



**Mekong Legal Network  
EarthRights International  
Sydney Centre for International Law, University of Sydney**

**Submission on the ASEAN Human Rights Declaration**

June 2012

**Introduction**

The Mekong Legal Network (MLN) is a regional network of public interest lawyers and society leaders from Burma, Cambodia, China, Laos, Thailand and Vietnam, working on regional legal advocacy.

EarthRights International (ERI) is a not-for-profit non-governmental organization that specializes in human rights, the environment, and corporate and government accountability. Its Asia Legal Program works to help strengthen the rule of law in the Mekong region.

The Sydney Centre for International Law at the Faculty of Law in The University of Sydney, Australia, is a leading centre of international law research and policy in the Asia-Pacific region, with particular expertise in human rights.

MLN, ERI and the Sydney Centre have prepared a joint submission on the ASEAN Human Rights Declaration. The submission comprises this letter and a Draft Declaration annexed to this letter.

**1 Regions and the Promotion and Protection of Human Rights**

- 1 MLN, ERI and the Sydney Centre welcome the establishment of the ASEAN Intergovernmental Commission on Human Rights and welcome the decision of ASEAN Member States (Member States) to agree upon an ASEAN Human Rights Declaration (the Declaration). MLN, ERI and the Sydney Centre note that the Declaration will emanate from a region that contains all of the great religions of civilization, and great diversity of politics and culture. It will serve as an inspiration to those remaining regions and sub-regions of the world (including elsewhere in Asia) that do not currently enjoy regional oversight of human rights.

- 2 Because of the important role that the Declaration will play in the region, and the role that it will play as an inspiration to other regions and sub-regions, the ASEAN Declaration should, at a minimum, meet existing regional and international standards for the protection of human rights. The hope is that the Declaration will go beyond existing protections, and build on earlier regional and international instruments, incorporating into its text the most recent developments in international human rights law.
- 3 ASEAN has already made encouraging progress in formulating regional responses to pressing human rights issues. In this regard, we note particularly: the ASEAN Declaration on the Elimination of Violence Against Women; the establishment of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children; the Declaration on the Advancement of Women in the ASEAN Region; the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children; the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. We also note that the Constitutions and national laws of ASEAN Member States contain many provisions which protect the fundamental rights of people in ASEAN States.
- 4 With the aim of assisting the formulation of an instrument that meets international standards and addresses the particular needs of the region, MLN and the Sydney Centre have prepared a Draft Declaration, which is attached to this document.

## **2 Drafting Process for the ASEAN Declaration**

- 1 Paragraphs 4.8 and 4.9 of the Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (TOR), refer to the role of other actors in AICHR's work, and specifically refer to the Commission's mandate to engage in "dialogue and consultation" with civil society organisations, and consult with "other national, regional and international institutions and entities concerned with the promotion and protection of human rights."
- 2 These provisions make clear that ASEAN leaders recognise the importance of civil society input into the work of the AICHR, in order to:
  - (a) ensure that the work of AICHR represents the interests and priorities of the people of Southeast Asia;
  - (b) ensure that AICHR's work reflects the diversity of opinions and views about human rights issues that exist within the region;
  - (c) ensure that AICHR's work is translated into the many languages of the region, and reaches as many of the people of the region as possible, especially marginalised groups and those people who live in rural areas.
- 3 It is imperative, in this regard, that those responsible for drafting the ASEAN Declaration on Human Rights open the process to the people of Southeast Asia, make public the draft Declaration, and provide space in all ASEAN countries for debate, discussion and input into the substance of the Declaration from non-governmental organisations and civil society representatives.

## **2 Structure of the Declaration**

- 1 MLN, ERI and the Sydney Centre affirm the principle of the inter-relatedness and indivisibility of all rights. In the Draft prepared and annexed to this document, economic and social rights are given equal prominence to civil and political rights, and key collective rights are also included (namely, concerning self-determination, development, indigenous peoples, and minority groups).
- 2 Rights which states may not limit under any circumstances (including rights connected to life, liberty, security of person and recognition before the law) appear at the beginning of the Draft Declaration in Article 3. These are followed by economic rights (for example, the right to an adequate standard of living, to work and to education) which states are obliged to fulfil to their maximum ability and to progressively realise. These are followed by civil and political rights, some of which (for example, the right to freedom of expression and freedom of association) states may limit to the extent necessary to protect other fundamental rights and freedoms. The Declaration concludes with provisions relating to cooperation and capacity building in order to fulfil the goal of the Declaration.

## **3 Right to Development**

- 1 MLN, ERI and the Sydney Centre have emphasized the right to development, given the importance of development to the region, and the close relationship between development and realisation of economic rights. The Article we have drafted seeks to draw attention to the right to development as emphasizing that the end or purpose of development is the expansion of human freedom, capabilities, and opportunity, and that the right encompasses:
  - (a) attention to the processes of development;
  - (b) a direct linkage between development and human rights in the planning, processes and projected outcomes of development projects;
  - (c) active, free and meaningful participation in the processes of development by all those affected, with particular attention paid to most vulnerable groups;
  - (d) empowerment of local communities, groups and individuals, in particular indigenous peoples, so that their concerns and issues are both heard and addressed;
  - (e) accountability on the part of all those involved in development projects (government bodies, public and private companies, financial bodies and institutions, international organisations)
  - (f) the fair distribution of benefits and burdens resulting from development projects;
  - (g) regard for the environment.

## **4 Rights of Women**

- 1 MLN and the Sydney Centre consider that the full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, should be a priority for ASEAN governments. Noting the historical impact of discriminatory laws, policies and cultural practices, which has resulted in unequal status

between men and women, we have made special reference to the equal rights of women in the articles on (a) economic rights (b) development rights (c) rights of political participation. Furthermore, in relation to non-derogable rights, we have emphasized that women are subject to violation of these rights in public and in private spheres, at the hands of state officials and private actors, and that states have a responsibility to protect the rights of women regardless of where violations occur.

## **5 Rights to political participation**

- 1 The articles we have drafted on the right to political participation borrow largely from the language of the International Covenant on Civil and Political Rights. However, given the importance of the right of political participation for securing other rights, we have elaborated the content of this right in a way that captures recent developments in international human rights law. For example, in General Comment 25, the United Nations Human Rights Committee affirmed (among other things) that the right to political participation required freedom of expression, assembly, and association and meant that voters must be free to support or oppose the government without undue influence or coercion of any kind. MLN, ERI and the Sydney Centre are of the view that principles such as these might usefully be incorporated in the right to political participation.
- 2 In addition, the Inter-American Commission on Human rights has emphasised that poverty is an impediment to full political participation. The ASEAN Human Rights Declaration should state that the reduction of economic inequality and improving access of women and marginalised groups to political participation are steps toward realising the right to political participation for all within the region.

## **6 Economic Rights**

- 1 The language of the Declaration drafted by MLN, ERI and the Sydney Centre echoes the provisions on economic, social and cultural rights found in the International Covenant on Economic, Social and Cultural Rights, particularly the principle of ‘progressive realisation’ of these rights.
- 2 However, the United Nations Committee on Economic, Social and Cultural Rights, has emphasized that even in circumstances where a state’s available resources are inadequate for immediate realisation of a right, there remains an obligation to ensure that the minimum core of each rights is fulfilled. There is also a further obligation on states to monitor the extent of the realization, or non-realization, of the rights, and to devise strategies and programmes for their promotion. We submit that provisions to this effect should be included in the Declaration.

## **7 Conclusion**

- 1 Listening to the voices of the people of the region is the first step in the path to creating a 'people-centred ASEAN'. MLN, ERI and the Sydney Centre have prepared this submission in the hope that it may contribute to a broad regional dialogue about the form and substance of the ASEAN Human Rights Declaration.

Yours sincerely,

Mekong Legal Network

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