recommendation for the wording of this section.

- **Provisions for specific rights which are vague, weak or otherwise fall below international standards:** While many specific provisions are clear and reflect international human rights standards, and some even provide a progressive approach, the formulation of several other rights lack clarity, precision or else fail to protect the right fully. These include the provisions on the right to life, freedom from enforced disappearances, right to health, right to sustainable developments and many others.

We provided detailed recommendations for changes that will bring these provisions into line with current and evolving international law and standards. We also recommended the addition of several provisions.

We call on the AICHR to continue to allow more time for consultation and inputs into the declaration in order for voices from all stakeholders be heard and taken into consideration.

The AICHR should also make public the declaration once it is submitted to the ASEAN foreign ministers. This will facilitate for civil society and the general public to continue to engage with their respective government to further improve the declaration.

We appreciate the fruitful consultation meeting held by the AICHR and encourage the AICHR to continue strengthening and broadening such engagement with civil society in future.

Press conference of ASEAN civil society organizations on the consultation meeting with the ASEAN Intergovernmental Commission on Human Rights 13 September 2012

Quotes from Dr. Aurora Parong, Amnesty International Philippines "Filipinos and all peoples of ASEAN have the same human rights as any other person in other parts of the world. Regional and national contexts cannot be used by States as excuse to weaken protection of human rights as provided in universally agreed standards. Cultural relativism is not acceptable in human rights."

"It is unacceptable to place general restrictions on all rights in the AHRD. Under international law, only certain limitations, strictly and narrowly defined, maybe imposed on a limited number of rights. For example, freedom from torture and freedom from slavery must be protected and enjoyed at all times. They are non-derogable rights – in other words they are rights that cannot be limited under any circumstances."

“We call on President Aquino and DFA Secretary del Rosario to raise the bar on human rights in the Philippines and ASEAN through a strong ASEAN Human Rights Declaration (AHRD). We need visionary leaders who will not be content with the current status of human rights in ASEAN. We need leaders who will lead us towards a people oriented ASEAN ensuring protection of its peoples from human rights abuse and the enjoyment of all human rights.”

Quote from Cynthia Gabriel, SUARAM, Malaysia

“While development facilitates the necessary enjoyment of human rights, the sustainable use of natural resources is integral to the right to development. Every ASEAN citizen is entitled to determine, participate and contribute to and enjoy equitably , economic, social, cultural and political development in which all fundamental freedoms and human rights can be fully realised, as part of their inalienable right to inclusive and sustainable development. ASEAN governments are duty bound to ensure that the lack of development may not be invoked to justify the violations of human rights of its people.”

Quotes from Ging Christobal, International Gay and Lesbian Human Rights Commission

“We believe that the decision to omit sexual orientation and gender identity from the ASEAN Human Rights Declaration signals lack of concern for lesbian, gay, bisexual and transgender persons who often suffer horrendous violence because of their sexual orientation and gender identity and have no avenues of legal recourse for widespread and institutionalized discrimination. Non-discrimination, non-violence, and equal protection of the law are critical for the well being of all people in ASEAN countries. There is still time to right a wrong. We ask the AICHR to include sexual orientation and gender identity in the ASEAN Declaration on Human Rights before the Declaration is adopted in November 2012.”

Quotes from Atnike Sigiro, The Commission for the Disappearances and Victims of Violence (KontraS), Indonesia

“The term public morality for example, can be used to criminalized or stigmatized minorities or to discriminate marginalized group with reason that their way of life or practice are against public morality”.

Annex 30

**Open letter to ASEAN Foreign Ministers at
Informal ASEAN Foreign Ministers Meeting
(IAMM) on the ASEAN Human Rights Declaration,
26 September 2012**

To

His Royal Highness Prince Mohamed Bolkiah, Minister of Foreign Affairs, Brunei Darussalam

His Excellency Hor Namhong, Minister of Foreign Affairs, Cambodia

His Excellency Dr. Marty Natalegawa, Minister of Foreign Affairs, Indonesia

His Excellency Dr. Thongloun Sisoulith, Minister of Foreign Affairs, Laos PDR

His Excellency Dato' Sri Anifah Aman, Minister of Foreign Affairs, Malaysia

His Excellency U Wunna Maung Lwin, Minister of Foreign Affairs, Myanmar

His Excellency Albert F. Del Rosario, Secretary of Foreign Affairs, the Philippines

His Excellency K. Shanmugam, Minister of Foreign Affairs, Singapore

His Excellency Dr. Surapong Tovichakchaikul, Minister of Foreign Affairs, Thailand

His Excellency, Pham Binh Minh, Minister of Foreign Affairs, Vietnam

Cc to

His Excellency Om Yentien, Chair of ASEAN Intergovernmental Commission on Human Rights

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.

Still Window-Dressing

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

Annex 31:

**Statement from the ASEAN LGBTIQ Caucus:
ASEAN Human Rights Declaration Refuses to
Protect LGBTIQ Rights! 16 November 2012**

We, the ASEAN LGBTIQ Caucus are outraged and disappointed by the decision of the ASEAN Head of States to adopt the AHRD that excluded sexual orientation and gender identity (SOGI). Despite countless attempts and demands by the members of civil society, including LGBTIQ groups, to push for its inclusion, ASEAN have remained reticent to the attempts. This AHRD not only shows a lack of respect to LGBTIQ people but also makes a mockery of the international human rights values and principles that all nations and citizens abide by and are held accountable to.

“Evidently, the numerous failed attempts to engage with AICHR and the recent adoption of ASEAN Declaration with no mention of SOGI, sends a clear message that the human rights of LGBTIQ people are irrelevant to them,” explained Vien Tanjung, founder of *Her Lounge*.

All 10-member countries of ASEAN have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which have specific provisions of non-discrimination on the basis of sexual orientation and gender identity, and are therefore, obliged to protect and promote the rights of LGBTIQ people in the ASEAN region.

“Malaysia is a member country of the UN Human Rights Council and Malaysia was re-elected for the second term this year. It is shocking that ASEAN with such collective expertise and knowledge on human rights; discrimination is still persistent in this region. This is evidenced by the exclusion of SOGI in the AHRD,” said Thilaga, an LGBTIQ activist.

In order for the AHRD to be a relevant and credible human rights tool that protects and benefits the ASEAN community as a whole without discrimination as it aspires to be, the declaration has to be consistent with existing international human rights laws.

Jean Chong of Sayoni from Singapore also expressed her disappointment to the exclusion of SOGI in the AHRD. “No ASEAN citizen can aspire to her/his fullest potential as a citizen in their respective country with the tunnel vision and self serving approach of their governments.”

“We encourage everyone to publicly denounce support and legitimacy of the ASEAN Declaration. The priority of this declaration is not human rights, but economic and political interests of the ASEAN states at the expense of the ASEAN peoples,” explained Ging Cristobal, International Gay and Lesbian Human Rights Commission (IGLHRC).

Annex 32

Civil society denounces adoption of flawed ASEAN Human Rights Declaration: AHRD falls far below international standards, 19 November 2012

Disregarding the deep concerns expressed by senior United Nations officials, human rights experts and hundreds of civil society and grassroots organisations at the national, regional and international levels, ASEAN leaders nonetheless adopted yesterday an "ASEAN Human Rights Declaration" that undermines, rather than affirms, international human rights law and standards. The document is a declaration of government powers disguised as a declaration of human rights.

It is deplorable that the governments of ASEAN have insisted on making a Declaration that implies that their people are less deserving of human rights than the people of Europe, Africa or the Americas. The people of ASEAN should never accept a lower level of protection of their human rights than the rest of the world.

The ASEAN Human Rights Declaration should have reflected the universally held conviction that respecting human rights necessarily means imposing limitations on the powers of government. Instead, the Declaration that was adopted, through some of its deeply flawed "General Principles", will serve to provide ready-made justifications for human rights violations of people within the jurisdiction of ASEAN governments. These include balancing the enjoyment of fundamental rights with government-imposed duties on individuals, subjecting the realisation of human rights to regional and national contexts, and broad and all-encompassing limitations on rights in the Declaration, including rights that should never be restricted. In many of its articles, the enjoyment of rights is made subject to national laws, instead of requiring that the laws be consistent with the rights.

The Declaration fails to include several key basic rights and fundamental freedoms, including the right to freedom of association and the right to be free from enforced disappearance.

The last-minute addition made to the leaders' statement upon adopting the declaration, reaffirming ASEAN member governments' commitment to the Universal Declaration of Human Rights and other human rights instruments in the implementation of the ASEAN Human Rights Declaration, does little to address the fundamental problem. As long as the Declaration's General Principles and the loopholes they provide remain, a wrong signal will be sent to governments that international human rights obligations may be circumvented.

It is highly regrettable that governments in the ASEAN who are more democratic and open to human rights succumbed to the pressure of human rights-hostile governments into adopting a deeply flawed instrument.

We again raise our objections to the ASEAN's "consultation and consensus" decision-making system, which has failed its people again. This reveals that the ASEAN human rights agenda is dictated by its Member States with little meaningful consultation with the vast array of civil society and grassroots organizations that are working each day for the human rights of the people of the ASEAN region.

This Declaration is not worthy of its name. We therefore reject it. We will not use it in our work as groups engaged in the protection of human rights in the region. We will not invoke it in addressing ASEAN or ASEAN member states, except to condemn it as an anti-human rights instrument. We will continue to rely on international human rights law and standards, which, unlike the ASEAN Human Rights Declaration, provide all individuals, groups and peoples in ASEAN with the freedoms and protections to which they are entitled. We remind ASEAN member states that their obligations under international law supersede any conflicting provisions in this Declaration. This Declaration should never be the basis to excuse the failure of a state to meet its international human rights obligations.

Endorsed by:

1. Aliansi Masyarakat Adat Nusantara
2. ALTSEAN Burma
3. Amnesty International
4. Arus Pelangi
5. ASEAN Watch Thailand
6. Asian Federation Against Involuntary Disappearances (AFAD)
7. Asia Indigenous Peoples Pact (AIPP)
8. Asian Center for the Progress of the Peoples (ACPP)
9. Asian Forum for Human Rights and Development (FORUM-ASIA)
10. ASEAN LGBTIQ Caucus
11. ARTICLE 19
12. Boat People SOS
13. Burma Partnership
14. Cambodian Food and Service Workers' Federation (CFSWF)
15. Cambodian Human Rights and Development Association (ADHOC)
16. Cambodian Independent of Civil-Servant Association (CICA)
17. Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
18. Cambodian Workers Center for Development (CWCD)
19. Cambodian Youth Network (CYN)
20. Coalition of Cambodian Farmer Community (CCFC)
21. Dignity International

Still Window-Dressing

22. Forum for Democracy in Burma
23. Forum LGBTIQ Indonesia
24. Human Rights Defenders-Pilipinas (HRDP)
25. Human Rights Education Institute of Burma (HREIB)
26. Human Rights Watch
27. IMPARSIAL (The Indonesian Human Rights Monitor)
28. Independent Democratic of Informal Economy Association (IDEA)
29. Indonesia for Human's
30. Informal Service Center (INSEC)
31. International Commission of Jurists (ICJ)
32. International Federation for Human Rights (FIDH)
33. International Gay and Lesbian Human Rights Commission (IGLHRC)
34. Justice for Sisters, Malaysia
35. Knowledge and Rights with Young People Through Safer Spaces (KRYSS)
36. Lao Movement for Human Rights
37. Lawyers For Liberty (Malaysia)
38. Lawyers' Rights Watch Canada
39. Migrant Forum in Asia (MFA)
40. Myanmar Youth Empowerment Program
41. Myanmar Youth Forum
42. NGO Coordinating Committee on Development (NGO-COD), Thailand
43. People's Action for Change, Cambodia
44. People's Solidarity for Participatory Democracy (PSPD)
45. People's Watch (India)
46. Philippine Alliance of Human Rights Advocates (PAHRA)
47. Philippine Human Rights Information Center (PHILRIGHTS)
48. Philippine NGO Coalition on the UN Convention on the Rights of the Child
49. Quê Me: Action for Democracy in Vietnam
50. Sayoni, Singapore
51. Seksualiti Merdeka, Malaysia
52. South East Asian Committee for Advocacy (SEACA)
53. Suara Rakyat Malaysia (SUARAM)
54. Task Force Detainees of the Philippines (TFDP)
55. Thai Volunteer Service (TVS)
56. The Commission for Missing Persons and Victims of Violence (Kontras)
57. Towards Ecological Recovery and Regional Alliance (TERRA)
58. Vietnam Committee on Human Rights

Annex 33

Southeast Asian Women’s Caucus on ASEAN Statement: ASEAN Human Rights Declaration Limited by ‘morality’ Say Women’s Organisations, 19 November 2012

The Southeast Asian Women’s Caucus on ASEAN has expressed disappointment in the final version of the ASEAN Human Rights Declaration (AHRD) adopted by ASEAN leaders on 18 November 2012. The Women’s Caucus said that the Declaration has too many limitations and loopholes to be useful. “The Declaration has failed to uphold international standards” said the Caucus.

“The Declaration makes rights subject to national laws, but national laws may discriminate against women and may not be fully compliant with international human rights standards. The Declaration also states that rights need to be ‘balanced’ with responsibilities which undermines existing commitments that ASEAN states are party to” she added.

The Caucus particularly denounced the inclusion of general limitations on rights premised on ‘public morality’, as being restrictive and a failure to uphold existing international obligations as well as other ASEAN declarations. *“The idea that human rights can be limited to protect ‘public morality’ is really concerning”* said Kate Lappin from the Asia Pacific Forum on Women, Law and Development. *“There is no definition of public morality in the Declaration to ensure it is interpreted progressively. Women in ASEAN still live in unequal societies, where culture and tradition dictate a lesser and differentiated status for women. Thus, notions of morality are most commonly used against women, to control women’s bodies and sexuality”* she added.

Women’s rights and legal experts were consulted in the lead up to civil society submissions and all agreed that the subjective term ‘morality’ is an unnecessary and dangerous basis for limiting rights to be included in international law and is most likely to be used to limit the rights of women and marginalised groups.

Women’s groups campaigned to have the reference to public morality removed from the draft declaration. Numerous international human rights groups and experts agreed that the public morality clause is an anachronism that doesn’t belong in a modern declaration on human rights.

It appears that the majority of the ten member states agreed with the women’s rights activists and supported its removal. However a few states one being Malaysia, a member of the Human Rights Council strongly disagreed and

Still Window-Dressing

insisted on the retention of the clause. “Allowing some states’ out dated concerns to prevail reduces ASEAN to a body striving for the lowest common denominator” said Ivy Josiah, Executive Director of Women’s Aid Organisation. She further added “consensus has its perils when the national interests of one member state triumph at the expense of universal human rights”.

The Women’s Caucus calls on all ASEAN states to ensure that the Declaration is interpreted progressively, without undermining the established universal principles and standards of human rights. ASEAN states will be held accountable in ensuring that the spirit and principles of the Declaration in no way negate the human rights and fundamental freedoms of the peoples of ASEAN as stated in Article 40 of the Declaration

*Annex 34***SEAPA Press Release: ASEAN limits free speech scope in rights declaration, says regional media group, 19 November 2012**

Bangkok, 19 November - The standard set by the ASEAN Human Rights Declaration (AHRD) falls below international human rights standards on freedom of opinion and expression, a regional press freedom watchdog said today.

The Southeast Asian Press Alliance (SEAPA) said that the omission of the phrase 'regardless of frontiers' from the declaration meant that it fell below the Universal Declaration of Human Rights (UDHR), which the regional group had pledged to uphold through the declaration.

The AHRD was unveiled by leaders of the 10 member states of ASEAN yesterday. The document included a guarantee on freedom of opinion and expression through Article 23, which is lifted almost entirely from the UDHR's Article 19, except for the said phrase.

'The omission of the phrase is a sign of the low commitment of ASEAN member countries to freedom of expression,' said SEAPA executive director Gayathry Venkiteswaran.

She explained that the phrase is a very important component of the human right, especially in a regional organization like ASEAN where communication across national borders is key to development and accountability of its members.

'It is particularly alarming that the framers of the document opted to delete the phrase in the light of borderless communications through the internet and with increasing integration and exchange among the regional media,' Gayathry said.

'This can legitimize censorship of messages from overseas,' she added, noting that criticisms of ASEAN member states include those coming from abroad—international bodies and NGOs, and opposition groups who have been forced into exile because of political repression at home.

Sub-standard principles

SEAPA also echoed criticisms of the AHRD raised by other human rights organizations which have earlier called for an extension of deliberations of the draft because of the low standards it set, and the lack of adequate public consultations.

Still Window-Dressing

Human rights groups expressed particular concern that the AHRD contained three caveats to human rights in General Principles 6, 7 and 8, which can be used to get around the guarantees provided by the document.

'This is really appalling especially considering the practice in many ASEAN states of legally curtailing many civil liberties—including free expression—against international human rights principles,' said Gayathry.

'These caveats mean that human rights in ASEAN including free speech may be will continue to be curtailed,' she added citing national security, press control and criminalized speech laws currently in place in many ASEAN countries.

Many of these national laws have been called out by UN human rights bodies as violating international norms,' Gayathry explained, 'including criminal libel which is practised in almost all ASEAN states.'

'National security and public order should be very strict exceptions to curtail human rights and free speech,' she said, 'but these placed at the start of the document which can mean they come before human rights.'

'In placing caveats in the AHRD principles, ASEAN has prioritised escape clauses in states' responsibility to uphold human rights,' SEAPA's executive director further said.

However, she said that SEAPA will still hold ASEAN states accountable for the rights in the declaration, despite limitations.'We don't accept what the ASEAN leaders have insisted on—that this is a non-binding document. If they have adopted it, they are committed to honouring it. We will hold the member states to the standards they agreed to, but we will be guided by the international standards on human rights,' Gayathry said.

Annex 35
**IWRAW-AP Statement on the AHRD,
 21 November 2012**

(Sent to the ASEAN Heads of State and Government on 21 November 2012)

International Women's Rights Action Watch Asia Pacific (IWRAW Asia Pacific) [1] wishes to express its disappointment in the decision of the ASEAN leaders to proceed with the adoption of the ASEAN Human Rights Declaration on 18 November 2012 despite the numerous calls to postpone the adoption by civil society groups and other stakeholders.

The current version of the Declaration falls short of its vision and mission as the overarching instrument to "establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process", due to its restrictive content and the process by which it was created.

- Procedurally, the expediency in adoption, lack of transparency, and meaningful civil society participation has substantively limited the vision and scope of the Declaration as an overarching standard setting instrument for all stakeholders in the region.
- Substantively,
 - the overall approach adopted by the Declaration, provides ASEAN member states an expedient to continue the denial and violations of rights under the protective shroud of culture and traditions of the region which are patriarchal and anachronistic standards that will continue to negatively impact women's human rights in ASEAN. This is clearly embodied in the numerous articles of the general principles which places limitations rather than to promote and protect the full recognition and enjoyment of human rights by all in ASEAN;

[1] IWRAW Asia Pacific is an NGO in Special Consultative Status with the Economic Social Council of the United Nations and has national partners in all 11 Southeast Asia countries. It facilitates and monitors the Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), an international treaty ratified by all member states of ASEAN. In collaboration with APWLD, it initiated the formation of the Southeast Asia Women's Caucus on ASEAN, with a membership of over 50 women's groups in the region.

Still Window-Dressing

- the Declaration, despite affirming its commitment to uphold international human rights principles and standards has allowed for limitations such as “balancing rights” with regional and national contexts and laws. This in the current political context of ASEAN, as well as the weak institutional climate for promotion and protection of human rights nationally, allows the member states to interpret the provisions in ways which may undermine their international commitments;
- continuing to limit the exercise of human rights and fundamental freedoms to meet the principle of “just requirements”, including on the basis of “public morality”, [2]further demonstrates the lack of true commitment by the ASEAN member states to the duty to respect, protect and fulfil the human rights of the peoples of ASEAN. The Declaration fails to provide the measures and mechanisms to ensure appropriate checks and balances to interpret “just requirements” at the national level. Further, historically the notion of public morality has been used to deny and violate women’s human rights to sexual autonomy and bodily integrity.

As an organisation committed to the realisation of human rights of women, we are extremely concerned by the absence of these key elements, as well as inclusion of provisions which negate the full recognition of human rights, both in the process of drafting and adopting the Declaration itself and in the substance of its content.

In line with the mission to promote and protect human rights, democracy, fundamental freedom, rule of law and good governance, we urge the “People-oriented” ASEAN to ensure progressive interpretation and implementation of the Declaration in accordance to the spirit and commitments of internationally agreed principles and standard on human rights. The women of ASEAN demand the recognition and enjoyment of allhuman rights and fundamental freedoms unfettered and unrestricted by unnecessary justifications premised on traditional, patriarchal and anachronistic standards and interpretations which are embodied in the adopted Declaration.

It should be noted that all Member States of ASEAN are parties to the Convention on All Forms of Discrimination Against Women (CEDAW), as well as the Convention on the Rights of the Child (CRC), and is thereby obligated to ensure the recognition and promotion of women’s and children’s human rights and continue to uphold the principles of universality, non-discrimination and substantive equality of all peoples of ASEAN.

[2] The statement of the Southeast Asia Women’s Caucus on ASEAN on the issue of public morality is fully supported by IWRAW Asia Pacific.

We, as a women's human rights group, together with other stakeholders, will continue to monitor and demand for the full accountability of the ASEAN member states in fulfilling its obligations to the peoples of ASEAN without in any way undermining its obligations under international human rights laws. We want the guarantee of a regional Declaration which will withstand national, regional and international scrutiny in upholding universal principles of human rights.

Yours sincerely
Audrey Lee
Officer in Charge

Annex 36

Statement by the Indigenous Peoples Task Force on ASEAN and Asia Indigenous Peoples Pact Statement on the ASEAN Human Rights Declaration, 4 December 2012

We, the members of the Indigenous Peoples Task Force on ASEAN (IPTF), Asia Indigenous Peoples Pact (AIPP) and other indigenous peoples organizations, express our extreme disappointment to the adopted version of the ASEAN Human Rights Declaration (AHRD). As an over-arching human rights standard in the region, the AHRD falls below international standards on human rights particularly on the duties and responsibilities of states in upholding the universality, and non-derogability of and the enjoyment and exercise of human rights by citizens.

More over, despite the favorable votes of all ASEAN member countries for the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, this AHRD does not include our recognition as indigenous peoples distinct from the majority and systematically discriminated and exploited through the non-recognition and violation of our collective rights. The non-inclusion of indigenous peoples rights in the AHRD is a further step backwards for ASEAN member countries and their duties and obligations to abide by international human rights standards and norms including those that recognize indigenous peoples rights. The UNDRIP which details our rights as indigenous peoples is part of international human rights standards and norms.

We are likewise disappointed that there were no genuine consultations conducted with civil society including indigenous organizations during the process of the drafting of the Declaration. Even more disappointing is that in the few instances that the ASEAN Intergovernmental Commission on Human Rights (AICHR) called for consultations on the then draft AHRD with civil society organizations, indigenous peoples representatives were not invited and were even barred to attend in some consultations to present our common inputs and recommendations. This however did not limit us from submitting our recommendations on the AHRD to recognize indigenous peoples and our collective rights, especially our rights to our lands, territories and resources, self-determination and free prior and informed consent. We have constantly been sending and personally submitting our inputs and recommendations on the AHRD to the members of the AICHR and disappointingly never received any official response to our communications to them.

Indigenous peoples in Southeast Asia comprise a large part of the population of the region numbering an estimated 100 million. Despite this, ASEAN member countries have been remiss in their duties and obligations to promote and protect our rights. Instead, we are made to bear the burden of national development goals by sacrificing our lands, territories and resources.

The current ambitious investment plan of ASEAN shows the severe imbalance between duties of states to respect and protect human rights with national development goals without ensuring social equity and justice. The differential impacts of the resource-extractive model of development of member-countries of ASEAN violate our collective rights as indigenous peoples to maintain and develop our political, economic and social systems in our own territories. This is clearly resulting to our massive displacements, wide-scale destruction of our sustainable livelihoods, food security, cultural heritage, social cohesion and ethnic identities. In addition, we continue to be highly marginalized and suffer from the lack of basic social services, compounded by the denial of citizenship by certain countries.

As the ASEAN member countries are parties to international standards and norms, we shall continue to engage the member countries by monitoring their compliance to and upholding their obligations on these standards and norms. We shall continue to engage national human rights and Indigenous Peoples institutions and Agencies, national and international human rights mechanisms and procedures for the promotion, respect, and protection of our rights as indigenous peoples.

With this, we call on ASEAN Member Countries

1. To fulfill their human rights obligations in compliance to international standards and norms they have committed to which includes the UNDRIP;
2. To be transparent and inclusive by providing effective mechanisms and platforms for indigenous peoples and civil society to engage effectively on all matters that affect them;

To designate a focal person for indigenous peoples within the AICHR towards the establishment of a working group that would look into the issues, concerns and welfare of indigenous peoples in the region.

Annexes C. Statements by INGO on the AHRD in 2012

Annex 37

Joint INGO Statement: The ASEAN Human Rights Declaration: Drafts must be published and subject to meaningful consultations with local, national and regional civil society and human rights defenders, 2 May 2012

We, the undersigned international human rights organizations, are concerned that the ASEAN Intergovernmental Commission on Human Rights (AICHR) has yet to take the necessary steps to ensure that the process of drafting the ASEAN Human Rights Declaration (AHRD) is transparent and fully consultative with civil society organizations in the ASEAN region.

In a [joint statement](#) released on April 8th, over 130 local, national and regional civil society organizations across the ASEAN region called on AICHR to implement the following steps:

- 1) To immediately publicize the draft AHRD so that the public can meaningfully participate in the drafting process. Consultations will remain meaningless if the draft declaration is kept confidential and out of reach of the peoples.
- 2) AICHR representatives who are already conducting national consultations in their respective countries must continue to do so, and ensure that these consultations are held nation-wide and in an inclusive and more regular manner. They should further encourage other AICHR representatives that have not taken such initiatives to do the same. The AICHR should also conduct consultations both at national and regional levels, especially if national consultations are not applicable yet in particular places.
- 3) To translate the draft AHRD into national languages and other local languages of the ASEAN countries in order to encourage broader public participation in the region.
- 4) To ensure that consultation meetings of the AICHR will be inclusive of all stakeholders, especially civil society organizations and national human rights institutions. [1]

On 12 April, AICHR announced that it would finalize the draft of the AHRD by July 2012 and hold one consultation with civil society organizations in late June 2012. A single consultation, conducted not at the outset but rather towards the very end of the drafting process, cannot be considered consultative and transparent. In addition to being non-transparent and non-consultative, this process has been clearly rushed with little thought provided on some of the key elements that have been articulated by ASEAN civil society for decades. An instrument of this importance and magnitude needs more time for adequate deliberation and discussion.

We fully endorse the April 8th statement made by national and regional civil society organizations and strongly urge all representatives of the AICHR to fully and immediately implement these recommendations. This would ensure that the AHRD reflects the legitimate concerns of civil society and human rights defenders in ASEAN and reflects existing international human rights standards.

The drafting of the AHRD is a litmus test of AICHR's willingness to constitute a credible, respected, and effective regional human rights body. Principles of transparency, accountability, and consultation are applied by the United Nations and all other regional bodies when they engage in human rights standard-setting and the ASEAN must not fall below well established international standards and practice.

This joint statement is endorsed by (in alphabetical order):

1. Amnesty International
2. Asian Legal Resource Centre
3. Association for the Prevention of Torture (APT)
4. Christian Solidarity Worldwide
5. Civil Rights Defenders
6. Freedom House
7. Human Rights Now
8. Human Rights Watch
9. International Commission of Jurists
10. International Federation for Human Rights (FIDH)
11. International Gay and Lesbian Human Rights Commission (IGLHRC)
12. Protection International
13. Reporters Without Borders
14. World Organisation Against Torture (OMCT)

Annex 38

**Joint INGO Statement: Less than Adequate:
AICHR Formal Consultation with Civil Society
on the ASEAN Human Rights Declaration,
21 June 2012**

Amnesty International, the International Commission of Jurists, Human Rights Watch, the International Federation for Human Rights (FIDH), Dignity International, and Article 19 welcome the first official consultation between ASEAN Intergovernmental Commission on Human Rights (AICHR) and civil society organisations (CSOs) on the ASEAN Human Rights Declaration (AHRD), which is due to take place in Kuala Lumpur on June 22, 2012 at the Ritz Carlton Hotel.

This CSO consultation comes in the wake of national consultations held by individual AICHR commissioners in Indonesia, Malaysia, the Philippines, and Thailand but regrettably not in any of the other ASEAN member States.

As international non-governmental organisations dedicated to promoting and defending international human rights, we are deeply concerned by AICHR's official consultation process, which is seriously flawed in several aspects:

- AICHR has failed to publish or otherwise publicly release a draft of the AHRD, leaving CSOs totally in the dark and unable to comment or respond to the current draft text of the Declaration;
- AICHR has failed to make public detailed information about its deliberations on the AHRD, making it extremely difficult for CSOs to contribute input that responds to key issues and arguments raised during these deliberations.
- AICHR has allocated an extremely short period for consultation—only a few hours—for CSOs to consider what is a crucial and complex document;
- AICHR has arbitrarily limited participation to only four CSOs from each member state, leaving many dozens of other organisations interested in AHRD—in particular grassroots organisations—without a voice in the process;
- Several ASEAN governments have unilaterally appointed organisations that are in fact run by or are very closely affiliated with the State rather than being independent and representing civil society;

- With the notable exception of the commissioner from Indonesia, AICHR commissioners have failed to provide any clear guidelines on how the participants for the consultation were selected.
- AICHR has not stated how it will incorporate civil society input to the AHRD. With AICHR due to present the draft AHRD to the ASEAN Ministers Meeting (AMM) on 8 July, and only one further day of deliberations on the AHRD scheduled by AICHR, on 23 June, there is deep concern that the input from CSOs will have very limited effect on the final text.

As international human rights organisations, we share the concerns voiced by many CSOs in the region that the human rights standards in the draft Declaration may be lower than those at the universal level, including in international instruments already binding on ASEAN states, despite the assurances of some AICHR representatives that this would not be so. We strongly believe that individuals, groups, and peoples in ASEAN must be afforded enjoyment of all human rights as enshrined in universal instruments through the collective efforts of the international community.

We therefore call on AICHR to:

1. Immediately publish the current draft of the ASEAN Human Rights Declaration and disseminate it as widely as possible throughout the region;
2. Ensure more time is allocated for meaningful consultation between AICHR and CSOs, both on the national level (especially in states which have not yet conducted national consultations) and regionally; and cease selectively limiting participation to only a few chosen CSOs;
3. Ensure that the Declaration fully complies with international human rights law and standards, and that nothing in the Declaration undermines or goes against those standards.

Annex 39

**Joint open letter to ASEAN foreign ministers on
the draft ASEAN Human Rights Declaration, 7
July 2012**

To the Ministers of Foreign Affairs of the Member States of the
Association of Southeast Asian Nations (ASEAN)
during the 45th ASEAN Ministerial Meeting (AMM)

H.R.H. Prince Mohamed Bolkiah, Minister of Foreign Affairs, Brunei Darussalam
H.E. Hor Namhong, Deputy Prime Minister and Minister of Foreign Affairs,
Cambodia
H.E. Dr. Marty Natalegawa, Minister of Foreign Affairs, Indonesia
H.E. Dr. Thongloun Sisoulith, Minister of Foreign Affairs, Laos PDR
H.E. Dato' Sri Anifah Aman, Minister of Foreign Affairs, Malaysia
H.E. U Wunna Maung Lwin, Minister of Foreign Affairs, Myanmar
H.E. Albert F. Del Rosario, Secretary of Foreign Affairs, the Philippines
H.E. K. Shanmugam, Minister of Foreign Affairs, Singapore
H.E. Dr. Surapong Tovichakchaikul, Minister of Foreign Affairs, Thailand
H.E. Pham Binh Minh, Minister of Foreign Affairs, Vietnam

Your Excellencies,

The International Commission of Jurists, International Federation for Human Rights, Amnesty International, Human Rights Watch, Dignity International, and Article 19, write to you today to express our grave concerns regarding the process of drafting the ASEAN Human Rights Declaration (AHRD). We understand that the ASEAN Intergovernmental Commission on Human Rights (AICHR) will be transmitting to you a draft of the Declaration during your meeting with them on 8 July 2012 in Phnom Penh, Cambodia.

In our previous statements addressed to the AICHR, we noted the deeply flawed consultation process in the drafting of the Declaration, characterized by a lack of transparency and an absence of broad-based consultations with civil society organizations (CSOs). As we mentioned in our previous statements to the AICHR:

- The drafting process was mainly conducted behind closed doors. Although some individual AICHR members held national consultations with CSOs from their countries, no such consultations were held in other ASEAN member States. We also note that not all consultations held were as broad-based as they should have been.

- A draft of the Declaration was never publicly released, putting CSOs and other key stakeholders, such as national human rights institutions and even ASEAN sectoral bodies, in a position wherein they were unable to substantially comment on or respond to a formal text, thereby limiting their ability to provide concise and targeted inputs.

While we welcomed the AICHR's first official regional consultation with CSOs in Kuala Lumpur on 22 June 2012, only slightly more than two weeks before the presentation of the AHRD to you, it was far from adequate. Again, the AICHR refused to share a draft of the Declaration despite repeated calls by participating CSOs for the draft to be released. Moreover, a single consultation with CSOs for an instrument that aims to set forth human rights standards in the entire region falls well short of what is acceptable. The consultation did not include a fully representative presence from ASEAN civil society. That consultation was limited to a small number of CSOs from each country and there was an opaque process dominated by governments for selecting these CSOs in many countries. As a result, a number of the participating CSOs were either government controlled or very closely affiliated with the government.

The United Nations and every other regional inter-governmental organization in Europe, Africa, the Americas, and the League of Arab States meaningfully engage with and facilitate the participation of CSOs when undertaking standard-setting exercises, including the opportunity to engage with draft texts as they are being developed. It is therefore unacceptable for the ASEAN to refuse to adopt similar best practices that guarantee transparency and fully consultative processes with civil society.

According to Article 1.13 of the ASEAN Charter, one of ASEAN's purposes is 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." Hiding the AHRD behind closed doors and limiting participation in its drafting betrays this principle and will erode public confidence in ASEAN's commitment to meet this obligation.

We are encouraged by the formal commitment expressed by AICHR members during the Kuala Lumpur consultation that the Declaration will provide an "added value" to the existing body of human rights standards. To guarantee this outcome, we join national and regional CSOs in urging the AMM to:

- Remove any provision purporting to impose limitations or restrictions on all rights in general;
- Remove any provision subjecting the rights in the Declaration to "national and regional particularities" which may be used by States as an excuse to weaken the protection of human rights as provided in universally agreed standards;

Still Window-Dressing

- Remove any reference to the balancing of rights and responsibilities, given that human rights are inalienable and cannot be made contingent on responsibilities;
- Include a provision explicitly guaranteeing that no part of the Declaration shall be interpreted or implemented in a manner that is inconsistent with or undermines international human rights standards; and
- Ensure that provisions on specific rights are in line with international human rights standards and clearly adding value to them.

Finally, we also echo the call of CSOs in the region and urge the AMM to:

- Immediately publish the current draft of the ASEAN Human Rights Declaration and disseminate it as widely as possible throughout the region; and
- Allow more time for broad-based consultations with independent and representative CSOs on the draft, both on the national level (especially in member states which have not yet conducted national consultations) and regionally, without selectively limiting participation to only a few chosen CSOs.

Sincerely yours,

Sam Zarifi
Regional Director for Asia and the Pacific
International Commission of Jurists

Souhayr Behassen
President
International Federation for Human Rights (FIDH)

Catherine Baber
Interim Program Director for Asia and the Pacific
Amnesty International

Phil Robertson
Deputy Director, Asia Division
Human Rights Watch

Agnes Callamard
Executive Director
Article 19

Jerald Joseph
Executive Director
Dignity International

cc:

H.E. Surin Pitsuwan, Secretary-General of ASEAN
Members of the Committee of Permanent Representatives to ASEAN

Annex 40

**Joint INGO Statement: Postpone deeply flawed
ASEAN Human Rights Declaration,
5 November 2012**

Bangkok, 5 November 2012. In a letter sent today to ASEAN Heads of State, leading international human rights organizations called for the postponement of the adoption of the ASEAN Human Rights Declaration, pointing out that in its current form, the Declaration falls short of existing international human rights standards and risks creating a sub-standard level of human rights protection in the region.

Of particular concern are the General Principles in the Declaration. Under General Principles 6,7, and 8 of the current draft, enjoyment of rights is to be “balanced with the performance of duties”, subjected to “national and regional contexts” and to considerations of “different cultural, religious and historical backgrounds.” Also, all the rights in the Declaration may be restricted on a wide array of grounds including “national security” and “public morality”.

“The idea that all human rights are to be ‘balanced’ against individual responsibilities contradicts the very idea of human rights agreed upon in the 1948 Universal Declaration of Human Rights, which was affirmed by all States, including ASEAN Member States, in 1993 in the Vienna Declaration and Programme of Action,” said Wilder Tayler, Secretary General of the International Commission of Jurists. “Balancing human rights with responsibilities turns on its head the entire *raison d’être* of human rights,” he further emphasized.

Furthermore, international law prohibits governments from derogating under any circumstances from a broad set of rights. Other rights can only be subject to specific, narrow, and clearly defined restrictions in certain circumstances. Finally, international law imposes on all ASEAN Member States the duty, regardless of their political, economic and cultural systems, to respect and protect all human rights and fundamental freedoms.

“It is clear that in its current form the Declaration purports to make a significant and worrying departure from existing international human rights law and standards, including those found in other regional human rights instruments, in Europe, the Americas, and Africa,” said Souhayr Belhassen, President of the International Federation for Human Rights (FIDH).

“Unless significant changes are made to the text, ASEAN will be adopting in 2012 a Human Rights Declaration that grants ASEAN Member States additional powers to violate human rights instead of providing the region’s people with additional safeguards against such violations”, said Michael Bochenek, Director of Amnesty International’s Law and Policy Programme.

The organizations strongly urged in their letter that ASEAN leaders should return the draft text to the ASEAN Intergovernmental Commission on Human Rights and send clear instructions to redraft it, in a transparent, deliberate and inclusive process, in full consultation with all stakeholders, so that it does not fall below internationally recognized human rights law and standards.

Annex 41

ITUC/ITUC –Asia Pacific Statement on ASEAN Human Rights Declaration, 29 November 2012

The ITUC and the ITUC Asia-Pacific express serious concern with a position which represents a retreat from the existing commitments from its constituent member states.

The International Trade Union Confederation (ITUC) and its regional body, ITUC Asia-Pacific, taking note of the recent initiative to issue an ASEAN Human Rights Declaration (AHRD) consistent with the Roadmap for an ASEAN Community 2009-2015, express serious concern with a position which represents a retreat from the existing commitments of its constituent member states under the International Bill of Human Rights and the core conventions of the International Labour Organization, among other instruments. Throughout, the AHRD retreats from upholding universal principles and instead limits the reach of the enumerated rights to a balance with the performance of unspecified corresponding duties (General Principle 6) and to regional and national contexts (General Principle 7). Further, some rights are limited to the extent of national laws and regulations.

In particular, the ITUC and ITUC-AP are shocked that the AHRD makes no reference whatsoever to the right to freedom of association. While the right to form and join a union is recognized at Article 27(2) of the AHRD, the same article limits the obligation to the extent permitted by national law and practice. This sets no international standard at all, but rather leaves each ASEAN member to define the contours of this fundamental right. A review of ITUC's Annual Survey on Trade Union Rights <http://survey.ituc-csi.org/> and the regular reports of the ILO Committee of Experts and Committee on Freedom of Association www.ilo.org reveal that the laws and practice of many ASEAN member states are far from complying with well-established international labour standards. Indeed, Cambodia, where the ASEAN Summit took place, was singled out by the ILO Committee on Freedom of Association on November 15, 2012 as one of five serious and urgent cases http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_193200/lang-en/index.htm. Cambodian labour law is well out of step with international standards, and despite many years of promises has yet to implement new legislation.

All ASEAN members are also members of the International Labour Organization (ILO). In 1998, the ILO, through a tripartite process, adopted the ILO Declaration on Fundamental Principles and Rights at Work, which obliges all members to respect, promote and realize the principles of, inter alia, freedom of association, regardless of whether the members have ratified the relevant fundamental

conventions. Moreover, 5 of 10 ASEAN members have ratified Convention 87, which confers a binding legal commitment to guarantee all workers the right to form and join trade unions without any distinction whatsoever.

The ITUC and ITUC-Asia Pacific join the international community in calling upon ASEAN to revise the AHRD through a transparent, consultative process including trade unions and civil society organizations so that it is brought into line with international human rights law. Further, the ITUC and the ITUC-Asia Pacific call on ASEAN members who have not ratified Convention 87 to do so immediately.

Sharan Burrow General Secretary, ITUC

Noriyuki Suzuki General Secretary, ITUC-AP

Annexes D. Statement by NHRI on the AHRD in 2012

Annex 42

SUHAKAM Press Statement: ASEAN Human Rights Declaration Falls Short of Expectation, 19 November 2012

The Human Rights Commission of Malaysia (the Commission) welcomes the adoption of the ASEAN Human Rights Declaration (AHRD) on 18 November 2012 during the ASEAN Summit in Cambodia as a positive development in the promotion and protection of human rights in the region. The Commission is greatly encouraged by the reaffirmation by the ASEAN countries of their commitment to the Universal Declaration of Human Rights (UDHR), 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 Commission notes that the AHRD covers a wide range of rights categorised separately as Civil and Political Rights, Economic, Social and Cultural Rights, the Right to Development, and the Right to Peace, all of which, while in consonance with international human rights standards, are subject to nine general principles.

While not downplaying the significance and usefulness of those general principles, the Commission is disappointed that they permit restrictions to be made on grounds wider than what are accepted internationally. More important, General Principle 7, which declares on the one hand, that all human rights are universal, indivisible, interdependent and interrelated, recognises on the other, that Member States may take into consideration their political, economic, legal, socio-cultural, and historical backgrounds in the realisation of human rights in their countries. The Commission is concerned that these principles might undermine the whole spirit of the Declaration and negate the full enjoyment and protection of human rights in the region. The Commission would also like to draw attention to Article 5 of the Vienna Declaration and Programme of Action under which it is the duty of States to promote and protect human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

The Commission also regrets the Declaration was drafted with limited openness and transparency, and inadequate extended consultations with various stakeholders, including the National Human Rights Institutions (NHRIs) which were keen to contribute and anxious to ensure that the AHRD would be on a par with other regional human rights declarations.

Nonetheless, the Commission, along with the other members of the South East Asian National Human Rights Institutions Forum (SEANF), will continue to engage with the ASEAN Governments and the ASEAN Intergovernmental Commission on Human Rights (AICHR) in the process of the full and unimpeded implementation of the AHRD, consistent with international human rights standards and norms in the interest of ensuring that the rights of the region's 600 million citizens are promoted and protected.

TAN SRI HASMY AGAM

Chairman

The Human Rights Commission of Malaysia (SUHAKAM)

*Annexes E. Statements by ASEAN Dialogue Partners
on the AHRD in 2012*

Annex 43

**Statement by Victoria Nuland, Spokesperson of
the United States Department of State, on the
ASEAN Human Rights Declaration,
20 November 2012**

The Universal Declaration of Human Rights (UDHR) lays out universal principles of human rights that are the entitlement of all persons everywhere, establishing a minimum baseline for the protection of human rights. Regional declarations are a useful way to reinforce the human rights commitments and obligations of states as articulated in the UDHR and in the International Covenant on Civil and Political Rights (ICCPR). For this reason, in principle, we support ASEAN's efforts to develop a regional human rights declaration.

While part of the ASEAN Declaration adopted November 18 tracks the UDHR, we are deeply concerned that many of the ASEAN Declaration's principles and articles could weaken and erode universal human rights and fundamental freedoms as contained in the UDHR. Concerning aspects include: the use of the concept of "cultural relativism" to suggest that rights in the UDHR do not apply everywhere; stipulating that domestic laws can trump universal human rights; incomplete descriptions of rights that are memorialized elsewhere; introducing novel limits to rights; and language that could be read to suggest that individual rights are subject to group veto.

The Declaration and the ASEAN statement of adoption call for the Declaration to be implemented consistent with the Universal Declaration on Human rights and international human rights agreements. Therefore, ASEAN has an opportunity to take steps to revise the Declaration through a transparent process that includes civil society and that brings the document in line with the standards embodied in the UDHR and ICCPR. The United States remains a committed partner with ASEAN on the protection of human rights.

*Annex 44***Statement by European Union's High Representative Catherine Ashton on the adoption of the ASEA Human Rights Declaration, 22 November 2012**

Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy and Vice President of the Commission, issued the following statement today:

“I welcome the formal adoption of the ASEA Human Rights Declaration as an important step towards strengthening the protection of human rights in Asia.

I emphasise the need to ensure that implementation addresses adequately any problems of compatibility with international standards, notably the Universal Declaration of Human Rights and the relevant United Nations human rights treaties.

I welcome the accompanying Phnom Penh Statement of Heads of States and Governments on adoption of the Declaration, which reaffirms their commitment to the universality of Human Rights. I will continue to work with ASEA and its Member States as well as civil society organisations to promote human rights nationally, regionally and globally on the basis of internationally-agreed human rights standards.”

Annexes F. Statements by the UN on the AHRD in 2012

Annex 45

Statement by the High Commissioner for Human Rights at the Bali Democracy Forum, 7 November 2012

Excellencies Ladies and Gentlemen

I convey greetings and good wishes of Ban Ki Moon, the Secretary General of the United Nations.

It gives me great pleasure to join you at this stimulating regional and global forum and I sincerely thank the Government of Indonesia for inviting me to attend. While still young, the Bali Democracy Forum is emerging as an important platform for the promotion of good governance, the rule of law and human rights, and is particularly relevant at this time when a new wave of democratic aspiration and change is sweeping different parts of the world.

When we talk of democratic global governance, we often focus on the challenges and flaws of our existing intergovernmental mechanisms, be they of the UN or the international financial system. Increasingly these institutions are challenged on their representativeness, transparency and responsiveness to a fast-changing world. But what happens in the conference halls of the UN or the Bretton Woods institutions belies a much broader phenomenon of global governance, in which networks of national governments, international organisations and civil society at large increasingly influence world politics. Over the past decade, we have seen broad coalitions of civil society, UN agencies and like-minded governments reframe debates on international trade policy or environmental goals. In the human rights field, these networks have encouraged states to create new international instruments – for instance human rights treaties – or institutions such as the world's first permanent international criminal court.

The Human Rights Council, now in its sixth year of development, is illustrative of this trend. One of the features of the institution building process for the Human Rights Council has been the steady expansion of space and opportunities for independent national human rights institutions and civil society to engage and influence the proceedings. Most of the positive initiatives taken by the Human Rights Council result from the dynamic interaction of member states, civil society and the UN human rights mechanisms, such as the Special Rapporteurs.

A human rights based approach to governance and public policy making calls for equality and non-discrimination, transparency and accountability, participation and empowerment. I have heard several references to “home grown” democracy. For this to happen there must be full participation of civil society together with tolerance for dissent. “Nothing about us, without us” has become more than a catch-cry of our times: it demands consultation and participation as essential elements of good governance and policy making.

A critical test for this approach will be the elaboration of the new Sustainable Development Goals and the post-2015 development agenda. I congratulate His Excellency President Susilo Bambang Yudhoyono on his appointment as a co-chair of the high level panel of eminent persons that will elaborate the vision and principles that will guide this agenda, and I look forward to supporting his leadership. This is a historic opportunity to frame the development agenda in a people-centred way, that uses the human rights framework in defining indicators and goals and enhances the accountability of state institutions to the people they serve. This has been the demand that has echoed in the streets over the past year from Tahrir Square in Cairo to Zucotti Park in New York, as people demand justice, dignity and an end to corruption.

Obviously, when we talk about participation, some groups of society merit specific attention and inclusion. In this regard, empowerment of groups which have been excluded or marginalised, such as women, ethnic minorities and indigenous people and sexual minorities and their full participation in decision making processes are fundamental for the achievement of equality, development and peace.

Excellencies Ladies and Gentlemen

Regional organisations can also provide even more effective and relevant platforms for bringing stakeholders together to complement national and international governance structures. The Bali Democracy Forum has created such a platform, which would be further strengthened by establishing formats for meaningful consultation with civil society. I commend the efforts ASEAN is making to foster a community in this dynamic Southeast Asia region, including through the strengthening of democracy, the enhancement of good governance and the rule of law and the promotion and protection human rights, as enshrined in the ASEAN Charter. Indeed, in the human rights field, ASEAN has taken a step forward with the creation of the Asia-Pacific region’s first regional human rights mechanisms, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on Women and Children. Shortly ASEAN Foreign Ministers will be considering for adoption an ASEAN Human Rights Declaration which should aspire to be a landmark expression of human rights consciousness and commitments for the region.

Still Window-Dressing

Last year, I had the pleasure of meeting with AICHR members here in Bali, and a parallel gathering of national institutions and civil society organisations from across the region. I encouraged AICHR not to react defensively to civil society partners, but to open the doors and harness their energy and contributions. This has been the key to success for similar mechanisms in all other regions of the world.

I remain concerned, therefore, when I hear continued frustration from civil society partners about a lack of transparency and willingness by AICHR to engage with them in taking forward the human rights agenda. This has been particularly the case with the new draft ASEAN human rights declaration, which has still not been published formally in its entirety for comments and reaction. This is not the hallmark of the democratic global governance to which ASEAN aspires, and it will only serve to undermine the respect and ownership that such an important declaration deserves.

The balancing of human rights with individual duties is not a part of international human rights law, misrepresents the positive dynamic between rights and duties and should not be included in a human rights instrument. Similarly, restrictions on rights should not be applied through a blanket clause or in the name of regional or national particularities, but rather should be attached to specific rights and not go beyond the narrow and well defined restrictions enshrined in international law. I urge the Governments of the region to take more time to develop a draft Declaration that fully conforms with international human rights standards and is framed with the participation of all key stakeholders..

Democratic global governance can also be undermined at the national level, by measures that restrict and even punish freedom of expression, the right to receive and impart information, the right to peaceful assembly and the right to freedom of association. The expansion of democratic global governance has been greatly facilitated in recent years by the proliferation of new technologies of communication which are deeply transforming the world in which we live. This new media and information revolution has opened a large space for transnational actors to increasingly play a role, especially through civil society, in global decision making.

This region has reaped many of the benefits of this revolution for its strong economic and social development. But I am concerned when I see these freedoms limited in the political sphere, with the retention or introduction of repressive laws to control freedom of expression on the internet, or the use of criminal defamation and incitement laws to silence critics of governments and public policy. Equally serious are reports of reprisals against human rights defenders for their cooperation or engagement with the international human rights mechanism, a concern which is now the focus of a regular report by the

Secretary-General. Repressive laws and policies and attacks of this kind thwart and set back the democratic gains we hope to achieve in governance at the regional and international level.

Excellencies Ladies and Gentlemen

The democratic global governance to which we aspire is one that listens to and responds to the people at all levels. As intergovernmental processes open themselves up to popular scrutiny and participation, popular expectations are also growing for them to act in responsive and responsible ways. In a terrible situation like Syria, where intergovernmental institutions like the Security Council lack transparency and accountability and fail to deliver the protection response demanded by their public, their integrity and legitimacy will increasingly be called into question. So too must regional organisations like ASEAN and the OIC find new approaches for preventing and acting upon violations within their own spheres of influence, such as the current protection crisis in the Rakhine state of Myanmar.

These are challenging times for the international agenda and the system of global governance we have evolved in past decades. But these are also times of incredible opportunity for innovation and reform. I am convinced that using human rights principles as a compass will help in our efforts to improve global governance, and in turn advance the human rights agenda and right to development. I commend the Indonesian Government and the Bali Democracy Forum in creating an important platform for these critical debates of our time.

Thank you.

Annex 46

OHCHR Press Release, “UN rights chief welcomes focus on human rights and democracy, calls for review of ASEAN draft human rights declaration,” 8 November 2012

BALI (8 November 2012) – United Nations High Commissioner for Human Rights Navi Pillay on Thursday welcomed the emergence of the Bali Democracy Forum as an important platform for the promotion of good governance, the rule of law and human rights in the region, while urging ASEAN leaders to take more time to develop a regional Human Rights Declaration. The draft Declaration is due to be adopted at the ASEAN (Association of Southeast Asian Nations) Summit in Phnom Penh later this month.

The 5th annual Bali Democracy Forum, taking place on 8 and 9 November and bringing together more than 80 governments and international organisations, is focusing on promoting democratic practices, including participation, accountability and responsive governance.

“The Bali Democracy Forum is particularly relevant at this time when a new wave of democratic aspirations and change is sweeping different parts of the world,” Pillay said. “Intergovernmental regional gatherings like this one can provide effective and relevant platforms for bringing stakeholders together – but it is crucial that mechanisms exist for broad and meaningful consultations with civil society.”

Pillay commended ASEAN’s efforts to strengthen democracy and the rule of law with the creation of the first regional human rights mechanism in Asia-Pacific - the ASEAN Intergovernmental Commission on Human Rights (AICHR), but added that “it is very important that the new ASEAN Declaration complements and does not undermine international standards.”

The High Commissioner expressed concerns about the process by which the Declaration, which has still not been officially published, was drafted. She noted that inadequate involvement of civil society and other stakeholders had prompted concerns even among some members of the ASEAN institutions.

“This is not the hallmark of the democratic global governance to which ASEAN aspires, and it will only serve to undermine the respect and ownership that such an important declaration deserves,” the UN human rights chief said.

Pillay encouraged ASEAN leaders to ensure the participation of all key stakeholders and to harness their energy and contributions, both in drafting the Declaration and building ASEAN's new human rights mechanisms. "This has been the key to success for similar mechanisms in all other regions of the world," she said.

While welcoming the inclusion of many fundamental rights in the draft, the High Commissioner noted blanket restrictions that are not part of international human rights law.

"I urge the governments of the region to take the necessary time to develop a Declaration that fully conforms with international human rights standards and is framed with the participation of all key stakeholders," the High Commissioner said.

Annex 47

**Open Letter from the Coordination Committee
of the Special Procedures of the Human Rights
Council on the draft ASEAN Human Rights
Declaration, 16 November 2012**

The Coordination Committee of the Special Procedures of the Human Rights Council supports the ongoing efforts within ASEAN (the Association of Southeast Asian Nations) to develop a regional human rights system. The adoption of a credible ASEAN Human Rights Declaration will represent a significant step forward in these efforts. In this context, we encourage the Member States to ensure that international human rights standards are maintained when they come to consider the adoption of the ASEAN Human Rights Declaration this Sunday (18 November 2012).

For the ASEAN human rights system to complement the work of the United Nations human rights system, including the work of Special Procedures, it is imperative that, as a minimum, ASEAN's landmark human rights instrument maintains international human rights standards. Next year we will mark the 20th anniversary of the Vienna Declaration and Programme of Action, to which ASEAN Member States and civil society made significant contributions. The Vienna Declaration sought to forge a new vision for global action for human rights into the next century. This Declaration, adopted by 171 States by consensus, proclaimed: "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."

It is essential that the ASEAN Declaration reaffirms this important principle of the Vienna Declaration. For instance, the right to life is a fundamental right upon which all other rights depend. Any credible human rights instrument should unconditionally protect this right without making it contingent on the provisions of domestic law. Indeed, the *raison d'être* of regional human rights instruments is to establish minimum standards that all domestic laws need to comply with, which may involve the amendment of domestic laws if these violate human rights. If the recognition of human rights is qualified with provisions such as "in accordance with national law", this could be used by Governments as a justification to go below international standards. For example, in relation to the right to life, such a provision could be used to shield States against scrutiny by international human rights mechanisms concerning the excessive use of force by law enforcement officers, state failure to protect people against non-state actors and the continuation of the use of the death penalty.

With regard to provisions which seek to “balance” rights with individual duties, this is not the wording of international human rights law. Reference to “balancing” in these terms denies the positive dynamic that exists between rights and duties. The creation of an environment where people are able to exercise their human rights is directly linked to the creation of an environment where trust and respect can develop between individuals and groups and between the people and state institutions. In such an environment, duties and responsibilities are able to emerge freely. This is not to say that laws should not be in place to guard against, for instance, defamation of individuals or incitement to hatred. However, advocating a balance between human rights and duties creates much greater scope for Governments to place arbitrary, disproportionate and unnecessary restrictions on human rights. There should be no such provision in a human rights instrument, whose primary purpose is to protect individuals and groups against the misuse and abuse of State power.

With regard to legitimate restrictions, under certain conditions, on the grounds of “morality”, “public order” and “national security”, special procedures mandate holders are acutely aware of the risk of these terms being used as a pretext by Governments to place arbitrary, disproportionate and unnecessary restrictions on human rights. In order to ensure that the ASEAN human rights declaration adds value to international instruments, we strongly encourage the inclusion of language which makes explicit that the restrictions must be provided by law and conform to the strict tests of necessity and proportionality, and that these restrictions may not put in jeopardy the right itself or apply to rights that are non-derogable under international law.

We would also hope to see an ASEAN human rights declaration which adds value, by addressing human rights concerns that are particularly pertinent to the region. For instance, the South-East Asia region has a large number of asylum seekers who are often subjected to further human rights violations after fleeing persecution in their home country. Therefore, we would hope to see language providing for the right to seek and to enjoy, in other countries, asylum from persecution, as well as on the international customary law principle of non-refoulement (to prevent persons from being returned to countries where, for instance, they will be subjected to torture). Again, such provisions should not be contingent on domestic laws. Similarly, on the issue of statelessness, we would hope to see provisions that provide for access to citizenship and the right not to be arbitrarily deprived of their nationality, including a provision on birth registration for children who would otherwise be stateless.

It is our hope that the ASEAN Human Rights Declaration takes its place as a landmark document which contributes to an improvement in the human rights situation in South-East Asia. To secure this, the Declaration should, as a minimum, maintain international standards if not add to these standards. One way of ensuring this would be to consult further with the people of the region, including civil society organisations, to take on board their concerns and aspirations. Special procedures also stand ready to provide further advice to ASEAN in this historic task.

Annex 48

**OHCHR Press Release, “ASEAN Human Rights Declaration should maintain international standards,” urge key UN expert group,”
16 November 2012**

GENEVA (16 November 2012) – The largest body of independent experts in the United Nations Human Rights system today called on the Association of Southeast Asian Nations (ASEAN) to ensure that international human rights standards are maintained when they come to consider the adoption of the ASEAN Human Rights Declaration this Sunday, 18 November.

“It is imperative that, as a minimum, ASEAN’s landmark human rights instrument maintains international standards to complement the work of the UN human rights system,” said Michel Forst, who currently chairs the Coordination Committee set up by the independent experts designated by the UN Human Rights Council to address specific country situations and thematic issues in all parts of the world.

In an open letter* to ASEAN member States, the group of international experts stressed the need to reaffirm in their Declaration the duty of States to promote and protect all human rights and fundamental freedoms regardless of their particular political, economic and cultural systems - one of the key principles of the Vienna Declaration and Programme of Action, adopted by 171 States in 1993 to forge a new vision for global action for human rights into the next century.

“The *raison d’être* of regional human rights instruments is to establish minimum standards that all domestic laws need to comply with, which may involve the amendment of domestic laws if these violate human rights,” Mr. Forst said. “The right to life, for example, is a fundamental right upon which all other rights depend, and any credible human rights instrument should unconditionally protect it without making it contingent on the provisions of domestic law.”

“In relation to the right to life,” the Committee Chair warned, “provisions such as ‘in accordance with national law’ could be used to shield States against scrutiny by international human rights mechanisms concerning the excessive use of force by law enforcement officers, state failure to protect people against non-state actors and the continuation of the use of the death penalty.”

The Human Rights Council independent experts also drew attention to provisions in the draft ASEAN Declaration which seek to ‘balance’ rights with individual duties. “This is not the wording of international human rights law,” they pointed out.

“Advocating a balance between human rights and duties creates much greater scope for Governments to place arbitrary, disproportionate and unnecessary restrictions on human rights.”

“With regard to legitimate restrictions, under certain conditions, on the grounds of ‘morality,’ ‘public order’ and ‘national security,’” Mr. Forst noted, “the Human Rights Council experts are acutely aware of the risk of these terms being used as a pretext by Governments to place arbitrary, disproportionate and unnecessary restrictions on human rights”.

“We strongly encourage the inclusion of language which makes explicit that the restrictions must be provided by law and conform to the strict tests of necessity and proportionality, and that these restrictions may not put in jeopardy the right itself or apply to rights that are non-derogable under international law,” he said.

The experts also called on ASEAN to consider in their declaration the issues of statelessness, the right to seek and to enjoy asylum from persecution in other countries, and the international customary law principle of non-refoulement (to prevent persons from being returned to countries where, for instance, they will be subjected to torture). “Again, such provisions should not be contingent on domestic laws,” underscored Mr. Forst.

“The ASEAN Human Rights Declaration should take its place as a landmark document which contributes to an improvement in the human rights situation in South-East Asia,” the Committee Chair said. “To achieve this, we call on all ASEAN member States to consult further with the people of the region, including civil society organisations, and to take on board their concerns and aspirations.”

“The independent experts of the Human Rights Council Special Procedures stand ready to provide further advice to ASEAN in this historic task,” he added.

Annex 49

OHCHR Press Release: Pillay encourages ASEAN to ensure Human Rights Declaration is implemented in accordance with international obligations, 19 November 2012

GENEVA (19 November) – The UN High Commissioner for Human Rights Navi Pillay welcomed Monday the renewed commitment by ASEAN leaders to universal human rights norms, but expressed concern that the new ASEAN Human Rights Declaration (AHRD), adopted on 18 November, retains language that is not consistent with international standards.

“The international human rights mechanisms will continue to hold ASEAN member states to their international obligations and encourage ASEAN to strengthen further its regional human rights framework,” Pillay said.

In the Phnom Penh Statement on the adoption of the ASEAN Human Rights Declaration, the ASEAN leaders committed “to ensure that the implementation of the AHRD be in accordance with our commitment to the Charter of the United Nations, the Universal Declaration of Human Rights, the Vienna Declaration and Program of Action, and other international human rights instruments to which ASEAN Member States are parties...”

The High Commissioner has previously drawn attention to elements of the Declaration that fall below international standards, as well as expressing concern at the lack of inclusive and meaningful consultation with civil society in the region during the preparation of the Declaration.*

“Other regions have shown how regional human rights systems can evolve and improve over time, and I am confident this will be the same for ASEAN”, the High Commissioner said. “Looking ahead, it is essential that ASEAN ensures that any language inconsistent with international human rights standards does not become a part of any binding regional human rights convention.”

Annexes G. Additional Resource
Annex 50

Comparison of key civil society recommendations and the final text of the adopted AHRD

Civil society recommendations or proposed amendments	Explanatory notes	Final text of AHRD
Preamble		
<p>[SEAWC second addendum]</p> <p>REAFFIRMING 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, the principles of democracy, the rule of law, and good governance, <u>and for the empowerment of the peoples of ASEAN, with due respect for gender equality.</u></p>		<p>[2nd paragraph] REAFFIRMING 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;</p>
<p>[Manila joint submission]</p> <p>REAFFIRMING FURTHER 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</p>	<p>[Manila joint submission]</p> <p>The additions are meant to ensure that international standards are upheld and the Declaration has a concrete effect on human rights in the region.</p>	<p>[3rd paragraph] REAFFIRMING FURTHER 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;</p>
<p>[Manila joint submission]</p> <p>RESOLVED that this Declaration will help establish a framework for human rights cooperation <u>among all individuals, groups and peoples</u> in the region and contribute to the ASEAN community building process;</p>	<p>[Manila joint submission]</p> <p>The term “resolved” reflects 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 stakeholders in the ASEAN community building process.</p>	<p>[5th paragraph] CONVINCED that this Declaration will help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process;</p>

Still Window-Dressing

<p>[Manila joint submission]</p> <p><u>RECOGNIZING that realization of 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></p>	<p>[Manila joint submission]</p> <p>This addition aims to reflect the provisions pertaining to the right to development embodied in the Declaration. Moreover, it will introduce a sense of dynamism into the Preamble.</p> <p>See also Article 1 of the Preamble of the ASEAN Charter.</p>	<p><i>[No corresponding paragraph]</i></p>
<p>General Principles</p>		
<p>[Manila joint submission]</p> <p>Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.</p> <p>[ASEAN LGBTIQ Caucus statement]</p> <p>Include SOGI provision into the ASEAN Declaration on Human Rights, specifically inclusion of reference to 'gender identity' and 'sexual orientation' within Article 2</p> <p>[SEAWC first addendum]</p> <p>Sexual orientation and gender identity must be a ground for non-discrimination, along with race, color, sex, 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.</p> <p>[CRC Asia submission]</p> <p><u>Children should be protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, beliefs and political association of the child's parents, legal guardians or family members.</u></p>	<p>[Manila joint submission]</p> <p>The list in the draft is restrictive, whereas a human rights declaration should address all instances of discrimination. The suggested formula will facilitate the development of inclusive interpretation</p> <p>[Women's Caucus first addendum]</p> <p>The CEDAW Committee in its General Recommendations 27 and 28 has explicitly stated that there should not be any discrimination on the basis of sexual orientation and gender identity. Further, in 2011, Human Rights Council issued a resolution, "expressing grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity." Meanwhile, the Yogyakarta Principles also states that, "Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights."</p> <p>[CRC Asia submission]</p> <p>The AHRD should guarantee that all children will be protected from all forms of discrimination whether based on their own or their parents, guardians or family's identity, beliefs, practices or status. Any non-discrimination provision should not restrict undertaking any affirmative action to rectify inequalities affecting children.</p>	<p>[Article 2] Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.</p>

<p>[Manila joint submission]</p> <p>The rights of women, children, the elderly, persons with disabilities, migrant workers, <u>indigenous Peoples, minorities, Lesbian-Gay-Bisexual-Transgender (LGBT) persons, person deprived of liberty</u> and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.</p> <p>[MLN/ERI/SCIL joint submission]</p> <p>All persons have the right to determine their own sexual orientation and gender identity, and this right shall be respected and protected by law. No person shall be deprived of any of the rights set out in this Declaration on the basis of their sexual orientation or gender identity.</p>	<p>[Manila joint submission]</p> <p>It is important to include these groups as their human rights have been under attack both within ASEAN and globally.</p> <p>[LGBTIQ Caucus statement]</p> <p>Across the ASEAN region, LGBTIQ persons are either treated as second class citizens, criminals, are seen as deviants, and in some cases are not even recognized as human beings. We are made to lead dual lives and be ashamed of ourselves for who we are. We are subjected to name calling, condemnation, taunts, reparative treatments and other inhumane abuses. Discrimination and violence come not only from our families, friends, communities, and employers but also from state institution such as state actors, especially police and religious officers. Even in the face of discrimination and violence, the governments refuse to protect our basic human rights.</p> <p>[AIPP/ IPTFA joint submission]</p> <p>Several ASEAN governments still express their reservation in the application of the concept of indigenous peoples in their countries as enshrined in the UNDRIP.</p>	<p>[Article 4]</p> <p>The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.</p>
<p>[Manila joint submission]</p> <p>Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating <u>that person's human rights.</u></p> <p>[Women's Caucus second addendum]</p> <p>Every person has equal rights to access to justice which includes procedural and substantive justice in both formal and informal justice systems, with the principles of equality and non-discrimination before the law, in particular among the poor and disadvantaged groups and their access to fair, effective, and accountable mechanisms for the protection of their human rights.</p>	<p>[Manila joint submission]</p> <p>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 provided in this and other human rights instruments.</p> <p>[Women's Caucus second addendum]</p> <p>The "right to an effective and enforceable remedy" must be viewed as part of "access to justice," which goes beyond the mere access to competent lawyers and meeting the requirements of a legal procedure. Instead, it encompasses the enabling conditions that would allow a person to exhaust just and equitable means to achieve justice that are "suitable" to one's own context and at the same time on par with international human rights standards.</p>	<p>[Article 5]</p> <p>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.</p>

Still Window-Dressing

<p>[Kuala Lumpur and Manila joint submissions] 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 all human rights and fundamental freedoms.</p> <p>[MLN/ERI/SCIL Joint submission]</p> <p>All persons carry responsibilities towards their family, their community, and their nation. The rights and freedoms of all persons shall be exercised with due regard to the rights and freedoms of others."</p>	<p>[Kuala Lumpur and Manila joint submissions]</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 (e.g. UDHR, 1st preambular paragraph). 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> <p>[Women's Caucus second addendum]</p> <p>While the provision suggests that ASEAN Member States are the primary duty bearers, it need not underscore the inherent duties of individuals for the enjoyment of human rights and fundamental freedoms. The bounds of such enjoyment must be based on other individuals' equal enjoyment of human rights and fundamental freedoms. The provision runs the risk of immediately subsuming individual rights under communal rights, which has often led to the use of culture to marginalise and violate women's human rights, including right to own property, inheritance and marriage, among others.</p>	<p>[Article 6]</p> <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 all human rights and fundamental freedoms.</p>
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<p>[Kuala Lumpur and Manila joint submissions]</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.</p>	<p>[Kuala Lumpur and Manila joint submissions]</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>“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> <p>(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”.</p>	<p>[Article 7]</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. At the same time, the realisation 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>
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Still Window-Dressing

<p>[Kuala Lumpur and Manila joint submissions]</p> <p>(1) 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, in a democratic society.</p> <p><u>(2) In respecting, protecting and 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> <p>[APWLD submission]</p> <p>(2) The AHRD is an opportunity to advance international legal jurisprudence and lead other regions in standard setting. AICHR's commitment to an evolutionary approach can enable the AHRD to add value to UDHR, ICCPR and other international human rights standards especially CEDAW and the Convention on the Rights of the Child (CRC). The omission of "public morality" or similar clauses from the AHRD would allow this.</p>	<p>[Kuala Lumpur and Manila joint submissions]</p> <p>Under international law, only certain limitations, strictly and narrowly defined, may be imposed on a limited number of rights. 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. See e.g. ICCPR, Art. 4; Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR.</p> <p>[Women's Caucus second addendum]</p> <p>The sentence, "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," may be consistent with other ASEAN documents, including the ASEAN Charter, but it sets a prerequisite to the enjoyment of human rights and fundamental freedoms and runs the risks of contradicting the basic principles of human rights.</p> <p>[APWLD submission]</p> <p>As morality is a basis of limiting the exercise of human rights, its use further qualifies the exercise of women's human rights according to the dominant socio-cultural norms which are defined by men especially in political and religious hierarchies. Women, LGBT and other sexual minorities are often the subjects of standards of morality especially when they "transgress patriarchal and heteronormative standards. [...] With the subjectivity of morality clauses and a history of morality being invoked to diminish, rather than advance, human rights, the clause would diminish the AHRD and diminish its value to women of Southeast Asia.</p>	<p>[Article 8]</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. At the same time, the realisation 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>
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<p>[Women's Caucus second addendum]</p> <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, <u>people's participation, accountability, inclusivity, transparency,</u> and avoidance of double standards and politicization, should always be upheld.</p>	<p>[Philwomen submission]</p> <p>The principles of transparency and accountability invoke the state obligations of the member states of ASEAN to facilitate open, transparent and consultative processes with stakeholders. This shall pave the way to an informed and meaningful participation of the ASEAN peoples, especially the marginalized groups in the processes of ASEAN.</p> <p>Transparency and accountability shall pave the way to effective integration of human rights standards in the functioning and work of the ASEAN bodies and mechanisms.</p>	<p>[Article 9]</p> <p>In the realisation of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicisation, should always be upheld. The process of such realisation shall take into account peoples' participation, inclusivity and the need for accountability.</p>
<p>[Manila joint submission]</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>[Manila joint submission]</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. 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>	<p><i>No corresponding provision.</i></p>
Civil and Political Rights		
<p>[Manila joint submission]</p> <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>[Manila joint submission]</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. See e.g. 65th session of the UN General Assembly, UNGA Res. 65/206 (2010); 2nd Optional Protocol to the ICCPR.</p>	<p>[Article 11]</p> <p>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>
<p>[Manila joint submission]</p> <p>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>	<p>[Manila joint submission]</p> <p>Enforced disappearance is a crime under customary international criminal law. The addition of "arbitrary" reflects the right of State to lawfully deprive people of liberty.</p>	<p>[Article 12]</p> <p>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.</p>

Still Window-Dressing

<p>[Women's Caucus second addendum]</p> <p><u>Every individual and community has the right to self-determination.</u></p> <p>(1) <u>Every individual is free to decide over one's identities, body such as the exercise of one's exercise of one's sexual and reproductive rights, relationships, mobility and future.</u></p> <p>(2) <u>Slavery, servitude and the traffic of persons in any form, including those which take place within family relationships and in domestic employment, and for the purpose of trafficking in human organs, are prohibited.</u></p> <p>(3) <u>Every community is free to envision its development and the means to pursue this while ensuring observance of individual and collective human rights, rule of law and environmental integrity.</u></p>		<p>[Article 13]</p> <p>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 of trafficking in human organs.</p>
<p>[Manila joint submission]</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>[MLN/ ERI/SCIL joint submission]</p> <p>Every person has the right to bodily integrity. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, or to medical or scientific experimentation without consent.</p>	<p>[Manila joint submission]</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. 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>	<p>[Article 14]</p> <p>No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.</p>

<p>[Women's Caucus second addendum]</p> <p>Every person has the right to freedom of movement and residence within <u>and across</u> 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>	<p>[Women's Caucus second addendum]</p> <p>Although this provision is culled from the UDHR, reality suggests that people move across borders in addition to within borders, due to increasing trade and advanced technologies as well as push factors like poverty and conflicts. Having the preposition "across" reflects the evolving regional policies and initiatives which aim to ease migration.</p>	<p>[Article 15]</p> <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 country.</p>
<p>[Manila joint submission]</p> <p>Every person has the right to seek and receive asylum in another State in accordance with <u>international law</u>.</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, enforced disappearance or other serious human rights violations.</u></p>	<p>[Manila joint submission]</p> <p>Both these rights are rules of customary international law binding on all states.</p>	<p>[Article 16]</p> <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>[Manila joint submission]</p> <p>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>.</p> <p><u>No one shall be rendered stateless. 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></p> <p>[CRC Asia submission]</p> <p>Everyone has the right to be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, in the case of children, the right to know and be care for by his or her parents.</p>	<p>[Manila joint submission]</p> <p>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).</p> <p>[CRC Asia submission]</p> <p>Birth registration is vital to the realization of economic, social and cultural rights because governments require such document to acknowledge the child's existence, whether the child falls under their jurisdiction. Children without birth registration are less valued and are vulnerable to discrimination. Birth registration is vital to protecting children from early marriages and from recruitment and use in armed conflict.</p>	<p>[Article 18]</p> <p>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.</p>

Still Window-Dressing

<p>[Manila joint submission]</p> <p>The family as a <u>key</u> unit of society is entitled to protection by society and each ASEAN Member State. <u>Every person</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.</p>	<p>[Manila joint submission]</p> <p>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.</p> <p>[Women’s Caucus first addendum]</p> <p>Aside from the equal rights and roles in marriage and family (See Women’s Caucus 31 October 2011 submission), we propose that “family” in the context of “the right to found a family” be interpreted in its broadest and most inclusive fashion so as to encompass as other forms of family that do not conform to the nuclear two-parent family. The family must be recognized as a social unit rather than a “natural” unit --- and the AHRD should include language that does not discriminate those consisting of unmarried and LGBT parents and does not stereotype any forms of non heteronormative family arrangements.</p>	<p>[Article 19]</p> <p>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.</p>
<p>[Manila joint submission]</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 <u>the full extent of due process of the law as provided by international human rights law and standards.</u></p>	<p>[Manila joint submission]</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 juveniles persons.</p> <p>See e.g. ICCPR, Art. 14(3).</p>	<p>[Article 20]</p> <p>(1) Every person charged with a criminal offence shall be presumed innocent until proved 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>[Manila joint submission]</p> <p>(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.</p> <p>(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 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.</p>	<p>[Manila joint submission]</p> <p>The addition is intended to address developments in technology, in particular data storage, access and retrieval.</p>	<p>[Article 21]</p> <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 the protection of the law against such interference or attacks.</p>
<p>[Manila joint submission]</p> <p>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.</p>	<p>[Manila joint submission]</p> <p>Freedom to change and to manifest one's religion or belief is an integral part of this right.</p> <p>See e.g. ICCPR, Art. 18; UDHR, Art. 18.</p>	<p>[Article 22]</p> <p>Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.</p>

Still Window-Dressing

<p>[SEAPA submission]</p> <p>The AHRD's text recognizing the right to freedom of opinion and expression must include the phrase "regardless of frontiers" in order to reflect the contemporary communication landscape, which is global and also particularly regional.</p> <p>[Women's Caucus second addendum] 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>Every person has the right to access information in the spirit of good governance, accountability and transparency.</u></p>	<p>[SEAPA submission]</p> <p>This is in recognition of both the advancements in information and communication technology and ASEAN's aspirations as a regional community; and in conformity with the guarantee of this right under Article 19 of the 1948 Universal Declaration on Human Rights and of the 1966 International Covenant on Civil and Political Rights (ICCPR).</p>	<p>[Article 23]</p> <p>Every person has the right to freedom of opinion and expression, including 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.</p>
<p><u>Everyone has the right to seek, receive and impart information through any media and regardless of international frontiers.</u></p>	<p>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.</p> <p>Indonesia has a Law on Freedom of Public Information. Malaysia has state-level legislation (two states) and the Philippines Congress is considering Freedom of Information legislation.</p>	<p><i>No corresponding provision.</i></p>

<p>[Manila joint submission]</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, <u>without compulsion</u>, 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>[AGENDA submission]</p> <p>The AHRD should include an Article on The Right to Participate in Political and Public Life that clearly and unequivocally provides for equal access to political and public life for persons with disabilities.</p>	<p>[Manila joint submission]</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> <p>[AGENDA submission]</p> <p>At present, persons with disabilities experience many obstacles throughout Southeast Asia to accessing their basic human right to participate in political and public life, particularly in exercising their right to vote. Representatives from DPOs throughout ASEAN noted in the December 2010 <i>Jakarta Declaration</i> that “60 million persons with disabilities living in ASEAN are still largely marginalized in society due to the physical, informational, attitudinal and systemic barriers.”</p>	<p>[Article 25]</p> <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>(2) Every citizen 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>
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Still Window-Dressing

Economic, Social and Cultural Rights		
<p>[Manila joint submission]</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, <u>and the right to enter into collective bargaining agreements</u>.</p> <p>(3) No child or young person shall be subjected to economic and social exploitation. Those who employ them 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 recruitment and use of child labour should be prohibited and punished by law.</p> <p>[Women's Caucus second addendum]</p> <p>Every person has the right to work, to the free choice of employment, <u>access to basic amenities, security of tenure, just and equal living wage and adequate benefits</u>, to enjoy just, decent, <u>safe</u> and favorable working conditions, and to have access to assistance schemes for the unemployed.</p> <p><u>Every worker has the right to mechanisms to redress. States must ensure adequate and effective social protection measures to adults who are engaged in informal work and implement appropriate measures to eliminate discrimination against women in the field of employment in order to ensure equality between men and women.</u></p>	<p>[Manila joint submission]</p> <p>The term "security of tenure" added to prevent arbitrary termination of employment. The phrase "in accordance with national laws and regulations" was removed to prevent States from violating this right through national legislation. The changes were made to reflect the provision of the International Labour Organisation (ILO) Convention 182.</p> <p>[Women's Caucus second addendum]</p> <p>To strengthen this positive provision, it is suggested that the worker's rights to basic amenities and living wages and adequate benefits which are the same for women and men and are adequate to maintain a family.</p>	<p>[Article 27]</p> <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. Those who employ children and young people 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>[ERI-CIEL joint submission]</p> <p>Every person has the right to a healthy and sustaining environment that is an environment capable of supporting human society and the enjoyment of human rights. Every State has a duty to ensure that present and future generations can enjoy the right to a healthy and sustaining environment.</p> <p>[Manila joint submission]</p> <p>Right to a healthy and sustainable environment</p> <p>(1) <u>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>(2) <u>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 and attenuation of harm.</u></p> <p>(3) <u>ASEAN Member States shall ensure that present and future generations can enjoy the right to a healthy and sustainable environment.</u></p>	<p>[Manila joint submission]</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>	<p><i>No corresponding stand-alone provision. See Article 28(f).</i></p>
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Still Window-Dressing

<p>[Manila joint submission]</p> <p>(1) Every person has the right to the enjoyment of the highest attainable standard of physical, mental, <u>sexual and reproductive health, and to have access to education, information, goods and services needed to attain this.</u></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>(3) ASEAN Member States shall create a positive environment, <u>including by providing adequate resources and services, to overcome stigma, silence, denial and discrimination in the prevention, treatment, care and support of people suffering from communicable diseases, including HIV/AIDS.</u></p> <p>[Women's Caucus second addendum]</p> <p>Every person has the right to the enjoyment of the highest attainable standard of physical, mental, <u>sexual and reproductive health, and to have access to the information, education and services needed to attain this. Every person has the right to make decisions concerning reproduction, free of discrimination, coercion and violence, and to have access to a full range of family planning options and methods within a comprehensive health care system.</u></p> <p>[Philwomen submission]</p> <p>[T]he declaration must recognize the importance of women's sexual health and rights, alongside reproductive rights.</p>	<p>[Manila joint submission]</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> <p>[Women's Caucus second addendum]</p> <p>Sexual well-being has its own specificity beyond the freedom and wherewithal to decide over one's own fertility, including choosing the number and spacing of children. It is concerned with access to the information, services and entitlements especially freedom from discrimination to ensure one's autonomy, protection and enjoyment of sexuality and relationships, "not merely counselling and care related to reproduction and sexually transmitted diseases."</p>	<p>[Article 29]</p> <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 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>
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<p>[Manila joint submission]</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 <u>women during pre-natal, delivery and post-natal periods</u>. 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>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>[Women's Caucus second addendum]</p> <p>...(3) <u>Women and men have the same rights and roles in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: including the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children: in all cases the interests of the children shall be paramount.</u></p>	<p>[Manila joint submission]</p> <p>The change is to provide for more specific, precisely worded and inclusive formulation of these rights.</p> <p>[Women's Caucus second submission]</p> <p>International standards like ILO and CEDAW recognize the common responsibility of men and women in the upbringing and development of their children. They require states to introduce special non-transferable paternity leave to promote the active participation of fathers in child-raising; and to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.</p>	<p>[Article 30]</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 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>
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Still Window-Dressing

<p>[Manila joint submission]</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 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>(4) 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.</p>	<p>[Manila joint submission]</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>	<p>[Article 31]</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 be equally accessible to all on the basis of merit.</p> <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>
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<p>[Manila joint submission]</p> <p>(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.</p> <p>(2) <u>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> <p>[AIPP/IPTFA joint submission]</p> <p>Integrate into the AHRD cultural rights as embodied in Articles 8, 11, 12, 13, 14, 15, 16 of the UNDRIP</p>	<p>[Manila joint submission]</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> <p>[AIPP/IPTFA joint submission]</p> <p>This right is stipulated in Article 8 of the UNDRIP which states that, "indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture, and States shall provide effective mechanisms to prevent and provide redress to forced assimilation.</p>	<p>[Article 32]</p> <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>[Manila joint submission]</p> <p>ASEAN Member States-shall 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>[Manila joint submission]</p> <p>The use of the word "shall" is preferred, as it makes the commitment more declaratory.</p>	<p>[Article 33]</p> <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 realisation of economic, social and cultural rights recognised in this Declaration.</p>
<p>[Manila joint submission]</p> <p>[Women's Caucus second addendum]</p> <p>Omit the entire provision.</p>	<p>[Manila joint submission]</p> <p>This obligation should apply equally to non-nationals without exception.</p>	<p>[Article 34]</p> <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 organisation and resources of their respective national economies.</p>

Still Window-Dressing

Right to Development		
<p>[SAPA TFAHR position paper]</p> <p>The AHRD should provide for the right to development, ensuring its place among other human rights without either trumping or being trumped by other rights.</p> <p>[Manila joint submission]</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 is integral of the right to development 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.</u></p>	<p>[SAPA TFAHR position paper]</p> <p>Paragraph 10 of the VDP A unequivocally stipulates the right to development as a universal and inalienable right and an integral part of fundamental human rights. The right to development places the human person as the "central subject of development" as well as the "active participant and beneficiary" of the development process.</p> <p>[Manila joint submission]</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>	<p>[Article 35]</p> <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 and sustainably 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 recognised human rights.</p>

<p>[Women's Caucus second addendum]</p> <p>ASEAN Member States should adopt meaningful, <u>inclusive</u>, people-oriented and gender responsive development programmes aimed at poverty <u>alleviation</u>, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an <u>equal</u> basis, and the progressive narrowing of the development gap within ASEAN.</p>	<p>[Women's Caucus second addendum]</p> <p>Since the AHRD is an aspirational human rights document, it must set higher goals for the region. Using the term equal is to ensure equality to access, opportunities, and benefits.</p>	<p>[Article 36]</p> <p>ASEAN Member States should adopt meaningful people-oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.</p>
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Still Window-Dressing

<p>[Manila joint submission]</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> mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community 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.</p> <p>[Women's Caucus second addendum]</p> <p>ASEAN Member States recognize that the implementation of the right to development requires effective development <u>and regulatory</u> policies at the national <u>and regional</u> levels as well as equitable economic <u>and social</u> relations, international cooperation and a favourable <u>and fair</u> international economic environment. ASEAN Member States should mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community to promote equitable, <u>gender-responsive</u> and sustainable development, fair trade practices and effective international cooperation.</p>	<p>[Manila joint submission]</p> <p>The addition aims to highlight protection for marginalized groups, including indigenous peoples.</p> <p>[AIPP/IPTFA joint submission]</p> <p>Right to Development as embodied in Articles 3, 20, 21, 23, 29, 32 of the UNDRIP:</p> <p>In sum, these articles provide that Indigenous Peoples have the right to maintain and develop their political, economic, and social systems and institutions and to secure their own means of subsistence and development, including the freedom to engage in traditional and other economic activities. Those deprived of such means are entitled to just and fair redress. They have the right to determine and develop priorities and strategies for their own development and to be actively involved in health, housing and other economic and social programs which, to the extent possible, they will administer through their own institutions.</p>	<p>[Article 37]</p> <p>ASEAN Member States recognise 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 equitable and sustainable development, fair trade practices and effective international cooperation.</p>
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Right to Peace		
<p>[Manila joint submission]</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 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>	<p>[Manila joint submission]</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>	<p>[Article 38]</p> <p>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 realised. 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>
Cooperation in the Promotion and Protection of Human Rights		
<p>[Manila joint submission]</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>[Manila joint submission]</p> <p>The additions are intended to ensure that the Declaration is implemented in law, policy and practice.</p>	<p>[Article 39]</p> <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/ organisation, in accordance with the ASEAN Charter.</p>

Still Window-dressing

<p>[Manila joint submission]</p> <p>Nothing in this Declaration may be interpreted as implying for any State, <u>non-State actor</u> or person any right to <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>[Manila joint submission]</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>	<p>[Article 40]</p> <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 principles 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>
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About SAPA TFAHR

SAPA, short for Solidarity for Asian People's Advocacy, is a loose, horizontal forum and platform for information and resource sharing among Asian civil society advocates who are engaging intergovernmental processes, as well as alternative processes/spaces at sub-regional, regional and global arenas. SAPA's members are organized around Working Groups on the following issues/themes/groupings:

- Association of Southeast Asian Nations (ASEAN)
- United Nations human rights mechanism
- South Asia
- Northeast Asia
- Rural Development
- Labour and Migration

TFAHR is short for the Task Force on ASEAN and Human Rights within SAPA's Working Group on ASEAN, which promotes civil society engagement of ASEAN, as a regional intergovernmental organization. SAPA TFAHR was created in 2007 to engage ASEAN in the latter's creation of a human rights body state in the ASEAN Charter – now the ASEAN Intergovernmental Commission on Human Rights (AICHR).

SAPA TFAHR Convenors 2013

- Asian Forum for Human Rights and Development (FORUM-ASIA)
- People's Empowerment Foundation (PEF)

Country Focal Points

- Burma/ Myanmar – Task Force on ASEAN Burma (TFAB) and Alternative ASEAN Network on Burma (ALTSEAN Burma)
- Cambodia – Cambodian Human Rights and Development Association (ADHOC)
- Indonesia – The Commission for the Disappeared and Victims of Violence (KontraS)
- Malaysia – Suara Rakyat Malaysia (SUARAM) and Persatuan Kesedaran Komuniti Selangor (PKKS Empower)
- The Philippines – Task Force Detainees of the Philippines (TFDP)
- Singapore – Think Centre
- Thailand – People's Empowerment Foundation (PEF)

Thematic Focal Points

- Children – Child Rights Coalition Asia (CRC Asia)
- Persons with Disability – Disable Peoples' International Asia – Pacific (DPI-AP)
- Indigenous Peoples – Asia Indigenous Peoples Pact (AIPP)

Still Window-Dressing

- Migrant Workers –Task Force on ASEAN Migrant Workers (TF-AMW)
- Refugees – Asia Pacific Refugees Rights Network (APPRN)
- Housing – Center for Housing Rights and Evictions (COHRE)

“It’s probably not up to universal standards, it’s probably subjecting to rights of the government rather than absolute rights of the individual, but politics is the art of the possible.”

***Dr Surin Pitsuwan**, former Secretary General of ASEAN,
commenting on the ASEAN Human Rights Declaration*

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