Fact Sheet: ASEAN Human Rights Declaration (the “Declaration”)
Timeline: Due to be adopted in November 2012
CCHR Classification: YELLOW (usual criteria applied to a regional rather than Cambodian law)
Snapshot: The Cambodian Center for Human Rights (“CCHR”) has classified the leaked draft of the Declaration yellow: its premise is admirable; however, a number of articles go against the stated aim of promoting and protecting human rights in the Association of South-East Asian Nations (“ASEAN”). The Declaration – with full and transparent consultation with ASEAN civil society – must be reviewed and amended to ensure that this landmark document builds on the human rights standards set out in the Universal Declaration of Human Rights (the “UDHR”) and applicable international covenants. Furthermore, it should provide for an effective supra-national enforcement mechanism in the event of human rights violations.

Introduction
This fact sheet provides an overview of the recently leaked working draft of the Declaration, which is currently being drafted by the ASEAN Intergovernmental Commission on Human Rights (“AICHR”), and is due to be adopted in November 2012, at the conclusion of the annual ASEAN summit. The Declaration seeks to act as a foundational instrument that will facilitate the promotion and protection of the human rights and fundamental freedoms of the peoples of ASEAN. This fact sheet is written by CCHR, a leading, non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

The leaked draft of the Declaration – an overview
The leaked draft of the Declaration contains a number of positive provisions that seek to promote and protect the human rights of the peoples of ASEAN: the inclusion of a provision stating that corporations have a responsibility to respect human rights (Article 24); a provision that seeks to protect human rights defenders from arbitrary sanction or interference (Article 93); and efforts by Thailand to prevent discrimination against lesbian, gay, bisexual and transgender people and women (Articles 2 and 81), are all progressive provisions which are not only welcome but also demonstrate that the ASEAN community has the potential to lead the way in the promotion and protection of human rights. Furthermore, the draft Declaration also seeks to protect the economic (Articles 61-67) and social and cultural rights (Articles 68-70) of the peoples of ASEAN, and also contains specific provisions that aim to protect vulnerable groups in society, particularly women, children and the elderly (Articles 81-90).

However, despite the presence of the aforementioned progressive provisions, the Declaration presently contains a number of articles that are a cause for concern. Firstly, there are a number of articles that could be utilized to cement the rights of the state above claims to universal human rights and freedoms: Article 16 states that the realization of human rights must be considered in the context of “regional and national particularities”; Article 26 allows for member states to derogate from their duty to respect the human rights of their citizens in order to meet requirements of “national security, public order, the protection of public health or morals or the protection of rights and freedoms in a democratic society”. The use of such vague terminology in both of these articles gives rise to concerns that states will use such provisions to legitimate the violation of the human rights and fundamental freedoms of their citizens. Furthermore, there have been efforts to introduce qualifications to certain articles that would essentially allow for the restriction of the fundamental freedoms of religion (Article 46), expression and opinion (Article 47), and the right of a citizen to participate freely in the government of their respective country (Article 56).

CCHR classifies each law according to how acceptable it is in terms of its consistency with the Constitution and Cambodia’s obligations under domestic and international law, and the clarity of its provisions. Laws that are classified green are acceptable in the opinion of CCHR; laws classified yellow contain a number of concerns that should be reviewed and amended; and laws classified red are draconian and/or in violation of the Constitution and/or the country’s obligations under domestic and international law, and should therefore be rejected, annulled or re-drafted, as appropriate.
Such restrictions amount to an effort on the part of certain member states to water down the scope and application of the Declaration and ensure that the human rights of the peoples of ASEAN are subordinate to the rights of member states. If such restrictive provisions are included in the final Declaration, ASEAN runs the risk of falling below the minimum standards for human rights as set out in the UDHR and other applicable covenants which member states (such as Cambodia) may have signed. Furthermore, the Declaration could even be held up by member states as a substitute for the UDHR. If so, and the final Declaration falls below the minimum standards set out in the UDHR, the people of ASEAN would be worse off than they were prior to the Declaration – a disaster for the future of human rights in the region.

Enforcement?
While a human rights declaration that honestly espouses human rights would be a positive first step, it is only a halfway house if it is non-binding. For there is currently no provision for the creation of an effective enforcement mechanism through which individuals hold parties – namely governments and corporations – to account for the violation of their human rights. Without the implementation of such a mechanism, in other words a regional human rights court, the Declaration will be impotent – in danger of compromising the rights of the very people whom it should be serving. This lack of an effective enforcement mechanism is primarily due to a lack of political will on the part of ASEAN to interfere in the sovereignty and internal affairs of its member states. ASEAN member states continue to consider sovereignty to be absolute and seem unwilling to cede sovereignty in order to create an independent and impartial enforcement mechanism that will allow for adjudication on human rights violations throughout the entire community.

Drafting and consultation process
Thus far, the Declaration has been drafted behind closed doors, in utmost secrecy, with absolutely no attempt on the part of AICHR to consult or collaborate with civil society during the drafting process. Despite efforts by the governments of Thailand, Malaysia, Indonesia and the Philippines to engage with civil society at a national level, overall there has been minimal consultation – not sufficient or appropriate for a Declaration of such paramount importance to the region, which requires input from all stakeholders. The drafting process should be fully transparent, and there should be a region-wide consultation to ensure that the concerns of all ASEAN citizens are reflected – and their rights protected – in the final draft. CCHR calls for a regional civil society consultation to discuss the leaked draft to be organized as soon as possible.

Conclusion and recommendations
While a proposal to enshrine human rights at a regional level in the Declaration is a welcome move, there are still a number of concerns, relating to both the drafting process and the text of the Declaration itself, which need to be addressed before the Declaration can be considered to truly promote and protect human rights and fundamental freedoms in the ASEAN community. CCHR calls on AICHR to ensure that the drafting process is fully transparent and that efforts are made to engage with civil society at a regional level, in order to ensure that the Declaration reflects the concerns of the citizens of ASEAN. Furthermore, AICHR must ensure that the Declaration does not fall below the minimum standards for human rights as set out in the UDHR and applicable international covenants. Instead, AICHR should adopt progressive measures that show that the region can lead the way in the promotion and protection of human rights. Finally, in order for the Declaration to be effective, there must be provision for the creation of a supra-national regional enforcement mechanism, as, without such a mechanism, the Declaration will be rendered toothless.

For more details please contact Ou Virak (tel: +855 (0) 1240 4051 or e-mail: ouvirak@cchrcambodia.org) or Robert Finch (tel: +855 (0) 7880 9960 or e-mail: robert.finch@cchrcambodia.org).