

Consultation on Key Documents of the Association of Southeast Asian Nations

Reference Document: Going Forward Paper on Key ASEAN Documents: Observations and Recommendations

Background

MARUAH, a human rights organisation in Singapore, held a full-day consultation on 26th October 2013, to gather views on pertinent ASEAN documents, to promote knowledge on ASEAN and to encourage civil society actors to become more engaged on matters related to ASEAN.

We are aware that the ASEAN Summit is over. But we wish for this paper – Observations and Recommendations – as an intervention from engaged participants in Singapore. MARUAH has also previously submitted views to regional organisations, which have shared their feedback with the relevant ASEAN bodies. It is important to discuss this subject with diverse groups and raise awareness about ASEAN and its relevance to our lives in Singapore.

It is in that spirit that we submit this document for consideration, for dialogue and for change.

For the Consultation, 50 participants from civil society organisations, tertiary institutions and research institutions attended the discussion. The following documents were discussed:-

- a) ASEAN Charter
- b) The Three Community Blueprints
- c) The Declaration on the Elimination of Violence Against Women and the Elimination of Violence Against Children in ASEAN
- d) The Guidelines on Accreditation of Civil Society Organisations

The one-day workshop started with a sharing of information on the documents through two plenaries, which were then followed up with breakout sessions for the participants to share their thoughts. The viewpoints were shared with all participants in the last plenary. This document – Observations and Recommendations - is a collation of the views expressed during the consultation.

1 ASEAN Charter

1.1 Observations

- 1.1.1 We note that the ASEAN Charter (AC) *“may be reviewed five years after its entry into force or as otherwise determined by the ASEAN Summit”* (Article 50). Yet there has been no public dialogue on any possible review.
- 1.1.2 We note that Article 2.2 (l) endorses *“respect for the different cultures ... while emphasising their common values in the spirit of unity in diversity”*. Yet we note that Article 2.2(e) has a clearly expressed principle of *“non-interference in the internal affairs of ASEAN member states.”* We remain concerned at the lack of institutional instruments that can be applied if/when national interests can cause harm to the people. Under Chapter VII (Article 20) on *“decision-making”*, we note the acknowledgement that consensus-building may not be achievable all the time. Therefore we state that there is a lack of institutional alternatives to apply if/when a decision is needed.
- 1.1.3 We note that the number of stakeholders remain limited in Annex 2. In the AC there is no clear institutional approach to dialogue with stakeholders especially Civil Society Organisations (CSOs) despite provisions in Article 16.2 and 16.3. We note that ASEAN is to be *“people-oriented”* (Article 13) and there are provisions for consultations (Article 2.2(g) and Article 20.1). Yet there is no institutional dialogue process, at the national or regional level, endorsed in the AC.
- 1.1.4 Under Article 18.2, it states that *“(t)he immunities and privileges under this Article shall be laid down in a separate ASEAN agreement”*. We note that this agreement is not in the AC.
- 1.1.5 We note the limitations on the executive powers of the ASEAN Secretary-General (ASG) (Article 11) and are concerned that the ASG’s work can be just managing the subjectivities of the ASEAN Member States (AMS).
- 1.1.6 We also note the mandate given to the Committee of Permanent Representatives (CPR) that they can *“liaise with the ASEAN Secretary-General and the ASEAN Secretariat on all subjects relevant to its work”* (Article 12 c). We find this mandate too wide-ranging and risks being too intrusive into the matters of the ASEAN Secretariat beyond the ASG. We express here that not enough has been done, or a clear report presented to reflect on the efforts to raise awareness, at the regional and national level, on ASEAN, the organisation and its governing documents.

1.2 Recommendations

- 1.2.1 We ask for review of the AC before the next five-year cycle ends.
- 1.2.2 We ask for an institutional structure of an independent advisory body to be set up which can assess when it is timely and humane to over-ride the non-interference principle to protect people in ASEAN. This advisory body can also come under the auspices of an Office of the Human Rights Ombudsman that we also suggest to be set up, under Article 14 of the AC.

- 1.2.3 We urge that a majority voting system be introduced to complement Article 20 so that AMS can arrive at a decision on crucial matters that impact on the well-being of the people. We urge and call upon the AMS to institutionalise in the AC, a regular dialogue with CSOs, recognising them as stakeholders.
- 1.2.4 We ask that the 'separate agreement' (Article 18.2) be made available in the AC as an addendum.
- 1.2.5 We call for amendments to Article 12(c) to define the role of the CPR.
- 1.2.6 We call for amendments to review the mandate of the Secretary-General to increase his/her executive powers for decision-making (Article 11).

2 Community Blueprints

2.1 Observations

- 2.1.1 Overall we support the three Community Blueprints and acknowledge the mid-term reports of two of the Community Blueprints. However we are concerned at the varying standards in quality of strategic plans, outcomes and project management amongst the three Community Blueprints. We note the lack of a roadmap on coordination and harmonisation across the three blueprints.
- 2.1.2 We also note that reference to UN Human Rights conventions, International Labour Organization's (ILO) conventions, Millennium Development Goals and/or international agreements that all 10 AMS have ratified, agreed upon, are not brought into focus for internal harmonisation in processes that are from the international-to-regional to national and local.

2.2 Recommendations

2.2.1 Political-Security Community Blueprint

- 2.2.2 We ask that a Human Rights Ombudsman be set up through a democratic process by the people of ASEAN.
- 2.2.3 We ask that work begins to set up a Human Rights court by a certain timeframe.
- 2.2.4 We suggest that the Blueprint also incorporate provisions for National Human Rights Commissions to be set up in each AMS.
- 2.2.5 We recommend setting up legal and support institutions for every person to have access to justice and legal professionals.

2.2.6 Economic Community Blueprint

- 2.2.7 We ask that Business and Human Rights be introduced in this Blueprint.
- 2.2.8 We also recommend that institutions be set up to look into with consumer protection and consumer education.
- 2.2.9 We recommend that AMS develop a Whistle-blower Act to enable information on bad practices to emerge and to also protect the whistle-blower.

- 2.2.10 We ask for transparency on the terms of free-trade agreement with regards to usage of raw materials, human resource management standards and environmental impact assessments.
- 2.2.11 Socio-Cultural Community Blueprint
- 2.2.12 We ask for terms such as ‘decent work’ to be used in the same context to that of ILO.
- 2.2.13 We recommend that national living wages for each AMS be set up alongside national poverty lines.
- 2.2.14 We ask that that migrant workers be protected by legal means and that they have access to justice.
- 2.2.15 We recommend recognising refugees, undocumented workers as individuals with rights who need decent conditions to live in, even as their cases are being processed.
- 2.2.16 We recommend that special attention be given to indigenous communities and groups that suffer from discrimination especially the disabled, the elderly and people with diverse sexual orientation and gender identities communities.
- 2.2.17 We also ask for the carbon footprint to be calculated for ASEAN, with a view to reducing carbon emissions.

3 The Declaration on the Elimination of Violence Against Women and the Elimination of Violence Against Children in ASEAN

3.1 Observations

- 3.1.1 We welcome the statement that all AMS will *“modify social and cultural patterns of conduct of men and women”* to eliminate prejudices and discriminatory practices.
- 3.1.2 We are particularly pleased with the measure (Article. 8) to harmonise mechanisms from the UN’s Conventions to the national and regional.
- 3.1.3 We are however let down by the fact that the Declaration combines two communities together – Women and Children – into one Declaration in a stereotypical manner.
- 3.1.4 We are concerned with the ambiguity and lack of clarity on the definition of key terms, namely:-
 - 3.1.4.1 *"children", which does not clearly specify the age groups or a harmonisation with the Convention on the Rights of the Child (CRC)*
 - 3.1.4.2 *"women", which appears to adopt a heterosexual identity and does not take into account what SOGIE (Sexual orientation and Gender Identity/ Expressions) , ethnic minority individuals face in terms of violence and discrimination*
 - 3.1.4.3 *"violence" and its constitution, which in today’s context, can also be State-sanctioned violence.*
- 3.1.5 We welcome the recognition of cyber-prostitution as acts of violence against children but are cautious when cyber-porn is seen one-dimensionally as violence against women.
- 3.1.6 We are disappointed with the lack of articulation in the Declaration of trafficking as acts of violence.

- 3.1.7 It is noted that the language used in the Declaration is one of “‘acknowledging’ with regards to State Obligations on the International human rights Conventions. This is too mild for commitment for AMS.
- 3.1.8 We regret that the Declaration is silent on legal customary frameworks that can subjugate the status of women to a position of inferiority in society.
- 3.1.9 We are deeply disappointed with the lack of a public consultation with CSOs before the adoption of the Declaration.
- 3.1.10 We note the absence of a clear accountability strategy in the Declaration to bind AMS to eliminating violence against women and children and the clarity of the mandate holder by ASEAN Government’s Human Rights representatives.

3.2 Recommendations

- 3.2.1 We ask that this Declaration be separated into two – Declaration on the Elimination of Violence against Women and the Declaration on the Elimination of Violence against Children.
- 3.2.2 We hope that ‘acknowledge’ can be replaced with ‘reaffirm’ to induce higher levels of commitment to eliminating violence against women and children.
- 3.2.3 We wish to have stronger definitions of violence, women and children in the Declaration. We urge for a clearly expressed notion that violence – State-level laws or traditional practices - in whatever form is unacceptable.
- 3.2.4 We ask that trafficking be included in the Declaration.
- 3.2.5 We ask for vulnerable and marginalised communities of refugees, stateless women and children, SOGIE communities, undocumented migrant workers to be included in the discussion on vulnerable groups to violence.
- 3.2.6 We ask that regular dialogues with stakeholders and civil society be institutionalised.

4 Civil Society Engagement

4.1 Observations

- 4.1.1 We note that the Guidelines on Accreditation of Civil Society Organisations have been submitted and noted by the ASEAN Coordinating Committee. But there has been no consultation with civil societies on a document that impacts on their work. Nevertheless we are heartened by the objectives of the accreditation which is an effort to engage CSOs in an interactive and fruitful relationship on matters related to ASEAN.
- 4.1.2 We find Article 8(a) rather binding as CSOs are to abide by the policies of ASEAN when or if CSOs can find it difficult especially if it impacts on the people’s welfare and their rights.
- 4.1.3 We also express our reservations on the requirement expressed in Article 8(e) that CSOs “shall invite” participation of officials of AMS to its meetings and activities.
- 4.1.4 We are troubled by the lack of a regular dialogue between accredited CSOs, AMS and the ASEAN Secretariat.

4.2 Recommendations

4.2.1 We ask for a regular dialogue to be set up so that views and information can be shared.

4.2.2 We ask for a revised Accreditation process to be drawn up in consultation with CSOs.

5 Conclusion

5.1 We submit this document in all sincerity as we want a stronger ASEAN for the people of ASEAN and for the people of Singapore. We will be very happy to meet and dialogue further on any of the subject matters above if needed.