



**CRC Asia Submission on the ASEAN Human Rights Declaration (AHRD)
12 June 2012**

CRC Asia is a regional network of child rights organizations that work within ASEAN.ⁱ Having a mandate to mainstream child rights perspectives into processes related to human rights promotion and protection, CRC Asia intends to provide input to the ASEAN Intergovernmental Commission on Human Rights (AICHR) on the drafting to the AHRD. The intention is to ensure that the AHRD is consistent with the principles of and the rights guaranteed in the UN Convention on the Rights of the Child (UN CRC) and the Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography that have been ratified widely by ASEAN member states.

CRC Asia affirms that all human rights are universal, inherent and interdependent, and that children's rights are also human rights. We believe that civil and political rights (e.g. freedom of religion and association, and the right to be heard) as well as economic, social and cultural rights (e.g. the right to accessible and quality health care, the right to accessible, free and quality basic education, and the right to an adequate standard of living) that will be enshrined in the AICHR will guarantee the best interest and ensure the survival and development of children.

CRC Asia believes that the AHRD is a significant political document that will guarantee the rights of children and will set the parameters concerning states' obligations in the protection and promotion of such rights. We believe that the AHRD may have the potential to help strengthen government's compliance to the UN CRC and other human rights instruments by enhancing the mandate of ASEAN and its members to undertake regional cooperation in the area of human rights.

Given the importance of the AHRD, CRC Asia believes that all stakeholders including children and young people should be involved in a transparent and meaningful process. The AICHR should maximize the ASEAN Children's Forum (ACF) as ASEAN's official platform for children's participation and other national consultative mechanisms to inform children about the processes around the AHRD drafting and generate input from them. Such would help generate a sense of ownership of the AHRD amongst civil society as well as children and young people within ASEAN.

The content of the submission was derived from the inputs of CRC Asia members and networks. To ensure the participation of children and young people, the statements of children participants to the ASEAN Civil Society Conference/ASEAN People's Forum (ACSC/APF) that took place in May 2011 (Jakarta) and March 2012 (Phnom Penh) were taken into consideration and integrated into this document.

Non-Discrimination

The AHRD should guarantee that all children will be protected from all forms of discrimination whether based on their own or their parents, guardians or family's identity, beliefs, practices or status. Any non-discrimination provision should not restrict undertaking any affirmative action to rectify inequalities affecting children.

CRC Asia proposes that the following provision be included in the AHRD:

“Children should be protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, beliefs and political association of the child’s parents, legal guardians or family members.”

Best Interest of the Child

The said important principle enshrined in the UN CRC needs to be reflected in the AHRD. This will guarantee to children that all undertakings of ASEAN and its member states must have positive impact, contribute to their survival and development, and will lead towards creation of child-friendly societies.

CRC Asia proposes that the following provision be included in the AHRD:

“ASEAN Member States undertake legislative, administrative, social, educational and other measures to protect and promote the rights of all children. In all actions undertaken by the state and non-state actors, the best interest of the child shall be a primary/paramount consideration.”

Participation of Children

The AHRD should guarantee the right of children to be heard and not to reinforce the idea that children are only beneficiaries of action of governments or receive protection. It must emphasise that children be regarded as active subjects of rights. As such they should be entitled to receive adequate and appropriate information, to speak, to participate and to have their views taken into account in all levels and contexts. States should have the obligation to create mechanisms that will enable children to affect government decisions in a systematic manner.

CRC Asia proposes that the following provisions be included in the AHRD:

“ASEAN Member States shall provide the child an opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body.”

“ASEAN Member States shall respect the rights of the child to freedom of expression, which shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through the any other media of the child’s choice.”

“ASEAN Member States shall take all appropriate measures, including administrative and legislation to ensure full participation of children in the development of their community at all levels.”

Protection from physical or mental violence, neglect or negligent treatment, abuse including sexual abuse, maltreatment or exploitation

Provisions concerning the protection of the life, liberty and security of persons must be framed in a comprehensive manner covering violations undertaken at public and private sphere, and covering those acts perpetrated by state and non-state actors. In particular to children, they should be protected from all forms of violence; all forms of abuse inclusive of sexual, emotional, psychological and physical; neglect; maltreatment or exploitation by parents, other family members, and others having the responsibility as the care takers of the child.

It is important that the AHRD responds to one key recommendation of the UN Study on VAC, i.e. to prohibit all forms of violence against children and to strengthen international commitment. These recommendations shall work towards ensuring that international and domestic standards are comprehensive enough.

CRC Asia proposes that the following provisions be included in the AHRD:

“No violence committed against any child is justifiable or acceptable.”

“All persons have the right to protection from all forms of violence (physical, emotional and psychological) or abuse, neglect or negligent treatment, maltreatment or exploitation, inclusive of sexual abuse taking place at the public and the private spheres. Children, in particular, should be protected from all forms of violence while in the care of parent(s), legal guardian(s) or any person who has the responsibility as a care taker/duty bearer of the child.”

Birth Registration, Right to a Name and Identity

These rights guaranteed in the UN CRC must be provided in the AHRD. Birth registration is vital to the realization of economic, social and cultural rights because governments require such document to acknowledge the child’s existence, whether the child falls under their

jurisdiction. Children without birth registration are less valued and are vulnerable to discrimination. Birth registration is vital to protecting children from early marriages and from recruitment and use in armed conflict. In ASEAN, birth registration is required to access immunization programs (Burma/Myanmar and Thailand), health care (Thailand), school enrolment (Cambodia, Indonesia, Myanmar, Philippines, Thailand and Vietnam).

CRC Asia proposes that the following provision be included in the AHRD:

“Everyone has the right to be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, in the case of children, the right to know and be care for by his or her parents.”

Traditional practices prejudicial to the health of the child

The AHRD should be more specific to address traditional practices that are harmful to children’s health. The Committee on the Rights of the Child have identified examples of these practices: all forms of female genital mutilation/circumcision; binding, scarring, tattooing, piercing, branding; initiation ceremonies; deliberate discriminatory treatment of children involving violence (e.g. lack of care towards children with disabilities); forms of discipline which are violent or prejudicial to health; and early marriage.

CRC Asia proposes that the following provision be included in the AHRD:

“ASEAN member states shall take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children.”

Right to Rest, Play and Recreation

This right is guaranteed in both the UDHR and the CRC. The CRC Committee’s General Comment No. 7 (Implementing Child Rights in Early Childhood) considered “play” as one of the distinctive features of early childhood. The said general comment gave value to play as contributory to the development of the child’s full potential as it enable children to challenge their current capacities, and entails exploratory learning. The right to play of children, however, is faced with several challenges such as excessive chores (especially affecting girls) and competitive schooling, and poor urban planning where housing density, transportation, pollution and crime creates a hazardous environment for children.

CRC Asia proposes that the following provision be included in the AHRD:

“Everyone has the right to rest and leisure. Children, in particular, have the right to engage in play and recreational activities appropriate to the age of the child.”

Duties and Responsibilities

The stress on individual's responsibility to the state and community is problematic. First, it may be interpreted to legitimise acceptance to policies, customs and practices that are contradictory to human rights. ASEAN should understand that reporting of violations of human rights is being hindered because of possible repercussions from the state or alienation from the community. A child may not be prevented from voicing out concerns (e.g. violence perpetrated by a parent or person of authority) because he/she may be viewed as a bad or disrespectful child. Second, there are no adequate limitations on the exercise of duties and responsibilities. This may help legitimize the participation of children in armed conflict and other national service that may be performed for the State.

Any provision that makes the interpretation of universality of human rights contingent upon the usage of regional or domestic particularities is problematic. This poses as a problem because this might open the doors for the AHRD to legitimize culturally or socially accepted practices that are detrimental to the rights of children such as the usage of children in armed conflict as justified by religion, the practice of corporal punishment, and denial of children from voicing out concerns at the level of family. We also need to note that many countries have reservations or declarations on the CRC invoking culture as the basis.

The AHRD should fully stress on the role of the state create conditions necessary to ensure the realization of human rights. These conditions necessary to ensure human rights should include the provision of necessary support for persons whose rights have been violated; and measures undertaken by the state to eradicate prevailing laws, regulations, customs and practices that prevent, infringe or contradict human rights.

CRC Asia proposes that the following provision be included in the AHRD:

“ASEAN member states have the duty to take all appropriate measures to promote physical and psychological recovery and social reintegration of a person whose rights have been violated.”

“Everyone whose human rights have been violated has the right to an effective and enforceable remedy that promotes his/her physical and psychological recovery and social reintegration, to be determined by a court or other competent authorities.”

Limitations of Rights

Provisions that would allow restrictions to all human rights for purposes of protection of public health or morals or the protection of the rights and freedoms of others in a democratic society are problematic. Such manifest a lower standard compared to the UDHR and other international instruments where such conditions that may allow restrictions only for certain rights for example freedom of speech and assembly.

The drafting of the AHRD should bear in mind the 1986 UN General Assembly Resolution (41/120) which includes guidelines relating to the elaboration of new international standards/instruments. The said resolution urges UN Member States to give due consideration to the established international legal framework and to avoid undermining existing standards in any way when developing new international standards. The said resolution was also reaffirmed in the 1993 Vienna Declaration and Programme of Action.

CRC Asia proposes that the following provision be included in the AHRD:

“Nothing in the present Declaration shall affect any provisions which are more conducive to the realization of human rights and which may be contained in the law of the State or International law in force for that State.”

ⁱ CRC Asia is composed of the following organizations: Save the Children Sweden, Terre Des Hommes Germany, Southeast Asia Coalition to Stop the Use of Child Soldiers, NGO Advisory Committee for the Follow-up to the UN Study on Violence Against Children, P.S. the Children (Malaysia), The Life Skills Development Foundation (Thailand), Mindanao Action Group for Children’s Rights and Protection (Philippines), Vietnam Association for the Protection of Children’s Rights (Vietnam), CENFORCHIL (Vietnam), Institute for Social Studies (Vietnam), Human Rights Education Institute of Burma (Burma/Myanmar), United Against Child Trafficking (Burma/Myanmar), NGO Coalition on the Rights of the Child (Cambodia), Yayasan SEJIWA (Indonesia), Sahabat Perempuan dan Anak Indonesia, Yayasan KKSP (Indonesia), Children’s Human Rights Foundation (Indonesia), Hong Kong Committee on Children’s Rights. Further information about CRC Asia can be obtained from the website (www.childrightscoalitionasia.org).