



THE ASEAN CHARTER AND HUMAN RIGHTS WINDOW OF OPPORTUNITY OR WINDOW DRESSING?

The ASEAN Charter, signed by the Association of Southeast Asian Nations (ASEAN) in November 2007, is the first Asia-Pacific regional treaty that, once ratified, will legally oblige states to respect and protect human rights.

If fully implemented, the Charter, together with other human rights instruments adopted by ASEAN in recent years, will herald a new era for human rights in the region. Amnesty International strongly supports civil society organizations and others throughout the region that are working to ensure the Charter does not become a lost opportunity.

This information sheet highlights the human rights provisions in the ASEAN Charter and sets out Amnesty International's position on the establishment, composition and mandate of the ASEAN human rights body. Myanmar is used as a case study to illustrate the human rights challenges that ASEAN faces.

THE ASEAN CHARTER

The Charter was adopted at the ASEAN Summit in Singapore, November 2007. It will become legally binding when ratified by all 10 ASEAN member states. To date, six member states have ratified.

The ASEAN Charter contains several provisions that either directly, or indirectly, address human rights, including:

- Article 1: ASEAN should “promote and protect human rights and fundamental freedoms”.
- Article 2: ASEAN should act in accordance with “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice” as well as “upholding the United Nations Charter and international law”.
- Article 14: ASEAN should establish a “human rights body”. A body of experts has been set up to draft the human rights body's terms of reference.

While Amnesty International welcomes the inclusion of these provisions, concern remains that some member states may view these commitments as little more than a window-dressing exercise, and will try to make sure that the human rights body has no real “teeth” and is under the control of political interests. This is compounded by the fact that commitment to human rights in the ASEAN Charter is couched in very general terms, a weakness which could be remedied by a strong, professional and representative human rights body applying international standards.

OTHER ASEAN HUMAN RIGHTS INITIATIVES AND MECHANISMS

- In June 2004, ASEAN adopted the Declaration on the Elimination of Violence Against Women in the ASEAN Region, which includes, a commitment to adopting “an integrated and holistic approach to eliminate violence against women”, to “gender mainstreaming” and to “take all necessary measures to eliminate all forms of discrimination against women and to empower women”.
- In January 2007, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, which includes a provision to establish an “instrument on the protection and promotion of the rights of migrant workers.”
- In 2004, ASEAN leaders agreed to “the establishment of an ASEAN commission on the promotion and protection of the rights of women and children”, but this, along with other human rights related initiatives, has yet to materialize.

THE ASEAN HUMAN RIGHTS BODY

Regional human rights bodies are an effective means of ensuring international standards are applied effectively. In the ASEAN region, where there are serious, ongoing human rights violations, a human rights body is no less essential to guarantee the implementation of the human rights commitments in the Charter.

Regional and international human rights monitoring mechanisms often rely on co-operation with, and information from, human rights defenders and civil society. They provide information on the general human rights situation as well as on individual cases, and they facilitate contact with victims of human rights violations and outreach to communities and individuals. Participation by civil society in the process of establishing a human rights body, in determining its composition and in supporting its work, is central to the body's success.

The provision for the establishment of the ASEAN human rights body offers no detail as to its nature, powers, composition or remit. Amnesty International calls on ASEAN to follow these general principles:

- **ESTABLISHMENT:** The human rights body must be established within a reasonable timeframe that allows for meaningful participation. It should follow broad and substantive consultation with human rights defenders, women's organizations, minority groups, Indigenous communities, trade unions and other sectors of society within all member states. Draft terms of reference for the body should be made widely available, for example on the ASEAN Secretariat website, to

allow for comments by all interested persons and organizations well in advance of their finalization.

■ **COMPOSITION:** The human rights body must be, or must have the power to appoint, an independent, impartial, competent, well-resourced, professional, expert body, whose membership reflects the region's diverse peoples and cultures and has gender parity. Members should be nominated and elected in a transparent process involving civil society at every stage of the proceedings.

■ **MANDATE:** The human rights body must encourage ASEAN member states to guarantee the level of human rights protection that is required by international law and standards. It must have the authority and the resources to carry out:

A monitoring role, including the investigation of specific human rights situations, in response to submissions by individuals, organizations or states, or on its own motion. It must work to ensure that states allow human rights defenders to carry out their work unhindered. The human rights body must be authorized to determine that a state's human rights violations amount to "a serious breach of the Charter or non-compliance", in which case the Charter provides for the ASEAN Summit to decide on the matter;

An advisory role, including on the ratification and implementation of international human rights and other relevant treaties, the implementation of recommendations of UN treaty bodies and special procedures, and on the establishment and operation of national human rights institutions in accordance with international standards.

In addition, the human rights body should provide advice to national and regional human rights defenders;

A promotional role, including urging member states to ratify international human rights treaties, to report to human rights monitoring bodies and to invite UN special procedures to visit;

An educational role, including the development of tools and materials for human rights education and helping member states to provide human rights education and training, for state officials, vulnerable groups such as detainees, and for the public as a whole.

Amnesty International strongly recommends that the human rights body's mandate should be phrased in such a way that it allows for the future development, expansion and elaboration of ASEAN and other regional human rights prevention, protection and promotion mechanisms.

A NEW ERA FOR HUMAN RIGHTS?

The human rights commitments within the Charter are a tribute to the vibrant, active and dedicated civil society in the region that has been at the forefront of efforts to push forward an ASEAN Charter with a strong human rights component. But, whether the Charter will translate into real change, with a strong human rights body capable of transforming ASEAN into a truly human rights-friendly region remains to be seen.

Amnesty International is campaigning alongside others in the region and internationally to ensure a positive outcome.

MYANMAR – A CASE IN POINT

One of the challenges facing a future ASEAN human rights body is the appalling human rights situation in Myanmar. Myanmar is an example of a country desperately in need of a regional mechanism to ensure that commitments to human rights become a reality. Violations in Myanmar have been particularly widespread, systematic and ongoing for decades, with total impunity. Violations include:

- The use of child soldiers and forced labour.
- Laws that criminalize peaceful expression of political dissent.
- Collective punishments by the army against populations suspected of sympathizing with armed opposition groups, especially in and around Kayin (Karen) State. These include, burning houses and villages, destroying crops, forced labour and forced relocation, in addition to unlawful killings and enforced disappearances.
- Arrest without warrant and incommunicado detention without charge or trial.
- Widespread use of torture and other cruel, inhuman or degrading treatment, especially during interrogation and pre-trial detention.
- Defendants being denied the right to legal counsel and prosecutors relying on confessions extracted through torture.
- Judicial proceedings against political detainees which fail to meet international standards of fairness.

ASEAN leaders, following years of what has been labelled “constructive dialogue” with the Myanmar authorities with

very little impact, have recently been more forthcoming and explicit in condemning human rights violations in Myanmar. This was particularly apparent during the crackdown on peaceful demonstrations in late September and early October 2007, when there were mass arbitrary arrests and dozens of demonstrators were unlawfully killed. ASEAN issued several strong statements, expressed “revulsion” at the crackdown, and urged Myanmar to co-operate with the Special Adviser to the UN Secretary-General on Myanmar.

However, ASEAN leaders did not seek to block Myanmar’s head of government, Prime Minister Thein Sein, from attending the Summit where the ASEAN Charter was adopted. Instead, he participated as a legitimate and equal partner, signing the Charter even as his government was in “serious breach” of its human rights provisions.

After Cyclone Nargis devastated much of southern Myanmar in early May 2008, ASEAN took a lead in co-ordinating the international relief effort. When the Myanmar government blocked international assistance to the affected areas, prioritizing instead a “referendum” on a Constitution that would perpetuate army rule and impunity for perpetrators of human rights violations, ASEAN called a special meeting in Singapore and established a mechanism to co-ordinate relief activities along with the Myanmar government and the UN. This welcome move illustrates the positive role that ASEAN can and should play in the region.

A strong human rights body would be able to investigate human rights violations, analyze them in the context of international human rights law and standards, make clear recommendations as to what steps the state and ASEAN must take to remedy the situation and, if necessary, invoke the “serious breach” provision in the Charter and call for urgent action by the ASEAN Summit.

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