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Aung San Suu Kyi's Verdict: Implications for ASEAN

Alistair D. B. Cook and Mely Caballero-Anthony

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The guilty verdict by a Myanmar court on Aung San Suu Kyi for breaking the terms of her house arrest is a serious blow to the standing of ASEAN both locally and internationally. It comes less than a month after ASEAN members, including Myanmar, accepted the Terms of Reference of their agreement on human rights at a meeting in Thailand.

ON 11 AUGUST 2009, Aung San Suu Kyi was found guilty by a court based at the Insein prison in Myanmar for breaking the terms of her house arrest. She was found guilty and sentenced to 18 more months of house arrest for harbouring an American man, John William Yettaw, who swam to her house uninvited. This ruling by the Myanmar court signals to Southeast Asia and the international community that little progress has been made internally in the country. It reflects the current limitations that the region has on Myanmar.

The Long Road towards Human Rights

Local and international outrage has done little to influence the outcome of these charges against Suu Kyi. Once again it brings the focus of human rights back on to Southeast Asia, and what the region is willing to do to resolve the political questions surrounding Myanmar. Against ASEAN's goal of establishing an ASEAN Security Community, this ruling brings into question what tangible role the grouping will play in upholding human rights. Significantly, the ruling comes shortly after the signing of the Terms of Reference on 20 July 2009 for the ASEAN Intergovernmental Commission on Human Rights (AICHR) at the 42nd ASEAN Ministerial Meeting in Phuket, Thailand.

It has been a long road to this agreement on the AICHR; its establishment could not come at a more crucial time for the people of Myanmar. The Terms of Reference was born of a conversation in 1993 at the 26th ASEAN Ministerial Meeting in Singapore and the 14th General Assembly of the ASEAN Inter-Parliamentary Organisation (AIPO) in Kuala Lumpur. The Joint Communiqué of the 26th ASEAN Ministerial Meeting stated they "agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights". Subsequently, there were various track-two

(unofficial) discussions on the idea of a regional human rights mechanism. The ASEAN Human Rights Working Group was formally recognised as the regional informal network on human rights and had been given the opportunity to meet annually with ASEAN Senior Officials.

By 2005, the ASEAN leaders reached an agreement to draft a Charter for the Association. They later assigned an Eminent Persons Group (EPG) to make policy recommendations. Human rights advocates lobbied the EPG and High Level Task Force for the inclusion of the mechanism. At the end of 2006, the EPG recommended that a human rights body be incorporated. This was subsequently included in the final draft of the ASEAN Charter, which was signed at the 40th ASEAN Ministerial Meeting, in Manila, Philippines in 2007. The Charter called for the establishment of a regional human rights body but fell short of what its mandate would be. A High Level Panel was eventually convened to formulate the Terms of Reference (TOR) of this body. The TOR was finally accepted, though in a much watered-down form, at the 42nd ASEAN Ministerial Meeting in Phuket, Thailand on 19 July 2009.

UN response to ASEAN

The UN High Commissioner for Human Rights, Navanethem Pillay, recently commented that the world body ‘strongly encourages ASEAN states to appoint Commission members who are independent and impartial, and have proven expertise in Human Rights’. This could not ring more loudly than a call for an effective body to respond to the Myanmar challenge. Indeed, the verdict on Suu Kyi will put further pressure on ASEAN member states to implement the AICHR without delay, as it should tackle the human rights violations head-on at a time when the world is watching. A regional response to this verdict is necessary to signal to the people of Myanmar and the international community that ASEAN is serious about promoting the principles and values that it professes.

With the signing of the ASEAN Charter, the Association demonstrated that it was ready and willing to take concrete steps in further integrating as a region. More importantly, the signing of the ASEAN Charter showed a regional normative shift by the grouping towards commenting on the internal dynamics of members. This is seen when ASEAN declared that it is committed “to strengthen democracy, enhance good governance and the rule of law, to promote human rights and fundamental freedoms”. The events in Myanmar therefore put ASEAN’s credibility under close scrutiny by its citizens and the international community.

If the ASEAN Charter offers a reflection of how the region carries out its business and its regional governance, then the ASEAN response to the guilty verdict on Suu Kyi needs to show that the Charter works -- and works well. But this trial has illustrated that the military regime in Myanmar is unable to carry out its responsibilities as outlined in the ASEAN Charter and the Terms of Reference of the new AICHR. The staging of this trial and the verdict that was passed are a clear signal to ASEAN on the extent to which the military regime regards the agreements they are party to, effectively holding the regional Association and its will in contempt.

The charge against Suu Kyi does nothing to promote ideas of good governance but smacks of political expediency by a regime that fears democratic change ahead of a proposed election in 2010. The fact that this trial took place around the time that Suu Kyi’s current house arrest was due to expire illustrates this well.

A Question of Legitimacy

It is now time for ASEAN to act decisively in accordance with principles of regional peace and security enshrined in the ASEAN Charter and the Terms of Reference of the AICHR. This action will bolster the legitimacy of ASEAN as the guardian of the personal security of its citizens.

It remains to be seen whether ASEAN will step up to this challenge and indeed whether its response will yield results. However, it is clear that if ASEAN does little to improve this situation, then its credibility will be further undermined. It will be difficult for the Association to portray itself as providing regional solutions to regional problems.

Alistair D. B. Cook is Post Doctoral Fellow and Mely Caballero-Anthony is Associate Professor and Head at the Centre for Non-Traditional Security Studies, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University.