

# The Reform and Evolution of ASEAN Human Rights Regime: A Communicative Action Perspective

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## Abstract

ASEAN has experienced significant progress since the initiation of the ASEAN Community Vision and the incorporation of human rights into its foundations. This development has ignited continuous scholarly discussions over the degree to which the ASEAN human rights framework shape regional identity and impacts member states' behavior towards human rights. These debates often revolve around two key theoretical approaches: the logic of consequences and the logic of appropriateness. These logics pose challenges in fully understanding the complexity of state behavior, as they are often observed operating simultaneously and interchangeably within state actions. The article investigates the ASEAN human rights regime through the communicative action perspective and its logic of arguing. It employs a qualitative instrumental case study approach, focusing on the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Humanitarian Assistance (AHA) Centre to illuminate the region's evolving human rights strategies. It is characterized by both deliberate reforms and informal adaptations, reflecting a complex interplay of traditional principles, and emerging human rights norms. The findings indicate that ASEAN states are open to being convinced and persuaded by ideas related to human rights instead of dismissing them outright. ASEAN's approach to human rights, while progressing gradually, suggests a shift towards more substantive engagement with global human rights norms, facilitated by the discursive processes embedded within the AICHR and AHA Centre.

**Keywords:** ASEAN Human Rights Regime, AICHR, AHA Centre, Communicative Action, Logic of Arguing

## Introduction

The initiation of the ASEAN community and the mainstreaming of human rights in Southeast Asia have been considered as one of the most important developments of the region since its establishment in 1967. The member states have agreed to accommodate the idea of human rights and human protection stated in the ASEAN community doctrine. The basic idea of the ASEAN community is to ensure the security of the state and the security of the people through a wide range of agendas and programs such as conflict prevention and resolution, peacebuilding, the acceleration of economic growth, and the reduction of poverty, climate change adaptation and mitigation, disaster management, a commitment to good governance, democracy, human rights, and fundamental freedoms (ASEAN, 2015).

Scholars engage in extensive discussions about the influence of ASEAN's human rights regime on the identity, interests, and behaviors of member countries, particularly in relation to the longstanding principles of the ASEAN way. The founding and evolution of ASEAN itself have drawn both critics and supporters who adopt two distinct analytical approaches (Acharya, 2009; Davies, 2013; Jones, 2010; Katsumata, 2004; Munro, 2011; Petcharamesree, 2013). Various theoretical perspectives, predominantly rationalism (including realism and neo-realism) and social constructivism, are used to interpret ASEAN and its foundational principles (Leifer, 1989; Davies, 2013; Acharya, 2009; Katsumata, 2003). The establishment and development of ASEAN attracts skeptics and proponents who apply two competing approaches (Stubbs, 2019; Beeson, 2020; Jetschke & Theiner, 2020). The debate on ASEAN's engagement with international norms, especially the Responsibility to Protect (R2P), has generated extensive research and discussions. Proponents argue that ASEAN is gradually preparing to integrate the R2P norm into its regional human rights framework, suggesting a cautious but progressive approach to localizing international norms (Bellamy & Davies, 2009; Bellamy & Beeson, 2010; Kraft, 2012). On the other hand, some remain skeptical about ASEAN's commitment to incorporating these international norms into its regional practices, questioning whether there will be a substantive integration or merely superficial acknowledgment (Capie, 2012; Sukma, 2012). Some adopt a middle-ground perspective on this debate, viewing contestation as a dynamic process that offers opportunities and alternatives for integration (Rosyidin, 2020; Maulana & Newman, 2022). This viewpoint acknowledges the ongoing complexities and disputes that characterize the adoption of international standards within ASEAN's policy frameworks.

The different approaches can be understood as the debate between the logic of consequences and the logic of appropriateness. These logics present challenges in fully capturing the complexity of state behavior, as both are frequently observed acting simultaneously and interchangeably within state actions. These two logics of actions may be insufficient to explain the dynamic behavior of ASEAN countries regarding the development of their regional human rights arrangements. To comprehend the intricacy of a state's activity in international politics, it is crucial to perceive both kinds of action as complementary rather than entirely separate.

This research explains the reform and evolution of ASEAN's human rights regime by analyzing two ASEAN rights instruments: the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Humanitarian Assistance (AHA) Centre. It discusses the role of the two ASEAN human rights instruments within the contexts of the ASEAN way and the Southeast Asian regional project of the ASEAN Community. It aims to provide a comprehensive understanding of the progression, despite in an incremental manner, of the human rights framework and the corresponding behaviors of ASEAN states towards these norms by analyzing the AICHR and AHA Centre through the lens of communicative action and its associated logic of argumentation. It demonstrates that deliberate reforms to human rights in ASEAN and the gradual evolution of the human rights framework, often through informal adjustments, happen in a complementary manner over time.

This first section of the research explains the conceptual approach of communicative action and its logic of arguing, juxtaposed with the traditional debate between the logic of consequences and appropriateness. It suggests that using the logic of arguing provides a more comprehensive understanding of the dynamic reform and evolution of ASEAN's human rights regime. It proposes that adopting the logic of arguing offers a deeper insight into the dynamic changes and evolution of ASEAN's human rights regime, suggesting a shift in analytical focus to better understand regional developments. The next section examines the development of ASEAN's human rights regime within the broader project of the ASEAN Community Vision. This part details the advancements and challenges faced by the AICHR and the AHA Centre as the primary ASEAN human rights instruments. It underscores that the commitment of ASEAN countries to human rights is evolving through specific reforms and informal modifications of the human rights framework, and thus argues that ASEAN countries engage in discussions about human rights ideas and issues rather than outright rejecting them. This engagement is portrayed as part of a social learning process where ASEAN states gradually adapt their approaches to human rights protection despite the persistent influences of traditional principles like state sovereignty and non-interference. The research concludes in the final section, summarizing the discussions and reinforcing the significance of communicative action in understanding and influencing the trajectory of human rights practices within the ASEAN context.

### **Communicative Action and the Logic of Arguing**

This section outlines the conceptual framework of communicative action and its logic of arguing, situating it within the ongoing debate between rationalists and constructivists. It highlights communicative action as a potential intermediary approach, bridging the gap between the rationalist focus on instrumental behavior and the constructivist emphasis on norm-guided behavior. This framework is applied to analyze the behavior of ASEAN states regarding the development and implementation of human rights initiatives in the region. This approach provides a nuanced understanding of the dynamic processes involved in advancing human rights within the ASEAN framework, emphasizing the role of discourse and argumentation in shaping state actions and policies.

In general state theories, the rationalist-constructivist debate is primarily situated within explanatory theories of state. These theories focus on questions about who controls the state and what forces shape its behavior. This contrasts with normative theories of state, which focus on what constitutes the most appropriate form of state and international political community (Hobson, 2000). The debate between rationalists and social constructivists centers on the extent to which norms, including ideas and principles, can influence the behavior, interests, and identities of states. In the agent-structure debate, rationalists are typically seen as agent-oriented, focusing on how agents form strategic actions in response to norms. In contrast, social constructivists emphasize the role of structures, advocating that state behavior is guided by norms. This distinction highlights two different approaches to understanding state behavior: one views states as primarily calculating actors that respond strategically to external pressures and incentives, while the other sees states as entities whose actions are shaped by deeper social structures and shared norms. This framework is crucial for analyzing how different theoretical perspectives address the complexities of state behavior and international relations.

According to the logic of consequences, rationalists view state behavior as strategic and instrumental, whereas rationality primarily determines state actions and interests. However, while norms can constrain state behavior, they do not typically shape the state's interests or identity (Schimmelfennig, 2000; Müller, 2004). This view acknowledges the influence of norms but limits their role to that of external constraints rather than internal drivers. The concept of 'bounded rationality' further nuances this perspective. Bounded rationality refers to the limitations states face in processing all available information to make optimal policy decisions (Keohane, 1984). It is highlighted that these difficulties are not only due to the complexity of the external environment but also stem from the states' own cognitive. This cognitive constraint implies that states may not always act purely on rational calculations. As a result, when states face challenges in calculating the costs and benefits of actions due to bounded rationality, they are more likely to rely on common ideas, norms, principles, or the frameworks of particular international institutions. This reliance suggests that under certain conditions, the behavior of states may align more closely with norm-driven rather than purely strategic considerations, indicating a blend of rationalist and constructivist influences in international relations.

States experiencing bounded rationality may adopt rhetorical behavior, indicating a departure from purely instrumental action. Such states might align their behavior with norms as a means to navigate complex situations and assess the costs and benefits of potential actions through a process of learning and justification (Schimmelfennig, 2000). This rhetorical approach allows states to address the dilemma between pursuing self-interest and the challenges posed by limited capacity to process information or the constraints imposed by international norms and regimes. In the context of ASEAN, the development of its human rights regime since 1997 can be viewed as driven by pragmatic considerations, shaped significantly by the traditional ASEAN principles of non-interference and sovereignty. These foundational principles influence the development of ASEAN's human rights regime. As a result, the regional human rights mechanisms in ASEAN have developed incrementally and faced challenges in implementation (Davies, 2013; Hara, 2018). This gradual and sometimes

problematic progress reflects the complex interplay between ASEAN's commitment to human rights and its adherence to the core principles of state sovereignty and non-interference, highlighting the nuanced ways in which international norms and bounded rationality shape state behavior in regional contexts.

Meanwhile, social constructivists, who rely on the logic of appropriateness, view state behavior as being governed almost automatically by norms. They see international politics as a social domain where norms are autonomous and constitutive, existing independently of states (Hobson, 2000). Within this framework, the behavior of a state is deeply influenced by the normative structures in which it is embedded. This perspective suggests that states' behaviors are not only constrained by these international structures but are also shaped by their identities, with the state's behavior in turn reconstituting its identity. Social constructivists emphasize the dual effects of norms, both regulative and constitutive. They believe that norms regulate state behavior while simultaneously constituting states' interests and identities. As Finnemore (1996) has highlighted, norms 'create new interests and values for actors', underscoring the transformative power of these social structures. At this point, it is suggested that the recent development of ASEAN's human rights frameworks and instruments, as part of the narrative of the ASEAN community, should be regarded as a continuous process of intentional reform and gradual evolution of the human rights system in the region. Thus, it confirms that ASEAN and its member countries intentionally uphold human rights principles in the region. Some argue that the recalibration of the traditional principle of non-interference by ASEAN member states represents a significant shift, suggesting a nuanced approach to addressing regional issues (Bellamy & Drummond, 2011). This change is particularly visible in the operations of the AICHR. Despite its initial limitations, AICHR has been developing progressively and is now considered increasingly capable of playing a pivotal role in effectively implementing ASEAN's human rights instruments (Ryu & Ortuoste, 2014; Kraft, 2012).

The theoretical debate between rationalists and constructivists highlights different logics of action, strategic and norm-guided behavior respectively. These approaches often position state behavior at opposite poles, but such a binary framing may not adequately capture the complexities of state actions that often occur simultaneously and interchangeably. This suggests a need for a more integrated approach. Recognizing strategic and norm-guided behaviors as complementary rather than mutually exclusive can provide a more comprehensive understanding of state behavior in international politics. This perspective is crucial for interpreting ASEAN's policies and actions, especially in managing the balance between sovereignty, non-interference, and the growing demands for human rights and humanitarian considerations within the region.

Risse-Kappen's (2000) interpretation of social constructivism broadens the theoretical landscape by integrating both the logic of appropriateness and the logic of truth-seeking or arguing. This dual focus emphasizes that state behavior is not solely about fitting actions to norms (appropriateness) but also involves a dynamic process of engaging with and questioning these norms through dialogue and discourse. The logic of arguing, as Risse-Kappen suggests, is about interaction and engagement rather than strict adherence. In this

model, states engage in truth-seeking behaviors where they scrutinize and challenge the validity of the principles and norms that guide their actions (Risse-Kappen, 2000). Communicative action, therefore, is conceived as an interactive process among actors within a shared 'lifeworld' or common cultural context. Common lifeworld could be defined as a collective interpretation of the world and of themselves (the actors), as provided by language, a common history, or culture. A common lifeworld consists of a shared culture, a common system of norms and rules perceived as legitimate, and the social identity of actors (Risse-Kappen, 2000). Here, states and other actors strive for consensus and mutual understanding through reasoned argumentation, dialogue, and sometimes contestation (Müller, 2004; Risse-Kappen, 2000). This type of interaction emphasizes the role of discourse in shaping and reshaping norms and behaviors, highlighting the fluid and negotiated nature of international relations. This approach moves beyond traditional views of state behavior as merely strategic or normatively guided, suggesting instead that international politics involves continuous and active engagement with norms, where states not only follow but also interpret and redefine their actions in relation to shared values and understandings.

In the framework of communicative action as theorized by Jürgen Habermas (in Outhwaite, 1994), the relationship among states is conceptualized as being fundamentally as egalitarian. This perspective posits that during communicative interactions, where the primary goal is mutual understanding, the usual power dynamics that characterize international relations are regarded as irrelevant. In other words, all actors (states) have equal rights and access to submit arguments, challenge, and contest other arguments regardless of their power distribution. Habermas terms this as the 'ideal speech situation' (Outhwaite, 1994). In an ideal speech situation, all actors/states in this context possess equal rights and opportunities to present and contest arguments that are independent of their power or status. This normative framework suggests that the engagement process in communicative action is based on the quality and validity of arguments rather than on material power.

The ideal speech situation does not deny the existence of power relations in broader socio-political contexts but rather emphasizes that, within the scope of communicative action, these power dynamics should not influence the discourse. Success in achieving mutual understanding through dialogue and contestation relies not on the distribution of material capabilities but on ensuring that all participants have equal access to participate in the discourse. This framework elevates the role of reasoned debate and the capacity to influence through argumentation as the key drivers in the process of reaching consensus and understanding among states.

At this point, the application of communicative action and its logic of arguing offers a compelling middle ground in the ongoing discussion between strategic and norm-governed behavior in international relations. This approach reframes these behaviors as part of an interactive process where states continuously engage, challenge, and refine their actions and principles through dialogue and negotiation (Risse-Kappen, 2000). By employing this framework, strategic actions are not just maneuvers for material advantage but are also opportunities for discourse and alignment with norms. In the context of ASEAN, using the logic of arguing to analyze the organization's human rights arrangements illuminates the

complex dynamics between ASEAN's traditional principles, such as non-interference and state sovereignty, and its evolving community vision, which increasingly incorporates elements of human rights protection. This research views the development of ASEAN's human rights policies not as a static outcome but as a fluid, ongoing process that involves active negotiation and contestation among member states. By focusing on communicative action, this approach highlights how ASEAN member states negotiate the implementation of human rights within a framework that traditionally emphasizes state sovereignty. It posits that through open dialogue and reasoned argumentation, ASEAN can potentially reconcile its foundational principles with its aspirations towards a more integrated and rights-oriented community.

## **Research Method**

This research uses a qualitative instrumental case study approach, which focuses on the description and analysis of a case not confined to understanding the case itself but also to gaining new insight from the evidence (Denzin & Lincoln, 2011; Bryman, 1989). Qualitative case study research is taken because it enables the development of a thorough understanding of the motivations, reasonings, and actions of particular groups through exploring and interpreting case(s) (Bryman, 1989; Schofield, 2002). An instrumental case study examines specific phenomena or cases within a particular context to explain broader issues or contexts. This approach uses detailed analysis of a single case or a few cases to gain insights into larger patterns or inform theoretical understandings (Gerring, 2007; Baxter, 2010). As mentioned, this research attempts to explain the dynamic behavior of ASEAN and its member states toward the regional human rights system by explaining the evolvement of AICHR and the AHA Centre. The use of a case study approach in investigating the roles and progress made by AICHR and AHA Centre provides a detailed explanation of how the dynamics, not to say inconsistent, behavior of ASEAN countries toward human rights principles in the context of the region could be comprehended. To this point, analysis of the development of the two important ASEAN human rights bodies (AICHR and AHA Centre), as the case studies, could represent the extent to which the human rights principles have been accepted or rejected in the region. The data sources in this research are document-based, including official statements and documents from ASEAN and its member states related to human rights issues. In addition, relevant literature has been used to construct the context and the significant of the research. The data is interpreted by using the conceptual framework of communicative action and its logic of arguing. An interpretation of the cases is aimed at learning the broader lessons regarding the dynamics of norm implementation and states' behavior toward international norms.

## **Human Rights in ASEAN**

The establishment of ASEAN is a regional effort to prevent external interferences and a mechanism for war prevention and conflict management among the member countries

(Acharya, 2009, 2013; Katsumata, 2003). It is an effort by countries in the region to build their nations and to ensure their economic development through cooperation and a solid commitment to sovereignty and territorial integrity. The ASEAN principles, which emphasize non-interference, non-use of force, and consensus-based mechanisms, are important to achieve the primary goal of regional cooperation. From its inception in 1967 until the mid-1990s, ASEAN focused heavily on security and stability rather than on promoting human rights, fundamental freedoms, or democracy. This orientation is reflected in foundational ASEAN documents such as the Bangkok Declaration and the Treaty of Amity and Cooperation (TAC), where explicit references to human rights and fundamentals are conspicuously absent. The emphasis is on creating a secure and stable regional environment that could foster economic cooperation and growth, with less attention to the integration of human rights into the regional agenda (Ryu & Ortuoste, 2014; Tobing, 2019). This approach indicates the times and the political landscapes of the ASEAN member states during the organization's early years. The prioritization of state sovereignty and regional stability over human rights was consistent with the broader non-interference policy that ASEAN upheld, which allowed member states to maintain control over their internal affairs without external criticism or intervention. It was not until the global human rights discourse gained significant traction in the 1990s that ASEAN gradually incorporated human rights considerations into its broader regional objectives.

Following the global event, the 26<sup>th</sup> ASEAN Ministerial Meeting in 1993 emerged as a pivotal moment for human rights within ASEAN. During this meeting, the foundations were laid for the development of regional human rights mechanisms. This initiative reflects a growing recognition of the importance of such mechanisms within the ASEAN framework, marking a departure from the earlier focus solely on security and economic development. Subsequently, entities like AICHR and the AHA Centre were established. These institutions are integral to ASEAN's strategy to uphold and protect human rights across the region. They embody ASEAN's evolving approach to human rights, from a non-committal stance to a more proactive and structured engagement with human rights issues, aligning regional policies with global human rights norms and commitments.

ASEAN has taken deliberate steps to strengthen its human rights infrastructure, as highlighted by the formation of the AICHR in 2009. The adoption of the ASEAN Human Rights Declaration in 2012 further solidified this commitment, although it had faced criticism for prioritizing national laws over universal human rights standards. Discussions around enhancing AICHR's authority, including allowing it to handle individual complaints and conduct investigations, indicate a serious ongoing commitment to refining the human rights framework within ASEAN. Moreover, the establishment of the AHA Centre in 2011 to save populations from natural disasters and, later, its role has been extended to respond to manufactured humanitarian crises demonstrates a focused effort of ASEAN to implement its commitment to be a people-centered and people-oriented regional organization. To this point, the progression of human rights frameworks within ASEAN should be viewed as a multifaceted process involving deliberate and specific reforms undertaken by member countries, alongside gradual and informal adjustments to human rights principles.



## **AICHR: Progress and Limitations**

The initiation of the so-called ASEAN Community at ASEAN Concord II (also known as Bali Concord II) in October is pivotal in enhancing the region's approach to human rights and other 'non-traditional issues' (Ryu & Ortuoste, 2014; Pisanò, 2014). Since ASEAN Concord II, some ASEAN frameworks and instruments have been established to translate the 'people-centered' doctrine of the community vision, including the AICHR, ASEAN Human Rights Declaration (AHRD), ASEAN Charter, and AHA Centre. ASEAN Charter (Article 2) stated that ASEAN and its member states should act 'to respect fundamental freedoms, promotion and protection of human rights, and the promotion of social justice' and 'to uphold the UN Charter and international law, including international humanitarian law, subscribed to by ASEAN member states' (ASEAN, 2008). Article 14 specifically calls for the establishment of a human rights body operating under a Terms of Reference (ToR). In July 2009, at the 42nd ASEAN Ministerial Meeting in Thailand, the members agreed on the ToR of the AICHR. The ToR provides AICHR with 14 mandates and functions, enabling it to play a vital role in the region's human rights initiatives (ASEAN, 2009).

Many argue that AICHR has prioritized the promotion of human rights over their protection. As Yen (2011) has noted, AICHR's development has been closely intertwined with that of ASEAN itself, which significantly limits the commission's authority and capacity due to the association's institutional framework. It implies that the authority and capacity of the commission are significantly constrained by the institutional framework of the association. Critics also contend that ASEAN's progress on human rights is largely rhetorical. Some also argue that the progress of ASEAN in terms of human rights is rhetoric. ASEAN often exhibits a selective response approach, choosing how to interpret and apply existing regional norms based on the type of crisis at hand. This means that while the organization and its member states may adopt a more flexible interpretation of norms in response to collective issues like regional economic crises, they tend to maintain a conservative stance on matters involving state security, human rights, and democracy (Ashley, 2023).

In addition, Davies (2013) points out that an action-identity gap persists in ASEAN countries regarding human rights and democracy. He argues that despite the creation of regional human rights frameworks and commitments to democracy, these do not translate into substantial change at the national level. While ASEAN member states formally recognize human rights within the regional framework, many continue to violate the rights of their citizens, especially concerning political and expression freedom. Most member states remain under authoritarian or semi-authoritarian regimes that heavily restrict these freedoms (Davies, 2013). Karim (2017) has noted that the promotion of human rights and democracy in Southeast Asia faces significant challenges, mainly due to Indonesia's ambitions. As the principal advocate for these principles, Indonesia's dual role as a regional leader and a bridge-builder on the global stage creates conflicting interests. These conflicts impede the effectiveness of democratization efforts and the broader promotion of human rights across the region.

This disparity is illustrated by the continued human rights violations, such as the humanitarian crises of Rohingya and the extrajudicial killings in the Philippines' war on drugs (Maulana & Newman, 2022). These examples highlight the weak enforcement of human rights protection across ASEAN, particularly the absence of sanctions-based mechanisms to ensure member states' compliance with the human rights frameworks to ensure compliance of the member states. Without such mechanisms, human rights frameworks remain ineffective at addressing violations and holding governments accountable (Davies, 2012).

The role and authority of AICHR remains problematic. Not all human rights issues are automatically brought before the commission, especially those linked to political and security matters. These sensitive issues must be decided by the central governments of member states rather than by their representatives in AICHR. Furthermore, AICHR lacks the authority to enforce human rights at the national level of member states. As stated in its ToR, AICHR is required to respect the 'independence, sovereignty, equality, territorial integrity, and national identity of all ASEAN member states'. It must also uphold the 'respect for different cultures, languages, and religions of the people of ASEAN...' (ASEAN, 2009). These provisions limit AICHR's ability to directly intervene in domestic human rights issues, as its primary role is advisory and promotional rather than enforcement oriented. Consequently, the commission faces significant challenges in advancing a unified human rights agenda while balancing the principle of non-interference and the diverse political contexts of member states.

According to Donnelly (1986), international human rights regimes can be classified into four categories: declaratory, promotional, implementation, and enforcement. AICHR fits somewhere between the promotional and implementation types. It has adopted international human rights standards as guidelines and carries out extensive promotional activities, including information exchange, technical assistance, and discussions and dialogues on human rights. While AICHR is not designed to be a protective mechanism, its role in promoting human rights across ASEAN remains significant (Phan, 2019). For instance, it has organized initiatives like the ASEAN Youth Debate on Human Rights in 2013 and held a dialogue with the Indonesian government to commemorate the 30<sup>th</sup> anniversary of the Vienna Declaration in the same year. It also facilitated discussions on the Rohingya crisis in Myanmar and a missing activist in Laos. Such activities highlight the commission's efforts to raise awareness, foster dialogue, and encourage member states to uphold human rights standards despite the limitations in its enforcement capabilities (Wahyuningrum, 2014).

Furthermore, AICHR has become the primary driving force for the adoption of some international human rights standards in Southeast Asia, such as corporate social responsibility, the rights of women, children, and persons with disabilities, and the campaign against trafficking in persons (ASEAN, 2018). Additionally, as noted in the AICHR annual report 2019, which commemorated the commission's tenth anniversary, AICHR was instrumental in several significant human rights achievements, particularly, to mention a few, the development of the AHRD, adopted in 2012, and the ASEAN enabling masterplan 2025 for mainstreaming the rights of persons with disabilities, adopted in 2018 (AICHR, 2019). These key milestones underscore ASEAN's dedication to promoting and protecting human

rights throughout the region, illustrating the considerable advances made since the ASEAN Concord II in expanding a more comprehensive human rights agenda.

AICHR also provides a platform for member states to discuss various human rights matters, underscoring its commitment to its promotional mandate. The commission also serves as a venue for the Southeast Asian epistemic community, such as the ASEAN human rights working group, to provide constructive criticism on regional human rights issues. Former Malaysian representative to AICHR, Edmund Bon Tai Soon, has noted that AICHR can continue to act as a 'translator' of human rights norms by offering a platform for member states to share experiences and best practices related to human rights protection and implementation (Asia Pacific Centre, 2022). Additionally, AICHR maintains consultative relationships with Civil Society Organizations (CSOs), such as the Association of Indonesian Disabled Persons, Child Rights Coalition Asia, and Save the Children Philippines. Furthermore, AICHR serves as a forum where notable human rights violations can be reported and discussed. For instance, during AICHR meetings from 2016 to 2018, Indonesia and Malaysia consistently bring up the Rohingya issue, highlighting the human rights violations by Myanmar's government. These activities reflect AICHR's potential as a platform for promoting, coordinating, and critically discussing human rights challenges in the region (Suzuki, 2021).

Since 2014, AICHR has addressed the intersection of environmental and climate change issues with human rights protections, highlighting the commission's continuous effort to integrate human rights into the resolution of regional challenges, as noted in the 2014 AICHR report (AICHR, 2014). In 2015, AICHR organized a similar workshop on human rights, environment, and climate change, establishing a forum for ASEAN stakeholders to share experiences and best practices in fulfilling human rights obligations related to environmental and climate issues. The workshop report highlights its specific goal to develop strategies for incorporating a human rights-based approach into ASEAN's environmental policy and protection. It also seeks to boost the capacities of relevant stakeholders and create an ASEAN framework dedicated to maintaining human rights to ensure environmental conservation and reduce the impacts of climate change (AICHR, 2016). As a result, on October 7, 2021, ASEAN released its inaugural state of climate change report, offering a comprehensive overview of the region's climate change status and detailing potential opportunities for cooperation and collaboration to achieve its 2050 climate goals (ASEAN, 2021).

Following the adoption of the Five-Year Work Plan (FYWP) in 2020, AICHR has been actively engaging in discussions on its priority programs, which cover a range of topics, including the rights of children, persons with disabilities, environmental human rights, business-related human rights, human trafficking, human rights during public health emergencies, the rights of victims in anti-radicalism and violent extremism measures, and the ASEAN human rights dialogue. In 2020 and 2021, AICHR focused particularly on the public health challenges posed by the COVID-19 pandemic. The commission initiated several programs aimed at sharing best practices for handling human rights issues during public health emergencies, particularly concerning women, youth, children, persons with disabilities, migrant workers, older persons, indigenous people, and other vulnerable groups.

These initiatives also emphasized promoting responsible business practices to mitigate human rights risks and impacts, all contributing to the ASEAN Strategic and Holistic Initiative to Link ASEAN Responses to Emergencies and Disasters (ASEAN SHIELD) (AICHR, 2021).

During the 2023 annual meeting, AICHR representatives from member states shared updates on recent national human rights developments, such as introducing new laws, regulations, and initiatives (ASEAN, 2023). A major focus of the discussion was the progress of the monitoring and evaluation framework for the five-year work plan. The AICHR annual report 2023 also reviewed the implementation of its priority programs throughout 2022, which spanned various areas as mentioned. This comprehensive engagement in a variety of human rights topics underscores that the contributions and roles of the AICHR should be acknowledged across a diverse array of human rights agendas, extending beyond issues solely tied to military, political, and violations.

Criticism of the AICHR largely focuses on the structure of its framework on the regime design of the commission. Munro (2011) highlights four primary areas of critique concerning the commission's design: its incremental development strategy, the ambiguous definition of its role and mandate, its enforcement capabilities, and its mandatory membership. The intergovernmental, rather than independent, structure of AICHR significantly restricts its potential roles and contributions (Asia Pacific Centre, 2022). Davies (2014) points out that the design of AICHR is closely tied to principles of non-intervention and sovereign equality as specified in the ASEAN Charter, which leads the commission to focus more on future human rights promotion rather than the active protection of individual rights. However, some contend that these institutional constraints do not completely prevent the commission from adapting and evolving in practice. Munro (2011) notes that there are some mandates in the AICHR's ToR can be interpreted in a more 'liberal way'. For instance, Article 4.3 of the ToR, which calls for enhancing public awareness of human rights through education, research, and information dissemination, could potentially extend to activities such as interviewing and investigating complaints, not just promoting awareness (Munro, 2011).

Yuyun Wahyuningrum, the Indonesian representative to AICHR, has noted significant development in the commission over the past decade. She highlights AICHR's commitment to fulfilling Article 4.10 of its ToR, which mandates the commission to gather information from ASEAN member states on human rights promotion and protection. This particular article is seen as crucial for AICHR to function effectively as a regional human rights body despite being one of its more challenging mandates (Wahyuningrum, 2021). Article 4.10 has been considered as the key modality for AICHR to perform its role as a regional human rights body (Asia Pacific Centre, 2022). Wahyuningrum (2021) highlights that AICHR goes beyond its designated responsibilities by developing a complaint mechanism to address numerous human rights-related inquiries received, a role that is not specifically outlined in its ToR. This adaptation demonstrates that the implementation of the ToR can be flexible in practice and relies on the innovative interpretation of the mandate by proactive representatives within AICHR (Munro, 2011; Wahyuningrum, 2021).

During the 40<sup>th</sup> and 41<sup>st</sup> ASEAN Summit Meeting in Cambodia in November 2022, despite the relatively mild statements issued by ASEAN governments, AICHR representatives took a firmer stance by condemning the executions of activists by Myanmar's Junta military. Despite a consensus that could not be achieved, half of the ASEAN representatives in AICHR, including Malaysia, Indonesia, the Philippines, Singapore, and Thailand, strongly condemned the Junta military (Al-Jazeera, 2022). The progressive AICHR representatives have the potential to become important social forces in mainstreaming the promotion and protection of human rights in the region. These progressive representatives within AICHR demonstrate the potential to become significant social forces in promoting and protecting human rights across the region. This situation parallels civil society's role in influencing the dynamics of ASEAN regionalism, specifically, the establishment of the ASEAN Human Rights Mechanisms, where social forces are crucial in integrating human rights considerations into the ASEAN's regional (Davies, 2013; Sundrijo, 2021).

### **AHA Centre: Progress and Limitations**

Signed by ASEAN Foreign Ministers on 17 November 2011, the AHA Center is designed to collaborate with the National Disaster Management Organizations of the ASEAN member states. Its primary responsibility is to facilitate disaster relief efforts within the region. The center aims to reduce loss of life and damage to property from natural disasters by identifying hazards and risks before their impacts and to increase early warning times (AHA Centre, 2018). The early warning system provided by the center focuses predominantly on natural disasters rather than the occurrence of conflict and other sources of atrocity. Technically, this system concentrates on monitoring environmental hazards and tracking geological movements, working in close coordination with the national disaster management institutions across all ASEAN countries. With regard to its nature, many argue that the AHA Centre is still far from equipped to address human-induced humanitarian crises in the region.

The center is highly reliant on ASEAN member states, even though its development has been inherently conceptualized in the ASEAN's institutional doctrine of 'One ASEAN, One Response' (ASEAN, 2016; Cook, 2021). Since its establishment in 2011, there has been an expanded understanding of the term 'disaster' within the region (Suzuki, 2021). According to the Agreement on the Establishment of the AHA Centre, a disaster is defined as 'a serious disruption of the functioning of a community or society causing widespread human, material, economic or environmental losses' (ASEAN, 2011). This definition does not restrict disruption solely to natural disasters, thereby allowing for the potential expansion of the center's role to include human-made disasters (Suzuki, 2021). Initially, the focus of the AHA Centre is on natural disasters, but as its capacity and experience grow, it is also anticipated to address human-induced disasters as outlined in the ASEAN Agreement on Disaster and Emergency Response (AADMER) (Ear, Cook, & Canyon, 2017). Furthermore, due to the AHA Centre's less politically sensitive nature, given that its original mandate is to assist in natural disaster crises, it is considered more acceptable for involvement in managing the domestic affairs of ASEAN countries, especially in humanitarian crises. This is despite some countries in the region accepting ASEAN 'intervention-like' responses through the AHA Centre to mitigate

international criticism over human rights violations (Suzuki, 2021). As Ear, Cook, and Canyon (2017) have noted, the recent role of the AHA Centre in the conflict in Marawi has shown ASEAN's growing political confidence in making the center a key component of the regional response architecture for both natural and man-made disasters.

Within ASEAN, expanding organizations' mandate often involves complex procedures and can be challenging. However, the practical actions taken by member states have facilitated some progress and development of the AHA Centre, even within the limits of its established mandate (Wahyuningrum, 2021; Suzuki, 2021). It is important to acknowledge that the AHA Centre's role has broadened to address issues stemming from human-made humanitarian crises, not limited to natural disasters. Recently, the AHA Centre's responsibilities have included responding to human-induced disasters or conflicts, such as those in Marawi in the Southern Philippines and Rakhine State in Myanmar, albeit its focus remains on providing humanitarian aid instead of addressing the underlying causes of human rights violations (Cook, 2021; Suzuki, 2021; Asia Pacific Centre, 2022).

During the 2017 conflict in Marawi, the clashes between local militants aligned with Islamic State (IS) joined forces, and the Philippines military forces led to the death of over 1,000 combatants and civilians and forcibly displaced at least 350,000 people. This created substantial humanitarian demands for health support for food, water, and shelter (RSIS, 2020). In response to these urgent needs, on July 10, 2017, the Philippines government requested assistance from the AHA Centre (AHA Centre, 2017a). The center quickly acted, dispatching aid that included hygiene kits, family tents, water filtration units, and kitchen sets, altogether valued at over USD 324,397, to support the civilians affected by the conflict (AHA Centre, 2017a).

The response to the Marawi conflict received robust support from ASEAN countries, notably Malaysia, which facilitated the delivery of relief items using its military aircraft. The AHA Center acknowledged that the humanitarian response would not have been possible without substantial support from the Malaysian government, which allowed access to its territory for storing relief items and provided aircraft to transport internally displaced persons within Marawi and the surrounding localities (AHA Centre, 2017b). Despite criticism directed at the center due to the limitations of its mandate and institutional design, the collaborative response to this human-induced crisis highlights the region's progress in embodying the 'One ASEAN, One Response' doctrine for disaster management (Parameswaran, 2017; Liow, 2018).

In 2017, alongside its response in Marawi, the AHA Centre also received an emergency request to assist in the conflict in Rakhine State, Myanmar. This request was linked to the intensification of conflict resulting from the 'clearance operations' by the Myanmar Junta in August 2017. The conflict led to severe human suffering: thousands of people were killed, and numerous homes and villages were destroyed. Widespread atrocities, such as the burning of homes, sexual violence against women and girls, and the forced displacement of many individuals, including children, were reported. These individuals fled to Bangladesh and neighboring countries, causing not only significant harm to the refugees themselves but also adversely affecting the local populations in the host countries (Lone & Naing, 2017; ASEAN

Parliamentarians for Human Rights, 2020; Islam & Wara, 2022). In the initial month of the clearance operations, it was estimated that approximately 6,700 Rohingya people were killed, including at least 730 children (BBC, 2020).

Working in partnership with the Myanmar government, particularly through the Minister of Social Welfare, Relief, and Resettlement, the AHA Centre distributes aid valued at nearly USD 566,285 to the displaced residents of 99 villages/townships in Rakhine state (AHA Centre, 2017c). Additionally, the Singapore government authorizes the AHA Centre to oversee the delivery of humanitarian aid worth approximately USD 75,000 to assist the local communities in Rakhine State (AHA Centre, 2017c). Furthermore, at the request of the Myanmar government and following directives from the ASEAN Foreign Ministers' Meeting in Chiang Mai, Thailand, the AHA Centre is assigned to carry out a Preliminary Needs Assessment (PNA). This assessment is designed to facilitate the repatriation process of the Rohingya population to Rakhine State (Suresh, 2019). This involvement indicates that the center has actively engaged in significant initiatives aimed at addressing the Rohingya crisis.

In response to the request, the AHA Centre dispatches ASEAN-ERAT personnel comprising experts from regional member countries such as Singapore, Thailand, and the Philippines, as well as the official staff from the center, to undertake a mission to Rakhine State. Their objective is to gather, process, and analyze the situation on the ground (The AHA Centre, 2018). This mission successfully identifies ways to enhance reception and transit centers and provides recommendations regarding basic services for displaced persons (The AHA Centre, 2020). In addition to identifying the essential humanitarian aid (health and psycho-social support, water and sanitation), the ASEAN-ERAT team also notes trust issues among communities in Rakhine State (Thuzar, 2019).

The findings from the ASEAN-ERAT team are crucial for ASEAN, the governments of Myanmar and Bangladesh, and other relevant stakeholders to initiate a comprehensive approach to the repatriation and reconciliation of the Rohingya. The AHA Centre highlights that its involvement in managing human-induced humanitarian disasters in Marawi and Rakhine represents a historic development for both the center and ASEAN as a whole (AHA Centre, 2019). As outlined in its 2019 Annual Report, the center's roles in addressing the man-made crises in Marawi and Rakhine provided valuable new experiences and perspectives, reinforcing the Centre's capability to manage disasters in conflict settings and to potentially expand its mandate (AHA Centre, 2019). To this point, the center's response to the crises in Marawi and Rakhine is pivotal, marking significant progress towards achieving the ASEAN Vision 2025 on expanded disaster management and furthering the implementation of the ASEAN People-Centred doctrine.

# Conclusion

## Contestation as a Learning Process

The study has thoroughly examined the ASEAN human rights regime, focusing on the roles of AICHR and AHA Centre and showing how these entities have been crucial in advancing human rights within the ASEAN framework. Applying communicative action and the logic of arguing, it is evident that ASEAN member states are not just passive recipients of human rights principles but actively involved in a continuous dialogue to reevaluate and strengthen their commitments. This active process underscores a shift from traditional, sovereignty-bound non-interference to a more engaged, though incremental, embrace of international human rights standards.

It is emphasized that AICHR has the capacity to broaden its functions beyond what is specified in its terms of reference, evolving towards a more 'protective' human rights body. Similarly, the AHA Centre has demonstrated its ability to address not only natural disasters but also human-induced crises. As these human rights tools are integrated within ASEAN's robust institutional framework, it suggests a shift in how ASEAN member states perceive and engage human rights principles. These examples demonstrate ASEAN's ongoing deliberate efforts to refine its human rights infrastructure to better respond to regional human rights challenges. Despite the fact that the pace and impact of these reforms can be subject to varying interpretations, they undeniably signify a clear commitment and contributions to enhancing human rights protections within the region.

The use of a communicative action lens is essential to understand the nuances of ASEAN's approach to human rights. It has facilitated a more profound insight into how states negotiate the tension between national sovereignty and global human rights norms. Through dialogue and debate, ASEAN has incrementally integrated human rights into its regional policies, indicating a maturing regional identity that increasingly recognizes the importance of human rights protection alongside economic and security cooperation. Despite notable advancements, the ASEAN human rights regime faces significant challenges, especially limitations in the enforcement powers of the AICHR and the AHA Centre. The enduring debates around the balance of sovereignty and intervention and the varying commitment levels among member states underscore the complexities of implementing a cohesive human rights strategy across diverse political and cultural landscapes.

Understanding the development of the human rights regime within the 'ASEAN context' requires considering the regional values and norms, as well as the historical backdrop of ASEAN's founding. This context, seen as a learning process, allows for a greater possibility of overlapping and exchanging state actions that balance pragmatic considerations with norms. States are continually learning and assessing benefits, taking into account socio-political realities and potential constraints that may affect their acceptance of norms like human rights. As a result, in the process of integrating human rights norms, the international principles of respecting state sovereignty and non-interference can still be apparent in the application of these human rights standards.



The evolution of the ASEAN human rights regime reflects a broader global shift towards recognizing and institutionalizing human rights within regional cooperative frameworks. Through communicative action, ASEAN is not only responding to external pressures but is also actively shaping its approach to human rights in a way that respects its unique political, cultural, and historical context. Continued commitment to this dialogic process will be crucial for ASEAN as it navigates the challenges of upholding human rights in a rapidly changing world. ASEAN must continue to enhance the capabilities and mandate of its human rights instruments to meet the evolving expectations of its populations and international observers.

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