

ENGAGEMENT, VISION, RESPONSE A COMPARISON OF CSO ENGAGEMENT AND TACTICS IN RELATION TO THE ASEAN CHARTER AND THE ASEAN HUMAN RIGHTS DECLARATION

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This article examines civil society tactics for engagement and advocacy before and after the passage of the ASEAN Human Rights Declaration and contrasts them with civil society tactics during the drafting and the ratification process for the ASEAN Charter. The article focuses on organizations and movements which self-identify as part of the civil society movement within Southeast Asia.

Civil society advocacy efforts, on both the Declaration and the Charter, can be broken down into three phases: engagement within the ASEAN structure, proposal of an alternative vision, and response to the finished product. With both the ASEAN Charter and the ASEAN Human Rights Declaration, civil society groups initially worked towards entering the drafting process through interface with the relevant ASEAN institutional actors. In response to the lack of success of this first approach, some civil society actors adopted the additional tactic of laying out an alternative vision through the creation of a 'Peoples' document' to stand in contrast to its official counterpart. Finally, when the relevant ASEAN instrument was adopted, civil society actors re-oriented their advocacy to respond to the final and official instrument. The article ends with an examination of some of the differences between these two civil society campaigns, and the variables that may underlie these differences.

ASEAN, as a body, has been marked by an unwillingness to provide space for civil society organization (CSO) involvement, especially space where CSOs could contest the direction and form of ASEAN policies (See e.g. Gerard 2014; Shigemasa 2013; Lopa 2012; Schmidt 2010; Arlegue 2010). The ASEAN accreditation process for civil society groups has been tightly controlled and state-directed; the original accreditation guidelines only allowed quasi-governmental or governmental organizations to apply for accreditation (Shigemasa 2013, p. 93), and even after the reformation of the Guidelines in 2012, the great majority of the organizations that are currently accredited to engage with the regional institution “look like guilds for ASEAN” (Ibid.). Currently, there are only a few accredited CSOs that engage in policy advocacy or rights-related work (See Gerard 2014, p. 84; Collins 2008 p. 329 at fn. 9).

This accreditation process is emblematic of the broader ASEAN attitude towards CSO engagement, demonstrating that such engagement is “determined and directed by the state elite ... It is a top-down process where ASEAN establishes the objectives that the CSOs pursue” (Collins 2008, p. 315). As a result of this top-down nature, “CSOs are forced to either accommodate ASEAN’s political project in order to interact with officials, or they are excluded from such interaction” (Gerard 2014, p. 15). The result is a limited set of circumscribed spaces for CSO engagement, with such engagement offering even fewer opportunities for CSOs to discuss or contribute to ASEAN policy formulation.

This dynamic remains in place with the ASEAN Intergovernmental Commission on Human Rights, or the AICHR, the “overarching” body for human rights in the region (AICHR Terms of Reference, Art. 6.8). Until very recently, there were no formal entry points for CSOs to influence policy or the work product of the AICHR, to share their views or recommendations with the body, or to enter into dialogue with the body. The adoption of the Guidelines on the AICHR’s Relations with Civil Society Organizations in February of 2015, more than five years since the adoption of the AICHR’s Terms of Reference, now allows CSOs to have a “consultative relationship” with the body.

Under the Guidelines, CSOs who wish to work with the AICHR must go through an approval process where they are first ‘screened’ before their application is considered at plenary, an event which means that—as a result of the AICHR’s consensus-based decision-making—every ASEAN state has a de facto veto over any CSO’s application (AICHR CSO Guidelines, Art. 9). CSOs, in order to enjoy this consultative relationship, must accept a list of vaguely worded obligations including not only the obligation to comply with national regulations (which becomes problematic when one considers laws within the region which restrict freedom of speech, expression, and assembly beyond the bounds permitted under international law) but also the obligation to “refrain from any conduct which will undermine the mandate and functions of the AICHR” (AICHR CSO Guidelines, Art. 12). Further, CSOs are obligated to refrain from any actions “motivated

by political interests” against Member States, with suspension or revocation of the CSO’s approval being the penalty for non-compliance (AICHR CSO Guidelines, Art. 13).

Upon receiving this consultative status, CSOs can submit written statements, receive an advance copy of the AICHR agenda, and be invited by the AICHR for consultations based on the AICHR’s discretion (AICHR CSO Guidelines, Arts. 16, 18). Overall, a reading of these Guidelines reveals that the “consultative relationship” envisioned within the document is a conditional privilege rather than a relationship where CSOs are seen as partners in the work of building a rights-respecting ASEAN.

Before these recently-adopted Guidelines, however, there was not even the opportunity for CSOs to engage in such a formal relationship with the AICHR. For the great majority of the AICHR’s existence, CSOs have had to look to the body’s enabling documents for clues on how to engage formally with the body.

The AICHR’s Terms of Reference (TOR) and Rules of Procedure do not offer any mandate for CSO engagement except for in the vaguest terms: Article 4.8 of the TOR charges the body to “engage in dialogue and consultation” with entities associated with ASEAN, “including civil society organizations and other stakeholders,” but links this mandate with Chapter V of the ASEAN Charter, which—as noted above—dramatically restricts the amount of space available to CSOs. Otherwise, at Article 4.9 of the TOR, the AICHR may “consult, as may be appropriate” with other institutions and entities. But given the ASEAN values of consensus and non-interference, such discretionary consultation cannot be expected to result in meaningful engagement (See generally Forum-Asia 2012).

Given all this, and as is demonstrated below, the key challenge for CSOs and similar stakeholders such as peoples’ groups or social movements has been realizing points of access into ASEAN processes, including those which result in key policy instruments for the ASEAN community. The drafting processes for both the ASEAN Charter and the ASEAN Human Rights Declaration offered a “window of opportunity—more political space allowed by ASEAN for track 2 and 3 actors to intervene” (Shigemasa 2013, p. 94); civil society’s attempts to utilize this window, and to react when it was clear that this window was not as wide as originally hoped, have significant commonalities in both instances.

1. Civil society and the ASEAN Charter

1.1. The ASEAN Charter Drafting Process and a Lack of CSO Space

The drafting of the ASEAN Charter was met with initial expectation amongst CSOs that they could contribute meaningfully to the drafting process; such optimism, however, waned as early opportunities for engagement failed to translate into meaningful

consideration of CSO proposals for the final document. The ASEAN Charter drafting process began in 2005, with the appointment at the ASEAN Summit of an Eminent Person's Group (EPG) to provide recommendations for the potential charter. The EPG comprised primarily of retired government officials, known for their "experience" and "gravitas" within ASEAN (Collins 2008, p. 323). The EPG was seen as generally more encouraging of CSO involvement (Ibid., see also Gerard 2014 pp. 88-94) than its successor mechanism, the inter-governmental High Level Task Force (HLTF). The HLTF, which comprised of senior officials from its member states' Foreign Ministries, functioned as the actual drafters of the Charter.

"While [CSO] submissions were initially well received by the Eminent Persons Group" note Olivet and Brennan (2010, p. 74), "they did not go beyond the High-Level Task Force which was finally responsible for the actual drafting". The HLTF met in a formalized setting with CSOs once, in March of 2007, which Collins (2008, p. 325) acknowledges was itself "some achievement" when considering "some ASEAN members reluctance to meet with CSOs at all" (see also Gerard 2014, p. 94). Despite this, "The contrast between the EPG's willingness to engage with CSOs and the HTLTF was stark, and it did not bode well for the ASEAN Charter reflecting CSOs hopes" (Collins 2008, p. 325). CSO recommendations made during the HLTF-CSO consultation, notably, did not find a place in the final form of the Charter (Gerard 2014, p. 94). The process was also marked by a lack of transparency; public access to the Charter only occurred on November 7th, a mere 13 days before the Charter was officially signed, and only due to a copy being leaked to the media (SAPA-WGA 2007).

1.2. CSO engagement within the ASEAN structure on the Charter

Civil society efforts to engage with ASEAN during the Charter drafting process occurred primarily through the recently-formed Solidarity for Asian People's Advocacy Working Group on ASEAN, or SAPA-WGA. SAPA-WGA engaged with the EPG several times, presenting its views on the proposed ASEAN Security Community in April of 2006, submitting its opinions on the Economic Community that June, and submitting proposals on the Socio-Cultural Community in November of that year (Lopa 2011 p. 5; Collins 2008, p. 323; SAPA-WGA 2007). Also throughout 2006, SAPA-WGA conducted in-country consultations in eight different ASEAN countries, collecting information from the people of ASEAN regarding what type of Charter they wanted. The outputs of these consultations found form in many of the recommendations that the CSO coalition provided to both the EPG and the HLTF (Lopa 2011). Collins (2008, p. 323) notes that, through these proposals, this civil society coalition hoped to demonstrate two specific roles that it could perform with and for ASEAN: "First, to use their expertise to be agents for creating caring societies within an ASEAN community, and secondly, to have an institutionalized input into ASEAN's decision-making apparatus".

1.3. Presenting an Alternative Vision: the ASEAN Peoples' Charter

At the November 2007 ASEAN Civil Society Conference, civil society representatives began calling for the launching of an ASEAN Peoples' Charter. This Peoples' Charter was envisioned as a document that would represent civil society hopes for a people-centered instrument. Framers of the document took pains to illustrate that the drafting of the Peoples' Charter was not meant to stand in opposition to the actual ASEAN Charter but "instead, to illustrate the ideal charter people have in mind" (Chandra & Djamin 2007). It was a document designed "to complement the ASEAN Charter," not to supplant it (Samydorai 2008). Nonetheless, the Peoples' Charter aimed to serve as a powerful critique of the formal Charter by representing the document that could have been, a "democratic aggregation of the aspirations of the people of ASEAN" (Ibid.) as opposed to the state-centered document which civil society advocates were increasingly convinced the actual ASEAN Charter was becoming. "The emergence of the ASEAN People's Charter proposal," summed up two SAPA-Working Group leaders, "really reflects the uneasiness of the people of Southeast Asia to allow a handful of ASEAN policy-makers to decide their fate" (Chandra & Djamin 2007).

Despite this, the Peoples' Charter is most notable for the efforts taken by CSOs to create and proclaim the document, not for any success it gained after its adoption as an alternative vision to the official Charter. While civil society leaders discussed the potential and merits of such a Peoples' Charter during the efforts made to create it, references to the document, post-creation, are notably absent.

1.4. Criticisms of the ASEAN Charter after its Signing

Upon the signing of the actual ASEAN Charter in November of 2007, critical observers, including many civil society groups, retained several serious concerns. Some of the main concerns revolved around, firstly, the continued lack of any meaningful institutional space for civil society (See e.g. Collins 2008, p. 326). Secondly, there was the concern that the enshrinement of the ASEAN non-interference principle would be used to silence criticism on issues such as fundamental freedoms, human rights standards, or democratization. Thirdly, there was dismay over the 'watering down' of more progressive elements of the Charter (Anwar 2009, p. 45). Fourthly, there were the lack of provisions for human rights standards, with the establishment of the ASEAN human rights body (in Article 14 of the Charter) being vague and cursory (SAPA-WGA 2007), and with a lack of mechanisms for human rights enforcement.

This was despite the "landmark inclusion" of human rights in both the Preamble and the Principles of the Charter (SAPA-WGA 2007). SAPA-WGA noted, unfortunately prophetically, that "Article 1.7 qualifies the promotion and protection of human rights 'with due regard to the rights and responsibilities of the Member States of ASEAN'. This wording is dangerous, because it undermines the fundamental elements of the

universality and inalienability of human rights. It is not made clear what these ‘rights and responsibilities’ of member states are, leaving the way open for governments to violate human rights in the pursuit of their self-defined ‘national interest’” (SAPA-WGA 2007).

1.5. CSO response to the Charter

As a result of all this, SAPA-WGA concluded in a statement a few days before the Charter’s release, the Charter was “a disappointment . . . “a document that falls short of what is needed to establish a ‘people-centered’ and ‘people-empowered’ ASEAN” (SAPA-WGA 2007). SAPA-WGA went on to lay out a variety of specific comments on the Charter, illustrating where they saw the Charter falling short of its promise (Ibid.).

The Charter, despite being signed by the heads of state of all ten ASEAN nations, still required ratification by the different ASEAN member-states before it would become a binding treaty; this would not occur until December 2008, after Thailand became the final member-state to ratify the treaty. This ratification process “brought to prominence the sharp differences that have divided partisans and critics of ASEAN” (Chachavalpongpun 2009, p. 2). Some civil society members and academics, especially in the more democratic nations within ASEAN, were vocal in calling for a delay of ratification or even the rejection of the Charter, although these voices remained in the minority during the ratification debate (Sukma 2009, p. 45). Critics of the document, pointing to the flaws alluded to above, argued that given the drawbacks, “it probably makes better sense not to have a Charter at all and to continue as ASEAN has been doing without a binding constitution” (Anwar 2009, p. 39).

In response, many other civil society members and academics responded with arguments underscoring the possibilities for ASEAN to develop into a more people-centered body as a result of the Charter. Many of these arguments centered around or were related meaningfully to human rights.

In response to criticisms regarding the basic description of the proposed human rights body within Article 14, those more supportive of the Charter argued that the establishment of a human rights body offered opportunities that would be lost if the Charter failed to be ratified. Ray Paul Santiago, of the Working Group for an ASEAN Human Rights Mechanism, for example, cautioned that “Let us not slam the door on any opportunity or opening which will allow CSOs to engage ASEAN further for the promotion and protection of human rights ... what is important is that the regional human rights body will be in place” (Working Group for an ASEAN Human Rights Mechanism 2007).

During this debate, supporters and critics of the Charter took different stances towards the Charter. Indonesian Parliamentarian Djoko Susilo noted that, during the debate within Indonesia of whether or not to ratify the Charter, Congressional members fell into three main camps: Immediate Ratification, Wait-and-See, or Total Rejection (Susilo

2009, pp. 10-11). This tri-partite breakdown of responses can be applied more broadly to concerned groups and civil society organizations struggling with how to react to a document that fell short of the hopes that many had, but that still contained some potential.

But in other ways, this grand difference of opinion equaled little more than a focus on different tactics to achieve the same ends. As Sukma (2009) sums up, the “divergent views on the status of the ASEAN Charter” are simply that “One view maintains that the Charter should be ratified first, and then amended later. The opposite view argues that the Charter should be amended first before it is ratified” (Sukma 2009, p. 57). The ultimate goal, then, was the same: amendment of the Charter to form a more progressive, enforceable and people-centered document. The question was simply whether tactics of rejection or of acceptance would achieve these goals more effectively.

2. Civil society and the ASEAN Human Rights Declaration

2.1. The AHRD drafting process – perpetuating a reluctant relationship

The reticence of ASEAN officials to engage with civil society or other stakeholders remained in place during the drafting process of the ASEAN Human Rights Declaration, or AHRD. Firstly, at no point did the AICHR formally release a formal draft for consideration. In fact, the drafting process for the Declaration was so secretive that the Terms of Reference governing the behavior of the document’s Drafting Committee included a “confidentiality clause” that bound the drafters from disclosing information (Forum-Asia 2012, p. 13-14; Forum-Asia 2013, p. 28). Beyond this, even the Terms of References for the Drafting Committee and the names of the Committee members themselves were not publicized (Forum-Asia 2012, p. 13-14). The closed-door nature of the drafting process continued when the AICHR itself took over the drafting process in January 2012, until the day the Declaration was released (Forum-Asia 2013, p. 28), and in fact was so pronounced that the AICHR even refused to show copies of the draft to other ASEAN officials during consultations with other ASEAN organs, causing these bodies to point out the “disrespectful” nature of a request for input into a document that they were not allowed to see (Ibid.).

Beyond this, individual Commissioners’ efforts to conduct in-country consultations with their own civil society members were often lacking; such efforts, notes human rights umbrella group, Forum-Asia, “varied widely, from extensive, inclusive consultations in a very small number of member states, through limited consultations in others to no consultations at all in several states” (Ibid., p. viii). The only states where national consultations took place were Thailand, Indonesia, Malaysia and the Philippines (Ibid., p. 29).

2.2. CSO Engagement within the ASEAN Structure on the Declaration

From the beginning of the ASEAN Human Rights Declaration drafting process, civil society groups attempted to lay out their vision and provide input for the Declaration itself. Most notably, this occurred when civil society coalitions created common statements of their hopes and expectations for the Declaration. One early such document was a June 2011 Civil Society Position Paper on the Declaration, submitted to the AICHR before the AHRD Drafting Group was even established. This Position Paper included a set of “guiding principles” which should underlie the content of the Declaration, a set of recommendations for the drafting process, and a list of rights and freedoms that should be included in the eventual Declaration (SAPA TF-AHR 2011).

As it became increasingly clear during the drafting process that AICHR engagement with civic stakeholders was severely lacking, civil society groups shifted their focus to the lack of transparency within the Declaration drafting process and the lack of engagement with civic stakeholders. An April 2012 Joint Statement, signed by over 130 local, national and regional CSOs, called upon the AICHR to: Immediately publicize the draft AHRD; conduct consultations at national and regional levels; to translate the AHRD into national and local languages, and; to ensure an inclusive consultation process (April 2012 Joint Statement). These recommendations were later further endorsed by a collection of international human rights organizations (May 2012 Joint Statement).

In May of 2012, the AICHR representatives agreed to a consultation with civil society; however, as Gerard (2014) notes unhappily, this was not a result of the CSO advocacy directly to ASEAN officials, but rather on CSOs “rel[ying] heavily on external pressure” from the international community and global groups in order to induce the AICHR to relent (pp. 133 & 144), the most notable example being the UN High Commissioner for Human Rights, who had been vocal in her support of civil society’s inclusion in the drafting process (OHCHR 2011).

The AICHR eventually held two formal Regional Consultations with civil society on the proposed ASEAN Human Rights Declaration (Forum-Asia 2013, p. viii). But these consultations themselves were rather limited, both in terms of membership and of substance. Many civil society groups whose expertise would have been valuable, but who were viewed as particularly critical voices by some member-states, were not invited; in fact, some CSOs were informed that member states had used their consensus-based “veto” power to block the groups from attending (Forum-Asia 2013, p. 31). And for the groups that were able to attend, Petcharamesree (2013, p. 52) notes that, although “all AICHR representatives agreed” that the CSOs’ “inputs were meaningful,” nonetheless there was not much success in having these inputs included in the draft (see also Gerard 2014, p. 127).

Partially in spite of these limitations, and partially because of them, CSOs worked hard to create a unified and clear message laying out civil society concerns before these consultations. Coalitions of civil society organizations met before each such consultation to create a Joint Submission identifying civil society's position on the Declaration, with the aim of influencing the AICHR during the drafting process.

In June of 2012, days before the first AICHR-CSO consultation, 48 CSOs and peoples' movements created a Joint Submission in June to address substantive and procedural aspects of the Declaration and its drafting process. The June Joint Submission contained proposals for different wordings of articles within the Declaration, but its authors noted that the proposed language was created drawing upon "the partial and insufficient information at our disposal" regarding the content of the draft Declaration (Kuala Lumpur Joint Submission 2012). This lack of information is evident at many points throughout the Joint Submission, with much of the Joint Submission's suggestions being in response to "apparent inclusion[s]" of problematic language within the official draft, or to concerns that the official language would be problematic (Ibid.).

Shortly before the second AICHR-CSO consultation (which was held on September 12th), at least 62 CSOs and peoples' movements met at a Civil Society Forum on the ASEAN Human Rights Declaration held in Manila on 10-11 September. This civil society forum produced a second Joint Submission, one which began by reiterating concerns that the AICHR consultations were insufficiently broad and that no ASEAN-wide national consultation process appeared to be occurring. This Joint Submission was able to offer more concrete proposals for the content and wording of the Declaration, given CSOs' access to informal drafts of the Declaration by that time (See e.g., Petcharamesree 2013; Forum-Asia 2012 pp. 27-29).

This Manila Joint Submission was extensively discussed during the September AICHR-CSO consultation, so that it was a success in stimulating a formal conversation between the AICHR and civil society groups regarding the substance of the draft, albeit "very belatedly" (Forum-Asia 2012, p. 29). But, as Forum-Asia notes, "this came at a time when negotiations over the text had all but concluded. So while CSO representatives made a very strong case for changes in the text that would bring it up to international human rights standards, they inevitably hit the brick wall of the ASEAN rule that decision-making would be carried out by 'consultation and consensus'" (Ibid.). In other words, while the Joint Submission was a useful tool for getting the AICHR representatives to formally discuss the substance of the draft Declaration with civil society, it was too late in the process to stimulate any changes to the text, and unable to overcome the 'veto power' that each AICHR Representative had over the proposed changes.

2.3. Presentation of an Alternative Vision: The ASEAN Peoples' Human Rights Declaration

Given that the Joint Submissions had provided CSOs the opportunity to discuss their own vision of the Declaration, to the point of creating specific language as well as a comprehensive list of rights, many CSOs agreed that it would be useful to take the additional step of creating an 'ASEAN Peoples' Human Rights Declaration'. Similarly to the ASEAN Peoples' Charter, the ASEAN Peoples' Human Rights Declaration aimed to function both as a shadow Declaration which would demonstrate the short-comings of the actual Declaration and as an example of what kind of human rights instrument could emerge if free from government interference. The Declaration was formally endorsed by 57 CSOs—with many of these organizations serving as umbrella organizations for dozens of organizations within one country or across the region—and the final draft of the Declaration was finished on November 14, 2012, a mere four days before the actual ASEAN Human Rights Declaration was officially promulgated.

The Peoples' Declaration aimed to serve both as an advocacy tool and as an instrument for capacity building and awareness raising among domestic constituencies, by illustrating how rights-based and people-centered language could be incorporated into regional instruments. And, by juxtaposing the Peoples' Declaration with its official counterpart, CSOs could show where language was inserted to safeguard States' interests in the actual Human Rights Declaration (See Appendix for example).

In some ways, it should be noted, the strategy of drafting a Peoples' Declaration indicates a concern among CSOs that more direct engagement with the ASEAN institutional structure would not yield results. To put it another way, CSOs expected that the Peoples' Declaration would juxtapose so clearly with the official Declaration only because previous civil society attempts to influence the draft document were unsuccessful. Civil society groups would have felt no need to create a Peoples' Declaration, even before the ASEAN Human Rights Declaration was actually promulgated, if they believed that the official Declaration would have incorporated their recommendations.

The goals of the Peoples' Declaration, then, stand in contrast with the goals of the Joint Submissions. While the Joint Submissions were aimed at the AICHR Representatives in an attempt to influence the development of the official Declaration, the Peoples' Declaration was developed as a result of the concern that the official Declaration would be flawed, and was instead aimed at pursuing a model of advocacy in which flaws in the Declaration would be highlighted in order to bring attention to their negative aspects.

Much like the ASEAN Peoples' Charter before it, the Peoples' Declaration inspired much brainstorming and discussion during the effort to create the document, but failed to play a major role in advocacy campaigns after its creation. Similarly to the Peoples' Charter, there was a more sustained discussion early in the process about what the Peoples' Declaration

would do, than follow-through later in the process on what the Peoples' Declaration had done. It seems that when it comes to both 'Peoples' Documents,' civil society has been effective in articulating its vision of a people-centered ASEAN agreement, but has struggled with effectively using the resulting documents as effective tools for comparison with their formal counterparts.

2.4. Criticisms of the ASEAN Human Rights Declaration after its Signing

The official ASEAN Human Rights Declaration was established on 18 November 2012, to strong criticism. It was notably problematic that the Declaration failed to provide any provisions on certain marginalized groups, such as indigenous peoples and LGBT peoples. Beyond this, the Declaration failed to include several key freedoms such as the right to freedom of association. However, the great majority of the critical response—from civil leaders and outside observers alike—has centered around the fact that General Principles 6 through 8, of the set of General Principles which form the foundation of the document, fall below international human rights standards by seeming to provide a list of excuses member states may use to violate or otherwise not uphold human rights (See e.g. ICJ 2013; November 2012 Joint Statement).

Seemingly realizing that these General Principles would not be palatable to either regional civil society or the international community, the AICHR quickly issued the Phnom Penh Statement, which sought to reassure that the AHRD would be in accordance with international law. But the relationship between the Phnom Penh Statement and the Declaration is unclear, and insufficient to undo the harmful effect of the General Principles. Additionally, as Dr. Yuval Ginbar of Amnesty International has pointed out, “the Statement refers to ASEAN instruments as well as to international law, thus looping back to the same norms which would seek to undercut international human rights standards” (Ginbar 2014).

As the General Principles provide the context for the entire Declaration, the result is a dramatic undercutting of the entire ASEAN human rights framework of which the Declaration was envisioned as the linchpin.

2.5. CSO responses to the Declaration

Many civil society organizations, as a result of these problems, have reacted by declaring their rejection of the Declaration. In an open letter issued days after the Declaration was formally adopted, fifty-four civil society groups jointly declared that “This Declaration is not worthy of its name. We therefore reject it. We will not use it in our work as groups engaged in the protection of human rights in the region. We will not invoke it in addressing ASEAN or ASEAN member states, except to condemn it as an anti-human rights instrument. We will continue to rely on international human rights law and standards, which, unlike the ASEAN Human Rights Declaration, provide all individuals,

groups and peoples in ASEAN with the freedoms and protections to which they are entitled” (November 2012 Joint Statement). The signatories ranged from high-profile global groups with a strong regional presence, such as Human Rights Watch and Amnesty International; to regional organizations and umbrella groups such as Forum-Asia, the ASEAN LGBTIQ Caucus, and the Southeast Asian Committee for Advocacy; to various national groups within ASEAN member countries, which comprised the significant majority of signatories.

Others have been less condemnatory. While there is a deepening knowledge among civil society that the Declaration is seriously flawed, some groups are encouraged by the Declaration and believe that, despite its flaws, it opens up space and potential advocacy opportunities within ASEAN. Other groups have adopted a ‘wait and see’ attitude, wondering whether and how governments will actually attempt to implement the Declaration. Shigemasa (2013) sums up the various reactions of human rights actors towards the AHRD as falling into three camps: “accept[ing] the Declaration with a compromise (having something was better than having nothing); contend[ing] with the components of it with possible improvements; and totally disregard[ing] it with disdain” (p. 96). Notably, this mirrors the tri-fold reaction that Susilo (2009) identified as occurring with some constituents during the ASEAN Charter ratification process.

Those who prefer a more critical engagement argue that, with the Declaration standing lower than international standards, it is impossible for civil society groups to utilize the document without compromising their principles on the importance of human rights. Conversely, those who prefer a less confrontational approach point out that, with so few entry points into the ASEAN human rights system, rejection of the AHRD closes doors where not many were open to begin with.

Despite all this, there is again the dynamic that these various views over the AHRD are all secondary to the consensus that the Declaration needs to be amended. Ging Cristobal, of ASEAN SOGIE Caucus (ASC) and the International Gay and Lesbian Human Rights Commission (IGLHRC), notes that these groups have taken a ‘reject’ stance. At the same time, she notes, “the ASC is also part of a larger coalition that has taken a more conditional reject position, so that ASC can work with the system to amend the document, to show where it is lacking and how we can change it.” As she explains it, the differences are more significant on paper than they are in practice: “This is not an acceptance without conditions,” but rather “an acceptance with the goal of amending the problematic portions. It is a sweet rejection versus a bitter rejection” (Cristobal 2014).

Khin Ohmar, Coordinator of the SAPA Task Force on ASEAN and Burma, has similar sentiments: “At the end of the day the document is there . . . We have the same goal, and the rest is a nuance of the messaging. Some groups are more indirect, and some are more straightforward, but we all agree that this is not good enough” (Ohmar 2014). Interestingly, Ohmar notes that the discussion about how to react to the AHRD is similar

to that held by Burma CSOs on the country's 2008 Constitution, written by the military regime: "Some say we need a new Constitution, some say we should amend it. It doesn't matter; the point is that we need to change it" (Ibid.).

3. Comparing CSO Engagement with Both Documents

The two narratives for civil society efforts to engage with these major ASEAN documents, during and after their drafting processes, have been similar in many ways: There was a concentration and internal organization of CSO activity in preparation for potential engagement with the ASEAN institution, an attempt at engagement within the ASEAN institutional structure that increasingly turned to an articulation of civil society vision outside of this structure as CSO overtures were rebuffed, and then a collection of responses to the final ASEAN document that ranged from dismissal to cautious acceptance. Of course, there were important distinctions between these civil society efforts as well. These distinctions arise partially as a result of the differences between these two separate documents, but partially as a result of how civil society itself within ASEAN has changed, over time, in its understanding of regional developments.

The civil society response to the Declaration, notably, has been harsher than to that of the Charter. The voices urging against ratification of the Charter were, as Sukma (2009) describes, consistently "on the defensive" (p. 45) whereas a sizeable portion of the ASEAN civil society community has taken an additional step past simply demonstrating "disappointment" towards vocalizing a "rejection" of the Declaration.

One variable that explains the difference in reaction has to do with whether each instrument was perceived as retrogressive or simply more of the same. The ASEAN Charter was sharply criticized for the 'watering down' of its progressive elements and for the codification of pre-existing ASEAN norms seen as detrimental to the body's progress. In other words, many of the criticisms revolved around how the ASEAN Charter was more of the same, rather than a step forward.

By contrast, the ASEAN Human Rights Declaration has been seen as a step backwards, as a result of its problematic General Principles falling under the standards of international law. The debate over the utility of the Charter was summarized by academics as a "conflict between reality and expectation" (Chachavalpongpun 2009, p. 7); the hope that the document could in time become progressive versus the concern that it would calcify existing structures (Sukma 2009, pp. 55-56). The debate over the ASEAN Human Rights Declaration, in comparison, has been over whether the document is an encouraging step forward or a troubling step backward.

A second major difference is that the Charter went through a ratification process during which civil society could be included in a conversation about the Charter even after its final form had been decided. In contrast, the Declaration was presented as a *fait accompli*

after its signing. This placed civil society and other actors in a more stark position with the Declaration, while the ratification process of the Charter allowed for parties to express their dismay with the Charter but fall short of explicitly rejecting it.

Thirdly is the point that, in the five years between the Charter and the ASEAN Human Rights Declaration, civil society groups have been more confidently asserting their place within the ASEAN conversation (Lopa 2011). Events such as the civil society-operated ASEAN Civil Society Conference, the proliferation of regional umbrella groups and networks for civil society, and the increasing comfort of funders to back independent active civil society groups (Ibid.) have combined to create a more unified, vocal, and expressive civil society on regional issues. In addition, CSOs are increasingly turning to ASEAN as a forum for advocacy, recognizing the importance of engaging with this regional institution and advocating for an organization that provides space for civil society as a matter of course. This process was much further along during the drafting of the ASEAN Human Rights Declaration than it was for the ASEAN Charter. And for those who believe in the positive power of civil society, this increased commitment to ASEAN-level advocacy is an encouraging sign for the fulfillment of the goal of a people-centered ASEAN.

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APPENDIX: A Comparison Between the People’s Declaration and the ASEAN Human Rights Declaration: AHRD General Principles 6-9.

ASEAN PEOPLE’S HUMAN RIGHTS DECLARATION	ASEAN HUMAN RIGHTS DECLARATION
(No comparative article)	“The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms” (Article 6, General Principles).
All human rights and fundamental freedoms are universal, indivisible and interdependent. All ASEAN Member States, as part of the international community, must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis (Article 2).	All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds (Article 7, General Principles).
The rights and freedoms of all persons shall be exercised with due regard to the rights and freedoms of others, fostering and guaranteeing mutual respect and tolerance (Article 4.5, General Principles).	The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights 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 (Article 8, General Principles).
(No comparative article)	In the realisation of the human rights and freedoms contained in this Declaration, the principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation and avoidance of double standards and politicisation, should always be upheld. The process of such realization shall take into account peoples’ participation, inclusivity and the need for accountability (Article 9, General Principles).