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Dear Mr. Darusman:

We write as expert advisers in our personal capacities concerning the project that has resulted in your organization's report, *Keeping the Faith: A Study of Thought, Conscience, and Religion in ASEAN*. Both of us have extensive international background on issues pertaining to freedom of religion or belief ("FoRB") and on international human rights more generally. We write in particular in response to a letter of 28 November 2014 (the "28 November Letter") from a series of major human rights organizations that criticizes the report for being anchored in Article 22 of the ASEAN Human Rights Declaration ("AHRD").

At the outset, we want to state that we agree with the fundamental point made by the 28 November Letter: namely, that the provisions of the AHRD fall short in significant ways of the full FoRB protections that have been articulated in other human rights documents, a number of which have been acceded to by ASEAN states, as indicated by the report. We acknowledge that there are grounds for concern in this regard, and hope that as the process of implementing AHRD moves forward, all such shortfalls can be addressed. But as Navi Pillay, the UN High Commissioner for Human Rights has said with respect to AHRD: "Other regions have shown how regional human rights systems can evolve and improve over time, and I am confident this will be the same for ASEAN." UN News Centre, 19 November 2012.

Over time, such improvements can be made by amending AHRD provisions, and even more easily, by construing AHRD commitments in ways that conform to the overall corpus of human rights instruments. But such improvements are less likely if there is no clear empirically based analysis of the actual compliance situation on the ground. That is precisely what the *Keeping the Faith* report seeks to provide. In a region where significant shortfalls exist in actual implementation of FoRB standards, it is not counterproductive to identify problems crying out for solution, even if solving these problems does not achieve full compliance with international norms. It may be more realistic to have interim targets that can lay the foundation for evolution toward full compliance.

It is important to emphasize in this regard that AHRD standards do not supplant the international obligations that ASEAN nations have taken on by ratifying other international

instruments. Nothing in the AHRD excuses countries from living up to the full range of international standards they have adopted. The ASEAN Human Rights process is significant, however, precisely because it is an internally generated set of norms that are unlikely to be seen as foreign impositions. In that sense, even though imperfectly framed, they may be highly effective in leading to concrete improvements in human rights performance.

We note in this regard that the *Keeping the Faith* report acknowledges the concerns expressed in the 28 November Letter (see note 164 and accompanying text). It cautions against prioritization of state interests over rights, and urges that Articles 6, 7 and 8 of the AHRD “should (at least) be read restrictively so as not to vitiate the rights guaranteed under the declaration.” Further, “ASEAN Member States should similarly read the respective limitation clauses in their constitutions restrictively to give the fullest protection to the freedom of thought, conscience, and religion.”

In short, while we welcome the attention the 28 November Letter gives to differences between AHRD and other international human rights instruments, we nonetheless believe that the *Keeping the Faith* report makes a significant and valuable contribution to practical advances in the protection of FoRB in ASEAN countries.

Sincerely yours,

Tore Lindholm

A rectangular box containing a handwritten signature in black ink that reads "W. Cole Durham, Jr.".

W. Cole Durham, Jr.