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Title	ASEAN human rights declaration : a pragmatic compromise
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Citation	Ng, J. (2012). ASEAN human rights declaration : a pragmatic compromise. (RSIS Commentaries, No. 211). RSIS Commentaries. Singapore: Nanyang Technological University.
Date	2012
URL	http://hdl.handle.net/10220/11694
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No. 211/2012 dated 21 November 2012

ASEAN Human Rights Declaration: A Pragmatic Compromise

By Joel Ng

Synopsis

The ASEAN Human Rights Declaration is a historic document that sets out a common framework for protection of human rights in the region. While some clauses are controversial, the declaration represents the consensus of members with pragmatic concerns for their security.

Commentary

THE ASEAN Human Rights Declaration (AHRD) signed by the heads of government of member countries in Phnom Penh on 18 November 2012 represents a new normative standard for the region governing the relationship between states and their citizens. This sets out principles by which the states have committed to upholding individual rights and freedoms.

Despite reservations on the part of some civil society groups, the new normative standard for human rights in the region should not be underestimated.

Governing principles

Nine general principles of the AHRD put the individual person as the bearer of rights and freedoms without any kind of distinction, and with equal protection before the law. It then follows with civil, political, social, economic and cultural rights, as well as specific rights to development and to peace.

Human rights activists, however, have focused on the limitations set out in Article 8, which states that the exercise of rights and freedoms “shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society”.

These limitations themselves are not *carte blanche*, as the following article states that “the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicisation shall always be upheld”.

Give and take in the Declaration

The AHRD reflects the compromise struck by ASEAN's diverse members on the basis of consensus. In ASEAN, procedural norms have been extremely important in allowing agreements to be concluded. The failure of the AMM to issue a joint communique in Phnom Penh in July underlined the importance of reaching consensus among members.

Earlier drafts of the AHRD contained whole sections on limitations as well as responsibilities of individuals whose rights the document was intended to protect. These reflected the pragmatic concerns of some members who would have been concerned with the practical implications of a rights-based approach. Nevertheless, the degree of compromise is reflected in the omission of these sections, condensed into Articles 6 to 8.

Human rights activists can take satisfaction that their calls to adhere to the spirit of a human rights document were heeded. Although the drafting process was criticised for not being inclusive and participatory enough, several countries did make last-ditched efforts to widen the consultations following criticism, and these did have an effect, even if not all the public demands were finally met.

The qualification in Article 40 states that "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act ... at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties".

The Phnom Penh Statement on the Adoption of the AHRD further states that its implementation must be in accordance with the UN Charter, the Universal Declaration of Human Rights, and significantly, the Vienna Declaration and Programme for Action. Reiterating these commitments, the chapeaux of Articles 10 and 26 affirm all the civil, political, economic, social and cultural rights of the Universal Declaration of Human Rights.

Common framework

Like other ASEAN declarations, the AHRD retains the autonomy of states to formulate their own legal instruments for human rights protection. Nevertheless, it sets the ASEAN region on a common framework for upholding human rights, while stating several individual rights that have not been expressed in such clear terms before. This is particularly salient for those countries that have few human rights instruments to draw upon.

The Declaration may be seen as a collective commitment by ASEAN states, even while they need to flesh out how these principles will be implemented in their own countries with national plans of action and legislative reform where necessary. Civil rights activists could argue that their governments do not have the monopoly on defining "national security" nor "public morality", and that human rights contribute to these objectives in defining a plural space of tolerance in ASEAN's diversity.

However the AHRD was not meant to be a legally-binding document from the outset, and further conventions and agreements must follow with more legally-precise terms if enforcement is to be meaningful. Activists who have sought to use regional architecture to bypass political structures in individual countries and accelerate reforms they seek will be disappointed, but ASEAN has never been intended to impose a governance structure for the region.

However, by consolidating and enunciating the existing norms, it contributes to human rights protection by ensuring there cannot be regress, as often witnessed in ASEAN's turbulent history. In the meantime the AHRD should not be dismissed on the basis of certain articles in isolation, lest that leads to a return to confrontational stances that could undermine the advancement of human rights in the region.

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