

EU-Southeast Asia CSOs Submissions to the EU-ASEAN Human Rights Dialogue 2019
Brussels, 27 November 2019

On behalf of CSOs* that participated in the EU-Southeast Asia CSOs Meeting in parallel with the EU-ASEAN Human Rights Dialogue, we would like to submit the following recommendations to strengthen human rights - including labour rights-protection within ASEAN and the EU. The submission sets out ongoing threats faced by human rights defenders, journalists and activists working on behalf of the aforementioned or other communities and key human rights issues in the regions. Repressive laws are used to target human rights defenders, especially marginalized groups such as women, children, ethnic, religious minorities, atheists and humanists, as well as LGBTI (lesbian, gay, bisexual, trans, and intersex) defenders, who remain subject to fabricated charges, state-sanctioned violence, imprisonment and extrajudicial killings.

In order to document key human rights concerns in the national and regional level for the protection and promotion of human rights in ASEAN, there is a serious need for an effective communication mechanism between CSOs and AICHR. It is also important to ensure corporate accountability by ensuring human rights within their business operation. In addition, civic space is under serious threat in the EU and ASEAN, with stark repression of freedom of expression, assembly, association and religion or belief—both offline and online. As open civic space and full participation is vital for the realisation of the Sustainable Development Goals (SDGs), we urge the EU and ASEAN member states to address the current situation that hinders the implementation of SDGs and widens the inequality gap within and among countries in the regions.

Lastly, we would like to express our appreciation toward EU and ASEAN for organizing this meeting. We believe that this marks a pivotal moment for a better communication, coordination, and meaningful engagement between CSOs, ASEAN, and the EU in our common aspiration that no one is left behind.

We request for the inclusion of the attached submission as part of the official meeting notes. We urge immediate steps to be taken towards the implementation of the recommendations, and will monitor such steps accordingly.

* The CSOs and members of the academia (acting as individuals) are representing ASEAN Youth Forum, ASEAN SOGIE Caucus, Asia Justice and Rights (AJAR), Asian Forum for Human Rights and Development (FORUM-ASIA), Cambodian Human Rights and Development Association (ADHOC), CIVICUS: World Alliance for Citizen Participation, Christian Solidarity Worldwide (CSW), International Federation for Human Rights (FIDH), Human Rights and Development Foundation (HRDF), Human Rights Working Group (HRWG), People in Need, Southeast Asia Freedom of Expression Network (SAFENET), Solidar, Weaving Women's Voice's in Southeast Asia (WEAVE), World Vision, Dr. Andika Ab.Wahab (Malaysia), Dr Kevin W. Fogg (Oxford, UK)

Representatives of CSOs from Southeast Asia and the EU, gathered in Brussels on 26 November 2019 to discuss recommendations for the EU and ASEAN for the protection of human rights in the two regions. The meeting covered the SDGs in terms of their implementation and impact on human rights; peace, access to justice and civic space, including the heightened threat for human rights defenders; and discrimination and violence affecting marginalised communities including the LGBTIQ+ community, religious minorities and non-believers, women, migrants and refugees, and people with disabilities, among others. It also covered the right to development, including access to education and health. The CSO meeting was a parallel event within the EU-ASEAN Human Rights Dialogue, which took part on 27 November 2019.

The world we are living in now,

In Southeast Asia, despite the fact that ASEAN member states have made policy pronouncements on building a “rules-based, people-oriented, people-centered, dynamic, resilient and harmonious ASEAN community” as declared in the ASEAN Community Vision 2025, the ASEAN is at a crossroads as it enters a new development period characterized by uncertainties, instabilities and high security risks.

Power shifts and regime changes in some ASEAN countries have led to the undermining of democratic processes with the rise of authoritarian and populist leaders resulting in widespread violations of human rights including extrajudicial killings, forced disappearances, ethnic cleansing and severe violations of freedom of religion or belief and freedom of association- all contributing to a human rights crisis in ASEAN. Furthermore, despite the resurgence of ASEAN integration which could extend as far as regionalism, ASEAN’s principle of non-interference – which also applies to its human rights institutions – remains an insurmountable obstacle to addressing human rights violations, and even major crises, in its member states.

During the first decade of the existence of the ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN region has witnessed widespread and systemic human rights violations perpetrated by state authorities through the region, as well as abuses by non-state actors. The state of human rights in ASEAN member states has continued along a deteriorating trajectory. After a decade of its existence, the AICHR has yet to mature into an effective regional human rights mechanism. Unfortunately, to date, it has failed to provide protection and serve as a regional recourse for victims of human rights violations for people whose own states have failed to protect them.

In addition, spaces for LGBTIQ+, Environmental, Land and Women’s human rights defenders are continuously being challenged. In some countries, they are continuously shrinking while in others they are co-opted by state-led conservative forces. Non-state actors, organized under conservative and extremist interpretations of religion and operating with the support of the government, pose

as a threat against LGBTIQ+ activism. Government actors, including ministries responsible for religion and internal security, exert effort to delegitimize LGBTIQ+ identities and activism. Resistance against LGBTIQ+ activism is informed by the following discourses: LGBTIQ+ identities are foreign to ASEAN; LGBTIQ+ identities are inconsistent with religion and public morality; LGBTIQ+ identities are a threat to state defined national development in some ASEAN countries.

Globally, there is already a growing recognition of the rights of persons of diverse SOGIESC in human rights frameworks. The adoption of UNHRC Resolutions, the creation of the IESOGIE mandate, the increasing references to SOGIESC in UPR recommendations and treaty bodies concluding observations serve as evidence. This development has not trickled down in ASEAN. Since its inception, the AICHR has not issued a policy statement affirming the rights of LGBTIQ+ persons as inherent in the ASEAN Human Rights Declaration. The ACWC has made a reference to LGBTIQ+ children as one of the vulnerable sub-groups who are at risk of facing violence; this is reflected in the ACWC Plan of Action on Violence against Children.

Criminalization of consensual same-sex relations and of gender self-determination exists in many countries, including Brunei, Indonesia, Malaysia, Myanmar and Singapore. National legislation imposing the penalty of death towards LGBTIQ+ persons exist in Brunei. Criminalization and other discriminatory laws have serious repercussions on LGBTIQ+ person's access to healthcare, education, housing and other social protection programs. Despite the importance of an anti-discrimination legislation, as recommended by UN bodies, legal and policy measures are minimal within the region.

The mega trends of shrinking civic space, rise of authoritarian and right-wing populist leaders are similar with the EU where mixed migration, misogyny, sexism, discriminations to (sexual and religious) minorities, as well as restrictions of fundamental freedom hinders the protection of human rights. Furthermore, there is an urgent need to improve protections against discrimination in cases involving the politicization of religion, which often victimizes those who do not belong to the majority or established religion. The more closely that religion and State are intertwined, the more likely that dissenters and minorities will be a target for discrimination, hostility and violence. The absence of equal protection for minorities and dissenters, combined with policies and practices that undermine guarantees of equal citizenship and thus foster marginalization and exclusion, make those communities particularly vulnerable to those seeking to perpetrate offences against them.

Given this context, we collectively urge **ASEAN and the EU to:**

- Oppose all attempts to undermine human rights and promote the respect of human rights by all states in line with their international and constitutional obligations;
- Reiterate and systematise civil society consultation in all future human rights dialogues through the support of EU-ASEAN CSO Forums, taking into account the added value of cross regional solidarity work to address human rights trends and developments;

Specific recommendations to the EU, ASEAN and their member states on thematic areas are as follows:

1. Discrimination, gender, vulnerable groups and violence

- Enact legislation and policies prohibiting all forms of discrimination and violence against women, religious minorities and non-believers, and LGBTIQ persons, as well as repeal laws and policies that criminalise or persecute people on the basis of their gender, sexuality or religious beliefs;
- Ensure that development programs, in line with the sustainable development goals (SDGs), are designed and implemented inclusively and in a way that advances freedoms of expression, freedom of association and peaceful assembly; freedom of religion or belief and promotes inter-religious and inter-racial peace and dialogue; as well as affirms the principle of "no one left behind"; in particular, strategies must note the particularities of LGBTIQ persons lived experiences;
- Promote and ensure meaningful participation of marginalised groups, including women, the disabled, ethnic minorities, religious minorities, non-believers and LGBTIQ persons in the development, design and evaluation of national development frameworks and programs of action;
- Invest in economic empowerment programs for LGBTIQ persons, especially those from most marginalised sub-groups. These programs may include access to technical education, access to resources for livelihood, guaranteeing equal employment opportunities, support for creation of cooperatives, access to finance to support women, the disabled, ethnic and religious minorities and LGBTIQ entrepreneurs;
- Develop measures that aim to make school and education environments safe from all forms of violence and respects diverse identities of students; the EU should to support work to evaluate curriculums and develop inclusive learning materials for students that protect and enhance respect for the rights of freedom of religion or belief, women's rights are SOGIESC-inclusive;
- Support the generation of LGBTIQ+ specific data that will be used for designing inclusive development programs and to assess/evaluate reach of existing programs, whether they are being enjoyed by LGBTIQ+ persons; this should be done in a manner that respects right to privacy, content and ensures security of LGBTIQ+ persons from reprisal;
- Prioritise access to justice of women and girls in the context of sexual violence and other forms of gender-based violence in regional and national agendas; develop protocols or guidelines to address sexual violence especially those that are trans-national in nature, as negative and discriminatory views against girls are prevalent contributing to societal norms that are discriminatory in nature and contributes to a culture of violence against women and girls;

- Take appropriate measures against the rise of gender-based violence online, in particular with regards to attacks against LGBTIQ+ and women human rights defenders;
- Protect the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- Acknowledge issues relating to discrimination of people with disabilities and people affected by mental health issues; adopt measures to raise awareness of these issues and provide for mental health support for the people affected, including human rights defenders victims of harassment leading to mental health issues;
- Adopt appropriate measures for the protection of vulnerable migrants, including women, children, LGBTIQ+ people, ethnic minorities, and people with disabilities; all States should end the criminalisation of undocumented migrants and of humanitarian help provided to migrants. As a first step, ASEAN Member States should all ratify the Geneva Convention on the Protection of Refugees;
- Ensure and provide services of the rights to education for all children, especially girls- regardless their, citizenship status, religion or belief, sexual and gender identity, health condition, among others;
- Ensure action to tackle discrimination against religious minorities and measures to promote freedom of religion or belief for all in education.

Specifically, ASEAN, its mechanisms and its member states must:

- Ensure the role of independent civil society to monitor the implementation of RPAs on ERAW and EVAC in collaboration with ACWC and ACW;
- Create through the ACWC a knowledge-sharing platform for best practices;
- Establish a permanent mechanism to listen to the voices of children and address their concerns;
- Establish through its human rights mechanisms a partnership with the South Asia Association for Regional Cooperation, in particular with the South Asia Initiative to End Violence Against Children, to discuss the protection of Rohingya children, in close cooperation with civil society;
- Acknowledge, address and take action on the rise of the issue of online sexual abuse against children;
- Engage with international mechanisms for the protection and promotion of freedom of religion or belief, including but not limited to the UN Special Rapporteur for Freedom of Religion or Belief, the EU Special Envoy for

Freedom of Religion or Belief and other envoys and bodies, governmental and non-governmental, around the world working to defend freedom of religion or belief.

- Call on AICHR to address migration issues, including refugee protection, migration and trafficking in persons;

2. Human Rights, Civic Space and Access to Justice

ASEAN and its member states should:

- Respect the fundamental rights of peoples including ensuring freedom of expression, freedom of association and assembly and freedom of religion or belief;
- Ensure in law and in practice an enabling environment for civil society organisations including trade unions;
- Release all political prisoners/detainees and drop all charges against dissident voices;
- Promote and protect human rights defenders, including especially the labour, environmental and land, women, as well as youth and children's rights defenders, and enable their participation in all decision-making processes;
- Review and revise the ASEAN Charter particularly on providing spaces for CSOs to engage fully at the policy and implementation levels;
- Ensure substantive participation of CSOs in the work of 'panel of experts' to review AICHR's Term of Reference, to advance its protection functions by including the creation of a complaint mechanism and investigative function; and amend AICHR's modality to ensure open and independent selection mechanisms as well as giving fiscal independence to AICHR to support its protection and promotion mandate. The ToR review is pivotal to ensuring independence and effectiveness of AICHR;
- Call on AICHR to create a special desk and or focal point for human rights defenders protection;
- End all forms of militarism and the misuse of emergency laws and security related legislation;
- Allow the AICHR, ACWC, ACW and other relevant regional bodies to develop regional strategies to report, assess, review and discourse on the progress and challenges around the implementation of the right the development among the ASEAN Member States;

- Allow the AICHR, ACWC, ACW and other relevant regional bodies to support the UN-led reporting, assessment and review of the progress and challenges around the implementation on the right to development (i.e., UPR or Special Rapporteur on the Right to Development);
- Allow the AICHR, ACWC, ACW and other relevant regional bodies to explore the development of dispute settlement mechanisms in addressing issues and grievances around the right to development;
- Support the ACWC to follow up on the Regional Review on Laws, Policies and Practices within ASEAN related to the identification, management and treatment of victims of trafficking especially women and children with in-depth and more specific analysis for different sub-topics;
- Support the ACWC to be more open and up to date in providing information to the public, including on relevant human rights developments in the region and within countries, but also budgets and work plans;
- Support the ACWC to consider and deliberate on the possibility of having a complaint mechanism similar to that existing at the international level under CEDAW and CRC Committees, as part of its function as stated in paragraph 5.12 of the ToR, to propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violations of the rights of women and children, including the protection of victims;
- Support the ACWC to utilise its mandate and functions to advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage AMS to ensure respect and protection of their rights and improve their situation, as stipulated in paragraph 5.4 of the ToR;
- Create a better alignment strategy for engaging with the AICHR and other ASEAN Sectoral Bodies beyond invitations to events and short meetings.
- Acknowledge and fulfil the digital rights including right to access, right to express, and right to be safe on the digital world; and to give the Internet back to the civil society as its role for the democratisation and decentralisation of the power and information
- Channel resources, support, and upscale participatory, transparent and democratic governance of technologies, ensure peoples' ownership and control of their data, and evaluate the potential impacts on human health, society, livelihood and the environment prior to technological deployments;
- Uphold and integrate people's digital rights in the ASEAN digital masterplan, on cybersecurity cooperation, and data protection and privacy;
- Ensure press freedom is respected, including online, for instance through immediately stopping prosecuting and dropping all pending charges against activist filmmakers and journalists for conducting their legitimate activities,

including through posting content on social media; allowing domestic and foreign journalists to access remote and close regions of countries;

- Continue the discussion and ensure the inclusion of Timor Leste within the ASEAN.

The EU should:

- Fully implement the EU Guidelines on Human Rights Defenders in its relations with the ASEAN as a whole and with its Member States, including through encouraging the EU Delegations in ASEAN countries and the EU Delegation to the ASEAN to engage with regional mechanisms as well as national institutions. EU Delegations should also establish a regular and meaningful dialogue with human rights defenders, and support their activities and their safety, including through trial monitoring, in particular indigenous and environmental rights defenders who might be located in remote communities, or who might be targeted because of their cooperation with UN mechanisms;
- Improve coordination between EU Delegation and EU member states' embassies to facilitate the rapid issuance of visas to human rights defenders who are forced to temporarily leave their home countries. EU states should also push for establishment of a humanitarian visa regime.
- Train EU Delegation staff on the EU Guidelines on human rights defenders and ensure proper replacement for HRD focal points within EU Delegation when this position is absent.

The EU and ASEAN should:

- Take steps to ensure a safe and enabling environment for the exercise of the right to defend and promote human rights. This includes (i) public recognition of the positive role of HRDs, including journalists, trade union representatives, women and environmental human rights defenders and other activists, including in the area of sustainable development; (ii) repealing legislation which restricts and criminalises this right; (iii) provide adequate protection including those HRDs at risk, particularly to those defending environmental rights; and (iv) fight impunity by conducting impartial and independent investigations into acts of violence committed against HRDs and their families, protesters, and bringing those responsible to justice;
- Acknowledge the specific discrimination and violence that women, religious minority, and LGBTIQ+ human rights defenders face, including feminicides, gender-based violence, and online harassment and attacks against their families and children; develop specific tools to address the challenges faced by women human rights defenders;
- Guarantee the fulfillment of freedom of assembly, freedom of association and freedom of religion or belief, by ending all attacks against

these freedoms through reducing the excessive administrative burden on civil society organisations, ending the use of registration status to withhold funding or prevent organisations to conduct their legitimate human rights activities; as well as ending the excessive use of force against protesters;

3. Inclusive Development

- The ASEAN and EU Member states should strengthen social and economic justice, and ensuring fair redistribution of wealth, resources, power, and opportunities for all;
- The ASEAN and EU Member states should implement effective economic and social reforms in view of achieving equitable distribution and benefits of economic growth to all segments of society;
- The ASEAN and EU Member states should formulate development strategies and policies that ensure inclusive and meaningful participation of the most vulnerable and marginalised segments of the society;
- The ASEAN and EU Member states, as well as private entities should improve redistributive policies, as well as to ensuring basic services critical for the realisation of human development, including universal health coverage, water and sanitation, energy, education, housing and food;
- The ASEAN and EU Member states should design and implement progressive tax policies and retention of state resources, and encourage domestic resource mobilisation by ending illicit financial flows;
- The ASEAN and EU Member states should alleviate poverty by considering resilience building initiative, and to look into developing and using a multi-dimensional approach in measuring poverty beyond income;
- The ASEAN and EU Member states should develop appropriate data collection methodology to capture those who are (previously or likely) excluded; and disaggregated data should be made available to the general public to stimulate policy discourse;
- The ASEAN and EU Member States should guarantee free and universal access to health for all, with special provisions for vulnerable groups and individuals, such as women, religious minorities, LGBTIQ+, children, people with disabilities, indigenous people, migrants and internally displaced persons;
- All stakeholders, including the States, members of CSOs and the community as a whole – to work together to remove structural socio-economic, political and cultural barriers that hinder the full enjoyment of the right to development;

The EU should:

- When designing development cooperation projects in ASEAN countries, make the tackling of poverty and inequalities and the protection and promotion of human rights as priority themes, while ensuring meaningful participation of local human rights defenders and communities for guidance and advice;
- Support the final ban all forms of asbestos, and particularly chrysotile asbestos, as well as support the ASEAN in developing a common approach to the use of chemicals, such as the one EU has developed through the REACH directive. Asbestos has been and remains the biggest cause of occupational health issues in Asia, while significantly few Asian countries have ratified the 1986 ILO Asbestos Convention, compared to the global average;

4. **Corporate Accountability for Human Rights**

- The EU and ASEAN Member States must respect their extraterritorial obligations including, regulating transnational corporations;
- Both the EU and ASEAN should develop a comprehensive legislative framework on business and human rights in order to hold transnational corporations accountable for the human rights violations they are responsible to; this includes (1) implementation of the UN Guidelines on Business and Human Rights, (2) actively engaging in the negotiations for the adoption of a Binding Treaty on transnational corporations and human rights, (3) developing regional instruments to hold corporations accountable, such as a EU legislative instrument on mandatory human rights due diligence for European businesses, (4) adopt national pieces of legislation increasing business accountability;
- EU member states should lead by example and recognize the need to go beyond voluntary measures by developing, implementing and enforcing mandatory human rights due diligence requirements for all companies headquartered or operating within their jurisdictions, or strengthen these requirements where they already exist;
- AIHCR should receive reports related to human rights violations caused by the implementation of so-called 'development' projects—including but not limited to land-grabbing—and for AIHCR (and, within its mandate, ACWC) to promote understanding of economic and property rights for small-holders, women, and marginalised communities including indigenous peoples;
- As the EU has to design and implement its trade policy in order to respect and consolidate human rights, it should, including with ASEAN countries, set up independent monitoring and complaint mechanism to deal with the human rights impacts that the free trade agreements and investment agreements may have on populations. This mechanism should monitor the human rights impacts of the agreement, allow individual complaints and facilitate people's access to appropriate remedies (including when adverse

effects result from the agreements' dispute settlement mechanisms). The mechanism should offer procedural guarantees, must effectively decide on the requests submitted to it and give reasons for its decisions. As regards guarantees of non-repetition, the monitoring and complaint mechanism will be empowered to make recommendations to the various committees set up by the agreements. Measures to assess the independence of Civil society monitoring mechanisms are needed;

5. Accountability, Transparency and Partnership

- The EU, the ASEAN and their Member States should publicly state their support for civil society and against harmful rhetoric labelling human rights defenders as terrorists, threats to development or human traffickers; and ensure that any legislation taken to pursue legitimate security objectives only includes measures that are necessary, proportionate and predictable and cannot be used to harass or target human rights defenders;
- The ASEAN and EU Member States should strengthen good governance, peaceful, just and transparent rule of law and democracy, as the key conditions for the effective promotion and fulfilment of the right to development;
- The ASEAN and EU Member States partner with and include the civil society in their economic planning and reforms. The States should stimulate efforts to implement a gender-responsive budgeting and other policy decision making processes;
- A framework of engagement between CSOs and panel of experts that produce concrete output for the promotion of protection of human rights, including the formulation of Terms Of Reference, needs to be established;

6. Strengthening Environmental Protection and Addressing Climate Change

- The ASEAN and EU Member States should fully integrate a sustainable rights-based approach to their development policies and bear a fair share of the climate change mitigation and adaption efforts;
- The ASEAN and EU Member States should identify methods for effective data collection on the environmental impacts of development policies; and
- The ASEAN and EU Member States and corporations should implement environmental, social and human rights impact assessments in their policy decision / document, business operations and/or investment agreements.