December 19, 2011

TO: Members of the ASEAN Intergovernmental Commission on Human Rights (AICHR)

Dear Honourable Members of AICHR,

On December 10, people everywhere, including in ASEAN, celebrated the International Human Rights Day, which honours the adoption and proclamation by the United Nations General Assembly of the Universal Declaration of Human Rights (UDHR) in 1948.

In November 2007, the ASEAN Charter was signed by all ten ASEAN Member States. Pursuant to the Charter’s Article 14, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established on 23 October 2009. It is AICHR’s mandate to uphold universal human rights as prescribed by the UDHR and other international instruments. The AICHR thus became the first regional human rights body in Asia, a development much welcomed by human rights organisations in the region as well as international human rights organisations.

As AICHR continues to develop and as the ASEAN Human Rights Declaration (AHRD) is being drafted, FIDH is honoured to share with you, at this critical juncture, some recommendations inspired by the efficient and progressive development of other regional human rights bodies. We hope these recommendations will provide useful reference for AICHR to develop the capacity to address the many challenges preventing the enjoyment of human rights for everyone in ASEAN.

Broad-based engagement with civil society

In her address to the 7th Official Meeting of AICHR on November 28, the UN High Commissioner for Human Rights, Ms. Navi Pillay, encouraged ASEAN “to be more open to consultation with a wider range of national institutions and civil society groups from the region than has occurred so far.” She went to emphasize that “[o]ne of the keys to the success of other regional mechanisms has been their positive engagement with civil society.” At the same meeting, ASEAN Secretary-General Surin Pitsuwan said that “recognition and legitimacy is to be gained further by providing leadership, guidance and working together with the relevant stakeholders.” FIDH shares these views, which, more importantly, also reflects the long-standing desire by our member organisations and other civil society groups in ASEAN.

FIDH, with its 164 local member organisations in all continents, testifies to the tremendous benefits that have been reaped when regional human rights mechanisms consult regularly, broadly and substantively with civil society. AICHR has the advantages of hindsight and the availability of a robust body of experience in
other regional mechanisms to draw from. AICHR should incorporate the good practices in engaging with civil society early on in its institution-building phase.

In regard to the **African Commission on Human and Peoples’ Rights (ACHPR)**, African NGOs can, inter alia:

- make oral interventions on almost all items covered by the formal sessions;
- submit draft resolutions which are often adopted;
- provide briefings on civil society concerns;
- make recommendations on State reports;
- work with Commissioners in the various ACHPR Working Groups to draft guidelines on issues such as the abolition of the death penalty, protection of indigenous people, economic, social and cultural rights, or business and human rights.

Similarly, in the **Inter-American Commission on Human Rights (IACHR)**, NGOs are able, inter alia, to:

- attend meetings and hearings;
- take to the floor to present their positions on local situations being scrutinized by the IACHR;
- provide field analyses to assist the Commission's assessment of thematic subjects.

The IACHR organises tri-partite hearings to receive diverse expert inputs on situations that it is examining. For example, in March 2011, FIDH and its member organisation, the “José Alvear Restrepo” Lawyers’ Collective in Colombia, participated in and contributed findings to the IACHR’s General Hearing on the obstacles to the ongoing investigations and proceedings against Colombian government officials in charge of the illegal activities of the DAS, one of Colombia’s intelligence services. Such a hearing provided the Colombian government an opportunity to pledge policy changes on the subject. In October 2011, FIDH submitted a joint international fact-finding mission report to the IACHR General Hearing on land conflict-related abuses of peasants in Bajo Aguán, Honduras.

In addition, civil society's contribution also supports the structural development of the IACHR. As such, civil society contributes to the vetting of candidates for the IACHR and judges for the Inter-American Court of Human Rights (IACtHR). Civil society and States are also consulted on proposed amendments to the rules of procedures within the Inter-American System. Such process enabled a recent crucial reform of the internal rules.

FIDH appreciated the opportunity to engage with AICHR when its representatives visited Brussels in May 2011. However, FIDH regrets that, two years into its existence, AICHR as a body has yet to formally and broadly engage with civil society in ASEAN who has always stood ready to contribute positively to the work of the Commission. FIDH takes note of the recent interaction between the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and some civil society organisations, and urges AICHR to take the lead in ensuring that such interactions are expanded and institutionalized and that substantive consultation with civil society becomes a normal working method of all ASEAN human rights bodies and other entities.

Regarding engagement with civil society, FIDH respectfully makes the following general recommendations:

- As a first step towards substantive engagement, AICHR should welcome representatives of civil society and NGOs to **observe in whole or in part the next formal meeting of the Commission in 2012** and to continue to do so thereafter;

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• AICHR in particular and ASEAN in general should expeditiously **institutionalize the necessary channels to deepen and broaden its engagement** with local and regional civil society; without prejudice to the development of such channels, AICHR should already **consult regularly and substantively** with civil society in carrying out its mandate;

• Any guidelines or rules of procedures developed by AICHR and/or ASEAN to regulate consultation with civil society should **facilitate rather than restrict civil society’s access** to ASEAN and its human rights mechanisms, and they should be formulated through consultation with civil society.

**Transparency**

In her address to AICHR in November, the UN High Commissioner for Human Rights also stressed that it would be “**beneficial to increase the transparency of your proceedings, by publishing your annual report and other key documents on the AICHR website.**”

AICHR does not have its own dedicated website yet. Press releases are released and posted on a single page on the ASEAN website following each of AICHR’s formal meetings. The information provided by these short press releases are scant and they often represent the only information regarding AICHR’s work that is available to the general public.

Access to information is a key strength of other regional human rights mechanisms. The IACHR holds approximately 100 hearings a year on both individual complaints lodged before it and on thematic issues, and many of the hearings can now be viewed live or on the Internet. The Commission’s annual reports, special reports, press releases are all accessible on its website. IACHR also transmits information to the public via social media like Facebook and Twitter. IACHR published 127 press releases in 2011 as of December 9.

The ACHPR likewise has its own dedicated website where one can access documents such as the final communications, list of participants, adopted resolutions, and decisions on communications before the Commission. The draft agenda of each session is sent to specialized agencies, national human rights institutions and NGOs concerned with the agenda. As a general rule per the rules of procedures of ACHPR, the sittings of the Commission are held in public and their summary minutes are also public documents.

Regarding transparency of AICHR, FIDH respectfully makes the following general recommendations:

• AICHR should publish the **agenda** of each formal meeting of AICHR **before** it is held, and that **minutes and outcome of the meetings** be made available to and accessible by civil society and the general public in a timely manner;

• Some existing documents that should be made public include: the **Guidelines on the Operation of AICHR; the 2013-15 AICHR Work Plan; the First Annual Report; the Terms of Reference for the Drafting of the ASEAN Human Rights Declaration (AHRD); the Terms of Reference for the thematic studies on Corporate Social Responsibility (CSR) and Human Rights, and on the Right to Peace**;

• The ASEAN Secretariat should create a **dedicated website** for AICHR where documents should be promptly uploaded and which should be regularly updated with full-time secretariat support. Member States of ASEAN should contribute the **necessary financial resources** to ensure its creation without delay.

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ASEAN human rights declaration

FIDH welcomes the drafting of an ASEAN human rights declaration (AHRD). Such a historic and important document must not fall below international human rights standards and should be drafted in consultation with civil society and the general public whose rights it is supposed to uphold. The AHRD should be a document for the people, by the people and of the people of ASEAN.

Thus far, country-level consultations on the declaration have only taken place in a small number of Member States. Reiterating our belief that consultation should be at the core of AICHR’s work methods, FIDH strongly encourages that AICHR spare no effort in consulting broadly with stakeholders, especially civil society and the United Nations human rights mechanisms, in order to benefit from their input and expertise in human rights.

Civil society in ASEAN has also raised concerns regarding the possible inclusion of provisions into the declaration that could undermine fundamental principles of human rights. FIDH fully supports the position that the declaration must not incorporate any provisions of vaguely conceived cultural, traditional or economic “particularities” which could be invoked or interpreted by Member States as justifying limitation or derogation from internationally recognized human rights. Nor should there be provisions that could provide justification for observing these rights in an unequal or discriminatory manner, to the detriment of the dignity and rights of individuals belonging to marginalized, vulnerable and disadvantaged groups, including women and children, stateless persons, migrant workers, refugees and asylum-seekers, as well as racial, ethnic, religious and sexual minorities, who have faced discrimination and persecution throughout ASEAN.

Regarding the ASEAN human rights declaration, FIDH respectfully makes the following general recommendations:

- The declaration should **unequivocally recognize all human rights** set out in the Universal Declaration of Human Rights, the International Bill of Rights, and other international human rights standards and declarations;
- The declaration should reaffirm ASEAN’s full and unqualified commitment to the **universality, indivisibility and interdependence** of all rights.
- AICHR and its drafting team members should broadly, frequently and substantively **consult with civil society** at both national and regional levels throughout the drafting process, using the recommendations already submitted by civil society as basis for consultations. AICHR should invite civil society organisations to attend the January 2012 meeting between AICHR and the Drafting Group on the ASEAN Human Rights Declaration;
- AICHR should **publish the draft declaration**, in English and in all national languages of the region, in the earliest instance and allow adequate time for broad-based consultations before adopting the final text;
- The declaration should explicitly **recognize jus cogens or peremptory norms**, from which no derogation is permitted under any circumstances. The final text should also include a commitment to ensure all national legislations are drafted, interpreted and implemented in full compliance with international human rights law and standards.

FIDH would appreciate your acknowledgment of the receipt of this letter and remain at your disposal should you wish to discuss our recommendations. Please accept, Honourable Members of AICHR, the assurance of our highest regards.
Sincerely yours,

Souhayr Belhassen
President of FIDH

Debbie Stothard
Deputy Secretary-General of FIDH
Permanent Delegate to the ASEAN
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Endorsed by:

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