

The ASEAN Commission for the Protection of Human Rights of Women and Children (ACWC)

Module 4

The ASEAN Commission for The Protection Of Human Rights of Women And Children (ACWC)

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MODULE 4.1.

The ACWC Terms of Reference



Objectives:

- » To understand the Terms of Reference of ASEAN.
- » Commission for the Promotion and Protection of the Rights of Women and Children (ACWC).
- » To facilitate understanding between the ACWC Terms of Reference and the states' obligations to implement them.
- » To understand and evaluate ACWC Terms of Reference and its mandate of protection and promotion of women and children's rights in ASEAN.
- » To identify opportunities and limitations of the TOR for peoples' continuing engagement on issues of human rights, women and children.



Knowledge Acquired:

- » Knowledge and understanding of the ACWC's TOR.



Time: 1.5 hours

Materials: ACWC's Term of Reference, flap paper, pens



Procedures:

1. Divide the participants into four workshop groups. Each group shall be handed specific provisions of the ACWC's ToR to analyse and comment. Discuss what the group thinks the provisions should be.
 - Group 1: Purpose and Principles
 - Group 2: Status, Mandate and Functions
 - Group 3: Composition
 - Group 4: Modalities, Work Plan and Funding, Role of the SG and the Secretariat

2. Present to the plenary the group's analysis and critique the assigned topic.

3. Ask the plenary for comments and ensure the discussion reaches unity. Regroup and build consensus on the key points of issues that are agreed by all regarding the TOR. Then, invite a volunteer group of 4-5 people to draft a short statement that will be presented to the plenary at the end of the day.



Debriefing:

- » All ASEAN member countries are signatories to CEDAW and CRC.
- » ASEAN recognised the importance of the conventions and declarations especially those on women and children in 1998, on the occasion of the 50th anniversary of UDHR.
- » In the Hanoi Plan (1999-2004) it considered implementation of CEDAW and CRC in its Human Rights Activities.
- » In ASEAN 2025: Forging Ahead Together ACWC is mentioned in ASCC Blueprint i.e. to "Enhance regional initiatives to promote and protect the rights of women and children as well as persons with disabilities especially through the work of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)" in the sub section of promotion and protection of human rights towards the realisation of the inclusive characteristic of ASCC.



Conclusion:

- » Increasing appreciation of the agencies on women is important.
- » Not only CEDAW's principles of non-discrimination but also the principles of substantive equality should equally be respected. ACWC's TOR evades matters provided in Article 5 (a) of CEDAW:
- » "States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"

Handout Material 4.1.1

History of ACWC'S Establishment

The ACWC was inaugurated on 7 April 2010 during the 16th ASEAN Summit in Hanoi, Vietnam. For many civil society actors, the establishment of the AICHR in 2009 and the ACWC in 2010 represented important milestones in addressing the gap between international human rights laws and national implementation and practice.¹ Indeed, among the many reasons for this historical development, the creation of AICHR and ACWC underscores the critical role civil society actors have played in efforts to incorporate human rights into ASEAN's agenda and institutionalise human rights within the Association since the 1990s.²

The momentum of civil society groups lobbying for stronger human rights promotion and protection in the region coincided with notable shifts within ASEAN that indicated a growing receptiveness among state and non-state actors to the global discourse on human rights, at least in theory. In 1993, ASEAN recognised the concept of introducing regional arrangements for the promotion and protection of human rights at the Bangkok Declaration of the Preparatory Regional meeting for Asia of the World Conference on Human Rights. In July of the same year, and a month following the Vienna World Conference and the subsequent Vienna Declaration and Programme of Action,³ ASEAN Member States incorporated a section on human rights in the Joint Communiqué at the 26th ASEAN Ministerial Meeting, in which they agreed to “consider the establishment of an appropriate regional mechanism on human rights.”⁴

Progress on institutionalising a regional human rights mechanism did not immediately gain traction within ASEAN following this agreement. However, civil society efforts, especially those from the Working Group for an ASEAN Human Rights Mechanism (established in 1996), continued to advocate and played an instrumental role in advancing ASEAN's agreement to promote human rights in the Vientiane Action Program, which was adopted in 2004.⁵

On 15 December 2008, the ASEAN Charter entered into force, which included Article 14, calling for the inclusion of an ASEAN human rights body. In March 2009 at the 14th ASEAN Summit, ASEAN leaders adopted the Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015), which included the ASEAN Political-Security Community (APSC) Blueprint and the ASEAN Socio-Cultural Community (ASCC) Blueprint. This Declaration further “reiterate[d] the establishment of an ASEAN commission on the promotion and protection of the rights of women and children as an important measure to ensure equitable development for women and children.”⁶

1 Forum Asia, “Report on The ACWC+10: Assessing The Commission's Impact on Protecting Women and Children's Rights in ASEAN,” 2020, <https://www.forum-asia.org/uploads/wp/2020/10/ACWC-Report.pdf>.

2 Mathew Davies, “Explaining the Vientiane Action Programme: ASEAN and the Institutionalisation of Human Rights,” *Pacific Review* 26, no. 2 (2013): 385–406.

3 OHCHR, “Vienna Declaration and Programme of Action” (1993).

4 ASEAN, “Joint Communiqué of the 26th ASEAN Ministerial Meeting,” 1993, https://asean.org/?static_post=joint-communication-of-the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993.

5 Sriprapha Petcharamee, “The ASEAN Human Rights Architecture: Its Development and Challenges,” *Equal Rights Review* 11 (2013): 48, https://www.equalrightstrust.org/ertdocumentbank/Sriprapha_Petcharamee_ERR11.pdf.

6 ACWC, “Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC),” 2010, https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR_ACWC.pdf.

In the period leading to the creation of the ACWC, following agreement among Member States ASEAN also issued a number of declarations on gender, women's rights and children's rights, including the 1988 Declaration on the Advancement of Women in the ASEAN Region,⁷ the 2004 Declaration on the Elimination of Violence Against Women in the ASEAN Region,⁸ and the 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children.⁹ These declarations reveal ASEAN's movement on gender issues predated its engagement with broader human rights issues.¹⁰

One Commission for women and children

Women and children, despite facing similar challenges, do not necessarily share the same experiences. Children, especially younger ones, are in need of support because of their ongoing development of physical and mental capacities. Women are often targeted for discrimination, violence and other human rights violations, and as such, are a high-risk group. These are blindingly obvious facts that do not normally need to be mentioned, but they do in this context, because of ASEAN's decision to lump together these two very different groups by establishing one Commission to promote and protect the rights of both.

CSOs in the region, UN agencies and other stakeholders have for now accepted this unhealthy arrangement, which is unique to ASEAN, but the long-term solution is to divide the ACWC into two separate Commissions and break this "infantilising" stereotype regarding women. Once this is done, the two Commissions would naturally collaborate and support each other on common issues, while each would have the expertise and capacity to focus on the issues and rights of its respective group.

Support from both state and civil society actors for a specific Commission on women's and children's rights in ASEAN is indicative of the socialisation within the ASEAN Member States (AMS) to the international human rights norms, particularly under the CEDAW¹¹ and CRC.¹² All ASEAN Member States signed and ratified the CEDAW and CRC in the decades prior to the establishment of the ACWC. Given the diversity among ASEAN Member States, the universal ratification of these two Conventions signified a degree of consensus around the recognition of women and of children as rights-holders and the call for a more specialised focus on their rights, including specific needs and circumstances. However, not all AMS have followed ratifications with robust implementation. In addition, AMS's reservations on specific articles of these conventions remain. The Commission's mandate envisioned its role as complementary to that of the international bodies established under the legal framework of CEDAW and CRC, with a view to further ensuring AMS's compliance with these Treaties.¹³

7 "1988 DECLARATION OF THE ADVANCEMENT OF WOMEN IN THE ASEAN REGION", <https://cil.nus.edu.sg/wp-content/uploads/2019/06/1988-Declaration-of-the-Advancement-of-Women-in-the-ASEAN-Region.pdf>.

8 "2004 Declaration on The Elimination of Violence Against Women in The ASEAN Region", <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2004-Declaration-On-The-Elimination-Of-Violence-Against-Women-In-The-ASEAN-Region.pdf>.

9 ASEAN, "ASEAN Declaration Against Trafficking in Persons Particularly Women and Children," 2004, <https://asean.org/asean-declaration-against-trafficking-in-persons-particularly-women-and-children-4/>.

10 Mathew Davies, "Important but De-Centred: ASEAN's Role in the Southeast Asian Human Rights Space," *TrANs: Trans-Regional and National Studies of Southeast Asia* 5, no. 1 (2017): 99–119, <https://www.cambridge.org/core/journals/trans-trans-regional-and-national-studies-of-southeast-asia/article/important-but-decentred-aseans-role-in-the-southeast-asian-human-rights-space/E3C59F45B5E38E0243EC3A05F370ED0F>.

11 UN, "UN Convention on the Elimination of All Forms of Discrimination against Women" (1979), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

12 UN, "UN Convention on the Rights of the Child" (1989), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

13 ACWC, "Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC)."

Table 1: ASEAN Member States’ ratification status of CEDAW and CRC¹⁴

States	Date of Ratification of CEDAW	Date of Ratification of CRC
Brunei	24 May 2006	27 December 1995
Cambodia	15 October 1992	15 October 1992
Indonesia	13 September 1984	5 September 1990
Lao PDR	14 August 1981	8 May 1991
Malaysia	5 July 1995	17 February 1995
Myanmar	22 July 1997	16 July 1991
Philippines	5 August 1981	26 January 1990
Singapore	5 October 1995	5 October 1995
Thailand	9 August 1985	27 March 1992
Vietnam	17 February 1982	28 February 1990

The creation of ACWC represents the confluence of the global discourse and diffusion of human rights law and standards, civil society pressure and advocacy, and the response from key sectoral actors within ASEAN. Yet, the pathway from the 1990s to 2010 reveals an uneven development within ASEAN with respect to its approach to human rights, as the era was marked by steps towards introducing human rights language and principles through regional declarations and programmes, only to be followed by periods of relative silence and inertia. Throughout both waves of action and inaction at the ASEAN level, civil society groups, especially those representing women and children’s rights, continued their campaigns and efforts to push for stronger regional human rights mechanisms. Therefore, their critical role in the formation of ACWC and in the development of ASEAN human rights discourse must be acknowledged and emphasised.

As will be clear from this report, it should also be noted that the ratification of treaties, the adoption of declarations and the establishment of bodies, however significant, are not sufficient to ensure the protection of human rights. For that to happen, the lofty words that these instruments contain must be translated into concrete action on the ground. It is at this practical level that both ASEAN institutions and its Member States have often failed the region’s women and children.

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- 2 These CSOs include the Women’s Legal Bureau, Asia Pacific Forum on Women, Law and Development, International Women’s Rights Action Watch Asia Pacific, and the ASEAN Working Group for the Establishment of an ASEAN Human Rights Group.
 - 3 Mathew Davies, “Explaining the Vientiane Action Programme: ASEAN and the Institutionalisation of Human Rights,” 26(2) Pacific Review 385-406 (2013).

¹⁴ UN, “United Nations Treaty Collection”, https://treaties.un.org/Pages/Content.aspx?path=DB/MTDSG/page1_en.xml%0A%0A.

- 4 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, A/CONF.157/23, [https:// www.ohchr.org/en/professionalinterest/pages/vienna.aspx](https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx).
- 5 Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 23-24 July 1993, https://asean.org/?static_post=joint-communicue-of the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993.
- 6 Sriprapha Petchamesree, "The ASEAN Human Rights Architecture: Its Development and Challenges," 11 Equal Rights Review, 48 (2013).
- 7 Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), issued February 2010. https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf
- 8 <https://cil.nus.edu.sg/wp-content/uploads/2019/06/1988-Declaration-of-the-Advancement-of-Women-in-the-ASEAN-Region.pdf>
- 9 <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2004-Declaration-On-The-Elimination-Of-Violence-Against-Women-In-The-ASEAN-Region.pdf>; https://asean.org/?static_post=declaration-of-the-advancement-of-women-in-the-asean-region-bangkok-thailand-5-july-1988
- 10 <https://asean.org/asean-declaration-against-trafficking-in-persons-particularly-women-and-children-4/>
- 11 Matthew Davies, "Important but De-centred: ASEAN's Role in the Southeast Asian Human Rights Space," 5(1) TraNs: Trans-Regional and National Studies of Southeast Asia 99-119 (2017)
- 12 UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by UNGA resolution 34/180 of 18 December 1979, entry into force 3 September 1981, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.
- 13 UN Convention on the Rights of the Child, adopted by UN General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.
- 14 See ACWC TOR, Articles 1.1, 3.2, 3.4, 5.6, 5.7, 5(11). https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR ACWC.pdf
- 15 United Nations Treaty Collection. https://treaties.un.org/Pages/Content.aspx?path=DB/MTDSG/page1_en.xml

(Source: Forum Asia Report on the ACWC+10 Assessing the Commission's impact on Protecting Women and Children's Rights in ASEAN page 20-22)

Handout Material 4.1.2

ACWC Terms of Reference	
Purposes	Principles
<ul style="list-style-type: none"> • To uphold, promote, protect, respect and fulfil the rights and fundamental freedoms of women and children in ASEAN to live in peace, equality, justice, dignity and prosperity • To promote the well-being development, empowerment and participation of women and children in the ASEAN Community building process; • To enhance regional and international cooperation complementing national and international efforts... ; • To uphold human rights as prescribed by the international human rights declarations and instruments; • To promote stability and harmony in the region, friendship and cooperation among ASEAN Member States 	<ul style="list-style-type: none"> • Respect for human rights and the guiding principles of CEDAW and CRC; • Respect for the principles of impartiality, objectivity, non- selectivity, nondiscrimination and avoidance of double standards and politicisation; • Complement CEDAW and CRC Committees; • Recognition of the primary responsibility of the State on women and children’s rights; • Constructive non-confrontational and cooperative approach on rights of women and children; • Balance between the functions of promotion and protection of rights; • Adoption of an evolutionary approach towards the realisation of rights; • Collaboration and consultative approach with ASEAN Member States, academia and civil society.

(Source: ACWC Terms of Reference Art. 2 and 3)

Handout Material 4.1.3

MANDATE AND FUNCTIONS OF ACWC
<ul style="list-style-type: none"> • To promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children; • To develop policies, programs and innovative strategies to promote and protect the rights of women and children; • To promote public awareness and education of the rights of women and children in ASEAN; • To advocate on the improvement of the situation of women and children; • To build capacities of relevant stakeholders at all levels; • To assist in the preparation of CEDAW and CRC Periodic Reports the Human Rights Council's Universal Periodic Review (U PR) and reports for other Treaty Bodies; • To assist in implementing the Concluding Observations of CEDAW and CRC and other Treaty Bodies related to the rights of women and children; • To encourage ASEAN Member States on the collection and analysis of disaggregated data by sex, age, etc., related to the promotion and protection of the rights of women and children; • To promote studies and research related to the situation and well-being of women and children; • To encourage ASEAN Member States to undertake periodic reviews of national legislations, regulations, policies, and practices related to the rights of women and children; • To facilitate sharing of experiences and good practices; • To propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims; • To encourage ASEAN Member States to consider acceding to, and ratifying, international human rights instruments related to women and children; • To support the participation of ASEAN women and children in dialogue and consultation processes in ASEAN related to the promotion and protection of their rights; • To provide advisory services on matters pertaining to the promotion and protection of the rights of women and children to ASEAN sectoral bodies upon request; • To perform any other tasks related to the rights of women and children as maybe delegated by the ASEAN Leaders and Foreign Ministers

(Source: ACWC Terms of Reference Art. 2 and 3)

Handout Material 4.1.4**ACWC REPRESENTATIVES**

- Government representatives.
- Two per ASEAN Member States, one for women's rights and another for children's rights.
- Qualifications include competence in the field of rights of women and children, integrity, and gender equality.
- Selection process should be according to the internal process of the respective ASEAN Member State that is transparent, open, participatory and inclusive.
- The term of office for each representative is three years with only one additional term of consecutive reappointment possible.
- ASEAN Member States may replace the representative at its discretion but should inform the ACWC the reason for replacement.
- Chairmanship and Vice Chairmanship terms are three years, rotated among ASEAN Member States on an alphabetical basis. The Chair and Vice should not be representatives from the same Member State and with the same area of competence (women's or children's rights).
- Decision making shall be based on consultation and consensus in accordance with the ASEAN Charter.

(Source: ACWC Terms of Reference Art. 6 and 7)

MODULE 4.2.

Introduction to CEDAW and CRC



Objectives:

- » To familiarise participants with CEDAW and CRC.
- » To compare ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) Terms of Reference (TOR) with the ASEAN members' commitment to CEDAW and CRC.



Knowledge Acquired:

- » Familiarisation of CEDAW and CRC.



Time: 1 hour

Materials: Flap paper, crayons, pens.



Procedures:

1. Use the meta-cards from Module 4.1 above about the essence and character of the ACWC's TOR.
2. Divide the participants into two groups on CEDAW and two groups on CRC. Each group will handle half of either CEDAW or CRC and compare it with the TOR of the ACWC.
3. Make notes on blue coloured meta-cards if it coheres with the CRC convention and red if doesn't cohere with CRC. Stick these meta-cards beside the particular points of the ACWC.
4. Similarly, the CEDAW group will write on yellow meta-cards if it coheres with ACWC and green if it doesn't. Stick these meta-cards beside the particular points of the ACWC.

5. Have a plenary discussion.
6. Ask the participants to merge into two large groups of CRC and CEDAW groupings again. Ask each group to summarise what the strong points and the gaps in the human rights standards of the ACWC are.



Debriefing:

- ASEAN governments are all signatories to CEDAW and CRC.
- Rights and issues contained in the CRC are considered by ASEAN governments to be “soft issues” while CEDAW are touted more as “hard issues”; due to unfounded fears that women may challenge structures and power relations (e.g., between men and women, women and society, and women and culture including religions).
- Need to realise that we can call on state obligations to these two conventions to strengthen their commitment to the work of ACWC.



Conclusion:

- Women and children’s rights are human rights. They are fundamental freedoms inherent in all human beings regardless of sex, age, race, creed or other status.
- Discrimination, distinction, exclusion, or restrictions on the basis of sex and age which impairs or nullifies the recognition, enjoyment or exercise of rights are also clear violations of human rights.
- All should have the same rights and should be given the same opportunities to enjoy an adequate standard of living.
- The unbridled disparity in development is a result of inequality in opportunities between men and women, boys and girls. This inequality is sometimes manifested in society’s culture and traditions which shape gender roles and family relations.
- Every woman, every child has the right against discrimination, to survival, to development, to protection and to participation.
- It is not until the rights of women and children are fulfilled that ASEAN governments’ commitment to their international human rights obligation are realised.

Handout Material 4.2.1

Convention on the Rights of the Child

www.unicef.org/cspr/over-18/ASEAN-Studio

Know Child Rights unicef

End Child Poverty unicef

•Sets out the civil, political, economic, social and cultural rights of children
 •Requires that states act in the best interests of the child
 •Acknowledges that every child has certain fundamental rights,
 including the right to life and the right to his/her own name and identity

All members of the UN have ratified the CRC except the United States and Somalia.

Human Rights, Children and Youth

What are the Human Rights of Children and Youths?

Human Rights are universal, and civil, political, economic, social and cultural rights belong to all human beings, including children and young people. Children and youths also enjoy certain human rights specifically linked to their status as minors and to their need for special care and protection.

The human rights of children and youths are explicitly set out in the Convention on the Rights of the Child, the most widely ratified human rights treaty in history. They are also contained in other human rights documents including the Universal Declaration of Human Rights, the International Covenants, the Convention on the Elimination of All Forms of Discrimination Against Women, and other widely adhered to international human rights treaties and declarations.

The Human Rights at Issue

- The human rights of children and youth include the following indivisible, interdependent and interrelated human rights:
- The human right to a standard of living adequate for a child's intellectual, physical, moral, and spiritual development, including adequate food, shelter and clothing.
- The human right to freedom from discrimination based on age, gender, race, colour, language, religion, nationality, ethnicity, or any other status, or on the status of the child's parents.

the most basic human rights treaties, and women's human rights are the subject of a specific treaty, the Convention on the Elimination of All Forms of Discrimination Against Women. Far-reaching government commitments to ensuring the human rights of women have been made at each of the recent world conferences, and women's human rights are central to the unanimously approved Beijing Declaration and Platform for Action.

The Beijing Declaration and Platform for Action, organised into Critical Areas of Concern, raises issues involving fundamental human rights of women. Click on the subjects below to learn about governments' obligations and Commitments to fundamental human rights of women, organised to reflect the Critical Areas identified at the Beijing conference:

- Women and Poverty
- Education and Training of Women
- Women and Health
- Violence Against Women
- Women and Armed Conflict
- Women and the Economy
- Women in Power and Decision-Making
- Women and the Environment
- The Girl-Child

(Source: PDHRE, <http://www.pdhre.org/rights.html>)

MODULE 4.3.

Inter-linkage of ACWC with AICHR



Objectives:

- » To determine the relationship between ACWC and AICHR on the human rights promotion and protection.
- » To establish areas of complementation and coordination between the two mechanisms as venues for redress and seeking justice



Knowledge Acquired:

- » Knowledge of the inter-linkages of ACWC and AICHR.



Time: 1.5 hours

Materials: colored meta-cards, pens, colored yarns, the report from the Module 4.1



Procedures:

1. Divide the participants into two groups.
2. Give each person a copy of the ACWC Term of Reference and the copy of the AICHR Principles and Purposes.
3. Discuss and compare the similarities and/or differences between the two mechanisms:
 - In what way are they similar to each other?
 - Where did they differ from one another? Are the differences irreconcilable?

- What do you propose to align them together?
 - What would be your suggested mechanics to ensure effective coordination?
4. Write on the provided meta-cards the group's proposals and suggested mechanics for coordination.
 5. During the plenary, the facilitator shall ask for one volunteer from each group to hold the ends of a thread of yarn. The yarn connects two groups.
 6. The groups hang their proposals and suggested mechanics for coordination on the yarn. Similar suggestions shall be attached to each other.
 7. After the reporting, allow time for participants to view the hanging suggestions, then start the discussion if the validity of the suggestions are agreed. Detach those that are not appropriate from the yarn.



Debriefing:

- » Ask the participants of the pro's and con's of every suggested coordination strategy.
- » How does this impact the mandate of AICHR on the one hand and ACWC on the other?



Conclusion:

- » Though separate and independent bodies, both AICHR and ACWC are mandated to work for the protection and promotion of human rights based on the universally accepted principles.
- » ACWC is not a limitation to the functions of AICHR. It serves as a complementary and added mechanism to ensure protection and promotion of the rights of women and children.
- » Consistent with AICHR TOR Article 6.9, close consultation and coordination shall define coherence and synergy of work and functions between AICHR and ACWC.

Handout Material 4.3

ACWC’s Terms of Reference Art. 7.7 states that:

The ACWC shall coordinate with the ASEAN Intergovernmental Commission on Human Rights (AICHR) and other relevant ASEAN sectoral bodies dealing with issues pertaining to women and children including consultations on the ultimate alignment between the ACWC and the AICHR as the overarching human rights institution in ASEAN.

AICHR	ACWC
Created based on the Article 14 of Charter	Created based on SC Blueprint
Established on 23 October 2009	Established on 7 April 2010
10 Representatives	20 Representatives (Women Rights and Child Rights)
14 Mandates	13 Mandates
No individual complaint	No individual complaint
Provide advises to ASEAN sectoral government upon request	Provide advises to ASEAN sectoral government upon request
Can obtain information on human rights issues from Member States	Consult CS, Women, Children
Consult stakeholders	Advocate on behalf of Women and Children & Encourage the ASEAN Member States to improve their situation
Submit the Annual Report	Submit the Annual Report

(Source ASEAN Human Rights by AICHR Representative for Indonesia, Yuyun Wahyuningrum , Powerpoint presented in the 28th DTP Session in Dili, Timor Leste, November 2013, available at <https://www.slideshare.net/wahyuningrum1/asean-human-rights-yuyun-wahyuningrum-2013>)

MODULE 4.3.

ACWC Procedures



Objectives:

- » To introduce ACWC as a regional mechanism for redress and seeking justice beyond the domestic judiciary.
- » To know the extent of ACWC's responsiveness to the human rights violations perpetrated by the state and its apparatuses
- » To locate areas of possible CSO coordination, peoples' participation and engagement in ACWC work.



Knowledge Acquired:

- » Knowledge on the ACWC procedures as a mechanism for redress



Time: 1.5 hours

Materials: Flap paper, pens



Procedures:

1. Participants shall divide themselves into four groups They shall be asked to imagine themselves as members of the ACWC. Give each person a copy of the TOR of the ACWC.
2. Each group shall be assigned one of the four questions to discuss and come up with rules for their own ACWC.
 - Group 1: How would you envision an ACWC procedure on lodging or handling complaints? What are the principles, policies and mechanics you would install in the commission?
 - Group 2: What would be your procedure on scheduling or conducting on-site investigations into an ASEAN member state? What are the rules you would set up to preserve the ACWC's integrity and the impartiality of your investigations?

- Group 3: As a commission of ASEAN what would be your procedures in coming up with the annual commission report? How would you process the establishment of a country-specific report or the human rights record of an ASEAN member state?
 - Group 4: When a complainant (NGO or individual) requests for a case hearing from the commission, what are the policies, criteria and procedure you would establish to provide him/her/them access to justice?
3. Present the group reports in the plenary for further discussion and enrichment.



Debriefing:

- » What do you think or feel about the activity?
- » What does the activity say about the responsibilities of the commission?
- » Do you think the ACWC would think about their procedure the way we think?
- » How do we manage to ensure our proposals and ideas are considered in their deliberations?



Conclusion:

- » Rules of Procedure would define the impartiality and eventually the integrity of the ACWC. It must uphold the highest standard of human rights.
- » Safeguards must be instituted to make the commission independent from the dictates and political manoeuvres of the governments, to ensure the sincerest protection and promotion of the rights of the ASEAN people.
- » Political will from the commission is essential to making ACWC relevant and a people-centred commission.

Handout Material 4.4.1**SUMMARY OF SELECT RULES OF PROCEDURES FOR THE ASEAN COMMISSION ON THE PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN AND CHILDREN (ACWC)****Rule 1: ACWC Meetings**

- Two types of meetings, regular and special.
- Regular meetings occur, either in the ASEAN Secretariat and/or ASEAN Member States.
- Special meetings are based on priority matters and could be conducted online.

Rule 2: Decision making

- Based on consensus with a process that is led by the Chair (with the assistance of the ASEAN Secretariat as assigned by the chair). Except for urgent matters, the country representatives (or other officials appointed to represent the representatives) should respond within two weeks, except if there is a request for extension. No response means there is no objection.

Rule 4: Conduct of Business

- ACWC's sessions consist of two types, closed and open sessions. Open sessions may include dialogue or consultation with other ASEAN sectoral bodies or national, regional and international institutions and entities concerning the promotion and protection of the rights of women and children.

Rule 11: Establishment of Committees or Working Groups

- ACWC may establish an ad-hoc working group, committee or task force for the ACWC to facilitate its work as and when necessary.

Rule 12: Reporting Procedure

- (Pursuant to Art. 7.5 of the TOR) ACWC submits annual report to the AMMSWD (ASEAN Ministerial Meeting on Social Welfare and Development) and copied to the ACW (ASEAN Committee on Women) and the CPR (Country Permanent Representatives) and other sectoral bodies at the discretion of the ACWC.
- Decision to publish the report is at the discretion of ACWC.

Rule 14: Relationship with other sectoral bodies

- Coordination and collaboration with other ASEAN sectoral bodies dealing with the rights of women and children in undertaking the mandate and functions of the ACWC, including by providing inputs for each other's report.
- If requested, then ACWC will provide advisory services on matters pertaining to the promotion and protection of the rights of women and children to the requesting ASEAN sectoral bodies.

Rule 16: External Relations of the ACWC

- The ACWC shall engage the participation of CSOs by abiding to the principles of transparency, effective and meaningful dialogue.
- The external institutions and entities ACWC engages are both those relevant to the promotion and protection of ASEAN Charter and the rules of procedure and criteria for engagement with entities associated with ASEAN as prescribed by the CPR and entities that are not listed in Annex 2 of the ASEAN Charter.
- The entities to be engaged are decided by the ACWC based on consensus.

Handout Material 4.4.2**SELECT EXCERPTS FROM****FORUM ASIA'S REPORT ON THE ACWC+10: ASSESSING THE COMMISSION'S IMPACT ON PROTECTING WOMEN AND CHILDREN'S RIGHTS IN ASEAN****8 April 2021**

This report seeks to examine the progress, or lack thereof, and challenges faced by the ACWC in implementing its TOR and work plans, and its relationship with and role of CSOs in its 10-year history.

Research for this impact assessment consisted of four main components:

- Documentation from the Expert Meeting on Preparation of Ten Years Evolution of ACWC, organised by FORUM-ASIA (attended by 20 experts that included representatives of local, regional, and international CSOs, academics, ACWC (current and former) representatives, and government officials who have worked in or with ASEAN for the past 10 years).
- An online survey on "Assessing the Impact of the ASEAN Commission on the Promotion and Protection on the Rights of Women and Children (ACWC)" (completed by 20 respondents; from Indonesia (35%) and Thailand (35%), followed by the Philippines (10%), Cambodia (5%) and Singapore (5%), while 10% indicated they were based outside of ASEAN. Women's rights organisations were represented by 30%, 25% of children's rights organisations, 15% of youth organisations, and 15% consisted of general human rights organisations, while 10% of the respondents indicated that their organisations focused both on women's rights and children's rights).
- Interviews with key stakeholders from CSOs, ACWC, ASEAN Secretariat and UN (A total of 28 semi-structured interviews were conducted with key individuals, primarily through phone calls, while a small number of interviews were conducted via email. Interviews included 17 representatives of CSOs (61%), three current ACWC representatives, two former and one current AICHR representative, and two officers from ASEAN Secretariat. The identities of all interviewees are kept anonymous in this report).
- Desk review.

3.1. ACWC's selection process

Respondents were asked whether they agreed with the statement that "ASEAN Member States have selected their representatives to the ACWC in a transparent, open, participatory and inclusive selection process," as stated in ACWC's TOR. 35 per cent of respondents agreed or somewhat agreed with this statement, while 45 per cent disagreed, somewhat disagreed, or completely disagreed. However, the level of AMS transparency varied widely from state to state.

Given the high dependency on individual representatives to carry out the ACWC's mandate, interviewees point to the importance of enhancing the selection process of representatives to ensure they meet the qualifications needed to leverage the ACWC's work. One interviewee recommended incorporating the Paris Principles⁶⁴ as the standard for ASEAN Member States to adopt in the selection process of ACWC representatives.

3.2. Compliance with mandate as provided in the TOR

In the ACWC TOR, there is much overlap between what can be called "promotion" and what can be called "protection." For instance, article 5.2 provides that the ACWC must "develop policies, programs and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community." Trying to separate the promotion and protection aspects in this article would be pointless.

In ASEAN, however, governments of Member States, especially those wary of their oppressive laws, policies and practices undergoing independent scrutiny and exposure, have vigorously and successfully pushed for a sharp dichotomy between the two. They have forced the region's two leading human rights mechanisms into focusing on "promotion," which they see as theoretical activities, at the expense of "protection," namely researching and documenting actual human rights situations and violations in the Member States, not to mention intervening to stop violations.

What is considered the promotion mandate of the ACWC encompasses awareness-raising, education, capacity-building and the like. Outputs have included training, conferences, workshops, research and studies.

3.2.1. Promoting the human rights of women and children in ASEAN

(Some) respondents indicated that they observed some ACWC's influence on policies through the empowerment of women and children. However, the influence is suboptimal compared to the challenges and rights violations faced by women and children in the region. Other respondents noted that the ACWC's promotion activities have been effective in awareness-raising of the rights of women and children, and that the ACWC has cooperated with the AICHR and others on human rights especially of women and girls. Another respondent noted that the ACWC was particularly strong at the start of its tenure, especially in engaging women's groups at the national level, but this influence has since declined. However, respondents were also concerned with the lack of effectiveness of ACWC, given that gender equality remains behind in ASEAN.

Interviewees from CSOs also saw the promotion work of the ACWC as an achievement, especially in awareness-raising through its campaigns and media activities. Key criticisms included a lack of information by the ACWC on its structure and the work. Those who doubted the success of the ACWC's promotion work also noted that the Commission has not adequately addressed the plight of most vulnerable groups of women and children, including those who are migrants and stateless, through its campaigns and workshops. Another interviewee noted that the promotion work of the ACWC has tended to lack a clear direction (especially in the second term of representatives), as indicated in the lack of follow-up for planned action after

baseline studies are produced, such as the Progress Report on Women’s Rights and Gender Equality.¹⁵ The feedback indicated the need for ACWC to have a plan to utilise these studies and produce results through accentuating the linkages between promotion and protection mandates.

Lastly, interviewees noted that the provision of decision-making by consensus in the TOR, reflected in other ASEAN instruments, has had a massive impact on the ACWC’s performance of its promotion mandate. According to many interviewees, the main achievement of the ACWC over the past decade has been the production of several guidelines and documents to promote awareness-raising, education, and capacity-building concerning the rights of women and children in ASEAN. As one current ACWC representative remarked, the ability of 10 AMS to come to a consensus to sign a document on the rights of women and children is a remarkable feat for the Commission.¹⁶ However, it was noted by an ASEAN official during the expert meeting that many documents remain “stuck” within ACWC due to the lack of consensus among the Member States, making it impossible to go forward and authorise their release.¹⁷ This was also an experience confirmed by interviewees who have contributed to the reports by ACWC. One noted that a study on online protection had been delayed by more than a year due to the approval process alone.¹⁸ Another interviewee noted that a report on children’s citizenship rights had already been approved by ACWC representatives but remains unpublished a year later.¹⁹ An AICHR representative said that a similar delay in the production of documents occurs in AICHR, due to the protracted approval process requiring consensus among the AMS.²⁰

3.2.2. Protecting the human rights of women and children in ASEAN

Several noted that there had been changes to national policies concerning violence against women and children. However, the ACWC’s direct contribution to the changes in national policies remains unclear.

Others noted that in the area of children’s rights, ACWC’s work on standard-setting, including in drafting the Declaration of the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN,²¹ was also a significant step forward in the protection of children’s rights specifically. Regarding women’s rights, the ACWC’s Regional Guidelines and Procedures to Address the Needs of TIP Victims was noted as an example of protection work. However, the implementation of these documents remains uncertain, and therefore overall protection functions cannot be achieved by ACWC.

However, the absence of a monitoring and evaluation mechanism or activities, and the lack of any initiative that directly involves the protection of rights, are key reasons for ACWC’s inability to serve its protection mandates. Respondents also indicated the total absence of any effort to handle human rights violations by ACWC, for instance of LGBTIQ groups in Indonesia, as well as the view that the ACWC could do more to protect LBQ women and women’s rights that are related to children’s issues (such as the issue of commercial surrogacy).

15 ASEAN, “Progress Report on Women’s Rights and Gender Equality,” 2020, https://asean.org/storage/2012/05/Progress-Report_Women-Rights-and-Gender-Equality.pdf.

16 Forum Asia, “Report on The ACWC+10: Assessing The Commission’s Impact on Protecting Women and Children’s Rights in ASEAN.”

17 Ibid.

18 Academic, Interview by Forum Asia, 23 April 2020.

19 Academic, Interview by Forum Asia, 30 April 2020.

20 The AICHR Representatives, Interview by Forum Asia, 8 May 2020.

21 ASEAN, “Declaration on the Protection of Children from All Forms of Online Exploitation and Abuse in ASEAN” (2019), <https://asean.org/storage/2019/11/3-Declaration-on-the-Protection-of-Children-from-all-Forms-of-Online-Exploitation-and-Abuse-in-ASEAN.pdf>.

A claim is often made that the ACWC (and also the AICHR) lacks a protection mandate. The claim, however, is patently wrong, given the simple fact that the first “purpose” that the TOR provides to the ACWC is to “promote and protect the human rights and fundamental freedoms of women and children in ASEAN” (emphasis added).²²

Indeed, the TOR does not make explicit provisions for the Commission receiving individual petitions, investigating submitted cases or initiating investigations on its own, or issuing resolutions and recommendations to governments or monitoring their laws, policies and practices relevant to the rights of women and children. However, nothing in the TOR prohibits the ACWC from engaging in these activities either. For instance, the provision in Article 5.9 of the TOR for promoting “studies and research related to the situation and well-being of women and children” can be used, with some creativity, to conduct studies into situations where the well being of women or children are at risk, namely where their rights are violated.

Unfortunately, however, those member states who oppose any protection activities by the ACWC (and the AICHR) have forced these Commissions, through the use of their veto power under consensus decision-making rules, to instead focus overwhelmingly on promotion activities. Moreover, they have convinced many, including academics and even CSOs, that these Commissions have no protection mandates, despite the evidence of clear protection mandates for both.

During the expert meeting, participants discussed the need to develop comprehensive human rights protection strategies and measures that are based on international human rights law and standards. The ACWC was identified as being in a better position to leverage a protection strategy, as its mandate includes assisting with the implementation of the CEDAW and CRC (which all AMS countries have ratified).²³ The ACWC’s TOR also includes a mandate to assist (upon request) with the periodic reports for CEDAW and CRC, and in the implementation of the Conclusion Observations of the CEDAW and CRC.²⁴ Among the 10 ASEAN countries, only Thailand ratified the CRC optional protocol on a communication procedure. In addition, the Philippines and other AMS also ratified the CEDAW optional protocol.²⁵ This lack of ratification of the OP was provided by a current ACWC representative as a reason why the ACWC has focused its activities on prevention and promotion, rather than complaints.²⁶ A more protection-oriented approach would have been for the ACWC to step in and implement Article 3.4 of the TOR, which calls on the ACWC “to complement rather than duplicate the function of CEDAW and CRC Committees” by handling individual complaints pending ratification by AMS of the respective Optional Protocols.

ACWC protection mandates are weaker compared to other regional mechanisms for women’s rights, including the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI); the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO); the African Commission on Human and Peoples’ Rights Special Rapporteur on the Rights of Women in Africa (A SRWHR); and the Inter-American Commission on Human Rights Rapporteur on the Rights of Women (IA RWHR).²⁷ This weakness is due in part to the lack of a communication and complaint mechanism as well as a clear mandate to conduct country missions, which are features in other regional mechanisms. Furthermore, the

22 ACWC, “Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC).”

23 *Ibid.*

24 *Ibid.*

25 UNHCR, “UNHCR Treaty Bodies Database,” n.d., https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Country-ID=137&Lang=EN.

26 Forum Asia, “Report on The ACWC+10: Assessing The Commission’s Impact on Protecting Women and Children’s Rights in ASEAN.”

27 UNHCR, “The EDVAW Platform: Cooperation among UN, Global and Regional Women’s Rights Mechanisms,” n.d., <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CooperationGlobalRegionalMechanisms.aspx>.

ACWC has yet to issue any guidelines on the protection of the rights of women and children groups such as women's human rights defenders, unlike other bodies.²⁸

3.2.3. Promoting public awareness and education on the rights of women and children in ASEAN

3.2.4. Capacity-building

The ACWC's TOR provides that the Commission is to "build the capacity of relevant stakeholders at all levels," including civil society, community leaders, and "women and children machineries" (which may refer to the central coordinating units within national governments), through the provision of technical assistance, training and workshops towards the realisation of the rights of women and children. Fifty per cent of respondents agreed to varying degrees that the ACWC has performed this particular mandate satisfactorily, while 40 per cent disagreed to varying degrees. Comments from respondents included that the ACWC does coordinate with national governments, but has had limited outreach, mostly due to limited funding.²⁹

3.2.5. Advocating on behalf of women and children

The ACWC is mandated to "advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage the ASEAN Member States to improve their situation."³⁰ Here too, a creative, proactive Commission could have used this provision to receive complaints from individual women or children whose human rights have been violated, and advocate the relevant governments on their behalf. However, the political will to do that has been lacking.

Overall, 45 per cent of respondents agreed to various degrees that ACWC satisfactorily complies with this mandate, while 35 per cent disagreed overall. Among the comments, it was noted that the ACWC has not been progressive when discussing sensitive topics involving vulnerable groups such as transgender people who are HIV positive or sex workers' rights to reproductive health support. As a positive example of the ACWC's action on this mandate, a respondent indicated that the ACWC had shown a strong commitment to pushing forward the human rights and fundamental freedoms of people with disabilities in ASEAN. This commitment was reflected in the ACWC's participatory role in the Task Force on Mainstreaming the Rights of Persons with Disabilities, which enabled the adoption of ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities.³¹ Also, the ACWC played a vital advocacy role on the issue of trafficking. However, respondents also stated that the ACWC needs to advocate more on behalf of refugees and minorities, as well as LGBTIQ people.

3.2.6 Assisting ASEAN Member States with reporting on CEDAW and CRC

Respondents were split in their assessment of the ACWC's performance in carrying out its mandate to assist ASEAN Member States in preparing for the CEDAW and the CRC periodic reports, the Human Rights Council's Universal Periodic Review (UPR) and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN. It should be noted that the ACWC may only provide such assistance "upon request."

²⁸ African Commission on Human and Peoples' Rights, "Resources," n.d., <https://www.achpr.org/resources>.

²⁹ Forum Asia, "Report on The ACWC+10: Assessing The Commission's Impact on Protecting Women and Children's Rights in ASEAN."

³⁰ ACWC, "Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC)."

³¹ ASEAN, "ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities," n.d., <https://asean.org/storage/2018/11/ASEAN-Enabling-Masterplan-2025-Mainstreaming-the-Rights-of-Persons-with-Disabilities.pdf>.

Thirty five per cent of respondents agreed overall, 35 per cent disagreed overall, and 30 per cent neither agreed nor disagreed with the statement.

In their comments, respondents raised several issues on this mandate, including the ACWC's inability to meaningfully encourage ASEAN governments to submit their reports, since ACWC representatives are themselves appointed by governments. Other respondents stated conversely that the ACWC has a strong commitment to assisting AMS in preparing their reports. There was frequent comment about the limited information available about ACWC and the lack of communications from representatives concerning this role, and that CSOs have not been invited by ACWC representatives to assist in the preparation of the reports.

3.2.7 Public communication and information

The ACWC's TOR provides that the Commission is to "keep the public regularly informed of its work and activities through appropriate public information materials produced by the ACWC."³² Sixty five per cent of respondents disagreed to varying degrees that ACWC has satisfactorily fulfilled this function, while 30 per cent of respondents agreed.

The most frequent comment was that the ACWC website was not updated. Most respondents who have visited the official ACWC website provided similar feedback – there are no updates or any information about current program implementation, work, events, or contact details of ACWC representatives.

3.3. Implementation of ACWC Work Plans

The ACWC is currently in the second workplan, which covers the period from 2016 to 2020, has a total of 16 thematic areas- fewer than the first- and contains 48 projects, which is more than twice the number of those in the first workplan.

ACWC's workplan for 2012-2016 does include INGOs as identified partners under the category "Related ASEAN/UN Bodies and Remark. The inclusion of CSOs in the activities is likely a function of UNICEF's requirement that CSOs be included in its regional and national-level work with the ACWC. In contrast, activities that explicitly focused on women's rights in the workplan do not list any CSO partners. While "CSOs—Women's Caucus" is identified as a partner, they are listed under the category of children's rights for the thematic area of "trafficking women and children." The inclusion of CSO partners in the ACWC Workplan 2012-2016 does not appear to have been strengthened in the subsequent ACWC's Workplan 2016-2020. While CSOs were listed as a separate group in four activities in the first workplan, they were not mentioned at all in the second workplan. The absence of CSOs listed under the category of potential partners is striking, primarily as more specific project details and outputs are provided compared to the previous workplan.

The ACWC workplans did not include work on economic violence, significantly as Foreign Trade Agreements (FTAs) were being advanced by the ASEAN Economic Community. Also, the workplans are still lagging in ensuring inclusivity of marginalised groups among women and children, including LGBTIQ persons, and advocating for their pressing human rights concerns throughout the region. Moreover, the workplans still has a lack of international instruments harmonisation, due to the fact that the ACWC does not have enough resources, while its decision-making process is slow.

³² ACWC, "Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC)."

3.4. Implementation of the Regional Plans of Action (RPAs)

3.4.1. RPA EVAC

The Regional Plan of Action on the Elimination of Violence against Children (EVAC) was seen as a milestone in the context of ASEAN, given that the final document included what has been seen as controversial issues: the call for protection measures for stateless, migrant, and asylum-seeking children; the identification of children from the lesbian, gay, transgender or transsexual communities as a group susceptible to violence; and the attention to the issue of child marriage, particularly in its link to sexual violence. This document was also seen as a milestone as it includes a more comprehensive definition of violence which includes acts that are harmful to children, whether the acts are accepted as tradition or disguised as 'discipline'.³³

The inclusion of child marriage in the RPA (as well as in the ACWC's second workplan) is an achievement that resulted from an inclusive process in the ACWC's agenda setting efforts. In particular, the dialogue around child marriage gained traction, particularly from 2018 to 2020 in ASEAN, when the ACWC called upon stakeholders with expertise and experience working on the issue of child marriage to provide their inputs. Due to this inclusiveness, there has been sustained engagement between the ACWC and these partners on the issue.³⁴

The strategy to share research results about the policy options available at the country level is aimed at increasing awareness among policymakers and providing a toolkit for them to use. This strategy aims to address myths that perpetuate child marriage, including the false perception that it is not prevalent in ASEAN. The inclusion of migrant, asylum-seeking and refugee children in the RPA was also heralded as an accomplishment of the ACWC, especially the identification of this group in the "protection, response, and support services" section of the Plan: "Review/strengthen protective policies and measures for stateless, migrant, and asylum-seeking children who are victims of violence. (Regional)".³⁵ The RPA EVAC has also been perceived as a positive step in strengthening the protection of children's rights concerning CRC, as most of the AMS countries have made reservations at the time of ratification of the CRC.³⁶

Yet, the absence of a significant linkage between ASEAN's regional human rights mechanisms and the national level of governance to produce change, which remains a crucial challenge for these mechanisms to tackle.³⁷

3.4.2. RPA EVAW

The Regional Plan of Action on the Elimination of Violence against Women (RPA EVAW) also was seen as an achievement for ASEAN generally, and the ACWC in particular. The document sets a common agenda on the elimination of violence against women for the AMS to implement at the national and regional level. In the five years since its adoption, the success of the RPAs is evident in the fact that governments in ASEAN do use the RPA as a guide for their national policies, particularly in regards to implementing the data collection required under the RPAs.

33 ASEAN, "ASEAN Regional Plan of Action on the Elimination of Violence against Children (ASEAN RPA on EVAC)," 2017, <https://asean.org/wp-content/uploads/2018/01/49.-December-2017-ASEAN-RPA-on-EVAC-2nd-Reprint.pdf>.

34 Forum Asia, "Report on The ACWC+10: Assessing The Commission's Impact on Protecting Women and Children's Rights in ASEAN."

35 ASEAN, "ASEAN Regional Plan of Action on the Elimination of Violence against Children (ASEAN RPA on EVAC)."

36 Forum Asia, "Report on The ACWC+10: Assessing The Commission's Impact on Protecting Women and Children's Rights in ASEAN."

37 Ibid.

The RPA EAW similarly provides that it “will be implemented under regional and national contexts and circumstances” – but this formulation is much milder than in other ASEAN instruments.³⁸

The ACWC’s Workplan for 2016-2020 features several projects under the thematic area of strengthening the economic rights of women with regards to the feminisation of poverty and women’s rights to land and property. However, these do not refer explicitly to the RPAs nor specifically to the elimination of economic forms of violence, and focus instead on women’s economic empowerment.

The RPA EAW has a lack of the approaching cross-border issues and to identify common priority agenda issues; lack of synchronicity between the RPA EAW and the CEDAW provisions as a missed opportunity when reflecting on the drafting process; absence of monitoring and evaluation indicators; and disjuncture between the regional guidelines and local realities on the ground and at the grassroots level.³⁹

3.5. Assessment of Stakeholder Engagement

The ACWC is expected to collaborate with various stakeholders, including the AICHR, the ASEAN Secretariat, ASEAN sectoral bodies, dialogue partners, as well as CSOs in order to carry out its function of mainstreaming, promoting and protecting rights of women and children in the region. The relationship between the ACWC with these stakeholders is crucial to carry out its mission successfully.⁴⁰

3.5.1. Engagement with AICHR and ASEAN Sectoral Bodies

In engagement with AICHR and ASEAN Sectoral Bodies, more than half of respondents (55 per cent) indicated their agreement with the statement that the ACWC has satisfactorily complied with its mandate to coordinate with the AICHR and other ASEAN sectoral bodies, including the ACW. Twenty five per cent of respondents expressed disagreement. Many respondents commented explicitly about the close cooperation between the ACWC and the AICHR, particularly in Thailand.

The ACWC relies on the ASEAN Secretariat’s Head of Poverty Eradication and Gender Division, which is under the Human Development Directorate of the ASCC Department. Then, the relationship between the ACWC and the ACW that is institutionally regulated is the provision in the ACWC TOR that it must send the ACW a copy of the annual report that it submits to ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD).⁴¹

However, the AICHR considered the tension of the relationship between the ACWC and the ASEAN Committee on Women (ACW), which is the subsidiary body of the AMMW and is composed of senior officials in the respective ministries in charge of women and girls. There are two distinctions in the characteristics of the two Commissions. One is in representation, with all members of the ACW being designated government officials, while the ACWC representatives are a mixture of government and non-governmental individuals.

³⁸ *Ibid.*

³⁹ Forum Asia.

⁴⁰ *Ibid.*

⁴¹ ACWC, “Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC).”

The second distinction is in the core function, with the ACWC being a regional human rights body, with part of its mandate relating to international treaties and other standards, while the ACW is an extended Member States' regional arm focusing on women issues and gender mainstreaming. The work of the two Commissions often overlaps, but the human rights lenses dominate the mandate of the ACWC.

3.5.2. Engagement with External Stakeholders

From the time the ACWC was established to the present, UNICEF has played an indispensable and critical role in supporting the Commission and its work on children's rights. UNICEF signed a Memorandum of Understanding (MOU) with ASEAN in 2014, providing an official mechanism for engagement. UNICEF also has country offices in all 10 ASEAN Member States, with a regional office located in Bangkok, Thailand. Before the MOU, UNICEF's regional and national bodies have maintained active engagement with ACWC, including consulting and providing input in the drafting of ACWC's TOR. UNICEF has engaged with both the ASEAN Secretariat directly and ACWC representatives individually, particularly those from "champion" governments in Thailand, Indonesia, and the Philippines.

Other external organisations that have developed close relations with the ACWC over the decades is Plan International, which has a "constructive" partnership with ACWC. Plan International has had a more salient role within the ACWC due to its provision of high equality knowledge products - including its publications, statistics, and updates - to the ACWC on topics of interest to both parties (for instance, on girl empowerment). This type of assistance may be useful for other organisations seeking to engage with the ACWC in the future, which also reflects a "common ground and trust" approach centred on one priority issue of girl's empowerment that is specific and concrete, and focused on the issue's applicability. Given the constraints of prioritising one issue over others, work on an issue is likely to be more impactful if it cuts across different sectors (for instance, health, education, gender equality, etc.).

UN Women also has a close working relationship with the ACWC, albeit one that is not as strong as UNICEF's engagement. UN Women has country offices in 7 AMS. As in the case with UNICEF, UN Women provides technical support and has a shared workplan with the ACWC.

External organisations such as Plan International and UNICEF have played an essential role in financing, planning, and leading the platforms for engagement between the ACWC and CSOs, especially those working on the ground, and other relevant stakeholders in the field of children's rights. However, a challenge remains in capitalising on the momentum once the workshops or meetings have ended.

3.5.3. Engagement with the ASEAN Secretariat

The ASEAN Secretariat provides direct and secretarial support to the ACWC, which involves assisting the Commission in organising meetings, preparing agendas, and collecting and distributing background information on policy and programme initiatives. It is also involved in agenda-setting and generating policy recommendations in two aspects: first, the ACWC's core work, and second, the ACWC's relations with ASEAN bodies, external entities, and other

dialogue partners, on several thematic issues. The ASEAN Secretariat was encouraged to adopt a more constructive approach with donors, specifically providing them more comprehensive information, including identifying more concretely the added value of a proposed study and its justification, and any relevant data and/or research products already existing on the topic.

However, the role of the ASEAN Secretariat concerning the ACWC has received a fair amount of criticism. The ASEAN Secretariat has often taken the role as “a documenter” of ACWC meetings, as opposed to providing necessary strategic assistance to the ACWC.

3.5.4. CSO Engagement with ACWC

CSOs and the ACWC have engaged in separate pathways between those working on children’s rights and those focusing on women’s rights. In the domain of children’s rights, the ACWC has developed more systematic and sustained forms of engagement. One such form has been the ACWC’s partnership with grassroots organisations through Child Rights Coalition (CRC) Asia, which is a regional network of children rights and human rights organisations working to protect, promote and mainstream children’s rights perspectives into regional and international advocacy bodies.⁴² The engagement with CRC Asia is consultative, with the organisation helping the ACWC secure inputs and feedback from grassroots NGOs. UNICEF also plays a crucial facilitating role in bringing CRC Asia members to workshops and platforms with ACWC representatives.

UNICEF’s role in bringing together CSOs and the ACWC was concerning the regional working group on child protection, which includes UNICEF EAPRO, CRC Asia, ECPAT, Plan International, Save the Children, and World Vision. This group convenes for specific purposes such as in the ASEAN context, working together on the RPA EVAC and its midterm review. The working group is led by UNICEF, which provides these organisations with the options of either working with the ACWC directly through UNICEF’s MOU with ASEAN or working on the target areas of the RPA outside of the ASEAN institutional framework. Each organisation has been able to find a niche within the RPA EVAC, for instance, in the case of ECPAT, a focus on child exploitation and for Save the Children a focus on corporal punishment, which are also aligned with UNICEF’s work with ACWC.

Two pathways are available for CSOs to initiate engagement with ACWC through a discussion-based platform. The first process requires a CSO (or consortium of CSOs) to submit a letter to the ASEAN Secretariat with a request to hold an official open meeting for the CSO to meet with ACWC representative(s); The second pathway is for CSOs to approach individual ACWC representative(s) and request a meeting with them directly.

Based on the interview session, Forum Asia found the problem or weakness of ACWC’s engagement with CSOs, first, the ACWC’s response was slow to handle engagement requests from CSOs. In the process engagement, ACWC engagement has become rare and lacks opportunities, as ACWC were selected by the government with no transparency; second, many CSOs have missed opportunities for engaging with the ACWC, especially following the positive experience during the drafting of the RPAs EVAC and EVAW, an experience that has not been strengthened or even repeated in subsequent years; third, many CSOs (across the spectrum of those working women rights and children’s rights) point to the ACWC’s failure to include LGBTIQ organisations in both formal and informal engagements, and relatedly, the absence of LGBTIQ perspectives in the ACWC’s work.

⁴² Child Rights Coalition Asia, “Who We Are,” n.d., <http://www.crcasia.org/about-us/who-we-are/>.

3.6. Accountability of ACWC: To Whom?

At an individual level, ACWC representatives vary in their level of independence, including whom they identify as being accountable. Those from countries more progressive in their approach towards women and children's rights are more likely to state that they act independently of their government and that they are accountable to their constituents, namely women and children. Representatives from other countries, particularly those appointed by their governments, are more likely to emphasise the intergovernmental nature of the ACWC and to state that they are accountable to the line ministries and their country governments.

3.7. COVID-19: A case study in the ACWC's Response

Theoretically, the ACWC could take the initiative to highlight how women's and children's needs are to be addressed in all ASEAN COVID-19 responses as per the suggestion by CRC Asia.⁴³ It could provide guidance on how the international standards such as recommendations issued by the CEDAW and CRC committees, as well as guidance by UN Women and UNICEF – who are also ACWC dialogue partners – can be applied by ASEAN Member States responding to COVID-19 at the regional and national levels. With the support of their national line ministries, the ACWC could research and provide disaggregated data on how the pandemic is affecting women and children, and where policy gaps affecting human rights are emerging in the regional and national responses.

The ACWC could focus on the setbacks caused to its work plan by the pandemic, and how its new workplan will seek to reduce the gender-divide and build more women and child-friendly regions in a post-COVID ASEAN. Issues such as increased violence against women and children and the violations of the rights of women migrant workers during the pandemic are in line with ACWC's existing priorities and have already been well-documented.⁴⁴

The ACWC is currently committed, through its workplan, to address gender equality in education, early marriage and trafficking in women and children – again these are areas in which the pandemic's impacts have been well-noted. These are also areas that the ACWC could improve collaboration with the other ASEAN bodies, especially on health and education.

The ACWC has taken necessary initial steps towards protecting the rights of women and of children in ASEAN, especially in creating the ERAW-EVAC Declaration and the RPAs ERAW and EVAC. Nevertheless, the fact remains that in the decade since its establishment, the ACWC has not monitored, documented, reported on or in any way intervened in the human rights violations against women and children in the region. The ACWC has remained inactive and silent especially on the crisis facing ethnic Rohingya women and children in Myanmar. It has also similarly remained inactive and silent during the COVID-19 pandemic, when women and children have been adversely impacted throughout the region.

43 "ASEAN and SAARC Must Put Children's Rights at the Heart of COVID-19 Response," 2020, https://www.crcasia.org/wp-content/uploads/2020/05/Joint-Statement-ASEAN-and-SAARC-children-and-COVID19-response_JF-CRCA-CRConnect-ECPAT.pdf.

44 ILO, "COVID-19 and Women Migrant Workers in ASEAN," n.d., https://www.ilo.org/asia/publications/issue-briefs/WCMS_746979/lang-en/index.htm.

- 66 ACWC, Progress Report on Women’s Rights and Gender Equality (Jakarta: ASEAN Secretariat, October 2016), https://asean.org/storage/2012/05/Progress-Report_Women-Rights-and-Gender-Equality.pdf.
- 67 Remarks made at the Expert Meeting.
- 68 Remarks made at the Expert Meeting.
- 69 Interview with academic on 23 April 2020.
- 70 Interview with academic on 30 March 2020.
- 71 Interview with AICHR Representative on 8 May 2020.
- 72 Declaration on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN, adopted by the 35th ASEAN Summit, Bangkok, 2 November 2019,
- 73 Remarks made at the Expert Meeting. The quotation is from ACWC TOR, Article 5.12.
- 74 ACWC TOR, Article 2.1. See similarly AICHR TOR, Article 1.1.
- 75 Petchararesmee, p. 50.
- 76 ACWC TOR, Article 5.11. https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf
- 77 ACWC TOR, Articles 5.6 and 5.7, respectively. https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf
- 78 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN
- 79 Remarks made by an ACWC representative at the Expert Meeting.
- 80 <https://www.komnasperempuan.go.id/file/Catatan%20Tahunan%20Kekerasan%20Terhadap%20Perempuan%202019.pdf>
- 81 <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CooperationGlobalRegionalMechanisms.aspx>
- 82 <https://www.achpr.org/resources>
- 87 Practitioners’ Workshop on the Implementation of the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons, held August 2-4, 2019 in Bangkok, Thailand. Press release: <https://asean.usmission.gov/launch-of-the-acwc-regional-guidelines-and-procedures-to-address-the-needs-of-victims-of-trafficking-in-persons-tip-and-practitioners-workshop/>
- 88 ACWC TOR, Article 5.2. https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf 89 <https://asean.org/storage/2018/11/ASEAN-Enabling-Masterplan-2025-Mainstreaming-the-Rights-of-Persons-with-Disabilities.pdf>
- 90 Remarks made at the Expert Meeting.
- 91 <https://asean.org/joint-statement-of-the-asean-commission-on-the-promotion-and-protection-of-the-rights-of-women-and-children-acwc-and-the-special-representative-of-the-un-secretary-general-on-violence-against-children/>
- 92 ACWC TOR, Article 7.6. https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf