

## **Tom Lantos Human Rights Commission Hearing**

### **“Advancing Human Rights through ASEAN: Vehicle for change?”**

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In discussing the current state of democracy and human rights in ASEAN, I want to begin by noting that the organization’s ASEAN Human Rights Declaration (AHRD) was passed after great debate over many years and finally adopted on November 18, 2012. While the declaration pays lip service to the Universal Declaration of Human Rights, its general principles reflect a compromise among the ten ASEAN member states, whose systems of government range from military dictatorship in Thailand, a Muslim monarchy in Brunei, communist authoritarian regimes in Laos and Vietnam, and six hybrid democratic systems, which include two consolidated democracies in Indonesia and the Philippines, one fledgling multiparty system in Burma/Myanmar, and three semi-democratic one-party dominant system in Singapore, Malaysia and Cambodia.

Crafted according to the “ASEAN Way” of consensus-based decision-making aimed at upholding national sovereignty and non-interference, the Declaration represents the lowest common denominator of what the ASEAN governments are willing to commit to democracy and human rights promotion within their own national borders. Far from a ringing endorsement of liberal democratic ideals, the Declaration is a conceptual construct that identifies human rights promotion as a long-term aspirational goal rather than a guide to specific action to protect and promote civil liberties. In essence, it was promulgated to enhance ASEAN’s moral authority with its own domestic publics and to strengthen its standing in the U.S.-dominated global discourse on democracy and human rights advancement.

ASEAN civil society organizations (CSOs) had almost no input in crafting its details and were quick to criticize the final product. Outside observers expressed equally disparaging verdicts. Within ten days of the document’s release, Mr. Daniel Baer, then Deputy Assistant Secretary at the State Department’s Bureau of Democracy, Human Rights and Labor, offered the U.S. Government critique. Organizing his presentation around perceived failings of “cultural relativism,” “domestic laws versus universal rights,” “novel limits to rights,” and “individual rights subject to group veto,” Mr. Baer’s raised three major objections to the Declaration: first, ASEAN’s subjection of the bedrock

principle of the universality of human rights to an assumed ASEAN cultural context, where national laws take precedence over human rights protection; second, the subordination of individual rights to group rights; and third, by balancing rights of citizens with emphasis on their primary duties to the state.

U.S. candid official criticism of ASEAN's performance in this area has been a consistent feature of the Congressionally-mandated annual reports on human rights, religious freedom and trafficking in persons for each ASEAN member country. However, within the broader context of U.S.-ASEAN relations and in the bilateral U.S. relations with individual ASEAN nations, human rights considerations clearly take a back seat to the top national priorities of security cooperation and economic engagement. Most notably, the Obama Administration seeks ASEAN's support for its position on settling territorial disputes in the South China Sea. Specifically it wants ASEAN to take a united position that will draw China into negotiating a binding Code of Conduct for the South China Sea, which will commit the claimant states to a peaceful resolution of disputed claims based on international law and freedom of navigation. A second issue that drives the security agenda between U.S. and ASEAN is counter-terrorism and the imperative to address ISIL recruitment activities, particularly in Indonesia, which contains the largest Muslim population in the world, and Malaysia, which has recently seen a disturbing rise in Islamist extremism.

In the area of economic engagement, particularly in the context of the Trans-Pacific Partnership (TPP) Agreement, where four ASEAN nations – Brunei, Malaysia, Singapore and Vietnam – have signed the free trade pact, and another three – Indonesia, Philippines and Thailand – have expressed their interest in becoming members, the Obama Administration has demonstrated a willingness to compromise on human rights to advance the TPP. This attitude was demonstrated by the State Department's upgrading of Malaysia's status in the 2015 Trafficking in Persons Report, when it was uplifted from Tier 3 to Tier 2 Watch List, despite credible evidence provided by both human rights groups in Malaysia and the U.S. that the country has not done enough to warrant that upgrading. If Malaysia had remained in Tier 3, it would have been ineligible to join the TPP, following the Trade Promotion Authority (TPA) legislation introduced by Senator Bob Menendez that prohibits expedited "fast track" Congressional consideration for any trade deal including a Tier 3-ranked country.

Looking at the human rights issue from the perspective of the ASEAN countries themselves, one can surmise that with the political liberalization in Burma/Myanmar, that country is no longer a contentious issue. And the domestic situations in other nations are equally far from capturing international headlines, with the exception of the plight of Burma's Rohingya Muslims. The annual reports on human rights, religious freedom and TIP will continue to be critical, even hard-hitting, but ASEAN leaders assume that Washington will not push very hard for immediate tangible improvements, even with regard to Tier 3 countries (only Thailand received that designation in 2015), which might be subject to sanctions in non-humanitarian and non-trade-related foreign assistance. On the other hand, there is always the potential that Congressional action will be forthcoming should human rights conditions deteriorate significantly, as was seen with the cut-off in

military assistance to Indonesia in the wake of abuses committed by the military in Timor Leste, and sanctions applied to Burma/Myanmar before its political liberalization.

What can be expected from the established human rights institutions within ASEAN, particularly the ASEAN Intergovernmental Human Rights Commission (AICHR)? In keeping with the ASEAN governments' driving principle of safeguarding national sovereignty, AICHR, established in 2009, was intentionally designed as a weak institution with a mandate to project ASEAN member state's willingness to learn about human rights, but not necessarily to respect, promote or protect them. AICHR has no investigative, evaluative or enforcement powers, or any early warning mechanisms. Its authority is confined to the right to collect information regarding the promotion and protection of human rights in each ASEAN member state; to engage and consult with CSOs and other human rights stakeholders; and to enhance public awareness through education, research and dissemination of information on the following thematic areas: migration; trafficking in persons; women and children in conflict and disasters; rights of persons with disabilities; juvenile justice; right to health, education and peace; and freedom of religion and belief.

Since AICHR currently does not have the institutional strength to serve as a vehicle for human rights promotions, it is through bilateral strategic arrangements with national human rights commissions, and national as well as regional human rights NGOs, that the U.S. can best advance human rights in ASEAN. The outcomes of such arrangements will be more positive in countries that are receptive to democracy and human rights promotion, such as the Philippines and Indonesia, where elections and the press are relatively free, and civil society functions with minimum government interference (with the notable exception of Papua in Indonesia). Another country that is progressing along an encouraging path is Burma/Myanmar, where Aung San Suu Kyi has thus far managed to work effectively with the military leaders as she seeks to consolidate civilian rule in that country. However, she cannot become President and is constrained to speak out against the gross violations of the human rights of the Rohingya Muslims. Malaysia and Singapore continue to have free elections, but restrictive government policies in both countries and electoral gerrymandering in Malaysia have prevented the emergence of multi-party systems in those countries. Malaysia until recently was notably freer than Singapore but has now regressed to a point where it has become less tolerant of civil liberties and civil society institutions, which facilitated the rise of opposition politics in the 2008 and 2013 elections. Few advances in human rights can be expected in communist authoritarian Laos and Vietnam, though the latter country is committed to undertaking labor reforms required for its accession to the TPP. A particularly disturbing trend in the region has been the increasing resistance to the Western secular human rights regime from groups committed to the implementation of sharia law, as exemplified by Aceh in Indonesia and Brunei, the first nation in ASEAN to implement the sharia penal code.

Thailand, at one point heading in the direction of a vibrant pluralistic polity, has now become much less tolerant under a military dictatorship that is likely to remain in power and continues to apply the strict *lese majeste* laws and other edicts that constrain freedom

of speech and other civil liberties as well as limit the activities of NGOs. That restrictive environment is likely to stay in place through the transition following the passing of His Majesty the King.

Looking ahead, what are the prospects for improvement of human rights in ASEAN?

Despite the varying degrees of limitations placed on human rights in each ASEAN country, each of the societies contain idealistic, committed activists and NGOs pressing for liberal reforms covering a wide spectrum of interests: free and fair elections; freedom of press, assembly, and speech; LGBTI rights; clean and accountable governance; environmental protection; inclusive economic development; and greater access to social welfare services. National CSOs have also linked up regionally in bodies, such as the ASEAN People's Forum (APF), the Solidarity for Asian People's Advocacy (SAPA) network, and Forum-Asia, to present a common front and agenda to ASEAN's governing elites. But there are also strong forces working in the opposite direction. These counter-movements include the challenge to the authority of the ten ASEAN sitting governments posed by both Islamist and non-Islamist movements mobilized along ethnic and regional identities. In thwarting such challenges, ASEAN governments have and will continue to crack down on civil liberties in the name of national security.

The Obama Administration's timely Asia rebalance policy has not only brought strategic, political and economic advantages to the U.S., but it has also increased U.S. standing in the region as well as opened up new opportunities for advances in the U.S. human rights agenda. Given the institutional weakness of the ASEAN Secretariat and the predisposition of ASEAN governments to discourage domestic CSOs from interacting regionally across borders as well as the lack of progress in building a substantive people-centered ASEAN "Socio-Cultural Community," U.S. democracy and human rights promotion efforts should be dual-tracked to simultaneously build up both national and regional capacity of ASEAN CSOs. This parallel dual-tracking would enable cross-fertilization of best practices within ASEAN, with lessons and strategies learned from the more robust human rights community in Indonesia and the Philippines to benefit the weaker and more fragile CSOs in other ASEAN nations such as Laos and Vietnam.

### **Recommendations:**

1. Expand and strengthen the capacity of civil society organizations in the ASEAN countries by promoting youth leadership and civil society linkages between ASEAN and the U.S. Increase Congressional funding for programs such as the Young Southeast Asian Leadership Initiative (YSEALI), the U.S.-ASEAN Fulbright Visiting Scholars Initiative, the International Visitors Leadership Program (IVLP), and the Kennedy-Lugar Youth Exchange and Study (YES) program for high school students. These initiatives have successfully built up fledging civil society movements in the newer ASEAN countries (Laos, Burma/Myanmar, Cambodia and Vietnam) and deepened human rights NGO capacity in the older ASEAN countries (Indonesia, Malaysia, Philippines, Singapore, and Thailand).

2. Earmark funding for the training of ASEAN anti-trafficking NGO leaders who can partner with law enforcement officials in their respective countries in identifying and addressing human rights violations, both among domestic populations and victimized foreign migrant workers.
3. Fund ASEAN CSO cross-border linkages that facilitate national NGOs working under the auspicious of regional bodies, such as the ASEAN People's Forum, to address common objectives related to democracy promotion, ethnic minority rights, religious freedom, LGBTI rights, and trafficking in persons.
4. Increase funding for democracy and human rights promotion advocacy groups based in the United States – such as the National Endowment for Democracy, National Democratic Democracy, and International Republican Institute – which, in their watchdog roles over the years, have collaborated effectively with ASEAN-based CSOs in building capacity to champion civil liberties, free and fair competitive elections, and clean, accountable and democratic governance, both nationally and regionally.
5. Increase USG efforts to strengthen pro-democracy and human rights institutions in the Muslim majority countries of Indonesia, Malaysia and Brunei. Muslims in those countries, together with the Muslim minority populations in the Philippines, Thailand, Singapore, Burma/Myanmar and Cambodia, comprise almost half the total population of ASEAN. Congressional funding for U.S. public diplomacy outreach programs and educational exchanges in ASEAN should target moderate and inclusive Muslim initiatives such as Indonesia's Nahdatul Ulama's grass roots-driven *Islam Nusantara* project and Malaysia's state-sponsored Global Movement of Moderates. Both initiatives seek to counter violent extremism by localizing Islam within the Indonesian and Malaysian multicultural environments and to de-radicalize Indonesian and Malaysian Muslims from recruitment by the Islamic State (ISIS/ISIL).
6. Establish two Tom Lantos Human Rights ASEAN Awards, the first to commend the efforts of individuals who have made outstanding contributions to the promotion of democracy, human rights and freedom in their own countries, and the second to recognize the achievements of regional NGOs in coordinating and advancing human rights among civil society organizations throughout ASEAN. In order to give greater attention to the role of human rights in the U.S.-ASEAN Strategic Partnership agenda, the establishment of these awards should be announced at the forthcoming U.S.-ASEAN Leaders Summit.