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THE ASIA-PACIFIC

**ASEAN'S  
ENGAGEMENT  
OF CIVIL SOCIETY  
REGULATING DISSENT**

**Kelly Gerard**



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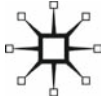
# ASEAN's Engagement of Civil Society

## Regulating Dissent

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# List of Abbreviations

ACMW	ASEAN Committee on the Implementation of the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers
ACSC	ASEAN Civil Society Conference
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ADB	Asian Development Bank
AEC	ASEAN Economic Community
AEPF	Asia-Europe People's Forum
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AICOHR	ASEAN-ISIS Colloquium on Human Rights
AIPA	ASEAN Inter-Parliamentary Assembly
AIPCM	ASEAN Inter-Parliamentary Caucus on Myanmar
AIPP	Asia Indigenous Peoples Pact
ALTSEAN-Burma	Alternative ASEAN Network on Burma
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
APA	ASEAN People's Assembly
APEC	Asia Pacific Economic Cooperation
APF	ASEAN People's Forum
APRRN	Asia Pacific Refugee Rights Network
APSC	ASEAN Political-Security Community
APWLD	Asia-Pacific Forum on Women, Law and Development
ASA	Association for Southeast Asia
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
ASEAN-ISIS	ASEAN Institute of Strategic and International Studies
ASEF	Asia-Europe Foundation
ASEM	Asia-Europe Meeting
ASETUC	ASEAN Services Employees Trade Union Council
AsiaDHRRA	Asian Partnership for the Development of Human Resources in Rural Asia
AU	African Union

BWI	Building and Woodworkers International
CARAM	Coordination of Action Research on AIDS and Mobility
CAS	Country Assistance Strategy
CLMV	Cambodia, Laos, Myanmar, Vietnam
COHRE	Centre on Housing Rights and Evictions
CPR	Committee of Permanent Representatives
CSO	Civil Society Organization
DODAI	Dialogue on Democracy and ASEAN Integration
DPI-AP	Disabled Peoples' International – Asia Pacific
EC	European Commission
ECOSOC	Economic, Social and Cultural Council, United Nations
ECOSOCC	Economic, Social and Cultural Council, African Union
EPG	Eminent Persons Group
EU	European Union
FDI	Foreign Direct Investment
FORUM-ASIA	Asian Forum for Human Rights and Development
GATT	General Agreement on Tariffs and Trade
GONGO	Government-Organized Non-Governmental Organization
GO-NGO	Government Organization-Non-Governmental Organization
HLTF	High Level Task Force
HREIB	Human Rights Education Institute of Burma
HRWG	Human Rights Working Group
ICBL	International Campaign to Ban Landmines
ICJ	International Commission of Jurists
IESR	Institute for Essential Services Reform
ILO	International Labour Organization
IMF	International Monetary Fund
IID	Initiatives for International Dialogue
INFID	International NGO Forum for Indonesian Development
IR	International Relations
ISA	Internal Security Act
LGBTIQ	Lesbian, Gay, Bisexual, Transgender/transsexual, Intersex and Queer
MCP	Malaya Communist Party
MFA	Migrant Forum in Asia

MMN	Mekong Migration Network
NGO	Non-governmental Organization
NLD	National League for Democracy
OAU	Organization of African Unity
PAP	People's Action Party
PKI	<i>Partai Komunis Indonesia</i> (Indonesian Communist Party)
PRSP	Poverty Reduction Strategy Paper
PSI	Public Services International
REACH	Reaching Everyone for Active Citizenry @Home
SAPA	Solidarity for Asian People's Advocacy
SAPA-TFAB	SAPA Task Force on ASEAN and Burma
SAPA-TFFOI	SAPA Task Force on ASEAN and Freedom of Information
SAPA-TFAHR	SAPA Task Force on ASEAN and Human Rights
SAPA-TFAMW	SAPA Task Force on ASEAN and Migrant Workers
SAPA-WGA	SAPA Working Group on ASEAN
SEACA	Southeast Asian Committee for Advocacy
SEARCH	South East Asia Regional Cooperation in Human Development
SOMRDPE	Senior Officials Meeting for Rural Development and Poverty Eradication
TFDP	Task Force Detainees of the Philippines
UMNO	United Malays National Organisation
UN	United Nations
UNI APRO	Union Network International – Asia Pacific Regional Organization
US	United States
WTO	World Trade Organization
ZOPFAN	Zone of Peace, Freedom and Neutrality

# 1

## A “People-Oriented” ASEAN?

In the period of reform that followed the regional financial crisis beginning in 1997, the idea of a “people-oriented”<sup>1</sup> ASEAN became a motif of discussions regarding the anticipated direction of the Association. This was accompanied by overtures of opening the Association to stakeholders, particularly civil society organizations (CSOs). This rhetoric of widening participation gained more concrete forms from the early 2000s, when ASEAN established new opportunities for civil society involvement. At the same time officials also began to interact with CSOs through mechanisms established outside of official processes, such as the ASEAN People’s Assembly and the ASEAN Civil Society Conference. This appeal to widen participation signaled an abrupt shift from ASEAN’s previous style of regional governance, characterized by closed-door meetings and tacit agreements among leaders, leading to the widely held perception of ASEAN as elitist and exclusive (Chavez 2006, p. 9).

ASEAN’s commitments to widen policymaking were not a standalone endeavor but one aspect of an ambitious and ongoing reform program. ASEAN sought to reinvent and re-legitimize its political project from the late 1990s after questions arose regarding its relevance and practices, particularly in light of its inability to assist states struggling to halt the decline of the economic crisis. ASEAN embarked on a series of reforms. It intensified regional economic integration through its bid to establish a single and integrated market by 2015. The codification of some practices through the ASEAN Charter in 2007 was a crucial part of this campaign to transform the Association, signaling ASEAN’s considered embrace of liberal reforms. ASEAN also shifted to establish a regulatory framework where, through regulatory networks, state actors coordinate and harmonize policy. Regulatory networks have been

established across a wide range of activities, including investment practices, migrant workers, the seasonal haze and, controversially, human rights.

Despite ASEAN's "people-oriented" shift and the establishment of opportunities for civil society participation, CSOs' expanded efforts to influence ASEAN's project of regional integration remain largely ineffective. Furthermore, interactions between the two sets of actors are frequently fractious, underscored by remarks made almost a decade after ASEAN began promoting its "people-oriented" agenda by Jenina Joy Chavez, research associate and Philippine program coordinator for the development network, Focus on the Global South:

ASEAN's history is marked by the glaring absence of wide-ranging participation from civil society and social movements, and it is high time that the situation is rectified. The process must be taken to the people, the streets, the schools, the local communities. It is time to wrest the initiative from the political elite, and let the people define what kind of regional governance they want, and to articulate their vision for the region. (2006, p. 9)

ASEAN's problematic relationship with CSOs despite its embrace of more inclusive political structures raises numerous questions, not least how to reconcile the rhetoric and reality of ASEAN's engagement of CSOs. Such questions are of growing significance as Southeast Asia, yet again, emerges as the battleground for competing great power interests. Through its reform program ASEAN has sought to position itself at the center of the regional architecture, and capable of managing tensions arising from China's ascendance, seen in rhetoric of ASEAN as the "fulcrum for regional architecture" (Wade 2012). Its hostile relationship with certain social forces in the region casts doubt over this image, and raises questions about ASEAN's trajectory.

ASEAN's shift to engage CSOs is but one example of the broad trend of regional and global governance institutions widening policymaking to include CSOs. This trend emerged in the 1970s, and increased in intensity from the 1990s. Centering on *why* and *how* governance institutions engage CSOs, and how this engagement shapes political outcomes, *ASEAN's Engagement of Civil Society* investigates this shift to pluralize policymaking through the lens of the ASEAN case. Focusing on the social conflicts that have shaped ASEAN's form and trajectory, and its relationship with CSOs, the book explores why ASEAN's shift to embrace civil society has come about and how ASEAN engages CSOs. It examines

the varied responses by CSOs to this changing political environment, from those that work within channels that have been established by ASEAN for their participation, to those that seek to influence policy-making while operating outside of it. It asserts that ASEAN's shift to embrace civil society engagement be seen as both an attempt to reaffirm its legitimacy, and as part of a new strategy of regional governance. Here, the key debates that frame the analysis are described, and the argument outlined.

## Explaining civil society participation in regional and global governance

ASEAN's shift to engage CSOs parallels the trend seen in many, if not most, regional and global governance institutions. This trend of governance institutions establishing channels for CSOs to contribute to policymaking dates back to the founding of the United Nations, however it has grown in intensity in recent years. The concept of global civil society has grown in popularity amongst academics and practitioners, initially having been met with significant enthusiasm by those who considered this trend a blatant challenge to the system of sovereign states (for example, Falk 1998; Matthews 1997). This enthusiasm has been revised in recent times, "tempered by conceptual questioning, doubts about the standing of those claiming to act in and on behalf of civil society, and elucidation of some decidedly uncritical roles and relationships" (Dryzek 2012, p. 102).

Numerous studies in the fields of regional and global governance and global civil society highlight the diverse ways in which CSOs participate in governance institutions, such as the UN's "consultative status" arrangement (Wapner 2007; Willetts 1996); the EU's online public register of CSOs (Greenwood 2009); and the fledgling Economic, Social, and Cultural Council of the African Union (Badejo 2008; da Costa 2007). However, there are substantial differences across institutions in the participatory mechanisms they have established, and the forms of participation they subsequently enable. For example, the EU's "Citizen's Initiative" permits CSOs to propose agenda items for meetings of the European Commission (EC 2010). However, CSOs seeking to lobby the World Trade Organization (WTO) are limited to attending the Plenary Meetings of the Ministerial Council that are broadcast over the internet and participating in *ad hoc* public symposia where the agenda is wholly set by the WTO (van den Bossche 2010). Regional and global governance institutions regulate CSOs' access in a range of forms, creating differing

forms of political participation through which CSOs can contribute to regional and global policymaking.

Justifications for why these institutions open their political structures to include these disparate interests also vary across institutions. Empirically, claims of the benefits of civil society engagement are highly contested. Scholars and practitioners argue that civil society involvement in policymaking in regional and global institutions provides a partial solution to issues arising from the “democracy deficit” that these institutions struggle with. However, CSOs and actors in governance institutions may not necessarily want to work toward broadly similar outcomes, casting doubt over the development of a collaborative relationship between the two sets of actors. Some CSOs, meanwhile, advocate for the abolition of the institutions they target, and hence it is unlikely they would wish to partake in policy consultations. Furthermore, both CSOs and regional and global governance institutions are highly complex and diverse entities, creating significant logistical issues in establishing some form of collaborative relationship between representatives of the two, leading some institutions to operate civil society outreach agencies to manage these relationships. Most importantly for CSOs, despite having opportunities to contribute to policymaking, these refashioned governance institutions and their policies infrequently exhibit changes in accordance with CSOs’ goals. Claims of the benefits of civil society participation policymaking in regional and global governance institutions must be tempered by recognition of the differences both across and within these two sets of actors, and the subsequent complexities of this trend to widen regional and global policymaking.

Theoretically, mainstream International Relations (IR) theories offer little in explaining this significant development in global politics in recent decades. These theories fail to adequately explain why regional and global governance institutions engage CSOs, and the form that this engagement takes. For realists, non-state actors such as CSOs are at best considered peripheral. Liberals account for the inclusion of CSOs in regional and global policymaking as a means of addressing the increased complexity of governance, but fail to draw out the political implications of this process. While constructivists place greater analytical emphasis on the role of CSOs, these accounts offer only partial explanations for this trend. On the question of *why* these institutions widen policymaking to include CSOs, constructivists assert this can be explained through the concept of norm diffusion. However, constructivists pay little detailed attention to the question of *how* these institutions engage CSOs, namely the institutional practices that follow the apparent adoption of a norm.



As outlined in subsequent chapters, officials have frequently paid "lip service" to the norm of civil society participation while drastically constraining participation in practice. Constructivists categorize this failure by an actor to demonstrate the desired change in its behavior as a failure in "norm socialization." Constructivists assert that the norm itself will eventually produce the desired behavior, however this reliance on norms as explanatory variables offers little in explaining why officials embrace the rhetoric of pluralizing policymaking to include CSOs and yet fail to alter their behavior, and more so over time, thereby directly contravening the logic of norm diffusion.

Focusing on these two considerations – *why* and *how* governance institutions include CSOs in policymaking – this book contends that it is the underlying social conflicts that shape the boundaries of civil society participation in governance institutions, determining which CSOs contribute to policymaking, and the nature of their participation. In the pages that follow, I argue that questions as to why governance institutions seek to involve CSOs and the forms of participation they establish are related: governance institutions structure civil society participation according to the outcomes they wish to achieve from involving CSOs. This argument and its associated framework of analysis, described below, are drawn from the work of social conflict theorists, considering institutions, markets and states not as unitary, independent and coherent entities but as social structures, meaning they are shaped according to conflicts among competing social forces. This book asserts that the channels established by governance institutions for CSOs to contribute to policymaking do not emerge independently but are shaped by underlying social conflicts.

To examine relations between CSOs and governance institutions, this book extends the critical political economy framework of Jayasuriya and Rodan (2007), where modes of participation serve as the unit of analysis. A mode of participation is the "institutional structures and ideologies that shape the inclusion and exclusion of individuals and groups in the political process" (2007, p. 774). This framework acknowledges that institutions structure the form politics can take, making particular forms of participation acceptable and others not. As such, modes of participation organize conflicts, determining which conflicts are "expressed, mediated or marginalized" (2007, p. 779). In analyzing modes of participation, this approach is concerned with the questions of who is represented within these sites, what forms of participation are deemed permissible, what struggles have occurred to establish these spaces and whose interests are furthered by their creation. By recognizing

the role of institutions in organizing conflict, this framework explains the boundaries of participation for CSOs with reference to underlying political economy relationships.

The modes of participation framework was developed to examine domestic politics, in particular to explain political regimes in Southeast Asia where in recent years a growing number of opportunities for political *participation* have emerged alongside the narrowing of the channels for political *contestation*. The objective of the framework's designers was to identify and explain political regimes not according to their institutional attributes or qualitative performances, such as the holding of elections and whether these are free and/or fair, but rather "in terms of the organization of conflict through various modes of political participation" (2007, p. 773). Based on the interpretation by social conflict theorists of states, institutions and markets not as independent, coherent and unitary entities, but rather, as being socially constituted, this framework understands domestic political regimes as working to manage, ameliorate or contain conflict.

This book extends the modes of participation framework from the domestic scale to examine the relationship between CSOs and regional and global governance institutions, in particular why these institutions seek to incorporate disparate interests such as CSOs, how they structure CSOs' participation and how CSOs' inclusion shapes political outcomes. This study's extension of the modes of participation framework from investigating domestic regimes to the regional and global scales is based on recognition that state borders do not constitute a boundary for political power, and actors will employ strategies to advance their interests across governance scales (Jessop 1990). Each territorial scale, whether local, subnational, national, regional or global, has a differing configuration of actors, resources and political opportunities, and actors subsequently seek to rescale the governance of an issue in accordance with their interests (Hameiri and Jones 2012). Consequently, the governance of a single territorial scale cannot be examined in isolation from others – domestic political projects are intricately bound up with the form and trajectory of regional and global governance institutions.

Identifying and explaining the modes of participation for CSOs in ASEAN, this book argues that ASEAN's post-crisis engagement with civil society is directed toward boosting its legitimacy and furthering its narrow reform agenda, rather than creating opportunities for CSOs to contest this political project. Despite ASEAN's rhetoric of creating a "people-oriented" organization, the mode in which ASEAN actually interacts with CSOs constrains them in various important ways: CSOs

are forced to either accommodate ASEAN's political project in order to interact with officials, or they are excluded from such interaction via the withdrawal of official participation, ignorance or even sabotage. As demonstrated by Carroll in his examination of the World Bank's engagement practices, inclusive rhetoric is "*more than just spurious lingo or clever spin*" (2010, p. 7, emphasis in original). Such rhetoric is designed to create legitimacy – in this instance, for ASEAN's political project. This inclusive rhetoric creates legitimacy because it is attached to the mechanisms that ASEAN has established to engage CSOs. However, these mechanisms are structured to include those groups that can advance ASEAN's market-building program, while circumscribing the participation of non-amenable interests. Thus, ASEAN's approach to engagement functions in silencing its dissenters who have become increasingly organized and vocal in recent years.

As argued in subsequent chapters, this is achieved through the issue-sensitive nature of ASEAN's engagement of CSOs and its management of who can participate and how. Importantly, these three features of ASEAN's approach to engaging CSOs not only structure the spaces that ASEAN has established for civil society participation, but also influence those channels for political participation that have been established by non-ASEAN actors. CSOs may pursue their claims for reform outside of ASEAN-established spaces, such as through the interface meeting of the annual ASEAN Civil Society Conference. However, these spaces for participation are designed with ASEAN practices in mind. CSOs shape these channels according to the regulations that govern civil society access to official processes, so as to encourage officials to attend. Hence, even seemingly independent forms of political participation must be considered in the context of relevant power relationships.

This study contributes to the scholarship on state-civil society relations in Asia,<sup>2</sup> the understudied interactions between regional CSOs and regional governance institutions in East Asia<sup>3</sup> and ASEAN. ASEAN has been thoroughly researched in mainstream IR studies, however this literature is characterized by an ongoing debate between constructivists and realists, with both approaches being dominated by a methodological nationalism that fails to adequately account for the role of domestic political processes in shaping regional governance (Jayasuriya 2003b). Constructivists consider ASEAN's reform agenda as a concerted attempt at community-building that advances the Association's practice of norm-governed interaction – conceived through the "ASEAN Way" – and consider this project as having been increasingly defined by the contributions of regional communities (Acharya 2003; Caballero-Anthony

2004; Collins 2008, 2013a; M. Jones 2004; Katsumata 2004; Morada 2008; Rüländ 2013). Realists, on the other hand, point to persistent patterns of *realpolitik* state behavior in arguing that states' preference for unilateral self-help undermines any notion of "community" (Jones and Smith 2006, 2007). For realists, the scope of this "community" concern is limited to the notion of ASEAN as a security community, and consequently, absent from this analysis is consideration of the participation of CSOs, and how more inclusive policymaking may shape political outcomes.

The dominant IR accounts of ASEAN acknowledge a persistent gap between ASEAN's rhetoric and its practice, which is generally attributed to ASEAN's conservatism (see L. Jones 2012) or more recently, "mimetic adoption" (Katsumata 2011). The methodological nationalism of constructivist and realist accounts means that neither of these theoretical approaches open the "black box" of the state to consider how particular developments in ASEAN's political project privilege highly sectional interests and/or undermine specific social forces. For example, in constructivist accounts of ASEAN-CSO relations scholars lament the gap between the rhetoric and reality of ASEAN's "people-oriented" reforms (Collins 2008, 2013a; Morada 2008; Rüländ 2013). However, beyond pointing to ASEAN's diverse membership and its existing practices, these accounts offer little in explaining why the popular participation gap persists. Attributing ASEAN's problematic relationship with CSOs to the Association's supposed conservatism fails to account for, first, ASEAN's particular approach to engaging CSOs, whereby it simultaneously promotes its inclusion of CSOs in policymaking while delimiting their participation; and second, how political economy relationships shape the boundaries of participatory channels, where particular actors and issues are occasionally deemed suitable for consultations and others are excluded.

By recognizing social conflict as the source of institutional change and/or stagnation, this book not only describes CSOs' ineffectiveness in steering regional policy in particular directions despite ASEAN's "people-oriented" shift, but it also explains why this is the case. Scholars have documented the lack of civil society participation in ASEAN, despite its participatory turn (Acharya 2003; Chavez 2006; Collins 2008, 2013a; M. Lim 2011; Morada 2008; Nesadurai 2010; Quayle 2012; Rüländ 2013). Aviel (2000), Chandra (2006, 2009), Chandra and Chavez (2008), Igarashi (2011) and Nesadurai (2011), meanwhile, have highlighted CSOs' expanding efforts to engage ASEAN over the past decade and a half. However, explanations of ASEAN's particular approach to engaging

CSOs and the limitations of their inclusion in policymaking remain underdeveloped. By considering the form and trajectory of institutions as being socially constituted, this book understands ASEAN's problematic engagement of CSOs not simply as a response to civil society's rising significance in global politics, but also as being determined by domestic socio-political conditions. In doing so, it provides an innovative analysis of ASEAN's reform agenda, and as part of this, its engagement of CSOs.

This study's focus on social conflict and its role in shaping relations between governance institutions and CSOs is thus also a novel contribution to the literatures on global governance and global civil society, given the prevalence of mainstream IR theories in explaining this development and their limitations. Unlike existing theoretical accounts of relations between governance institutions and CSOs, the modes of participation framework does not frame participatory channels for civil society as developing in isolation from social conflict. In doing so, it avoids simply describing and benchmarking the participatory channels of one institution relative to others. By examining how the boundaries of civil society participation develop according to conflicts among competing social forces, this framework not only describes how a particular participatory channel is more or less effective for specific civil society agendas, but it also explains why. The modes of participation framework enables analysis of dominant social forces and the patterns of struggle that make it necessary for institutions to refashion themselves to incorporate disparate interests, such as CSOs, and it explains why these refashioned institutions infrequently exhibit substantive changes that reflect the inclusion of these disparate interests – namely, because dominant social forces within these institutions structure civil society participation in defense of their interests.

This book thus builds on pioneering research critiquing the progressive-sounding vocabulary of "participation," "partnership," and "ownership" that characterizes the now-hegemonic approach to "doing development" led by the World Bank (Carroll 2010, p. 1; see also Hatcher 2007; Jayasuriya 1999, 2001, 2003c). These contributions seek to explain the purpose of this "discursive shift towards a more social vocabulary" (Hatcher 2007, p. 202) amongst development institutions. These scholars argue that this shift is an attempt to structure political participation in alignment with market liberalism, so as to insulate economic institutions from what are perceived to be the destabilizing effects of political processes, what Jayasuriya terms "economic constitutionalism" (1999, 2001, 2003c) and Carroll characterizes as the attempt "to re-legitimize market-led development, embed market society and institute