

Chapter 3

Humane Aspects of the People-Centred, People-Oriented ASEAN Economic Community

Seree Nonthasoot¹

3.1. Introduction

The ASEAN Economic Community (AEC) will continue to have impacts that go beyond the economic sphere. The growth of global value chains (GVCs) has given rise to changing consumer demands and the rising middle class, resulting in new demands and expectations on how products or services are produced and delivered, not only from the perspective of sustainability and the environment, but also from human perspectives that encompass implications on the workforce, local communities, consumers, and others. This chapter will look at the interlinkages between social and economic issues, in particular between human rights as the humanising component and the AEC, as well as the relevance of the AEC Blueprint 2025 and the 2030 Agenda for Sustainable Development, and will make recommendations on how the AEC and ASEAN institutions can better respond to these issues.

It is important to highlight at the outset that as implicitly suggested in the title, the underlying message of this chapter is how to render more humane, the ongoing economic integration momentum in ASEAN. It has no objective to advance a proposition that the current framework should be halted or made less impactful on human rights as a precondition of its further progress.² As will be discussed below, trade and economic integration in the ASEAN region on the whole has yielded concrete benefits to the peoples of Southeast Asia. A crucial enabling factor to deepen and broaden the regional economic integration agenda successfully is the mitigation of negative impacts that will undermine the legitimacy of the policy.

The inclusion of a chapter on humane aspects of the AEC as part of the 'mega trends' is in itself a testimony of the AEC's openness to reach out to stakeholders and interested parties. Indeed, the AEC Blueprint 2025 states that:

¹ DPhil, Oxon. The Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights (terms from 2013-2015 and 2016-2018).

² For analysis of the impact on human rights from international trade in general, see Alan O Sykes, 'International Trade and Human Rights: An Economic Perspective' (2003). U Chicago Law & Economics, Olin Working Paper No. 188 <<https://ssrn.com/abstract=415802>> accessed 20 March 2017.

ASEAN can further maximise the benefits of regional integration and cooperation by capitalising on global mega trends, such as the expanding interconnected global cross-border flows and accelerating technology digital advancement that are increasingly defining international production, trade, services and investment. To enable ASEAN to seize the opportunities associated with these mega trends, all sectoral working groups will need to proactively consider the impact of these trends and integrate it into their future work programmes. Consultations with relevant stakeholders in such undertakings would be imperative as they are often at the forefront of these trends.³

While humane aspects are not specifically enumerated, it is a good sign that the AEC is more receptive to engaging with what was perceived as an unconventional topic within the economic pillar. To render more focused the scope of this chapter, it is therefore proposed that the ASEAN 2025: Forging Ahead Together,⁴ be used as the key document and timeline for the analysis.

3.1.1. Economic Integration and Impacts

This first section analyses economic integration and its impacts. Two main issues will be covered. First, economic integration as development policy and second, the impacts from economic integration.

1. Economic Integration and Development

Economic integration is founded on the concept of development. The driver for such development is the neo-liberal theory which promotes the market economy through the free flow of factors of production, deemed to lead to market efficiency that is believed to bring greater welfare to the people. Certainly, development along this line has lifted a great number of people from poverty, provided them with greater access to economic and social infrastructure, and increased their life expectancies. The other side of the coin are the impacts that development has generated. The issue of which will be discussed more fully below.

³ AEC Blueprint 2025 para 44.

⁴ *The ASEAN 2025: Forging Ahead Together* is a integral document adopted by the ASEAN leaders at the 27th ASEAN Summit on 22 November 2015 in Kuala Lumpur, Malaysia, and comprises: the Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, the ASEAN Community Vision 2025, the ASEAN Political Security Community Blueprint 2025, the ASEAN Economic Community Blueprint 2025, and the ASEAN Socio-Cultural Community Blueprint 2025.

This development perspective raises a few concerns. Firstly, by focusing on the economy, success (or failure) was measured primarily by the wealth of the country's economy and not the well-being of its people. Secondly, the development of requisite large infrastructure – intended to boost industrial production – could adversely affect the environment and be prone to corruption. Thirdly, the focused pursuit of wealth may lead to violations of people's rights for the greater good of the nation. For example, communities whose land had been taken to build dams or electricity stations, or farmers whose crops had been destroyed by pollution, were considered to have made a necessary sacrifice for the benefit of the nation as a whole. Lastly, is the fallacy of the trickle-down theory, by believing that economic development in any part of society would eventually benefit everyone, and that benefits gained by the wealthy would make its way to the poor. When the trickle-down did not happen, the result was an increase in poverty as the rich got richer and the poor missed out on development.⁵

In other words, the sole focus on growing the economy has led to an unequal development in many ways: development that favours developed countries over poor nations; development that focuses on urban over rural areas; development that neglects and excludes women who in many cases are the majority population.⁶

2. Impacts of Integration

This section explores in further detail the impacts of economic integration, of which the AEC is a good illustration.

A study undertaken by the Asian Development Bank (ADB) provides a clear picture of economic integration and its impact. As shown in Figure 3.1, greater welfare for the population in the economic integration area can be achieved through expanded markets for goods and services that result in higher economic growth. Comparative advantage will help allocate resources more efficiently within the integrated area and increase growth in productivity.⁷ Additionally, when countries cooperate to enhance integration through infrastructure connectivity and facilitation of cross-border flows, the positive effects further strengthen the welfare gain of integration. Integration also brings other benefits, including reduction of income inequalities between countries and a certain degree of risk-sharing.⁸

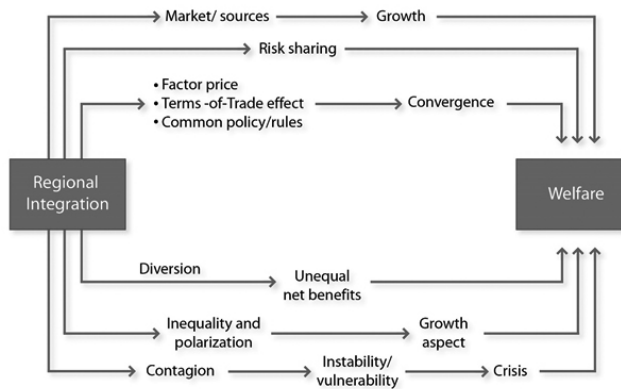
⁵ Azmi Sharom and others (eds), *An Introduction to Human Rights in Southeast Asia*, Vol 2 (SEAHRN 2016), p 134.

⁶ *Ibid*, p 132.

⁷ ADB, *Regional Cooperation and Integration in a Changing World* (2013), p 4.

⁸ *Ibid*, pp 5-7.

Figure 3.1 Impact of Economic Integration



Source: ADB, *Regional Cooperation and Integration in a Changing World* (2013), p 5.

On the other hand, integration entails costs and risks that can negatively affect welfare. In a closely integrated group of countries, contagion can spread throughout the bloc rapidly in times of crisis as illustrated by the Eurozone debacle. Trade diversion among integrated countries can also arise, especially in the case of custom union. Welfare may not be shared equally by all countries and some may stand to gain more than others. Thus, the distribution of integration benefits is a crucial matter. Inequality that occurs within countries is another risk of integration. As markets expand within the region, labour becomes increasingly competitive and the bargaining power of labour unions weakens, leading to internal inequality.⁹

Perhaps the risk that is most relevant to this study is environmental impact. The ADB study posits a post-crisis situation that as a result of a crisis, reduced economic activity leads to reduction in pollution and resource consumption. However, economically troubled countries also tend to reduce environmental priorities in effort to accelerate economic recovery.¹⁰ Such harm, however, can also occur in non-crisis situation. The fact that regional integration augments probability of contagion, the negative impact will transcend trade finance and macroeconomics but will fall on economic development, social inclusion and environmental sustainability as well.¹¹

Another study that focuses on the World Trade Organization and its impact on human rights affirms the general benefits of an open international trade system and advises

⁹ Ibid, pp 8-10.

¹⁰ Ibid, p 13.

¹¹ Id.

against the curtailment of the system in light of any contagion. What is pertinent is the proposal that if a negative impact arises, a tailored measure to address the issue should be adopted.¹²

3.1.2. Human Rights: The Humane and Humanising Component

This section discusses human rights as the humane and humanising component of the AEC and the ASEAN Community in general. It will be shown that while human rights have become a basic tenet — a foundational principle — of the ASEAN Community alongside the rule of law and democracy, a number of challenges remain. The effectiveness of mainstreaming concerns for human rights into the various functions of ASEAN ranks as a priority. Another challenge is to enhance the performance and relevance of the human rights mechanism in ASEAN.

1. Human Rights: Definition and Scope

Human rights are broadly defined as: “rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.”¹³ In a preamble of the seminal Vienna Declaration and Programme of Action 1993, it is maintained that: “all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms, ...”¹⁴

The concept of human rights centres on the dignity of the ‘rights holders’. As stated by the Charter of the United Nations¹⁵ and the Universal Declaration of Human Rights (UDHR),¹⁶ these rights are intrinsic entitlement of every individual human person. Human rights have emerged from domestic constitutional frameworks before reaching their normative status in international law.¹⁷ By default, states bear duties toward the rights holders. As normative standards, human rights are invariably evolving. Certain rights are developed

¹² O Sykes, n. ..., p 2.

¹³ <<http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>> accessed 15 March 2017.

¹⁴ Vienna Declaration and Programme of Action 1993, preamble para 2

¹⁵ UN Charter, preamble: “We the Peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .” (emphasis added).

¹⁶ See UDHR, eg Art 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...” (emphasis added).

¹⁷ Olivier De Schutter, *International Human Rights Law* (2nd edn, Cambridge 2014), p 13. See also the analysis of how human rights have reached the status of *jus commune* in pp 33-60.

in response to the changes in social, economic and cultural context. For example, the right to privacy, rights of persons with HIV/AIDS and environmental rights were not included when the UDHR was adopted in 1948 but were developed and subsequently incorporated in other international human rights instruments. In the purview of this chapter, the right to development is another right that was itself 'developed' through recognition of the lapse in economic development programmes.

2. ASEAN's Human Rights Agendas and Mechanism

Analysis in this part focuses on the issues of human rights agendas and mechanism in the ASEAN Community. A key query of this chapter in regard to human rights is: to what extent has the human rights mechanism been effective in addressing the impacts of regional integration? Some notable milestones are inclusion of human rights as a regional agenda, adoption of a new standard and a functioning mechanism. However, an overall assessment points to a qualified success.

1) Humane Agendas

Human rights have become a highly dynamic agenda of ASEAN since they were incorporated in the ASEAN Charter. When ASEAN was founded in 1967, the notion of human rights was absent in the ASEAN Declaration. Human rights emerged officially in the ASEAN vernacular in 1999 under the Hanoi Plan of Action that calls for exchange of information on human rights among member states.¹⁸ The impetus to include a human rights policy arose from the impact of the 1997 financial crisis that engulfed the region.¹⁹

It took 40 years for human rights to be finally adopted as an integral part of the ASEAN Community. The ASEAN Charter 2007 makes explicit references to human rights in many parts.²⁰ The most significant provision is Article 14 that mandates the establishment of a human rights body of ASEAN.²¹ The same Article entrusts the ASEAN Foreign Ministers Meeting (AMM) — a decision-making body of the APSC — to determine the Terms of

¹⁸ HPA para 4.8 "Enhance exchange of information in the field of human rights among ASEAN Countries in order to promote and protect all human rights and fundamental freedoms of all peoples in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action."

¹⁹ The call for the exchange of information on human rights among member states is one of a menu of measures to 'promote social development and address the social impact of the financial and economic crisis'

²⁰ See e.g. ASEAN Charter, preamble para 8: "Adhering to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms." Art 1 purposes: "The purposes of ASEAN are: ... 7. 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. ..." Art 2 Principles: "2. ASEAN and its Member States shall act in accordance with the following principles: ... (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice; ..."

²¹ ASEAN Charter art 14: "1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body. ..."

Reference (TOR) that set the boundaries of the human rights body's operation.²² The ASEAN human rights body, entitled the ASEAN Intergovernmental Commission on Human Rights (AICHR), was inaugurated in Thailand in October 2009.²³ The AICHR is designated as an intergovernmental and consultative body.²⁴ It has a reporting duty to the AMM, with whom it meets once a year and to whom it submits an annual report. The AICHR is hailed as a success story of ASEAN in its commitment to human rights and fundamental freedoms; like other regional organisations, ASEAN now has a human rights mechanism.²⁵ Despite the clearly stipulated responsibility to 'promote and protect' human rights, the AICHR work has largely been focused on promotional activities.²⁶

Box 3.1 ASEAN Human Rights Declaration

ASEAN Human Rights Declaration

- General Principles (Articles 1-9)
- Civil and Political Rights (Articles 10-25)
- Economic, Social and Cultural Rights (Arts 26-34)
- Rights to Development (Articles 35-37)
- Right to Peace (Article 38)
- Cooperation in the Promotion and Protection of Human Rights (Articles 39-40)

Phnom Penh Statement on the Adoption of the AHRD

"3. REAFFIRM further our commitment to ensure that the implementation of the AHRD be in accordance with the Charter of the United Nations, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN Member States are parties, as well as to relevant ASEAN declarations and instruments pertaining to human rights."

ASEAN has achieved recognisable progress in making human rights a constituent part of its policy framework. However, implementation of human rights agendas is subjected to the silo structure of the Community that has given rise to the difficulties on engagement between the AICHR and other bodies, both within the political pillar (APSC) to which the AICHR is attached and with those of the other two pillars. It is worth noting, however, that in 2017 the AICHR had its first interface with the Senior Economic Officials Meeting (SEOM),²⁷ the focal body of the AEC. This is indicative of both the gradual speed of engagement and further collaborative opportunities that are to be fostered if human rights are to be taken seriously by the economic pillar.

The TOR of the AICHR includes the development of an ASEAN Human Rights Declaration (AHRD).²⁸

²² ASEAN Charter art 14 para 2.

²³ For discussion of the drafting of the TOR and an overview of the AICHR, see Vitit Muntarbhorn, *Unity in Connectivity? Evolving Human Rights Mechanism in the ASEAN Region* (Martinus Nijhoff Publishers 2013), Ch 3.

²⁴ AICHR TOR 3, downloadable from: <http://aichr.org/documents/>.

²⁵ The AICHR is the most recently established regional human rights body. For an outline of human rights mechanisms of other regions, see Schutter, n. ..., pp 23-35.

²⁶ Since 2009, the AICHR has adopted two 'five-year work plans' (2010-2015 and 2016-2020), available at: <http://aichr.org/documents/>.

²⁷ The interface took place in March 2017 at a SEOM meeting in Bangkok. However, while all AICHR representatives were invited, only two attended the meeting, namely the Chair of the AICHR (Philippines) and the author as the Representative of Thailand.

²⁸ AICHR TOR 4.2.

During the drafting process (between 2010-2012),²⁹ there was a widely-held view that as a political instrument or a soft law, the AHRD will be a basic human rights document for the ASEAN Community that will help guide policies and actions of relevant bodies to be in compliant with universal human rights principles. While it endorses the Universal Declaration on Human Rights (UDHR) and incorporates a number of rights recognised by the UDHR, the AHRD adds a category of new rights, including right to development, right to peace, right of persons living HIV/AIDS and right to the environment. When the draft AHRD came to its consideration in 2012 at the ASEAN Summit in Phnom Penh, ASEAN leaders adopted a declaration on the AHRD (see text in Box 3.1), which

emphasises that implementation of the AHRD will be in conformity with relevant international standards.

Box 3.2 Role of Regional Human Rights Mechanisms

Role of Regional Human Rights Mechanisms

- Assist national governments with the implementation of their international human rights obligations; for example, assisting with the implementation of the recommendations of treaty bodies, special procedures and the Universal Periodic Review;
- Provide people with more accessible mechanisms for the protection of their human rights, once national remedies have been exhausted;
- Help to raise people's awareness of their human rights, placing them in a more localised context and reflecting their particular human rights concerns;
- Provide regional input to the development of international human rights standards and the improvement of international human rights mechanisms;
- Help national governments to better address regional human rights concerns that cross national borders; for example, human rights concerns related to migration, transnational crime and environmental disasters.

Source: UN Office of High Commissioner on Human Rights, Regional Office for South-East Asia

Following its adoption in November 2012, the AHRD has become a key reference document for the human rights function of ASEAN and has been cited in a number of soft laws such as the ASEAN Regional Plan of Action on Elimination of Violence against Women and its twin on elimination of violence against children and the first hard law or a legally binding instrument of ASEAN, the ASEAN Convention against Trafficking in Persons especially Women and Children. Most importantly, the AICHR implements its human rights programmes based on the AHRD provisions. A lingering question is to what extent the AHRD can find its way to the AEC or ideally be internalised by the different bodies of the economic pillar.

2) ASEAN Human Rights Mechanism

The second issue concerning human rights in ASEAN is ultimately about its mechanism. If the list of roles expected of a regional mechanism

²⁹ Drafting of the AHRD began in November 2010 with the creation of a Drafting Group comprising 10 members, each appointed by respective AICHR representatives. The author is a representative of Thailand to the Drafting Group. For the discussion on the AHRD, see Sriprapha Petcharamesree, 'The ASEAN Human Rights Architecture: Its Development and Challenges' (2013) 11 The Equal Rights Review 46-59.

³⁰ AICHR TOR 6.8, downloadable from: <http://aichr.org/documents/>.

indicated by the OHCHR is used as a benchmark, ASEAN human rights mechanism still has gaps to fill. There are a few points that explain the challenges to make the mechanism effective. Firstly, there is no singularity of human rights body in ASEAN. The term ‘overarching’ that is ascribed to the AICHR³⁰ in its role as the human rights institution in ASEAN implies rightly that it is not the only human rights body of ASEAN. Two human rights bodies were set up prior to AIHCR establishment in 2009. In 1976, a committee on women was established to coordinate matters pertaining to participation of women in the Community that at the time comprised only the five founding member states. The title of the committee was changed in 2002 to the ASEAN Committee on Women. In 2007, another committee was set up with a key task to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers.³¹ Less than a year after the creation of AIHCR, ASEAN created another human rights body that is specifically mandated to handle the rights of women and children, the ACWC.³²

Table 3.1 ASEAN Human Rights Bodies

Year	Title	Key Instrument
1976	ASEAN Sub-Committee on Women (renamed ASEAN Committee on Women—ACW—in 2002)	ASEAN Declaration on the Advancement of Women 1988
2007	ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)	ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
2009	ASEAN Intergovernmental Commission on Human Rights (AICHR)	ASEAN Charter and TOR
2010	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)	TOR

³¹ The ACMW was not established by the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers that was adopted by the ASEAN leaders in January 2007. It was instead set up by the statement of the AMM in July 2007, calling for the establishment of a committee to implement the leaders’ Declaration. After nearly ten years since it was created, the ACMW has not been able to conclude the negotiation of the instrument on migrant workers. Unlike the AICHR and the ACWC, the ACMW adopted its own TOR.

³² Creation of the ACWC predates the plan to set up the AICHR. In 2004, the VAP includes as an action line to ‘promote human rights’ under the then ASEAN Security Community the establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. See VAP Annex 1, 1.1.4.7. In fact, the APSC Blueprint 2009-2015 makes reference to the two bodies at the same time, expediting the establishment of the AICHR as well as the ACWC. See APSC Blueprint 2009-2015 para A.15.

Secondly, because the mandate of these bodies—on the rights of women, children and migrant workers—overlap, there is a need to coordinate and reach alignment to streamline their work.

Working relations between the human rights bodies has improved over the years as a result of frequent interactions through meetings and activities. A challenge still remains on how to institutionalise the sharing of information and regular communications. Thirdly, a root cause that has hampered such coordination stems from the different governance and administrative structures of each body. The AICHR is placed within

the political and security pillar while the ACWC and ACMW are attached to the socio-cultural. Each of these pillars has their own set of institutional arrangements, and cross pillar relations has been on an ad hoc basis.

3.2. AEC and Human Rights

This part explores the relationship between the AEC and human rights. The first section will discuss the governance context of the ASEAN Community, of which the AEC is a constituent part and which provides organisational structure that directly affects the AEC. The second section will look in closer detail the coverage of commitments that have implications on human rights.

The AEC has become the most recognisable part of the ASEAN Community. Arguably for many people it is the only part of ASEAN known to them. The popularity of the AEC is paradoxical given the fact that ASEAN was originally founded on regional security concern in the late 1960s and economic integration agenda was only intensified in the early 1990s when the Community was stepping toward the turn of its third decade.

3.2.1. Structure of the ASEAN Community

The organisational structure of the ASEAN Community as shown in the table below raises a number of issues on its humane aspects. Firstly, the ASEAN Charter is noted by its brevity about the scope of the Community. Conferring legal personality on ASEAN, the Charter simply states that it is an 'inter-governmental organisation'.³³ By creating and dividing its mandate into the APSC, AEC and ASCC, ASEAN manifests an important aspect that it is not a human rights organisation, nor is it singularly focused on economic matters.

³³ ASEAN Charter art 3

Secondly, the silos or compartmentalisation of ASEAN creates a challenge that is not uncommon in other intergovernmental organisations. In fact, such a structure also broadly reflects the governance at the domestic level of each member state where agencies are created along function or mandate line. Each sectoral body of the three community pillars, which is represented by high ranking officials from the member states and supported by relevant division of the ASEAN Secretariat, has its own agenda, resources and emphasis. The regularisation of the work rhythm and the increasing number of meetings have rendered it difficult for these bodies to address cross-cutting issues, including the concerns for human rights. It is also not unfamiliar for an issue to be transposed in different labels in order for them to be incorporated on the policy menu.

In the AEC, human rights have not become an institutional concept but are reflected in a variety of issues that will be more fully discussed later. Terms like 'inclusivity' represent opportune window through which a number of rights-based discussions can be initiated, including rights of women and persons with disabilities as business operators or entrepreneurs. One of the key priorities in streamlining ASEAN work is to prevent duplication of mandate and programme of works. However, in the context of human rights, a strict delineation may result in further alienating the very concept that the Community seeks to permeate to all of its corner. How then can common issues like human rights be addressed effectively among the ASEAN silos?

The third challenge is the main issue of mainstreaming the crosscutting issues of which human rights stand as a prominent candidate. There are two approaches that seem to be a default response among ASEAN practitioners. One is the reliance on the human rights mechanism of ASEAN and the other is the pivot of enhanced cooperation of the sectoral bodies. The mainstreaming challenge does not merely stem from the deficiency of inter pillar coordination. In fact, two additional factors are often overlooked. Firstly, the oft-cited lack of cross-silo engagement suppresses another root cause: the ineffectiveness of intra-pillar partnerships. The ASEAN organisational structure is perhaps best characterised as three boxes of beehives, each populated by various sectoral bodies clustered by their relevance. Since they are each surrounded by their mandate cell, they may be less than incentivised to interact with other cells. Secondly, the term 'mainstreaming' tends to imply imposition of values by one agency on another, which explains its resistance and inadequacy. As pointed out previously, while the human rights mechanism of ASEAN is spearheaded by the AICHR, its existence cannot be a license for complacency or inaction by other bodies. As a fundamental value of the ASEAN Community, human rights can be effectively respected, protected and fulfilled only if they are internalised by all sectoral bodies. Their policies and agendas must embrace human rights agendas. It will be further argued that a number of policy menus of the AEC can be aligned with human rights.

Table 3.2 ASEAN Sectoral Ministerial Bodies

List of Selected ASEAN Sectoral Ministerial Bodies (Source: ASEAN Charter) ³⁴		
ASEAN Political-Security Community	ASEAN Economic Community	ASEAN Socio-Cultural Community
<p>ASEAN Foreign Ministers Meeting ASEAN Defence Ministers Meeting ASEAN Law Ministers Meeting</p> <ul style="list-style-type: none"> ASEAN Senior Law Officials Meeting (ASLOM) <p>ASEAN Ministerial Meeting on Transnational Crime</p> <ul style="list-style-type: none"> Senior Official Meeting on Transnational Crime (SOMTC) Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of Ministries of Foreign Affairs Meeting (DGICM) 	<p>ASEAN Economic Ministers Meeting (AEM)</p> <ul style="list-style-type: none"> High Level Task Force on ASEAN Economic Integration (HLTF-EI) Senior Economic Officials Meeting (SEOM) ASEAN Community Statistical System (ACSS) Committee <p>ASEAN Free Trade Area (AFTA) Council ASEAN Investment Area (AIA) Council ASEAN Finance Ministers Meeting (AFMM)</p> <p>ASEAN Ministers Meetings on Agriculture and Forestry (AMAF) ASEAN Ministers on Energy Meeting (AMEM) ASEAN Ministerial Meeting on Minerals (AMMin) ASEAN Ministerial Meeting on Science and Technology (AMMST) ASEAN Telecommunications and Information Technology Ministers Meeting (TELMIN)</p> <ul style="list-style-type: none"> Telecommunications and Information Technology Senior Officials Meeting (TELSOM) <p>ASEAN Transport Ministers Meeting (ATM)</p> <ul style="list-style-type: none"> Senior Transport Officials Meeting (STOM) <p>Meeting of the ASEAN Tourism Ministers (M-ATM)</p> <ul style="list-style-type: none"> Meeting of the ASEAN National Tourism Organisations (ASEAN NTOs) 	<p>ASEAN Ministers Responsible for Information (AMRI)</p> <ul style="list-style-type: none"> Senior Officials Meeting Responsible for Information (SOMRI) <p>ASEAN Ministers Responsible for Culture and Arts (AMCA) ASEAN Education Ministers Meeting (ASED)</p> <ul style="list-style-type: none"> Senior Officials Meeting on Education (SOM-ED) <p>ASEAN Ministerial Meeting on Disaster Management</p> <ul style="list-style-type: none"> ASEAN Committee on Disaster Management (ACDM) <p>ASEAN Ministerial Meeting on the Environment (AMME)</p> <ul style="list-style-type: none"> ASEAN Senior Officials on the Environment (ASOEN) <p>ASEAN Health Ministers Meeting (AHMM)</p> <ul style="list-style-type: none"> Senior Officials Meeting on Health Development (SOMHD) <p>ASEAN Labour Ministers Meeting (ALMM)</p> <ul style="list-style-type: none"> Senior Labour Officials Meeting (SLOM) <p>ASEAN Ministers on Rural Development and Poverty Eradication (AMRDPE)</p> <ul style="list-style-type: none"> Senior Official Meeting on Rural Development and Poverty Eradication (SOMRDPE) <p>ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD)</p> <ul style="list-style-type: none"> Senior Officials Meeting on Social Welfare and Development (SOMSWD) ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) <p>ASEAN Ministerial Meeting on Youth (AMMY)</p> <ul style="list-style-type: none"> Senior Officials Meeting on Youth (SOMY) <p>Heads of Civil Service meeting for the ASEAN Cooperation on Civil Service Matters (ACCSM) ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) ASEAN University Network (AUN)</p>

³⁴ The full list of the ASEAN Sectoral Ministerial Bodies is in Annex 1 of ASEAN Charter. The Charter is downloadable from: <http://asean.org/storage/2017/07/8.-July-2017-The-ASEAN-Charter-21th-Reprint-with-Updated-Annex-1.pdf>

3.2.2. AEC Commitments and Implementation

1. Not Purely Economics

When discussing its humane aspects, two traits of the AEC that are often neglected must be considered. The first is the fact that while it is primarily concerned with economic integration objectives, the AEC is not wholly about economic and financial interests.³⁵ The AEC's single market agenda is broader than mobility of factors of production. The first Blueprint that expired in 2015 already covered a number of behind the border issues, including those clustered under the theme 'competitive economic region' and 'equitable economic development' (See Box below). The second trait of the AEC to be taken into account is the obligation that the AEC must undertake as an organ of ASEAN.

AEC Blueprint 2015

A. Single Market and Production Base

- A1. Free flow of goods (9 strategic approaches)
- A2. Free flow of services (3 strategic approaches)
- A3. Free flow of investment (5 strategic approaches)
- A4. Free flow of capital (7 strategic approaches)
- A5. Free flow of skilled labour
- A6. Priority of integration sectors
- A7. Food, agriculture and forestry

B. Competitive Economic Region

- B1. Competition policy
- B2. Consumer protection
- B3. Intellectual property rights
- B4. Infrastructure development (10 strategic approaches)
- B5. Taxation
- B6. E-commerce

C. Equitable Economic Development

- C1. SME development
- C2. Initiative for ASEAN Integration

D. Full Integration into the Global Economy

The ASEAN Charter has brought a fundamental shift. By enveloping the AEC and the other two pillars under one institutional roof, the ASEAN Charter not only endorses their existing obligations, but more importantly, binds them to a set of Community values, including human rights, democracy and rule of law.

2. Human Rights and Implications of AEC

Two points can be raised on the issue of impacts brought about by the AEC. The first point is that impacts associated with economic integration have indeed happened with environmental implications as the most prominent example. The second point is much lesser known: the fact that ASEAN has indeed anticipated these negative impacts and already made plan for their prevention and mitigation.

³⁵ ASEAN Charter art 9 ASEAN Community Councils

"1. The ASEAN Community Councils shall comprise the ASEAN Political-Security Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council."

However, the 'purposes' of ASEAN as indicated in Art 1 of the Charter already incorporate and elucidate the core rationale of the AEC: "to create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital; . . ."

Analysis of the impacts, particularly adverse implications, from the AEC is rendered difficult owing to the fact that AEC is part of the globalisation trend that has seen interconnectedness of economies through increasing erosion of trade impediments. Environmental impacts are an illustrative example. The creation of a single market through free movement of goods, services, investment and professional workers has encouraged and facilitated intra-regional projects that affected the environment and livelihood of the people in the host states that are not equipped with a robust environmental protection framework to handle the massive rise in these projects, many of which are unprecedented in scale. While it can be said that these projects would have been implemented even outside the context of the AEC, the AEC framework has played a role in facilitating the establishment of local presence and investment of ASEAN investors in the receiving state.

There is evidence that ASEAN policy makers were aware of, and planned for, the potential impacts that the single market implementation would have caused. However, the remit of such impacts is limited. The Declaration of ASEAN Concord II or the Bali Concord II, the first document that stipulates the structure for the ASEAN Community, was adopted in 2003 and makes reference to such regional 'problems' as environmental degradation and transboundary pollution, although they are not cited as consequence or impacts from ASEAN integration framework.³⁶

The first official document of ASEAN that discusses integration impact is the Vientiane Action Programme (VAP) that seeks to implement the Bali Concord II. The VAP's most pertinent parts on managing the social impact of economic integration and programme areas and measures are cited below.

Managing the Social Impact of Economic Integration

Domestic policy adjustments and emerging regional production arrangements from economic integration will have a profound social impact that will be felt mostly in the labour market. Consequently, there is a need to:

- i. Enhance human resource development through the networking of skills training institutions, and the development of regional assessment and training programmes;

³⁶ Bali Concord II para 6: "The Community shall intensify cooperation in addressing problems associated with population growth, unemployment, environmental degradation and transboundary pollution as well as disaster management in the region to enable individual members to fully realize their development potentials and to enhance the mutual ASEAN spirit."

- ii. Strengthen the capacity of governments to monitor labour markets and monitor human resource indicators; and
- iii. Promote social protection and social risk management systems.

The inclusion of health services as one of the eleven priority sectors for vertical integration will require strategies to address the impact of liberalisation in the health sector. In addition, the development of mutual recognition arrangements shall facilitate labour mobility in the region and will support the realisation of the AEC.³⁷

Box 3.3 Vientiane Action Programme 2004-2010 (Annex 3)

Vientiane Action Programme 2004-2010	
Ref. No.	Programme Areas and Measures
3.2	Managing the Social Impacts of Economic Integration
3.2.1	<p>Developing and enhancing human resources in the workforce</p> <p>3.2.1.1 Establish a network of skills-training institutions and a programme on vocational skills-training methodology</p> <p>3.2.1.2 Promote life-long learning as a means of personal development and integration into the working life and society</p> <p>3.2.1.3 Develop a regional assessment and training programme in the informal sector to promote employment and self-employment</p> <p>3.2.1.4 Enhance capacity of governments to monitor labour markets and human resource indicators, and design social impact policies</p> <p>3.2.1.5 Develop a programme on overseas employment administration</p> <p>3.2.1.6 Develop ASEAN human resources in applied research concentrating on micro-electronics, new materials, biotechnology, telecommunication and other high value-added industries that enhance ASEAN's global competitiveness</p> <p>3.2.1.7 Develop joint certification and accreditation of science and technology in the region</p>

³⁷ Vientiane Action Programme 2004-2010 (ASCC) para 3.2. The VAP is downloadable from <http://www.asean.org/storage/images/archive/VAP-10th%20ASEAN%20Summit.pdf>

3.2.2	<p>Strengthening systems of social protection and social risk management</p> <p>3.2.2.1 Establish an integrated social protection and social risk management system in ASEAN</p> <p>3.2.2.2 Conduct research on the impact of globalisation and regional integration on labour and unemployment</p> <p>3.2.2.3 Strengthen systems of social protection at the national level and work toward adoption of appropriate measures at the regional level to provide a minimum uniform coverage for skilled workers in the region</p>
3.2.3	<p>Addressing health development issues from liberalisation</p> <p>3.2.3.1 Develop strategies to:</p> <p>ensure coordination between policy makers, practitioners and users in rationalising health delivery</p> <p>enhance human resources for health to respond to globalisation and trade liberalisation</p> <p>3.2.3.2 Complete regional surveillance of risk factors for priority health issues identified in the Regional Action Plan on Healthy Lifestyles</p>

Two observations can be made on the VAP that limits its application. To begin with, while identification of potential impact in parallel with the implementation of the AEC agenda was certainly helpful, the detail of such impact is ostensibly limited and focuses mainly on social issues. Absent from the enumeration are environmental implications that are already recognised in the Bali Concord II. Moreover, perhaps a more serious weakness of the VAP's impact scoping is the fact that it falls under the strategic thrust of ASCC, and not the AEC that is the source of impact, and there was no explicit mechanism for linking or coordination between the two.³⁸

Since the first AEC Blueprint came to expiry at the same time as the Millennium Development Goals in 2015, the assessment of MDG implementation in the ASEAN region is also relevant to the development agenda of ASEAN. A recent study conducted by ASEAN³⁹ on the implementation of MDGs has identified the following challenges that have emerged along with the MDG agendas that were not completely executed.

³⁸ The VAP also has strategic thrusts under the AEC with the theme "enhancing competitiveness for economic growth and development through closer economic integration."

³⁹ It must be noted, however, that the main body responsible for the report is the Senior Officials Meeting on Rural Development and Poverty Eradication (SOMRDPE) through consultation with sectoral bodies under the ASCC. Involvement of the AEC is not indicated.

- 1. Inclusive economic and social progress.** Despite decreasing overall poverty, “core poor” and inequality are emerging.
- 2. Balanced urban growth.** ASEAN urban areas will be put under strain from increase in population and demand for infrastructure. People in concentrated areas more prone to natural disasters and climate change impacts.
- 3. More productive jobs and more skills adapted to those jobs.** Limited access to secure jobs for rural populations who are in informal sectors or self-employment. Transition from tertiary to job markets requires a set of skills—technical, entrepreneurial, people and communications—that is still deficient.
- 4. New health threats.** Non-communicable diseases—cancer, cardiovascular diseases, chronic respiratory diseases, and diabetes—are on the rise, leading to premature deaths among citizens as a result of changing consumption and environmental patterns. Globalisation also increases threats of pandemics like SARS and Avian flu that require enhanced coordination and communication to handle.
- 5. Climate change.** Rising sea levels, more frequent and more powerful floods, and risks to food security are examples of climate change effects that call for reversal of negative trends in emissions and unsustainable consumption and production patterns.
- 6. Social protection systems.** A flexible social protection system can help cushion shocks that are transmitted into globally and regionally integrated economies, help cope with the effects of natural disasters, and help reach those groups of core, or chronically poor, that are not able to benefit from economic growth⁴⁰

It is not clear the extent to which this report helped inform the High-Level Task Force that was tasked with the development of the new ASEAN Community Vision 2025. A challenge for the AEC is to recognise the relevance of the identified gaps and take them on board.

3.3. New Opportunities for a More Humane AEC

The start of the fully-fledged ASEAN Community on 31 December 2015 also marks two additional milestones and windows of humane opportunities for the AEC, the launch of the new ASEAN Community Vision 2025 and the Sustainable Development Goals (SDGs) 2030. They will be discussed in turn.

⁴⁰ ASEAN, *Report of the ASEAN Regional Assessment of MDG Achievement and Post-2015 Development of Priorities (2015)* pp 5-6.

3.3.1. ASEAN Community Vision 2025 & Mainstreaming of Human Rights

The first point of departure is that ASEAN is not a human rights organisation,⁴¹ unlike the Council of Europe, and the new Vision will not turn it into one. However, as an intergovernmental organisation, ASEAN is constructed on a canon of principles and objectives that explicitly include human rights and related concepts. Therefore, it is an undertaking of ASEAN and all organs and bodies, including the AEC, to instil and make effective the promotion and protection of human rights in their relevant policies and programmes. There are two salient aspects of the new Community Vision to be noted. One is the clear function in the ASEAN Political Security Community (APSC) Blueprint 2025 that human rights are to be mainstream across the three pillars.⁴² The ASEAN Socio-Cultural Community (ASCC) Blueprint 2025 also explicitly includes an element on the promotion and protection of human rights. The second point pertains to the AEC, while the 2015 and 2025 Blueprints do not differ significantly in terms of the overall targets, the new version is much more detailed than its predecessor. As can be seen in the table that juxtaposes the two versions, the 2025 Blueprint provides a variety of what can be used as action points for humane activities.

Table 3.3 Comparison of AEC Blueprints (2015 and 2025)

AEC Blueprint 2015	AEC Blueprint 2025
<p>A. Single Market and Production Base</p> <p>A1. Free flow of goods (9 strategic approaches)</p> <p>A2. Free flow of services (3 strategic approaches)</p> <p>A3. Free flow of investment (5 strategic approaches)</p> <p>A4. Free flow of capital (7 strategic approaches)</p> <p>A5. Free flow of skilled labour</p> <p>A6. Priority of integration sectors</p>	<p>A. A Highly Integrated and Cohesive Economy</p> <p>A1. Trade in goods (3 strategic measures)</p> <p>A2. Trade in services (implementing ASEAN Trade in Services Agreement through 6 approaches)</p> <p>A3. Investment environment (4 strategic measures)</p> <p>A4. Financial Integration, Financial Inclusion, and Financial Stability (3 strategic measures)</p> <p>A5. Facilitating Movement of Skilled Labour and Business Visitors (2 strategic measures)</p> <p>A6. Enhancing Participation in Global Value Chains (5 specific initiatives)</p>

⁴¹ Vitit Muntarbhorn, *Unity in Connectivity? Evolving Human Rights Mechanism in the ASEAN Region* (Martinus Nijhoff Publishers 2013), p 112.

⁴² ASEAN Political Security Blueprint 2025, para A.2.5 (vii): "Promote the mainstreaming of human rights across all three Pillars of the ASEAN Community, through consultation among relevant ASEAN Sectoral Bodies; ..."

<p>A7. Food, agriculture and forestry</p> <p>B. Competitive Economic Region</p> <p>B1. Competition policy</p> <p>B2. Consumer protection</p> <p>B3. Intellectual property rights</p> <p>B4. Infrastructure development (10 strategic approaches)</p> <p>B5. Taxation</p> <p>B6. E-commerce</p> <p>C. Equitable Economic Development</p> <p>C1. SME development</p> <p>C2. Initiative for ASEAN Integration</p> <p>D. Full Integration into the Global Economy</p>	<p>B. A Competitive, Innovative and Dynamic ASEAN</p> <p>B1. Effective Competition Policy (7 strategic measures)</p> <p>B2. Consumer protection (5 strategic measures)</p> <p>B3. Strengthening Intellectual Property Rights Cooperation (4 strategic measures)</p> <p>B4. Productivity-Driven Growth, Innovation, Research and Development, and Technology Commercialisation (3 strategic measures on ASEAN competitiveness and 8 strategic measures to promote innovation)</p> <p>B5. Taxation Cooperation (5 strategic measures)</p> <p>B6. Good governance (2 strategic measures)</p> <p>B7. Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice (5 strategic measures)</p> <p>B8. Sustainable Economic Development (8 strategic measures)</p> <p>B9. Global Megatrends and Emerging Trade-Related Issues</p> <p>C. Enhanced Connectivity and Sectoral Cooperation</p> <p>C1. Transport (5 strategic measures)</p> <p>C2. Information and Communications Technology (7 strategic measures)</p> <p>C3. E-Commerce (4 strategic measures)</p> <p>C4. Energy (7 strategic measures)</p> <p>C5. Food, Agriculture and Forestry (8 strategic measures)</p> <p>C6. Tourism (2 strategic measures)</p> <p>C7. Healthcare (7 strategic measures)</p> <p>C8. Minerals (4 strategic measures)</p> <p>C9. Science and Technology (6 strategic measures)</p> <p>D. A Resilient, Inclusive, People-Oriented and People-Centred ASEAN</p> <p>D1. Strengthening the Role of Micro, Small, and Medium Enterprises (5 strategic measures)</p> <p>D2. Strengthening the Role of the Private Sector (2 strategic measures)</p> <p>D3. Public-Private Partnership (6 strategic measures)</p> <p>D4. Narrowing the Development Gap (7 strategic objectives)</p> <p>D5. Contribution of Stakeholders on Regional Integration Efforts (3 strategic objectives)</p> <p>E. A Global ASEAN (6 strategic measures)</p>
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In addition to consumer protection that has been pointed out as most closely related to human rights under the preceding blueprint, the 2025 version includes many more action lines that are directly linked to human rights. These include good governance (B6), good regulatory practice (B7), sustainable economic development (B8), and narrowing the development gap (D4). Adopting action lines that align with human rights principles will not convert the AEC into a human rights body but will lend support to an equally important aspect which is the implementation of these goals. Consultation and cooperation with sectoral bodies of other pillars, especially those discharging the rights-related mandate, will be a key contributing factor to the AEC's successful implementation of these goals.

3.3.2. Sustainable Development Goals (SDGs) & Indicators

Succeeding the MDGs in 2015, the SDGs expand the scope to cover every country large and small, developed and developing. As evinced by the Resolution of the General Assembly, the SDGs aim at realising human rights and are to be viewed and implemented holistically.

The 17 Sustainable Development Goals and 169 targets . . . seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.⁴³

Most pertinently for ASEAN, in the ASEAN Community Vision 2025 the Leaders "underline the complementarity of the United Nations 2030 Agenda for Sustainable Development with ASEAN community building efforts to uplift the standards of living of our peoples."⁴⁴ It can be seen in the table below that every goal of the 2030 Agenda corresponds with a category of human right and a related action line of the 2025 AEC Blueprint, which reaffirms their alignment. This matrix will be relevant to the ongoing endeavour of ASEAN, through the Working Group on SDG Indicators (WGSDGI) under the ASEAN Community Statistical System (ACSS), to develop indicators for SDGs at the regional level in parallel with those at the national level.

⁴³ Transforming our world: the 2030 Agenda for Sustainable Development. A/RES/70/1, Preamble.

⁴⁴ ASEAN Community Vision 2025, para 6.

Table 3.4 SDGs, Human Rights & AEC Blueprint 2025

Sustainable Development Goals	Related Human Right Category	Related AEC Blueprint
Goal 1: End poverty in all its forms everywhere	Livelihood Right	D4. Narrowing the Development Gap
Goal 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture	Right to Food	<ul style="list-style-type: none"> • C5. Food, Agriculture and Forestry • D1. Strengthening the Role of Micro, Small, and Medium Enterprises • A6. Enhancing Participation in Global Value Chains • B2. Consumer protection
Goal 3: Ensure healthy lives and promote well-being for all at all ages	Right to Health	<ul style="list-style-type: none"> • C7. Healthcare • D2. Strengthening the Role of the Private Sector • D3. Public-Private Partnership • B9. Global Megatrends and Emerging Trade-Related Issues
Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all	Right to Education	<ul style="list-style-type: none"> • A5. Facilitating Movement of Skilled Labour and Business Visitors • C2. Information and Communications Technology • C9. Science and Technology
Goal 5: Achieve gender equality and empower all women and girls	CEDAW and CRC (Women and Children Rights)	<ul style="list-style-type: none"> • A4. Financial Integration, Financial Inclusion, and Financial Stability • A5. Facilitating Movement of Skilled Labour and Business Visitors • B6. Good governance • B8. Sustainable Economic Development

Sustainable Development Goals	Related Human Right Category	Related AEC Blueprint
Goal 6 Ensure availability and sustainable management of water and sanitation for all	Right to Water	<ul style="list-style-type: none"> • B8. Sustainable Economic Development • C4. Energy • C5. Food, Agriculture and Forestry • C8. Minerals • D4. Narrowing the Development Gap
Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all	Right to Housing	<ul style="list-style-type: none"> • B8. Sustainable Economic Development • D2. Strengthening the Role of the Private Sector • D3. Public-Private Partnership • D4. Narrowing the Development Gap
Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	Right to Work	<ul style="list-style-type: none"> • A2. Trade in services • A3. Investment environment • A5. Facilitating Movement of Skilled Labour and Business Visitors • D1. Strengthening the Role of Micro, Small, and Medium Enterprises
Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation	Economic Rights, Social Rights	<ul style="list-style-type: none"> • A3. Investment environment • B4. Productivity-Driven Growth, Innovation, Research and Development, and Technology Commercialisation • C1. Transport • C2. Information and Communications Technology • D3. Public-Private Partnership • C9. Science and Technology

Sustainable Development Goals	Related Human Right Category	Related AEC Blueprint
Goal 10: Reduce inequality within and among countries	Non-discrimination	<ul style="list-style-type: none"> • B6. Good governance • B8. Sustainable Economic Development • D4. Narrowing the Development Gap • D5. Contribution of Stakeholders on Regional Integration Efforts • E. A Global ASEAN
Goal 11: Make cities and human settlements inclusive, safe, resilient, and sustainable	Right to Housing	<ul style="list-style-type: none"> • A3. Investment environment • C5. Food, Agriculture and Forestry • B2. Consumer protection • B8. Sustainable Economic Development
Goal 12: Ensure sustainable consumption and production patterns	Livelihood Rights	<ul style="list-style-type: none"> • A1. Trade in goods • B1. Effective Competition Policy • B2. Consumer protection • C3. E-Commerce • C5. Food, Agriculture and Forestry • D1. Strengthening the Role of Micro, Small, and Medium Enterprises
Goal 13: Take urgent action to combat climate change and its impacts	Right to a Clean Environment	<ul style="list-style-type: none"> • B8. Sustainable Economic Development • B9. Global Megatrends and Emerging Trade-Related Issues • C5. Food, Agriculture and Forestry • C9. Science and Technology

Sustainable Development Goals	Related Human Right Category	Related AEC Blueprint
Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development	Rights to a Clean Environment	<ul style="list-style-type: none"> • B8. Sustainable Economic Development • B9. Global Megatrends and Emerging Trade-Related Issues • C5. Food, Agriculture and Forestry • C9. Science and Technology
Goal 15: Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation, and halt biodiversity loss	Right to a Clean Environment	<ul style="list-style-type: none"> • B8. Sustainable Economic Development • B9. Global Megatrends and Emerging Trade-Related Issues • C5. Food, Agriculture and Forestry • C9. Science and Technology
Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels	Civil Rights	<ul style="list-style-type: none"> • B6. Good governance • B7. Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice • B8. Sustainable Economic Development • D4. Narrowing the Development Gap
Goal 17: Strengthen the means of implementation, and revitalize the global partnership for sustainable development	Economic Rights, Social Rights	<ul style="list-style-type: none"> • B6. Good governance • B7. Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice • B8. Sustainable Economic Development • D4. Narrowing the Development Gap • D5. Contribution of Stakeholders on Regional Integration Efforts • E. A Global ASEAN

Source: Adapted from Azmi Sharom et al. (eds), *An Introduction to Human Rights in Southeast Asia, Vol 2* (SEAHRN 2016), p 147.

3.4. Way Forward

In this section, two key recommendations to enhance the humane aspect of the AEC are advanced. The first is incorporation of new tools to address potential adverse impacts of integration. The second is a call to revisit the scope of the AEC itself to incorporate some of these concerns.

3.4.1. New tools

New tools which are outlined below, can be considered and applied. As they are founded on the rights-based approach and are already compatible with the SDGs, they will complement the Community-Building programmes of ASEAN and in particular the implementation of the ASEAN Community Vision 2025 and its three community Blueprints.

1. Human Rights Impact Assessment

The first tool is a human rights impact assessment (HRIA) that is used to identify and measure the effects of human rights from policy, legislation project, and other intervention, with the aim to prevent or mitigate negative impacts and maximise positive ones. The HRIA is anchored on human rights obligations and thus provides accountability to states on whom those obligations are binding. The inter-sectoral approach of the HRIA also brings value added in ensuring coherence of relevant interventions with international human rights standards and laws. The HRIA has been adopted by various types of actors whose work was hitherto perceived as lacking relevance with human rights such as the World Bank and OECD.⁴⁵ At the United Nations, the Human Rights Council has adopted the “Guiding principles on human rights impact assessments of trade and investment agreements”⁴⁶ that is of direct relevance and can be used for a cyclical (ex ante and ex post) impact assessment of the deepening of the AEC and ASEAN free trade agreements (FTAs), including the ongoing negotiation of the Regional Comprehensive Economic Partnership (RCEP).

While there is no one-size fits all methodology for the HRIA, it must be empirical and evidence-based. For trade agreements, the key query that the HRIA can help respond is how the legal provisions and obligations of that particular agreement will affect the

⁴⁵ See, eg OECD and the World Bank, *Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges* (3rd edn, the World Bank, 2016), Nordic Trust Fund and the World Bank, *Human Rights Impact Assessments* (2013)

⁴⁶ See Report of the Rapporteur on the Right to Food (A/HRC/19/59/Add.5).

human rights of the people in the relevant states.⁴⁷ It should be noted that the HRIA has already been considered in a few issues pertaining to trade agreements.⁴⁸ However, there is yet HRIA on an investment chapter of an FTA⁴⁹, and the ASEAN Comprehensive Investment Agreement (ACIA) may be a candidate for an assessment.

2. Other tools

There are a few other impact assessment tools that can be used in tandem with the HRIA. Environmental impact assessment (EIA) and Social Impact Assessment (SIA) are two examples. Human Rights Due Diligence (HRDD) is another tool that has been endorsed by the United Nations Human Rights Council. The HRDD is an integral part of the UN Guiding Principles on Business and Human Rights (UNGP) that was endorsed in 2011. The UNGP amalgamates existing human rights principles on the duty of states and businesses to protect and respect human rights and to provide remedy in case of violations. Businesses are recognised as bearing a duty to respect human rights, encompassing the responsibility not to infringe upon human rights directly or indirectly. An emphasis is also placed on supply chain management to ensure that their suppliers do not take part in human rights violations. The increasing global nature of supply chain has rendered necessary to ensure that the production of goods and services in the ASEAN Community does not cause or contribute to violations of human rights such as human trafficking, forced and child labour, environmental degradation and bribery.

While it is opportune that the new AEC Blueprint includes as an element on enhancing GVC participation, and that an ASEAN Work Plan on Enhancing GVC Participation has been adopted, it is worth noting that the element on sustainable consumption and production appears under the ASCC Blueprint 2025. This provides a great opportunity for cross-pillar collaboration, while at the same time raises concerns over the same challenge of issues being addressed in silos. The HRDD will not only help identify the risks of potential human rights violation but also enhance recognition of integrity of the Community that takes seriously protection and promotion of the rights of its people who are involved in the manufacturing cycle.

⁴⁷ There are eight steps that should be undertaken to ascertain impacts from such an agreement. Key Steps in HRIA for Trade Agreement: Screening, Scoping, Evidence gathering, Consultation/Participation, Analysis, Conclusions and Recommendations, Publication/Reporting, and Monitoring and review.

⁴⁸ such as whether agricultural liberalisation commitments of an FTA have caused influxes of foreign foodstuffs and what negative and positive impacts this may have on domestic populations (Canada-Colombia FTA?, PACER-plus), whether intellectual property provisions of an FTA have had an impact on access to medicines (or seeds/food) on domestic populations (ASEAN China FTA (ACFTA) on Thailand) and whether trade agreements have been negotiated in a way that respects the participatory rights of populations affected by the agreements (ACFTA on Thailand)

⁴⁹ James Harrison, *Human Rights Impact Assessments of Free Trade Agreements: What is the State of the Art?* (2013).

3.4.2. More Inclusive Economic Agenda/Commitment? The Case of Migrant Workers and Free(r) Movement of Natural Persons

The case of migrant workers represents a tri-partite relationship among the countries of origin or the sending states, the countries of destination or the receiving states, and the migrant workers and their family members. The fair and effective flow of migrant workers will benefit all three parties but at the same time this is recognised as a sensitive issue. Migrant workers profit from their employment abroad while contributing to both the sending and receiving states through their remittances that they send home and through the work that they have delivered in the receiving states where local workers have moved up to take positions that require higher skill. Recent statistics reveal that ASEAN economies are underpinned by migrant workers. In a 2015 Report by UNESCAP,⁵⁰ of the estimated 231.5 million migrants in the world in 2013, over 59 million were found in countries of the Asia Pacific region, more than the population of Myanmar.

Despite their contribution⁵¹ and indispensability, migrant workers have faced with paradoxical treatment in ASEAN. On the one hand, migration and migrant workers are absent from the scope of the AEC. It is noticeable that while facilitated movement of labour is espoused as a purpose of the Community,⁵² the AEC narrows such movement to skilled labour and business visitors.⁵³ On the other hand, ASEAN is fully aware of the movement of migrant workers and has created a safety net in the form of a political instrument and a dedicated body, albeit outside of the AEC sphere. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was adopted in 2007 and stipulates obligations and commitments for relevant parties, including receiving and sending states and the ASEAN Community. The ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) was also set up to monitor the implementation of the Declaration and to develop an ASEAN instrument on migrant workers.⁵⁴

The term 'migrant workers' itself is not uniformly used. The AEC adopts the commonly used trade term of 'temporary movement of natural persons' (TMNP), emphasising the temporary nature of such movement and differentiating natural persons from juridical persons, while those in human rights field refer to 'migrant workers'. The issue of migrant

⁵⁰ UNESCAP, *Asia-Pacific Migration Report 2015: Migrants' Contributions to Development* (2015).

⁵¹ Two of the top ten countries of origin for migrants are in ASEAN (Indonesia and the Philippines). In Singapore, migrant workers constitute 35% of the number of workers in 2010. In Thailand, of the 39.4 million workers in 2012, at least two million are migrant workers from the Kingdom's neighbouring countries.

⁵² ASEAN Charter art 1 para 5,

⁵³ AEC Blueprint 2025 A5.

⁵⁴ Nearing the 10th year of negotiation of such an instrument, it is still unlikely to be concluded owing in large part to the divergence of position between the sending and receiving states.

workers is overshadowed by political concern on immigration, the area that is regarded as belonging to sovereign rights of the member states. While full liberalisation of migrant workers is unlikely, a greater consideration to migrant workers beyond high-skilled professionals is warranted in the AEC, to be considered in tandem with the safety net measures already put in place. Since migration has direct contribution on remittances and skill transfer,⁵⁵ the absence of the AEC's reference to migrant workers can result in the loss of opportunity cost associated with migration as a development tool.

3.5. ASEAN in the Long Run

The last substantive part discusses other relevant issues that have direct bearings on the economic agenda of ASEAN.

3.5.1. Imminent expansion of ASEAN

The discussion of humane aspects of the AEC will be incomplete without looking at a broader geographical and geopolitical context. Although ASEAN membership has remained at ten since Cambodia joined in 1999, it may be enlarged through admission of new members. The most likely candidate is Timor-Leste (which has been an observer of ASEAN since 2002).⁵⁶

A more concrete expansion is in the area of trade. ASEAN is in the process of consolidating five bilateral FTAs into one mega regional FTA, the Regional Comprehensive Economic Partnership (RCEP). With Australia, China, India, Japan, New Zealand, and South Korea as well as the ten ASEAN Member States, the RCEP will be the most populous trade bloc in the world, presenting more than 3.4 billion people or 45% of the world population, and nearly a third of global trade and output. The positive momentum of RCEP, notwithstanding the missed deadline(s) for conclusion, stands in stark contrast to the Trans-Pacific Partnership (TPP) that originally comprises 12 members, four of which are member states of ASEAN. The withdrawal of the United States makes the future of the TPP much more tentative when compared with the prospects of the RCEP.

⁵⁵ Pasha L Hsieh, 'Reassessing the Trade-Development Nexus: The Paradigm Shift in Asia-Pacific Regionalism' (2016) 37 *Northwestern Journal of International Law & Business* <<https://ssrn.com/abstract=2764651>> accessed 10 March 2017, p 53.

⁵⁶ When this expansion will materialise is anyone's conjecture and depends a number of geopolitical considerations. In terms of legal requirement, according to Art 6 of the ASEAN Charter admission of a new member is decided by consensus of the ASEAN Summit, which means all ASEAN leaders must agree and some present members have expressed reservations on Timor-Leste's membership. A more basic and fundamental criterion is the readiness of the prospective member to carry out all ASEAN obligations. A simple fact is instructive: the number of the meetings that a new member must take part or host is likely to exceed 1,200. It is an understatement to say that this will be taxing on the country the size of Timor-Leste in terms of population and GDP compared with the current members. Perhaps the contingent and implicit success of the admission lies not solely in the capacity of any new member, but also in the competence of ASEAN to make its internal process more efficient and open to increased regionalism.

The RCEP warrants further scrutiny since ASEAN is negotiating as a single entity on behalf of its ten members. There are a few observations on aspects of the RCEP that intersect with the focus of this Chapter. Firstly, in terms of its scope, the RCEP currently does not seem to include chapters on environment, labour, and transparency and anti-corruption that are specifically dealt with in the TPP.⁵⁷ Without such ‘built-in’ provisions that integrate human rights concerns and with no clear indications of the safety net measures, the RCEP may end up as another Free Trade Area without any accompanying means to address possible externalities—not necessarily within the RCEP framework. The signs are worrying for two reasons. On the one hand, problems associated with or resulted from intra-RCEP investment are due to arise. On the other hand, ASEAN, particularly its institutions, and the individual member states must be prepared to come to terms with those impacts. That said, due consideration shall be given to the other side of the argument against the inclusion of issues such as environment or labour standards in FTAs, which risk being used as mere bargaining chip in the negotiations, usually against developing economies. If this is done without understanding the underlying cause behind these social concerns, it may have the potential to cause even greater harm.

3.5.2. Trajectory of Sustainable Growth of ASEAN: The vanishing paradox of economic prosperity and growth versus human rights

ASEAN transcends beyond a free trade area and the AEC is merely a component of the Community, albeit the most recognisable element. As shown in this chapter, at the broadest context, regional—and indeed global—economic growth and prosperity are intertwined and inseparable from sustainable development, at least when a longer time frame is taken. More specifically to ASEAN, the question that has been invariably raised but only partially answered is: what benefits has the economic integration brought to the people and not just businesses?

While different sets of numbers, economic data are proffered to show the enhancement of the livelihood of the ASEAN population, the human cost, sacrifices and environmental depletion are yet to be accounted for. Since the ultimate goal of development and economic integration is the improvement of people’s lives, it is logical and imperative that the process leading to such a goal does not cause harm to the very objective for which it is designed, or that any unintended cost shall be minimised. The SDGs are a new

⁵⁷ See TPP Chapter 19 on labour, esp art 19.3 labour rights, requiring TPP members to adhere to ILO standards; Chapter 20 on environment, esp art 20.3 general commitments, prohibiting its members to, inter alia, lower environmental standards to attract investments; and Chapter 26 on transparency and anti-corruption, esp art 26.7 measures to combat corruption, mandating the criminalisation of bribery by public officials of the members. It seems puzzling that the issues pertaining to these TPP chapters are absent from the RCEP framework, considering the significant overlap of the TPP-RCEP membership. A plausible explanation is the shift of focus that occurs in the RCEP negotiations, especially from the non-TPP members.

framework that steers in that direction, espousing sustainability and human rights as both the ends as well as the means to achieve global wellbeing for the peoples.

3.5.3. Relevance of ASEAN and the AEC: The Litmus test of people-oriented and people-centred community

Three findings from a recent region-wide survey merit mention here since they reinforce the premises of this chapter.⁵⁸ Firstly there is an increasing sense of ASEAN citizenship and respondents are concerned if their countries are to leave ASEAN. Secondly, while the respondents are mostly aware of the AEC (and many cannot identify the other two pillars), their most pressing concerns are not economic. The top two concerns on their list are corruption and climate change and natural disasters. Thirdly, nearly three-quarter of the respondents aspire for an ASEAN in 2025 that is characterised by good governance, environmental sustainability with more liveable cities, and greater equity and protection of human rights especially of the minorities. These three findings serve as a reminder that the ASEAN citizens do care about their sustainable future and the role that the ASEAN Community, particularly the AEC, must undertake. To maintain its relevance among the population whose sense of belonging and shared values is increasing, ASEAN must strive to connect the deliverables to the people. It does not have to look far, when its new motto of a people-centre and people-oriented Community already espouses that very notion. To be relevant, the Community must move in a way that responds to the changing needs and expectation of its peoples.

3.6. Conclusion

This chapter analyses the scope of obligations and commitments of the AEC and ASEAN. It finds and confirms interlinkages between the regional trade and economic agenda on the one hand and sustainable development as well as other human rights mandate on the other.

Economic integration in ASEAN that is manifested and implemented through the AEC has created opportunities as well as impacts that hitherto are left to be addressed by the other two pillars of the Community, the APSC and the ASCC. Provisions of AEC agreements do not incorporate clearly and sufficiently the concerns for impact on human rights such as the rights to environment and the rights of migrant workers.

Under the first AEC Blueprint (2008-2015), in addition to market opening through the agenda to achieve free flow of factors of production, it also adopted a number of

⁵⁸ Ponciano Intal, Jr and others, 'One Voices of ASEAN: What Does ASEAN Mean to ASEAN People?' (Vol 2, Forthcoming).

‘behind the borders’ action lines such as consumer protection and equitable economic development that could have been used as entry points for rights-based approaches. It could be said, however, that there was a disconnect between human rights and economic integration agenda in the design and implementation of the ASEAN 2015 Community Blueprints.

Since 2007, human rights have become an integral part of the ASEAN Community. The ASEAN Charter enshrines human rights as a foundational principle of ASEAN and has created a mechanism to promote and protect human rights and fundamental freedoms of ASEAN citizens. These rights are also endorsed and reaffirmed in various political and legal instruments, most significantly the ASEAN Human Rights Declaration 2012. The creation of the AICHR in 2009 was a huge step forward. Mainstreaming of human rights as a cross-cutting principle to all organs and sectors of ASEAN, including the AEC, has become its institutionalised programme. The key challenge remains on how to mainstream human rights effectively into the various pillars of the Community, a challenge that is perhaps disproportionately more daunting for the AEC.

The adoption of ASEAN Community Vision 2025 and the corresponding blueprints of the three Community pillars reflects policies embracing human rights and fundamental freedoms. The explicit alignment of the new Vision with the SDGs further reinforces human rights values. Despite the lack of overt human rights language in the AEC Blueprint 2025, it is already substantively more detailed than its predecessor, and provides more opportunities for the humanising aspects, not least the integration of sustainability and global megatrends conducive to the mainstreaming of human rights that are a goal already present in the other two community Blueprints. The new AEC Blueprint has also taken on board some human rights-minded frameworks under different titles, including its agendas on empowerment of women as entrepreneurs (gender equality), inclusive business (accessibility and the right to work), and promotion of micro, medium and small enterprises (economic rights). The proof, however, is in the implementation. To this end, the governance of the AEC has significant bearings on the degree to which the rights-based approaches can be integrated with the economic agenda and how they are carried out. While intra and cross-pillar coordination is imperative, law and policies as well as the capacity of the ASEAN Secretariat and national ASEAN/AEC units are equally important factors.

The Sustainable Development Goals (SDGs) represent not only an instrument that merges development and human rights but also a yardstick for sustainability that calls for a holistic and effective action by all countries at every level of development. Similar action is to be undertaken by ASEAN and the AEC to complement national programme on SDGs. The ongoing development of SDG indicators for ASEAN, particularly in the

context of the AEC, will further fortify the rights-based approach. The chapter calls for a more holistic approach comprising two measures. One is integration of human rights concerns into the AEC commitment.

The other measure is the enhancement of commitments to incorporate specific issues that have not been addressed under the AEC framework or to include new policy tools that will help identify and reduce potential adverse impacts. As ASEAN is seeking to retain economic competitiveness including through further opening and expansion of its market, it is important that the humane agendas of rights-based development is taken on board in the negotiation and implementation of any subsequent agreements as well, lest the people-centred and people-oriented Community remain mere rhetoric.

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