

# **ASEAN-Japan Cooperation on Democracy and Human Rights Promotion: Challenges and Opportunities**

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IN 2003, THE leaders of ASEAN declared their intention to establish an ASEAN Security Community (ASC), later renamed the ASEAN Political-Security Community (APSC). The emergence of the APSC concept in part reflects ASEAN's growing attention to democracy and human rights as a way of promoting a stable regional order. Indeed, one of the main objectives of the APSC project is to establish "a rules-based community of shared values and norms" by "promoting political development in adherence to the principles of democracy, the rule of law, good governance, human rights, and fundamental freedoms."<sup>1</sup>

With democracy thus at the forefront of ASEAN's discourse, democracy promotion has also been incorporated into the goals of ASEAN-Japan cooperation. The joint declaration issued at the 14th ASEAN-Japan Summit in 2011, for instance, commits Japan and ASEAN to facilitating cooperation for "the promotion of democratic values and the empowerment of people in the region by supporting the realization of the APSC."<sup>2</sup> As one of the most successful democracies in Asia, Japan is expected to play a major role in supporting ASEAN's democracy project. However, the implementation of ASEAN-Japan cooperation on democracy and human rights promotion seems not to be an easy prospect given the diversity of political systems and ideologies among the ASEAN countries. What are the major challenges facing Japan and ASEAN in implementing bilateral cooperation in this field? How should Japan and ASEAN work together to overcome such obstacles?

The main objective of this chapter is to examine the challenges and opportunities for ASEAN-Japan cooperation on the APSC project with special reference to democracy and human rights promotion. The remainder of this chapter is organized as follows: The first section provides a brief overview of the ascension of democracy and human rights on ASEAN's agenda with respect to the APSC project. The second section examines obstacles in ASEAN that are interfering with the promotion of democracy and human rights. The third section examines major areas and activities in which Japan and ASEAN could foster cooperation. And the concluding section discusses the implications for ASEAN-Japan relations and the prospects of a regional order in both Southeast and East Asia.

### THE RISE OF DEMOCRACY AND THE HUMAN RIGHTS AGENDA IN ASEAN

In official ASEAN documents, reference to democracy first appears in the Declaration of the ASEAN Concord II (Bali Concord II), adopted at the ninth ASEAN Summit in October 2003. The advancement of democracy in ASEAN was accompanied by the emergence of the ASC concept, which was first proposed by Indonesia. At ASEAN's senior official meeting in May 2003, Indonesia presented a concept paper entitled "Towards an ASEAN Security Community," which placed a strong emphasis on democracy and the human rights agenda. The paper called for ASEAN members "to promote people's participation, particularly through the conduct of general elections, to implement good governance, to strengthen judicial institutions and legal reforms, and to promote human rights and obligations through the establishment of the ASEAN Commission on Human Rights."<sup>3</sup> Indonesia's keen interest in democracy and human rights promotion reflects not only the progress of democratization in Indonesia but also its attempt to reassert its traditional leadership in ASEAN.<sup>4</sup> Unsurprisingly, Indonesia's proposal met with opposition from some of the nondemocratic ASEAN countries that have resisted the inclusion of democracy and human rights as a main policy objective for ASEAN. Hence, while the Bali Concord II endorses the idea of the ASC, it only makes a brief reference to the democracy agenda, stating that "the ASC would ensure that ASEAN members live in peace with one another and in peace with the world in a just, democratic and harmonious environment."<sup>5</sup>

As the chair of ASEAN's Standing Committee, Indonesia was assigned the task of drafting an action plan for the ASC. This opportunity allowed Jakarta to again take the initiative for inserting a democracy and human

rights agenda as a major part of ASEAN's community-building project. A draft of the ASEAN Security Community Plan of Action (ASC POA), presented by Indonesia in February 2004, explicitly positions democracy and human rights as "common socio-political values and principles" that ASEAN members should nurture, and in order to achieve this objective, it urged ASEAN members to "strengthen the systems of people's participation through free and regular elections" and to "establish an ASEAN Regional Commission on Human Rights."<sup>6</sup>

However, persuading nondemocratic ASEAN members to support Indonesia's proposal again proved to be problematic. As a result of bargaining and negotiations among ASEAN members, the draft of the ASC POA was watered down. The references to democracy and human rights as shared ASEAN values and the establishment of a human rights commission were erased from the final version of the POA, which was adopted in November 2004. Instead, the final version simply argues that "ASEAN members shall promote political development in support of ASEAN's shared vision and common values for achieving peace, stability, democracy and prosperity in the region." Furthermore, "strengthening the systems of people's participation through regular and free elections" was replaced with "strengthening democratic institutions and popular participation."<sup>7</sup>

Despite these revisions, the ASC POA retains important elements of the democracy and human rights agenda proposed by Indonesia, thus making them a main component of ASEAN community building. ASEAN's commitment to democracy and human rights was also confirmed by the ASEAN Charter, signed by ASEAN leaders in November 2007. The charter commits ASEAN to "strengthening democracy, enhancing good governance and the rule of law, and to promoting and protecting human rights and fundamental freedoms."<sup>8</sup> Indonesia's earlier proposal for the establishment of a human rights body was also revived in the charter.

In addition, at the 14th ASEAN Summit in February 2009, ASEAN leaders adopted the ASEAN Political-Security Community Blueprint, which articulated a roadmap and activities that ASEAN would implement for realizing what by then had become known as the APSC. For example, regarding the promotion of democratic principles, the blueprint stipulates the implementation of the following actions:

1. Promoting understanding of democratic principles among youth at schools at an appropriate stage of education
2. Organizing seminars, training programs, and other capacity-building activities for governments, think tanks, and relevant civil society

organizations to exchange views, share experiences, and promote democracy and democratic institutions

3. Conducting annual research on experiences and lessons learned of democracy aimed at enhancing the adherence to the principles of democracy<sup>9</sup>

As for the promotion and protection of human rights, the blueprint specifies the following activities:

1. Establish an ASEAN human rights body by 2009
2. Complete a stock-taking of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children, by 2009
3. Cooperate closely with efforts of the sectoral bodies in the development of an ASEAN instrument on the protection and promotion of migrant workers' rights
4. Strengthen interaction between the network of existing human rights mechanisms as well as other civil society organizations, with relevant ASEAN sectoral bodies
5. Enhance and conduct information exchange in the field of human rights among ASEAN countries
6. Promote education and public awareness on human rights
7. Cooperate closely with efforts of the sectoral bodies in the establishment of an ASEAN commission on the promotion and protection of the rights of women and children<sup>10</sup>

ASEAN has begun to implement some of these activities. For instance, through the Bali Democracy Forum and the Institute for Peace and Democracy—both of which were established by the Indonesian government in 2008 with the aim of promoting democracy in Asia Pacific—Jakarta has provided other ASEAN countries with a number of workshops aimed at sharing the experiences and lessons learned during Indonesia's democratization process. These have included the workshop on Electoral Systems, Parties and Parliaments and the workshop on Indonesian and Asian Democratic Transition and Reform Experiences. Moreover, in keeping with the mandate of the ASEAN Charter, at the 15th ASEAN Summit in October 2009, ASEAN members launched an ASEAN Intergovernmental Commission on Human Rights (AICHR) as an ASEAN human rights body. Following this, an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was established in April 2010.<sup>11</sup>

## CHALLENGES FOR DEMOCRACY AND HUMAN RIGHTS PROMOTION IN ASEAN

As we have seen, ASEAN has publicly acknowledged the importance of democracy as the basis of regional order and has begun to implement a number of measures for promoting democracy and human rights. However, this does not mean that ASEAN governments have successfully embarked on this designated path. Indeed, ASEAN still faces a number of challenges that it must overcome to accomplish the task.

The first challenge is that there are wide disparities among ASEAN members over their political will to engage in democracy building. Promoting a “democratic environment” in Southeast Asia basically means that all ASEAN countries would become democracies in the foreseeable future. However, the willingness to promote democracy is not shared to the same degree among the member states. The debate over the formulation of the APSC seems indicative that only a few ASEAN members, in particular Indonesia and the Philippines, strongly support the idea of democracy and human rights promotion in ASEAN.<sup>12</sup> Whereas the two countries have struggled to consolidate their democracies, civil society organizations (CSOs) working in the area of democracy and human rights are relatively energetic in these countries. On the other hand, nondemocratic ASEAN states have basically no real enthusiasm for democratization. They view democracy and human rights promotion as a threat to their domestic political orders.<sup>13</sup> This in large part explains why the references to democracy in ASEAN documents, including the APSC Blueprint and the ASEAN Charter, are somewhat vague.<sup>14</sup> Similarly, the emergence of a somewhat ineffective human rights body in ASEAN is indicative of ASEAN’s ambivalent feelings toward human rights issues. The establishment of the AICHR is certainly a significant step toward human rights promotion in ASEAN. However, due to opposition from most ASEAN members, the AICHR has not been equipped with a mechanism for investigation that could monitor and report back on human rights violations by ASEAN member governments, thereby undercutting its ability to perform the task of “human rights protection.”<sup>15</sup>

The lack of political will for democratization on the part of reluctant ASEAN countries generates another challenge, namely the problem of implementation. As noted above, ASEAN has implemented some modest measures for the democracy promotion specified by the APSC Blueprint. However, the driving force behind these measures has mainly been Indonesia, not ASEAN as a whole. Although reluctant states have participated in a number of “lessons learned” and capacity-building

workshops hosted by Indonesia, they are not expected in the near future to willingly engage in the active promotion of democratic values and principles within their countries, such as “promoting understanding of democratic principles among youths through school education,” a measure listed in the APSC Blueprint.

Ensuring a firm commitment from all ASEAN members may require a more intrusive measure, such as imposing peer pressure on states reluctant to conduct democratizing political reforms. However, ASEAN’s principles of consensus decision making and noninterference in the domestic affairs of states could prohibit member countries from taking any coercive action. At a meeting of the Inter-Regional Dialogue on Democracy in May 2012, ASEAN Secretary-General Surin Pitsuwan argued that “ASEAN has not been given a mandate to democratize non-ASEAN members. ASEAN can only bring gentle and soft reminders to them without a written mandate from all of the member countries.”<sup>16</sup>

The third challenge is that there are no countries within ASEAN that can effectively lead its democratic agenda.<sup>17</sup> As we have seen, Indonesia and the Philippines, two major democracies in Southeast Asia, have played an active role in advancing ASEAN’s democratic agenda. However, the credibility of their initiatives has been waning in recent years due to major democratization setbacks in both countries. Although Indonesia has successfully transformed itself from an authoritarian state to a new democracy, it has struggled to consolidate democracy due in part to a dysfunctional legal system, which helps facilitate the abuse of power and corruption.<sup>18</sup> The credibility of the Philippines as the oldest democracy in Southeast Asia has also been undermined by its political instability, stemming from pervasive corruption in the public sector, widespread electoral fraud, and extrajudicial killings.<sup>19</sup>

In short, the two countries have not yet successfully demonstrated democratic norms, thus failing to show the value of democratization to other ASEAN members. In other words, while they have successfully become *electoral democracies*, in which the elites acquire ruling power through competitive struggles for the people’s power, they are still far from becoming *liberal democracies*, where the exercise of state power is checked and liberties of individuals and groups are fully protected. The erosion of the rule of law in both countries, which has sometimes been subject to criticism from other ASEAN members, has greatly weakened the credibility of voices calling for democracy building within ASEAN. As Rizal Sukma argues, “For countries like Malaysia and Vietnam, democracy in Indonesia and the Philippines is not an ideal alternative to their existing political systems.”<sup>20</sup>

## OPPORTUNITIES FOR ASEAN-JAPAN COOPERATION ON DEMOCRACY AND HUMAN RIGHTS PROMOTION

As we have seen, ASEAN has faced difficult challenges in advancing its democracy and human rights agenda mandated in the APSC project. How can Japan and ASEAN collaborate with each other to overcome these difficulties? The ASEAN-Japan Plan of Action 2011–2015, adopted during the 14th ASEAN-Japan Summit in 2011, stipulates the following areas of cooperation in the field of democracy and human rights promotion:

1. Support the work of the AICHR and the ACWC through training, capacity-building, and technical cooperation
2. Conduct women's studies to address issues such as human trafficking and mail-order brides
3. Promote democratic values and the empowerment of people in the region by seeking cooperation through seminars and other joint projects and within the framework of the APSC Blueprint and the Bali Democracy Forum
4. Continue to promote capacity building in the law and justice sector in order to strengthen the rule of law, judicial systems, and the legal infrastructure.<sup>21</sup>

Although the above list of short-term activities could contribute to the advancement of ASEAN's democracy and human rights agenda, it may be said that it is not sufficient for coping with the aforementioned challenges facing the agenda. It is necessary, therefore, to consider what other mid- and long-term approaches (2015–2030) Japan and ASEAN should pursue to achieve democracy-building goals in ASEAN.

To begin with, Japan and ASEAN should work to strengthen civil society in Southeast Asia. The predicament surrounding ASEAN's democracy agenda suggests that ASEAN-Japan cooperation on democracy building should be based on a bottom-up approach (strengthening the social basis for gradual democratic transition) rather than a top-down approach (imposing external pressure on regimes to conduct political reform). A top-down approach could cause a political schism between the democratic and nondemocratic ASEAN members, thus having a counterproductive effect on the ASEAN community project.

The key to a successful bottom-up approach is the development of a more vibrant civil society.<sup>22</sup> It is civil society-led advocacy and campaign activities that help promote citizen awareness and understanding of democratic norms and values such as human rights, civil liberties, and social justice. The role of civil society in this regard includes exposing the deficiencies

of political structures and the abuse of state power, while offering an alternative framework for governance.<sup>23</sup> Over the long run, these activities would contribute to the diffusion of democratic values and knowledge on a broader level, thus promoting the necessary social basis for democratic transition.<sup>24</sup> This is exemplified by the democratic transitions in Indonesia, the Philippines, and Thailand, in which the activities of CSOs have helped delegitimize authoritarian rule, generating social movements for political liberalization in these countries.<sup>25</sup>

The strengthening of civil society also serves to consolidate democracy in democratic ASEAN members. Promoting the rule of law requires not only the establishment of elaborated judicial institutions for limiting the abuse of state authority but also the building of autonomous media and watchdog organizations, such as anticorruption and election monitoring groups, that can scrutinize and check the exercise of power since even well-designed judicial institutions are not free from the risk of being subverted. The risk of democratic institutions being abused tends to increase unless society has the will and means to defend itself. Only the media and CSOs, which provide citizens with additional channels through which to express their concerns and participate in politics, can generate pressure on ruling elites to conduct political reform when elections cannot ensure rule of law.<sup>26</sup> In this regard, the role of civil society in checking and limiting the potential abuse of state power is vital to the deepening of democracy in democratic ASEAN members.

A tremendous number of CSOs already exist in ASEAN states. Democratic ASEAN countries have vibrant civil societies, with organizations working in various fields, such as human rights, health, anticorruption, election monitoring, and environmental protection. These organizations have generated a vast array of new social movements and have pressured governments for political reform. The number of CSOs has also increased in nondemocratic ASEAN countries, and particularly in Malaysia, Vietnam, and Cambodia. In the coming decades, with steady economic growth, the number of CSOs is expected to increase in many parts of ASEAN. According to studies on the linkages between civil society and democratization, economic development is a key factor in the emergence of a dynamic civil society, helping enlarge the middle class and raising education and information levels among the public, thereby contributing to the proliferation of “self-expression values” that stress human autonomy and choice.<sup>27</sup>

Yet, the expansion of CSOs does not automatically lead to successful democratization. Indeed, despite the already significant number of CSOs in ASEAN, their ability to promote democracy and human rights has proved limited. Although CSOs operating in democratic ASEAN countries have

had some success legislating and constitutionalizing change, their ability to affect far-reaching political reforms has been hindered in part by the persistence of conservative forces dominating most major government institutions.<sup>28</sup> Meanwhile, CSOs operating in nondemocratic ASEAN states face severe restrictions on their activities and are subjected to strict government controls.<sup>29</sup>

The limited role of civil society in Southeast Asia in terms of democracy promotion has stemmed not only from the lack of a legally protected realm for civil society—one that ensures the liberties of individuals and groups—within many of the region’s countries but also from the shortage of capability and expertise on the part of CSOs.<sup>30</sup> According to Edward Aspinall and Meredith Weiss, many CSOs in Southeast Asia have only a limited capacity for public mobilization due mainly to the weakness of their linkage to political parties and to mass constituencies.<sup>31</sup> Indeed, civil societies in Southeast Asia have remained highly fragmented because of the diversified nature of their societies, which are characterized by ethnic, urban-rural, and religious divisions.<sup>32</sup> For instance, in many ASEAN states, civil society movements have mainly flourished in urban areas, in which CSOs and nongovernmental organizations (NGOs) founded by urban elites have grown with significant funding from a wide range of Western donors and aid agencies, such as USAID, the World Bank, and the United Nations. While those organizations have conducted assertive liberal campaigns along with the interests of the international donors, they have not responded well to the social and political problems facing the rural poor, who lack resources to organize civic organizations. As a result, the rural poor have been forced to remain inside the traditional patron-client system, dominated by local bosses who are their only source for the material assistance they require. This has helped promote the fragmentation of civil society, thus weakening its capacity for public mobilization.<sup>33</sup>

How can Japan help ASEAN to strengthen civil society in Southeast Asia? Given the limitations of regional civil societies discussed above, Japan-ASEAN cooperation should focus on the task of overcoming fragmentation. One effective measure that Japan and ASEAN could implement together would be the fostering of linkages among civic organizations that bridge ethnic, urban-rural, and religious divides, allowing the engagement and mobilization of local constituencies. Recent years have witnessed the growth of transnational networks among civic organizations in Southeast Asia. These networks and associations have played an important role in strengthening domestic NGOs and CSOs, including grassroots organizations in the rural areas of ASEAN countries, providing them with the funds and expertise necessary for campaigning

and lobbying. Together, they form a collective voice that can appeal to both the public and governments, while making alliances with other international groups for lobbying both state governments and regional organizations.<sup>34</sup> For instance, the Asian Forum for Human Rights and Development (FORUM-ASIA), headquartered in Bangkok, has provided assistance to local NGOs in various Asian countries and has campaigned to promote human rights and freedom of association.<sup>35</sup>

To help regional civil societies overcome their weaknesses, Japan and ASEAN should actively support the growth of CSO networks in Southeast Asia. For instance, Japan and ASEAN could set up a special fund to provide necessary financial assistance to those CSOs that are contributing to the building of regionwide CSO networks and to empower local CSOs on the forefront of democracy building and human rights. Such a joint initiative could help local CSOs overcome various constraints, allowing them to flourish, hence making an important contribution to the growth of civil societies and democracy building in Southeast Asia.

Additionally, Japan and ASEAN should consider the possibility of establishing CSO networks between them. A major characteristic of Japanese civil society is the existence of only a few large advocacy groups but many small local groups, mostly represented by neighborhood associations. The activities of neighborhood associations, for instance, include forming watch patrols to prevent crime and fires; supporting children, women, and senior citizen groups; cleaning public facilities; maintaining community centers; and organizing festivals. By increasing the capability of grassroots communities to maintain social structures, these activities make a significant contribution not only to the enhancement of local governance but also to the boosting of social capital, vital to the building and maintenance of democracy.<sup>36</sup> ASEAN has an abundance of advocacy groups, but lacks local groups like the neighborhood associations, which can effectively promote social capital. Sharing the Japanese CSO model with ASEAN countries could help strengthen the social basis for democratization in ASEAN. In order to facilitate interactions between Japanese and ASEAN CSOs, Japan and ASEAN should organize international CSO conferences.

Secondly, Japan and ASEAN should work together to consolidate the rule of law among democratic ASEAN members. Considering the lack of political will to advance democracy on the part of reluctant ASEAN states, the successful implementation of the APSC project will depend on efforts taken by democratic ASEAN members, in particular Indonesia and the Philippines. However, setbacks in their democratization have tarnished their democratic allure, weakening their leadership. To enhance their validity, Indonesia and the Philippines must transform themselves into liberal

democracies, significantly reducing executive abuses and corrupt practices, thus restoring the democratic rule of law.

Although the two countries have already established special government bodies to fight corruption, such as anticorruption commissions and the office of ombudsman, these institutions have often been plagued by dysfunctional judicial systems in which corruption also prevails. In order to reestablish the rule of law, at a minimum Indonesia and the Philippines need to develop more capable and politically isolated judicial systems since elected lawmakers, bureaucrats, the military, and the police cannot be held accountable without such judicial efficacy. Nor can human rights be protected without it.<sup>37</sup> The establishment of an effective judicial system requires not only well-trained, objective, fair-minded legal practitioners, including judges, clerks, prosecutors, investigators, and defense attorneys, but also the necessary resources and infrastructure for generating and maintaining the quality of the system, such as law schools, judicial training institutions, law libraries, and professional bar associations.<sup>38</sup>

Japan is one of a small number of countries possessing the expertise needed for judicial reform in Indonesia and the Philippines, having extensive experience in supporting the development of judicial systems in other developing countries, such as Cambodia and Vietnam. To cite an example, since 1999 the Japan International Cooperation Agency (JICA), with support from the Japanese Ministry of Justice, has been strongly supporting Cambodia's efforts to restore its legal and judicial systems after undergoing untold damage during its civil war. JICA's assistance has ranged from the drafting of civil laws to the formulation of education and training curriculums in the major legal institutions, including the Royal School for Judges and Prosecutors, the Center for Lawyers Training and Legal Professional Improvement, and the Bar Association of the Kingdom of Cambodia.<sup>39</sup>

Based on this experience, Japan could help both Indonesia and the Philippines to improve their educational and training programs for law students, judges, prosecutors, and other legal practitioners in order to increase the professional skills of law practitioners while strengthening the ethical performance of their judicial systems. Such collaboration would contribute to the empowering of democratic ideals in both countries, thus helping strengthen their ability to lead the APSC project.



Given the political, economic, and cultural diversity among ASEAN states, the promotion of a democratic environment within ASEAN is perhaps the

most daunting task in the APSC project. Democracy building is a complicated, nonlinear process of development, requiring a long-term, tenacious effort to reform government, strengthen civil society, build a democratic culture, and so on. Fostering democratic development, hence, often requires strong and steady assistance from external actors who have the necessary expertise and resources to further democratization.

Japan is one of a small number of countries that can provide capable support to ASEAN's democracy and human rights project. This is an area in which Japan and ASEAN are expected to establish a strong partnership in the coming decade. Such cooperation will not only serve to consolidate bilateral relations and enhance peace and stability in Southeast Asia through the facilitation of shared norms and values, but it will also have a significant impact on the future course of regional order in the wider East Asian region. Japan and ASEAN share a common interest in building an open and rules-based regional order in East Asia. Given that the construction of such a regional order can never be achieved without ASEAN being able to transform itself into a democratic entity, the success of bilateral cooperation in this field is a critical step toward their shared goal of promoting a durable security community based on the principle of openness and the rule of law in the East Asian region.

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