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07 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;
- 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,

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Amnesty International

Phil Robertson
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Human Rights Watch

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cc: H.E. Surin Pitsuwan, Secretary-General of ASEAN
Members, Council of Permanent Representatives to ASEAN

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