



*Draft Prepared by  
the Mekong Legal Network, EarthRights International and  
the Sydney Centre for International Law, University of Sydney  
June 2012*

## **The ASEAN Declaration on Human Rights**

### **Preamble**

- I. Guided by the purposes and principles of the Universal Declaration on Human Rights, the United Nations Charter, the ASEAN Charter, international human rights law and international humanitarian law, and reaffirming the commitment of Member States to the purposes and principles contained in these instruments;
- II. Emphasizing that the Member States of ASEAN are bound by a common desire to create a region of lasting peace, prosperity and social progress, where the welfare and quality of life of the peoples of ASEAN is continuously improved;
- III. Noting that economic growth and development is necessary in order to improve the welfare of the peoples of Southeast Asia, and that the well-being of the individual person, and their community, is the goal of all economic growth and development;
- IV. Acknowledging that development must be sustainable for the benefit of present and future generations, and that the environment must be protected, and cultural heritage preserved;
- V. Recognising that all human rights and fundamental freedoms are universal, indivisible and interdependent, and determined that the implementation, promotion and protection of all rights will be given equal attention;
- VI. Recognising in particular that the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms does not justify the denial of other human rights and fundamental freedoms;
- VII. Determined to remove the barriers that deny those who live in poverty access to proper nutrition, social services, a healthy environment, education and work;
- VIII. Emphasizing that respect for the different cultures, languages, political systems and religions of the peoples of ASEAN, exist beside the shared value of respect for every person's dignity;
- IX. Affirming that the State's promotion and protection of human rights and fundamental freedoms is the means to assuring that the dignity of every person ;
- X. Recognising the importance of full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and aware of the historical impact of discriminatory laws, policies and cultural practices, which has resulted in unequal status between men and women;
- XI. Convinced that cooperation between states is necessary in order to enable Member States to fulfil their obligations to protect and promote the human rights and fundamental freedoms of all people who live and work in the region;
- XII. Acknowledging that corruption and impunity undermine economic and social development, disrupt political stability, impede the protection of rights and freedoms, jeopardise democracy and democratic governance, and weaken institutions;

- XIII. Aware of the fact that Individuals, non-governmental organizations and the institutions of civil society have an important role to play in contributing to making the public more aware of human rights and fundamental freedoms through activities such as education, training and research, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities;

Have agreed on the following ASEAN Declaration on Human Rights.

#### **Article 1 – Purpose**

- 1 The purpose of this Declaration is to promote, protect and ensure, at the national and regional levels, the full and equal enjoyment of all human rights and fundamental freedoms by all persons.

#### **Article 2 – General Principles**

- 1 Every person is equally entitled to the rights and freedoms set out in in this declaration, without distinction of any kind, including race, ethnicity, national or social origin, religion or belief, health or disability, status, political or other opinion, age, class, caste, sex, sexual orientation or gender identity.
- 2 States will take steps to adopt laws or other measures that may be necessary to give effect to the rights recognized in this Declaration, and to provide effective and enforceable remedies for the violation of these rights.
- 3 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.
- 4 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.

#### **Article 3**

- 1 Member States will take all necessary measures to ensure that the rights set out in this Article are protected, and that violations of these rights, whether they occur at the hands of public officials, state actors, or private bodies, in the public sphere or in private contexts, are redressed. Member States will take particular measures to protect the rights of vulnerable groups, such as women, children, those who live in poverty, ethnic minorities, persons with disabilities, the elderly, refugees, migrant workers, internally displaced persons and members of indigenous groups.
- 2 Every person has the right to life, which shall be protected by law. No person shall be arbitrarily deprived of their life.
- 3 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.

- 4 Every person has the right to liberty. No person shall be held in slavery, servitude, subjected to human trafficking, or compelled to perform forced or compulsory labour.
- 5 Every person has the right to security of the person. No person shall be subjected to arbitrary arrest, detention, or enforced disappearance. No person shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.
- 6 Every person has the right to legal recognition.
- 7 No one shall be held guilty of a criminal offence on account of an act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.
- 8 Every person has the right to judicial guarantees of their rights during emergencies.
- 9 Every person has the right to security of property and privacy. No person shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, or to unlawful attacks on their honour and reputation.
- 10 Every person has the right to freedom of thought, conscience and religion.
- 11 Every person deprived of their liberty has the right to be treated humanely.

#### **Article 4 - Economic Rights**

- 1 ASEAN states will ensure the widest possible enjoyment of the economic rights of all persons, and will devise strategies and programmes for their promotion, and will monitor their implementation.
- 2 Aware that discrimination against women hampers the growth of the prosperity of society and the family and makes more difficult the full development of the women's potential to serve their countries and humanity, ASEAN states will take appropriate measures to ensure that women have access to food, health, education and work on a basis of equality of women and men.
- 3 Aware that some groups, such as children, the elderly, persons with disabilities, migrant workers, refugees, internally displaced persons, ethnic groups, indigenous peoples and minority groups are particularly vulnerable to violation of economic rights, ASEAN states will take appropriate measures to ensure that economic rights are guaranteed to these groups.
- 4 Every person has the right to an adequate standard of living, which includes:
  - 4.1 The right to adequate food;
  - 4.2 The right to clean and safe drinking water and sanitation;
  - 4.3 The right to adequate clothing;
  - 4.4 The right to medical care;
  - 4.5 The right to access social services.
- 5 Every person has the right to work, which includes:

- 5.1 The right to freely chooses or accept employment;
  - 5.2 The right to conditions of work which are safe and healthy;
  - 5.3 The right to form and join trade unions, which will be able to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - 5.4 The right to fair wages;
  - 5.5 The right to equal remuneration for work of equal value;
  - 5.6 The right to promotion and advancement, subject to no considerations other than those of seniority and competence;
  - 5.7 The right to strike, provided that it is exercised in conformity with domestic law;
  - 5.8 The right to reasonable limitation of working hours and rest.
- 
- 6 Every person has the right to social security.
- 
- 7 Every person has the right to own property alone and in association with others. No one shall be arbitrarily deprived of his or her property.
- 
- 8 Every person has the right to education. Member States will ensure that:
    - 8.1 Primary education is compulsory, free, and accessible to all;
    - 8.2 Secondary education is compulsory, free and accessible to all;
    - 8.3 Higher education is made equally accessible to all, on the basis of capacity, and without discrimination of any kind;
    - 8.4 Means are made available for those who have not received or completed their primary education, to do so;
    - 8.5 The conditions of teaching staff will be continuously improved;
    - 8.6 Provided that schools conform with minimum educational standards laid down or approved by the State, parents and guardians have the right to choose the religious and moral education of their children in conformity with their own convictions;
    - 8.7 Children have their right to be educated in their own language.
- 
- 9 ASEAN states will prohibit child labour and punish any person who procures the labour of children. For children under the age of 16 years, education is the primary occupation, and work must not impede the realisation of the right to education set out in this Declaration.
- 
- 10 Everyone has the right to benefit from the protection of moral and material interests resulting from any scientific production, literature, or art that they have created. These rights include the protection and recognition of traditional knowledge of indigenous communities.
- 
- 11 Everyone has the right to access financial resources such as bank loans, mortgages, and other forms of financial credit, especially those who live in poverty and marginalised groups.

## **Article 5 - Self determination**

- 1 All peoples have the right to self-determination, which includes the right to freely determine their political status and to freely pursue their economic, social and cultural development.
- 2 All peoples have the right to freely dispose of their natural wealth and resources.

## **Article 6 - Development**

- 1 State Members recognise that development is central to the realisation of other fundamental rights and freedoms. State Members undertake to ensure that the goal of all development is the well-being of the individual, and of the community in which she or he lives, and of the entire population.
- 2 All persons, and particularly those individuals and groups most vulnerable to the effects of development, have the right to active, free and meaningful participation in the processes of development, so that the concerns and issues of local communities, groups and individuals, are both heard and addressed.
- 3 Those involved in development projects (whether government bodies, public or private companies, financial bodies or institutions, international organisations) are accountable to individuals and to the local communities in which development projects are carried out. Accountability includes the right of individuals and local community groups to be fully compensated for the negative consequences of development projects.
- 4 ASEAN states will take appropriate measures to ensure that women are able to fully participate in the elaboration and implementation of development planning at all levels.
- 5 All persons have the right to the fair distribution of benefits resulting from development.
- 6 All persons who depend on the land and natural resources within it for the continuity of their lives have the right to make use of the land. This right includes the right of indigenous groups to utilize and manage land and natural resources.
- 7 Corporations have a duty to respect and protect the rights set out in this Declaration and will be accountable for violations of these rights to the State in which they operate.

## **Article 7 – The environment**

- 1 Every person has the right to a healthy and sustaining environment that is capable of supporting human society and the enjoyment of human rights.
- 2 State Members have a duty to ensure that present and future generations can enjoy the right to a healthy and sustaining environment.

## **Article 8 - Equality before the law**

- 1 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, sexual orientation or gender identity, language, religion, political or other opinion, nationality or social origin, property, birth or other status.

## **Article 9 – Freedom of religion**

Everyone has the right to freedom of religion. This includes the freedom to have or to adopt a religion or belief of choice, and freedom, either individually or in community with others and in public or private, to manifest this religion or belief in worship, observance, practice and teaching. This right may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

## **Article 10 – Freedom of Expression**

Everyone has the right to freedom of expression. This includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media. This right may be subject to certain restrictions, but only such as are prescribed by law and are necessary in order to respect the rights or reputations of others, or to protect national security, or for reasons of public order, or public health, or the reasonable requirements of public morality.

## **Article 11 – Information**

Every person has the right, regardless of geographical boundaries, to seek, receive and impart information of all kinds, whether orally, in writing or through any other media of his or her choice, in accessible formats. This right also includes the right of citizens to obtain information from the Government.

## **Article 12 – Peaceful Assembly**

Everyone has the right of peaceful assembly. This right may be subject to certain restrictions, but only such as are prescribed by law and are necessary in order to respect the rights and freedoms of others, or to protect national security, or for reasons of public order, or public health, or the reasonable requirements of public morality.

## **Article 13- freedom of association**

Everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests. This right may be subject to certain restrictions, but only such as are prescribed by law and are necessary in order to respect the rights or reputations of others, or to protect national security, or for reasons of public order, or public health, or the reasonable requirements of public morality.

## **Article 14 – Freedom of movement**

- 1 Every person has the right to freedom of movement and residence within the borders of each state.
- 2 Every person has the right to leave any country including their own, and to return thereto.
- 3 Every person has the right to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.

## **Article 15 – Citizenship**

Every person has the right to a name and to citizenship. This right shall not be negatively affected by marriage.

## **Article 16 – Political participation**

- 1 Every person has the right to take part in the conduct of public affairs, directly or through freely chosen representatives. State Members will take all necessary measures to remove barriers to political participation that may exist for some groups, such as those who live in poverty, persons with disabilities, older persons, women and members of racial or ethnic minorities, so that these groups can have access to and are able to participate in the political life of the country.
- 2 Political participation includes the right:
  - 2.1 To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
  - 2.2 To have access, on general terms of equality, to the public service of their country.
- 3 Freedom of expression, assembly, and association, are necessary elements of the right to political participation.
- 4 Voters have the rights to support or oppose the government without undue influence or coercion of any kind.

## **Article 17 – Culture**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

## **Article 18 – Marriage**

- 1 Every person of legal age has the right to marry and to establish a family. Marriage shall be entered into with the free, informed and full consent of both parties and there shall be no limitation due to race, nationality, religion or beliefs.
- 2 State Members shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. The same right to enter into marriage means:
  - 2.1 The same right freely to choose a spouse and to enter into marriage only with free and full consent;
  - 2.2 The same rights and responsibilities during marriage and at its dissolution;
  - 2.3 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;

- 2.4 The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- 2.5 The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- 2.6 The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- 2.7 The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for valuable consideration;
- 2.8 In the case of dissolution of marriage, provision shall be made for the necessary protection of any children.

#### **Article 19 - Children**

- 1 State members recognise that children, by reason of their physical and mental immaturity, need special safeguards and care, including appropriate legal protection, before as well as after birth.
- 2 Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by their status as a minor, on the part of their family, society and the State.
- 3 Every child shall be registered immediately after birth and shall have a name.
- 4 Every child has the right to acquire a nationality.
- 5 A child is entitled to identity without discrimination, including on the basis of marital status of their parents, as well as children of migrant workers who have been born in the recipient country.

#### **Article 20 - Indigenous Peoples**

Indigenous peoples have the right to be recognised and to the protection of their culture, land, language and religion.

#### **Article 21 – Fair Trial**

- 1 Everyone, in full equality, has the right to a fair and public trial by a competent, independent and impartial court, in determining their rights and obligations as well as in any criminal charges against them.
- 2 Every person charged with a criminal offence shall be presumed innocent until proven guilty according to law and guaranteed the right to defend the case which has been brought against them.



- 3 No one 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.
- 4 No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted.

#### **Article 22 – Sexual orientation and gender identity**

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.

#### **Article 23 - Asylum seekers, refugees and internally displaced persons**

- 1 Understanding that the rights of asylum seekers, refugees and internally displaced persons are especially vulnerable to violation, State Members will take the necessary measures to ensure the full protection for these groups of the non-derogable rights listed in this Declaration.
- 2 State Members will, to the maximum extent of their capacity, ensure for asylum seekers, refugees and internally displaced persons, the enjoyment of the economic, social and cultural rights set out in this Declaration.
- 3 State Members will respect, protect and promote, for asylum seekers, refugees and internally displaced persons, the relevant civil and political rights set out in this Declaration.

#### **Article 24 - Human Rights Defenders**

- 1 Every person has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
- 2 State Members will take all necessary measures to ensure the protection by the competent authorities of all persons who participate in peaceful activities against violations of human rights and fundamental freedoms and protect them against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of the person's legitimate exercise of the rights referred to in the present Declaration.

#### **Article 25 - Nationality**

All persons have the right to a nationality. No one shall be arbitrarily deprived of his or her nationality.

#### **Article 26 - Culture**

Every person has the right to recognition and respect for their culture, language and religion.

## **Article 22 – Cooperation, capacity building and implementation**

- 1 In order to realise the rights set out in this Declaration, Member States agree to support and progressively strengthen regional human rights mechanisms such as the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission on Women and Children.
- 2 Member States will encourage and facilitate the ratification of international human rights instruments, treaties and protocols, adopted within the framework of the United Nations system.
- 3 Member States will encourage the establishment of National Human Rights Institutions (NHRIs) and support the work of NHRIs in states that already possess them. Member States will facilitate cooperation between NHRIs.
- 4 Member States undertake to promote and raise awareness, understanding and respect for human rights and fundamental freedoms through teaching, education at all levels, dissemination, publication, research and development. This will include training for members of the judiciary, lawyers, law enforcement officers, personnel of the armed forces, public officials and civil society organizations.
- 5 Member States will cooperate and collaborate in efforts at the national and regional levels to fulfil the objectives of this Declaration. This will include: the exchange of information and the provision of technical assistance and capacity building projects between and amongst members States, in order to further the promotion and protection of human rights at the national and regional levels.
- 6 Member States will cooperate with governmental, nongovernmental or academic institutions, to pursue their commitments to promote respect for and protection of human rights in their respective countries, in the region and in the international community.
- 7 It is the hope and wish of Members States that this Declaration will provide the basis for the eventual adoption an ASEAN Human Rights Convention, which will be binding on all Members States.