

# **ASEAN's Problematic Intergovernmental Commission on Human Rights: The New Media's Role in Enhancing the Protection of Human Rights**

Robin Ramcharan

## *Abstract*

*Citizens of ASEAN states appear to be increasingly involved, through Information Communication Technologies (ICTs), in pushing for greater openness and accountability of their political leaders and public institutions. In particular, ICTs afford citizens of ASEAN States and like-minded counterparts around the world in the human rights community to push for greater accountability of ASEAN's human rights institutions. With the adoption of the ASEAN Charter in 2007, ASEAN states embarked on a process of crafting a regional ASEAN Intergovernmental Commission on Human Rights (AICHR), eighteen years after the World Conference on Human Rights in Vienna, Austria. While the World Conference had reaffirmed the universality of human rights, ASEAN states have moved grudgingly and gradually, egged on by greater global concern for human rights and by the pressures of globalization, towards the protection of human rights. The Terms of Reference (TORs) of the AICHR, adopted in July 2009 and favouring promotion rather than protection of human rights did not provide for an institutionalised role for the media. Subsequent drafting by AICHR of a proposed ASEAN Human Rights Declaration (AHRD) has excluded mainstream news media and civil society organizations (CSOs) from the process. In the absence of reporting and substantive reporting by most mainstream media in the region civil society, most importantly the new ICT based media, has played a vital role in seeking to advance the protection of human rights. This includes scrutiny of the specific rights that will be included in the forthcoming AHRD to ensure that international human rights standards are upheld and that ASEAN states honour their existing commitments under international instruments. The new media-environment provides a platform for a multitude of actors to disseminate human rights related information, to document human rights abuses and thereby enhance the protection of human rights in the region.*

**Keywords:** *Human rights, new media, journalism, civil society, ASEAN.*

## **Introduction**

As the Association of Southeast Asian Nations (ASEAN) nurtures its recently created ASEAN Intergovernmental Commission on Human Rights (AICHR), what role has the media played in its creation and subsequent deliberations? How have the region's media

and the new media in particular fared in engaging with AICHR, if at all? What is the role of the new media in advancing the protection of human rights in the region? The potential of the new media, and Internet in particular, to enhance political freedom was not lost on the repressive ruling regime in Myanmar amidst the “Saffron Revolution” in 2007, during which it shut down the Internet in the country as it controlled the nation’s two internet service providers (ISPs).<sup>1</sup> Nevertheless, images filtered through that served to further delegitimize the Myanmar regime internationally. Is the new media likely to play a similar role elsewhere in Southeast Asia and is it likely to expand? The capacity of the internet to affect domestic politics was specifically mentioned by Malaysian Prime Minister Abdullah Badawi in the wake of his party’s electoral losses in March 2008 and the election of five prominent bloggers to Parliament: “We certainly lost the Internet war, the cyber-war... It was a serious misjudgement. We made the biggest mistake in thinking that it was not important.”<sup>2</sup>

Scholarship on human rights issues in Southeast Asia, and on the media and human rights in the region in particular, is of relatively recent vintage. The literature on the media and democracy in the region suggests a quiescent news media, either willingly or unwillingly largely following a ‘developmental mode’, as opposed to a ‘liberal’ mode found in western societies. In the new media environment, Southeast Asian Governments continually seek to retain control of the burgeoning media industry and with some success. Can the new media environment serve as a vehicle of transparency, accountability and ultimately for the protection of human rights?

A cursory examination of the new media in particular in relation to the establishment of the AICHR, whose Terms of Reference (TORs) were adopted in July 2009, suggests that the online media coverage was largely inadequate. The AICHR, launched formally at the ASEAN Summit in Thailand in October 2009, has faced widespread international criticism for its very weak protection mechanisms since the adoption of the TORs. The regional media, having no clear role according to the TORs of the AICHR, *itself* failed to raise even this issue, and a host of other policy issues relevant to the protection of human rights in the region. Failure to raise critical policy issues also constituted a disservice to the protection of human rights with ASEAN. The levels of critique of regional online news media, predictably, varied significantly according to the nature of the political regimes in which they operated. This trend continued as the AICHR engaged with the drafting of an ‘ASEAN Human Rights Declaration’ after its creation.

The new media environment therefore seems vitally important in this context as a space where civil society organisations (CSOs) and other actors can act as agents of accountability<sup>3</sup> and where the protection of human rights can be carried forward in the absence of a clear role for the media within the AICHR and in influencing the drafting process for the forthcoming declaration. But even this capacity is called into question.

### **The New Media and Politics: Human Rights Watchdog?**

Scholarship on media in the region as an institutional watch-dog for human rights protection in Southeast Asia has suggested that the press has by and large, with some exceptions, not fulfilled the liberal, democratizing role that it is held to play by analysts of the press in western societies.<sup>4</sup> Western theoretical approaches to the role of the media in society have posited a powerful role for the media (writ large) as an institution that serves generally as a check and balance upon political authority, serving as mechanism for ensuring transparency and accountability. The media in general and journalists in particular are said to serve as an independent voices that enhance accountability and transparency – a ‘Fourth Estate of Democracy’ with a stated mission of monitoring government and those in power. A free press performs three essential features for a democracy: a ‘watchdog’ role to expose abuses, the provision of knowledge and information to cater to the political concerns of people, and the facilitation of public discussion – a kind of “day to day parliament of the people”<sup>5</sup> Contrary to the liberal model of the media in the West, Southeast Asian media organizations have largely followed a development model, constrained by the authoritarian political structures in which they exist.<sup>6</sup> Introduced by the colonial powers over the last few centuries, the media has burgeoned from the simple printing press, to broadcasting via radio and cable but has generally served the nation-building prerogatives of the elites that emerged after the Second World War at the helm of newly independent ‘nation-states’.

The media and journalism in the region have reflected an emphasis on ‘de-westernization’ and the promotion of Asian values, so warmly embraced by Singapore’s Lee Kuan Yew and Malaysia’s Mahathir Mohammed. Xu Xiaoge, in discussing “developmental journalism”, argues that Asian values were used in journalism to advocate national unity, racial harmony, and national development.<sup>7</sup> Journalists struggled to find a middle ground between investigative journalism and ‘authoritarian-benevolent’ journalism. Despite division among scholars and practitioners, consensus was reached regarding the need to identify certain universal values deeply rooted in the Asian context and to promote them in the professional sphere.<sup>8</sup> These values included truth, objectivity, social equity, non-violence. Although universal, says Masterston, these values have been prioritized in Asia, when Asian countries confront the following issues: (a) market practices in conflict with journalistic integrity and professional standards, (b) interference by the boardroom in the newsroom, (c) lack of adequate dialogue and network mechanisms to allow journalists in Asian countries to exchange news and information independent of existing Western or government agencies, and (d) government interference in editorial functioning through various forms of censorship in the name of nation-building and national security. Where human rights were covered in the press, according to David Fan and Jennifer Ostini, such coverage tended to concern due process as opposed to civil and political rights, and tended also to stress social and economic rights. From their study on human rights media coverage in Chinese East Asia, including Singapore, a general linkage could be made between the level of treatment of human rights issues and “exposure to the West”, a task made easier by new media technologies.<sup>9</sup>

The new media, the Internet in particular, has challenged the traditional printing press, television and radio as a tool for the delivery of information. In addition it has provided a democratization of the sources of information that is publicly transmitted as anyone can now upload content to the Internet. Consumers of information can go directly to the sources for information, rather than having to rely on reports by traditional media organizations. There has been a consequent fragmentation of the media as multiplicity of audiences are reached, a characteristic which itself is producing a mainstreaming of the Internet as a source of information.

With revolutions in ICTs in the era of globalization and the emergence of Pan-Asian media (CNN, MTV, Star TV) there has emerged a battle between organizational networks of “capital and influence” that views Asian audiences as “consumers” and regional forces that seek “to attract those audiences identification of themselves as Asians.”<sup>10</sup> The potential of the Internet to reach new consumers for either dollars or ideas is enormous in the Asia Pacific (AP) region. In the last decade, the Asia Pacific Region has experienced continuous ICT infrastructure development and service uptake, which have led the region to become a world leader in ICTs. Internet World Stats has noted that today over 657 million people in Asia use the internet, which represents some 41 per cent of users worldwide. Within Southeast Asia, Indonesia had 25 million users, Vietnam 21 million users, the Philippines 20 million and Malaysia 16 million users.<sup>11</sup> The Southeast Asian mobile media industry, through which one can access the Internet also, is also developing rapidly.

Governments in Asia, and around the world, have been cracking down on politically-oriented content on the Internet, real or perceived. News organisations have widely reported on the increasing extent of Internet censorship by governments pointing to China, which has the one of the sophisticated internet monitoring and censorship system in the world. Net censorship by authoritarian states is rampant and they are also learning to use the net themselves, but democratic states are also not immune from criticism. Governments in Southeast Asia are perhaps terrorised by the threat of online criticism and have made significant efforts to try to control such criticism. In addition to “social censorships” the governments have begun censorship of social networking sites. The Internet, bloggers in particular, pose challenges to many governments, notably Malaysia, Myanmar, Thailand and Vietnam. To this we can add Singapore and Indonesia as well. Following its report to the UN Human Rights Council in September 2009, the Vietnamese government noted that the State “will always create the best possible conditions for the media to develop...[including] ensuring freedom of speech and freedom of the press.”<sup>12</sup> However, it has continued to persecute and prosecute a number of bloggers and online journalists. In a letter to the President of Vietnam the Committee to Protect Journalists (CPJ) has labelled Vietnam “one of the world’s worst violators of internet freedom.” CPJ also noted the creation in October 2008 of the Administration Agency for Radio, Television and Electronics information “a state unit tasked specifically with monitoring the Internet for postings that could be considered critical of your government’s policies.”<sup>13</sup> Internet censorship in Singapore has been well documented by frontline activist and scholar, James Gomez in his extensive body of work. The Net censorship for political

reasons prompted Amnesty International to launch a campaign in its 45<sup>th</sup> year of activism, 2006, called “Irrepressible.info,” which highlighted web repression and the jailing of net dissidents. Kate Allen of Amnesty noted at that time, that the Internet had become a “new frontier in the struggle for human rights.”<sup>14</sup> The crack down by governments through restrictive laws, regulations and censorship serves in Southeast Asia and globally, to unnaturally preserve the monopoly of mainstream media organizations, which are able to thrive despite serious financial pressures and declining readership.

Scholarship on the new media has begun to examine its impact on politics in Asia. A useful work is that of Indrajit Bannerjee, *Rhetoric and Reality: The Internet Challenge for Democracy in Asia* (2003), which provides very useful factual accounts of the penetration of ICTs in key Asian countries, surveys of key stakeholders and chapters on Indonesia, Malaysia, the Philippines, Singapore and Thailand. Another work by Peter Eng (1997) has argued for a positive effect on democracy and accountability by the new media in particular and has cited the Philippines and Thailand as examples.<sup>15</sup> Recently, in 2007, the Thai interim-Government was under scrutiny for a perceived ‘assault’ on the internet after it blocked Youtube for not taking down a video clip apparently injurious to the monarchy.<sup>16</sup> Siriyuvasak of Chulalongkorn University has warned that despite the more open media environment in Thailand than elsewhere in Southeast Asia, restrictive regulatory practices continued and even increased, adding to the pressures already confronting a free and independent press. After the September 2006 Military coup in Thailand, the Council for Democratic Reform under Constitutional Monarchy (CDRM) seized all television stations in Bangkok and there was a clampdown on opposition Internet sites. The popular video-website was targeted with potential lawsuits if they did not take down video clips deemed defamatory to the Thai Monarchy, a crime known as *lese majeste* under Thai law. The Cybercrime Act of 2007, or Internet Crime Act, enacted to fight cybercrime and unwanted pornography, bore the potential, according to Siriyuvasak, for stifling political dissent by criminalizing against the distribution of false information or pornography. Internet Service Providers (ISPs) had to retain a copy of the traffic of all users for 90 days for official inspection. He suspected that the real reason is the censorship of political expression. In addition, the strong linkage between telecommunications companies and politicians further advanced the cause of censorship. In Thailand’s case, former PM Thaksin Shinawatra owned a telecommunications and media empire which served his political ends. He could arguably influence the printed press by “feeding large sums of advertising money and government public relations budget.”<sup>17</sup> The potential for censorship also lay in Thailand’s Libel law contained in its Criminal Code and Civil Codes. Siriyuvasak noted that “the struggle for a democratic society continues to be an uphill task for civil society.” Due to limitations on free expression, and self-censorship authors had to shift to independent media such as *prachatai* or *taipeoplespress*. As a result he noted that alternative media play a significant role in countering a hegemonic ideology of ‘Nation, Religion, King’ and the ruling junta. But he notes the adverse political climate to the new media in Thailand.

David Hill and Krishna Sen undertook their study of the Internet and authoritarianism in Indonesia partly due to the fact that the Internet arrived in Indonesia in a major way around

the mid-1990s and some two years later the Suharto regime fell. They argue that the fall of Suharto can not be understood without an understanding of the impact of the Internet.<sup>18</sup> For example, print media banned in 1994, such as *Tempo* and *Detik*, reappeared on the Internet as *Tempo.com* and *Detik.com*, in cooperation with state-owned enterprises. Not only was the Suharto regime unable to control the Internet media, but it also cooperated with it in some instances. For Somantri, writing on the impact of the Internet on Indonesian politics, it has emerged as another one of the conventional media.<sup>19</sup>

In other parts of Southeast Asia, Sheila Coronel has suggested that new media, mobile phone texting (or SMS) in particular, contributed to the downfall of former President Estrada of the Philippines.<sup>20</sup> In the hitherto extremely repressive political regime in Myanmar, where traditional media outlets were completely dominated by the State, Internet connectivity has remained very low and access was stifled by prohibitive regulations, censorship and high costs though this may change in light of the momentous changes taking place in the media landscape since Myanmar's 'opening up' in 2012. Prior to this Gmail and GTalk were made inaccessible in June 2006 and Skype was banned.<sup>21</sup> As noted above, during popular uprisings in 2007, the government had the capacity to shut down the Internet after it became too potent a tool for opposition forces and local human rights activists. While it can not be argued that the Internet was instrumental in changing the domestic political order, research suggests nevertheless that the so-called "Saffron revolution" was partly Internet driven and evidenced a complex relationship "between eyewitnesses within the country and a networked public sphere of bloggers, student activists, and governments around the globe."<sup>22</sup> Prior to this crisis the regime was initially slow to respond to the challenge of Internet sites that emerged in the 1990s – such as *seasia-1* and *BurmaNet*, the latter funded by the Soros Foundation - that disseminated consolidated human rights information on Myanmar. Subsequently the military regime created its own online platform to offer its own views – *MyanmarNet*. The Saffron Revolution was disseminated globally as *local* bloggers and digital activists flooded cyberspace with images and videos of saffron-robed monks leading large, peaceful demonstrations against the government. Pictures and videos taken by Burmese citizens, often on their mobile phones, were secretly uploaded from Internet cafes or sent through digital files across the border to be uploaded. Analysis of the Internet shutdown, has indicated that the government attempted to disrupt the two-way flow of information so in order to distort the picture of reality for people on both sides of the Burmese border. This episode demonstrated that "a relatively small group of Burmese citizens achieved a disproportionate impact on the global awareness and understanding" of the crisis, leading to extraordinary government crackdown and surveillance on such technologies.<sup>23</sup> Bloggers from around the world joined the local activists by disseminating the same images globally, thereby spurring transnational activism. One noteworthy lesson of the "saffron revolution" was that "[i]n a tightly controlled media environment, citizen journalism is even more important than in countries with a free press. Citizen journalists are able to report on government actions and provide a measure of accountability that would not otherwise occur."<sup>24</sup> However, this mildly romantic picture should not obscure the fact that local Myanmar bloggers and activists operate in fear. The ruling by a Myanmar court to



imprison a former military officer who was linked to photos of a ranking junta official's visit to North Korea that had appeared on a news website run by Myanmar's journalists living in exile is a reminder of the steely approach by Myanmar's ruling junta. The Electronics Act of 2000 bans Myanmar's citizens from using the Internet to send information, photos or videos critical of the junta to foreign audiences.<sup>25</sup> This law complements a host of other repressive ones, including the 2000 Internet law which bans any information posted on the Internet that in the junta's view may undermine the interests and security of the country. The 1996 Television and Video Act provides for penalties of up to three years jail term for copying, distributing, hiring or exhibiting video tape that has no video censor certificate. Consequently, activists, often in urban areas, operated at the margins. Activist bloggers also operated along the border with neighbouring countries such as Thailand. Indeed much digital activism concerning Myanmar has come from abroad, from organizations such as the Free Burma Coalition (FBC) based at the University of Wisconsin, Madison and run by dissident Muang Zarni. While FBC and similar networks have had much success in using the Internet to mobilize international condemnation of the regime in Myanmar, one can not yet conclude that this medium has a "liberalizing" effect in extreme authoritarian regimes where "the impact of the Internet on democracy is more nebulous."<sup>26</sup> With the opening up of the media landscape Myanmar, including relaxed rules for the Internet, this may change, though the jury is out given that there were still considerable restrictions on journalists and related to what can be posted online.

Carol Soon and Randolph Kluver, through an examination of hyperlinking by political communities in Singapore, have argued that "political groups in Singapore use Internet to realize certain agendas, which they may not be able to fulfil in the offline world," and in doing so circumvent certain controls imposed by state restrictions.<sup>27</sup> James Gomez has suggested, however, in the wake of his own electoral campaigns in that country, that online outreach strategies by political actors do not necessarily translate into electoral gain. In the highly connected Singapore, Gomez argues that this has merely added another tool to the Government's already formidable arsenal of control.<sup>28</sup> Bannerjee concurs with this point noting that while network connectivity does relatively broaden the scope of political expression at the grassroots level, it may not necessarily occasion democratization at the governmental level.<sup>29</sup>

Indeed, analysis of the new media and politics reveals similar concerns about the supposed liberalising function of the new media. While originally the advent of information communication technologies were hailed very positively for their capacity to revolutionize human rights promotion and protection by fostering accountability, it has been pointed out that the Internet does not operate in a political vacuum. Instead, they operate in an overtly political space and it thus responsive to geography, and thus to regulation. Statistics about the vast increases in connectivity in Asia and elsewhere by themselves reveal nothing about the degree of respect for human rights in a country. As Cherian George has noted, the less democratic the society, the more attractive the society looks, but the more radical Internet use will be blocked or punished. Indeed, even if the AICHR provided for institutionalized

space for the media there is still a strong probability human rights problems would be merely glossed over. This medium has been and will continue to be shaped by political and economic forces.<sup>30</sup> Recent scholarship on the new media in ASEAN has echoed this general view of the new media. In a special edition of the *Asia Pacific Media Educator* on “New Media and Journalism in Asia, Freedom of Expression, Censorship & Ethics,” edited by James Gomez, the authors painted a not-so-rosy picture of the role of the media in advancing human rights, democracy and the rule of law. For example Terence Lee notes that in Singapore, one of the most wired places in the region, government has sought to bring such media under tight regulation.<sup>31</sup> Jonathan Woodier has noted that the burgeoning media industry in Southeast Asia, local and foreign, is viewed with concern among local governments who “have been keen to quarantine what many see as the source of contagion of internal instability.”<sup>32</sup> This has occasioned heightened concerns over surveillance and interception of communications in Southeast Asia and that avenues where the dispossessed and disenfranchised can vent their unease are increasingly being choked. Rudolph and Lim found some correlation, nevertheless, between the Internet’s decentralised structure and the long term inability of central authorities to instrumentalize this technology towards their own political purposes.<sup>33</sup> In some cases, such as Malaysia, Indonesia and the Philippines, while there was a vibrant press organizations, the media tended to be either quiescent or an active participant in the nation-building processes of many of the young ASEAN states.<sup>34</sup> In Malaysia, Loo has noted that one of the limitations on the democratizing effect of the new media can be a citizenry not yet culturally disposed to such interaction through the Internet.<sup>35</sup> Ironically, greater transparency and openness may have resulted more from the Asian financial crisis of 1997, which exposed intra-state corruption and cronyism.<sup>36</sup> For Simon Tay, democracy is a part of the future of Southeast Asia and the media, as part of civil society, is a factor in the new system of governance.<sup>37</sup> With the adoption of the TORs of the AICHR, Southeast Asia seemed to be warming up to this prospect.

### **Absence of Media Role in AICHR**

Among the critical issues that were needed to enhance the protection role of the AICHR, was the following: what kind of role will civil society mechanisms, most notably the media, play in the AICHR? Unfortunately, there is no institutionalised role for the media within the AICHR. Termsak Chalermphanupap of the ASEAN Secretariat expresses the fears of ASEAN Governments by arguing that ASEAN is heading towards the right direction as far as cooperation on human rights is concerned and ASEAN welcomed constructive criticisms, “as long as critics get all the facts right and try to see the whole picture. ASEAN is not a single-issue entity. Neither is it an omnipotent supra-regional government.”<sup>38</sup>

Media analysis has very sparingly noted the very *absence of a role for the media itself in the new mechanism*. Thailand’s *The Nation* called attention to the fact that “the role of the civil society organisations is still unclear.” Consequently, “no doubt about it, human rights defenders have a role to play. In the absence of an adequate mechanism, these organisations



cannot afford to be complacent. They must keep pushing the envelope and pressuring the regional body to commit itself to a better and stronger mandate that puts the interests of the Asean people at the centre of Asean policy.”<sup>39</sup> As the International Federation of Journalists has noted, “a difficult relationship between journalism and the exercise of political power is itself a hallmark of democratic society and the tendency to manipulate news and information or to try to shape the agenda of public debate exists in all societies.”<sup>40</sup>

Whereas in many other institutions around the world the media has access to such institutions for the promotion and protection of human rights it is not clear how the media will interact with the AICHR beyond reporting from the sidelines as is the case in the current phase of drafting of the proposed AHRD. It is not clear whether the reports of member states to the AICHR will be made public on the Internet for public scrutiny. It is not clear what role the media will have in relation to such reports. Article 6(7) of the TORs merely stated that “The AICHR shall keep the public periodically informed of its work and activities through appropriate public information materials produced by the AICHR.”

### **Civil Society Actors and the AICHR in the New Media Environment**

CSOs are proving to be vitally important given the absence of more poignant analysis and prevalence of incomplete analysis by the traditional media sources. The coverage of the AICHR by the traditional media collectively raised some important points but largely failed to analyse the deeper significance of the TORs and to consider policy options for the advancement of the protection of human rights.

In the lead-up to the TORs of July 2009, the general requirements of an ASEAN regional human rights body were highlighted previously by the National Human Rights Institutions of Indonesia, Malaysia, Philippines and Thailand. They had posted a position paper of 2008 on the draft terms of reference of the eventual ASEAN human rights body, available through the National Human Rights Commission of Indonesia website.<sup>41</sup> It had noted that the TORs should provide for an “independent deliberative body,” that provides an effective level of promotion, protection and monitoring of human rights throughout the ASEAN region. Formation of the human rights body had to be undertaken in a transparent and participatory manner, as well as an inclusive process of consultation with all stakeholders, including the NHRIs and the civil society. The human rights body required both promotion and protection functions. The human rights body should also have, at the initial phase, a role to monitor the implementation of international human rights obligations and the respective treaty bodies’ recommendations at national level of ASEAN member states. The protection function of the human rights body should include human rights situation analysis of the ASEAN sub-region, which can be undertaken through country visits and the assessment of the impacts of the Blueprints for the ASEAN Communities i.e. Political and Security, Economic and Socio-Cultural. The human rights body needed to be adequately funded and supported by staff members and facilities. Did the regional media pick up on these points?

Once the TORs were adopted in July 2009, *collectively* regional and extra-regional media coverage by traditional media sources on the Internet encompassed a number of general points: 1) the TORs of the new Commission are “toothless” as the TORs have some serious flaws when it comes to protection, a view expressed by the international community, and by regional and international NGOs; 2) creating the region’s first Commission is better than nothing and that an evolutionary process will transform it into a real protection mechanism; and 3) the new body is not aimed at one member only, namely the repressive military regime in Myanmar, but at all ASEAN members who have their share of problems when it comes to the protection of human rights, notably Cambodia, Laos, and Vietnam. These points are reflected collectively, but with variations in the reporting by selected national news media available in English on the Internet and some international media outlets.<sup>42</sup> Individually the coverage of the launch of the AICHR varied from soft to moderately critical, from authoritarian regimes to more democratic respectively.

The *Wall Street Journal*<sup>43</sup> reflected the view that the TORs provided for a “toothless council”, a concern voiced by the ATFHR and Rafendi Djamin.<sup>44</sup> On the other hand, the *Philippine Daily Inquirer* noted the view of Dr. Termsak Chalermpananupap, ASEAN’s Director of Political and Security Directorate, that the new ASEAN Human Rights body was “not supposed to have teeth” but was to generate consensus. Mr. Termsak, who felt it necessary to issue a document dispelling “misinformation” by the media, had noted that ASEAN human rights body was to be will be an organ inside the organization structure of ASEAN. The direct mandate for its establishment was in Article 14 which was part of ASEAN Charter’s Chapter IV, “Organs”. As such, the human rights body was “never intended to be any ‘independent watchdog’. To moan on the human rights body’s ‘lack of teeth’ is to bark up the wrong tree.”<sup>45</sup>

The *Jakarta Post* reflected the view that ASEAN could not press too hard given the objections of the CLMV countries. Voice of America (VOA) noted the reaction of Sinapan Samdorai, from the Task Force on ASEAN Migrant Workers in Singapore, that the new Commission’s approach to ‘protection’ of human rights will be evolutionary. Moreover, Malaysia’s *Star* and others reported that the TORs are to be reviewed in 5 years.<sup>46</sup>

The view that the Commission would not target only Myanmar, amidst the problematic trial of opposition leader Aung San Suu Kyi, but that it was concerned with all ASEAN countries, featured in Abugao’s coverage for AFP. Nevertheless, that the Commission gave “room for manoeuvre” on Myanmar featured in *Al Jazeera*’s coverage. With regard to other ASEAN countries, *The Jakarta Post* noted the view that not only the CLMV countries were concerned, but ‘even Singapore and Malaysia, had problems with the NGO proposals for a tougher Commission. Percy of Australia’s ABC network, also noted that the CLMV and Singapore were of concern.<sup>47</sup>

The regional news media’s reaction to the new ASEAN human rights body has revealed predictable differences in coverage according to the nature of the political regimes. One

may observe that on such an issue as Asia's first human rights mechanism with potentially profound consequences for the human security and demand for justice by ASEAN's peoples the reporting was very sparse, lacked context and depth of analysis. It was left to NGOs to provide substantive details on the functioning and shortcomings of the new human rights body on the occasion of its launch.

Civil Society Actors exploiting traditional and new media outlets have been more trenchant in their analysis. The concerns of regional and international online non-governmental human rights organizations were reflected by a few of the regional news outlets, and international ones, in a general but insufficient manner. NGOs from the region endorsed Amnesty's call to ASEAN for a tougher human rights body. The Bangkok-based Forum Asia went so far as to call the proposed Commission's TORs a threat to the security of Asean people. Rafendi Djamin of Indonesia's Coalition for International Human Rights advocacy and convenor of Solidarity for Asia Peoples' Advocacy Task Force on ASEAN and Human Rights, while expressing similar concerns, betrayed some optimism that the Commission might eventually move to a more genuine protection role, as reported in a VOA article. The *Canadian Press* noted that the serious flaws prompted Indonesia to make a last minute stand in favour of a tougher Commission, thereby threatening to derail the whole process until a last minute compromise was reached.<sup>48</sup> Indonesia's concerns will be addressed in a separate political statement on the future Commission. Indonesia's stand comes as it tries to re-inforce its recent return to more democratic rule and as court's Washington's more receptive ears under the new Obama administration following US Secretary of State Hilary Clinton's visit to the region in January 2009.

A non-governmental actor, the Asian Center for Human Rights (AHC), while noting that it can be argued that some mechanism is better than nothing, asked poignantly whether ASEAN's new human rights body posed "a threat to human rights in the region?"<sup>49</sup> AHC, noted that its critique was shared by the UN High Commissioner for Human Rights in Geneva. The AHC noted that some states in ASEAN with appalling human rights record, "have a clear motive to undermine human rights standards" and are "acting to do so in international fora" as well as regional fora.

In this context of serious concerns about the credibility of the new mechanism, there would seem to be an important role for the new media to play a powerful and positive force in the protection of human rights and the promotion of the rule of law. This is especially important as there appears to be no institutionalised relationship between the traditional media and the AICHR. Nor does it appear that the media has any access to the proceedings of the AICHR. Reports to the AICHR by member states will be available only to the Foreign Ministers.

The TORs of the AICHR reveal the continuing nervousness that ASEAN governments feel in relation to international norms of human rights. It is indicative that while they are politically stable societies they are perhaps not yet mature states that are ready to handle heightened levels of scrutiny.<sup>50</sup> An interesting, parallel occurrence is the acrimonious debate

in the United Nations about the concept of the very young concept of the Responsibility to Protect (RTP). Many countries expressed deep concern in the UN General Assembly over the RTP concept. The very *President* of the General Assembly expressed concerns over the implications of RTP for the sovereignty of states and called into question the legality of RTP.<sup>51</sup> China, a member of the Security Council, stated flatly that RTP should not contravene state sovereignty.<sup>52</sup> Moreover, ASEAN states have significant reservations to international human rights treaties, such as Singapore, which argues that accession to conventions does not imply the acceptance of obligations going beyond the limits prescribed by the Singaporean constitution. Malaysia and Brunei have also subjected their international obligations to Islamic and domestic law.<sup>53</sup> It remains, therefore, for an independent regional media, a vital part of civil society, to stake out a hitherto-elusive role - an assertive one that contributes to the promotion *and protection* of human rights, democracy and the rule of law. This begins with scrutiny of the terms of reference of the new ASEAN Intergovernmental Human Rights Commission.

Regional and international NGOs have historically played a vital role in the advancement of human rights. The Universal Declaration on Human Rights of 1948, was significantly influenced and enriched by NGO input. In the UN mechanisms around the world, for NGOs regularly provide their input items on the agenda of the relevant bodies. In the UN system for example, NGOs are given observer status and partake in the UN Human Rights Council's work by submitting position papers on items on the agenda of the Council. An institutionalised role appears to be missing from the ASEAN mechanism. This further underscores the necessity of a vibrant civil society presence in the new media environment. The AHRC, an NGO referred to earlier, also called attention to a number of objectionable aspects of the TOR. These provisions of concern included omission of the commitment in the ASEAN charter to "strengthen democracy, enhance good governance and the rule of law", and consensus decision-making since a 'logic of consensus building' around human rights issues within ASEAN could only be detrimental to the protection of human rights in light of the record of countries like Myanmar. Consensus decision-making was viewed with concern for standard setting as ASEAN develops a regional Human Rights Declaration. A third concern was over the respect for the principle of non-interference as respect for independence, sovereignty, equality, territorial integrity and national identity are the operating principles of the AICHR. A fourth was the non-confrontational approach in favour of an evolutionary approach, which is contrary to international law when you have situations of massacres and gross violations of human rights, for example. A fifth was the provision of technical services without independent oversight, prompting fear that the AICHR will provide costless political legitimacy to ASEAN member States with worst human rights record. A Sixth was the appointment of non independent members of the proposed commission, but rather governmental representatives who remain accountable to their governments even after appointment. This is the most onerous aspect of the TORs. Finally, the AICHR submits its reports to the Foreign Ministers of ASEAN and it is unclear if further action is mandatory thereafter.

These critical concerns, featuring sparsely or not at all in the news media coverage, online or otherwise, were also reflected in Amnesty's International's recommendations of June 2008 to the High Level Panel drafting the TORs. Upon adoption of the TORs Amnesty's reaction echoed its earlier concerns and recommendations. Amnesty International urged ASEAN to ensure that its newly established human rights mechanism has the necessary powers to do its job properly.<sup>54</sup> Amnesty cautiously welcomed the new body but indicated that the TOR of AICHR left "much room for improvement." Donna Guest, Deputy Director of Amnesty International's Asia-Pacific Programme, urged ASEAN governments to make AICHR a truly independent and robust body with full powers to monitor, investigate and report on the human rights records of all 10 member states. Key concerns, which had been expressed by Amnesty in open letters to ASEAN's High Level Panel responsible for drafting the TORs, included: a lack of a clear protection mandate for the AICHR; lack of binding requirements for independence and expertise of AICHR members; and an emphasis on 'regional particularities' and 'non-interference in the internal affairs' which could undermine respect for universal human rights standards." In addition, the decisions by consensus only, meant that each state would be able to reject any criticism of its own human rights record by veto. "This could lead either to paralysis or to the adoption of weak positions based on the lowest common denominator." Amnesty International has called for a clear mandate for the ASEAN human rights body to protect as well as promote human rights. "The ASEAN human rights body must be empowered to investigate human rights abuses and be able to receive complaints of abuses," said Donna Guest. "Without such powers the body will not be able to address serious human rights situations in the region, for example in Myanmar." Amnesty International urged ASEAN to ensure a transparent mechanism to select independent experts as members to the human rights body. The organization said that it is essential that the membership of the body is reflective of wider civil society. Amnesty International also called on the ASEAN human rights body to uphold all human rights in accordance with universal principles and internationally agreed treaties and standards.

The same trend of reporting from the sidelines and sparse substantive discussion of critical concerns by mainstream media has continued in relation to the drafting of the forthcoming ASEAN Human Rights Declaration. To be fair, it should be said that the drafters, consisting of Government appointed representatives to the AICHR, have not released a working draft for public discussion and has cut out civil society altogether. Moreover, the consumer (most often academics and interested CSOs) can proceed via Google directly to the online platforms of relevant regional and global civil society organizations for critiques of the process and related substantive issues, such as what specific rights will be contained in the declaration being drafted. On the latter point, a rare glimpse of a January 2012 working draft dated was uploaded on the website Scribd.com onto which users can upload and share documents of their choice.

Criticism by international human rights organizations featured in *Asiaweek* of Singapore, which carried an AFP article reflecting NGOs – Amnesty International and Human Rights watch - of the lack of consultation on the proposed declaration and the "deeply flawed" and



“closed door” approach to the drafting process which began in July 2011 in Vientiane, Laos. Human Rights Watch Deputy Asia Director was cited as calling for the “immediate release” of a copy of the draft to the public given that a leaked earlier version was “quite worrisome”.<sup>55</sup> The *Jakarta Post* carried a few articles in June 2012, as ASEAN’s AICHR was about to submit a draft to the ASEAN Ministerial Meeting in Phnom Penh in July 2012, which echoed these same concerns and calls by the UN High Commissioner for Human Rights, Navi Pillai, for a meaningful consultation on the draft with the widest spectrum of people in the region. It also drew attention to criticism by Indonesia-based Human Rights working Group (HRWG) whose representative Yuyun Wahyuningrum deplored the “blocked access to information relating to the draft, which is so important and which will affect millions of people in Southeast Asia.”<sup>56</sup> Yuyun posted online a letter titled “ASEAN Human Rights Declaration” to interested civil society titled “ASEAN Human Rights Declaration” containing contact details, including e-mails of the AICHR members so that they could reach them directly. She noted her concern that the Drafting Team (DT) had no authority to consult with stakeholders” and that only Indonesia and Thailand’s DT members confirmed that they want to talk to civil society. On May 2, 2012 some 136 CSOs, most of them based in the region, petitioned the AICHR through an open letter for a genuine consultation process. A planned consultation for late June 2012 towards the end of the drafting process would not be considered consultative and transparent.<sup>57</sup> Following a consultation on 22 June 2012 with 48 civil society organizations, a Federation for Human Rights (FIDH) statement reiterated the flawed consultation process and that their “procedural concerns were compounded by the lack of transparency and organization of today’s Consultation itself”. Moreover, a number of international and regional organizations were barred from participating as there was “no consensus over allowing them to participate”. The statement noted their major concern: to ensure that the level of human rights protections in the AHRD “does not fall below that of international standards.”<sup>58</sup> Writing in the *Jakarta Post*, Debbie Stothard of FIDH argued that it was “crunch time for ASEAN” as it could “make the right decision to publish the draft declaration and then conduct broad based consultations” or it could “continue tumbling towards irrelevance and becoming a laughing stock in the international community.”<sup>59</sup>

The Indonesian Permanent Representative to the AICHR, I Gede Ngurah Swajaya, in an interview with the *Jakarta Post* sought to reassure civil society that “We have come to decide that the ADHR must not be less powerful than the Universal Declaration on Human Rights. ... the Declaration will also have added values to it.” The representative noted that “Indonesia hopes that ASEAN will be a community that uses universal values and norms as the basis of its cooperation and emphasizes the protection of human rights.”<sup>60</sup> The *Jakarta Post* on the same day quoted Marzuki Darusman, Chairman of the Human Rights Resource Centre for ASEAN, who sought to reassure civil society that the declaration would not water-down international standards along the lines of the ‘Asian values discourse’ that emerged from the region in the early 1990s, as it referenced the Universal Declaration of Human Rights as the main source of the declaration. He did acknowledge that some phrases on the declaration were “debatable”.<sup>61</sup> Darusman noted the desirability of including in the



declaration a statement to the effect that a convention would be subsequently elaborated leading to binding undertakings and that an explicit statement of states' responsibilities to fulfill these rights was needed as opposed to merely "promoting and protecting."<sup>62</sup>

Echoing calls by the UN High Commissioner for Human Rights for ASEAN to set the bar high CSOs submitted a document to the AICHR during the June 22 consultation and posted online on the FIDH website which expressed concern over following substantive matters:

- The need to ensure that the human rights protections in the Declaration are not lower than those enshrined in universal standards, a concern also raised by the International Commission of Jurists.
- The apparent inclusion in the draft of an overarching "General Principle" providing for "Balance between rights and responsibilities. They called for the deletion of this phrase.
- The apparent inclusion of an overarching principle providing for "Taking into account national and regional particularities" .
- The need for the Declaration to address human rights abuses by non-state actors.
- The need to ensure implementation and dissemination of the Declaration.
- The need to monitor and assess the impact and dissemination of the Declaration.
- The need for cooperation with civil society and the public as a whole in promoting and protecting human rights.

Regarding civil and political rights the CSOs suggested the inclusion of appropriate language related to: the right to life, enforced disappearance, right to information, right to electronic privacy, political participation and voting, freedom of religion and belief, access to justice, access to remedy and the right to nationality. On social, economic and cultural rights they suggested wording on the right to self-determination, right to an adequate standard of living, right of everyone to work, right to form and join a union, right to health, and the right to education. They also made suggestions related to the rights of specific groups which should be firmly anchored to the principle of non-discrimination. They noted the lack of a provision related to Indigenous Peoples, lack of a clear provision on the protection of children and migrant workers. A joint open letter dated July 8, 2012, to ASEAN Foreign Ministers on the AHRD by reputable international human rights CSOs, urged ASEAN Ministers to remove any provision purporting to impose limitations or restrictions on all rights in general, to remove any provision subjecting the rights in the Declaration to "national and regional peculiarities" which could be used by States to weaken protection of human rights, to remove any interference to the balancing of rights and responsibilities given that human rights are inalienable, to include a provision explicitly guaranteeing that no part of the declaration shall be interpreted or interpreted in a manner inconsistent with international standards and to ensure that specific rights are in line with international human rights standards.<sup>63</sup> A timely Expert's Note on the ASEAN Human Rights Declaration by the American Bar Association in May 2012, has emerged as a useful guide to AICHR Permanent Representatives of the international human rights commitments of ASEAN states. It suggested pathways for

AICHR to draft a declaration that respected ASEAN State's international commitments and it argued that ASEAN could make a unique contribution to the advancement of human rights based on its regional perspective, based in part on values and concerns reflected in the ASEAN Charter and other regional agreements. Among the rights that it noted could be developed further "due to the ASEAN's unique context" included the right to information on matters of public interest.<sup>64</sup> The Southeast Asia Press Alliance (SEAPA) in Bangkok, Thailand has argued that in advancing human rights protection "the media has a critical role to play" and in preparing a list of 10 questions to ask regional governments, SEAPA "urge[d] friends in the media to use every opportunity to pose these questions to [the] national representatives and ASEAN officials."<sup>65</sup>

### **New Actors in the New Media Environment and Professional Journalism**

Can the new media environment complement the established news media outlets by enhancing their capacity to serve as a human rights watchdog?<sup>66</sup> The NGO's referred to thus far have been credible regional human rights actors. The new media environment has allowed for far greater democratization of information dissemination by a variety of actors. Domestic civil society phenomena include not only human rights oriented organizations online, but also politically oriented sites and blogs and social networking sites, such as Facebook, Youtube and Twitter. The new media environment allows for new actors that continuously challenge regulations restrictive of freedom of expression and access to information. Nevertheless, the plethora of sources of information, and especially of politically motivated information, obviates the need for professional journalism and in-depth analysis. As veteran reporter on Asian affairs Michael Vatikiotis has noted, in the more permissive media environment after the fall of President Suharto, "the biggest challenge for the newly liberated media of the region...is not only to protect the freedom of speech but also to guard the truth."<sup>67</sup> New actors, exploiting the information sharing capabilities of the new media environment, are often political actors that seek to shape outcomes, for better or worse.

New actors have sprung up almost everywhere, constantly challenging restrictive press laws and barriers to information sharing. In the Philippines, for example, a network called Codewan ("code one") was created in 1996, to host online communities of NGOs and People's Organizations exclusively. The network had dial-up nodes in Lyzon, Visayas and Mindanao and linked civil society through an 'intranet' so as not to clog up the network. Vergel Santos notes that it was very active during the Estrada Presidency and "became a forum for consensus-building and networking among anti-Estrada forces."<sup>68</sup>

In Thailand, for example, Ubonrat Siriyuvasak of Chulalongkorn University has highlighted the proliferation of access to a wide range of civil society organizations and individuals in Thailand as a result of the spread of new media technologies, notably Internet and Community radio. Alongside the mainstream media, all of which have Internet presence, popular political websites appeared such as Pantip ([www.pantip.com](http://www.pantip.com)), Sanook ([www](http://www).

sanook.com), as well as alternative sites such as Midnightuniv ([www.midnightuniv.org](http://www.midnightuniv.org)) and online press such as Prachatai ([www.prachatai.com](http://www.prachatai.com)) which together created a “virtual democracy” for members of civil society.<sup>69</sup>

In the restricted media environment of Singapore some space has opened up for contestation and scrutiny as evidenced by websites such as the well documented Think Center ([www.thinkcentre.com](http://www.thinkcentre.com)) created by James Gomez, Singapore Window ([www.singapore-window.org](http://www.singapore-window.org)) and Sintercom ([www.sintercom.org](http://www.sintercom.org)), all of which were committed to ensuring greater access to information and critical analysis. The *Temasek Review* ([www.temasekreview.com](http://www.temasekreview.com)), whose website administrator is apparently based in Hong Kong, aims to an “independent, balanced and unbiased coverage on socio-political affairs in Singapore” and offers a blog where people can post opinions, comments, etc.<sup>70</sup> Blogs have proliferated. In a poll conducted in 2006 by the state-run Media Development Authority (MDA), it was found that half of all Singaporean teens between the ages of 15 and 19 maintained a weblog. Some 46 per cent of the next age bracket of 20-to-24-year-olds did likewise. While many of Singapore’s blogs were fairly innocuous “diary-type spaces, including the popular Xixue ([xixue.blogspot.com](http://xixue.blogspot.com)),” others, such as “Mr Wang Says So” ([mrwangsaysso.blogspot.com](http://mrwangsaysso.blogspot.com)) and independent filmmaker Martyn See’s “No Political Films Please, We’re Singaporeans” ([www.singaporerebel.com](http://www.singaporerebel.com)), take on hard social and political issues.”<sup>71</sup> In Singapore, which conducts reviews of censorship at ten year intervals, starting in 1992, a 17-member Government appointed panel was tasked in September 2009, slightly in advance, with updating policies on censorship of the media and the arts in light of the new media landscape.<sup>72</sup> The recommendations of this body will be scrutinized closely. Already in 2001, in the lead up elections in that year, an overwhelming anti-People’s Action Party (PAP, the ruling party) sentiment was not lost on the leadership, which subsequently required individuals who use websites to propagate or promote political issues to register with the MDA.<sup>73</sup>

The democratization of the process of news making and the multiplication of the ways information is manufactured, delivered and used are positive developments. The new media environment, which provides access to civil society groups, can play a role in generating greater freedom for the press. But it does not mean that the traditional media that have adapted to the online environment and newer online-based news organizations have any more enhanced capacities to act as agents of accountability. CSOs exploiting the new media environment, and thereby performing the function of journalism, need to be not only critical but to offer credible, fair analysis. There is still a need for professional journalism, which places matters in their proper historical, legal, economic, political and social contexts.

The dangers to professional journalism in globally respected traditional media organizations themselves were highlighted by Gillian Ursell, who has noted that even the BBC’s vaunted professional journalism was not immune from the pressures of competition from online news providers, both old and new. Her survey of the literature on the degradation of journalism reveals two culprits: competition and ‘niche marketing’ of the news as the task

of journalism had seemingly become merely to deliver and serve up what the customer wants, and the advent of the new media, which had contributed to blurring the distinction between journalists and non-journalists.<sup>74</sup> The value of the BBC to politicians in Britain was highlighted by then Secretary of State, Chris Smith, who expressed the belief in October 1999, that:

...it's not technology that will decide the ultimate success or failure of the digital revolution, it will be the range and quality of services... I am clear that the ethos of broadcasting as a public service must remain at the heart of the system...to set and sustain benchmarks for quality...the good helps to drive out the bad.<sup>75</sup>

Furthermore, Chris Warren, a former president of the International Federation of Journalists, has noted that journalists are being asked to run 24-hour blogs while still covering their patch or producing their section.<sup>76</sup> As labour productivity has become a concern, Warren argues that "From South Asia, to northern Europe, to Latin America, employers are using individual contracts to undermine collective agreements and the independence of journalism."<sup>77</sup>

New media sources need to offer sound, factually correct, and deeper analysis to fulfill the role of watchdog and to perform effectively as an agent of accountability. The quality of the news remains paramount and it is not dependent on the technologies that have emerged. The new media, notes Plavik, had to demonstrate that it could add quality to the information that it was conveying.<sup>78</sup> It is quality that compels readers and that distinguishes mere reporting from the professional trade of journalism, not the mere channelling and reinforcement of existing political persuasions to select audiences. New media sources must serve their audiences by delivering credible information and they must also convince those in power that they are capable of being fair and balanced so as to ultimately diminish the incidences of knee-jerk reactions against the press and freedom of access to information. The Phillipine Center for Investigative Journalism was founded for this very reason in 1989, "to go beyond day-to-day reportage...to go deeper and broader, show the bigger picture."<sup>79</sup>

The need for professional journalism is underscored by the following factors. The first is the diminishing of the Internet as a public domain due to increasing commercialization and increasing state control. Second, there is a low level of penetration into society as urban and higher income brackets benefit the most making it a less egalitarian medium than it might seem at first. Lower income brackets and rural areas predictably evidence much lower degrees of penetration.<sup>80</sup> Analysis on the political consequences of this situation in relation to human rights protection remains to be done. One can speculate that if this situation persists then the new media's ability to enhance promotion and protection of all groups might remain limited. Third, there has been outright partisanship of many of the new actors, as noted by Vatikiotis. Fourth, the citizenry uses the Internet for multiple purposes and do not necessarily use the Internet for political information or activism. A case in point for the latter factors is Singapore, which has one of the highest rates of Internet connectivity and

penetration in the world, but whose citizens displayed low levels of participation on public issues through this medium.<sup>81</sup>

There is ongoing attempt to foster better, responsible journalism, in particular in the new media environment. The Asia Media Forum for exchange among journalists, created in Thailand in 2006, adopted the following aims: the “promotion of inclusive journalism that promotes justice; strives to meet the highest standards of accuracy, balance, fairness and accountability; and fights discrimination and exclusion based on gender, caste, religion, political beliefs and ethnicity,” and the:

strengthening of media that ensures the right to know of the people, right to access to information and freedom of expression by linking them with human dignity, human rights and equitable development and by breaking the silence that mars media discourse on development issues confronting the region.<sup>82</sup>

Such values are far from foreign to journalism in the region. Truth, accuracy and objectivity are consensual cornerstones of journalism ethics as documented in professional codes in the region.<sup>83</sup> ASEAN's code of journalistic ethics adopted by the 1989, seventh Assembly of the Confederation of ASEAN Journalists stated that journalists should not suppress any facts or make improper exaggeration. Malaysia's code urged journalists to report facts accurately and faithfully and to respect the right of the public to the truth. In relation to freedom of expression of the media, Indonesia's code stated that a journalist always defended the principles of free and balanced coverage, reporting, critique and comments, while Malaysia's stated that the Malaysian press believed in a liberal, tolerant, democratic society and in the traditional role of a free and responsible press. Helen Clarke, Prime Minister of New Zealand, while commenting on the relationship between politicians and journalists, urged them “to develop clear boundaries between the two as part of journalistic professionalism.”<sup>84</sup>

This is prescient advice in view of an additional dimension to the media in Southeast Asia: the development of an indigenous *regional* media. This is perhaps reflective of the media's general deference to states' warnings about non-interference in their internal affairs, a concept that initially related to the use of force and then subsequently was expanded to encompass other areas of inter-state relations. Press criticism in one country of ASEAN has traditionally been seen as interference. Tay notes that the different levels of democracy and of media freedom between ASEAN countries can be a source of tension between governments. For example, will criticism by *NewsAsia*, a Singaporean broadcaster with regional broadcasting ambitions, be construed as interference, especially given that “it has been regarded as being under state influence” if not control?<sup>85</sup> The review of the media coverage of the TORs revealed little or no substantive analysis, let alone critical analysis, of the diplomacy and the retreat of the various actors in face of Myanmar's and other states' opposition to stronger terms. During the process of drafting the AHRD since July 2011, CSOs have taken the lead using their online platforms to challenge not only the process, but

drawing on a draft leaked to the public they have also challenged the substantive clauses put forward in the draft in a professional manner. If indeed democracy is part of the long term future of Southeast Asia, the economic, political and social transitions as well as institutional changes (judiciary, executive, legislative) involved, argues Glenda Gloria, require a vibrant, independent and fair media.<sup>86</sup> Such a media would be able to report *and* analyse truthfully, accurately, independently and comprehensively on ASEAN's new human rights mechanism. Increasing attention to the development of professional journalism in the new media environment is being undertaken by news organizations like *Asia Times*, *Asian Sentinel* and *Malaysiakini*. The latter, for example, was founded by former professional journalists from traditional news media organizations in Malaysia to craft a pioneering, alternative, on-line news service that has reportedly even attracted praise from Singapore's Lee Kuan Yew as a credible source of information.<sup>87</sup> Janet Steele, an Associate Professor of Journalism at the School of Media and Public Affairs at George Washington University, writing on *Malaysiakini*'s website, has praised the organization's "high standards of journalism".<sup>88</sup>

### **Conclusion**

The media has no role thus far in the AICHR, as is reflected in the drafting process of the forthcoming AHRD. Nor does the AICHR, thus far, include any plans to open up its work to the public. The online news media coverage of the AICHR, while offering some hints at the objections to the newly minted AICHR, lacked depth and breadth of coverage and offered little real analysis of the broader public policy issues involved. Some coverage, most notably in Thailand, was more critical but has yet to fill in the bigger picture.

The Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights issued during the ASEAN Summit in Thailand, 23-25 October 2009, recognised that the TORs of the AICHR "shall be reviewed every five years" after its entry into force "to strengthen the mandate and functions of the AICHR" and "in order to further develop mechanisms on both the protection and promotion of human rights." Furthermore, "this review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting."<sup>89</sup> Addressing civil society on this occasion, Thailand's Prime Minister stated,

For the members of civil society present here, you should rest assured that you now have a new partner with whom to work. Together, we can help shape an ASEAN human rights agenda that truly makes a difference in the lives of our peoples. Support and participation at the very grassroots level will go a long way towards further reinforcing the political will and commitment at the government level.<sup>90</sup>

It is therefore vital that civil society take its rightful place as an agent of accountability and a force for the protection of human rights. A critical issue for such organizations, which in essence fulfill a journalistic role, is that they engage in critical analysis but accurate, fair and deeper analysis than is evident in the media coverage thus far.



This is perhaps an opportune time for the region's media to concert and consider how they will engage institutionally and substantively with the AICHR. The TORs provide in Article 4(8) for engagement in dialogue and consultation with "other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter." On this issue, the National Human Rights Institutions of ASEAN may be of assistance in offering advice and assistance on engage the media.

The outcome of such a concert might be at least threefold. The first, is an insistence by the regional media on institutionalized access to the work of the AICHR and in particular access to the substantive work of the AICHR. It must, at minimum, insist on a well developed 'media center' on any future website of the AICHR or on the ASEAN website and in all of the major languages of ASEAN. In this regard, the UN Human Rights Council Media site may perhaps serve as a model for the AICHR. The media sites of the European Court of Human Rights and the Inter-American Commission may also provide useful models to follow.<sup>91</sup> Such a 'media center', however, is only a very small starting point and bears the potential pitfall that the information provided might simply gloss over the real, fundamental human rights challenges. The second, is an enhanced relationship with credible national, regional, and international human rights non-governmental organizations such as Forum Asia and the AHRC. The third, is that journalists should seek specialized training specifically on international and regional human rights issues and on how to convey information using the new media environment in a fair and accurate way. This is especially important in the current context of 'crowdsourcing' as a means of enhancing the protection of human rights. It is also important in the context of the rise of citizen journalism in Southeast Asia as more and more are taking to social media. An important indicator of this is the fact that even in Myanmar, internet use by individuals in recent years has increased and according to U Pho Naing Lin, Chief Editor of Popular News Myanmar around 40% of internet users in his country have Facebook accounts. In other parts of Southeast Asia, social media is giving a voice to ordinary citizens that they did not have before.<sup>92</sup> Anupam Sekhar of the Europe-Asia Foundation, reporting on a conference on citizen journalism in the region has noted "the swift growth of citizen journalism and the newly accorded recognition of social media by mainstream media" were promising trends "pointing towards the emergence of real alternative media' in the region." Thailand and Malaysia were cases in point. In the former, mainstream media outlets were offering training to citizen journalists. In the latter, social media was serving as a reference point for mainstream media. Mainstream electronic media in Malaysia were known to regularly track social media sites to pick up news and trends. Sekhar noted that international news broadcasters such as CNN (Cable News Network) and BBC (British Broadcasting Service) have also featured stories from local Malaysian social media sites. The power of this "alternative media" will only increase as new applications for mobile devices are created such as

Regional human rights NGOs, academic institutions and regional press organizations can cooperate with a view to offering joint programs. These are necessary elements for better

human rights reporting and analysis. A UNESCO training manual for Vietnam on human rights based approach to journalism noted that:

There must be a marriage between new media information sources and professional journalistic practices. Journalists can use their ability to communicate and their access to mass media sources, not only to report events, but also to add more in-depth, quality analysis. Through analysis and the bringing together of multiple perspectives, journalists create the potential for a more knowledgeable, well-rounded and aware public. This increased awareness can lead to a stronger civil society and a more active population.<sup>93</sup>

### End Notes

<sup>1</sup>See OpenNet Initiative. (2005). Country Study: Internet Filtering in Burma. <http://opennet.net/studies/burma>. OpenNet Initiative is the partnership between the University of Cambridge, the University of Toronto and the University of Oxford.

<sup>2</sup>Prime Minister Abdullah Ahmad Badawi. (2008). quoted in How Malaysiakini challenges authoritarianism by Janet Steele, *Malaysiakini*, <http://www.malaysiakini.com/news/117130>. In another part of the world, the electoral crisis in Iran in the summer of 2009 demonstrated the utility of new media technologies – Internet, mobile telephony, SMS or ‘texting’ and social networking sites - in disseminating information about abuses committed by governmental agents. United States (US) Secretary of State Hilary Clinton noted on CNN that the US State Department had asked social networking site Twitter to postpone scheduled maintenance and to continue operating during the crisis in Iran as many citizens were using this medium to communicate events. Hilary Clinton, interview with Christiane Amanpour on “Amanpour,” CNN, 11 October 2009, 2-3pm (EST time).

<sup>3</sup>See related work on the ‘crowdsourcing’ – the collective intelligence of citizens (e.g. Wikipedia) - and human rights. Lisa Horner. (2011). A human rights approach to the mobile internet. 1 Association for Progressive Communications June 2011. Available at [http://www5.apc.org/es/system/files/LisaHorner\\_MobileInternet-ONLINE.pdf](http://www5.apc.org/es/system/files/LisaHorner_MobileInternet-ONLINE.pdf); Heinzelman, J. (2009). Waters, C. (2010). *Crowdsourcing crisis information in disaster- Affected Haiti* (USIP). Land, M. (2009). Peer Producing Human Rights. *Alberta Law Review*, 46,4; and Heinzelman, J., & Meier, P. (2013). Crowdsourcing for human rights monitoring: Challenges and opportunities for information collection and verification. Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1712021&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1712021&download=yes). Goldstein and Juliana Rotich, *Digitally Networked Technology in Kenya’s 2007–2008 Post-Election Crisis*, by Joshua Digitally. Internet and Democracy Case Studies. September 2008. Berkman Center Research Publication No. 2008-09. Available at <http://unpan1.un.org/intradoc/groups/public/documents/unpdadm/unpan042523.pdf>.

<sup>4</sup>See generally, Robinson, S. (2007). Someone’s gotta be in control here. *Journalism Practice*, 1(3), pp.305-321; Romano, A., & Bromley, M. (2005). *Journalism and Democracy in Asia*. London and New York: Routledge.

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