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# Transforming Membership? Citizenship, Identity and the Problem of Belonging in Regional Integration Organizations

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## Abstract

*Regional integration organizations (RIOs) renegotiate the boundaries of socio-political membership when they confer social, economic or political rights on non-nationals. This article examines how access to socio-political membership intersects with regional community building in the Association of Southeast Asian Nations, the Economic Community of West African States and the Southern Common Market. Whilst the promise of people-oriented integration is common to all three organizations, they deploy different political and legal tools to advance regional community building. These choices reflect the diverging visions of belonging in contemporary RIOs. However, the comparative analysis in this article shows that people-orientedness remains an unattainable normative goal unless the focus of regional membership politics moves from fostering regional belonging and unity to recognizing intra-regional differences. A revised theory of regional community building must therefore vindicate, rather than suppress, differences within RIOs.*

## 1 Introduction

The period from the late 1980s onwards is often called ‘new regionalism’ in the study of regional integration. What is characteristic of this period is that, along with free trade and security cooperation, many regional integration organizations (RIOs) began

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to pursue broader policy objectives.<sup>1</sup> Regional integration processes can transform the boundaries of political and social membership through a mutual recognition of rights or by conferring new regional rights on nationals of the member states. Several RIOs have also created a regional citizenship status and define rules for its acquisition. A central question to new regionalism is therefore whether, and on what basis, access to socio-political membership is redistributed within RIOs. A related question is what role non-state actors, including individual citizens, can play in regional integration processes and community building.

Citizenship of the European Union (EU) provides an example of a far-reaching regional citizenship, but the theories of new regionalism often dismiss the EU as a generic model for regional integration processes. The concern is that Eurocentrism may place too much weight on the constitutional dimension of integration, failing to concede other meta-narratives of regional integration.<sup>2</sup> This article analyses how three RIOs, which are by nature intergovernmental rather than supranational, deal with issues concerning socio-political membership and community building.<sup>3</sup> This question is approached by exploring what forms of belonging these RIOs recognize and how their visions of a regional community and peoplehood therefore diverge.

In this article, clarifying the underlying ideals of a regional community will also shed light on why the objective of people-oriented integration currently remains implausible in many intergovernmental RIOs. The term ‘people-oriented’ implies that relevant actors in regional integration processes are not confined to the member states. Citizens’ participation in regional community building is therefore a central criterion for people-oriented regional integration. In practice, however, citizens have limited opportunities to engage in regional community building in intergovernmental RIOs.

This article makes a two-fold argument about people-oriented regional community building: first, the comparative analysis of the Association of Southeast Asian Nations (ASEAN), the Economic Community of West African States (ECOWAS) and the Southern Common Market (Mercosur) depicts people-orientedness as a rhetorical tool, rather than as an effective interpretative standard, for regional community building. Second, a normative critique, which builds on the findings of the comparative analysis, presents the shift from the politics of belonging to the politics of difference as a prerequisite for genuinely people-oriented regional community building. The first

<sup>1</sup> For the historical evolution of regional integration processes, see, e.g., M. Doidge, *The European Union and Interregionalism: Patterns of Engagement* (2011). For a theoretical approach to ‘new regionalism’, see, e.g., F. Söderbaum and T. Shaw (eds), *Theories of New Regionalism* (2003).

<sup>2</sup> For the constitutional development of European Union (EU) citizenship, see, e.g., Shaw, ‘Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism’, in G. de Búrca and P. Craig (eds), *The Evolution of EU Law* (2nd edn, 2011) and different contributions in D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (2017). For an overview of different supranational citizenships, see, e.g., Strumia, ‘Supranational Citizenship’, in A. Shachar *et al.* (eds), *The Oxford Handbook of Citizenship* (2017) 669.

<sup>3</sup> These three regional integration organizations (RIOs) are the Association of Southeast Asian Nations (ASEAN), the Economic Community of West African States (ECOWAS) and the Southern Common Market (Mercosur). They have been selected as emblematic geographical examples of how regional integration processes have evolved in different parts of the world. For more details, see section 3 of this article.

point finds support from the recent literature on comparative regionalism, whereas the second distances itself from it.

Moving the focus of regional membership politics from belonging to difference means that regional community building is no longer premised on the false ideal of regional unity but, instead, on the community's ability to create and maintain just and equal relations between its diverse constituencies. Unlike the mainstream theories of regional community building, this approach takes into account how a regional integration process may in itself constitute and deepen systematic inequalities that prevent individuals from participating in regional community building. These findings indicate that the constructive theory of regional integration needs to move its focus from regional identity building to access and participation.

Section 2 of the article grounds the comparative and critical analysis of regional community building, first, by outlining how regional integration processes disentangle national identity, citizenship and socio-political membership and, second, by defining belonging, recognition and difference as possible bases for regional membership politics. In section 3, a review of ASEAN, ECOWAS and Mercosur shows that the emerging visions of a regional peoplehood differ as to whether regional belonging is understood as a shared cultural identification or as a product of participation through regional rights. The comparative analysis of ASEAN, ECOWAS and Mercosur then exposes the limits of these different accounts of belonging in theorizing regional community building. Section 4 adds more substance to this critique by explaining why it is important to rethink people-oriented regional membership politics with reference to difference rather than to belonging.

## 2 Breaking the Bond: National Identity, Citizenship and (Regional) Belonging

Citizenship is a key signifier for political and social membership in a polity. The notion of citizenship can simply describe a full member of a political community. But, as a normative concept, it must explicate what creates such membership. The term 'belonging' provides a dual perspective on this issue because it can refer both to a sense of attachment and to being part of something.<sup>4</sup> The two meanings of belonging come together when socio-political membership is justified by an assumed relationship of attachment between citizens. In political theory, the order between attachment and membership can also be reversed, in which case identification and attachment between citizens are viewed as products of, rather than preconditions for, socio-political membership and participation.

Citizenship usually indicates membership in a bounded democratic community.<sup>5</sup> The idea of collective national identity provides one answer to the question of what

<sup>4</sup> Similarly, see the distinction between belonging as 'identifications and emotional attachments' and as 'social locations' in Yuval-Davis, 'Belonging and the Politics of Belonging', 40 *Patterns of Prejudice* (2006) 179, at 199, 202.

<sup>5</sup> For a more critical perspective on the boundedness of citizenship, see, e.g., Bauböck, 'Political Membership and Democratic Boundaries', in Shachar *et al.*, *supra* note 2, 60; Bosniak, 'Citizenship Denationalized', 7 *Indiana Journal of Global Legal Studies* (2000) 447, at 501; L. Bosniak, *The Citizen and the Alien* (2006), at 1–16.

constitutes attachment between citizens within such a community.<sup>6</sup> National identification can be derived from more abstract attributes than the person's origin on the basis of birth, but it nevertheless advances a particularist understanding of belonging and membership.<sup>7</sup> As a result, national citizenship becomes 'internally inclusive' and 'externally exclusive'.<sup>8</sup> The questions of belonging and access that underlie national citizenship are also compelling in the context of regional integration. On the one hand, regional integration processes tend to challenge national identity and national citizenship as the exclusive sources of socio-political membership. On the other hand, a regional citizenship status or a regional identity can be seen as an instrument for deepening the legitimacy of regional integration processes. The role of belonging in regional integration is therefore marked by a complexity that deserves further attention both as a practical and as a theoretical question.

In this article, the regional problem of belonging refers to the normative vacuum that surrounds access to socio-political membership in regional integration organizations. But belonging is not the only possible explanation for what makes political community a community and, thus, for what factors are relevant in distributing access to socio-political membership. This point and its implications for the theory of regional community building can be illustrated by distinguishing between belonging, recognition and difference as competing bases for regional membership politics. The politics of belonging derives the normative thrust of community building from the real or imagined sameness of its members.<sup>9</sup> It has been challenged by different theories of recognition that claim that respect for difference should be the founding value of a political community.<sup>10</sup> But the idea of recognition arguably fails to take into account that showing respect for diversity can also hide oppression and marginalization within a community.<sup>11</sup> The politics of difference therefore problematizes the way in which

<sup>6</sup> E.g., D. Miller, *Citizenship and National Identity* (2000).

<sup>7</sup> Habermas, 'Citizenship and National Identity', in B. van Steenberg (eds), *The Condition of Citizenship* (1994) 20, at 23.

<sup>8</sup> On these two dimensions of citizenship, see, e.g., R. Brubaker, *Citizenship and Nationhood in France and Germany* (1992), at 21–23.

<sup>9</sup> E.g., Walzer speaks of 'communities of character' as 'historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life'. M. Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (1983), at 62.

<sup>10</sup> Taylor divided the 'politics of equal recognition' into the 'politics of universalism', which draws on the 'equal dignity of all citizens' and the 'politics of difference' that emphasizes the 'unique identity' and 'distinctiveness' of groups and individuals. Taylor, 'The Politics of Recognition', in A. Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition* (1992) 25, at 37. However, there are several theories of recognition, which differ from one another in important ways. Compare, e.g., Honneth's analysis of three forms of recognition as 'Love', 'Respect' and 'Esteem' (A. Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (1992)) with Nancy Fraser's argument for 'parity of participation' as a normative principle under which both the claims for 'recognition' and 'redistribution' shape a just society (Fraser, 'Rethinking Recognition', 3 *New Left Review* (2000) 107, at 118–119).

<sup>11</sup> E.g., L. McNay, *Against Recognition* (2007); Ahmed, 'The Language of Diversity', 30 *Ethnic and Racial Studies* (2007) 235, at 254.

some intra-community differences create structural inequalities in access to societal participation and power.<sup>12</sup> As such, it moves the focus of community building from cultural recognition to how a community can maintain just and equal relations between those who are inherently different.<sup>13</sup>

The above tensions between belonging, recognition and difference are typically debated in relation to how a just national political community ought to be organized. However, similar tensions and normative choices occur in the process of regional community building when people-orientedness is regarded as its guiding principle. In the next section, a comparative review of ASEAN, ECOWAS and Mercosur describes the limits of belonging-based regional membership politics. That people-oriented regional community building remains rhetorical in all three RIOs indicates that we must develop alternatives to the highly imaginative ideals of regional unity and sameness. In search of such alternatives, it is essential to accommodate the reality of intra-regional differences into the theory of regional community building, as opposed to pretending that it does not exist.

### 3 Three Visions of Regional Community Building: ASEAN, ECOWAS and Mercosur

In this section, the analysis of ASEAN, ECOWAS and Mercosur pictures regional identity and regional citizenship as the two main signifiers for regional belonging. Different approaches to regional belonging foster different understandings of people-oriented community building, depending on whether the emphasis is on attachment or on participation. These differences are important because they explain why there is no consensus on the role of individuals in regional community building within contemporary intergovernmental RIOs. A broader question that emerges from this analysis is whether the processes of regional community building seek to redefine the boundaries of socio-political membership from a regional perspective, or whether they also challenge the logic of belonging that underlies national membership politics.

#### A *The ASEAN Identity*

ASEAN was founded in 1967 to advance economic growth, social progress and cultural development as well as regional peace and stability.<sup>14</sup> ASEAN operated as an intergovernmental forum between the newly independent member states, with no

<sup>12</sup> E.g., Young, 'Polity and Group Difference: A Critique of the Ideal of Universal Citizenship', 99 *Ethics* (1989) 250, at 250; Foster, 'Difference and Equality: A Critical Assessment of the Concept of "Diversity"', 1993 *Wisconsin Law Review* (1993) 105, at 130.

<sup>13</sup> For a discussion on similar challenges in the context of European integration, see P. Neuvonen, *Equal Citizenship and Its Limits in EU Law: We the Burden?* (2016), at 122–128.

<sup>14</sup> Bangkok Declaration between Indonesia, Malaysia, Philippines, Singapore, and Thailand, 8 August 1967. The Association of Southeast Asia (founded in 1961) between Philippines, Thailand and Malaysia was transformed into ASEAN when Singapore and Indonesia joined in. The following states later joined ASEAN: Brunei (1984), Vietnam (1995), Myanmar (1997), Laos (1997) and Cambodia (1999).

reference to pooled sovereignty in its founding documents.<sup>15</sup> After the democratization of several ASEAN states in the 1980s and 1990s, the ASEAN Free Trade Area was established in 1992.<sup>16</sup> The Asian financial crisis at the end of 1990s pushed the ASEAN states to further revise the framework for regional integration. The main principles of this reconfiguration were included in the ASEAN Vision 2020 document, which initiated the formal process of ASEAN community building.<sup>17</sup>

The idea of a three-pillared ASEAN community that comprises the ASEAN Political and Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC) was introduced in 2003.<sup>18</sup> It was followed by the Vientiane Action Programme, which connected ASEAN community building to an ASEAN regional identity<sup>19</sup> and provided a list of strategies for promoting such identity.<sup>20</sup> The Vientiane Action Programme paved the way for the ASEAN Charter, which transformed ASEAN into a legal entity in 2008. The Charter affirms ‘the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States’.<sup>21</sup> But it also claims that the member states are ‘inspired by and united under One Vision, One Identity and One Caring and Sharing Community’.<sup>22</sup>

According to the ASEAN Charter, one purpose for regional cooperation is to ‘promote a people-oriented ASEAN’ and ‘to promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region’.<sup>23</sup> Its other purposes include political, security, economic and socio-cultural cooperation and a single market.<sup>24</sup> ASEAN also aims at alleviating poverty, narrowing the development gap and providing equitable access to opportunities for human development,

<sup>15</sup> E.g., Collins, ‘A People-Oriented ASEAN: A Door Ajar or Closed for Civil Society Organizations’, 30 *Contemporary South Asia* (2008) 313, at 319.

<sup>16</sup> On the democratization in the ASEAN region, see, e.g., Acharya, ‘Democratisation and the Prospects for Participatory Regionalism in Southeast Asia’, 24 *Third World Quarterly* (2003) 375, at 375–378. Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Singapore, 28 January 1992, available at <https://asean.org/asean-economic-community/asean-free-trade-area-afta-council/agreements-declarations/>.

<sup>17</sup> ASEAN Vision 2020, 1997, available at [https://asean.org/?static\\_post=asean-vision-2020](https://asean.org/?static_post=asean-vision-2020).

<sup>18</sup> Declaration of ASEAN Concord II/Bali Concord 2003, available at <http://asean.org/declaration-of-asean-concord-ii-bali-concord-ii-3/>.

<sup>19</sup> Vientiane Action Programme 2004–2010, available at [www.asean.org/storage/images/archive/VAP-10th%20ASEAN%20Summit.pdf](http://www.asean.org/storage/images/archive/VAP-10th%20ASEAN%20Summit.pdf), preamble.

<sup>20</sup> These strategies include: mainstreaming the promotion of ASEAN awareness and regional identity in national communication plans and education curricula, people-to-people contact through arts, tourism and sports, promoting and preserving ASEAN cultural heritage through exchanges, expert meetings and the implementation of the ASEAN Declaration on Cultural Heritage, encouraging dialogue amongst member states to promote a deeper understanding of the region’s civilization, cultures and religion and promoting ASEAN’s standings in the international community. *Ibid.*, Art. 3.4 on Promoting an ASEAN Identity, at 19.

<sup>21</sup> Charter of the Association of Southeast Asian Nations (ASEAN Charter) 2007, 2624 UNTS 223, Art. 2.

<sup>22</sup> ASEAN Charter, *supra* note 21, preamble.

<sup>23</sup> *Ibid.*, Art. 1. Note also Art. 35 on ASEAN identity, which states: ‘ASEAN shall promote its common ASEAN identity and a sense of belonging among its peoples in order to achieve its shared destiny, goals, and values.’

<sup>24</sup> *Ibid.*, Art. 1.

social welfare and justice.<sup>25</sup> These objectives are reiterated in the 2025 blueprints, which form the main planning mechanism for the three ASEAN communities.<sup>26</sup>

The ASEAN Political-Security Community Blueprint 2025 envisages ‘a people-oriented, people-centred ASEAN in which all sectors of society, regardless of gender, race, religion, language, or social and cultural background, are encouraged to participate in, and benefit from, the process of ASEAN integration and community building’.<sup>27</sup> The ASEAN Socio-Cultural Community Blueprint 2025 speaks of an ASEAN community that is ‘inclusive, sustainable, resilient, and dynamic’ as well as ‘participative and socially responsible’.<sup>28</sup> In regard to inclusion, it refers to ‘rights-based principles in the promotion of ASEAN policies and programmes in the ASCC Pillar’,<sup>29</sup> while promising ‘greater people-to-people interaction and mobility within and outside ASEAN’ and ‘measures to ensure a caring society, social harmony and values of humanity, and a spirit of community’.<sup>30</sup>

The multiple references to an ASEAN identity and a people-oriented ASEAN community in the official documents raise the question of what concrete mechanisms advance regional community building within ASEAN. In considering this question, it is important to bear in mind that ASEAN identity does not take the form of a regional citizenship. Instead, the focus is on ‘social capital’ and ‘cultural identifications’.<sup>31</sup> The official principles of ASEAN integration include ‘respect for the different cultures, languages and religions of the peoples of ASEAN’ as well as for ‘their common values in the spirit of unity in diversity’.<sup>32</sup> ASEAN identity can therefore be seen as an attempt to foster a ‘desire to live together’.<sup>33</sup> But achieving that goal is difficult because the way in which ASEAN integration is governed does not support the objective of regional community building.<sup>34</sup>

The Initiative for ASEAN Integration and the ASEAN Development Fund are the main tools for addressing the development gap between the member states.<sup>35</sup>

<sup>25</sup> *Ibid.*

<sup>26</sup> ASEAN’s current strategy, ‘the ASEAN Community Vision 2025’, and the three blueprints for the ASEAN communities are compiled into the Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, available at [https://asean.org/?static\\_post=asean-2025-forging-ahead-together](https://asean.org/?static_post=asean-2025-forging-ahead-together).

<sup>27</sup> *ASEAN Political-Security Community Blueprint 2025* (Jakarta: ASEAN Secretariat, 2015), Introduction, para 3.

<sup>28</sup> *ASEAN Socio-Cultural Community Blueprint 2025* (Jakarta: ASEAN Secretariat, 2015), para 5.

<sup>29</sup> *Ibid.*, para 10.

<sup>30</sup> *Ibid.*, para 21: ‘E.1. – Towards an Open and Adaptive ASEAN.’

<sup>31</sup> Jones, ‘Forging an ASEAN Identity: The Challenge to Construct a Shared Identity’, 26 *Contemporary Southeast Asia* (2004) 140, at 145–146.

<sup>32</sup> ASEAN Charter, *supra* note 21, Art. 2.

<sup>33</sup> Henry, ‘The ASEAN Way and Community Integration: Two Different Models of Regionalism’, 13 *European Law Journal* (2007) 857, at 874.

<sup>34</sup> Narine, ‘ASEAN in the Twenty-First Century: A Sceptical Review’, 22 *Cambridge Review of International Affairs* (2009) 369, at 379.

<sup>35</sup> The ASEAN heads of state launched the Initiative for ASEAN Integration with the objectives of narrowing the development gap and accelerating economic integration of the newer members of ASEAN, namely Cambodia, Lao People’s Democratic Republic, Myanmar and Vietnam. For more details, see Initiative for ASEAN Integration Work Plan III (2016–2020), available at <http://asean.org/storage/2016/09/09rev2Content-IAI-Work-Plan-III.pdf>.

In practice, the lack of recognition for low-skilled work forms a significant gap in the social aims of ASEAN.<sup>36</sup> The ASEAN Declaration on the Protection and Promotion of the Rights of Migrants was accepted in 2007 with the aim of ‘promoting the full potential and dignity of migrant workers’.<sup>37</sup> The ASEAN Committee on Migrant Workers was subsequently established to develop an ASEAN instrument on the protection of the rights of the migrant workers, with an explicit reference to ASEAN’s vision of a caring and sharing community. But the declaration itself had no legal mandate, and its implementation was left to the member states. The obligations of the sending and receiving states were clarified by the adoption of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrants in 2017.<sup>38</sup> However, the consensus is legally non-binding, and it explicitly excludes the regularization of undocumented migrant workers from its objectives.<sup>39</sup>

The ASEAN Economic Community Blueprint 2025 aims at the ‘seamless movement’ of goods, services, investment, capital and skilled labour.<sup>40</sup> At the moment, however, the free movement of skilled labour depends on a series of mutual recognition agreements (MRAs) and the ASEAN Agreement on Movement of Natural Persons (MNP Agreement).<sup>41</sup> The MRAs facilitate sector-specific free movement for eight professions.<sup>42</sup> The MNP Agreement eliminates restrictions on the temporary cross-border movement of persons involved in trade in goods, services or investment.<sup>43</sup> The MNP Agreement does not apply to ‘measures affecting natural persons seeking access to the employment market of another Member State’ or to ‘measures regarding citizenship, residence or employment on a permanent basis’.<sup>44</sup> This means that ASEAN has no comprehensive legal framework for the free movement of skilled labour and no legal framework at all for general free movement.

ASEAN’s human rights policy can be viewed as an alternative platform for regional identity building.<sup>45</sup> The ASEAN Charter set the plan for the subsequent establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the adoption of the ASEAN Human Rights Declaration (AHRD) in 2012.<sup>46</sup> It is

<sup>36</sup> Chavez, ‘Social Policy in ASEAN’, 7 *Global Social Policy* (2007) 358, at 369.

<sup>37</sup> ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers 2007, available at [www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf](http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf).

<sup>38</sup> In September 2017, the ASCC Council published the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, 14 November 2017, available at <http://asean.org/wp-content/uploads/2017/11/ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf>.

<sup>39</sup> *Ibid.*, Art. 56.

<sup>40</sup> ASEAN Economic Community Blueprint 2025 (Jakarta: ASEAN Secretariat, 2015), para. 7.

<sup>41</sup> *Ibid.*, paras 19–20. ASEAN Agreement on the Movement of Natural Persons (MNP), 19 November 2002.

<sup>42</sup> Six mutual recognition agreements (engineering, nursing, architecture, medicine, dentistry and tourism) and two framework agreements (surveying and accountancy).

<sup>43</sup> MNP, *supra* note 41, Art. 1.

<sup>44</sup> *Ibid.*, Art. 2(2).

<sup>45</sup> E.g., Manea, ‘How and Why Interaction Matters: ASEAN’s Regional Identity and Human Rights’, 44 *Cooperation and Conflict: Journal of the Nordic International Studies Association* (2009) 27, at 28.

<sup>46</sup> ASEAN Human Rights Declaration (AHRD), 19 November 2012, available at <http://asean.org/asean-human-rights-declaration/>.



nevertheless controversial whether the AHRD advances the implementation of international human rights standards.<sup>47</sup> For instance, although the original text of the AHRD included an innovative right to development and peace,<sup>48</sup> it did not recognize lesbian, gay, bisexual and transgender rights.<sup>49</sup> The AICHR was created to monitor and promote human rights in the ASEAN states, but it has no formal power to force compliance.<sup>50</sup> The lack of regional enforcement mechanisms reinforces the argument that domestic economic and political needs define ASEAN's involvement with human rights.<sup>51</sup>

The mode of ASEAN governance is state-centric as a whole.<sup>52</sup> It is based on the so-called ASEAN way, which requires consensus, consultation, voluntarism and the policy of non-interference.<sup>53</sup> Even the ASEAN Economic Community relies on mutual recognition agreements rather than on harmonization by regional law.<sup>54</sup> As a consequence, ASEAN law does not focus on guaranteeing individual rights to nationals of the member states.<sup>55</sup> Moreover, there is no regional court or tribunal in ASEAN. Instead, the ASEAN Charter includes provisions on dispute settlement.<sup>56</sup>

The quest for a more people-oriented ASEAN is connected to the role of civil society actors, including non-governmental organizations, in the integration process. The meetings of accredited non-state actors (Track 2) and the ASEAN Civil Society Conference (Track 3) now complement the official ASEAN meetings (Track 1). In practice, the accreditation mechanism places restrictions on civil society engagement in ASEAN policy-making. It has been noted that the involvement of civil society therefore resembles 'service provision' rather than 'advocacy'.<sup>57</sup> Similarly, the formation of the ASEAN Inter-Parliamentary Organization in 1977 and, its successor, the ASEAN Inter-Parliamentary Assembly in 2006 have primarily increased democratic participation at the level of implementation.<sup>58</sup>

<sup>47</sup> See, e.g., *ibid.*, Arts 6, 7. For more discussion, see, e.g., Narine, 'Human Rights Norms and the Evolution of ASEAN: Moving without Moving in a Changing Regional Environment', 34 *Contemporary Southeast Asia* (2012) 365.

<sup>48</sup> AHRD, *supra* note 46, Arts 33, 38.

<sup>49</sup> Langlois, 'Human Rights, "Orientation" and ASEAN', 13 *Journal of Human Rights* (2014) 307, at 312.

<sup>50</sup> For the institutional development of ASEAN human rights policy, see Hsien-Li Tan, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia* (2011).

<sup>51</sup> Narine, *supra* note 34, at 367.

<sup>52</sup> Chavez, *supra* note 36, at 361.

<sup>53</sup> E.g., ASEAN Charter, *supra* note 21, Art. 20.

<sup>54</sup> Henry, *supra* note 33, at 867.

<sup>55</sup> *Ibid.*, at 864.

<sup>56</sup> ASEAN Charter, *supra* note 21, Art. 22(2) states that 'ASEAN shall maintain and establish dispute settlement in all fields of ASEAN cooperation'. But Art. 22(1) outlines that 'Member State shall endeavour to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation'.

<sup>57</sup> Beeson and Gerard, 'ASEAN, Regionalism and Democracy', in W. Case (ed.), *Routledge Handbook of Southeast Asian Democratization* (2015), at 59.

<sup>58</sup> Rüländ and Bechle, 'Defending State-Centric Regionalism through Mimicry and Localisation: Regional Parliamentary Bodies in the Association of Southeast Asian Nations (ASEAN) and Mercosur', 17 *Journal of International Relations and Development* (2014) 61, at 73.

To sum up, the ASEAN human rights policy and the creation of various civil society forums have not fundamentally altered the ‘corporatist’ nature of regional governance in ASEAN.<sup>59</sup> The ASEAN states also hold different views on what democracy means in the first place.<sup>60</sup> It is possible that the seemingly conflicting values and norms in the ASEAN Charter reflect ideological divergence between the ASEAN states.<sup>61</sup> Socio-economic disparity between the ASEAN member states and their internal conflicts further challenge the process of regional integration.<sup>62</sup> In ASEAN, the decisive question to people-oriented community building is therefore how the ideal of an ASEAN identity relates to the political, social and cultural diversity between and within the ASEAN member states, on the one hand, and to the principles of non-interference and sovereignty, on the other.

## B ECOWAS Community Citizenship

ECOWAS was founded by the ECOWAS Treaty in 1975.<sup>63</sup> Its initial goal was to advance economic growth in the region.<sup>64</sup> Recognizing the socio-political dimension of economic development led to a major treaty revision in 1993. The present goal of ECOWAS is to establish an economic union in West Africa, with the aim of increasing living standards, maintaining economic stability and fostering relations between the member states.<sup>65</sup> The fundamental principles of ECOWAS also include equality, interdependence and solidarity between the member states, the maintenance of regional peace, the protection of human rights in accordance with the African Charter on Human and Peoples’ Rights and the promotion of democratic governance as envisaged in the 1991 Declaration of Political Principles of ECOWAS.<sup>66</sup>

In the ECOWAS Treaty, the objective of a common market is expressly linked to the free movement of persons and the rights to residence and establishment.<sup>67</sup> The ECOWAS Treaty also outlines that the member states recognize the rights of ‘Citizens

<sup>59</sup> Rüländ, ‘The Limits of Democratizing Interest Representation: ASEAN’s Regional Corporatism and Normative Challenges’, 20 *European Journal of International Relations* (2014) 237, at 253–254.

<sup>60</sup> E.g., Myanmar.

<sup>61</sup> Narine, *supra* note 34, at 370, 376.

<sup>62</sup> Chavez, ‘Transnational Social Movements in ASEAN Policy Advocacy: The Case of Regional Migrants’ Rights Policy’, United Nations Research Institute for Social Development (2013), at 7–8.

<sup>63</sup> Treaty of the Economic Community of West African States (1975 ECOWAS Treaty) 1975, 14 ILM 1200 (1975). The ECOWAS member states are Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

<sup>64</sup> Note that the creation of the Organization of African Unity (OAU) in 1963 focused on political integration at the continental level, whereas the various regional integration organizations focused on regional economic integration. Hartmann, ‘Sub-Saharan Africa’, in T.A. Börzel and T. Risse (eds), *The Oxford Handbook of Comparative Regionalism* (2016) 271. ECOWAS is therefore an attempt to create an economic union in West Africa in accordance with the Lagos Plan of Action and the later Treaty Establishing the African Economic Community, 3 June 1991. E.g., Forere, ‘Is Discussion of the “United States of Africa” Premature? Analysis of ECOWAS and SADC Integration Efforts’, 56 *Journal of African Law* (2012) 29.

<sup>65</sup> Treaty of Cotonou (ECOWAS Treaty) 1993, 2373 UNTS 233, Art. 3(1).

<sup>66</sup> *Ibid.*, Art. 4. African Charter on Human and Peoples’ Rights, 28 June 1981; Declaration of Political Principles of ECOWAS, Doc. A/DCL.1/7/91, 6 July 1991.

<sup>67</sup> ECOWAS Treaty, *supra* note 65, Art. 3(2).

of the Community' to entry, residence and establishment in their territories in accordance with the provisions of the relevant ECOWAS protocols.<sup>68</sup> The Protocol on Free Movement of Persons, Residence and Establishment (Protocol on Free Movement) came into force in 1979.<sup>69</sup> It confirmed that community citizens' rights would be established during a three-stage transitional period.<sup>70</sup> Under the Protocol on Free Movement, ECOWAS community citizens are able to enter the territory of another member state for a period of 90 days without any visa requirement.<sup>71</sup> The host member state can require them to obtain permission for the extension of their stay beyond 90 days.<sup>72</sup> In addition, the member states retain the right 'to refuse admission into their territory any Community citizen who comes within the category of inadmissible immigrants under its laws'.<sup>73</sup>

The second phase Protocol on the Right to Residence was ratified by the ECOWAS member states in 1986.<sup>74</sup> The community citizens' right of residence for the purpose of seeking and carrying out 'income earning employment' in the territory of other ECOWAS states includes the rights 'to apply for jobs effectively offered', 'to travel for this purpose, freely, in the territory of Member States', 'to reside in one of the Member States in order to take up employment in accordance with the legislative and administrative provisions governing employment of national workers' and 'to live in the territory of a Member State according to the conditions defined by the legislative and administrative provisions of the host Member State, after having held employment there'.<sup>75</sup> These rights can be made subject to 'restrictions justifiable by reasons of public order, public security and public health'.<sup>76</sup> Citizens of the community who wish to exercise their right to free movement and residence shall obtain an ECOWAS residence card or a residence permit.<sup>77</sup>

In regard to equal treatment, the Protocol on the Right to Residence holds that:

migrant workers who comply with rules and regulations governing residence, shall enjoy equal treatment with nationals of the host member state in the following matters: (a) security of employment; (b) possibility of participating in social and cultural activities; (c) possibilities or

<sup>68</sup> *Ibid.*, Art. 59 (1975 ECOWAS Treaty, *supra* note 63, Art. 27).

<sup>69</sup> Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment (Protocol on Free Movement) (1979).

<sup>70</sup> *Ibid.*, Art. 2(1)–(3).

<sup>71</sup> *Ibid.*, Art. 3(2).

<sup>72</sup> *Ibid.*, Art. 3(2).

<sup>73</sup> *Ibid.*, Art. 4.

<sup>74</sup> Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons (Protocol on the Right to Residence) (1986).

<sup>75</sup> *Ibid.*, Arts 2, 3.

<sup>76</sup> *Ibid.*, Art. 3.

<sup>77</sup> *Ibid.*, Art. 5. The obligation of the member states to provide valid travel documents to their citizens was confirmed in 1985 by Art. 2(1) of Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Rights of Residence and Establishment (Protocol on Code of Conduct) (1985). A standardized ECOWAS travel document was created by the Authority of Heads of State in 1985 (Decision A/DEC.2/7/85, 6 July 1985) and the plan for a uniform ECOWAS passport was accepted in 2000.

re-employment in case of loss of job for economic reasons, in this case, they shall be given priority over other workers newly admitted to the host country; (d) training and advanced professional training; (e) access to institutions of general and professional education as well as to professional training centres for their children, and (f) benefit of access to social cultural and health facilities.

It also holds that '[m]igrant workers who comply with the rules and regulations governing residence shall enjoy equal treatment with nationals of the host Member State in the holding of employment or the practice of their profession'.<sup>78</sup>

In addition to the rights to free movement and residence, the third phase Protocol on the Right of Establishment set out the right to establishment with a particular focus on non-discrimination between national and non-national companies in 1990.<sup>79</sup> But this protocol has not yet been fully implemented by the ECOWAS member states. The rights to free movement and residence belong to the holders of ECOWAS community citizenship, a more detailed definition of which was provided by a separate protocol in 1982.<sup>80</sup>

A community citizen is a person who is a national of an ECOWAS member state by descent or by birth, meaning that at least one of his or her parents is a national by descent and the person renounces the nationality of that parent who is not a national by descent.<sup>81</sup> A naturalized person can apply for community citizenship, providing that he or she has renounced the nationality of any state outside the community and has resided permanently in a member state for a continuous period of 15 years.<sup>82</sup> The community may reduce the period of 15 years at the request of a member state.<sup>83</sup> But granting community citizenship to a naturalized person must not jeopardize 'the fundamental interests of one or more Member States'.<sup>84</sup> The Protocol Relating to Community Citizenship also includes detailed provisions on when adopted children and children born to naturalized persons are eligible for ECOWAS community citizenship as well as on the loss and forfeiture of community citizenship.<sup>85</sup>

The substantive rights of ECOWAS community citizens do not go beyond the rights enjoyed by nationals of the host member state.<sup>86</sup> The right to equal treatment in the Protocol on the Right to Residence only refers to migrant workers. Moreover, the Protocol on Free Movement does not require the host member states to financially support ECOWAS community citizens who legally reside in their territory in order to

<sup>78</sup> Protocol on the Right to Residence, *supra* note 74, Art. 23(1)–(2).

<sup>79</sup> Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment (1990), Arts 2–4.

<sup>80</sup> Protocol A/P.3/5/82 Relating to the Definition of Community Citizen (Protocol Relating to Community Citizen) (1982).

<sup>81</sup> *Ibid.*, Art. 1(1)(a)–(b).

<sup>82</sup> *Ibid.*, Art. 1(1)(d).

<sup>83</sup> *Ibid.*, Art. 1(1).

<sup>84</sup> *Ibid.*, Art. 1(1)(e).

<sup>85</sup> Protocol Relating to Community Citizen, *supra* note 80, Arts 1(1), 2(1)–(3).

<sup>86</sup> Okom and Dada, 'ECOWAS Citizenship: A Critical Review', 2 *American Journal of Social Issues and Humanities* (2012) 100, at 107.

seek or carry out employment.<sup>87</sup> At the same time, undocumented migration between the member states is a significant problem because some ECOWAS community citizens do not possess a valid travel document or birth certificate.<sup>88</sup> This was also recognized by the 2008 ECOWAS Common Approach on Migration.<sup>89</sup>

In the past, recourse to what has been called 'overbroad' expulsion has negatively affected the enjoyment of ECOWAS community citizens' rights.<sup>90</sup> The Protocol on the Right to Residence prohibited collective expulsions and limited the accepted grounds for individual expulsion.<sup>91</sup> The protocol also includes procedural provisions on how an expulsion order should be carried out.<sup>92</sup> But the expulsion of ECOWAS community citizens is still permitted, for instance, in the case of non-fulfilment of 'an essential condition for the issuance or the validity of their authorisation of residence or work permit' as well as 'in accordance with the laws and regulations applicable in the host Member State'.<sup>93</sup> Legally, resident ECOWAS community citizens are therefore only those community citizens whose residence in the territory of another member state complies both with ECOWAS laws and with national immigration laws.<sup>94</sup>

Since the Protocol on Free Movement allows the member state to refuse those community citizens who are inadmissible under national legislation, the failure to harmonize national immigration laws has delayed the full realization of ECOWAS citizenship rights.<sup>95</sup> However, the ECOWAS Community Court of Justice ruled in *Olajide Afolabi v. Federal Republic of Nigeria* that an ECOWAS community citizen could bring a case about a breach of the Protocol on Free Movement against the member state in a national court.<sup>96</sup> Some authors suggest on this basis that ECOWAS citizens' rights to free movement and residence may have effects that come close to what is meant by direct effect in EU law.<sup>97</sup>

<sup>87</sup> Adepoju, Boulton and Levin, 'Promoting Integration Through Mobility: Free Movement under ECOWAS', 29 *Refugee Survey Quarterly* (2010) 120, at 139.

<sup>88</sup> Agyei and Clotey, Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration (2009), at 16, available at [www.imi.ox.ac.uk/files/events/clotey.pdf](http://www.imi.ox.ac.uk/files/events/clotey.pdf).

<sup>89</sup> ECOWAS Common Approach on Migration, 18 January 2008, available at [www.unhcr.org/49e47c8f11.pdf](http://www.unhcr.org/49e47c8f11.pdf).

<sup>90</sup> E.g., Adepoju, Boulton and Levin, *supra* note 87, at 132. Migrants were expelled en masse in West Africa in the 1960s. Moreover, for instance, Nigeria (in 1983 and 1985) has used collective expulsion measures against ECOWAS community citizens. For more on this, see, e.g., Adepoju, Boulton and Levin, *supra* note 87, at 136.

<sup>91</sup> Protocol on the Right to Residence, *supra* note 74, Arts 13, 14.

<sup>92</sup> *Ibid.*, Arts 15, 16.

<sup>93</sup> *Ibid.*, Art. 14; see also Protocol on Free Movement, *supra* note 69, Art. 11; Protocol on Code of Conduct, *supra* note 77, Art. 3.

<sup>94</sup> E.g., Okom and Dada, *supra* note 86, at 106.

<sup>95</sup> *Ibid.*, at 108.

<sup>96</sup> ECOWAS Community Court of Justice, *Olajide Afolabi v. Federal Republic of Nigeria*, Case no. ECW/CCJ/APP/01/03 (2004).

<sup>97</sup> Nwauche, 'Enforcing ECOWAS Law in West African National Courts', 55 *Journal of African Law* (2011) 181, at 190.

At the moment, only the first phase of free movement – that is, visa-free entry for 90 days in the territory of other member states, has been fully implemented throughout the region. The implementation of the second and third phases of free movement was affected by the economic decline in West Africa in the 1980s as well as by the wars in Liberia and Sierra Leone from the 1990s to the early 21st century.<sup>98</sup> In addition to the political and economic obstacles, regional integration has legal obstacles in ECOWAS.<sup>99</sup> The ECOWAS Treaty outlines that cooperation in political, judicial and legal matters between the member states ‘may demand the partial and gradual pooling of national sovereignties to the Community within the context of a collective political will’.<sup>100</sup> However, the fact that Article 5(2) of the ECOWAS Treaty makes the application of the treaty dependent on the constitutional processes of each member state explains the ineffectiveness of ECOWAS law.<sup>101</sup>

The ECOWAS Treaty’s provision on the recognition, promotion and protection of human and peoples’ rights in accordance with the African Charter for Human and Peoples’ Rights<sup>102</sup> gained new legal weight when the jurisdiction of the ECOWAS Community Court of Justice was expanded by the 2005 Supplementary Protocol.<sup>103</sup> In addition to the member states and the ECOWAS institutions, access to the Court is now granted to individuals ‘on application for relief for violation of their human rights’.<sup>104</sup> This was confirmed in *Hadijatou Mani Koraou v. Republic of Niger*, in which the Court exercised its jurisdiction in a human rights case concerning slavery and the denial of fundamental rights.<sup>105</sup> Private actors can sue any category of persons for human rights violations but only ECOWAS community officials, not the member states, for the violation of other rights.<sup>106</sup>

Migration is often viewed as a historical ‘way of life’ in West Africa.<sup>107</sup> Against this background, regional integration could be seen as a return to ‘borderless West Africa’ that arguably existed before the era of colonial regimes.<sup>108</sup> But these plans are

<sup>98</sup> For more discussion on this, see, e.g., Adepoju, Boulton and Levin, *supra* note 87, at 124.

<sup>99</sup> Thompson, ‘Legal Problems of Economic Integration in the West African Sub-Region’, 2 *African Journal of International and Comparative Law* (1990) 85, at 86.

<sup>100</sup> ECOWAS Treaty, *supra* note 65, preamble; see also Arts 56, 57.

<sup>101</sup> *Ibid.*, Art. 5(2). For more discussion, see Nwauche, *supra* note 97, at 186 and 189.

<sup>102</sup> *Ibid.*, Art. 4(g).

<sup>103</sup> Supplementary Protocol A/SP.1/01/05 amending the preamble and articles 1, 2, 9, 22 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice (Protocol of the Community Court of Justice), Art. 9(4) as defined in Art. 3; see also ECOWAS Treaty, *supra* note 65, Art. 15, which holds that the judgments of the Court are binding on the member states. For more discussion, see Nwogu, ‘Regional Integration as an Instrument of Human Rights: Reconceptualizing ECOWAS’, 6 *Journal of Human Rights* (2007) 345, at 351.

<sup>104</sup> Protocol of the Community Court of Justice, *supra* note 103, Art. 10(d).

<sup>105</sup> ECOWAS Community Court of Justice, *Dame Hadijatou Mani Koraou v. Republic of Niger*, Case no. ECW/CJ/APP/08/07 (2008).

<sup>106</sup> Cf. Protocol of the Community Court of Justice, *supra* note 103, Arts 10(c), 10(d). For more discussion on this point, see Nwogu, *supra* note 103, at 352.

<sup>107</sup> Adepoju, ‘Creating a Borderless West Africa: Constraints and Prospects for Intra-Regional Migration’, The UNESCO Migration without Borders, Doc. UNESCO SHS/2005/MWB/1 (2005), at 1, available at <http://unesdoc.unesco.org/images/0013/001391/139142e.pdf>.

<sup>108</sup> Agyei and Clotey, *supra* note 88, at 20.

complicated by the fact that several ECOWAS member states are divided by prolonged conflicts over access to national citizenship.<sup>109</sup> The socio-cultural diversity, including the linguistic differences between English, French, Portuguese and over a thousand existing local languages, is also characteristic of the region.<sup>110</sup> It is therefore striking that ECOWAS Vision 2020 argues for a move ‘from an ECOWAS of States to an ECOWAS of People’.<sup>111</sup> In reality, the ECOWAS Parliament has no legislative powers.<sup>112</sup> Major challenges to the ECOWAS of people also include inadequate infrastructures, political fragility, intra-regional conflicts and high unemployment rates across the region.<sup>113</sup>

### C *The Plan for Mercosur Citizenship*

Mercosur (el Mercado Común del Sur or Southern Common Market) was established by the 1991 Treaty of Asunción to promote free trade between the member states.<sup>114</sup> The 1994 Protocol of Ouro Preto updated the objectives of integration and established the Consejo del Mercado Común as the main organ of Mercosur and the Grupo Mercado Común as the main executive organ.<sup>115</sup> The free movement of persons was not included in the original goals of Mercosur. But the aims of integration were redefined in the aftermath of the regional political and economic crisis in the late 1990s and the early 2000s.<sup>116</sup> The 1997 Multilateral Social Security Agreement and the 1998 Mercosur Socio-Labour Declaration consequently recognized a set of rights for migrant workers in the employment context.<sup>117</sup>

What has been called a new socio-political agenda for Mercosur was more decisively articulated by the Buenos Aires Consensus between the presidents of Argentina

<sup>109</sup> For more about these citizenship struggles, see Obi, ‘The Economic Community of West African States (ECOWAS) and the Quest for Community Citizenship: Any Lessons for the Greater Horn Region?’, in K. Mengisteab and R. Bereketeab (eds), *Regional Integration, Identity and Citizenship in the Greater Horn of Africa* (2012) 237, at 237–238.

<sup>110</sup> Adepoju, *supra* note 107, at 4.

<sup>111</sup> ECOWAS Vision 2020: Towards a Democratic and Prosperous Community, June 2007 available at [www.spu.ecowas.int/wp-content/uploads/2010/03/ECOWAS-VISION-2020-THEMATIC-PAMPHLETS-in-English.pdf](http://www.spu.ecowas.int/wp-content/uploads/2010/03/ECOWAS-VISION-2020-THEMATIC-PAMPHLETS-in-English.pdf).

<sup>112</sup> Protocol A/P.2/8/94 relating to the Community Parliament (1994), which came into force on 14 March 2002.

<sup>113</sup> ECOWAS Commission’s Overview of the 2020 Vision Document, June 2010, at 7, available at <http://invenio.unidep.org/invenio/record/19257>.

<sup>114</sup> Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (Treaty of Asunción) 1991, 2140 UNTS 319. The original member states were Argentina, Brazil, Paraguay and Uruguay. Venezuela became a member state in 2012, but it was suspended in 2016. Several South American States are associate members of the Mercosur.

<sup>115</sup> Additional Protocol to the Treaty of Asunción on the Institutional Structure of Mercosur (Protocol of Ouro Preto) 1994, 34 ILM 1244 (1994), Arts 3, 10.

<sup>116</sup> E.g., Giupponi, ‘Citizenship, Migration and Regional Integration: Re-Shaping Citizenship Conceptions in the Southern Cone’, 4 *European Journal of Legal Studies* (2011) 93, at 115–116; Gardini, ‘Mercosur: What You See Is Not (Always) What You Get’, 17 *European Law Journal* (2011) 683, at 685–689.

<sup>117</sup> Acuerdo Multilateral de Seguridad Social del Mercado Común del Sur, Decision 19/97, 15 December 1997; Declaración Sociolaboral del Mercosur, 10 December 1998.

and Brazil in 2003.<sup>118</sup> The subsequent 2005 Somos Mercosur ('We Are Mercosur') Programme included a distinctively socio-political vision of Mercosur integration, with a strong focus on the role of civil society and a Mercosur identity. The programme led to the constitution of the Mercosur Social Summit in 2006, but its concrete outcomes have been a disappointment to many observers.<sup>119</sup>

In parallel with these policy developments, the Residence Agreement for Nationals of Mercosur States was adopted in 2002 and the ratification process was completed in 2009.<sup>120</sup> It came into force in the situation in which a significant number of inter-regional migrants had no regular status in the host member states.<sup>121</sup> Under the Residence Agreement, citizens of Mercosur member states and associate states are entitled to reside in the territory of another Mercosur state for the maximum period of two years by providing a valid identification document and a clean criminal record.<sup>122</sup> After two years, they can obtain a permanent residence permit if they have sufficient financial resources for themselves and their dependent family members.<sup>123</sup> The Residence Agreement also grants Mercosur migrants rights to work, petition, mobility, association, religious practices, family reunion, remittances transfers, children's education and equal treatment in regard to labour legislation and working conditions.<sup>124</sup>

Decision 64/10 by the Mercosur Common Market Council introduced an initiative for an action plan for creating a Mercosur Citizenship Statute by 2021.<sup>125</sup> Article 2 of Decision 64/10 promises that the planned Mercosur Citizenship Statute will provide fundamental rights to all nationals of the Mercosur member states. The general objectives of the statute include free circulation of people, equal civil, social, cultural and economic rights and equal conditions for accessing employment, health and education. These objectives were confirmed by the Mercosur Common Market Council in 2017.<sup>126</sup> Because Decision 64/10 only attributed rights to nationals of the Mercosur member states, some authors have expressed the concern that the Mercosur Citizenship Statute might have negative implications for securing the rights of other migrants.<sup>127</sup>

<sup>118</sup> Caballero Santos, 'Mercosur, the Role of Ideas and a More Comprehensive Regionalism', 78 *Colombia Internacional* (2013) 129, at 129.

<sup>119</sup> *Ibid.*, 140.

<sup>120</sup> Acuerdo sobre residencia para nacionales de los Estados Partes del MERCOSUR, Bolivia y Chile (Residence Agreement), Doc. MERCOSUR/RMI/CT/ACTA 04/02, 6 December 2002, available at [www.mercosur.int/documento/acuerdo-residencia-nacionales-estados-partes-mercotur/](http://www.mercosur.int/documento/acuerdo-residencia-nacionales-estados-partes-mercotur/).

<sup>121</sup> Acosta Arcarazo, 'Toward A South American Citizenship? The Development of a New Post-National Form of Membership in the Region', 68 *Journal of International Affairs* (2015) 213, at 216–217.

<sup>122</sup> Residence Agreement, *supra* note 120, Art. 4.

<sup>123</sup> *Ibid.*, Art. 5.

<sup>124</sup> *Ibid.*, Art. 9. For more discussion, see Margheritis, 'Mercosur's Post-Neoliberal Approach to Migration: From Worker's Mobility to Regional Citizenship', in D.J. Cantor, L. Feline Freier and J.P. Gauci (eds), *A Liberal Tide?: Immigration and Asylum Law and Policy in Latin America* (2015) 57, at 60.

<sup>125</sup> Estatuto de la Ciudadanía del Mercosur Plan de Acción, Decision of the Mercosur Common Market Council 64/10, 16 December 2010.

<sup>126</sup> Estatuto de la ciudadanía del Mercosur plan de acción: Actualización de la Decisión CMC No 64/10, Decision of the Mercosur Common Market Council, Doc. MERCOSUR/CMC/DEC 32/17, 20 December 2017.

<sup>127</sup> P. Ceriani Cernadas, 'Migration, Citizenship and Free Movement in South America: A Rights-Based Analysis of Regional Initiatives', United Nations Research Institute for Social Development Publications (2013), at 1, available at [www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/174C45EB44BF92D1C1257D6C0029E0CB?OpenDocument](http://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/174C45EB44BF92D1C1257D6C0029E0CB?OpenDocument).



According to the 2013 Buenos Aires Declaration, the South American Conference on Migration recognized the human right to migration and the rights of migrants as equal subjects of law.<sup>128</sup> Progressive national migration laws in Argentina and Uruguay also protect the human right to migrate as well as the equality of social rights even in the case of irregular migrants. It has been argued on this basis that the rights granted under the Mercosur Citizenship Statute should at least cover the nationals of Mercosur's associate states.<sup>129</sup> However, this problem may in part be eliminated by the ongoing process of establishing a South American citizenship within the Union of South American Nations.<sup>130</sup>

The Mercosur Residence Agreement can be seen as paving the way for the legal status of Mercosur citizenship.<sup>131</sup> However, although the Residence Agreement introduced new rules on residence, it did not eliminate border controls between the member states.<sup>132</sup> There have been some attempts to create regional identification documents and visa exemptions in Mercosur.<sup>133</sup> But it remains to be seen whether the Residence Agreement will make a fully coordinated immigration policy possible.<sup>134</sup> In the meantime, the lack of enforcement mechanisms means that nationals of the member states have limited access even to their current rights to free movement and residence.<sup>135</sup>

In principle, binding Mercosur laws prevail over conflicting national laws because the member states are monist in their reception of international law. The member states also have the obligation to implement binding Mercosur decisions into their national legislation under Article 42 of the Protocol of Ouro Preto. Invoking these principles is nevertheless difficult because there is no supranational court or tribunal in Mercosur.<sup>136</sup> In the context of free movement and residence, possible disputes are directed to the Mercosur Forum on Migration for informal settlement.<sup>137</sup>

Mercosur policies are often defined within the states rather than regionally.<sup>138</sup> Moreover, the participation of civil society actors has been described as trivial in

<sup>128</sup> Buenos Aires Declaration of the South American Conference on Migration 2013, available at [http://csm-osumi.org/sites/default/files/documentos%20csm/declaracion\\_de\\_buenos\\_aires\\_28agostofinal\\_1.pdf](http://csm-osumi.org/sites/default/files/documentos%20csm/declaracion_de_buenos_aires_28agostofinal_1.pdf).

<sup>129</sup> Ceriani Cernadas, *supra* note 127, at 14.

<sup>130</sup> For more about this development, see, e.g., D. Acosta Arcarazo, *The National versus the Foreigner in South America: 200 Years of Migration and Citizenship Law* (2018), at 173–198.

<sup>131</sup> E.g., Simone, 'Nationality and Regional Integration: The Case of the European Union', in A. Annoni and S. Forlati (eds), *The Changing Role of Nationality in International Law* (2013) 169, at 170.

<sup>132</sup> Ceriani Cernadas, *supra* note 127, at 5.

<sup>133</sup> Acuerdo para la Creación de la Visa Mercosur, Doc. MERCOSUR/CMC/DEC 16/03, 15 December 2003. For more about these developments, see Margheritis, *supra* note 124, at 61.

<sup>134</sup> Giupponi, *supra* note 116, at 123.

<sup>135</sup> Simone, *supra* note 131, at 170.

<sup>136</sup> Dispute settlement mechanism was established by the 1991 Brasil Protocol, which was replaced by the 2002 Protocol of Olivos (with provisions on the creation of the Permanent Revision Tribunal). Protocolo de Brasilia para la Solución de Controversias, Doc. MERCOSUR/CMC/DEC 01/91 (1991); Protocolo de Olivos para la Solución de Controversias en el Mercosur, 18 February 2002. The system arguably has several problems, including the fact that only states can be parties to dispute settlement and they can prolong negotiations almost indeterminately. Moxon-Browne, 'MERCOSUR and the European Union: Politics in the Making?', in F. Laursen (ed.), *Comparative Regional Integration: Europe and Beyond* (2010) 131, at 136–137.

<sup>137</sup> Acosta Arcarazo, *supra* note 121, at 217.

<sup>138</sup> Grugel, 'Democratization and Ideational Diffusion: Europe, Mercosur and Social Citizenship', 45 *Journal of Common Market Studies* (2007) 43, at 56–57.

regard to the actual decision-making.<sup>139</sup> The creation of the Economic and Social Consultation Forum (elForo Consultivo Económico Social) in 1999 can be viewed as a step towards more direct civil society participation. Another step was the establishment of the Parliamentarian Joint Commission (laComisión Parlamentaria Conjunta) in 1991. As the predecessor of the Mercosur Parliament, the commission was composed of members of the national parliaments, but its tasks were limited to consulting. The constitutive protocol for the Creation of Regional Mercosur Parliament (Parlasur) was accepted in 2006, and it includes a reference to direct elections.<sup>140</sup> In the future, Parliament might therefore become a deliberative forum for Mercosur, in spite of its lacking decision-making powers.<sup>141</sup>

The Mercosur member states have historical problems with social inclusion. Democratization did not solve these problems, and they were arguably worsened by the neo-liberal reforms in the 1980s and 1990s.<sup>142</sup> In theory, regional integration could strengthen democratic governance in the region.<sup>143</sup> But the socio-political agenda of Mercosur has also been described as a ‘post neo-liberal’ attempt to give socio-economic decisions ‘back to the state’.<sup>144</sup> The politicization of regional integration may explain why economic integration and migration have separated in Mercosur.<sup>145</sup> It is therefore not always clear whether the socio-political programme of Mercosur seeks to advance the regional project or the process of state building.

### ***D Imagining a Regional Peoplehood: Belonging ‘Before’ or ‘Because of’ Membership?***

ASEAN, ECOWAS and Mercosur share the objective of ‘people-oriented’, ‘people-centred’ or ‘people-driven’ integration. However, it has been seen above in this section that these attributes mean different things to different RIOs. Above all, there is no uniform understanding of what the origins of a regional peoplehood are and, thus, of what role individuals can play in regional community building. Two distinctly different visions of a regional community emerge from the comparative review of ASEAN, ECOWAS and Mercosur – one that views a sense of regional identity as a basis for

<sup>139</sup> Ratton Sanchez, ‘Civil Society in Mercosur: Some Critical Points’, in W. Matiaske *et al.* (eds), *The European Union as a Model for the Development of Mercosur: Transnational Orders between Economic Efficiency and Political Legitimacy* (2007) 77, at 101.

<sup>140</sup> Protocolo Constitutivo del Parlamento del Mercosur, Doc. MERCOSUR/CMC/Dec 23/05 (2005), Art. 6(1).

<sup>141</sup> Caballero Santos, *supra* note 118, at 133.

<sup>142</sup> Grugel, ‘Citizenship and Governance in Mercosur: Arguments for a Social Agenda’, 26 *Third World Quarterly* (2005) 1061, at 1070.

<sup>143</sup> *Ibid.*, at 1074. This view finds support from the Protocol of Ushuaia on Democratic Commitments in Mercosur 1998, 2177 UNTS 383, which made an explicit connection between democracy and participation in regional integration. However, the definition of democracy amongst Mercosur member states has been criticized for its narrowness (especially in regard to the prominent role of presidents in regional integration). E.g., Rüländ and Bechle, *supra* note 58, at 74.

<sup>144</sup> Margheritis, *supra* note 124, at 57.

<sup>145</sup> *Ibid.*, at 72. For more discussion, see Margheritis, ‘Piecemeal Regional Integration in the Post-Neoliberal Era: Negotiating Migration Policies within Mercosur’, 20 *Review of International Political Economy* (2013) 541.

attachment and the other that holds the status of regional citizenship as a bounding of participation.

The ASEAN motto 'One Vision, One Identity, One Community' shows that regional community building plays a central role in the rhetoric of ASEAN integration. However, it is clear that the ASEAN community is not envisaged as a polity that would cross the borders of ASEAN member states. On the contrary, although the ASEAN Charter emphasizes the values of democracy, rule of law and good governance, the fundamental principles of ASEAN integration include non-interference and national sovereignty. Moreover, although the ASEAN Socio-Cultural Community Blueprint 2025 explicitly refers to rights-based principles in the promotion of ASEAN policies and programmes, the role of individual rights in ASEAN community building is minimal if compared with the other two RIOs under consideration. The interesting question, therefore, is what kind of community is fostered by the identity-based understanding of regional belonging in ASEAN.

The idea of ASEAN as a community of caring societies assumes that socio-economic development within the member states, together with an awareness of ASEAN cultural heritage, will bind the member states and their nationals together. Moreover, it seems that the shared values and cultural heritage that comprise the core of an ASEAN collective identity under Article 35 of the ASEAN Charter are envisaged as something that exists independent of the integration process. Depicting the sense of regional belonging prior to the integration process resembles a communitarian vision of community building, which explains the existence of a political community by relations of *ex ante* belonging between its members.<sup>146</sup> The task of individuals is therefore to absorb the given vision of regional belonging, as opposed to developing a sense of such belonging by actively engaging in the process of regional community building.

Unlike in the case of ASEAN, the official documents of ECOWAS and Mercosur give a central role to individual rights in regional community building. It can be argued that, instead of assuming *ex ante* belonging and attachment between nationals of member states, both organizations view regional belonging as something that can be constructed by granting nationals of the member states social, economic or political rights in other member states. However, there are important differences between these two RIOs in this area. The status of ECOWAS community citizenship already exists, whereas Mercosur works towards adopting a regional citizenship by 2021. Further differences arise in relation to the personal and material scope of regional rights.

ECOWAS community citizens enjoy a temporary right to stay in the territory of another member state without any visa requirement. They also enjoy the right to residence for the purposes of employment and job seeking in other member states. Unlike in ECOWAS, the border controls have not been abolished between the Mercosur member states. However, during their lawful residence in another member state, the Mercosur Residence Agreement confers a set of social and economic rights on nationals of the member states. Some of these rights may be relevant to migrants who are

<sup>146</sup> There exists a considerable amount of literature on the particularities of Confucian communitarianism in East Asia. As an introduction to the topic, see, e.g., S. Kim, *Confucian Democracy in East Asia: Theory and Practice* (2014).

economically inactive, providing that, after two years, they have been able to prove sufficient means of living to secure permanent residence in the host member state. Moreover, the plan for a Mercosur Citizenship Statute promises fundamental rights to all nationals of the member states. ECOWAS grants a limited right to equal treatment to migrant workers only. The enjoyment of ECOWAS citizenship rights is also contingent on meeting the criteria for admissibility under national immigration law.

It can be argued on this basis that the ‘ECOWAS of People’ has its focus on the qualified freedom of migration, whereas ‘Somos Mercosur’ has adopted a more socio-economic approach to regional rights and community building. These differences notwithstanding, ECOWAS and Mercosur share a vision of regional belonging as a product of, rather than a precondition for, socio-political membership. That a meaningful polity and, thus, citizenship as an expression of its membership are only possible if certain conditions are met<sup>147</sup> does not indicate that a political community can only emerge from a shared collective identity. The crucial question to the theory of regional community building is therefore which one should come first: a sense of regional belonging or access to socio-political membership.

Seeing the connection between regional belonging and access to socio-political membership as a two-way process highlights the active role of citizens in regional community building. However, although the visions of regional community building in ECOWAS and Mercosur therefore provide a diametrically opposed picture of how the emergence of a regional peoplehood is envisaged in ASEAN, they do not question regional belonging as the end value of regional community building. This finding is important when we move on to consider why both identity-based and citizenship-based visions of a regional community seem to promise more than they are currently able to deliver when it comes to people-oriented integration and community building.

## 4 Beyond Belonging: Two Critiques of People-Oriented Regional Community Building

Despite their different understandings of a regional peoplehood, the official vision of a people-oriented regional community and the reality of integration processes clash in all three RIOs under consideration. In this section, the diverging reality and rhetorics of regional community building will be discussed from two perspectives. It will first be seen how the so-called ‘reality-rhetorics gap’ can be explained by norm diffusion and national political interests.<sup>148</sup> It will then be argued that this gap points towards a deeper normative problem in the theory of regional community building – namely, the failure to accommodate intra-regional differences into the vision of a regional

<sup>147</sup> For more on these conditions, see, e.g., Walker, ‘The Place of Territory in Citizenship’, in Shachar *et al.*, *supra* note 2, 553. For a more critical discussion on the moral and territorial boundaries of citizenship, see, e.g., Williams, ‘Nonterritorial Boundaries of Citizenship’, in S. Benhabib, I. Shapiro and D. Petranovic (eds), *Identities, Affiliations, and Allegiances* (2007) 226.

<sup>148</sup> For the concepts of ‘transformation gap’ or a ‘rhetoric-action gap’, see Jetschke, ‘Institutionalizing ASEAN: Celebrating Europe through Network Governance’, *22 Cambridge Review of International Affairs* (2009) 407, at 412; Rüländ and Bechle, *supra* note 58, at 62.

peoplehood. The second part of this section will consider how regional membership politics can come into terms with the reality of intra-regional differences.

## A The Diverging 'Reality' and 'Rhetoric' of Regional Community Building

In the era of new regionalism, many integration theorists adopt a constructivist perspective on regional interests and identities as products of social interaction.<sup>149</sup> From this starting point, regional community building would appear as a process in which regional norms and interaction transform collective identities within the member states. But the analysis of ASEAN, ECOWAS and Mercosur demonstrates that the objective of regional community building and the actual governance of regional integration processes often point in opposite directions. The constructive theory of regional community building must therefore consider when, if at all, a 'collective ideational change'<sup>150</sup> that could transform the existing, more bounded, identities becomes possible and what hinders such change in intergovernmental RIOs.

In ASEAN, a strong preference to consensus-based decision-making is combined with weak regional institutions. There is no ASEAN court, and conflict resolution is based on dispute settlement. The implementation of regional policies and initiatives is consequently hampered both by the lack of legal mandates and by the lack of enforcement mechanisms and effective sanctions.<sup>151</sup> In spite of the higher degree of institutionalization and legalization in ECOWAS and Mercosur, the lack of implementation and effective enforcement constitutes a major obstacle to regional community building in these two RIOs. ECOWAS community citizenship rights to entry, stay, residence, equal treatment and access to the ECOWAS Community Court of Justice are far from effective. In Mercosur, the gap between the formal and actual protection of regional rights is even more striking because there is no supranational court that could ensure that the member states give primacy to regional laws and comply with their obligation to implement Mercosur decisions into national law.

The divergence between the official goals and the reality of intergovernmental regional integration has been thoroughly analysed in the study of ASEAN integration. The notion of a 'hybrid' character of ASEAN suggests that the language of ASEAN integration imitates European integration, albeit the 'social structure' and 'political culture' of the ASEAN member states do not lend support to such developments.<sup>152</sup> This branch of literature views functionalist explanations for regional developments inadequate. Instead, the analytical focus is placed on

<sup>149</sup> E.g., Manea, *supra* note 45, at 28. For more about social constructivism as an integration theory, see, e.g., Risse, 'Social Constructivism and European Integration', in A. Wiener and T. Dietz (eds), *European Integration Theory* (2004) 159, at 160–166.

<sup>150</sup> This term comes from J.W. Legro, 'The Transformation of Policy Ideas', 44 *American Journal of Political Science* (2000) 419, at 420.

<sup>151</sup> E.g., Chavez, *supra* note 36, at 361; Beeson and Gerard, *supra* note 57, at 56.

<sup>152</sup> For this point, see, e.g., Jetschke and Rüländ, 'Decoupling Rhetoric and Practice: The Cultural Limits of ASEAN Cooperation', 22 *Pacific Review* (2009) 179, at 181.

diffusion processes that underlie regional integration.<sup>153</sup> The objective of diffusion is to increase the organization's legitimacy by copying the institutional structure and practices of other organizations.<sup>154</sup> When such activity remains rhetorical, it arguably produces dissonance between the RIO's normative ideals and its concrete policies.<sup>155</sup> The norm-diffusion theory refuses to see regional institutional reforms as an indication of 'legalization' or 'constitutionalization' of regional integration processes.<sup>156</sup> Rather, it views them as a 'strategic reaction' by governing elites to external pressures.<sup>157</sup>

The perceived degree of norm diffusion varies between RIOs. Unlike ASEAN, Mercosur has arguably reached the level at which it is possible to speak of the localization of diffused norms.<sup>158</sup> However, the case of ECOWAS illustrates that a purely diffusion-based explanation for regional integration processes is inadequate. It seems clear that the principles of European economic integration have provided a source of inspiration, *inter alia*, for how the right to free movement has evolved in ECOWAS. But the status of ECOWAS community citizenship saw daylight before the status of EU citizenship.<sup>159</sup> Similarly, the rules for standing before the ECOWAS Community Court of Justice are more favourable to individuals than those in EU law.<sup>160</sup> Along with norm diffusion, it is therefore possible to trace a constitutionalizing vein in ECOWAS integration.

From a comparative perspective, norm diffusion provides an important, but not exhaustive, explanation for the gap between the rhetoric and the reality of regional community building. Along with diffusion-based motivations, both internal and external functionalist needs provide impetus for regional integration processes.<sup>161</sup> It has been noted that diffusion-based accounts may fail to adequately take into account the domestic politics that often shape regional integration processes.<sup>162</sup> For instance, the renewed focus of Mercosur on social development can be viewed as an alternative to the past neo-liberal policies and, thus, as a means of strengthening more statist

<sup>153</sup> Jetschke, *supra* note 148, at 422. It is also common to distinguish between 'active' norm diffusion, such as 'normative emulation' and 'passive' diffusion, such as 'mimicry'. Risse, 'The Diffusion of Regionalism', in Börzel and Risse, *supra* note 64, 87.

<sup>154</sup> E.g., Jetschke and Rüländ, *supra* note 152, at 183; Rüländ and Bechle, *supra* note 58, at 64.

<sup>155</sup> E.g., Rüländ and Bechle, *supra* note 58, at 65.

<sup>156</sup> *Ibid.*, at 81.

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*, at 82. In the norm-diffusion theory, 'institutional isomorphism' refers to '[a]dopting new norms rhetorically', while 'localization' refers to behaviour that 'entails a partial normative transformation among the norm recipients'. *Ibid.*, at 64–65.

<sup>159</sup> Compare Treaty on European Union, OJ 1992 C 191/01, Art. 8 with 1975 ECOWAS Treaty, *supra* note 65, Art. 27 and Protocol Relating to Community Citizen, *supra* note 80.

<sup>160</sup> Compare Treaty on the Functioning of the European Union, OJ 2012 C 326/47, Art. 263 with Protocol of the Community Court of Justice, *supra* note 103, Art. 10.

<sup>161</sup> E.g., Börzel, 'Theorizing Regionalism: Cooperation, Integration, and Governance', in Börzel and Risse, *supra* note 64, 41.

<sup>162</sup> Risse, *supra* note 153.

policies by left-wing governments.<sup>163</sup> It is therefore also possible to see regional community building as a tool for nation building.<sup>164</sup>

In sum, both norm diffusion and the international and domestic politics can explain the dynamics that separate the rhetoric of people-oriented regional community building from the reality of integration processes in contemporary intergovernmental RIOs. Making recommendations on how a more realistic vision of regional community building would look like would therefore require an in-depth analysis of the political and social history of the given region. Before engaging in such a task, it is nevertheless important to have a critical look at the strategies of community building that are currently fostered by ASEAN, ECOWAS and Mercosur.

## ***B Ingraining Difference into the Theory of Regional Community Building***

Regional membership politics can be deemed unrealistic on the grounds that it masks other international and domestic motivations than that of regional community building. But both the diffusion-based and the functionalist explanations for the 'reality-rhetoric' gap leave unanswered the more fundamental question of whether the prevailing visions of a regional peoplehood comply with the ideal of people-oriented integration in the first place. The comparative analysis of regional community building must therefore be accompanied by a normative critique that examines what claims about belonging are suitable for the theory of people-oriented regional community building. This discussion is rooted in the analytical distinction between belonging, recognition and difference as competing bases for membership politics, as discussed in section 2.

In ASEAN, the idea of collective identity gives the regional project clear outer limits, whether real or imagined. When membership politics is based on *ex ante* belonging, it views difference primarily as a threat to the sense of belonging and, thus, to the existence of a political community. This tendency to prioritize unity over diversity is captured in Rogers Brubaker's observation that membership politics that has its basis in belonging relies heavily on 'practices of identification, classification, and categorization'.<sup>165</sup> Although the ASEAN documents recognize the diversity of regional experience, they envisage 'unity in difference' at the level of collective identification.<sup>166</sup> The role of regional cooperation is to unveil and strengthen a shared cultural heritage rather than to construct new sources of regional belonging by transforming access to socio-political membership through regional rights and agency.

Rights-based visions of regional community building in ECOWAS and Mercosur place less weight on the ideal of regional unity. Instead, access to regional rights on

<sup>163</sup> Margheritis, *supra* note 145, at 552, 557.

<sup>164</sup> E.g., Söderbaum, 'Old, New, and Comparative Regionalism: The History and Scholarly Development of the Field', in Börzel and Risse, *supra* note 64, 16.

<sup>165</sup> R. Brubaker, *Grounds for Difference* (2015), at 81.

<sup>166</sup> ASEAN Charter, *supra* note 21, Art. 2; see also Brubaker, *supra* note 165, at 132–133 about how belonging-based membership politics advances a 'congruence' between 'culture' and 'polity'.

the basis of a regional citizenship or, simply, as a national of one of the member states becomes a potential source of regional belonging and identification. The individual rights to entry, residence and security of residence form the core of regional rights. These core rights are often accompanied by a set of social and economic rights, as has been seen in section 3. The boundaries of socio-political membership are transformed when these rights are granted to regional migrants in spite of their status as non-nationals. Regional rights therefore revisit on what basis people are recognized as worthy of equal protection in the member states.

Since persons who enjoy access to socio-political membership on the grounds of regional rights are different in ways that are not sufficiently valued nationally, it can be argued that the focus of regional membership politics has already moved from belonging towards recognition in ECOWAS and Mercosur. However, the ideal of equal recognition was problematized in section 2 of this article because it turns a blind eye to how some group differences create more severe obstacles to access and participation than others.<sup>167</sup> The theory of people-oriented regional community building must therefore address the possibility that relevant structural inequalities within RIOs do not just emerge between nationals and non-nationals but also between privileged non-nationals and less privileged non-nationals.

What role individuals can play in regional community building depends on which normative basis is adopted for the regional membership politics. By ignoring other intra-regional differences than nationality, the theory of regional community building runs into the risk of *de facto* excluding some nationals of the member states from regional community building from the outset. The central question to people-oriented regional community building is therefore not how to foster a sense of regional belonging between nationals of the member states but, rather, who should be able to participate in the process of regional community building and what legal and political tools are needed to secure that participation.

Intra-regional differences form the context in which every vision of regional community building must operate. In so far as regional community building is based on *ex ante* belonging, it is not surprising that the reality of regional community building lags behind the rhetoric of integration. As alternatives to the belonging-based membership politics, the politics of recognition and the politics of difference share the premise that community building must not be based on assimilation. But the politics of difference goes further in analysing how societal power relations render only some differences critical when it comes to disadvantages in access to societal participation.

Whether a specific difference is recognized as a potential source of disadvantage in the regional membership politics depends on whose contribution to the process of regional community building is deemed valuable in the first place. Both the ASEAN 2025 blueprints and the ECOWAS Vision 2020 document explicitly recognize the vulnerable position of some social groups. But none of the three RIOs under consideration fully integrates the reality of intra-regional differences into the theory of regional

<sup>167</sup> This point is captured in the statement that 'treating all differences the same' is often as mistaken as not recognizing them at all. Foster, *supra* note 12, at 111.



community building. Even in the absence of more detailed quantitative data, this constitutes a major normative problem from the perspective of people-oriented regional community building. It is therefore unfortunate that the question of how different regional integration organizations deal with difference, as opposed to belonging and unity, is usually neglected in the comparative study of regionalism.

A revised theory of people-oriented community building would need to consider how 'positional differences', such as gender, class, age and ability and 'cultural differences', such as religion and ethnicity, affect participation in regional integration processes.<sup>168</sup> However, if the 'dilemma of difference' in regional community building was solved by affirming various group identities,<sup>169</sup> the risk is that many of the problems that characterize the politics of belonging would be reproduced in a new context.<sup>170</sup> Group identity as a shared experience of belonging to a social group is often based on projecting otherness outside the group, meaning that it, too, easily becomes insensitive to differences that exist within the group or the desired community.<sup>171</sup>

The only way out of this conundrum may be that the theory of regional community building will take more seriously the question of how recognizing the 'non-identical' in every process of identification will change the encounter of otherness in regional integration processes.<sup>172</sup> This would mean that the idea of regional identification as a source of unity is replaced with regional policies that, first, recognize the experience of difference as constitutive of regional identification and, second, seek to ensure that the existing intra-regional differences do not place unjust obstacles to regional participation. Facing this challenge will require a methodological and substantive synthesis between integration theory and critical social theory.<sup>173</sup> Such an approach to regional community building is also dependent on a constructive premise that regional integration processes can incrementally create a new social reality by transforming the perception of difference within RIOs.<sup>174</sup>

<sup>168</sup> For the distinction between 'positional' and 'cultural' differences, see Young, 'Structural Injustice and the Politics of Difference', in G. Craig, T. Burchardt and D. Gordon (eds), *Social Justice and Public Policy: Seeking Fairness in Diverse Societies* (2008) 77.

<sup>169</sup> This notion suggests that systematic inequalities and disadvantage can be 'recreated' both by ignoring and by recognizing group difference. M. Minow, *Making All the Difference: Inclusion, Exclusion and American Law* (1990).

<sup>170</sup> For the argument that 'identity politics' may often fall into the trap of 'essentialism', see, e.g., Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', 1 *University of Chicago Legal Forum* (1989) 139.

<sup>171</sup> E.g., Connolly notes that '[i]dentity – converts difference into otherness in order to secure its own self-certainty' and that, therefore, 'power is always inscribed in the relation an exclusive identity bears to the differences it constitutes'. W. Connolly, *Identity/Difference: Democratic Negotiations of Political Paradox* (2nd edn, 2002), at 64, 66.

<sup>172</sup> For 'non-identity' in critical social theory, see, e.g., T.W. Adorno, *Negative Dialectics* (1966), at 146–167. For Adorno, 'non-identity' is the 'secret telos of identification' that 'can be salvaged' (at 149).

<sup>173</sup> For an attempt in this direction, see, e.g., Neuvonen, 'Retrieving the "Subject" of European Integration', 25 *European Law Journal* (2019) 6.

<sup>174</sup> *Ibid.* For an early reference to 'constructive citizenship' as a way 'to invent an alternative strategy for dealing with difference', see Kostakopoulou, 'Towards a Theory of Constructive Citizenship in Europe', 4 *Journal of Political Philosophy* (1996) 337, at 341.

It is common to argue that differences between RIOs should be given more space in theorizing regional community building. But the analysis of regional community building in this article moved the focus to how the reality of difference shapes RIOs from within. Because this question is still largely ignored in European integration studies, creating a more developed theory of difference for regional community building is not automatically bound to EU-centrism. On the contrary, the fact that the politics of regional integration come before economics in many non-European integration organizations means that they may have more leeway in developing such a theory, providing, of course, that this issue would find its way to their political agenda.<sup>175</sup>

Thus, transforming collective identities may be deemed as an unhelpful and unrealistic goal in intergovernmental RIOs.<sup>176</sup> But the constructive approach to regional community building becomes more appealing if it focuses on transforming systematic obstacles to regional participation rather than on creating a sense of unity between nationals of different member states. Here, the emphasis is on the word ‘more’. Although the politics of difference poses questions that are more relevant to people-oriented regional community building than those posed by the politics of belonging, revising the foundations of regional community building along these lines would run against the present ideals of sovereignty and balance of power in most intergovernmental RIOs.

## 5 Conclusion

Different regional development histories mean that it is not possible to draw direct analogies between contemporary intergovernmental RIOs even when they use very similar concepts and terminology in describing regional community building. By comparing ASEAN, ECOWAS and Mercosur, this article has formed a comprehensive picture of identity-based and citizenship-based approaches to people-oriented regional community building in contemporary intergovernmental RIOs. This analysis results in two drastically different visions of what the origins of a regional peoplehood are and of what role individuals can have in people-oriented regional community building.

While ASEAN views a pre-existing regional identity as the main source of regional belonging, ECOWAS and Mercosur approach the interplay between belonging and access as a two-way process. These differences notwithstanding, the common denominator to all three RIOs is that the official vision of people-oriented regional community building differs from the reality of regional integration. Popular explanations for this situation include references both to norm diffusion and to domestic politics. The former suggests that RIOs seek to internationally legitimate their actions by imitating

<sup>175</sup> E.g., Kim, ‘Integration Theory and ASEAN Integration’, 29 *Pacific Focus* (2014) 374, at 376, 381.

<sup>176</sup> The ‘reality-rhetoric’ gap is often used to question the constructivist understanding of regional community building. In the ASEAN context, this is captured in the claim that ‘those in the association or among its academic enthusiasts who seek to embellish it as a framework for a more integrated ASEAN identity grounded on its distinctive norms and processes and framed by its inimical discourse only succeed in creating not a community but an illusion’. Jones and Smith, ‘Making Process, Not Progress: ASEAN and the Evolving East Asian Regional Order’, 32 *International Security* (2007) 148, at 149.

other RIOs, whereas the latter primarily views regional integration processes as a tool for state building.

This article has taken the critical analysis of regional community building further by challenging the central role of belonging in regional membership politics. The mainstream theories of regional community building, whether communitarian or not, tend to remain blind to how differences between privileged and non-privileged nationals of the member states place structural obstacles to citizens' participation in regional community building. In this article, shifting the analytic focus from belonging to recognition and difference is therefore introduced as a necessary step in theorizing regional community building from a more realistic constructive and people-oriented perspective.