



**ACSC/APF  
2015**

## **Reclaiming the ASEAN Community for the People**

**ASEAN Civil Society Conference and ASEAN People's  
Forum 2015**

### **1. PREAMBLE**

- 1.1. This ASEAN Civil Society Conference and ASEAN People's Forum marks the 10th anniversary since the first regional gathering of civil society in Malaysia. We, the civil society in Southeast Asia,<sup>1</sup> welcome the commitment of ASEAN in the years since to establish a people-centric ASEAN and a peaceful, prosperous community. With deep regret and concern, the people's recommendations submitted to ASEAN member states since 2005 have been neither implemented nor adopted in any meaningful way.
- 1.2. While ASEAN governments are heading towards developing the ASEAN Community's Post-2015 Vision, the people of ASEAN continue to suffer from authoritarian and military regimes, increased militarisation, violence and armed conflicts, unlawful foreign interference, lack of fundamental freedoms and human rights violations, undemocratic processes, corruption and poor governance, development injustice, discrimination, inequality, and religious extremism and intolerance. ASEAN's restrictive interpretation of the principles of state sovereignty and non-interference hamper the organisation's effectiveness in addressing

regional challenges, and the people remain excluded from participating fully in influencing ASEAN decision-making processes.

- 1.3. The failure of ASEAN to meaningfully address the people's issues is deeply rooted in the organisation's continued adherence to a neoliberal model that prioritizes corporate interests and elite groups, including state-owned enterprises, over the interests of the people. Our engagement with the ASEAN process is therefore anchored on a critique and rejection of deregulation, privatisation, government and corporate-led trade and investment policies that breed greater inequalities, accelerate marginalization and exploitation, and inhibit peace, democracy, development, and social progress in the region.
- 1.4. Reflecting on the past 10 years of engagement in ASEAN, and after extensive consultations,<sup>2</sup> we reiterate our previous recommendations and highlight the following four (4) regional priorities and overarching cross-cutting concerns:

## **2. REGIONAL PRIORITIES**

### **2.1. Development Justice**

- 2.1.1. ASEAN's development model for regional integration, and the unequal trade and investment agreements negotiated and agreed to by member states fail to guarantee redistributive, economic, gender, social and environmental justice, or accountability. They result in further inequality, lack of social protection, denial of basic information and communications infrastructure, environmental degradation, adverse impacts of climate change, and the systematic dispossession of the people's access to land, water, safe and nutritious food, and other resources. Large-scale mining and other extractive projects; the expansion of corporate agriculture (including promotion of genetically modified organisms); corporate and commercial fisheries; and intensified aquaculture continue to violate rights of local communities in ASEAN.

- 2.1.2. Despite all ASEAN states' voting in favour of the Declaration on the Rights of Indigenous Peoples (UNDRIP), "national development" continues to be used as a pretext for plundering and appropriating indigenous lands, territories, and resources. Further, nationalisation of lands owned by individuals, religious communities, and indigenous peoples justifies land grabbing and further marginalises a growing number of people who are already economically, politically, and socially disenfranchised.
- 2.1.3. Women's human rights are fundamentally threatened by regressive policies and programmes that instrumentalise and exploit women in the name of development. Women, girls, and other marginalized groups continue to be trafficked and subjected to sexual and gender-based violence that threaten their dignity and human rights.
- 2.1.4. The liberalization of the labour market has increased the number of precarious jobs and will continue to adversely impact the rights of workers, especially women, and including local and migrant workers, sex workers, domestic workers, and those working in the informal sector regardless of their documented or undocumented status.
- 2.1.5. Forced labour migration is exacerbated by state denial of decent jobs and living wages for workers, the rights to organise and form free and independent trade unions, collective bargaining, security of tenure, social security, occupational safety, access to safe and affordable health services, including sexual and reproductive health and rights, access to quality education, protection from violence, and an effective process for holding traffickers accountable. Failure by source country governments to protect their own citizens who are exported as migrant workers, and government prosecution of workers who expose their exploitation, aggravate the likelihood of abuse and human trafficking.
- 2.1.6. The regional economic integration plan does not hold corporations accountable for violations of human rights, and

social and environmental standards. In fact, corporations are given increased power through investment protection measures and investor-state dispute settlement (ISDS) in the ASEAN Comprehensive Investment Agreement of the AEC blueprint. ISDS empowers corporations in some instances to sue governments over local laws that may be in the public interest but counterproductive to the corporate interests.

## **2.2. Democratic Processes, Governance and Fundamental Rights and Freedoms**

- 2.2.1. Over the years, ASEAN has committed itself to the regional promotion of democracy and human rights. In a true democracy, the people have the right to full, meaningful, inclusive and representative participation by the people. Through transparent governance and free, fair and public elections in a truly multi-party, pluralistic system shall the will of the people be expressed. Yet no effective regional consultation mechanism exists for civil society in ASEAN to participate in crafting and critiquing regional policies. There has been a systemic breakdown in electoral processes in the region; and the people's will continues to be suppressed at both the regional and national levels.
- 2.2.2. An alarming number of restrictions in the region deny freedom of expression and information, freedom of religion or belief, peaceful assembly, and association, in both online and offline spaces. Laws in some countries deny the right to form civil society associations, people's movements, independent religious institutions, political parties, and free and independent labour unions.
- 2.2.3. States and non-state actors continue to commit violations with impunity, including police brutality, torture and enforced disappearances, against civil society activists. For example, the lack of immediate and transparent investigation into the case of Sombath Somphone<sup>3</sup> by ASEAN governments, the ASEAN Intergovernmental Commission on Human Rights (AICHR), or any other human rights mechanisms in the region. Human

rights defenders continue to be persecuted under oppressive laws, including laws against activities as “injuring the national unity,” “propaganda against the State,” “abusing democratic freedoms,” and sedition laws, which deny the people safe and constructive political space.

- 2.2.4. Despite increasing human rights violations in Southeast Asia, no human rights mechanism in ASEAN is able to address these concerns. Both the AICHR and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) lack strong monitoring, accountability and enforcement mechanisms and fail to provide human rights protection consistent with international human rights law and standards.

### **2.3. Peace and Security**

- 2.3.1. Ongoing territorial disputes and border conflicts continue to exist within the ASEAN region and between ASEAN countries and non-ASEAN nations. The lack of states’ commitment in comprehensively fulfilling their extra-territorial obligation also exacerbates cross-border issues. These conflicts are often used by states to perpetuate xenophobia, misogyny, and ultra-nationalism. The inability of ASEAN to bring about sustainable peace, justice and development contributes to political unrest, internal displacement, statelessness, the refugee crisis, human trafficking, forced migration, sea and maritime conflicts, human rights violations, insecure livelihood of fisherfolk in coastal regions, unfounded territorial water claims, competition for access to and control of natural resources, sexual, gender-based and other violence, and general human insecurities.
- 2.3.2. Strict adherence to non-interference principle allows states to act with impunity, perpetuate or disregard human rights violations, such as those against the Rohingya; Montagnard, Hmong, and Khmer Krom; Bangsamoro; Patani; Papuan and in other conflicts in the region.

- 2.3.3. In peace negotiations and post-conflict reconstruction, the region has failed to establish an inclusive and representative process that includes all affected communities and recognises the significance of contributions by women and other marginalized groups to the process. Existing dispute settlement mechanisms<sup>4</sup> do not cover the ambit of internal armed conflict situations and have yet to be effectively used to resolve existing disputes. There is no clear mechanism for enforcing dispute settlement agreements and no regional, legally-binding conflict prevention instrument or mechanism. Lack of political will results in non-adherence to ceasefire and peace agreements.
- 2.3.4. State and non-state actors such as businesses and financial institutions who aggravate the existing crisis situation and/or commit gross human rights violations in times of conflict are not held to any regional or international framework of accountability. Moreover, military and paramilitary forces used to secure investments, such as foreign mining projects, dams, and plantations, exacerbates land grabbing, and violates the peace and security of affected communities.

## **2.4. Discrimination and Inequality**

- 2.4.1. Discrimination denies the people their inherent rights and preserves the imbalance in power relations that prevent realisation of equality of opportunities, access and benefits/results. Multiple and intersectional discrimination, which can result in persecution, cuts across race, inter- and intra-religious practices or belief, ethnicity, nationality, age, gender, class, political and economic status, ability, geographic location, HIV status, marital and pregnancy status, and sexual orientation and gender identity/expression (SOGIE). This is seen in the private as well as the public spheres of lives of the people in Southeast Asia.
- 2.4.2. Inequality and discrimination continue to be perpetuated, both directly and indirectly, in laws and practices of state and non-state actors, particularly the private sector and extremist

groups. Cultural, traditional, and religious practices inconsistent with human rights standards remain unrectified by governments and are sometimes used to justify serious human rights violations. They act to impose patriarchal forms of traditional norms and practices, that result in restriction and denial of a separate legal personality, increased violence particularly on the basis of gender and sexuality, and are often used to increase restriction on people's mobility and access to public life including education, culture, sexual and reproductive health care, employment, and holding leadership positions. No clear regulation or accountability exists to address violations committed by non-state actors.

- 2.4.3. As ASEAN moves towards regional economic integration, unequal and unsustainable economic growth will result in worsening poverty, inequalities of wealth, resources, power and opportunities between countries, between the rich and the poor and between men and women. This economic inequality persistently prevents the people of ASEAN to realise the benefits of economic growth or redistributive changes.

*Considering these regional priorities, the civil society in Southeast Asia reiterate our previous recommendations and call on ASEAN and ASEAN member states to promptly adopt and implement the following overarching and specific recommendations:*

### **3. OVERARCHING RECOMMENDATIONS**

*We urge ASEAN states to:*

#### **3.1. Uphold international human rights principles and standards**

- 3.1.1. Ratify and fully implement state obligations, including extraterritorial obligation under all international human rights treaties, including the Optional Protocols; withdraw all

reservations, if any; and enact enabling legislation or establish other accountability mechanisms that institutionalise and support implementation. All states to uphold the principle of non-derogation by reforming and repealing all laws that undermine the right to life, liberty and dignity, including death penalties.

3.1.2. ASEAN human rights instruments must strictly adhere to international law and universal principles and standards of human rights.

### **3.2. Ensure accountability to all people of ASEAN**

3.2.1. Protect, promote, fulfil, and realise the individual and collective human rights of all peoples, especially the more vulnerable and marginalised. This includes extraterritorial obligations and recognition of primacy of universal principles of human rights over and above all other obligations.

### **3.3. Strengthen the mandate of AICHR, ACWC, ACMW (ASEAN Declaration for the Promotion and Protection for the Rights of Migrant Workers) and future human rights mechanisms**

3.3.1. Strengthen the terms of reference of these bodies to include the capacity to conduct onsite country visits and investigations, issue binding recommendations to member states, provide for periodic peer reviews on human rights conditions, set up working groups on emerging thematic issues, receive and address complaints, and institutionalise an inclusive framework of engagement with all relevant stakeholders, particularly civil society, national human rights institutions (NHRIs), and victims/affected communities.

3.3.2. Adhere to the principle of transparency, impartiality and independence, and also as prescribed in the terms of reference of the AICHR and the ACWC,<sup>5</sup> and ensure that appointees meet minimum requirements such as expertise in a human rights field, good human rights track record, and the ability to discharge their duties with integrity, probity, and independence.

3.3.3. Develop a transparent, participatory, and inclusive process involving civil society, NHRIs, and relevant stakeholders in their selection and appointment.

### **3.4. Enshrine international commitments in the ASEAN Community's Post – 2015 Vision<sup>6</sup>**

3.4.1. Ensure the standards and elements in the proposed ASEAN Community's Post-2015 Vision and ASEAN Development Goals meet human rights international commitments and do not undermine universal principles of equality and non-discrimination. Commit to a framework that aims to dismantle rules and systems that enable the gross inequalities of wealth, power, and resources between countries, between rich and poor, between men and women and other social group. Adopt an inclusive and constructive modality of engaging civil society in the drafting process, and in the monitoring of the implementation of the Post-2015 vision.

## **4. RECOMMENDATIONS SPECIFIC TO THE CONTINUING REGIONAL PRIORITIES**

*ASEAN and members states should:*

### **4.1. Ensure Development Justice**

4.1.1. Develop the ASEAN Community integration that is rooted in values that promote cooperation, active contribution to development, self-responsibility and accountability of civil society organisations, and development justice that ensures redistributive<sup>7</sup>, economic<sup>8</sup>, environmental<sup>9</sup>, gender and social justice<sup>10</sup>, as well as accountability<sup>11</sup>.

4.1.2. Put in place accountability mechanisms that are binding on both state and private actors, and that recognise and enhance the rights of all people of ASEAN. This includes: ensuring that all poverty reduction measures harmonise with ecological and environmental sustainability; signing up to initiatives such as the Open Government Partnership that adhere to the UN Guiding Principles on Business and Human Rights; ending land

- expropriation policies under the guise of economic development that have resulted in devastating impact to indigenous peoples and their ecology; and introducing laws that respect individuals' private ownership and communities' collective ownership of lands.
- 4.1.3. Guard against extensions of intellectual property rights in national or regional trade agreements that restrict access to seeds, free and affordable medicines and healthcare, as well as information including public research and creative content, and which may undermine public health, farmers' rights, traditional knowledge and practices of indigenous peoples, and the right to information commons among other undesirable effects.
  - 4.1.4. Establish the Environmental Pillar and adopt a common position on climate change, emphasising common but differentiated responsibilities, and defend it at the 21st Conference of the Parties. Incorporating the principles of the United Nations Framework Convention on Climate Change and the Rio Declaration, ASEAN should undertake regional collaboration in terms of adaptation and mitigation, focus on the protection of food sovereignty, and increase use of renewable energy and provision of long-term finance, especially for mitigating loss and damage.
  - 4.1.5. Provide lawful recognition to indigenous peoples as citizens with collective equal rights to free, prior and informed consent, and to lands, territories, and resources as recognised in UNDRIP and other international instruments including the Outcome Document of the World Conference on Indigenous Peoples.
  - 4.1.6. Ensure that trade policy-making and negotiations are transparent and consistent with human rights obligations, particularly at the local level. This includes: Involving input from civil society and social movements, including those representing farmers, women, youth, LGBTIQ persons, rural communities, and workers in the design, implementation and monitoring of aid modalities, development programmes and strategies.

- 4.1.7. Adopt domestic laws and policies in adherence to international human rights treaties and ILO norms and standards in anticipation of the open labour market under the 2015 ASEAN Economic Community. This includes: ensuring workers have the rights to job security, decent work, and living wage, equal pay for work of equal value, safe and secure working environments with gender equality, collective bargaining, and trade unions; relieving women of the burden of unpaid care and domestic work through the provision of social care services and infrastructures, social protection policies, and the promotion of shared responsibility within the family and the community; and eliminating child labour, forced labour, human trafficking, and government labour export programmes that exploit migrant labour, increase propensity towards international marriage brokerage for commercial purposes, and result in human trafficking.
- 4.1.8. Adopt a binding legal instrument in line with international human rights standards to protect and promote the rights of all migrant workers and their families regardless of their immigration status.

#### **4.2. Protect Democratic Processes, Governance, and Fundamental Rights and Freedoms**

- 4.2.1. Commit to and establish mechanisms to ensure meaningful and substantive participation, inclusion and representation by all people in ASEAN in all processes at both the national and regional levels without prejudice or restrictions.
- 4.2.2. Immediately reform all constitutions and laws that restrict or deny full civil and political participation of its people in democratic and other processes, including those in accordance with the Bangkok Declaration on Free and Fair Elections, and institute laws that promote greater transparency and people's participation in governance, including the right to form political parties and opposing voices.

4.2.3. End human rights violations and persecution targeted at human rights defenders and activists. This includes: repealing laws restricting freedom of expression, both online and offline, and freedom of religion or belief; releasing those imprisoned or detained under such laws; reforming laws restricting free and open access to information; immediately signing, ratifying and implementing measures aligned with the International Convention for the Protection of All Persons from Enforced Disappearance and the UN Human Rights Council Resolution on Protection of Human Rights Defenders; and banning and punishing all forms of violence committed by state and non-state actors including police brutality, torture, and enforced disappearances.

#### **4.3. Commit to Peace and Security**

4.3.1. Demonstrate commitment to comprehensive and collective security as stated in the ASEAN Political-Security Blueprint through cutting military spending, ensuring accountable and transparent utilisation of state budgets for community development, and providing an enabling environment for women's meaningful participation and representation in decision-making processes, including support for women's leadership, and community education to counter all forms of sexual- and gender-based discrimination and violence.

4.3.2. Establish a Dispute Prevention and Settlement Mechanism as a regional instrument for preventive and emergency response. Specifically, approve inclusion of a preventive clause in the existing Dispute Settlement Mechanism<sup>12</sup> in the next review of the ASEAN Charter.

4.3.3. Act in strict adherence to the principles of peace and security enshrined in the UN Charter and ratify and/or implement all international human rights laws, international humanitarian laws, particularly the Geneva Conventions, the Convention Relating to the Status of Refugees and the 1967 Protocol, as well as the Convention relating to the Status of Stateless Person, their

obligations under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, and the Rome Statute of the International Criminal Court, and put in clear measures as part of their national jurisdiction to prosecute war crimes, crimes against humanity, and genocide.

- 4.3.4. Ensure that justice and reparation systems conform to international human rights frameworks, including the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005), which is premised on the right to know, the right to justice, and the right to reparation/guarantees of non-recurrence.
- 4.3.5. Recognise the significant contributions of women and indigenous peoples in peacebuilding and post-conflict rehabilitation and reconstruction processes. This includes: developing and implementing National Action Plans on Women, Peace and Security according to the principles enshrined in the UN Security Council Resolution 1325 on Women, Peace and Security, Security Council Resolutions 1820 and 1888, CEDAW and General Recommendation 30; providing effective and timely remedies for different types of violations experienced by all women and children and adequate and comprehensive reparations; and address all gender-based violations, including sexual and reproductive rights violations, domestic and sexual enslavement, forced marriage, and forced displacement in addition to sexual violence, as well as violations of economic, social, and cultural rights.
- 4.3.6. Resolve issues of territorial disputes and border conflicts under the principle that resources beyond the limits of national jurisdiction are to the common heritage of all peoples and nations. This includes: working with all related parties and countries to settle disputes only by peaceful means, in accordance with international law, including the UN Charter, UN

Convention on the Law of the Sea, the ASEAN Charter, the Declaration on the Conduct of Parties in the South China Sea, and achieve at the earliest the Code of Conduct in the South China Sea; resolving issues of sea and maritime under the principle that the high seas are open to all States, and that no state may validly purport to subject any part of the high seas to its sovereignty. Lastly, exploring joint administrations by contending states over disputed areas.

#### **4.4. End discrimination and Inequality**

- 4.4.1. Immediately adopt the definition of “non-discrimination” defined by international human rights law, particularly the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD); and immediately eliminate all forms of discrimination, including discrimination on the basis of race, inter- and intra-religious practices or belief, ethnicity, nationality, age, gender, class, political and economic status, ability, geographic location, HIV status, marital and pregnancy status, and sexual orientation and gender identity/expression (SOGIE).
- 4.4.2. Recognise multiple sites and intersectionality of discrimination and realisation of substantive equality through guarantees of equal opportunities, equal access and equal benefits to all peoples, from all sectors, including, women, LGBTIQ persons, children, and youth.
- 4.4.3. Eliminate public morality clauses and cultural relativist justifications used to deny and violate rights of the people, especially women, LGBTIQ persons, and other marginalized and vulnerable groups; and create accountability mechanisms especially to address violations by non-state actors.

## 5. CONCLUSION

- 5.1. We, the civil society of Southeast Asia, guided by the principles of human rights, democracy, good governance, rule of law, non-discrimination, substantive equality, progressiveness and non-retrogression, remain united in our quest for a regional development in Southeast Asia that upholds democracy, peace and security, individual and collective human rights, and sustainable development, for a transformative and “people-centred ASEAN.”
- 5.2. We, therefore, reiterate our previous recommendations and call on all ASEAN member states to seriously consider these continuing regional priorities and recommendations, and immediately adopt positive measures to implement them.

## Notes

- <sup>1</sup> The ASEAN civil society is represented by various civil society organisations, community-based organisations, NGOs, social movements of women, children and youths, migrant workers, formal and informal workers from both urban and rural sectors, persons with disabilities, trade unions, sex workers, indigenous peoples, ethnic minorities, peasants, farmers, small-scale fisher folks, refugees and stateless persons, domestic workers, lesbian gay transgender/transsexual intersex and queer (LGBTIQ) people, human rights defenders and other groups.
- <sup>2</sup> This statement was adopted at the 3rd ACSC/APF 2015 Regional Consultation (23 – 24 January 2015) in Malaysia. This was preceded by the 1st Regional Consultation on 24 – 25 September 2014 and the 2nd Regional Consultation on 11 – 12 December 2014, respectively. The drafting of the statement has also gone through a rigorous consultation process through national and regional thematic groups.
- <sup>3</sup> Sombath Somphone, an internationally acclaimed community development worker and prominent member of Lao civil society, went missing on 15 December 2012, when police stopped his vehicle at a checkpoint in the capital. He was then transferred to another vehicle, according to police surveillance video, and has not been heard from since. Reports say that the Lao government continues to deny responsibility for his disappearance.
- <sup>4</sup> 1976 Treaty of Amity and Cooperation (TAC), signed at the first ASEAN Summit on 24 February 1976 in Denpasar, Bali; 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism, adopted by the Economic Ministers at the 10 ASEAN Summit in Vientiane, Laos on 29 November 2004; 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms, adopted in Hanoi, Vietnam on 8 April 2010.

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- <sup>5</sup> TOR of the AICHR Chapter 5, and TOR of the ACWC Chapter 6.
- <sup>6</sup> Nay Pyi Taw Declaration on the ASEAN Community's Post-2015 Vision, Nay Pyi Taw, 12 November 2014.
- <sup>7</sup> "Redistributive justice" aims to reduce inequalities between and within countries, among women and men, and among different social and ethnic groups through policies that redistribute resources, wealth, power, and opportunities.
- <sup>8</sup> "Economic justice" aims to develop economies that enable dignified lives, accommodate for needs and facilitate capabilities, employment and livelihoods available to all.
- <sup>9</sup> "Environmental justice" recognises the historical responsibility of those responsible for human rights violations, increased global warming and environmental disasters and compels them to alleviate and compensate marginalised groups who suffer from their actions.
- <sup>10</sup> "Gender justice and social justice" eliminate all forms of discrimination, marginalisation, exclusion and violence.
- <sup>11</sup> Accountability to the people's demands for democratic and just governments, transparency, and governance enables the people themselves to make informed decisions over their own lives, communities and future.
- <sup>12</sup> 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms. Adopted in Hanoi, Vietnam on 8 April 2010.