The Association of Southeast Asian Nations (ASEAN) is 45 years old, but it has yet to enjoy wide recognition and support from the ASEAN populace. Many explanations have been offered for this, not least of which is the distance of the regional formation from the people that it is supposed to represent and serve. The long history of authoritarianism and unstable political environment in the region has also been cited. Recent developments, including the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the signing of the ASEAN Declaration on the Protection of Migrant Workers, did a lot to bring ASEAN to the attention of its people. However, more is needed before people in the region can truly identify with ASEAN.
A New Tradition for ASEAN?

Much has been said about ASEAN’s lethargy, how sticky its processes could be, and how long it would take before anything could be agreed on and decided upon. However, it cannot be denied that since 2005, when ASEAN decided to embark on the Charter building exercise, new energies were infused into the Association. The notion of an ASEAN Community and its most palpable manifestation – the ASEAN Economic Community – is no longer a pipe dream, but a reality that is both anticipated, and able to strike apprehension in many of the region’s stakeholders.

In the 21st ASEAN Leaders’ Summit in November 2012, many agreements and seeds of agreements were given space, among the major ones being:

- ASEAN Regional Mine Action Centre (ARMAC)
- The ASEAN Human Rights Declaration
- The Statement on the 10th Anniversary of the Declaration on the Conduct of Parties in the South China Sea
- The ASEAN Agreement on the Movement of Natural Persons
- The Joint Launch of Negotiations for the Regional Comprehensive Economic Partnership, with accompanying Guiding Principles and Objectives for Negotiations

Yet, while two related major initiatives were established in Phnom Penh earlier this month -- the Agreement on the Movement of Natural Persons and the ASEAN Human Rights Declaration (AHRD) -- there remains a divide between ASEAN and stakeholders outside its official processes.

The AHRD is being criticized for “balancing the enjoyment of fundamental rights with government-imposed duties on individuals, subjecting the realization of human rights to regional and national contexts, and broad and all-encompassing limitations on rights in the Declaration...”. It is lamented that “in many of its articles, the enjoyment of rights is made subject to national laws, instead of requiring that the laws be consistent with the rights”, and that it failed “to include several key basic rights and

There are various popular advocacies brought before ASEAN. The most known movements would be those around human rights, which pushed for the ASEAN Inter-Governmental Human Rights Commission (AICHR), among others; and around migrants’ rights, which seeks a regional instrument for the protection of migrant workers.
fundamental freedoms, including the right to freedom of association and the right to be free from enforced disappearance." (Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration: AHRD falls far below international standards", Submission by 55 national and regional organizations to ASEAN, 19 November 2012)

The Agreement on the Movement of Natural Persons, on the other hand, remains confined to “business visitors; intra-corporate transferees; contractual service supplier; (and) other categories as may be specified in the Schedules of Commitments for the temporary entry and temporary stay of natural persons of the Member State", and does not cover the millions of migrant workers that beg for attention in the region.

Many cry foul over civil society’s charge that the AHRD is a disaster and a setback rather than a step forward in human rights. The long winding, no doubt contentious and often painful process of coming up with the AHRD is nothing short of a breakthrough in ASEAN. Defenders say that, if only for this, the AHRD has to be hailed. Credit must be given to staunch reformers in ASEAN, like Philippine, Thai and Indonesian representatives to AICHR who, despite being constantly outvoted, kept pushing so that ASEAN Member States can be bound to basic minimum standards.

Yet critics also come from an honest place. Anything less than the international standards is not good enough. Indeed, these are difficult issues that, combined with the hazy struggles for or against supra-nationality, resolution cannot be pushed in one go.

But here lies the motivation, objective, and power of active citizenship in the era of regional integration. Just as ASEAN Member States are fond of so-called confidence building measures, so do the people need assurances and positive indications, for them to join the regional bandwagon.

Three important mechanisms readily come to mind, on how a regional project such as ASEAN can have more resonance with the people.

- **First**, having freedom of information (FOI) legislations in the ASEAN Member States to enable citizens to know, examine and interrogate the different initiatives of their Governments in the regional body;

- **Second**, adopting an ASEAN Information Policy, which shall govern information produced as a result of regional processes and agreements; and,

- **Third**, mechanisms for people’s participation, that shall provide the regular space for citizens and stakeholders to be a part of the ASEAN processes.

These mechanisms are crucial in order to broaden the reach of, and to democratize, ASEAN.

Equally important, there is the question of substantial advocacy – the content, not just the process of policy; the subject, not just the form of decision-making. Stakeholders are interested in FOI, the regional information policy, the consultation mechanisms, and other forms of participation, because they have specifics to offer. The human rights movement has been instrumental in the shaping of the AICHR and the AHRD, not just in how the process should proceed, but also in what they should contain.

The same can be said of many other advocacies: the instrument on migrant protection; regional natural resources governance, covering non-renewables like minerals and land; the ASEAN Food Security Framework; Climate Change; trade justice; and many others.

It is when the varied views are given adequate space in ASEAN, facilitated by the mechanisms for access to information and people’s participation, and considered as valid competent concerns, that real interaction can be achieved.

In Phnom Penh, Philippine President Benigno S. Aquino III called the attention of the Chair, emphasizing that no consensus has been reached on the issue of dispute claims in the South China Sea. Aside from a defense of the Philippines’ national interest, President Aquino’s action was significant in another way. It was a break from tradition and historical
practice where no Member would dare openly raise a controversial issue against another, lest that Member be offended or lose face.

We can only hope that this is the start of ASEAN’s breaking away from tradition, and blazing of a new path where things are discussed candidly at the highest levels, so that resolution of issues can be fuller in an atmosphere where openness is the norm.

With this hoped-for development, the challenge of receiving non-official, people’s inputs, might be easier to tackle. There might be an opening, but such an opening is still narrow. Only continued active citizenship, and a serious focus on regional initiatives, can ensure that this opening does not deteriorate, and instead grow towards greater inclusivity in ASEAN.

The ASEAN Charter entered into force in December 2007. It codifies the terms long held by the regional body, but also opens up certain spaces for people’s participation. Following are some spaces that may be explored:

**Chapter 1, Article 1: Purposes**

13. To promote a people-centered ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.

**Article 16:**

**Entities Associated with ASEAN**

1. ASEAN may engage with entities which support the ASEAN Charter, in particular its purposes and principles.

2. Rules of procedure and criteria for engagement shall be prescribed by the Committee of Permanent Representatives upon the recommendation of the Secretary-General of ASEAN.

The possibility of actually engaging ASEAN within its formal structure is complicated and governed by diplomatic protocol. Some ASEAN bodies are more open, or provides a wider opening for citizen’s access.

Below are the relevant organs of ASEAN, and the relative space they provide for people access:

The ASEAN Summit, composed of the Heads of State or Government of Member States, is the supreme policy-making body of the Association. There are two Summits every year, hosted by the Member State holding the ASEAN Chairmanship. (The Member States take turns chairing ASEAN; Chairmanship is for one year.)

There had been interfaces between ASEAN Leaders and non-state actors. The engagement with the business sector is more established, with the ASEAN Business Advisory Council (ABAC) given time to interact with the Heads of State every Summit. Since 2005, a limited interface with civil society was started. Unfortunately, subsequent interfaces were contentious, with Member States appointing their representatives, instead of leaving the choice to a civil society-led process.

The Coordinating Council, composed of Foreign Ministers, formulates and coordinates implemen-
tation of agreements and the work of different ASEAN bodies. This is by far the most inaccessible organ of ASEAN.

The Community Councils (ASEAN Political Security Council, ASEAN Economic Council, and ASEAN Socio-Cultural Council) oversee the Sectoral Ministerial Bodies, and ensure the implementation of decisions. Participation at this level would require engagement with national sectoral bodies, which receive inputs from civil society, and for the more open Member States, may include civil society representatives as part of their official delegation. No space for civil society is known to have been given at the Community Council level, though.

The Secretary General is the Chief Administrative Officer of ASEAN, and heads the ASEAN Secretariat. The Secretariat and the Secretary General facilitate and monitor progress of ASEAN work. The Secretary General follows the positions of the Member States, and has no decision-making powers. From experience, the ASEAN Secretariat and the Secretary General are the most accessible ASEAN offices. Because there is a basic structure, and a physical base in Jakarta, the ASEAN Secretariat is able to entertain basic queries and concerns, and have often facilitated submissions and requests for interaction from different stakeholders.

Each Member State appoints an Ambassador to ASEAN, who joins the others in the Committee of Permanent Representatives. The CPR supports the work of the Community Councils and coordinates with National Secretariats and Sectoral Ministerial Bodies. The CPR revised the Guidelines on Accreditation of CSOs, which it approved in November 2012. During the period that the Guidelines were being considered, the CPR did not share drafts, or hold consultations with CSOs about it. Much of the changes in the Guidelines are procedural; and while there are more spaces provided, e.g. attendance in ASEAN meetings and access to documents, these remain discretionary on the part of the ASEAN Secretariat and/or its sectoral body. The possibilities for CPR in facilitating people’s participation in ASEAN will depend on how receptive individual Representatives are to the idea.

Theoretically, the National Secretariats should be the most accessible offices, as they are based in-country. However, as they are usually hosted in the Foreign Affairs Ministry or Department, they lack natural cohesion with ASEAN’s functional bodies. Still the National Secretariats are sources of information related to a Member State’s ASEAN work – it can at the very least refer an interested party to the relevant national sectoral ministerial body that can best respond to her/his concerns.

There are two recognized human rights bodies in ASEAN: the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on Women and Children (ACWC). The AICHR has just concluded the drafting of the ASEAN Human Rights Declaration (AHRD), which it accompanied with a series of national and regional consultations. It also received written submissions and position papers from different stakeholders. However, until it was released for approval by the Heads of State, the official draft of the AHRD was shared only at the later stages of the national consultation, and only in the Philippines. CSOs also decried the weaknesses of the AHRD, and are now calling for its recall. The ACWC, on the other hand, is seen as a friendly commission, but its powers and functions have been put to question by the AICHR who wants it classified as its sub-committee.

The ASEAN Foundation has the privilege of being given a mandate for promoting people-to-people interaction within the ASEAN region. It has funds to support relevant projects, but is often bogged down by political considerations. One of its recent projects is a 5-year support to the ASEAN Corporate Social Responsibility (CSR) Network, composed of corporations who are being encouraged to adopt CSR in their operations.
A main obstacle to understanding ASEAN is the dearth of information on its activities and operation.

The state of freedom of information in Southeast Asia has gradually improved over the past decade, thanks to the on-going political reform process and social and economic changes taking place in most of the region. Still, only Thailand and Indonesia, and the Malaysian State of Selangor, have enacted freedom of information legislations. The Philippines has a Constitutional guarantee, but a law that further fleshes out its substantive and procedural details remains pending in Congress despite more than a decade of campaigning by public interest groups.

New technology facilitates easier and faster access to some information and platforms of expression, especially in open societies like Indonesia, Philippines and Thailand. In restricted countries like Burma, Vietnam and Laos, such are limited and often censored, except for what may be considered as non-sensitive matters. Restriction of information remains in place in both democratic and closed societies, especially the disclosure of contents critical of governments or perceived to be sensitive with respect to economic stability and state security.

As a group, ASEAN generates and keeps information that has regional importance. ASEAN negotiates many economic and political agreements that bind Member States to specific commitments. It is also a hub for free trade agreements (FTAs). These negotiations and policy-making in the region in general are non-transparent with little space for people’s participation. Often, negotiating these comprehensive agreements, with far-reaching implications on lives and livelihoods, are beyond the purview of citizens and are almost the exclusive domain of governments.

There is, therefore, strong basis for the clamor for access to information in ASEAN – both in terms of national legislation in Member States, and in terms of an ASEAN-wide policy that should govern information generated in the conduct of ASEAN affairs.

Intergovernmental bodies like the Asian Development Bank, World Bank, International Finance Corporation, and the European Union, have shown emerging standards for a right to information rule or policy in international organizations. The Global Transparency Initiative’s Charter Principles for international financial institutions (IFIs) also provide basic standards for information access in international bodies.

The ASEAN Charter itself provides sufficient basis to explore the development of a rights-based information disclosure policy:

**Article 1.7** To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;

**Art.1.13** To promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.

The same has been repeated in the Principles (i.e. respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice).

In the practical sphere, the three blueprints contained in the Roadmap for an ASEAN Community all contain clauses for a communications strategy that “will not only create greater public awareness of the various initiatives, outcomes and issues…but also enable all stakeholders to be involved in the process”. 
Mechanisms for People’s Participation

In early 2012, the Solidarity for Asian People’s Advocacy (SAPA) Working Group on ASEAN spearheaded a process of consultations towards the drafting of general principles and specific proposals on people’s participation in ASEAN. The position paper, which was endorsed by more than 100 national and regional organizations, was submitted to the ASEAN Secretariat, as an initial input to what it hopes to be a process of dialogue between peoples and ASEAN.

SAPA’s submission is motivated by a belief that “people should be equal partners and beneficiaries of regional cooperation”, and advances the following basic principles:

- Participation is a right and is central to democracy and good governance;
- People are both partners in and beneficiaries of development;
- People have a right to exact accountability from and participate in the processes of a public institution like ASEAN;
- Participation should be done within the context of transparency;
- Participation facilitates increasing people’s ownership of ASEAN and its various initiatives;
- Participation mechanisms should be designed with a recognition of diversity of cultures and identities of peoples in ASEAN; and
- The autonomy of civil society should be respected.

For effective participation, SAPA proposes that enabling mechanisms be instituted, specifically those that relate to access to information, communications policy, liaison, registration, and resources for participation. These enabling mechanisms include:

- Clear and simple ASEAN access to information policy with an expansive coverage, similar to those implemented in other international;
- A proactive communications policy and mechanism that socializes ASEAN’s activities, events and developments, and progressively endeavors to translate major declarations and policies into national languages;
- A Civil Society Liaison unit that serves as the initial contact point to ASEAN;
- An inclusive ASEAN Registry of civil society organizations; and,
- Funds and resources to facilitate people engagement (e.g. for ASEAN to use for needed consultation processes, or to send officials to attend civil society events).

SAPA also proposes basic modes of participation, including:

- A complaints system, to cover not just the participation guidelines of ASEAN, but also to receive formal submissions on grievances against negative impacts of ASEAN work;
- Parallel events organized by civil society in connection with official meetings; and parallel platforms organized by ASEAN to engage various stakeholders;
- Civil society participation in ASEAN-related meetings and activities;
- ASEAN-civil society collaboration on specific projects and initiatives, along established lines of expertise;
- Civil society submissions, whether or not solicited; and,
- Public consultations as a required process for policy/project development in ASEAN.
References

ASEAN – Association of Southeast Asian Nations
- Charter of the Association of Southeast Asian Nations (2007)
- ASEAN Human Rights Declaration (2012)

ASEAN Secretariat
- Guidelines on Accreditation of Civil Society Organizations (CSOs), 2012
- Roadmap for an ASEAN Community 2009-2015 (Jakarta: ASEAN Secretariat, 2009)
- Constructive Engagement: Building a People-Oriented Community (Jakarta: ASEAN Secretariat, 2010)

“Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration: AHRD falls far below international standards”, Submission by 55 national and regional organizations to ASEAN (19 November 2012)


SAPA – Solidarity for Asian People’s Advocacy Working Group on ASEAN

SAPA Working Group on ASEAN Task Force on Freedom of Information in ASEAN (SAPA TF on ASEAN FOI)
- Various internal documents (unpublished)

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