

**AMNESTY INTERNATIONAL'S
BRIEFING TO THE ASEAN
COMMISSION FOR THE
PROMOTION AND PROTECTION
OF THE RIGHTS OF WOMEN AND
CHILDREN ON THE DRAFT
ASEAN DECLARATION ON THE
ELIMINATION OF VIOLENCE
AGAINST WOMEN AND
CHILDREN**

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INTRODUCTION

In this briefing, Amnesty International is submitting to the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (the Commission) its comments on the 2 April Draft ASEAN Declaration on the Elimination of Violence against Women and Children (the Declaration).

Amnesty International has followed the drafting process of the Declaration with interest, and welcomes this opportunity to comment on this important instrument. We have engaged, both as a global movement and through our sections in the region (AI Malaysia, AI Philippines and AI Thailand), in previous human rights standard setting endeavours in ASEAN. In addition, Amnesty International has campaigned globally against violence and other manifestations of gender-based discrimination against women, as well as against a variety of forms of violence against children. We have also worked to highlight and campaign against violations of the rights of women and children in ASEAN Member States, including the right to freedom from violence.

Our key concern is that the Declaration fully reflect international human rights law and standards, as provided, firstly, in the two key relevant treaties which all of ASEAN's Member States have taken upon themselves to implement, namely the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child; and secondly, subsequent instruments and jurisprudence developed by the international community and human rights expert bodies.

We are aware of the Commission's intention to keep the Declaration brief. However, ASEAN has already adopted several relevant instruments, in particular the Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004), the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2010) and the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (2010). We therefore felt that it would be important for the current Declaration to provide some detail and clarity in identifying at least the salient aspects of violence against women and children, as well as in pointing the way towards the Declaration's implementation, to ensure that it does not remain a dead letter.

Our submission consists of two parts: in the first, the text of the Draft Declaration, as of 2 April 2013, is marked with Amnesty International's suggested deletions, changes and additions. In the second part, we provide the rationale for our suggested changes, including pointing to international (and on occasion regional) authorities or sources for the changes in human rights treaties, standards and jurisprudence of expert bodies.

PART I: AMNESTY INTERNATIONAL'S SUGGESTED CHANGES

N.B. text that we suggest deleting is presented in ~~strikethrough~~; text that we suggest adding is in ***boldface and italics***.

Article numbers are presented as they would appear if the text was to be changed in accordance with our suggestions.

Zero Draft as of 2 April 2013

THE DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN AND CHILDREN IN ASEAN

WE, the Heads of State or Government of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN"), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, on the occasion of the ___ ASEAN Summit;

UPHOLDING the goals, purposes and principles of ASEAN as enshrined in the ASEAN Charter and Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015);

REAFFIRMING the goals and commitments of ASEAN to eliminating violence against women and monitor their progress as reflected in the Declaration on the Elimination of Violence Against Women in the ASEAN Region adopted at the 37th ASEAN Ministerial Meeting (AMM) on 30 June 2004;

FURTHER REAFFIRMING the commitments of ASEAN as reflected in the ASEAN Human Rights Declaration adopted at the 21st ASEAN Summit on 18 November 2012; the ASEAN Leaders' Joint Statement in Enhancing

Cooperation Against Trafficking in Persons in Southeast Asia adopted at the 18th ASEAN Summit on 8 May 2011; the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children adopted at the 17th ASEAN Summit on 28 October 2010; the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children adopted at the 10th ASEAN Summit on 29 November 2004; the Declaration on the Commitments for Children in ASEAN adopted at the 4th Meeting of the ASEAN Ministers Responsible for Social Welfare (AMRSW) on 2 August 2001; the Resolution on the ASEAN Plan of Action for Children adopted at the 3rd AMRSW Meeting on 2 December 1993; and the Declaration on the Advancement of Women in the ASEAN Region adopted at the 21st AMM on 5 July 1988;

ACKNOWLEDGING the commitments of individual ASEAN Member States to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) that have been ratified by all ASEAN Member States; ***ILO Conventions 138 and 182***, the Declaration on the Elimination of Violence Against Women (Vienna Declaration); the Beijing Declaration and Platform for Action (BPFA), BPFA+5 Outcome Document; ***UN GA Resolution 52/86 on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women: Model Strategies and Practical Measures***; the World Declaration on the Survival, Protection and Development of Children and Plan of Action for Child Survival, Protection and Development; A World Fit For Children Declaration; and the Millennium Development Goals (MDGs); as well as the UN Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), and 1889 (2009) on Women, Peace and Security;

WELCOMING the adoption of the Terms of Reference and Work Plan (2012-2016) of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children to promote and protect the human rights and fundamental freedoms of women and children in ASEAN, ~~taking into consideration the different historical, political sociocultural, religious and economic context in the region and the balances between rights and responsibilities;~~

ACKNOWLEDGING the importance of intensifying efforts of ASEAN Member States to promote and protect the rights of women and children from all forms of violence particularly those who are in vulnerable situations, including discrimination against women and children in mass and social media, discrimination against women and children living with and affected

by HIV and AIDS, women and children in conflict with laws, women and children in armed conflict, **migrant women and children**, cyber pornography and cyber prostitution, trafficking in women and children, domestic violence, corporal punishment of children, bullying, and others;

EMPHASISING that violence against men is equally abhorrent in all its forms and calling on ASEAN Member States to implement the provisions of this Declaration, where applicable, to combat violence against men as well;

RECOGNISING that violence against women and children occurs throughout their life cycle as a result of discriminatory practices and shall be eliminated as it impairs human rights and fundamental freedoms of women and children to live in peace, equality, justice, dignity and prosperity, as well as deprives their access to opportunities and rights to achieve their full potential;

DO HEREBY DECLARE THAT:

ASEAN Member States, individually and/or collectively, shall promote and protect the rights of women and children **to freedom** from all forms of violence in the region through the following measures:

1. Enact and, where necessary, reinforce or amend national legislations to eliminating violence against women and children **through:**
 - ***Ensuring that no person is subjected to sentence of death or to life imprisonment without possibility of release for crimes committed below age 18, and that no pregnant woman or new mother shall be executed;***
 - ***Prohibiting all forms of violence against children. Violence against children shall be understood to encompass, but is not limited to, all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. Such forms include all corporal punishment (including forms of corporal punishment imposed in the justice system and in schools and other educational settings) and all harmful traditional practices, including early or forced marriage;***

- ***Prohibiting all forms of violence against women, and developing penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subject to violence. Violence against women shall be understood to encompass, but is not limited to, the following:***
 - (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;***
 - (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;***
 - (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.***
- 2. ***Enhance the protection, services, rehabilitation, recovery and reintegration of victims, including through the following:***
 - ***Design and implement child-rights training within police forces that includes information on appropriate ways to deal with all children, particularly those from marginalized groups and those subject to discrimination;***
 - ***Where children are working illegally, ensure the availability of recovery and integration programmes that focus on assisting under-age children and those in “worst forms” of labour to leave work, receive education and training, and improve their life chances without further victimization;***
 - ***Provide accessible, child-sensitive and universal health and social services, including pre-hospital and emergency care, legal assistance to children and, where appropriate, their families when violence is detected or disclosed;***
 - ***Ensure that trafficked women and children are provided with protection, access to health care, adequate assistance and social reintegration services when they are involved in criminal investigations and the justice process, including***

ensuring that trafficked women and children victims are issued residence permits where their personal situation or criminal proceedings so require;

- **Ensure affordable and accessible health and social care services that address the physical, psychological and sexual and reproductive health consequences of violence against women;**
 - **Develop investigative techniques that do not degrade women subjected to violence and minimize intrusion, while maintaining standards for the collection of the best evidence;**
 - **Take all necessary steps to ensure at all stages of the proceedings, women survivors' physical and psychological state is taken into account and they may receive medical and psychological care;**
 - **Institute special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatic impact of proceedings.**
3. Integrate legislations, policies and measures, **including national plans of action with realistic, time-bound targets**, to prevent and eliminate violence against women and children, **promote non-violent values** and to protect and assist the victims/survivors in the national development plans and programmes; **and systematically evaluate compliance with legislation and implementation of plans, policies, and other measures;**
4. Strengthen a holistic, rights-based, and gender responsive **and age-responsive** approach to eliminate violence against women and children in the region which includes effective legislations, policies and measures to:
- Investigate, prosecute, punish and, where appropriate, rehabilitate perpetrators;
 - Protect women and children victims/survivors and witness;
 - Provide victims/survivors with access to justice, legal assistance, protection, social and health services, rehabilitation, recovery, and reintegration;
 - Prevent re-victimization of women and children from any form of violence in their home, workplace, schools, and/or communities through various programmes including economic empowerment of women victims/ survivors; and

- Promote education and public awareness of the nature and causes of violence against women and children towards active public participation in its prevention and elimination; **and:**
 - **Encourage regional cooperation in these efforts.**
5. Develop appropriate mechanisms to assist, upon request by ASEAN Member States, in implementing, monitoring and reporting the implementation of the Concluding **Observations and recommendations** of CEDAW, and CRC and other Treaty **human rights** bodies related to the elimination of all forms of violence against women and children;
 6. Strengthen the capacity of law enforcement officers, policy makers, social workers, health personnel, and other stakeholders to develop, implement, monitor and evaluate gender responsive **and age responsive** preventive and protective legislations, policies and measures for women and children victims of violence;
 7. Promote research and data collection and analysis concerning all forms of violence against women and children, **both at national and regional levels**, to support the formulation and effective implementation of laws, policies and programmes to eliminate violence against women and children and for better protection of the victims/survivors in the region, **in particular:**
 - **The adoption of national indicators based on internationally agreed standards;**
 - **Compiling, analysing and disseminating this data to monitor progress over time;**
 - **Where not currently in place, birth, death and marriage data registries with full national coverage should be created and maintained. States should also create and maintain data on children without parental care and children in the criminal justice system;**
 - **Data should be disaggregated by sex, age, urban/rural, household and family characteristics, education and ethnicity, also the relationship (if any) between the victim and the perpetrator;**
 - **States should also develop a national research agenda on violence against women and violence against children across settings where violence occurs, including through interview studies with women survivors, children and**

parents, with particular attention to vulnerable groups of women, girls and boys.

8. Strengthen the provision of support social services to women and children victims of violence in ASEAN through the establishment of an ACWC **ASEAN?** network of social services to facilitate the promotion of best practices, sharing of information, exchange of experts and social work professionals, and training of staff and volunteers among ASEAN Member States, as well as through the work of the ASEAN Social Work Consortium;
9. Strengthen partnerships with external parties at international, regional, national and local levels, including with ASEAN Dialogue Partners, UN Agencies, civil society, community-based organisations, academia, philanthropists and private entities, in the work for the elimination of violence against women and children in ASEAN and to mobilise resources to assist the victims;

WE TASK the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to promote the implementation of this Declaration, review its progress, and mobilise resources required for the implementation. ***The ACWC shall submit and publish an annual report on the implementation of this Declaration.***

WE ENCOURAGE ASEAN Member States and relevant ASEAN sectoral bodies to support, through appropriate instruments and actions, the accomplishment of this Declaration.

Adopted in __, this __ of __ in the Year Two Thousand and __, in a single original copy, in the English Language.

PART II: RATIONALE AND SOURCES FOR SUGGESTED CHANGES

N.B. rationale and sources are only provided where suggested changes are not self-explanatory.

Preamble, 6th paragraph:

While the text we recommend deleting does reflect the Terms of Reference of the Commission, Amnesty International is concerned that in the context of this Declaration its inclusion could be interpreted as suggesting that there may be “historical, political sociocultural, religious and economic context in the region” which would justify resort to violence against women, children or both, or that such violence may be justified on grounds of “balanc[ing] between rights and responsibilities”.

This clearly would be contrary to international human rights standards, including those which are legally binding on ASEAN member states. In fact, these standards call for working in the opposite direction, namely rooting out “historical” practices that allow for violence and other types of discrimination against women and children. Thus Article 5 of the UN Convention on the Elimination of All forms of Discrimination against Women¹ provides *inter alia* that “States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

While we are convinced that providing an opening for “justified” violence was not the intention, the best way to avoid any suggestions of equivocation would be to remove this passage.

Preamble, added paragraph 7 bis:

The Declaration would, at least in theory, provide a higher level of protection from violence to women and children in ASEAN than it would to men. While this may be justified broadly by the fact that as things stand, men are much more often perpetrators of violence, women and children much more often victims thereof, we believe it would be useful to ensure that the Declaration acknowledges that men too can be victims of violence. A provision in the same spirit was included in the UN Rules for the Treatment of Women Prisoners and Non-Custodial

¹ Adopted by UN General Assembly resolution 34/180 of 18 December 1979, entered into force 3 September 1981. *Cf.* Article 3 of the UN Convention on the Rights of the Child. Adopted by UN General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990.

Measures for Women Offenders (“Bangkok Rules”).²

Article 1:

As noted, Amnesty International believes that the Declaration should be more detailed in certain aspects to increase its effectiveness and clarity. This is particularly true of provisions guiding implementation.

The first added bullet point reflects international law and standards, in particular those pertaining to states which still have the death penalty.³ Amnesty International opposes the death penalty in all cases and for all offenders;

The second added bullet point would ensure that in implementing the Declaration, Member States do not apply a narrow or restrictive view of what constitutes violence against children but rather reflect the internationally agreed definitions of such violence;⁴

The third added bullet point would ensure that in implementing the Declaration, Member States do not apply a narrow or restrictive view of what constitutes violence against women, but rather reflect the internationally agreed definitions of these forms of violence.⁵

Article 1 bis

We suggest breaking Article 1 into two, in view of the added detail that we propose for both parts of the original Article 1. The suggested additions to what would become Article 2 provide guidance for addressing situations where women and children are most prone to human rights abuses:

The first, second and third added bullet points would guide Member States in training police who come in contact with children and in addressing cases of children engaged in hazardous work or subject to exploitation, and victims of violence more generally, reflecting expert UN

² Adopted by UN General Assembly Resolution A/RES/65/229, 21 December 2010, Annex, Rule 12.

³ The International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights. Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966. Entered into force 23 March 1976, Art. 6(5); UN Convention on the Rights of the Child, Art. 37(a); UN Safeguards guaranteeing protection of the rights of those facing the death penalty. Approved by Economic and Social Council resolution 1984/50 of 25 May 1984 and endorsed by UN General Assembly resolution A/RES/39/118, Safeguard 3.

⁴ See Article 19 of the UN Convention on the Rights of the Child; Report of the Independent Expert for the United Nations: study on violence against children, UN Doc. A/61/299, 29 August 2006, para. 98; Committee on the Rights of the Child, General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*), UN Doc. CRC/C/GC/8, 2 March 2007, esp. paras. 16-29. On forced marriage see in addition, for instance, Forced marriage of the girl child – Report of the Secretary-General, UN Doc. E/CN.6/2008/4, 5 December 2007.

⁵ See UN Declaration on the Elimination of Violence against Women, UN General Assembly resolution A/RES/48/104, 23 February 1994, Articles 4(d) and 2.

opinion;⁶

The fourth added bullet point addresses the treatment of women and children who are victims of trafficking, reflecting international and regional treaty law;⁷

The fifth added bullet point addresses specifically the provision of care in all its required forms to women who are survivors of violence, reflecting internationally-agreed standards as well as regional treaty law;⁸

The sixth, seventh and eighth added bullet points focus on the specific needs of women survivors of violence and best practices in addressing them during investigations and subsequent criminal proceedings, reflecting progressive international and regional standards.⁹

Article 5 (4 in the original Draft):

The suggested change is aimed at ensuring that this provision encompasses the findings and recommendations of non-treaty human rights bodies, in particular Special Procedures such as the UN Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on violence against children.

Article 7 (6 in the original Draft):

The suggested addition would give focus, clarity and direction to Member States implementing this important provision. Here too we believe that stating the principle must be accompanied by some detailed guidance for implementation to be effective. All additions are based on a UN expert opinion,¹⁰ with some adjustments to ensure the provision addresses both forms of violence.

⁶ Report of the Independent Expert for the United Nation, *op cit.*, paras. 114(c) 113(c) and 102, respectively.

⁷ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ("Palermo Protocol"). Adopted by the UN General Assembly resolution 55/25 on 15 November 2000, entered into force on 25 December 2003, Art. 7; Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197, 16 May 2006, Art. 14.

⁸ See UN Commission on the Status of Women, Agreed conclusions on the elimination and prevention of all forms of violence against women and girls, UN Doc. E/CN.6/2013/L.5, 19 March 2013, para. C(iii). See similarly Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the African Union, Maputo, 11 July 2003, Articles 4, 14.

⁹ Crime prevention and criminal justice: measures to eliminate violence against women, UN General Assembly resolution Res 52/86, 12 December 1997, Annex: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, para. 8; Council of Europe, Committee of Ministers Rec(2002)5 on the protection of women and girls against violence, Recommendations 41, 42.

¹⁰ All taken from Report of the Independent Expert for the United Nations, *op cit.* para. 107.

First Final Provision:

The suggested addition aims at concretising the role of the Commission in encouraging, monitoring and reporting on the Declaration's implementation. While we appreciate that the Declaration does not carry the binding force of a treaty, it would be of little value if it remains purely rhetoric. The Commission is the obvious body to carry out this monitoring and reporting role.

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