

**“Advancing Human Rights Through ASEAN:
Vehicle for Change?”**

**Statement of Catharin Dalpino
Adjunct Professor of Professional Practice,
School of Diplomacy and International Relations
Seton Hall University**

**Hearing Before the Tom Lantos Human Rights Commission
House Foreign Affairs Committee**

June 10, 2016

Co-Chairman McGovern and Co-Chairman Pitts,

Thank you for this opportunity to appear before the Tom Lantos Human Rights Commission on the topic of human rights in Southeast Asia and the possibility of expanding and protecting rights through the Association of Southeast Asian Nations (ASEAN). My testimony is informed by my previous responsibilities as a Deputy Assistant Secretary of State in the Bureau of Democracy, Human Rights and Labor (DRL) and by three decades of research and professional experience promoting Southeast Asian political development. My views are my own and not necessarily those of the School of Diplomacy and International Relations of Seton Hall University.

The State of Human Rights in Southeast Asia

As a broad observation, I can only echo the Commission's own words that the protection of human rights in Southeast Asia is uneven. This unevenness can be attributed in large part to the spectrum of political systems and transitions in the region, which has only broadened as ASEAN has expanded to encompass all of Southeast Asia. For example, in recent years we have seen a new but enduring democracy in Indonesia; a cautious but forward-moving reform effort in Burma/Myanmar; a decade of political instability and a dispiriting military coup in Thailand; and the determination by corporatist regimes in Vietnam and Cambodia to limit rights in order to retain political control. As well, there is downward pressure on political freedoms as governments attempt to counter violent extremism and face the social and environmental consequences of economic growth.

The prospect of promoting human rights in Southeast Asia through ASEAN comes with some caveats. Without doubt, the nature of the political system is germane to the protection of human rights; the more democratic systems may be expected to have stronger human rights regimes. However, we should take care not to equate a more open system with the automatic protection of rights. As well, we should not ignore any progress, however incremental, in authoritarian or semi-authoritarian countries of the region, even if that progress is an unintended byproduct of economic development or stronger foreign relations with advanced democracies such as the United States.

Lastly, some Westerners are inclined to narrow their focus to political and civil rights and to downgrade or dismiss issues related to economic rights and economic justice. However, many rights movements across Asia have been sparked and sustained by resistance to environmental destruction or local displacement by largescale infrastructure projects. For example, in 2015 the Philippines Commission on Human Rights became the first national human rights commission to launch an investigation on the impact of activities by major energy companies on climate change.

The Limits of ASEAN

On the global spectrum of regional organizations, ASEAN falls roughly in the middle on structures to promote or protect human rights. On the more active end of the spectrum is, of

course, the European Union with the European Court of Justice and common positions on human rights in the EU's external relations. This should not be surprising in a group comprised exclusively of advanced democracies. It is futile to hold ASEAN up to EU standards at this point; in any case, Southeast Asian leaders have made clear that the European Union is "an inspiration but not a model." Last year the world witnessed the African Union cross a threshold when the Extraordinary African Chambers was convened in Senegal to place a former Chadian dictator on trial for crimes against humanity. The prospect of a Southeast Asian leader being placed on trial for gross human rights abuse under ASEAN auspices in the foreseeable future is extremely remote.

In the middle range of the spectrum, ASEAN is comparable to other regional organizations that have integrated human rights into their boilerplates, however reluctantly. The mechanisms that presently exist in these organizations tend to be strong on rhetoric but weak on enforcement. These groups include the South Asian Association for Regional Cooperation (SAARC) and the Organization of American States (OAS). It bears mention that there is no organization in Northeast Asia that offers even a minimal human rights mechanism; more to the point, there is no organization in that sub-region that approximates ASEAN itself.

However, it has become something of a cliché that ASEAN's basic groundrules mitigate against an active and effective human rights mechanism. In the 21st century, when globalization has blurred the lines of international and national borders, ASEAN is determined to adhere to Westphalian principles, politically if not economically, with its principle on non-interference in the internal affairs of member states. Moreover, the group's reliance on consensus in decision-making enables the least common denominator member to weaken or altogether block activism on controversial issues. Neither of these aspects of "the ASEAN way" bode well for developing a strong human rights mechanism at this time.

The ASEAN Human Rights Structure

The 2012 ASEAN Human Rights Declaration borrows heavily but selectively from the Universal Declaration of Human Rights, with updates such as protection against human trafficking and the illegal sale of human organs. However, the Declaration also admonishes that human rights must be "considered in the regional and national context," and that they may be limited by "public morality." The declaration is not a blueprint for the development of an ASEAN human rights mechanism; on the contrary, it is silent on this except for an expression of hope that it "will help establish a framework for human rights cooperation in the region."

In 2009 the ASEAN member states established the ASEAN Intergovernmental Commission on Human Rights (AICHR), but cautioned that the Commission would not receive or investigate complaints of human rights violations. Instead, it would focus initially on human rights promotion, primarily through "education, research and the dissemination of information." Not surprisingly, the AICHR has received criticism, within Southeast Asia and abroad, for offering promotion without protection. The Commission's primary accomplishment to date has been production of the Declaration. That process has been criticized for a lack of transparency in the drafting process and failure to consult with non-governmental groups.

Not surprisingly, what institutionalization there has been on human rights within ASEAN is focused on bringing together national institutions, specifically promoting linkages and cooperation among national human rights institutions (NHRI). This is not necessarily a bad choice, given ASEAN's embedded respect for national principles. However, only half of the ASEAN member states have national human rights commissions: Indonesia, Malaysia, Myanmar, the Philippines and Thailand. (Timor Leste also has a NHRI but is not a member of ASEAN). The six Southeast Asian human rights commissions have come together in a loose consortium, the South East Asia National Human Rights Institutions Forum (SEANF).

The efficacy of Thailand's national human rights commission has been openly questioned in the wake of the military takeover and the loss of civil and political rights; in January 2016 the International Coordinating Committee on National Human Rights Institutions downgraded its ranking of the Thailand commission. But despite the inherent weaknesses of some of the national commissions, their very existence has drawn attention and some degree of respect within Southeast Asia. Some Southeast Asians have even appealed to a national human rights commission in another country. For example, rural Cambodians traveled to Kuala Lumpur to deliver a petition of protest to the the Malaysian Human Rights Commission against the Malaysian company Mega First, which the Cambodians maintain is harming their communities through work on the Don Sahong dam project in Laos and the anticipated downstream effects.

Potential Next Steps Toward an ASEAN Human Rights Mechanism

Given global concern for human rights and growing US engagement with Southeast Asia, it is appropriate for the United States to encourage greater protection of human rights in the region, which includes a stronger ASEAN human rights mechanism. Generally, human rights advocacy in Southeast Asia might still be pursued best through bilateral relations, in which more favorable short-term outcomes might be effected. However, it would be a mistake to dismiss the potential for human rights protection through ASEAN in the longer term, as many "realists" in the US policy community are inclined to do.

In this regard, the best advocacy is multi-pronged, involving the US Congress, the White House and the State Department. Specific recommendations include:

- o Raising the profile and priority of developing a more effective ASEAN human rights mechanism within US human rights policy in Southeast Asia. Too often, US diplomats and other officials focus on "the list" - of prominent dissidents in detention and other individual human rights victims - and give longer-term regional developments in human rights a lower priority, if they are included at all.
- o Encouraging the remaining five ASEAN members to establish national human rights commissions. In these countries, "rubber stamp" institutions are likely to be the first line of defense, but should not be dismissed out of hand. In the mid-1990's, then-President Suharto of Indonesia launched a national human rights commission, in large part to deflect criticism from the West on human rights. To

his and others' surprise, the commission became increasingly assertive and autonomous.

- o Encouraging the ASEAN Inter-Governmental Commission on Human Rights to require member states to submit annual reports on the state of human rights in their countries. This would be a major step forward but a reasonable mid-term goal. Some, if not many, member governments would likely submit extremely optimistic interpretations of their rights protections, but the very process of compiling and submitting such reports, albeit by the governments, would stimulate discussion on rights within the domestic populations.
- o Encouraging Southeast Asian governments to sign and ratify UN human rights treaties where they have not yet done so. For example, Myanmar is considering accession to the UN Convention Against Torture. This could stimulate an outside-in effect, that is, encourage ASEAN to be more pro-active in areas of human rights where the member states have already adopted international treaties.
- o Supporting greater civil society interaction with the ASEAN Inter-Governmental Commission on Human Rights and related bodies. There is some of this already - for example, Forum Asia produces an annual performance report on the ASEAN human rights mechanism, but there is need and room for much more.