

REPORT

AICHR HIGH LEVEL DIALOGUE ON MANAGING FREEDOM OF EXPRESSION IN THE INFORMATION AGE

Medan, Indonesia, 11 – 12 April 2018

INTRODUCTION

1. The High Level Dialogue was participated by Representatives of the ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children (ACWC), Senior Officials Meeting on Youth (SOMY), Senior Officials Meeting on Responsible for Information (SOMRI), representative of Committee of Permanent Representative (CPR) of Indonesia, Ministry of Foreign Affairs of Indonesia, representative of US Mission to ASEAN, ASEAN Secretariat, National Human Rights Institutions (NHRIs) in ASEAN, representative of UNESCO Jakarta, representative of OHCHR Bangkok, Civil Society Organizations (CSOs) with Consultative Relationship with AICHR, nominated participants from ASEAN Member States. The High Level Dialogue was supported by ASEAN-U.S. PROGRESS, UNESCO, The Embassy of Switzerland in Indonesia, and the Ministry of Foreign Affairs of Indonesia.
2. The High Level Dialogue's objectives are:
 - a. To develop greater understanding on the concept of freedom of expression in the Information Era within the ASEAN;
 - b. To identify and compile the benefits and potential pitfalls, including useful lessons in managing freedom of expression and the potential policies, institutions and approaches that will curtail freedom of expression including for women, children and vulnerable groups in ASEAN;
 - c. To share views and experiences on set of laws that define the proper restrictions and limitations in exercising freedom of expression for respect of the rights or reputations of others and for the protection of national security, public order or of public health or morals;
 - d. To identify proposed areas of cross-border cooperation that can minimize the potential pitfalls in managing freedom of expression, especially within the context of information era.
3. The Provisional Programme of the High Level Dialogue appears as **ANNEX 1**.

OPENING REMARKS

4. **H.E. Dr. Dinna Wisnu, Representative of Indonesia to AICHR**, opened the dialogue by reminding the duties of AICHR representatives, included the duty to develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community. She also described the changes that the information age has brought into the world, challenges facing the world because of the relatively “unknown” characteristic of the information technology development, and the capacity of individuals and private actors to advance transparency and reveal information that is otherwise won’t be known to the public and garner social change. Moreover, she stated that Information technology created rooms for greater freedom of expression. The remarks appeared as **ANNEX 2**.
5. **H.E Ambassador Barry Desker, Chair and Representative of Indonesia to Singapore**, pointed out the timeliness of the dialogue, with its focus to discuss ways to promote and protect freedom of expression amidst the opportunities, threats and challenges posed by the Information Age. While disinformation was now new, the development of information technology has amplified the challenges. It has created greater interconnectivity among people and nations, but can also present threats to peace, social cohesion and security. He welcomed ASEAN member countries’ efforts to discuss and consider ways to address the challenges of fake news nationally, as well as ASEAN’ initiatives in promoting digital literacy and cyber wellness, and minimising the effects of fake news. He welcomed a consultative approach to identify tangible ways in addressing the issue. His remarks appear as **ANNEX 3**.
6. **Ms. Julie Chen, Director of ASEAN Affairs Office, US Mission to ASEAN**, stated that she raised the concerning development of digital technology, that is generating both positive and negative impacts. She underlined that maintaining democracy required protection of Freedom of Expression and to guard it from those who wanted to abuse it. She also reminded that it is crucial to discuss the concept of freedom of expression in the information age, to share lessons learned and views as well as experience among ASEAN member states that would further encourage cross border cooperation.
7. **Dr. Ming-Kuok Lim, Advisor for Communication and Information, UNESCO Office Jakarta**, called to mind the mandate of UNESCO that is to promote, foster and protect freedom of expression, as described in its charter. He conveyed that the programs have been implemented to highlight the importance of protecting freedom of speech, however further steps need to be taken to ensure sustainability, long lasting and meaningful freedom of expression. He stated that multi-pronged and multi-stakeholder approach are

required to address the complexity of challenges of freedom of expression. It requires knowledge and expertise from all parties to ensure fundamental freedom of freedom of expression can always be available.

8. **Mr. M. Chandra W. Yudha, Director of ASEAN Political Security Cooperation, Ministry of Foreign Affairs of the Republic of Indonesia**, highlighted some of the complexity of the rapid development of ICT in the 21st century and the rapid development of ICT which brought forward empowerment for the people by helping them in education, collaboration, capacity building and job opportunities. He also reminded that the rapid development of ICT may open up new space for dissemination of hate speech, incitement, blasphemy, fake news and divisive messages widened the gap in the society. He stated that Indonesia fully supports AICHR's endeavors in promoting regional cooperation, promoting and protecting freedom of expression in South East Asia. The remarks appeared as **ANNEX 4**.

SESSION I: MANAGING FREEDOM OF EXPRESSION IN THE INFORMATION ERA – THE POLICY FRAMEWORKS

9. The first session was moderated by Dr. Dinna Wisnu, the Representative of Indonesia to the AICHR, and the three speakers were Ms. Cynthia Veliko, the Regional Representative of UN OHCHR for South East Asia, Mr. Jose Joel M. Sy Egco, the Representative of SOMRI Philippines, and Mr. Allan G. Alegre, the Chief of Staff Commission on Human Rights of the Philippines and member of Southeast Asia National Human Rights Institution Forum (SEANF). The goal of the session was to highlight the international instruments on Freedom of Expression, especially those adhered to by the governments in ASEAN, to share activities and perspective on freedom of expression. Ms. Cynthia Veliko's presentation appeared as **ANNEX 5**, Mr. Jose Joel M. Sy Egco's presentation listed as **ANNEX 6** and Mr. Allan G. Alegre's presentation appeared as **ANNEX 7**.
10. **Ms. Cynthia Veliko** explained the importance of conforming restrictions to freedom of expression to the strict test of necessity and proportionality and those restrictions should be compatible with article 19 of the ICCPR. ASEAN Human Rights Declaration further states every person's right to freedom of opinion and expression. However, some qualifications for freedom of expression provisions challenges the universality of rights and is incompatible with international human rights law, as any restriction to the right to freedom of expression justified by a different regional, national, religious or other context would be ultimately in contradiction with Article 19.

11. **Ms. Veliko** also mentioned The UN Special Rapporteur on freedom of expression's report to the Human Rights Council that urged States not to interfere with freedom of expression whether through laws, policies, or extra-legal means, and the importance for the private sector to consider its potential impact on human rights.
12. **Mr. Jose Joel M. Sy Egco**, shared several policies and initiatives that ASEAN SOMRI has recently implemented, based on two approaches by ensuring that freedom of expression and right to information will neither be stifled nor abused against social good. He explained the ASEAN Strategic Plan for Information and Media that includes strategies to advance cooperation at ASEAN level, to share best practices, support and capacity building programs, and to harness the use of ICT across different group. He also shared some of the SOMRI's activities related to the freedom of expression in ASEAN. He stated that SOMRI also focuses its efforts on media and information literacy for the youth and has formulated Core Values on Digital Literacy for ASEAN, called READI that stands for Responsibility, Empathy, Authenticity, Discernment, Integrity, that is expected to be officially adopted during the 14th AMRI conference in May 2018
13. **Mr. Allan G. Alegre** also shared the perspective of the National Human Rights Institution in the Region on freedom of expression on how information and communication technology (ICT) affected all aspect of human lives, so that it is urgent to differentiate rights to the internet (access, accessibility, affordability) and rights on the internet (rights to privacy, data protection, internet freedom). Several emerging freedom of expression issues in the digital environment were mentioned, including the increase in human rights violation, such as digital disinformation, computational algorithms that discriminates against content, internet shutdowns, information warfare and weaponization of social media; and the importance role and responsibilities of intermediaries.
14. He underlined the lessons learned and challenges that have been identified, such as complementarity nature of offline and online worlds, extra-territoriality of digital human rights and human rights violations, intersectionality of various human rights and the necessity of content regulation. In order to ensure that strategic responses are taken, national human rights institutions should, among others, re-orientate / re-frame of human rights understanding to include freedom of expression, ensure internal compliance, build their capacity and develop multi-stakeholder networking and collaboration.
15. During discussion, several participants raised various issues, such as data ownership in the digital era that stored by private sectors, the importance of capacity building for all stakeholders, especially for the state and policy makers, to ensure that legislations enacted to manage freedom of expression will not curtail the freedom itself, the need for

collaboration and coordination with relevant stakeholders, state and non-state actors, and the causes of fake news.

SESSION II: MANAGING FREEDOM OF EXPRESSION IN THE INFORMATION ERA – REFLECTIONS ON WAYS AND MEANS TO ENSURE FREEDOM OF EXPRESSION IN ASEAN

16. Session 2 was moderated by Amb. Barry Desker, Chair and Representative of Singapore to AICHR and the speakers were. Najib Azca, Ph.D, from Gadjah Mada University, Indonesia, and Ms. Chiranuch Premchaiporn, Director of Prachathai, Thailand. Mr. Najib Azca shared his experience in “promoting freedom of expression in the context of relations between religions & ethnic groups” which was appeared as **ANNEX 8**. Ms. Chiranuch Premchaiporn shares her experience in “using new media technologies to promote freedom of expression and the voices of the minority” which was attached as **ANNEX 9**.
17. **Mr. Najib Azca, Ph.D** explained the lesson that can be learned from Indonesia’s experience under authoritarian regime and democratic transition, is that a strong and capable state, as well as a dynamic and vibrant civil society, are crucial to promote and maintain peace. The upcoming general elections in Indonesia pose great threats of politicization of religions, declining focus and energy of the government to promote tolerance and to protect people’s constitutional rights on freedom of belief and religion. He mentioned that social media increased people’s access to articulate their voices and at the same time produced more noises in the political sphere. He then gave one of the recommended action that can be taken to better manage freedom of expression is to conduct education, socialization and literacy on the prevention of discrimination and intolerance through conventional and new medias, especially among the youths.
18. **Ms. Chiranuch Premchaiporn** stated that digital landscape in South East Asian countries is marked with great digital divide in internet penetration rate among and within countries, declining press freedom, and increasing number of legislations that restricted freedom of expression and violated right to privacy of minorities. She continued with the explanation that numerous cases in Thailand of false criminal accusations against human rights activists who defended minorities are rarely covered by the media, and said that laws were being used to oppress dissenting opinions of minorities.
19. Ms. Chiranuch enumerated the challenges in managing freedom of expression can be summarized as follow:
 - a. **Security** – how ensure data security;

- b. **Mobile** – that brings opportunity to connect more, and also to undermine our live in terms of surveillance;
 - c. **Arts** – groups use arts to raise their voice and address censorship;
 - d. **Regulation** – rule of law is more important than arguing about bad or good law;
 - e. **Trans** – genders, borders, formation.
20. During discussion, points being observed were the issue of legalistic approach to manage freedom of expression, the importance of education and engagement of educational institutions, digital literacy among children and youth, and future generation's resilience against the pitfalls of ICT.

SESSION III: THE SPIRIT OF LAWS THAT DEFINE PROPER RESTRICTIONS AND LIMITATIONS TO FREEDOM OF EXPRESSION.

21. Session 3 was moderated by Dr. Ming-Kuok LIM, the Representative of UNESCO, and the three speakers were, Mr. Gilbert T. Andres, Chairperson of Advocates for Freedom of Expression Coalition-Southeast Asia (AFEC-SEA); Mr. Zainal Abidin and Tanziel Aziezi, Indonesian Institute for Independent Judiciary; and Ms. Angela M. Kuga Thas, Executive Director Persatuan Kesedaran Komuniti Selangor (EMPOWER). Their presentation were listed as **ANNEX 10**, **ANNEX 11** and **ANNEX 12** respectively.
22. **Mr. Gilbert T. Andres** shared his experience in countering misinformation in the Philippines. AFEC-SEA is of the position that criminalization of “fake news”, such as the Philippines’ Anti-Fake News Bill, is not the answer to disinformation, because criminalization is violation of constitution, criminalization of fake news means criminalization of speech, and criminalization of fake news will undue power to ruling administration to determine what is the truth.
23. **Mr. Zainal Abidin** explained that Indonesian laws have covered the protection of freedom of expression and freedom of religion, but some of the laws are incompatible with the UDHR, especially laws on blasphemy and defamation, which have no clear differentiation of derogation and limitation rights. To amend the laws through legislation process, comprehensive legal reform, including revocation of laws that violated human rights principles must be taken and legal terms in those laws must be clearly defined. He affirms the acts for law enforcement officer in processing cases related to freedom of expression based on human rights principles, and advocacy for dialogue among stakeholders in order to build harmony in the society.

24. **Ms. Angela M. Kuga Thas** shared Malaysian experience in Protecting Women and Youth online. She underlined three significant facts to be aware of, that freedom of expression is important to hold power accountable, right to privacy is a fundamental right, and women have a gendered experience of their rights as compared to men. She stated that false distinction between the real world (offline) and cyber world (online), and subsequent trivialization of online violence against women is a challenge in this information era. In Malaysia, some laws related to freedom of expression are limitedly applicable and poorly defined. It causes the difficulties to determine and proof that someone is found guilty. Furthermore, besides legislation, promoting and controlling self-regulation is needed to prevent harmful behavior of the users.
25. During discussions, the following points were observed, such as making the law to restrict and limit the freedom of expression that is not only a shortcuts, and the importance of ensuring that the said law will not deliberately be ambiguous, detrimental to Freedom of Expression, stifle Freedom of Expression and jeopardize protection of minority. Thus, any limitation of rights must be taken based on legislation, necessity, and proportionality by applying equal obligation between state actors and private individuals not to promote, produce, or facilitate misinformation but to release the factual information.

SESSION IV: GROUP WORK ON IDENTIFYING THE BENEFITS AND POTENTIAL PITFALLS, INCLUDING USEFUL LESSONS IN MANAGING FREEDOM OF EXPRESSION IN THE INFORMATION AGE

26. The participants were divided into 4 groups to discuss the benefits and potential pitfalls of the policies, regulations, law, institutions and approaches in managing freedom of expression in the information age in each ASEAN Member States.
27. In general, it was concluded that protection of the freedom of expression is stipulated in the Constitutions of the ASEAN Member States and the restriction and limitations of the freedom of expression are regulated by laws and based on international standards. In this regard, states have established various institutions and/ or mechanisms to protect the freedom of expression and regulate the restrictions and limitations. However, it is observed that there is still lack of coordination with private sector in protecting internet users (their data, privacy, age and content). Participants also shared several recommendations related to capacity building, utilizing a multi-pronged approach in increasing media literacy, promoting cross-sector collaboration and cross-border dialogue to address the pitfalls and to promote freedom of expression and encouraging the development of platforms to

receive people's complaints. The Summary of Findings of the Group Work is attached as **ANNEX 13**.

SESSION V: IDENTIFY PROPOSED AREAS OF CROSS-BORDER COOPERATION IN MANAGING THE FREEDOM OF EXPRESSION IN THE INFORMATION ERA IN ASEAN

28. The third session was moderated by Edmund Bon Tai Soon, Representative of Malaysia to AICHR and the speakers were Dr. Dinna Wisnu, Representative of Indonesia to AICHR, Mr. Abri Eko Noerjanto, MM from SOMY Indonesia which presentation attached as **ANNEX 14**, and Dr. Ming-Kuok Lim, UNESCO Office Jakarta. The speakers identified proposed areas of cross-border cooperation in managing the freedom of expression in the information era in ASEAN and explored the possibility of collaborative programs to handle fake news, forms of cooperation beyond G-to-G.

29. **Dr. Dinna Wisnu** shared the inputs from previous group works, with the following points:

- a. Regarding Policies, Regulations and Law, freedom of expression are regulated by law and should refer to international standards. In ASEAN level, freedom of expression is stipulated in the ASEAN Human Rights Declaration;
- b. Regarding Institutions, it is shared that states have established various institutions and/or mechanisms to protect the freedom of expression and regulate the restrictions and limitations. In ASEAN level, SOMRI is playing important role in freedom of expression in general and ACWC also has a particular concern about freedom of expression of women and children;
- c. Regarding Approaches, it is identified that there is a lack of coordination with private sector to protect internet users (data, privacy, age and content). There is also need to clearly define "false information" to ensure that it is not used to politicize the opposition group. A multi-pronged approach focusing on media literacy, public education, fact checking, legislation, anti-bullying education, and positive content was also raised.

30. Proposed activities for AICHR, including:

- a. to conduct Training for journalist/media professionals;
- b. to negotiate with private sector (tech companies, social media platforms);
- c. to hold a round table dialogue with SOMs, CSOs, and find a common understanding on Article 23 of AHRD.

31. **Mr. Abri Eko Noerjanto** share that SOMY had identified its goals for ASEAN Community Building 2025, that included a goal of ensuring fundamental freedoms, human rights and

better lives for all ASEAN people. He also briefed that SOMY has established cross border cooperation with other countries including US, Australia and India with eight potential cross-border, cross-program cooperation in managing freedom of expression, as defined in the ASEAN Work Plan on youth as follows:

- a. Strengthening existing and support of youth exchange program;
- b. Incorporation of freedom of expression issue in the program of appointment of national level ASEAN youth ambassador;
- c. Dissemination of information pertaining to ASEAN diverse culture thru social media;
- d. Dissemination of updates and information related to ASEAN through social media and AVLRC;
- e. IT contest, such as ASEAN youth video contest;
- f. ASEAN youth workshop on media literacy;
- g. ASEAN children and youth news network;
- h. Providing opportunity for youth to share view and experience and recommend solutions, such as ASEAN youth caucus.

32. Dr. Ming-Kuok Lim, proposed several potential cross-border cooperation between UNESCO and AICHR that falls under two main areas:

- a. Awareness raising and advocacy, including the establishment of international day on freedom of expression, with its relevant campaign and activities as forms of regional joint activities;
- b. Capacity building and policies which include media information literacy program, that is ongoing in ASEAN and it should be expanded to reach younger and wider target groups at national and regional level, and also Massive Online Open Course (MOOC) for the judiciary and security officers: an adaptable training program that has started in Latin America and African countries, and trained more than 5600 lawyers, judges and court officers on concept of freedom of expression and the role of judiciary in its protection, with full support of national supreme courts, UN special rapporteurs, universities.

33. Dr. Ming-Kuok Lim also said that ASEAN should look into a special mechanism on freedom of expression, such as the appointment of a regional rapporteur.

CLOSING REMARKS

34. The session was delivered by the Deputy Director for ASEAN Legal and Human Rights Cooperation, Ministry of Foreign Affairs of Indonesia, Mr. Caka A. Awal. He commended AICHR's initiative in raising the topic of freedom of expression and noted that this is the first time AICHR has discussed the issue. There is common agreement among participants that freedom of expression must be protected, and some restrictions are needed. However, those restrictions must not impede the rights of the people to have freedom of expression. Moving forward, he underlined that it is necessary to engage other stakeholders, especially tech companies, as well as to establish wider cooperation and collaboration with other stakeholders. He also reiterated Indonesia's support for AICHR in its endeavors in promoting the protection of freedom of expression.

LUNCH WITH MEDIA PROFESSIONALS

35. The session was facilitated by Dr. Dinna Wisnu, Representative of Indonesia to AICHR and participants from ASEAN Member States briefed the media on the take-home points of the High-Level Dialogue. Dr. Dinna Wisnu highlighted some key points that had been discussed and agreed in the dialogue, including:

- a. There is a common agreement that freedom of expression and freedom of information must be protected.
- b. AICHR is committed to proactively strengthen ASEAN member countries in empowering civil society in order to manage freedom of expression.
- c. Moments prior to general election, should be used to promote and strengthen freedom of expression, instead of suppressing it.
- d. A regional approach to private sector to protect internet user is a necessity.

36. During discussion the following points were raised by the participants:

- a. UNESCO's commitment to support AICHR and Indonesia media institutions in promoting freedom of expression is reiterated.
- b. Participant from Vietnam states that information technology brings benefits and challenges, and with the support from AICHR and other cooperative mechanism, at regional and international levels, they have enacted legislations that are intended to respect, promote and protect freedom of expression.
- c. Participant from Malaysia conveyed that legislation is not the only mechanism to manage freedom of expression and it is important to have accurate definition and

understanding on what is considered as false information or misinformation or disinformation.

- d. Participant from Thailand mentioned about one important issue discussed is the importance of finding a balance between freedom of expression and right to privacy of people, especially the vulnerable and the marginalized.
- e. Participant from Indonesia took a lesson-learned that this dialogue will be beneficial for policy makers in formulating better support for the people.
- f. Participant from Myanmar stated that this dialogue allows countries to learn from challenges faced by others and formulate appropriate measures to address them, and legislations are necessary but they have to be implemented with respect to the principle of proportionality.

SESSION VI: PUBLIC DIALOGUE

37. This session was moderated by Mr. Caka Alverdi Awal, MoFA Indonesia, and the speakers were Dr. Dinna Wisnu, along with nominated participants from Indonesia, those were Ms. I Gusti Agung Putri Astrid, member of Indonesian Parliament; and Dr. Ari Djito, the lecturer of Gadjah Mada University, Indonesia.

38. **Dr. Dinna Wisnu**, explained that background of the dialogue is given due to significant impact of rapid development of information technology in all countries, limited capacity of the people to properly respond to the rapid development, and fell victims to the misuse of the technology, including positive and negative impacts of national legislations, issues and challenges faced in vulnerable groups, vulnerable for abuse of law and restriction to freedom of expression, and crucial moment such prior to election. Hence, it is agreed that restriction on freedom of expression must not impede the freedom itself. Further activities have been proposed by participants and will be further finalized.

39. **Ms. I Gusti Agung Putri Astrid**, commended the selection of the topic for the high-level dialogue, as freedom of expression is not a novel idea, and actually proclamation of Indonesia's independence was an actually a reflection of people's aspiration to attain freedom of expression, however attainment of the freedom is still a struggle even until today. Current challenge in this situation is digital gap, between the digital literate and the ones who are illiterate, and the government's capacity to address these challenges. Indonesia's development agenda should include development of people's capacity in media literacy, specifically on raising public's awareness on good practices in using social media, and rather than criminalizing freedom of expression, Indonesia's policy makers

should work on providing better IT infrastructure that can be used for good purpose by the people.

40. **Dr. Ari Djito** identified that challenge of freedom of expression in Indonesia was the level of civil society. He also urged media literacy education for the middle-upper class, or those with greater access to social media. He affirmed that legislative approach taken by the state is effective to a certain extent, but the legislations failed to achieve the purposes of creating deterrent effect or educate public. Democracy has enabled a better freedom of expression.

41. During questions and answers session, there were some points observed, including AICHR's mandate in promoting and protecting freedom of expression, constructive dialogue among countries and among parties on specific issue at regional forum, and the responsibility to safeguarding and promoting freedom of expression and civil liberty.

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