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ASEAN Civil Society Conference/ASEAN Peoples' Forum 2012

JOINT STATEMENT OF
the 2nd ASEAN Civil Society Conference/ ASEAN People Forum (ACSC/APF) 2012

Phnom Penh, 16 November 2012

Preamble

The ASEAN Civil Society Conference/ASEAN People's Forum (ACSC/APF) 2012 took place on the 14-16 November 2012. The event, attended by over 500 delegates, included not only participants from ASEAN member states but also representatives invited from African Union, European Union and a delegation from the USA.

A key discussion that took place over the course of the event was ASEAN member states' failure to produce an ASEAN Human Rights Declaration that matches or even exceeds existing international human rights standards. As such, we the delegates of the ACSC/APF, refuse to endorse the Declaration and instead, will continue to use standards set in international human rights instruments, such as the Universal Declaration of Human Rights, to measure progress in the region.

ASEAN professes to be people-centered, however, the conduct of the Cambodian government in response to ACSC/APF has demonstrated that this principle has not been translated into action. As a result of intimidation by Cambodian authorities, two venue hosts reneged their agreements, in an attempt to curtail the constitutionally-guaranteed rights to freedom of speech and freedom of assembly.

ASEAN member states, in particular, those that do not currently hold elections, must commit to periodic free and fair elections with the presence of both citizen observers and international observers. Only then can we begin to fulfill ASEAN's potential to promote good governance, democracy and rule of law.

ASEAN is not just made up of governments but the people they serve. We the people take this role very seriously, because it affects our lives and the lives of future generations. Realizing the objectives laid out in the ASEAN Economic Blueprint has been the priority of ASEAN, which has been moving ahead with little regard to the citizens who will be most affected by it. ASEAN needs to open space, including genuine freedom of association and speech, for citizens to participate, take ownership and lessen the impact of negative consequences. ASEAN must embrace the key principles of the respect for human rights and the international human rights standards that all ASEAN countries adhere to. Sustainable and equitable economic development will only be achieved if ASEAN transforms into a genuinely people-centered community. That is why we are here today. Therefore we urge the adoption of the following recommendations:

ECONOMICS AND ENVIRONMENT

Food security, land and ocean grabbing

Ocean Grabbing and Food Sovereignty

The dominant model of development for economic growth has led to an agricultural crisis and natural disaster in developing countries due to lax natural resource management and the lack of sustainable development principles.. Local producers are threatened by unfair competition from imports. Land and ocean grabbing is likely to increase with ASEAN economic integration in 2015.

The 90 million workers in the fishing industry remain among the most poorly remunerated workers in the production sectors. National policies, such as large-scale subsidies, favor big vessel operators and fishpond owners. Privatization of coastal resources worsens the trend towards resource grabbing. Furthermore, poor enforcement of fishery laws and corruption within implementing agencies has led to the rise of illegal fishing.

These trends have not only threatened the livelihoods of poor fishers in the region but also led to massive over-fishing and destruction of water bodies such as lakes, rivers, mangroves and coastal resources.

In view of this, we call for the following:

1. Review the economic model being pursued by ASEAN which emphasizes more trade liberalization and increased investment by corporations in the fishery, coastal and agriculture resource industries. ASEAN should consider pursuing a model which protects and recognises the resource rights of vulnerable farmers and fishers.
2. Stop land, ocean and other resource grabbing in the region. ASEAN and national governments should adopt regional agreements and policies that reduce widespread private investment in and privatization of land, coastal, freshwater and fishery bodies;
3. For the governments of ASEAN member states to adopt policies that give farmers and fishers secure tenure, ownership, control and management of their land, freshwater and coastal/fishery resources.
4. For all fishers to be able to participate actively and substantially in decision-making in agriculture and fishery policies and specifically in the negotiations of the Food and Agriculture Organization instrument on fishery resource access, including the Fishers Code of Conduct.
5. For the governments of ASEAN member states to support programs of community management of coastal, freshwater and other fishery resources.

Natural Resources

Extractive Industry

Revenue from extractive industries is the foundation for the development of the economy and the huge driver toward poverty alleviation of the ASEAN member states. Extractive industries, if accountably and transparently managed, can avoid the so-called resource curse. It is of great importance that civil society organisations (CSOs) are given enough space for public engagement in the development of the extractive industry's legal framework to help promote just, accountable and inclusive policies. CSOs are relentlessly campaigning for ASEAN countries to adopt the Extractive Industries Transparency Initiative (EITI).

Recommendations:

1. ASEAN member states should adopt the EITI;
2. ASEAN should create a legal framework on extractive industries;
3. All ASEAN member states should adopt access-to-information laws;
4. Develop multi-stakeholders mechanism to promote good governance and transparency in extractive industries and natural resource management.
5. Guarantee transparency through frequent, perhaps monthly, financial and progress reports by the extractive industry.
6. To ensure transparency in oil, gas and mining revenues, countries should develop and adopt a legal framework and policy for domestic and international investment companies.

ASEAN Economic Community Blueprint and Regional Integration and its Implication for Women from a Gender Perspective

Many ASEAN documents state that the three ASEAN pillars must be viewed as “closely intertwined and mutually reinforcing”. In fact, the contrary is true. The pillars have been formulated in isolation without consideration of their collective impact. The political emphasis has been on the economic community/blueprints, which pose huge threats to people’s access to their means of subsistence. Without mechanisms to include serious participation by its people, ASEAN can expect increasing violations of fundamental human rights, women’s rights, environmental sustainability, social injustice and gender injustice and inequality.

We recommend ASEAN member states adopt mechanisms to:

1. Ensure that the voices of those affected are integrated into the collective policy of the ASEAN communities.
2. Ensure all measures and policies of member states protect human rights, women’s rights, indigenous people’s rights and the rights of marginalized and vulnerable peoples.
3. Uphold the principle of non-discrimination for age, sex, sexual orientation, gender identity, race, class, nationality, religion, ability or any other distinction.
4. Adopt the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers, which protects all migrant workers, skilled and unskilled, documented and undocumented, and their families.
5. Ensure that economic and investment policies do not result in land grabbing that uproots lives, especially those of women and the marginalized, through forced eviction and involuntary resettlement.
6. Provide effective remedies for violence against women. Protect sexual and reproductive rights, the right to a healthy environment and other rights guaranteed by international treaties and standards.
7. Ensure that women are involved in all levels of decision-making nationally and internationally.
8. Adopt and ratify the ILO Convention 189 on Domestic Workers.
9. Guard against extensions of intellectual property rights in national or regional trade agreements that restrict access to medicines and undermine public health.

Trade Unions, Labor Rights and Workers

Labor Trend on ASEAN

The labor issue in the ASEAN region has become an increasing priority due to the upcoming economic integration in 2015. There has been significant movement of workers from developing member states of ASEAN to the more developed states. There are three main points in relation to labor issues that needed to be considered by ASEAN and its constituent members, and upon which we have based recommendations:

Recommendations:

1. *Protect workers' rights in ASEAN*

- Ensure decent salaries for workers and employees;
- Ensure occupational safety protection for workers in construction and other sectors;
- Workers should work no longer than 8 hours a day and 5 days a week.
- Ensure the rights of trade unions to be able to negotiate collectively
- Reduce the prevalence of short term contracts and sub-contractors
- Ensure migrant workers are protected by relevant laws and related agencies.

2. *Implement a mechanism to ensure risk prevention and prevent other related violations against employees and migrant workers*

- The promulgation of a new labor law within ASEAN;
- The implementation of policy, legal framework and others mechanisms in relation to this topic.
- All ASEAN member states must adopt a Memorandum of Understanding to protect migrant workers who work within their countries.
- ASEAN member states must guarantee the rights of migrant women, including marriage migrants, and put in place mechanisms to ensure women's empowerment.
- ASEAN member states must include protection mechanisms for women and families abandoned by migrant workers.

3. *The creation of a legal framework within ASEAN*

- Set up a transparency committee, sector, and adopt a transparent approach to all sectors;
- Create a national and regional migration protection law to ensure the safety of migrants; and
- Provide a mechanism for the people of ASEAN members to raise concerns within the region in relation to labor issues.

SOCIAL-CULTURAL

Labor and sex trafficking

Modern-day slavery in and from ASEAN

Human trafficking within and from ASEAN remains a serious problem. Laws, policies, and practices by ASEAN member states often fail to protect millions of migrant workers, and often contribute to or are complicit in their enslavement, facilitating brokers, recruitment agents, labor export companies, outsourcing companies and unscrupulous employers to profit from the exploitation of migrant workers both in sending and receiving countries.

Notwithstanding efforts by civil society to highlight these cases to national governments for further action, these perpetrators continue their exploitative practices with impunity. The coordination between national ministries and across ASEAN member states to work collaboratively and in a coordinated manner is inadequate and sometimes even exacerbates

the problem by detaining and/or otherwise punishing the victims – sex trafficking victims as well as workers who have been held in debt bondage or slave-like conditions – rather than the perpetrators.

Although ASEAN member states earn profits in the billions of US Dollars from facilitation of migration, both from recruitment fees, levies and other government charges and from labor that sustains their national economies, ASEAN member states demonstrate a high degree of reluctance to provide sufficient resources towards combatting human trafficking in the areas of prevention, protection and prosecution of this trans-national crime.

We recommend that ASEAN member states:

1. Enact national anti-trafficking-in-persons laws and policies that meet international standards including the Palermo Protocol;
2. Provide sufficient resources for the investigation, prosecution, and conviction of perpetrators, especially in cases where such perpetrators are corrupt government officials or their accomplices;
3. Discontinue labor export and recruitment policies and practices that facilitate human trafficking;
4. Engage with and provide resources for CSOs to provide services and protection for victims of sex trafficking as well as workers who have been held in debt bondage or slave-like conditions (labor trafficking);
5. Enact immigration and labor laws that provide victims, especially migrant workers, with the right to reside and work legally until such time as they are willing and able to be repatriated safely;
6. Embark upon robust nation-wide campaigns to bring awareness about human trafficking, targeting factors that are likely to lead potential victims into trafficking as well as prejudicial and stereotypical views about migrant workers;
7. ASEAN should ensure that both sending and receiving countries be held jointly responsible to promote and uphold the rights of women migrants of due recognition to their contribution to the respective countries' development.

Human Rights

A Review of the Terms of Reference (TOR) of ASEAN Inter-Governmental Commission on Human Rights (AICHR)

The review of the Terms of Reference of AICHR process in 2014 under Myanmar's chairmanship will provide an opportunity to identify challenges and opportunities and a plan for the future. Civil society organizations and others want ASEAN Intergovernmental Commission on Human Rights (AICHR) to evolve into a credible, independent, responsive and accessible regional human rights mechanism in ASEAN.

Recommendations:

1. There should be more transparency in the recruitment for AICHR. To reflect this transparency, the term *inter-governmental* within AICHR should be changed to *independent*. Principles of the TOR concerning non-interference and sovereignty should be changed. The principle of impartiality should be adopted.
2. AICHR needs to have a human rights protection mechanism, as well as a mechanism to engage all relevant stakeholders, in particular CSOs, in ASEAN.

3. CSOs need to have a clear idea of what AICHR should achieve in the next three years and bring it to the attention of the foreign ministers of each member state.
4. CSOs need to be more creative about how they lobby for change. AICHR must increase public awareness so that everyone in the region understands its role.

Indigenous and ethnic minority and human rights

IP/EM in ASEAN community: Promote and Protect rights to Land, Territory, Natural Resources and Development of IP/EM

The Indigenous Peoples and Ethnic Minorities (IPs&EM) in the ASEAN community are distinct peoples with their own unique identity. They call on member states to recognize their rights through the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international instruments. They have a right to free, prior and informed consent on any laws, policies, and programs that affect their communities and nations. Their right to customary laws and self-governance should be respected in relation to sustainable management of lands, territories and resources.

Recommendations:

1. ASEAN member states should establish and reinforce effective redress mechanisms and access to justice for damages from past and current projects in which indigenous peoples were not consulted. This should include legal pluralism approaches rooted in traditional cultures
2. Local, national and regional governments should establish mechanisms by indigenous peoples participate in all decision-making processes including in matter of governance of state.
3. ASEAN member states need to ratify and immediately implement the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and International Labor Organization Convention 169. They must reviewing and repealing national laws and policies that discriminate against IPs&EM.
4. Each member state should immediately implement its Universal Periodic Review recommendations regarding IPs&EM. In the second cycle, IPs&EM should be included in preparation of the state report as key stakeholders. States should also accept recommendations relating to IPs&EM.
5. To build an ASEAN community by 2015 that is consistent with UNDRIP, member states should designate an indigenous peoples focal person within the AICHR to set up a working group for the respect, promotion and protection of indigenous peoples.

Sex Worker Rights

Sex worker-ASEAN

ASEAN plans to promote tourism in its member states. Despite their important contribution to this industry, the region's 1.2 million sex workers remain undervalued. They encounter serious and systematic discrimination in the application of immigration law. Because their work is criminalized, they are denied visas, work permits and all other protections and benefits that are applied to recognized workers, forcing them to deal with the risks of extortion and exploitation. Contrary to ASEAN's stated obligations, sex workers are routinely denied the legal protection and benefits offered to others. Corrupt police and other authorities systematically exploit, coerce and abuse the basic human rights of sex workers with impunity. Economic, religious and cultural considerations continue to hinder public health programs to fight AIDS, so the infection rate remains unacceptably high in the sex worker community.

Sex workers call on ASEAN governments to:

1. Guarantee that all ASEAN peoples can migrate and travel safely, with equal access to services including health and legal services, regardless of occupation. This must include an end to discriminatory immigration policies and practices that restrict the movement of sex workers.
2. Ensure sex workers receive equal protection and benefits under the law; and freedom from abuse by police and other state and non-state actors, including religious bodies.
3. Reform public health programming to provide sex workers with the highest standards of health services, especially HIV prevention.
4. The ASEAN Tourism Plan proposes to offer education and skills to tourism workers. Sex workers call on ASEAN Tourism Ministers Committee to create a fund available to sex workers and their organizations for education, skill training and other opportunities for other non-direct sex-related vocations.

LGBT Rights

Inclusion of Sexual Orientation and Gender Identity (SOGI) issues and Rights in the ASEAN Civil Society Conference (ASCS)/ASEAN People's Forum (APF) and in the ASEAN Human Rights Declaration

Lesbian, Gay, Bisexual, Transgender/Transexual, Intersex and Queer (LGBTIQ) persons have documented and explicitly presented evidence of extensive human rights violations that occur throughout the ASEAN region. Hence they are incensed by the exclusion of sexual orientation and gender identity (SOGI) in the draft of ASEAN's Human Rights Declaration. It is a blatant manifestation of discrimination against LBGTIQ persons. The LGBTIQ movement will never accept discrimination, abuse and violence as part of their existence by the denial of their rights and their humanity.

It is in this spirit of pride and dignity that we reclaim our rightful space in our respective countries and in our region, and demand our governments to:

1. Include SOGI provision into the ASEAN Declaration on Human Rights, specifically inclusion of reference to 'gender identity' and 'sexual orientation' in Article 2.
2. Immediately repeal laws that directly and indirectly criminalize SOGI, recognize LGBTIQ rights as human rights, and harmonize national laws, policies and practices with the Yogyakarta Principles.
3. Establish national-level mechanisms and review existing regional human rights instruments (e.g. AICHR, ACWC) to include the promotion and protection of the equal rights of all people regardless of SOGI with the active engagement of the LGBTIQ community.
4. Depathologize SOGI and promote psychological wellbeing of people of diverse SOGI in accordance with World Health Organization (WHO) standards and ensure equal access to health and social services.

Youth and Development

Young Volunteers in Southeast Asia: Immense Passion and Selfless Practice towards Positive Change

Volunteerism has always been one of the core values of social movements. Indeed, learning through direct acts of volunteerism will educate ASEAN's young generation. They can learn how to care, share and help each other. In that way, they can make their region more peaceful and its development more sustainable. However, society currently lacks a culture of volunteerism for many reasons. Youth who want to volunteer in other ASEAN member states face obstacles that need to be removed. They lack the financial backing and logistical support from their home governments.

Recommendations:

1. Promote volunteerism to all sectors in ASEAN community.
2. Have youth volunteer policies; provide more opportunities and strengthen the volunteer network for youth to contribute to society.
3. Provide both financial support and effective mechanisms.
4. Include volunteerism in the curricula of ASEAN educational institutions.
5. Establish a volunteer visa service for those who want to volunteer in Southeast Asia.

POLITICS AND SECURITY

ACSC Workshop: Solution for crisis in Arakan State: Strategy to be pushed forward by ASEAN

Continued sectarian violence between Rakhine and Rohingya communities in Arakan State, Myanmar, which started in June 2012 has resulted in hundreds of deaths and tens of thousands of internally displaced persons (IDPs). Renewed violence in October 2012 has disproportionately affected the Rohingyas, who forms the majority of IDPs and compound the problems they already experience as stateless persons.

Irresponsible reporting of the conflict which frames the issue as a religious conflict between Muslims and Buddhists misrepresents a complex reality and risks exacerbating the situation, as violence towards other Muslim ethnic minorities has occurred and is spreading beyond Arakan State so that the whole country has been affected by the conflict. Rather than preventing violence, local authorities have been responsible for perpetrating human rights violations.

Any measures to resolve the crisis must be conflict sensitive and take into account the perspectives of both the Rakhine and Rohingya communities. A solution to the problem must be developed as part of a national initiative. The national government needs to play a key role in addressing the issue rather than allowing the humanitarian situation to deteriorate. International humanitarian aid has not been allowed access to the area. The investigation commission set up by the government in response to the crisis is currently preparing a report of its findings which will be released in December 2012.

Recommendations:

1. The government should review the 1982 Nationality Law in consultation with both Rohingya and Rakhine communities to develop a mutually agreeable solution.
2. The government should take appropriate action to establish rule of law to stop the violence, and in such a way that does not violate human rights.
3. The government should allow humanitarian agencies unfettered access to affected Rohingya and Rakhine communities and internally displaced persons in Arakan state.
4. The government should allow foreign journalists access to Arakan state.

5. National media should refrain from inflammatory reporting and provide objective coverage of the situation.
6. All victims of the violence in Arakan state should receive treatment for trauma and extensive measures should be taken by both state and non-state actors to ensure restoration of lasting peace, security, livelihood and development.

ASEAN Free and Fair Elections

Elections are a pre-condition to democracy and as they promote social, political, and economic development, all ASEAN member states, particularly those that do not currently hold elections, must commit to periodic, free and fair elections. Only then can we fulfill the potential of ASEAN and ensure it empowers its citizens and remains people-centered.

We encourage all ASEAN member states, their Election Management Bodies (EMBs) and civil society members to endorse the Bangkok Declaration on Free and Fair Elections. Created by civil society members and EMBs from across Asia, the declaration addresses, in a practical way, many of the challenges concerning elections in the ASEAN region. By endorsing and then implementing the Bangkok Declaration's principles by 2015, ASEAN governments can prove their full democratic legitimacy to become of the people, by the people and for the people they serve.

To hold a free and fair election, countries must, in the context of their own country and its unique challenges, nevertheless meet some specific criteria:

1. Have a complete electoral/legal framework that ensures universal participation of citizens and functional independence for Election Management Bodies.
2. The framework should empower minorities, marginalized citizens and other people with special challenges while promoting the full participation of women in elections and facilitating voting for citizens living abroad.
3. Systems for Electoral Dispute Resolution must ensure that all complaints and electoral disputes are settled in a timely and impartial manner with adequate investigation and neutral resolution mechanisms.
4. Voter lists must be accurate so as to ensure the right to vote for all citizens. Voter registration must be simple, convenient, accessible, available and conducted in a timely manner that results in an accurate, complete voter list.
5. The electoral campaign should be peaceful, free and fair. Media should be impartial.
6. There should be proper oversight of parties' campaign finances and no misuse or abuse of government resources or interference by security services.
7. Fair voting operations must include professional polling station management.
8. Both citizens and election officials must have adequate training and education to perform their roles reliably and responsibly.
9. Citizen Election Observers should be fully recognized, accredited, and included in elections. Citizen observers can promote the integrity and transparency of the entire election process.

We urge ASEAN and/or its member states to utilize and benefit from the rich electoral experience found across Asia. We recommend they turn the documents into action and work together to build and ensure free and fair elections across the region.