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The ASEAN Human Rights Declaration: Establishing a common framework

By Joel Ng

Synopsis

The process of drafting the ASEAN Human Rights Declaration has illustrated the competing tensions between old and new norms in ASEAN. Resolving these issues need not be a zero-sum game, and can focus on a common framework of human security.

Commentary

The draft ASEAN Human Rights Declaration is expected to be discussed at the 45th ASEAN Foreign Ministers Meeting on 9 July 2012, and submitted for adoption by the 21st ASEAN Summit in Phnom Penh in November.

Civil society engagement in the process began with a consultation between the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN civil society representatives in Kuala Lumpur on 22 June 2012. The text of the draft was not released, although “elements” of the Declaration were published, showing several rights that would be highlighted in the Declaration. According to a Cambodian official, civil society organisations (CSOs) did not need to see the draft as that would overly complicate the process.

Indonesian Foreign Minister Dr Marty Natalegawa, in a meeting with ASEAN CSOs in Jakarta on 29 June, was more measured: He suggested that there was more room for diplomatic negotiation if the draft were not released; this would avoid a hardening of positions if certain lines of the draft were associated with certain member states. Nevertheless, Dr Natalegawa assured them that some form of the “elements” would be published and this would be “the same” as the actual draft Declaration.

However these positions did not satisfy human rights activists, concerned with specifics in language that could have important legal implications. They are particularly concerned with any limitations on rights – especially if not attached to specific rights – that could provide loopholes or escape clauses for human rights violations. Examples of such exist in several ASEAN countries’ laws, where there are wide discretionary powers or reservations under the concern for “national security” – which may not be well-defined.

Old and new norms

ASEAN was founded as a security-oriented organisation, concerned with inter-state conflict and strengthening the newly-independent states outwardly. It thus entrenched sovereignty and non-interference as basic commitments in agreements such as the Treaty of Amity and Cooperation. This has led to what is termed the

“lowest common denominator” approach, where agreements are made only at the level comfortable to all states.

An ASEAN Human Rights Declaration would go further. As human rights are fundamentally concerned with mediating relations between a state and its populace, a regional instrument would be in tension with the norms of non-interference and sovereignty. Moreover, CSOs cite the commitment by ASEAN for its people “to participate in and benefit fully from the process of ASEAN integration and community building.” The drafting process of the Declaration, in their view, has not met this goal, nor – it is feared – will the final Declaration, if limitations are inserted on non-specific grounds of national or regional particularities.

Several ASEAN states are not yet ready to commit to a legal framework of human rights protection. If the Declaration includes qualifiers that derogate human rights under unspecific conditions, it may go below international standards such as the Universal Declaration of Human Rights and the 1993 Vienna Declaration. The ASEAN Declaration also cannot both be a lowest common denominator of existing protections (where some states lack explicit protection of human rights in their laws), as well as a framework for future cooperation on human rights, as stipulated in AICHR’s terms of reference.

A human security framework

These issues were present in 1993 when the Vienna Declaration was signed, and it resulted in a concurrent Bangkok Declaration that enunciated an Asian position and introduced the derogation of rights under certain security considerations. What has not been as evident in Asian discourse since then is the link between human rights and security. Democratic regimes with participatory mechanisms are often better equipped to deal with societal tensions than authoritarian regimes with narrow access to power.

Human security expanded the concept of traditional notions of security (usually revolving around the state or regime), to focus on wider definitions such as economic, health, food, and political security. In this framework, human rights contribute to the political security, and by doing so, reduce potential antagonism between the state and disparate groups.

Recognising ASEAN’s original security-oriented posture, CSOs would do well to demonstrate clearly how the human rights protections they are calling for will contribute to regional security. What may be self-evident to them must be communicated to policy-makers effectively, so that there is no perceived conflict between specific rights and national security. The members of ASEAN that have emerged from authoritarian regimes know this best of all, and can offer useful lessons on how to manage these issues and avoid CSOs being perceived as diametrically opposed to governments.

ASEAN too, should recognise that even as their success in preventing inter-state conflict has demonstrated the success of the organisation, the continuation of long-running internal conflicts has exemplified the limits of its effectiveness. Local political forces, often sub-regional within states, can exacerbate on-going tensions, as witnessed in Rakhine state in Myanmar recently. While protecting national security is a legitimate concern of all states, the wording in the Declaration must not be arbitrary and open to discursive capture by small groups of local elites.

An important step forward

Notwithstanding these differences, the ASEAN Human Rights Declaration will be an important step forward for the region. National plans of action will be expected and regional and sectoral frameworks for human rights cooperation will be accelerated. The process has given many CSOs their first opportunity to be engaged in national dialogue with their governments. Indonesia has backed CSOs to have another opportunity to give their input, and AICHR will discuss final issues in October.

Regionally, the more democratic states must balance between the demands of civil society and the risk of rejection by the less liberal regimes. ASEAN too is balancing between old norms and new commitments to a people-centred community. While the final Declaration may not ultimately please everyone, it will mark the beginning of a framework for future cooperation in human security.

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