

Human Rights in Southeast Asia Series 1

BREAKING THE SILENCE

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Special for Jim Mahabir

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The Southeast Asian Human Rights Studies Network (SEAHRN) is a consortium of academic institutions which provide human rights education through study programs, research and outreach activities within the Southeast Asian region. The network, which was established in 2009, has 14 founding member institutions from 6 countries.

The SEAHRN was born out of a common dream to enhance and deepen the knowledge and understanding of students and educators as well as other individuals and institutions from Southeast Asia in human rights. This goal will be achieved by engaging in collaborative research, improving course curricula and training programmes, sharing of best practices and conducting capacity building training of educators, staff and students and other interested individuals and institutions. Furthermore, it seeks necessary regional academic and civil society cooperation to sustain the effective promotion and protection of human rights in the region. The network desires to open its doors to interested institutions and individuals who share its vision for human rights in Southeast Asia.

Human Rights in Southeast Asia Series 1: Breaking the Silence

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FOREWORD

Globalization creates cracks, cleavages, and vacuums of State powers along the increasingly porous inter-State boundaries not only in Southeast Asian Region but also in others. Slowly but surely the non-traditional threats such as carbon emission, climate change, eventual food crises, and some others are aggravating the traditional threats against the regional integrity—nuclear proliferation, territorial conflicts, shipping security, etc. Mixed together with permeably indefensible inter-State borders, these threats work wonders to worsen the situation of (1) the influx of people, such as refugees and migrants, on the move from armed conflicts and economic woes, (2) the increase of number of people under health threats such as pandemics or other contagious diseases, (3) the chronic state of the lack of quality education among population, (4) those who suffer from environmental degradation, and (5) other dire situations in all aspects of life. This growing list of challenges has indeed quickly replaced the usual issue of State security in our region.

An old quotation from one of ASEAN's founders thus resonates. Thus prominent was the former Indonesian Foreign Minister Adam Malik's foresight that, "The setting of a future of peace, friendship and cooperation is far too important to be left to the governments and government officials only." In this spirit, in 2008, the ASEAN Secretariat initiated a new mindset. The "Networked Secretariat" aims to reach out to as many potential partners, such as government agencies, civil society, academics and others, to deal with the old and new threats. The wider space has, to a certain extent, now allowed civil society to pursue interests with the ASEAN and its member States. Along with the permeable State borders, a country's problems can easily and conspicuously become problems of the others. In light of combating these potential and current drawbacks, the integration of the region, however, has its both dark and bright sides. Violence or arbitrary use of force, for instance, needs a response as to who could effectively offer some possible remedies or solutions.

ASEAN and the Governments alone cannot perform these complex tasks. The First International Conference on Human Rights in Southeast Asia organized by the Southeast Asian Human Rights Studies Network (SEAHNRN) on 14-15 October 2010 in Bangkok, Thailand was a symbolic gesture for civil society's countless achievements in human rights work. In the backdrop of a number of regional developments like the formalization of the ASEAN Inter-governmental Commission on Human Rights (AICHR), the incipience of the ASEAN Commission on Women and Children (ACWC), and the mandate to evolve an ASEAN Declaration of Human Rights, this Conference has indeed enriched the academic discourse on human rights in the region.

Amidst the domination of western universities and researchers, published works on human rights in Asia, specifically in the Southeast, get their first drop of much deserved fresh water after a long thirst for recognition, understanding and acceptance. Out of more than 80 entries in the Conference, the SEAHRN Editorial Team has decided to narrow the list down to 12 papers for the post-Conference book entitled “Human Rights in Southeast Asia Series 1: Breaking the Silence”. These selected papers were mostly done by Southeast Asia’s homegrown scholars, researchers and activists. Their efforts, indeed, represent countless attempts to enhance the academic discourse on human rights, peace and conflicts in the region.

These academic works truly stand out as the complementary intellectual parts of the previously called participation of a larger civil society, i.e. academia, non-government organizations and other stakeholders as by the ASEAN Secretariat. Issues featured in these papers represent only the tip of the iceberg of gloomy human rights records in the region. These academic works serve as the breakers of the chilly silence simply by their synchronous voices and tones. The echoing voices of oppressed groups, of tortured prisoners of conscience, of discriminated transgender groups, of intimidated press workers, of cornered religious groups, of stateless refugees, of homeless working class, of victims of military oppressions, of protesting philosophers of human rights, of victims of violent conflicts reverberate throughout the “quiet” southeastern part of Asia. There is no way that the sheer sonic waves of screams of horrified victims of human rights violation can evade our ears.

These first-hand accounts have shaken the evolution of a “sense of community” among the ASEAN member States. These developments make it even harder for the ASEAN to realize economic integration, inclusive and equitable development, accountable and open societies, without disenfranchising the discriminated “others.” Even much harder to launch is the initiative called “Contemporary Diplomacy” which allows the full promotion of human freedom. The whole scheme is to protect the vital core of all human lives in ways that allow both freedom and fulfillment. Human security thus means protecting fundamental freedom that is essential for life. This commitment, based on the report of the Eminent Persons Group of ASEAN in December 2006, is pivoting around the updated principles and objectives of ASEAN which are (1) “to respect human rights and fundamental freedom,” (2) “to shred its image of being an elitist organization,” as well as (3) “to become a ‘people-centered’ organization”.

The protesting voices documented and enriched with academic rigor in this book are part and parcel of this commitment. Human security, human development and human rights are indeed complementary, supplementary, and naturally supportive of each other. The deficiency of one not only tends to bring the lack of the others but also potentially create protracted conflicts which eventually hinder sustainable peace and development.

Henry Kissinger once challenged, “East Asia as far as technology and economic development are concerned is in twenty first century; as far as institutions to address problems are concerned, a nineteenth century Europe”. To take on this challenge, building a truly “listening” ASEAN means creating a set of pillars for and by people-centered institutions: opportunities, space, contribution, sense of belonging, and ownership for 600 million people of ASEAN to play their roles and realize their own destiny.

SEAHRN, through the 2010 Conference and this book, aimed to provide a venue to explore critical contributions by researchers and scholars in deepening the understanding of human rights-based framework and actual issues including peace and conflicts through in-depth engagement with localized sites within the region. Rather than setting an impossible mission for Governments and government officials to accomplish these purposes on their own, this is the time to map out and actualize a genuine “common journey” with the ASEAN population right through 2015 and beyond.



Dr. Surin Pitsuwan



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INTRODUCTION

STARTING GROUND

The Southeast Asian Human Rights Studies Network (SEAHRN) was established in October 2009. It is a consortium of academic institutions which work in the field of human rights and related areas including peace and conflict studies. The Network started with fourteen founding member institutions from six Southeast Asian countries. The driving force behind the creation of SEAHRN was the Centre for Human Rights Studies and Social Development (CHRSD) which recently became the Institute of Human Rights and Peace Studies, of Mahidol University, Thailand.

The main aspiration of SEAHRN is to enhance and deepen the knowledge in the fields of human rights and peace and conflict. It also aims at the promotion and protection of human rights and peace both in terms of academic endeavours as well as activism through greater cooperation between scholars and activists within the Southeast Asian region, by providing a loosely structured network within which such collaboration can work.

The pioneering activities of the Network were planned to be conducted in order to make this aspiration a reality were the holding of conferences and publications. This book is the direct result of these two planned actions. In October 2010, SEAHRN organized a two day conference entitled The First International Conference on Human Rights in Southeast Asia which was held in Bangkok, Thailand. It was very well attended by members of the academe, civil society, government agencies and international organizations from different parts of the world. It was graced by nearly five hundred participants and over a hundred paper presentations.

It was decided before the conference that from these papers some will be selected for publication. The founding members were tasked with making this selection. The criteria were based not only on the quality of the papers, but also with an emphasis on papers with a distinctly Southeast Asian perspective. This is in line with another of SEAHRN's aspirations, which is to provide a Southeast Asian voice in human rights discourse and to contribute to the growing knowledge on peace and conflict.

Contextualizing Human Rights, Peace and Conflict in Southeast Asia

It has been said that much of the success of the Association of Southeast Asian Nations (ASEAN) stems from its ability to maintain peace and security as well as to promote economic development in the region. It is true that since the establishment of ASEAN in 1967 and the end of the war in Indochina, there were no major inter-state conflicts

(with a few exceptions). The latest one is an on-going and long lasting dispute between Cambodia and Thailand. Despite this, at the national level, struggles for justice, self-government, self-determination which, in a number of cases, had resulted to violence which had cost lots of lives in a number of Southeast Asian countries. In spite of some conflicting incidences and violence, Southeast Asia could indeed be considered as a relatively peaceful region.

Southeast Asian governments, ASEAN members in particular, have committed (for the peoples and member states) to “live in peace with one another and with the world at large in a just, democratic and harmonious environment”.¹ ASEAN members, in their ASEAN political-security community blueprint, further promised to “promote political development in adherence to the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms as inscribed in the ASEAN Charter”.² Indeed, for the first time in ASEAN history, the ASEAN Charter has recognised and legalised human rights and fundamental freedoms both in its purposes and principles. Article 14 of ASEAN Charter stipulates that “ASEAN shall establish an ASEAN human rights body. The said body, which was later named “ASEAN Intergovernmental Commission on Human Rights,” was officially inaugurated on October 23, 2009 in Thailand. In April 2010, another human rights mechanism, “ASEAN Intergovernmental Commission on the Promotion and Protection of the Rights of Women and Children”, was formally established in Hanoi, under the Chairmanship of Vietnam.

In a span of less than a year, much needed human rights mechanisms were set up by ASEAN governments, the very first in the whole of Asia. To the disappointment of those who having pushed for effective regime, these Commissions have been criticised for their lack of protection mandates as none of them have been provided with complaint procedures. The two Commissions could not receive communications on human rights violations. Moreover, the Commissions are not equipped with monitoring powers. In ASEAN, the term “monitoring” is still as sensitive as “human rights”. Due to political diversity of its members and different political space that each society has, the application of human rights has been constrained by ASEAN’s principle and actual strict practice of “respect for state sovereignty and non interference in internal affairs of member countries”. The legalisation and recognition of human rights and fundamental freedoms by the ASEAN Charter does not break the silence on human rights issues. Southeast Asian countries continue to “mute” any discussions on human rights challenges especially those concerning members of the Association. Muting of any human rights concerns has been further strengthened by the principle of consensus. With only one open objection of any single member State, no issue could be discussed in any of official ASEAN forum. Unfortunately, ASEAN solidarity has been taking precedence over the protection of human rights and democratic principles.

The relative progress made by ASEAN in terms of institution building and the current norms setting has not been followed by any positive changes in regional human rights diplomacy. Human rights development witnessed in a few countries are more sporadic than systematic. Initiatives for the promotion and protection of human rights and struggles for changes have been advocated mainly by NGOs, other civil society groups and academics. In most if not all countries of Southeast Asia, advocates become victims of human rights violations. Rights to freedom of thought, expression and participation or assembly have been limited. A number of them were intimidated, threatened, and in the worst case, got killed or enforced to disappear.

In a number of countries, criticising the government is interpreted as opposing the establishment. Some countries have been applying security laws, emergency laws and emergency measures to silence the voice. Laws to control human rights activists are being developed in a number of countries in Southeast Asia. So, political and civil rights are at stake.

In addition, due to the economic and social disparities among the Southeast Asian countries, a large segment of their people is still struggling against poverty, which in itself a serious human rights violation. In this globalised and aggressively capitalistic region, people seem to be powerless to fight against corporations and business enterprises. Indeed, tremendous poverty has been further perpetuated by massive corruption. Only one country in Southeast Asia, Singapore, has been considered as uncorrupted country. The others have been ranked very high in the corruption index during recent years. With prevailing poverty and corruption, economic, social and cultural rights of the people could hardly be actualised.

Forms and degrees of state repression and violence vary from one country to another. Furthermore, it is a common practice in the region that acts of State violence or human rights violations committed by State agencies/officials have gone unpunished. At both national and regional levels, the system of accountability has not been properly put in place and impunity still prevails.

The prospect for the promotion and protection of human rights may not be that bright. Nevertheless, one should not lose hope. The recent institutional development suggests that ASEAN is going to the right direction and there could be no return. Although ASEAN people-centred provided for by the Charter still remains in the air but ASEAN peoples as well as academics, NGOs and CSOs are now paying more attention to ASEAN affairs. They are monitoring and claiming their right to participate in activities which have been until now reserved for and monopolised by ASEAN “elites”. ASEAN civil society is making their voice heard and ASEAN could not remain insensitive to the demand of ASEAN people, brought closer by common agenda including human rights concerns. It is not only human rights which is included in the principle legal instrument of organisation but also the same ASEAN Charter devotes the whole Chapter VIII

4

(articles 22-28) to “settlement of disputes” although no specific dispute settlement mechanism was prescribed except the ASEAN Summit in case any dispute remains unresolved. Not only do we realise that ASEAN Summit is highly political and, in many cases, politicised but the resolution to any dispute depends very much on the willingness and political will of parties to a dispute to agree to resort to “good offices, conciliation or mediation”. Moreover, the dispute settlement as specified by the ASEAN Charter deals mainly with “inter-state dispute”. The internal conflicts or violence within certain member states which may have spill over effects on others have not been addressed by the Charter. No mechanism was prescribed to address these issues. The term “conflicts” does not appear in the Charter and still perceived as sensitive. One may recognise that conflicts and violence which occur in the world today including in Southeast Asia are more national and internal in nature.

Conflicts over natural resources, conflicts over development projects, identity conflicts and conflicts related to some cultural issues are increasingly evident in Southeast Asian nations.

The First International Conference on Human Rights in Southeast Asia organised by the SEAHNR not only provides a venue for those working in the fields of human rights, peace and conflict to discuss the issues but also mainly contributes to “breaking the silence” in the region. The forum attested that human rights violations and conflicts are real challenges in the region and require concerted efforts to bring about change. The different articles which were selected to be published in this volume reflect only some aspects of the problems. Many more remain uncovered.

Synthesis of Selected Papers

The papers selected for this book can be broken into quite distinct themes and this introductory chapter shall be synthesising them accordingly. Underlying many of the papers in this collection is the philosophical debate between the universalism versus the relativism (or to use the term favoured in Southeast Asia, “Asian Values”) of human rights. It is fitting therefore to begin this synthesis with a discussion of Vo Van Ai’s paper “Universality and Particularity of Human Rights: A Vietnamese Buddhist Viewpoint”.

Vo challenges this distinction by drawing upon Buddhist traditions to illustrate that the concept of human rights is not alien to Southeast Asian thinking. He rejects the idea that the concept of human rights is a western construct which does not fit easily within Southeast Asian belief systems. In his paper, he directly denounces the Vietnamese government’s approach towards human rights. In Vietnam, the official ideological stance towards human rights is that the rights of the individual are intertwined with the nation state. Thus with the overthrow of imperialist forces and the creation of the Democratic Republic of Vietnam (now the Socialist Republic of Vietnam), it is deemed that with the success of the revolution, and the freeing of Vietnam, the individual’s human rights has

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been fulfilled as he too is, via the State's status, free. The individual is thus subsumed by the collective.

Vo argues that Buddhism demands not merely abstinence but a proactive approach towards compassion and this would include the constant and vigorous defending of the rights of individuals. This approach goes directly against the Vietnamese government's policy, and indirectly this paper also provides a strong intellectual argument against ideologues like Singapore's Lee Kuan Yew and Malaysia's Mahathir Mohamad who both espouse the Asian Values approach to human rights by rejecting human rights concepts as inherently foreign and unsuitable in their own countries. A side effect of which is the repression of civil liberties and the maintenance of political power.

By emphatically linking human rights to Buddhism, a belief which has been part of Southeast Asian ideology for millennia, Vo makes a clear stand against any such idea that as a region, human rights values somehow do not apply to its peoples and the leadership of the nations here have some sort of philosophical authority to deny or suppress those rights.

The next batch of papers deals with discussions of issues concerning Human Rights, Freedoms and People Power. Emily Hong in "When Rights Encounter Repression: Lessons from "People Power" Movements in Southeast Asia" espouses non-violent movements for human rights promotion and protection. However, she argues that for this to succeed, there needs to be two fundamental elements. The first is a shifting of paradigms where human rights activists do not view themselves as "rights holders" but instead as "power holders". This shift in perspective is needed to move away from a "victim mentality" to a more empowered mentality when pushing for human rights.

Furthermore, there is a need to understand the sources and pillars of power which those in authority have. Only with this understanding can a more effective strategy be formulated. Such activism however must have a strong domestic component and ought not to be dominated by international players and instruments. Citing the Philippines, Timor-Leste, and to a lesser extent Myanmar, she proposes that a tactically and strategically sound approach towards non-violent action is the way forward for human rights activism.

In this spirit, Steve Kibble, Tibor Van Staveren and Ed Hobe argue for the need of transitional justice. In their paper "Pathways to Justice: The Struggle of Civil Society to Define and Seek Justice in Timor-Leste", they revealed that Timor-Leste, as the newest country in the region, has had to go through a very difficult experience in attaining statehood. Since the 1975 invasion of Timor-Leste (then East Timor) by Indonesia, the territory has faced many human rights violations. The international community made certain superficial calls against such violations but in reality were either directly or tacitly supporting the Indonesia regime. Even after independence in 2002, violence still remained part of the Timor-Leste experience with armed retaliation from Indonesia, democratic

unrest and even attempts on the lives of their Prime Minister and President. The country is still very poor with a low level of education and employment.

They continue by defining Transitional justice as the quest from a once colonised peoples to obtaining “acknowledgment of crimes committed against them, have some form of reparation and move to reconciliation with their erstwhile oppressors”. They go on to critically examine the efforts of transitional justice in Timor-Leste identifying several serious institutional weaknesses that hinder the implementation of the recommendations of the Commission of Truth and Friendship and the Truth and Reconciliation Commission. It is necessary for these weaknesses to be addressed for in order to move forward as Timor-Leste needs to find closure for the injustices and human rights violations of the past.

In the past five years, the issue of religious freedom in Malaysia has been particularly contentious. Malaysia likes to portray itself as a pluralistic multi-religious and multi-cultural nation, yet recent events have done much to make this claim questionable. Religious freedom which is guaranteed by the Federal Constitution as well as judicial decisions, has been sidelined by a decision of the Federal Court (the Apex Court in the Malaysian judicial system), where a Muslim woman’s claim for her constitutionally protected right to change her religion was sidestepped by the court who held that such matters fell under the jurisdiction of the Syariah Court (Muslim religious court).

This abdication of responsibility, and abdication is the only term to be used as the Syariah Court has no jurisdiction to decide on Constitutional matters, can be seen in other cases where a man converts to Islam and then seeks to obtain a divorce and settle custody issues in the Syariah Court; an action which was supported by the civil courts when approached by the wife; when the Syariah court has absolutely no jurisdiction over the non-Muslim spouse.

Other government activities such as the banning of the use of the word “Allah” amongst Christians and the banning of Malay language bibles appear to show that Malaysia is heading towards a quasi-Muslim autocracy. It is fitting therefore to include Dian Abdul Hamed Shah and Mohd Azizuddin Mohd Sani’s paper entitled “Freedom of Religion in Malaysia: Debates on Norms and Politico-Legal Issues”. In it they explore this complex issue from a constitutional, political, historical and philosophical perspective with an emphasis on constitutional judicial decisions, ultimately submitting that “the dignity of individual choices should be respected without unnecessary state imposed hurdles”.

Herlambang Wiratraman asks “Does Post-Soeharto Indonesian Law System Guarantee Freedom of the Press?” A pertinent question in the light that Indonesia, after the overthrow of the Soeharto regime due to the “Reformation Movement” of the late 1990’s, has been held as a shining light for human rights in the region. The euphoria that accompanies such a dramatic change in Indonesia’s social and political life may

well obscure the finer points in the practice of human rights which may well lead to complacency.

During the Soeharto era, the basis of controlling press freedom was the creation of the policy promoting the press as a tool for the furtherance of Indonesia's "national ideology", the Pancasila, or more accurately the Indonesian government's interpretation of the Pancasila. Towards this end, direct controls of the press were enforced in order to ensure that they would not stray from this policy. Such controls include the requirement for a permit to publish and print and the requirements for all members of the press to be part of the Indonesian Journalists Association, which is a government approved and controlled body. Furthermore, there were anti-subversion and emergency laws that could be used against the press.

Following the end of the Soeharto regime, new human rights laws were passed which guaranteed the freedom of expression (it must be noted here that even during the Soeharto era there were laws supposedly protecting free speech; however they were interpreted narrowly and circumnavigated). Although the press in Indonesia now appear to be freer, caution still ought to be exercised for there still exist laws such as criminal defamation legislation and anti-pornography legislation which can be used against the press. Furthermore, there have been a greater number of direct attacks on members of the press for stories that they have written. In this was press freedom is affected not so much by legislation but by personal intimidation.

On a more optimistic note, Herlambang's paper does emphasise the growing appreciation of the freedom of speech and press freedom amongst the Indonesian judiciary who have been expressing this appreciation through progressive decisions. This paper strikes a cautionary yet hopeful note that in order to maintain the momentum for the development of human rights in the post Soeharto era, constant vigilance is required to prevent complacency and a backward movement for press freedom.

Bo Kyi and Hannah Scott open the third chapter with a very compelling topic. In their paper, "Torture, Political Prisoners and the Un-Rule of Law: Challenges to Peace, Security and Human Rights in Burma", the authors use Amnesty International and United Nation's definition of a political prisoner; that is to say a person detained for speaking against the government, practicing their religion, or for their culture, ethnicity and gender; as a basis for their examination of the political prisoner situation in Myanmar where they submit there exists 2000 such men and women.

The Myanmar government views any form of opposition as dissent, regardless of its peaceful nature. Thus an intellectual, religious or even artistic expression of opposition is sufficient to deem one as a dissident. There is no need to be part of a political party or group, opposing the government would cause one to be viewed as a "political threat", a term which is given a very broad meaning.

Moving Forward

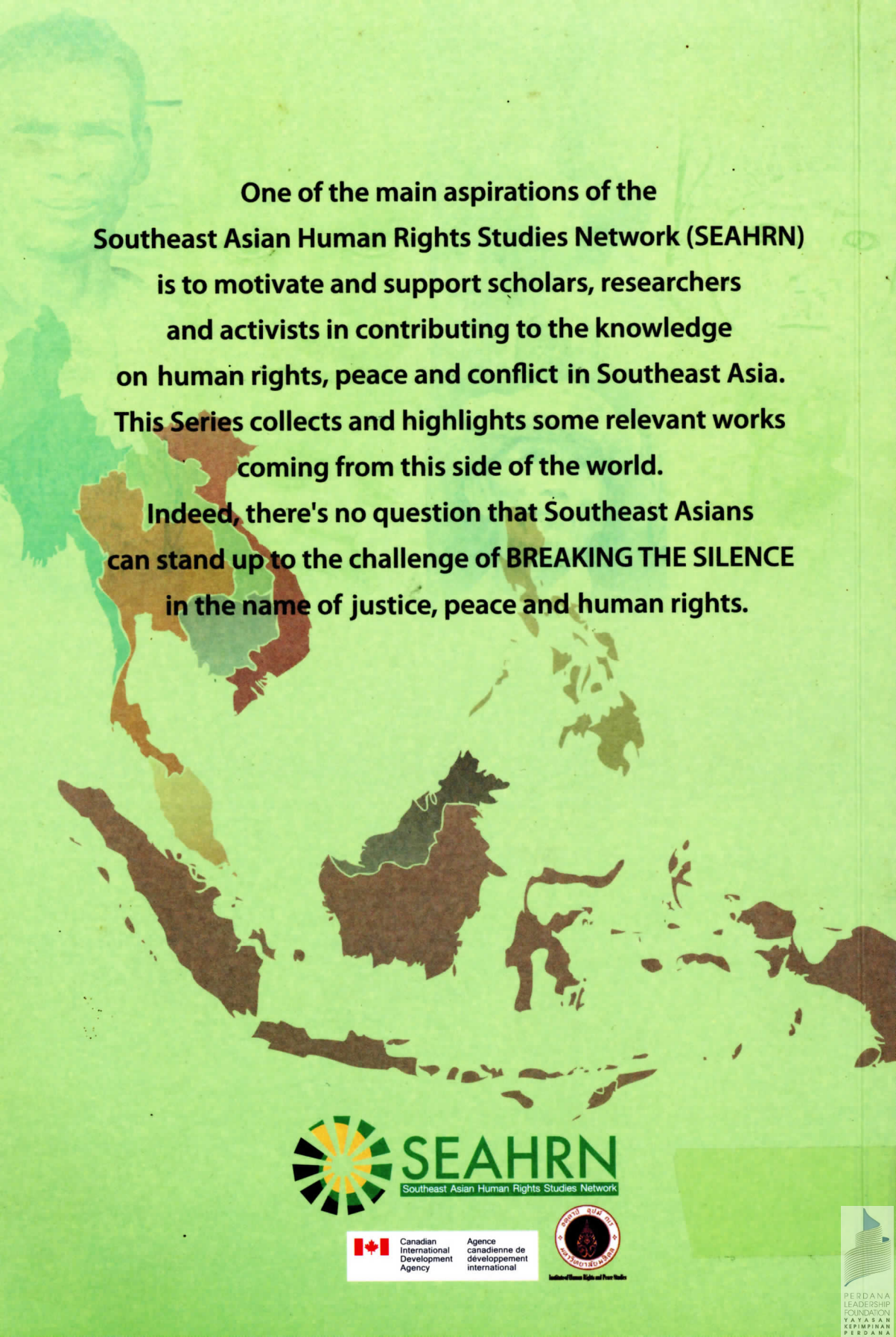
There is a wealth of experience and knowledge in the field of human rights, peace and conflict to be found in Southeast Asia. It is submitted that the broad yet in-depth selection of papers in this book is reflective of that. The spaces are expanding in the region and for the first time the ASEAN member States have acknowledged formally in their Charter the need to promote and protect human rights. Article 1(7) of the Charter states that one of the purposes of ASEAN is:

To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN

It is up to scholars, researchers and activists in the field of human rights, peace and conflict to continue pushing the agenda so that whatever momentum that can be found in the region is maintained. It is hoped that the work of SEAHRN, including this collection of papers, will be a step in that direction.

ENDNOTES

- ¹ Association of Southeast Asian Nations(ASEAN), Roadmap for an ASEAN Community 2009-2015, ASEAN Secretariat, Jakarta, 2009, p. 5.
- ² Ibid, p.6.



One of the main aspirations of the Southeast Asian Human Rights Studies Network (SEAHRN) is to motivate and support scholars, researchers and activists in contributing to the knowledge on human rights, peace and conflict in Southeast Asia. This Series collects and highlights some relevant works coming from this side of the world.

Indeed, there's no question that Southeast Asians can stand up to the challenge of **BREAKING THE SILENCE in the name of justice, peace and human rights.**

