



HAVE THEY PASSED THE LITMUS TEST?

A REPORT ON THE PERFORMANCE OF THE ASEAN HUMAN RIGHTS MECHANISMS IN 2016



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ON ASEAN AND HUMAN RIGHTS WORKING GROUP ON ASEAN (SAPA TFAHR & WGA)

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By the Representative of Malaysia to the AICHR

ACRONYMS AND ABBREVIATIONS

ACSC/APF	ASEAN Civil Society Conference/ ASEAN People's Forum
ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women and Children
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AEC	ASEAN Economic Community
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
ALAWMM	ASEAN Law Ministers Meeting
AMM	ASEAN Ministerial Meeting or ASEAN Foreign Ministers Meeting
AMMSWD	ASEAN Ministerial Meeting on Social Welfare and Development
AMS	ASEAN Member States
APA	ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children
ASEAN	Association of Southeast Asian Nations
ASLOM	ASEAN Senior Law Officials Meeting
ATFOA	ASEAN Task Force on AIDS
CADPA	Coalition on the Abolition of the Death Penalty in ASEAN
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPR	Committee of Permanent Representatives to ASEAN
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DPOs	Disabled People's Organisations
ECCDE	ASEAN Early Childhood Care, Development and Education
EU	European Union
FORUM-ASIA	Asian Forum for Human Rights and Development
GONGO	Government-Organised Non-Governmental Organisation
HRRC	Human Rights Resource Centre
HRWG	Human Rights Working Group
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning
NOSSA	ASEAN Network of Social Service Agencies
READI HRF	Regional EU-ASEAN Dialogue Instrument Human Rights Facility
RPA on ERAW	ASEAN Regional Plan of Action on the Elimination of Violence Against Women
RPA on EVAC	ASEAN Regional Plan of Action on the Elimination of Violence Against Children
SAPA TFAHR & WGA	Solidarity for Asian People's Advocacy (SAPA) Task Force on ASEAN and Human Rights and Working Group on ASEAN Sustainable Development Goals
SDGs	Southeast Asian Human Rights Studies Network
SEAHRN	Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics
SOGIESC	Senior Officials' Meeting on Health Development
SOMHD	ASEAN Senior Officials' Meeting on Social Welfare and Development
	ASEAN Senior Officials Meeting on Transnational Crime Terms of Reference

SOMSWD	ASEAN Senior Officials' Meeting on Social Welfare and Development
SOMTC	ASEAN Senior Officials Meeting on Transnational Crime
ToR	Terms of Reference
UN	United Nations
UN ECOSOC	United Nations Economic and Social Council
UN ESCAP	United Nations Economic and Social Commission on Asia and the Pacific
UNICEF	United Nations Children's Fund

INTRODUCTIONS

The following report presents a review of the performance of the human rights mechanisms of the Association of Southeast Asian Nations (ASEAN) – the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children (ACWC) – in 2016.

This seventh annual review is produced by the Asian Forum for Human Rights and Development (FORUM-ASIA) and the Solidarity for Asian People's Advocacy (SAPA) Task Force on ASEAN and Human Rights and Working Group on ASEAN (SAPA TFAHR & WGA).

Questions on how both Commissions carried out their activities given their mandates, their engagement with civil society organisations (CSOs), as well as their achievements and shortcomings, are the focus of this report.

The report looks into how the AICHR and the ACWC have acted on the ASEAN Community Vision 2025, which the ASEAN Leaders had adopted at their 27th Summit in Kuala Lumpur on 18-22 November 2015 with the tagline 'Forging Ahead Together'. Likewise, the report examines the role of civil society in promoting and protecting human rights in the ASEAN region, and to what extent working with the AICHR and the ACWC could enhance this function.

The report concludes with key findings and recommendations for the AICHR, the ACWC and ASEAN.

This review of the performance of the two ASEAN human rights mechanisms in 2016 is based on primary and secondary sources, which include: official information from the AICHR, ACWC and ASEAN Secretariat and ASEAN Member States (AMS); publicly accessible reports from credible sources; interviews with key individuals and organisations; and questionnaires. The first draft of this report was shared with key respondents for further inputs. At the same time, this performance review was designed not as an exhaustive audit of ASEAN's human rights mechanisms, but as a qualitative assessment from the viewpoint of civil society with the aim of contributing to the accountability and effectiveness of the AICHR and ACWC.



HIGHLIGHTS

In 2016, the AICHR started to operationalise a system of regulated relationships with CSOs through a process of granting them consultative status. As of end-2016, it had granted consultative status to 16 organisations. (See Chapter 4).

During the year, AICHR actively shared information on its programmes and activities through its official website (<http://aichr.org/>) and AICHR Representatives used social media to reach out to the public. AICHR took up two major topics during the year –trafficking in persons and the rights of persons with disabilities.

For its part, the ACWC posted relatively limited information through 12 posts monitored (<https://acwc.asean.org/>) in total. The ACWC focused mostly on follow-up to the Regional Plan of Actions on the Elimination of Violence against Women and Elimination of Violence against Children (RPAs on EAW and EVAC).

However, the silence of ASEAN's two mechanisms for responding to human rights concerns continued to remain a cause for profound concern when viewed against key issues that arose in 2016. Indeed, seven years after the establishment of the AICHR and six years after the ACWC's, both Commissions have shown little willingness to speak up on pressing human rights concerns in the region.

For instance, shortly after his inauguration on 30 June 2016, President Rodrigo Duterte of the Philippines launched a bloody "war on drugs" in which thousands of people were reported to have been extrajudicially executed by police and vigilantes working for them. The AICHR did not issue a statement, did not request information, as its Terms of Reference (ToR) mandates it to do, nor did it condemn the

killings, which organisations like Human Rights Watch and Amnesty International have described as a strategy that could amount to crimes against humanity.

The AICHR showed similar passivity regarding the rise of religious intolerance and discrimination based on Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics (SOGIESC) in several AMS. The ACWC was also silent despite these and other serious human rights violations in the region affecting both women and children.

Both Commissions fell short of the required responses to or inputs on the worsening plight of the Rohingya population in Myanmar's Rakhine state, where military-led attacks towards the end of the year involved unlawful killings, torture, rape and the burning of property. Reports say that as many as 87,000 Rohingya were estimated to have fled into neighbouring Bangladesh.¹

The mandates of both Commissions explicitly task them with protecting human rights, not just promoting them. Their inaction in the face of gross human rights violations in the ASEAN region is therefore a breach of their own ToR.



¹ <http://www.aljazeera.com/news/2017/09/90000-rohingya-flee-myanmar-violence-10-days-170904062405183.html> and [is there a different source intended to be added here?]

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ASEAN SOGIE Caucus
Amnesty International
Association for Law, Human Rights and Justice (HAK)
ASEAN Services Employees Trade Union Council (ASETUC)
Asia Pacific Refugee Rights Network (APRRN)
Child Rights Coalition Asia (CRC Asia)
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CHAPTER 1

PERFORMANCE OF THE AICHR

In 2016, the AICHR embarked on its second Five-Year Work Plan 2016-2020. The year also saw a transition in the Commission with the appointment of eight new Representatives - from Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, and Viet Nam (see Table 2).

The Lao People's Democratic Republic (Lao PDR), as AICHR Chair for the year, hosted the Commission's 20th Meeting in Vientiane on 4-5 February 2016. Just one day before, a workshop was held to ease the transition between the old and new Representatives.

The Workshop on Transition between the AICHR Representatives 2013-2015 and AICHR Representatives 2016-2018 was to be the venue for handing over pending issues and ensuring a smooth transition from the previous Representatives to the new ones.² However, the convening of a one-day transition workshop was far from adequate to ensure the accomplishment of these major objectives. Additionally, not all new Representatives were elected around the same time and consequently, those who had not yet been elected did not benefit from attending the transition workshop.

MEETINGS

Throughout 2016, the AICHR held 13 meetings and two activities: three regular meetings (the 20th, the 21st, and the 22nd Meetings); three special meetings; seven other meetings; and two activities.³

Table 1 lists the AICHR activities, compiled from press releases published on the Commission's website and on individual Representatives' Facebook pages. No publicly available reports or minutes of the meetings were made available to make possible the monitoring of the outcomes and follow-up actions after these meetings.

² Interview with Rafendi Djamin, Indonesia's former Representative to the AICHR, on 14 September 2017.

³ See <http://aichr.org/category/activities/aichr/> (last accessed 10 September 2017).

TABLE 1
MEETINGS OF THE AICHR, 2016

Title	Date/Venue	Key Points Discussed/Outputs	Comments
20 th Meeting	4-5 February 2016, Vientiane, Lao PDR	<ol style="list-style-type: none"> 1. Workshop on Transition between the AICHR Representatives 2013-2015 and the AICHR Representatives 2016-2018 <ul style="list-style-type: none"> • How AICHR should continue to mainstream human rights across all pillars of the ASEAN Community 2. Priority activities to be undertaken in 2016: <ul style="list-style-type: none"> • Second AICHR Regional Dialogue on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community, as AICHR is focusing on the rights to health, education and employment • AICHR Seminar on Promoting CSR and Human Rights in ASEAN, tasked to work on the recommendations from the baseline study the AICHR conducted for its Thematic Study on Corporate Social Responsibility (CSR) and Human Rights • Annual Consultation on Human Rights-based Approach in the Implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (APA) • AICHR Regional Forum on Media and Human Rights • AICHR Youth Debates on Human Rights 	<ol style="list-style-type: none"> 1. The minutes of the Workshop were not publicly available, giving CSOs little room to follow up the issues discussed there. In addition, not all new Representatives had been appointed or selected at the time of the workshop, which reduced the effectiveness of the transfer of knowledge from the previous to the new Representatives. The new Representatives could also have their own priorities, which means that they would not automatically take over the issues pushed by their predecessors. 2. These five activities were completed in 2016. But as above, the minutes and/or final reports were not made available to the public. The 2016 priorities still focused on 'soft' issues that did not capture the actual human rights situation in ASEAN region at the time. The AICHR remained focused on the first half of their mandate. While the ASEAN Socio-Cultural Community Blueprint 2025 explicitly states that enhancing regional initiatives to promote and protect the rights of persons with disabilities is part of the ACWC's work,⁴ it seems that the AICHR decided to take the lead on this matter. This could be an example of an unresolved alignment issue between the two Commissions.

⁴ Available at <http://www.asean.org/wp-content/uploads/2012/05/8.-March-2016-ASCC-Blueprint-2025.pdf>.

21 st Meeting	5-9 April 2016, ASEAN Secretariat, Jakarta, Indonesia	<ul style="list-style-type: none"> • Adoption of several Concept Papers for activities under Priority Programmes/Activities for 2016 • Adoption of themes of activities in 2016, to include trafficking in persons; rights of persons with disabilities; human rights, the environment and climate change • Deliberation of the AICHR's Annual Report 2016 and Priority Programmes/Activities in 2017 • Annual Interface with the Committee of Permanent Representatives (CPR) to ASEAN, briefing on the role and function of the CPR, particularly in relation to the ASEAN Dialogue Partners and cross-pillar coordination • Annual Dialogue with the Secretary-General of ASEAN, where the AICHR expressed its appreciation for the support in the establishment of the Human Rights Division under the ASEAN Political-Security Community (APSC) Department • Meeting with Nina Hachigian, US Ambassador to ASEAN, where the US stated that it was committed to support the ASEAN-US PROGRESS programme • Meeting with Fransisco Fontan Pardo, EU Ambassador to ASEAN 	<ul style="list-style-type: none"> • The Concept Papers discussed in this Meeting were not made public. • Presumably, the theme of the rights of persons with disabilities was prioritised in response to AMS' ratification of the Convention on the Rights of Persons with Disabilities (CRPD), the last two ratifications coming from Viet Nam in 2015 and Brunei Darussalam in 2016. The theme of climate change seemed to be in response to the 2015 Southeast Asian haze episode. • The Annual Report was published in 2016. See the section below for the analysis. • The press release did not have details of the results of four diplomatic meetings.
Special Meeting	2-3 July 2016, Chiang Mai, Thailand	<ul style="list-style-type: none"> • Finalisation of AICHR's Annual Report 2016. • Discussion of the AICHR Judicial Colloquium on the Sharing of Good Practices regarding International Human Rights Law and Human Rights Cases in Domestic Courts 	<p>The synergy between the AICHR, the ACWC and other ASEAN bodies is important. However, such engagement needs to consider civil society feedback in order to reflect connections to the ASEAN peoples and local communities.</p>

		<ul style="list-style-type: none"> Meeting with the Representatives of the ACWC and the ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD) to discuss possible cooperation and to have an agreement to regularise interactions through annual meetings in order to further enhance synergy among the three bodies' programmes 	
Special Meeting	23-24 July 2016, Vientiane, Lao PDR	<ul style="list-style-type: none"> Annual interface with the ASEAN Foreign Ministers at the 49th ASEAN Ministers' Meeting (AMM). AICHR submitted its Annual Report 2016 to the AMM, presenting the programmes and activities undertaken over the past year, and providing its observations on achievements and challenges. AMM endorsed the Priority Programmes/Activities of AICHR for 2017. Decision to co-organise a Panel Discussion on the Socialisation of the ACTIP, which aims to highlight the work that ASEAN is doing to protect its people by its all-inclusive approach to address trafficking in persons. Agreement to organise the third AICHR workshop relating to human rights, environment and climate change, and the AICHR Workshop on a Rights-based Approach to Regional Management Strategy for Effective Environmental Assessment. Agreement to organise the AICHR Judicial Colloquium on the Sharing of Good Practices regarding International Human Rights Law and 	<ul style="list-style-type: none"> The key point from this Meeting was the AMM's refusal to review the AICHR's ToR (see below for further elaboration). The AMM's Joint Communique sounded promising by saying that "the AMM encouraged all the Representatives to engage more on human rights challenges in the region." Yet the second part of the statement emphasises the condition "(...) in accordance with the principles of the ASEAN Charter, the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD, as well as the Terms of Reference (ToR) of the AICHR."⁵ The AICHR should always be a regional body based on consultation and consensus, but it becomes a toothless one when faced with human rights violations in the region. The Judicial Colloquium is to be convened in 2017 under the direction of the Malaysia Representative.

⁵ Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting, Vientiane, 24 July 2016, para 16.

	<p>Human Rights Cases in Domestic Courts, with the objective of encouraging greater peer-to-peer interaction between relevant stakeholders such as judges, AICHR Representatives, and other relevant ASEAN Sectoral Bodies such as the ASEAN Law Ministers Meeting (ALAWMM) and ASEAN Senior Law Officials Meeting (ASLOM).</p> <ul style="list-style-type: none"> • Extensive discussion on the new thematic study the AICHR is embarking upon, on the Right to Education, and one of its new initiatives to be undertaken in 2017 on the right to safe drinking water and sanitation. • Briefing on the progress in the establishment of a Task Force on the Mainstreaming the Rights of Persons with Disabilities in the ASEAN Community. 	<ul style="list-style-type: none"> • The Task Force was established in 2016.
<p>Special Meeting</p> <p>27 – 28 October 2016, Ha Noi, Viet Nam</p>	<ul style="list-style-type: none"> • Discussion of the progress of implementation of its Priority Programmes/Activities for the years 2015 – 2017 and adoption of several new projects. • Discussion on the outcomes of several AICHR Programmes/Activities that were recently concluded. • Intention to enhance the mainstreaming of human rights into the three pillars of the ASEAN Community based on the ASEAN Human Rights Declaration (AHRD), the Sustainable Development Goals (SDGs), and the ASEAN Community Vision 2025. • Deliberation of applications by CSOs seeking a Consultative Relationship with the AICHR. 	<ul style="list-style-type: none"> • There was no publicly available information on the new projects discussed in this Meeting. • There was no publicly available information on the outcomes of activities that were concluded. • There was no clear strategy available to be commented on with regards to the implementation of human rights mainstreaming across the three pillars of the ASEAN Community. • See Chapter 4 for elaboration on the consultative relationship process.

22 nd Meeting	23-25 November 2016, Luang Prabang,	<ul style="list-style-type: none"> • Briefing on the outcomes of recently held AICHR activities. • Discussion of programmes and activities that the AICHR was to undertake in 2017 to further regional cooperation on promoting human rights in ASEAN, which would cover issues such as: the right to education; the SDGs; good practices regarding international human rights law; as well as the continuation of several AICHR programmes, including the AICHR youth debate, regional dialogue on disability, workshop on human rights, environment and climate change, the AICHR-The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) second consultation, and AICHR Judicial Colloquium on the Sharing of Good Practices Regarding International Human Rights Law. • Handover of the AICHR Chairmanship from the Representative of Lao PDR to the Temporary Representative of the Philippines, Belinda M. Ante 	<ul style="list-style-type: none"> • The AICHR continued its practice of not sharing the results of this Meeting. • Several CSOs had obtained consultative status by the time of this Meeting, but there was no indication of their participation noted in it. • Civil society groups expressed the hope that the AICHR would have better performance under the Philippines as ASEAN Chair in 2017.
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THE AICHR AND ITS REPRESENTATIVES

TABLE 2
AICHR COUNTRY REPRESENTATIVES, 2016

ASEAN Member State	Representative	Appointment
Brunei Darussalam	Nazmi Mohamad (<i>new</i>)	Government official – Appointed
Cambodia	Polyne Hean (<i>new</i>)	Government official – Appointed
Indonesia	Dinna Wisnu, Ph.D. (<i>new</i>)	Academia – Open Selection
Lao PDR	Phoukhong Sisoulath	
Malaysia	Edmund Bon Tai Soon (<i>new</i>)	Lawyer – Appointed
Myanmar	Hla Myint (<i>new</i>)	NHRI commissioner – Appointed
Philippines	Leo Herrera-Lim (<i>new</i>)	Government official – Appointed
Singapore	Barry Desker (<i>new</i>)	Former Ambassador – Appointed
Thailand	Dr. Seree Nonthasoot	
Viet Nam	Nguyen Thi Nha (<i>new</i>)	Former Ambassador – Appointed

Under Article 5(2) of the ToR of the AICHR, the appointment of new AICHR Representatives is a matter for each AMS. Some States appoint serving government officials (Brunei Darussalam, Cambodia, and Philippines), former Ambassadors (Singapore and Viet Nam) former members of National Human Rights Institution (Myanmar), or members of the bar association (Malaysia), while others use an open selection process (Indonesia). Each Government, usually through the Ministry of Foreign Affairs, has discretionary power in the selection process of its AICHR Representative.

The policies of the AICHR, such as the response to human rights issues and approach to engagement with civil society, are influenced by the background of the individual Representatives, as well as by each Government's policies and attitudes toward human rights. Representatives from bureaucratic backgrounds tend to be more cautious, while non-bureaucrats are more accustomed to and more progressive in engaging with civil society. Similarly, Representatives from more democratic countries (i.e. Indonesia, Malaysia, Philippines, and Thailand (whose current Representative was appointed before the military coup)) are more open to civil society engagement than those from more totalitarian countries (i.e. Brunei Darussalam, Cambodia, Lao PDR, Myanmar, Singapore, and Viet Nam).

With the third term of AICHR Representatives, the AICHR has fewer country Representatives from CSOs or with a human rights background. From the viewpoint of CSOs, the AICHR Representatives

from Thailand and Malaysia are the most approachable ones, as exemplified in FORUM-ASIA's experience. CSOs also find their willingness to be involved in the initiation of the Coalition on the Abolition of the Death Penalty in ASEAN (CADPA)⁶ and their active public communication on their Facebook pages encouraging.

The 2016 Country Representatives are generally less political than their predecessors. This created a new dynamic within the Commission – one that made it more open to considering requests from CSOs for consultative status more favourably.

AICHR's nature as a regional human rights commission should naturally mean it consists of Representatives who have human rights competence and expertise, whether their background is in Government or civil society. A diversity of expertise in different human rights issues would provide complementarity within the Commission. But the 2016 composition of the AICHR might not have helped its outputs for that year. Only a few of the Representatives had exposure to international human rights issues before their appointment, while the majority had ideological and bureaucratic barriers that shaped their view towards human rights and the wider stance of the AICHR.

The fact that each country Representative is primarily accountable to his/her Government⁷ remains a cause for major concern. This tends to influence his/her views related to human rights matters based on the interests of his/her Government, and undermines the AICHR's ability to be seen as an independent regional human rights mechanism. Moreover, many Representatives appear to be representing their particular Ministry, and not their Government/State.

Conversations that CSOs have had with incumbent AICHR Representatives indicate that they are aware of the need to be more active than their predecessors. For instance, certain Representatives have told CSOs that they would like to see better communication channels between the AICHR and CSOs, and have tabled this issue for AICHR deliberations to follow up in discussions on consultative relationship procedures. However, this might be feasible only in cases where the issue at hand is not confidential or deemed sensitive by certain countries. The AICHR Representatives from the Philippines and Malaysia have initiated discussions on the creation of a human rights protection mechanism within the AICHR.

In general, the AICHR focuses more on the first part of the first purpose ('promotion' part?) listed under its mandate, and less on the second part ('protection'). As the Commission's ToR explicitly states in paragraph 1.1, "The purposes of the AICHR are to promote and protect human rights and fundamental freedoms of the peoples of ASEAN". The promotion and protection mandate is also acknowledged in the Phnom Penh Statement on the Adoption of ASEAN Human Rights Declaration (AHRD). However, the AICHR has taken the fragmented approach since its first composition (?) (2009), which continued until the third (2016). This approach seems to be a cause of the Commission's inaction.

Unlike in the case of protection, the AICHR has zealously adhered to the "consultation and consensus" clause in its ToR. This means that each AMS effectively has veto power over any decision by the AICHR, in particular when it comes to addressing human rights violations under its own jurisdiction. This has resulted in virtual paralysis. Instead of finding innovative ways of reaching meaningful decisions, the AICHR opts for the lowest common denominator, the least controversial topics for studies or other activities, and silence in the face of even the most serious human rights violations in the region.

AICHR'S ANNUAL REPORT

The AICHR adopted its 17-page annual report for 2016 on 3 July 2016. The publication of this report, covering the period July 2015 to June 2016, indicates progress in the area of the AICHR's public communications and transparency.

In 2015, the Commission's annual report was also made accessible to the public, but only after an initiative by the Thailand Representative.⁸ In 2016, the report was made officially available on the AICHR

⁶ <http://www.endcrimenotlife.com/> and <https://www.facebook.com/aichrmalaysia/> (last accessed 18 September 2017).

⁷ Paragraph 5.2 of the AICHR Terms of Reference.

⁸ FORUM-ASIA, *Breaking the Silence and Unlocking Barriers for Human Rights Protection in ASEAN: A Report on the Performance of the ASEAN Human Rights Mechanisms in 2015*, p. 32, <https://www.forum-asia.org/?p=21644> (last accessed 10 September 2017).

website. However, a significant proportion of the annual report is a compilation of press releases issued following AICHR meetings and events, so its content does not provide much additional substantive value to its readers.

There is, however, a degree of analysis in section 7 of the annual report, though elaboration is still needed. For example:

“(...) the AICHR will collaborate with the Committee of Permanent Representatives and the ASEAN Community Councils to mainstream human rights in the three pillars of ASEAN (...)”
(sub-section 7.7.1, page 14)

The aim of mainstreaming human rights in ASEAN is certainly positive, and its inclusion in an annual report of a regional human right commission appears natural. However, key questions remain unanswered, such as: how is the AICHR going to achieve such mainstreaming? To what extent have the three pillars of ASEAN mainstreamed human rights? And how are the AICHR and the CPR going to coordinate their roles?

When it comes to the eight new Representatives, the report states that:

“(...) substantial development was already identified in the previous Annual Report and anticipated by the previous AICHR Representative (...)” (sub-section 7.1, page 12)

This statement highlights the fact that CSOs had no access to AICHR Annual Reports before 2016. Thus, it is not possible to make comments on the extent of identified and anticipated situations referred to in the first AICHR’s annual report.

The report also states that:

“(...) Implemented activities will be utilised to improve future programmatic approaches through a process of monitoring and evaluation (...)” (sub-section 7.2, page 13)

However, the report does not provide details, for instance on what monitoring and evaluation processes are envisaged or whether CSOs or other stakeholders would be part of the process. The report further states:

“(...) Another example is the initiatives on the rights of women in various fields on which the Philippines has taken a lead, including the elimination of violence against women (...)”
(sub-section 7.2, page 13)

This statement brings out the question of the extent to which the AICHR and the ACWC have aligned and coordinated their activities. If both Commissions really want to work together, it is not clear why there has been such an overlapping of issues, with the AICHR claiming credit for areas that are clearly under the mandate of the ACWC.

It seems that the two Commissions have different ideas on what constitutes achievement and alignment. Further discussion on this is in Chapter 3:

“(...) The difficulty in searching for suitable talents as national focal points for thematic studies of the AICHR has delayed progress (...)” [to make it consistent with previous quotes, also add source here]

How does the AICHR define ‘suitable talents’? Does ‘suitable’ mean expertise in the issue or the country, or language, since English, as the official language of ASEAN, is not a native language in most ASEAN countries? Does it refer to any expectation from each Government, including and not limited to, a person’s willingness to avoid criticising Governments?

Ideally, an annual report would shed light on the AICHR deliberation process, reasons for prioritising an issue or for discontinuing work on another issue, analysis of achievements, challenges as well as suggestions for improvements in the future. The report would have been better structured and

cross-referenced with a corresponding Work Plan or Mandate and Functions.

The annual report fails to address the key problems that plague the AICHR's work and undermine its credibility as a human rights commission.

Article 1 (1) of the AICHR's ToR states that the first purpose of the Commission is "to promote and protect human rights and fundamental freedoms of the peoples of ASEAN." But the AICHR continues to focus solely on its rights promotion work, neglecting the other half of its mandate. In this way, the AICHR has been breaching its own ToR and thus continues to be seen as a weak and inefficient body.

PRIORITY PROGRAMMES/ACTIVITIES

In general, the AICHR focused its resources and commitments on the following issues and activities:

Trafficking in Persons, including the implementation of ACTIP, protection of victims and survivors, good practices to combat trafficking, and cross-border cooperation.

- The AICHR organised a Workshop on Effective Communication Strategies to Combat Trafficking in Persons on 23-24 June 2016, in Nha Trang, Viet Nam. The workshop identified challenges in: the communication process; international, regional experiences and good practices on effective communication strategies; and raising awareness on rehabilitation efforts to support victims of human trafficking in the communication plan. The workshop also shared national experiences and good practices on communication processes in combating trafficking in persons.
- The AICHR – SOMTC Consultation on Human Rights-Based Approach in the Implementation of ACTIP and APA was held on 29-30 September 2016 in Jakarta, Indonesia. The meeting studied the plans and steps taken by AMS that have ratified ACTIP to implement such an approach. The meeting recommended the provision of tailored support for the specific needs of individual AMS in ratifying and strengthening ACTIP implementation. There was a proposal for the AICHR-SOMTC consultation meeting to become an institutionalised forum for consultation among ASEAN bodies related to the combating of TIP. Moreover, it was decided that the AICHR would study the SOMTC Action Plan to ensure that there is no overlap. The consultation also discussed the need to further explore other ways to prevent TIP in addition to law enforcement, including expanding the roles of community members, parents, and survivors of TIP.
- The AICHR Regional Workshop on Strengthening National Plans of Action on Trafficking in Persons to Ensure Effective Implementation of ACTIP and APA was held on 1-2 December 2016 in Phnom Penh, Cambodia. This workshop examined good practices and challenges in the national plans of action on TIP both inside and outside the ASEAN region. Furthermore, the AICHR developed recommendations to strengthen the national plans of action on TIP and looked into ways and means to integrate the provisions of the ACTIP and APA into the national plans of action, policies and legislation of the AMS. Relevant AMS were encouraged: to ratify the ACTIP; integrate its provisions into their national plans of action; and undertake mid-term stock-taking to ensure their coherence.

The Rights of Persons with Disabilities, including a series of consultations, the mainstreaming of the rights of persons with disabilities across all three pillars of the ASEAN Community, and establishment of a Task Force.

- The AICHR organised the Second Regional Dialogue on the Mainstreaming of the Rights of Persons with Disabilities on 29 June – 1 July 2016 in Chiang Mai, Thailand. The gathering was attended by members of the UN Committee on the Rights of Persons with Disabilities. The dialogue aimed at mainstreaming the rights of persons with disabilities across the three pillars of the ASEAN Community, particularly related to

The Rights of Persons with Disabilities, including a series of consultations, the mainstreaming of the the issues of health, education and employment. The dialogue discussed the creation of the ASEAN Economic Community (AEC) and its implications for persons with disabilities on their enjoyment of their rights. It also considered the development of a regional action plan for the mainstreaming of the rights of persons with disabilities in ASEAN.

- The AICHR Training Programme on the Rights of Persons with Disabilities was organised on 11-14 October 2016 in Bangkok, Thailand. Topics covered by the training included: conceptual, international and regional frameworks on disabilities; friendly designs for persons with disabilities; the role of journalists; and the role of government officers and policy makers in respecting, protecting and promoting the rights of persons with disabilities. The training aimed to provide a better understanding on the rights of persons with disabilities, and set up a regional platform of relevant stakeholders in ASEAN to share experiences and practices on the promotion and protection of the rights of persons with disabilities in the region. The AICHR decided to convene a task force on the mainstreaming of the rights of persons with disabilities that would draft a regional action plan. The AICHR also announced plans to conduct a third regional dialogue on the mainstreaming of the rights of persons with disabilities in 2017.
- The AICHR o The First Meeting of the Task Force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community was held on 5-6 December 2016 in Bangkok, Thailand. The Task Force is mandated to draft a regional instrument that will serve as the implementation of the ASEAN Community Vision 2025 on the mainstreaming of the rights of persons with disabilities across all three pillars of the ASEAN Community through consultation among relevant ASEAN Sectoral Bodies and other stakeholders in the region, including disabled people's organisations (DPOs). The First Task Force meeting discussed the current situation of persons with disabilities in the ASEAN region, and the absence of a regional framework pertaining to disability rights and relevant challenges. The Task Force also deliberated on the framework of such a regional instrument.

Media and Human Rights

- The AICHR Regional Forum on Media and Human Rights in ASEAN took place on 16-17 May 2016 in Kuala Lumpur, Malaysia. The forum focused on: the rights of women and children; persons with disabilities; persons living with HIV/Aids; and migrant workers. The forum also discussed the need to promote media self-regulatory instruments in accordance with international human rights law and standards.

Participants shared good practices in reporting on vulnerable groups and produced an outcome document that contained observations and recommendations for the AICHR to adopt, including the drafting of an explanatory note or general comment on Article 23 of the AHRD and guidelines for good practices on media reporting.

CSR and Human Rights

- The AICHR Seminar on Promoting CSR and Human Rights in ASEAN was convened on 4 November 2016 in Singapore. The seminar discussed best practices and experiences from international and regional speakers, and explored the role of Governments, businesses, trade unions and CSOs in promoting CSR. It also explored possible elements of a regional strategy on CSR and human rights in ASEAN. Holding this seminar was one of the recommendations of the CSR and Human Rights Baseline Study completed by the AICHR Representatives with the 2013-2015 term of office.

Youth Debate on Human Rights

- This annual event was organised on 22–23 September 2016 in Kuala Lumpur, Malaysia. It aimed to provide a platform for ASEAN youth to express their views on contentious human rights issues, such as: abortion; child marriage; climate change; migrant workers; and peace. During the event, the AICHR Malaysia Representative issued General Observation No. 1/2016: Interpretation of Articles 6, 7 and 8 of the AHRD 2012 to explain provisions on: duties and responsibilities; application of human rights in regional and national contexts; and legal limitations of human rights (See Annex 2).

IMPLEMENTATION OF THE AICHR MANDATE AND WORK PLAN

Under the Chairmanship of Lao PDR, the AICHR continued its policy of not discussing any complaints made by CSOs to it. Though the AICHR put in place the mechanism for consultative relationship status in 2016, the benefits that come with holding such status have yet to be seen.

Throughout the year, the work of the AICHR did not include an active role in protecting human rights. The Commission instead focused on organising workshops, studies and discussions, while trusting AMS to do the actual protection work. The Commission put strong emphasis on less controversial human rights issues, collaboration, and best practices. While these are important components in ensuring respect for human rights, the sole focus on ‘soft measures’ and the absence of tools to tackle violations of rights that occurred widely in AMS throughout the year has opened the AICHR to accusations of failing to confront rights violations. As Member States accused of human rights violations did not face probing, resistance, reporting or condemnation from the AICHR, victims were left without regional protection.

In its work plan, the AICHR states that it aspires for the ASEAN Community to be free from fear, war, aggression and poverty.⁹ However, none of the activities undertaken reflect this commitment. Moreover, the AICHR only carried out about 50 per cent of the 29 activities planned for 2016. One of the reasons for this was that the new Representatives had new priorities or decided not to carry on plans made by their predecessors.

One advantage that the AICHR has, compared to the ACWC, is that it receives more support at the national level. The AICHR Country Representatives are supported by their national secretariats under the Ministry of Foreign Affairs. These national secretariats help AICHR Representatives to organise national consultations with CSOs and to handle other administrative matters.

THEMATIC STUDIES

Different thematic studies planned – some from as far back as 2012 that should have been led by certain country Representatives – were not carried out. These included the studies on: migration to be led by the Representatives of Thailand and Lao PDR; right to education to be led by the Representative of Lao PDR; right to life to be led by the Representative of Indonesia; and the environment to be led by the Representative of Myanmar.

This backlog is partly due to the changes in country Representatives. Several of the new Representatives had their own thematic priorities, such as in economic rights or trafficking in persons. While this is understandable, it should not have meant abandoning earlier decisions to pursue particular topics. This shows a lack of continuity across different commissioners.

It is also necessary to note that no thematic studies were planned or carried out regarding sensitive or controversial human rights issues such as: torture and other cruel, inhuman or degrading treatment or punishment; extrajudicial executions; the rights of SOGIE; or religious intolerance.

⁹ Five Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2016-2020). Adopted on 15 June 2015, endorsed at the 48th AMM on 3 August 2015. p.1 (Available at <http://aichr.org/documents/>).

STRATEGIES

In 2016, the AICHR discussed its performance efficiency and acknowledged that it had had too many meetings and events in the previous years.¹⁰ This might be one of the reasons behind the current Representatives' streamlining of their work. For example, the current AICHR discontinued discussions on torture and did not organise the Multi-Stakeholders' Annual Meeting. However, the decision to cull this topic is highly questionable in view of reports on torture in ASEAN.

The AICHR's ToR have not been revised and updated due to the lack of consensus during the ASEAN Foreign Ministers' Meeting (AMM), despite the fact that the revision has been proposed by the AICHR since 2016.¹¹

For example, at the 23 July 2016 Interface between the AMM and the AICHR in Vientiane, Lao PDR, Malaysia reiterated its support for the recommendation that the AICHR's ToR be reviewed for updating and/or improvement, where necessary or appropriate.¹² Due to the lack of consensus, the Joint Communiqué of the 49th AMM produced a somewhat vague result on the matter of the revision of AICHR's ToR that indicated no urgency or clear timeline. The Communiqué said:

'We welcomed the outcomes of the Interface between the AMM and AICHR Representatives and took note of the recommendation for the AMM to consider, when and as appropriate, the review of the ToR of the AICHR as provided for in the ToR, consistent with the purposes and principles of the ASEAN Charter, with a view to further enhancing the promotion and protection of human rights within ASEAN.'¹³

The alignment of human rights work across ASEAN remains a serious challenge for the AICHR since other ASEAN Sectoral Bodies do not seem to know the AICHR's exact place in the regional architecture.

Alignment with the ACWC also still needs improvement, as does cooperation with other ASEAN Sectoral Bodies. However, the improvement in cross-pillar and cross-sectoral cooperation is notable on the issue of rights of persons with disabilities,¹⁴ though this has not necessarily led to better protection of their human rights.

PUBLIC AWARENESS

While the official website of the AICHR is much more active and contains regular updates, some of the information it provides is superficial. Most importantly, the AICHR website only provides information about its own activities, and not about human rights in the region.

The Governments of four AMS have created official websites for their country Representatives. The levels of website management and updates, however, vary.¹⁵ Some representatives decided to use their Facebook pages as supplementary resources regarding AICHR activities and to increase their public visibility, in particular amongst youth. This is a savvy decision considering the large number of Facebook users in Southeast Asia.

To illustrate the discrepancy between information presented on the official AICHR website, a comparison was made between the number of activities performed or attended by the AICHR Representatives and those posted on the site. For example, the web page for Indonesia did not show activities for 2016, but information on the Facebook page of the Representative featured 39 activities, excluding regular and

¹⁰ Interview with H.E. Dinna Wisnu, Ph.D. on 21 June 2017.

¹¹ Interview with H.E. Dinna Wisnu, Ph.D. and H.E. Edmund Bon Tai Soon (AICHR), the last one held on 1 October 2017.

¹² <https://www.facebook.com/aichrmalaysia/posts/1983129661924683>. The same commitment is once again expressed in 2017 see

http://www.kln.gov.my/web/guest/press-release/-/asset_publisher/FCK0/content/intervention-by-yb-menteri-luar-negeri-at-the-interface-between-asean-foreign-ministers%E2%80%99-meeting-amm-and-the-asean-intergovernmental-commission-on-human-rights-aichr?redirect=/web/guest/press-release (last accessed 1 October 2017).

¹³ Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting, Vientiane, 24 July 2016, para 19.

¹⁴ Interview with Rafendi Djamin, former Indonesia Representative to the AICHR, on 14 September 2017.

¹⁵ See <https://aichr.or.id/index.php/id/> for Indonesia, <http://aichr.kln.gov.my/> for Malaysia, Myanmar website <http://www.myanmar-aicr.org/index.php/about/aicr-myanmar> is still under construction, and <http://www.aicr.or.th/index.php> for Thailand (last accessed 10 September 2017).

special AICHR meetings and events. Similarly, the new Malaysia Representative only had one national activity published on the Malaysia page of the AICHR website and no activities on the government-managed website, compared to 12 activities published on his Facebook page. In sum, the official AICHR website and the national secretariat websites do not reflect the full activities of their Representatives or carry consistent information.

Another activity that the AICHR organised to raise public awareness is the annual Youth Debate on Human Rights, which aims to increase varsity student awareness of human rights issues and the AHRD. This reflects the Commission's non-threatening approach, consistent with its rights promotion mandate.

ADVISORY SERVICES

In 2016, the AICHR did not issue policy advice or recommendations for other ASEAN bodies. In the past, however, the AICHR has replied to requests for advisory opinions on the right to health made by the Senior Officials' Meeting on Health Development (SOMHD) and the ASEAN Task Force on AIDS (ATFOA). Like several other provisions, this advice function, envisaged in Article 4.7 of the AICHR's ToR, remained dormant throughout 2016.

STANDARD- SETTING

Since the AICHR adheres to ASEAN's 'consultation and consensus' model of decision making,¹⁶ the quality of its outcomes is often described as following the lowest denominator when compared to international standards,¹⁷ particularly in the adoption of the AHRD and Phnom Penh Statement on the Adoption of ASEAN Human Rights Declaration (AHRD).

The AICHR has tried to set a new standard for a more official relationship with CSOs by following the United Nations' ECOSOC consultative status mechanism and other regional human rights mechanisms. However, CSOs do not see this consultative process with AICHR as reflecting fair deliberations in the review of applications.

CONCLUSIONS

While the AICHR showed incremental progress in certain aspects of its work in 2016, especially with regards to transparency and formalising relationships with CSOs, there remains room for much improvement and for expectations to be fulfilled.

The entry of new Representatives this year created a new dynamic within the Commission, a dynamic that CSOs have been monitoring in order to build on. The AICHR needs to follow up on Article 9.6 of its ToR and pressure the AMM to revise its mandate, including: the increase of its independence and human rights expertise; ensuring decisions by majority; strengthening its protection mandate; and further enhancing transparency.

Even without revising its mandate, the AICHR still has an obligation, under its current ToR, to both protect and promote human rights in ASEAN. The continued failure to do this, particularly the former, in 2016 makes AICHR less relevant in addressing the human rights situation in the ASEAN region.

¹⁶ Paragraph 6.1 the AICHR's Terms of Reference.

¹⁷ Interview with Yuyun Wahyuningrum, an ASEAN scholar and activist, on 27 August 2017.

CHAPTER 2

PERFORMANCE OF THE ACWC

The status and identity of the ACWC as an ASEAN commission remained ill-defined in 2016. This has created confusion in the way it is treated as an ASEAN Sectoral Body, which in turn affects the Commission's performance. Even though the Commission's full name has the word 'protection' in it, the mandate and functions listed in its ToR¹⁸ focus only on promotion.

By the fourth quarter of 2016, the ACWC welcomed three new Representatives for women's rights and three for children's rights from six Member States, succeeding Representatives who completed their term of office. The new ACWC Representatives are: H.E. Hajah Misnah binti Haji Bolhassan from Brunei Darussalam, H.E. Doeuk Han from Cambodia, and H.E. Dr. Rose Lena Lazemi from Malaysia for women's rights; and H.E. Yuyum Fhahni Paryani from Indonesia, H.E. Dr. San San Aye from Myanmar, and H.E. Wanchai Roujanavong from Thailand for children's rights. The 13th ACWC Meeting was convened under the leadership of the new chairperson H.E. Lily Purba, Indonesia's Representative to the ACWC for women's rights.

The ACWC continued to face the challenge of lack of resources, which restricts its ability to carry out its programmes. The ACWC does not receive annual contributions from AMS and many development partners do not support the ACWC's regional programmes, focusing instead on activities in certain countries, such as Viet Nam and Myanmar.

The ACWC also received less financial support than the AICHR. As a consequence, the ACWC carried out fewer activities than the AICHR. Development partners have at times allocated financial support for an ASEAN human rights mechanism to the AICHR, assuming that this support would encompass both Commissions. Such support does not require both Commissions to collaborate with each other, and is usually given so that each Commission can run its own programmes. The ACWC needs to increase its visibility and network with donor agencies, as well as ensure that its unique mandate is clarified, not least so as to ensure clearer division of labour with the AICHR.

MEETINGS

The ACWC held two regular meetings in 2016 – the 12th Meeting was held on 16-19 February 2016 at the ASEAN Secretariat in Jakarta, Indonesia, and the 13th Meeting on 3-5 October 2016 in Singapore.

The 12th Meeting reviewed the status of projects and activities under the ACWC Work Plan 2012-2016. It finalised and adopted the text of the ASEAN Early Childhood Care, Development and Education (ECCDE) Quality Standards particularly for child-care services (birth to 4 years of age) and pre-school services (4-6 years of age).¹⁹ The development of the ECCDE Quality Standards was coordinated by the Representative of Malaysia. The Meeting also finalised and adopted the ASEAN Guidelines for a Non-Violent Approach to Nurture, Care, and Development of Children in All Settings, the drafting of which was coordinated by the Representative of Thailand.²⁰

The 13th Meeting welcomed the six new Representatives. It also finalised the ACWC Work Plan for 2016-2020 and adopted 16 thematic areas for its projects and activities to be implemented between 2016 and 2020.

The following activities are compiled from different press releases published by the ASEAN Secretariat in the ACWC website and the Regional EU-ASEAN Dialogue Instrument Human Rights Facility (READI HRF). Other than the press releases, no other information was made publicly available in order to monitor follow-up actions after these meetings.

¹⁸ Available at http://www.asean.org/storage/images/2012/Social_cultural/ACW/TOR-ACWC.pdf.

¹⁹ Available at <http://asean.org/storage/2017/03/ASEAN-ECCDE-Quality-Standards-Final.pdf>.

²⁰ Available at

<http://www.civilsocietyasia.org/uploads/resources/84/attachment/ASEAN%20Guideline%20for%20Non%20Violent%20Approach>

**TABLE 3
MEETINGS OF THE ACWC, 2016**

Title	Date/Venue	Key Points Discussed/Outputs	Comments
12 th Meeting	16-19 February 2016, ASEAN Secretariat,	<p>Review of the status of projects and activities under the ACWC Work Plan 2012-2016.</p> <p>Finalisation of the ECCDE Quality Standards particularly for child-care services (birth to 4 years of age) and pre-school services (4-6 years of age).</p> <p>Finalisation of the ASEAN Guidelines for a Non-Violent Approach to Nurture, Care, and Development of Children in All Settings.</p> <p>Review of:</p> <ul style="list-style-type: none"> a) Draft Progress Report on Women’s Rights, Empowerment and Gender Equality led by the Representative of the Philippines; b) Draft Regional Review of the Laws, Policies and Practices within AMS Relating to the Identification and Treatment of Victims of Trafficking, especially Women and Children, led by the Representative of Lao PDR; c) Outline of the Baseline Study on Child Protection Systems in AMS led by the Representative of Indonesia; d) Outline of the Report on the ACWC Institutional Strengthening led by the Representative of the Philippines. <p>Agreement on the soft launch of the Network of Social Service Agencies (NOSSA) through the setting up of a website with links to the ASEAN and ACWC websites.</p> <p>Discussion of the development of the Work Plan for the next</p>	<ul style="list-style-type: none"> • Minutes of the meeting were not publicly available. • The four drafts reviewed were not made available to the public. • However, the history of the ACWC’s engagement with civil society shows there is a possibility that the Representatives might be willing to share meeting results when asked.

	<p>five-year period (2016-2020), and agreement to carry over 16 ongoing and planned projects under the new Work Plan. The recommendations of the ACWC's completed activities were going to be reviewed at the 13th Meeting for consideration of the new Work Plan.</p> <p>Agreement to recommend some amendments to the ToR of the ACWC to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) and their possible adoption.</p> <p>Open session with Marta Pais, Special Representative of the UN Secretary-General on Violence against Children, to discuss collaboration to support the implementation of the ASEAN Regional Plan of Action on Violence against Children (ASEAN RPA on EVAC).</p> <p>Agreement to support the High Time Movement (to end violence against children) by issuing a statement of support.</p> <p>Open sessions with UN Women and UNICEF to discuss, among others: future collaboration to support the implementation of the ASEAN Regional Plan of Action on Violence Against Women (ASEAN RPA on EVAW); and ASEAN RPA on EVAC.</p> <p>Agreement to provide inputs to the draft publication of UNICEF entitled Legal Protection from Violence: Analysis of Domestic Laws related to Violence against Children in ASEAN.</p> <p>Discussion of the Workshop on the Socialisation of ASEAN RPA on EVAW and ASEAN RPA on EVAC and on the exploration of possible joint collaboration with CSOs to implement them.</p>	
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Special Meeting ²¹	31 March – 3 April 2016	<ul style="list-style-type: none"> Discussion of the Progress Report on Women's Enhancement and Gender Equality: This sub-project aims to document the progress and milestones made by AMS in promoting and implementing women's human rights and gender equality in the region by using the Convention on the Elimination of All Forms of Discrimination (CEDAW) framework as the basis for the review. The project would be led by the Representative of the Philippines as the main proponent assisted by a team of researchers closely working with an advisory group from ACWC members. Discussion of the ACWC's internal comprehensive review of its current strengths, processes and policies, including an analysis of gaps and needs to meet its mandate as the regional body focusing on the rights and welfare of women and children. This was to be followed by the development of a strategic institutional capacity plan that would ensure the effective and efficient implementation of the ACWC Five-Year Work Plan. 	<ul style="list-style-type: none"> The three Special Meetings in 2016 were supported by READI HRF. Since its funds are severely limited, it is crucial for the ACWC to seek other funding sources to ensure the continuity of its activities.
Special Meeting ²²	27-28 June 2016, Chiang Mai, Thailand	<ul style="list-style-type: none"> Discussion of an ASEAN Integrative Child Protection System, where the ACWC acknowledged the need to assess existing standards of performance on child protection systems (CPS) in AMS through a baseline study in order to come up with a standard performance for an Integrative Child Protection System in ASEAN. 	<p>The ACWC should not focus on one-off topics or act only as a regional event organiser.</p> <p>There should be a clear direction on what to do after the ACWC collects baseline information relevant to the rights of women and children from all AMS.</p>

²¹ <http://readi.asean.org/events/acwc-special-meeting-institutional-strengthening-thailand-2/> and <http://readi.asean.org/events/acwc-special-meeting-progress-report-womens-enhancement-gender-equality-thailand/> (last accessed 18 September 2017).

²² <http://readi.asean.org/events/acwc-special-meeting-asean-integrative-child-protection-system/> and <http://readi.asean.org/events/acwc-special-meeting-institutional-strengthening-thailand-3/> (last accessed 18 September 2017).

	<ul style="list-style-type: none"> This meeting also continued discussion of the ACWC's internal comprehensive review of its current strengths, processes and policies (as above). 		
<p>13th Meeting</p>	<ul style="list-style-type: none"> Welcoming of three Representatives for women rights and three Representatives for children rights. Finalisation of the ACWC Work Plan for 2016-2020, and adoption of 16 thematic areas of its projects and activities for implementation in 2016-2020. 	<p>3-5 October 2016, Singapore</p>	<p>The Work Plan document was not made publicly available. This should be done, so that civil society can give inputs. Paragraph 7.6 of the ACWC's ToR says that 'the ACWC shall keep the public regularly informed of its work and activities through appropriate public information materials produced by the ACWC.'</p>

On 28 September 2016 in Jakarta, Indonesia, the ACWC launched the Regional Review on Laws, Policies and Practices within ASEAN related to the identification, management and treatment of victims of trafficking, especially women and children.²³ The ACWC aimed for the Regional Review to provide an accurate and up-to-date assessment of the current situation, good practices, and issues for consideration, as well as recommendations for improvement in support of victims of trafficking. The 200-page report provides extensive baseline information, from legal provisions to protection measures (or lack thereof) provided by the AMS related to women and children victims of trafficking. In-depth and more specific reviews of different sub-topics need to be considered.

PRIORITY PROGRAMMES/ACTIVITIES

According to the press release from its 13th Meeting, the ACWC finalised its new work plan for 2016-2020. However, the document was not available on the Internet at the time this report was concluded. The ACWC only stated that it adopted 16 thematic areas for the next five years:²⁴

- strengthening of the institutional capacity of ACWC;
- elimination of violence against women and children;
- the right of children to participate in all affairs that affect them;
- trafficking in women and children;
- promotion and protection of the rights of women and children with disabilities;
- Child Protection System: Comprehensive / Integrative Approach for Children in Need for Special Protection (i.e. victims of abuse and neglect, trafficking, child labour, children affected by statelessness, undocumented migrant children, HIV/Aids, natural disasters, conflicts, and children in the juvenile justice system / children in conflict with the law);
- the right to early childhood and quality education;
- promoting implementation of international, ASEAN and other instruments related to the rights of women and children;
- gender equality in education (textbooks, curricula, equal access);
- social impact of climate change on women and children;
- strengthening the economic rights of women with regards to feminisation of poverty, women's rights to land and property;
- adolescent physical and mental health;
- gender perspective in policies, strategies and programmes for migrant workers;
- gender mainstreaming;
- women's participation in politics and decision-making, governance and democracy; and
- early marriage.

ACWC Representatives have, at times, found it difficult to reach agreement on certain standards of what constitutes suitable protection for women and children victims of violence. Such differences of opinion usually stem from different economic conditions AMS face, such as between Cambodia, Lao PDR, Myanmar and Viet Nam and other member countries.

Trafficking in Persons is a thematic area of the ACWC, while the 'Identification, Management and Treatment of Victims of Trafficking, especially Women and Children' is a project in the ACWC Work Plan 2012-2016.

In September 2016, the ACWC launched a Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children in Jakarta. The printed publication became available in October 2016. The Regional Review aimed to support the implementation of the ACTIP, which was signed by the Heads of States at the 27th ASEAN Summit in November 2015. The Regional Review was meant to provide an up-to-date assessment of the current situation, good practices, and issues for consideration, as well as present recommendations for improvement in the responses to victims of trafficking. However, it was difficult for the review to portray the lay-of-the-land accurately, due to difficulties in reaching agreement

²³ <https://acwc.asean.org/resources/activities-recommendations/regional-review-on-laws-policies-and-practices-within-asean-relating-to-the-identification-management-and-treatment-of-victims-of-trafficking-especially-women-and-children/> (last accessed 17 September 2017).

²⁴ <https://acwc.asean.org/press-release/press-release-of-the-13th-asean-commission-on-the-promotion-and-protection-of-the-rights-of-women-and-children-acwc-meeting/> (last accessed 10 September 2017).

on what constitutes adequate protection. For example, Cambodia believed that it had provided adequate protection for women victims of violence since the Government had implemented several initiatives to address the issue of violence against women. Yet at the same time, the Government acknowledged that there had been lack of enforcement²⁵ – which could easily be interpreted as inadequate protection. Similar conclusions emerged from a study by a Cambodian CSO.²⁶

Additionally, in 2016, the ACWC published a 30-page Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons,²⁷ and five fact sheets on the issue of trafficking in persons.

The Regional Review was welcomed by AMS, as seen from the Joint Statement of the 9th ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) Paragraph 10.²⁸ CSOs find the publication of the Regional Review a concrete step toward fostering a common understanding of trafficking in the region, as well as identifying key recommendations that leverage regional cooperation in combating trafficking.

In addition, the ACWC initiated the soft launch of the NOSSA consisting of 33 social service agencies nominated by the 10 AMS, as well as other stakeholders concerned with violence against women and violence against children. The initiative aims to network and share information, knowledge and expertise. At the same time, there has been no information on how the NOSSA would operate and support the ACWC in protecting and promoting the rights of women and children in the ASEAN region. There has also been a dearth of information on the selection process and how an organisation could register to become a member of the NOSSA.

TABLE 4
ACWC COUNTRY REPRESENTATIVES, 2016

ASEAN Member State	Field	Representative
Brunei Darussalam	Women	H.E. Hajah Misnah binti Haji Bolhassan (new)
Cambodia	Children	H.E. Khiev Bory
	Women	H.E. Doeuk Han (new)
Indonesia	Women	H.E. Lily Purba
	Children	H.E. Yuyum Fhahni Paryani (new)
Lao PDR	Women	H.E. Soukphaphone Phanit
	Children	H.E. Chongchith Chantharanonh
Malaysia	Children	H.E. Prof. Datuk Dr. Chiam Heng Keng
	Women	H.E. Dr. Rose Lena Lazemi (new)
Myanmar	Women	H.E. Dr. Thet Thet Zin
	Children	H.E. Dr. San San Aye (new)
Philippines	Women	H.E. Prof. Aurora Javate-De Dios
	Children	H.E. Alberto T. Muyot
Singapore	Women	H.E. Laura Hwang
	Children	H.E. Koh Choon Hui

²⁵ ASEAN Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA on EVAW), Part II, Section I Highlights of Country Initiatives (as submitted by ASEAN Member States).

²⁶ Available at <https://www.licadho-cambodia.org/reports/files/210LICADHOReport-GettingAwayWithRape2015English.pdf>.

²⁷ Available at http://asean.org/storage/2012/05/FAASN_gender_8_email_REV.pdf.

²⁸ Available at http://asean.org/storage/2016/10/5-Joint-Statement-9th-AMMSWD_agreed-at-AMMSWD-meeting.pdf

Thailand	Women	H.E. Kanda Vajrabhaya
	Children	H.E. Wanchai Roujavanong (new)
Viet Nam	Women	H.E. Cao Thi Thanh Thuy
	Children	H.E. Dang Hoa Nam

Because the six new country Representatives only assumed office in October 2016, this review does not include their performance. Lily Purba, ACWC Chair since 2016, admitted that the continuity of the ACWC programmes has been affected as a result of the changeover.²⁹

Having Representatives from government backgrounds or affiliations brings its own advantages, including access to more support. For instance, Indonesian Representatives with CSO backgrounds have little to no support in terms of a national secretariat, support staff, or administrative assistance. In contrast, ACWC Representatives from bureaucratic backgrounds might have two to three support staff able to provide prompt responses, such as in the case of Singapore, Malaysia, Viet Nam. Although support mainly depends on country resources, all Representatives should be provided with administrative and expert support.

IMPLEMENTATION OF MANDATE AND WORK PLAN

As in the case of the AICHR, the ACWC's mandate is to 'promote and protect the human rights and fundamental freedoms of women and children in ASEAN'.³⁰ Like the AICHR, the ACWC has largely failed to act on its protection mandate and has not responded to human rights crises involving violations of the rights of women or children. The mandate and functions of the ACWC as stated in paragraph 5.1 - 5.16 of its ToR focus only on the promotion aspect and largely ignore the word 'protection' in the ACWC's full name.

Nevertheless, ACWC Country Representatives can initiate collaboration with other national and regional human rights institutions on certain human rights issues. For example, the two ACWC Country Representatives for Indonesia made an official request to the President of the Republic of Indonesia in 2015 to pardon Mary Jane Veloso, a Filipino trafficking victim on death row for drug smuggling offences. Advocacy was organised together with several other international and state institutions of Indonesia, i.e. Komnas HAM, Komnas Perempuan.

As stipulated in its ToR, the ACWC has to be mindful of ASEAN's non-interference principle when it wants to comment or get involved in domestic cases. However, adherence to this principle has not been productive, as it undermines universal human rights principles. This non-interference principle has been used to shield AMS from regional scrutiny on allegations of human rights violations in their countries.

Another institutional factor that limits the ACWC's responsibility is its inability to comment on cases related to civil or political rights that fall under the socio-political pillar of the ASEAN Community, for instance in the case of the Rohingya. Massive human rights violations like these affect the rights of women and children and put the matter squarely under the mandate of ACWC, which should then intervene. The ToR actually provides the ACWC with authority to directly address such challenges. For example, the ACWC could use functions that are stipulated in paragraphs 5.2, 5.4, 5.12 as follows:

5.2 To develop policies, programmes and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community

5.4 To advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage AMS to improve their plight

²⁹ Interview with H.E. Lily Purba (Indonesia Representative to the ACWC for women's rights) on 11 September 2017.

³⁰ ToR of the ACWC, para. 2(1). The paragraph continues, unfortunately, with cultural relativist restrictions, namely "taking into consideration the different historical, political socio-cultural, religious and economic context in the region and the balances between rights and responsibilities."

5.12 To propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violations of the rights of women and children, including the protection of victims.

The implementation of the ASEAN RPAs requires the meaningful participation of, and partnerships among all relevant ASEAN bodies, government and non-government agencies, civil society, communities and the private sector as well as national, regional and international organisations. The RPA stipulated eight Actions on the Elimination of Violence against Women and Children, as follows:

- Action 1: Prevention;
- Action 2: Protection and Support Services for Victims/Survivors;
- Action 3: Legal Framework, Prosecution and Justice System;
- Action 4: Capacity Building;
- Action 5: Research and Data Collection;
- Action 6: Management, Coordination, Monitoring and Evaluation;
- Action 7: Partnership and Collaboration; and
- Action 8: Review and Communications.

The follow-up on the ASEAN RPAs in 2016 focused on the production of multimedia campaign materials. Initial efforts in developing guidelines and procedures to fulfil the needs of survivors of violence, for implementation at the national level, were also made in 2016.

The ACWC identified projects that require regional and national consultations, such as on child participation, child protection, and RPA on EVAC. The ACWC also allocated different projects in order to implement the RPAs. For instance, ACWC Indonesia is focusing on how to improve the provision of cross-sectoral services for survivors of violence. However, the ACWC is still waiting for funding to elevate this project to the regional level.³¹

Two other follow-up plans are: a prevalence and impact cost study on VAW and VAC; and the formulation of a gender mainstreaming strategy across the three pillars of the ASEAN Community as well as within each AMS. However, there was no follow-up action during the year to increase the leverage of ASEAN RPAs on ERAW and EVAC at the national level, and no progress was made on a review and monitoring mechanism.

In 2016, the ACWC finalised a progress report on women's rights and gender equality in ASEAN. However, its launch was put on hold until 2017 to coincide with celebrations of the 50th Anniversary of ASEAN.³²

The ACWC has also compiled an internal review or reflection on the selection of Representatives, their presence, functions and roles, among others. However, the document is for internal use only and not accessible to the public. It is intended for the institutional capacity building of the ACWC.

Either by its own initiative or by request, the ACWC could provide comments or recommendations to other ASEAN bodies, i.e. SOMTC. In 2016, the ACWC sent comments on issues such as: trafficking in persons; the rights of persons with disabilities; climate change and natural disasters; and child protection.

STRATEGIES

The ACWC's Work Plan 2012-2016 consists of 23 activities. Although the document does not indicate the specific activities to be implemented in 2016, nine activities can be considered to have been continued to some extent through 2016, especially those related to the ACWC's support for ACTIP, the development of a regional review, and the creation of NOSSA.

The ACWC Work Plan 2016-2020 was not officially published, making it difficult for CSOs to comment or submit inputs into the document. The ACWC said it wanted to determine all the thematic issues before

³¹ *Ibid.*

³² Interview with H.E. Lily Purba (Indonesia Representative to the ACWC for women's rights) on 11 September 2017.

releasing the plan to external stakeholders. Furthermore, it considered the Work Plan a living document to which changes or additional points can be made.³³

Up until the publication of this report, the Work Plan for 2016-2020 had not been published, though some individual Representatives were willing to share the document with those who asked for it. While these individual initiatives are to be applauded, they are not enough. A regional commission such as the ACWC has to have clear procedures for making such an important document public, to ensure transparency and accountability as well as meaningful engagement with stakeholders.

In terms of strategies for engagement with the AICHR, its meetings were organised only through invitations. At the regional level, the ACWC was invited by the AICHR to join the Task Force on the Mainstreaming of the Rights of Persons with Disabilities in ASEAN. A better strategy for alignment is needed to avoid duplication, and to create a more productive partnership. For example, the AICHR and ACWC Representatives from Thailand and Singapore are known to have joint activities at bi-national level.

The fact that the AICHR is established by the ASEAN Charter and is recognised as the ‘overarching human rights institution’ is stipulated in paragraph 6.8 of the ToR of the AICHR, and further acknowledged in the Phnom Penh Statement on the AHRD – while the ACWC is not – appears to cast a shadow on the relationship between the two Commissions. The AICHR Representatives tend to believe that their mandate and position are stronger than the ACWC, while ACWC Representatives appear to believe that they enjoy equal status, albeit with a different focus.

PUBLIC AWARENESS

The ACWC was less active than the AICHR in the dissemination of information to the public. There were only 12 posts throughout 2016 on the ACWC official website.

Only two Facebook pages were created by ACWC Representatives – those of the Indonesia Representative on Women Rights to the ACWC and that of the ACWC Cambodia, which is managed by Cambodia Alternate Representative on Children Rights to the ACWC, Chovirith Theng. Thus far, only one of the Facebook pages contains substantive information. ACWC Country Representatives have the autonomy to publish relevant information on their individual pages.

As mentioned in the previous section, after the adoption of the Regional Plan for Actions on ERAW and EVAC, the ACWC produced four public campaign materials on the elimination of violence against women and children.³⁴ The videos were made available on YouTube in 2016. Unfortunately, these campaign materials are available only in English and on the Internet, limiting their accessibility to ASEAN citizens.

A short video uploaded to YouTube on June 2016³⁵ is worth mentioning. Introducing the ACWC in the Thai language, it pays tribute to the first Thailand Representatives to the ACWC, H.E. Saisuree Chutikul and H.E. Kanda Vajrabhaya.³⁶ Another organisation that has consistently been uploading short videos that showcase ACWC Representatives is the Human Rights Resource Centre (HRRC),³⁷ a regional CSO based in Jakarta.

³³ *Ibid.*

³⁴ <https://acwc.asean.org/multimedia/> (last accessed 13 September 2017).

³⁵ <https://www.youtube.com/watch?v=Y5uokFkYsSY> (last accessed 10 September 2017).

³⁶ <https://www.youtube.com/watch?v=Y5uokFkYsSY&t=7s> and https://www.youtube.com/watch?v=1IUQrQi_i98&t=6s (last accessed 3 October 2017).

³⁷ Example: <https://www.youtube.com/playlist?list=PLhCIDXDuzYvWrGHqfEhfTeA6h2sKEa0us> (last accessed 3 October 2017).

STANDARD-SETTING

As seen in the RPA on EAW and EVAC, the ACWC is capable of issuing detailed and fairly progressive standards, at least on issues that are deemed non-contentious. Although the implementation of the Plans of Action was still minimal in 2016, and mostly focused on the promotional aspects of rights, consistent follow-up activities related to RPAs could create a better standard for national implementation.

The RPA on EAW recognises that the following groups of women are especially vulnerable: women with disabilities; women living with and affected by HIV/Aids; girls; older women; ethnic minority and/or indigenous women; women in conflict with the law; women living in disaster or conflict affected areas; refugee and displaced women; documented and undocumented migrant women; stateless women; women human rights defenders and gender equality advocates; and women who are trafficked for forced labour or sexual exploitation, among others.³⁸

However, there is no recognition of the vulnerability of lesbian, transgender or transsexual women in the RPA on EAW. Meanwhile, the RPA on EVAC recognises that indigenous children, children from ethnic, religious or linguistic minorities, and children from the lesbian, gay, transgender or transsexual community are potentially vulnerable to or exposed to violence.³⁹

Overall, civil society finds the ACWC's steadfast silence in the face of human rights violations that AMS may deem sensitive unacceptable. It opposes the adoption of this approach by the ACWC as a regional standard.

CONCLUSIONS

Since its establishment, the ACWC has been seen as the more approachable of the two human rights bodies in ASEAN. The ACWC has tried to maintain this position by not adopting the AICHR approach of having formal consultative relationships with CSOs kept on engaging with them. Unfortunately, this commendable approach is not supported by a good strategy in public communication.

The ACWC urgently needs to address the widespread perception that it is an ASEAN Sectoral Body of less significance than the AICHR. As is, this perception affects the support and resources that the ACWC is able to obtain. Furthermore, it would benefit the ACWC to increase its leverage at the national level in order to generate more substantial impact in advancing the promotion and protection of the rights of women and children.

Finally, through the RPAs on EAW and EVAC, the ACWC has been involved in work that is closer to human rights protection than the AICHR. However, like the AICHR, it has remained silent amidst reports of violations of the human rights of women and children, and victims are not able to approach the ACWC to seek redress.

³⁸ ASEAN Regional Plan of Action on the Elimination of Violence against Women (ASEAN RPA on EAW), Part I, Section II (b).

³⁹ ASEAN Regional Plan of Action on the Elimination of Violence against Children (ASEAN RPA on EVAC), Chapter II on Definitions, Forms of Violence Against Children, and Vulnerable Groups of Children, section (d).

CHAPTER 3

CSO ADVOCACY IN ASEAN

Have CSOs achieved meaningful participation in their interactions with ASEAN? That is the most fundamental question to ask when it comes to CSO engagement with ASEAN.

CSOs can play an important role in creating a ‘People-Oriented, People-Centred ASEAN’ by bridging the gap between people’s aspirations and grievances on the one hand, and regional policy-makers on the other. This is especially true in the context of the ASEAN Community, which was formally launched at the end of 2015 and whose blueprints involve the making and implementation of decisions that have cross-border impact for ASEAN and its peoples.

Regional collaboration is one of the components in CSO advocacy strategies to improve space for democracy and civil society, given that the room for this shrank even further in many AMS in 2016.

Significant to CSO advocacy in ASEAN is the gathering of civil society actors called the ASEAN Civil Society Conference/ASEAN Peoples’ Forum (ACSC/APF), which has been organised annually since 2005. THE ACSC/APF is usually held in the country of the ASEAN Chair hosting the year’s ASEAN events.

This did not happen in 2016, when Lao PDR was the ASEAN Chair, due to concerns expressed by various local and regional organisations over possible restrictions imposed by the Lao PDR Government that would limit freedom of expression on key issues of concern to ASEAN. The ACSC/APF was instead held in Dili, Timor Leste. This decision came after a series of events in 2015 triggered concerns about the credibility of Lao PDR as the venue for CSO discussions.

Earlier, a paper from 40 unnamed Lao CSOs, circulated at the third Organising Meeting of the ACSC/APF 2015 in Kuala Lumpur, expressed opposition to issues⁴⁰ that were included in the 2015 ACSC/APF Conference Statement. This was followed by a heated side event in April at the ACSC/APF 2015, organised by other Lao CSOs. Around the same period, letters objecting to holding the ACSC/APF in Laos in 2016 were sent by the International Committee of the Asia Europe Peoples Forum and Southeast Asian organisations, led by the Solidarity for Asian Peoples’ Advocacies. In September 2015, members of the regional steering committee made a short visit to Vientiane to meet with Lao civil society.

Finally, the decision not to hold the ACSC/APF 2016 in Lao PDR was affirmed by the plenary at the ACSC/APF Conference in Kuala Lumpur, Malaysia on November 2015.⁴¹ Nevertheless, it is important to point out that this decision was not unanimous. Some ASEAN civil society actors disagreed with it, being of the view that it deprived Lao civil society of an opportunity to be empowered.

The Lao PDR Government is known for its restrictive and oppressive policies towards CSOs. The country’s CSOs have mostly been government-organised non-governmental organisations (GONGOs), known to fiercely defend their Government and to try to stifle any criticism of it. The still-unresolved disappearance of activist Sombath Somphone since 2012 reaffirms the concerns voiced by CSOs throughout the ASEAN region.

⁴⁰ These issues are of enforced disappearances and the mention of Sombath Somphone, democracy and multi-party systems, dams and indigenous peoples, and the LGBTIQ.

⁴¹ Lopa, Consuelo Katrina A., “South East Asia Peoples’ Engagement Towards a People-Centered ASEAN: A Ten-Year Review of the ASEAN Civil Society Conference/ ASEAN Peoples’ Forum (ACSC/APF) 2005-2015,” <http://www.laocso.info/wp-content/uploads/2016/09/FULL-PAPER-ACSC-APF-Ten-Year-Review-2005-2015.pdf> (last accessed 18 September 2017).



CSOs make their views heard on the disappearance of Lao activist Sombath Somphone at the ACSC/APF 2016 in Dili, Timor Leste.⁴²

The ACSC/APF 2016 issued a statement⁴³ that lamented the AICHR and the ACWC's severe shortage of resources and below-par standards compared to the human rights mechanisms of other regions; and their weak performance on their mandate of rights protection, including the failure to institute a complaints and enforcement mechanism.

It is important to note that two regional commissioners came to the ACSC/APF 2016. The Malaysia Representative to the AICHR, H.E. Edmund Bon, and the Philippine Representative to the ACWC, Prof. Aurora Javate-De Dios, attended the conference and held a discussion on how CSOs could work together with the regional bodies.

It was not possible for the ACSC/APF 2016 to have an interface with ASEAN leaders, given that the CSOs gathered in Dili and the ASEAN Leaders were in Vientiane for the ASEAN Summit. At any rate, these interfaces have become less and less important for the ACSC/APFs through the years, as their focus has turned more to internal dialogue among CSOs.

Within the ranks of civil society itself, debates continue on the pros and cons of continuing the interface mechanism with ASEAN Leaders. There are many aspects of civil society regional advocacy through ACSC/APF that could be developed further. For instance, these could include: how to reach a more balanced attendance and audience between human rights and development CSOs; how to clarify CSOs' stance on GONGOs' participation; and providing alternatives between top-down and bottom-up approaches between national and regional CSOs.

⁴² <https://www.flickr.com/photos/focussouth/29849356842/in/album-72157674361751346/> (last accessed 18 September 2017).

⁴³ Expanding Peoples' Solidarity for A Just and Inclusive ASEAN Community ACSC/APF 2016 – CSO Statement, para 5. The statement is available at <http://humanrightsinasean.info/document/acscapf-2016-cso-statement-expanding-peoples-solidarity-just-and-inclusive-asean-community> (last accessed 14 September 2017), while the original website of the event (<http://aseanpeople.org/>) is no longer available.

In addition, different organisations are still trying to develop and maintain their ASEAN advocacy, and assist in implementing human rights evidence-based policy through regional research or the publication of reports in order to inform ASEAN policymakers. The Human Rights Working Group (HRWG), for example, changed its advocacy focus from previously trying to assist the internal capacity building of the AICHR and the ACWC, to issue-based advocacy, i.e. on the right to life and rights of migrant workers.⁴⁴

These advocacy efforts mainly aim to assist the AICHR and the ACWC, although there are no clear indications on the extent to which they are taken into account by the two Commissions. Another area of work was the first ASEAN Advocacy Week, organised by ASEAN SOGIE Caucus together with the Human Rights Working Group (HRWG) and Arus Pelangi Indonesia on 17-23 June 2016 in Jakarta, Indonesia,⁴⁵ which tried to raise the issue of violations of LGBTIQ rights with the regional human rights mechanisms.

From the academic side, the consistent efforts of the Southeast Asian Human Rights Studies Network (SEAHRN) should be noted. SEAHRN organised the 4th International Conference on Human Rights and Peace and Conflict in Southeast Asia on 10-12 October 2016 in Bangkok, Thailand. SEAHRN is a consortium of human rights and peace academics and scholars from 22 university-based Southeast Asian institutions that conduct study programmes, research and outreach activities on human rights, peace and conflict studies.⁴⁶

⁴⁴ Interview with Daniel Awigra from HRWG on 14 September 2017.

⁴⁵ <https://aseansogiecaucus.org/news/asc-news/78-asean-advocacy-week-strengthening-regional-advocacy-for-LGBTI-groups> (last accessed 17 September 2017).

⁴⁶ <http://shapesea.com/members1/seahrn-the-southeast-asian-human-rights-studies-network/> (last accessed 18 September 2017).

CHAPTER 4

ENGAGEMENT WITH OTHER STAKEHOLDERS

AT THE INTERNATIONAL LEVEL

In 2016, the AICHR and ACWC were engaged with international actors and human rights bodies through meetings and official engagement in AICHR/ACWC events. For example, members of the UN Working Group on Business and Human Rights participated in the AICHR Seminar on Promoting CSR and Human Rights in November 2016. Representatives from the UN Committee on the Rights of Persons with Disabilities attended the AICHR Regional Dialogue on the Mainstreaming of the Rights of Persons with Disabilities.

The ACWC also had special sessions with the Special Representatives of the UN Secretary-General on Violence against Children, UNICEF and UN Women. The United Nations Economic and Social Commission on Asia and the Pacific (UN ESCAP) gave a briefing during the meeting of the Task Force on the Mainstreaming of the Rights of Persons with Disabilities in the ASEAN Community. In addition, Representatives from the AICHR and the ACWC met with regional and international CSOs.

International networking needs to be maintained and improved by the AICHR and the ACWC, so as to find ways to utilise international support towards creating a more meaningful presence in – and have constructive impact on – the lives of the people of ASEAN.

AT THE REGIONAL LEVEL

The AICHR and the ACWC have different approaches towards engagement with CSOs. The AICHR prefers to formalise this engagement by introducing the specific mechanism of consultative relationship status. The ACWC has chosen to have more open engagement with any CSO that would like to interact with it, as long as the aim is to align with the goals and mandate of the ACWC.

According to the AICHR, the Guidelines on AICHR's Relations with Civil Society Organisations aims to establish an enabling environment for meaningful and constructive engagement and interaction between the AICHR and CSOs.⁴⁷ There are two types of organisations that may apply for consultative status. First, there are the CSOs defined in the Guidelines as associations of persons, natural or juridical, that are non-profit and non-governmental in nature, which are organised voluntarily to promote, strengthen and help realise the aims and objectives of the ASEAN activities and cooperation in the promotion and protection of human rights. Second, there are the institutions that are defined as academic/policy/ research institutions or networks of such institutions, which can be of national, regional or international stature, dedicated to the promotion and protection of human rights.⁴⁸ The requirements are similar to those involved in applying to become Entities Associated with ASEAN with the ASEAN Secretariat.

The fact that 16 CSOs were granted consultative status⁴⁹ in 2016 is noteworthy progress, considering that this process was only discussed in the second period of the AICHR. All CSO applications for consultative status were approved.

⁴⁷ The AICHR Annual Report 2016 (last accessed 1 September 2017).

⁴⁸ Taken from the Application Form for Consultative Relationship with the ASEAN Intergovernmental Commission on Human Rights (AICHR).

⁴⁹ <http://aichr.org/external-relations/consultative-relationship-with-the-aichr/>, they are: (1) ASEAN Service Employees' Trade Union Council (ASETUC), (2) Asia Indigenous Peoples Pact (AIPP), (3) Center for Reintegration of Ex-prisoners into Society, (4) Child Rights Coalition Asia, (5) Human Rights and Development Foundation, (6) Human Rights Resource Centre (HRRC), (7) Institute for Strategic and Development Studies, Inc., (8) International Women's Rights Action Watch Asia Pacific, (9) MARUAH (Working Group for an ASEAN Human Rights Mechanism, Singapore), (10) Movement for the Intellectually Disabled of Singapore (MINDS), (11) Persatuan Penyandang Disabilitas Indonesia (Indonesia Disabled Association), (12) Pusat KOMAS, (13) Raoul Wallenberg Institute of Human Rights and Humanitarian Law, (14) Save the Children Philippines, (15) The Singapore Council of Women's Organisation, (16) The Vietnam Peace and Development Foundation.

FORUM-ASIA, after having applied twice before, was granted consultative status. The status was approved after screening by a panel that initially consisted of Representatives from Indonesia, Singapore, and Myanmar. Later, Myanmar nominated the Representative of Malaysia to replace it. The panel received the application submitted through the ASEAN Secretariat, and then made recommendations to the AICHR plenary. The recommendations were discussed at the AICHR meeting, taking into account the views of the AICHR Representative of the country of origin of the CSO applicant. There is no clear mechanism through which an organisation that is listed as an Entity Associated with ASEAN in Annex 2 of the ASEAN Charter could automatically be granted consultative relationship status with the AICHR.

The mechanism for consultative relationship status was developed to formalise relations with the AICHR, since the ad-hoc basis or other flexible means of cooperation were frowned upon by some AMS that preferred that ASEAN be a formal institution. So far, having consultative relationship status has meant that a CSO receives official invitations to attend some AICHR meetings and to meet with all Country Representatives in order to present its work or to propose regional projects. Discussions on what other forms of participation and involvement consultative-status CSOs can have were ongoing at the end of the year under review.

From the CSO point of view, the mechanism of the consultative relationship status can be used as a test to see how the AICHR reviews applications for such, including when the applicant CSO is critical of one or more Governments and works on sensitive rights issues.

One applicant for the consultative relationship status, the ASEAN Service Employees Trade Union Council, believes that consultative status with the AICHR -

Signifies acknowledgment from the AICHR that trade union is instrumental in the fulfilment of fundamental rights in the South-East Asia region.

On a more practical level, consultative relationship status could increase CSOs' access to the AICHR decision-making process and help in efforts to seek funding support. Some donor agencies might consider endorsements from the AICHR and the CPR as extra points in granting support for regional human rights projects.⁵⁰

At the same time, some FORUM-ASIA members believe that consultative relationship status does not bring any significant change or benefit in the level of engagement with the AICHR.

As of today, we feel it has no effect. The participation to consultation workshops remains dependent on the AICHR Representative hosting it.

(Asia Indigenous Peoples Pact)

By the end of 2016, we still could not see the clear benefit of having a consultative status with the AICHR, aside from being invited to some meetings.

(Child Rights Coalition Asia)

In general, civil society in the region seems to have gained more understanding of the work of the AICHR and its limitations, which at the same time have raised more doubts about the Commission's effectiveness. Although the AICHR appears to be open and cooperative, the accreditation process has thus far not brought about a palpable improvement in the protection of human rights in the ASEAN region.

As for the ACWC, it has not gone down the road of granting accreditation or consultative status to engage with CSOs at the regional level since it finds this impractical and bureaucratic. As a Commission, the ACWC has generally been more open and approachable than the AICHR.

Any CSO can request the ACWC for a meeting (open session), as long as the request is submitted to the Chair two to three months before the Commission's Regular Meeting. In two or three weeks, the

⁵⁰ Interview with the Human Rights Resource Centre (HRRRC) on 3 September 2017.

request is circulated for the approval of all ACWC Representatives.

In practice, the ACWC has approved three to five requests for open sessions in one meeting. Requests must be approved by all ACWC Representatives. So far, requests have been rejected only because of practical considerations such as lack of time or having too many requests at the same time. For example, UNICEF and UN Women's request for an open session in Singapore 2016 was rejected for this very reason, and deferred to the meeting in September 2017.

AT THE NATIONAL LEVEL

A Country Representative to the AICHR may organise national consultations to discuss issues that he or she will bring to the Commission. For example, the Malaysia Representative conducted two consultations in 2016 – first when he was newly appointed, in conjunction with the 2016 ACSC/APF, and second, for the anniversary of the adoption of the AHRD, hosted by the Ministry of Foreign Affairs of Malaysia. Information about national consultations was made available on Facebook pages of individual representatives. The Indonesia Representative also organised a national consultation regarding the ACTIP on 14 December 2016 in Jakarta.

The ACWC has also been open to CSO invitations for interaction or cooperation. However, if invited by any organisation to participate or to speak in an event, the ACWC Chair needs to get approval from all ACWC Representatives. If an invitation is directed to an ACWC Country Representative to participate on behalf of the country, as opposed representing the Commission, he or she has more leeway in responding to it. As such, organising or participating in national consultations is up to the Country Representatives. However, resource limitations mean that CSOs cannot expect the ACWC to cover expenses for their attendance at national consultations.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

ASEAN still considers human rights an issue to be dealt with through promotional actions only rather than from a protection angle. Any activity or step leading towards the issue of the protection of human rights is seen as a threat to the sovereignty of Governments, something to be resisted at all costs (hope this assessment is based on information from CSOs, etc, and not the statement of the researcher). Human rights are therefore portrayed as a sectoral issue instead of one that affects and influences all aspects of the lives of the ASEAN peoples. This mind-set is reflected in how the AICHR and the ACWC are treated within the overall ASEAN structure, and how both Commissions perform their duties.

In 2016, both the AICHR and the ACWC focused on the dissemination of the ACTIP by producing documents, organising dialogues, training and consultations on issues related to trafficking in persons, especially women and children. The AICHR also focused on institutionalising relations with CSOs, while the ACWC maintained engagement with interested CSOs without formal procedures or mechanisms.

The volume of publicly accessible information from the AICHR is growing, as its official website is regularly updated. The ACWC has its own website, but the information available on it remains quite limited. The information available on both websites consists mostly of press releases from regular and special Meetings of the respective Commissions. There is much room for improving both the quality and the quantity of information given to the public. At the moment, getting a more complete picture requires accessing individual Representatives' Facebook pages. Likewise, individuals searching the AICHR or ACWC website for information on trends and issues relating to human rights in ASEAN would be disappointed.

CSO engagement with ASEAN human rights mechanisms continues to be influenced by which AMS is the rotating Chair for the year. The year 2016 was not really conducive for civil society engagement as seen from the fact that ACSC/APF 2016 was convened in a non-ASEAN country, and that the AICHR did not table any complaint in its official meetings.

RECOMMENDATIONS

Civil society has the responsibility to remind the ASEAN Human Rights Mechanisms about the standards and tools that have been developed to promote and protect human rights, such as the Universal Declaration of Human Rights (UDHR) and the various human rights conventions. This, however, is far from being accepted as a norm by the AMS. This report proposes 14 recommendations for the AICHR, ACWC and ASEAN, apart from reiterating certain recommendations from the 2015 review.

Recommendations for the AICHR:

1. Become involved in monitoring, investigating, commenting on and recommending solutions for human rights issues in the ASEAN region, such as extrajudicial killings, the treatment of minorities and Indigenous Peoples, the rights of LGBTIQ people, torture and other ill treatment, land rights, right to education and more,
2. Formulate a clearer communication procedure and grievance handling mechanism,
3. Establish a monitoring and evaluation system to measure the progress and implementation of recommendations, either based on the AICHR's own assessment or on feedback from stakeholders, with clear and measurable indicators,
4. Accelerate discussion on the advantage that CSOs get from being granted consultative relationship status when it comes to creating space for providing inputs into policies,
5. Fulfil the mandate to work on both the protection and promotion of human rights by implementing paragraphs 4.10 and 4.11 of the ToR, that is to: obtain information from AMS on the protection of human rights, including information on human rights violations; and to develop common approaches and positions on human rights matters of interest to ASEAN based on international law and standards.

6. Create a better alignment strategy for engaging with the ACWC and other ASEAN Sectoral Bodies beyond invitations to events and short meetings.

Recommendations for the ACWC:

1. Follow up on the ASEAN RPAs on ERAW and EVAC, so that they evolve from public campaigns into plans of action at the national level.
2. Follow up on the Regional Review on Laws, Policies and Practices within ASEAN related to the identification, management and treatment of victims of trafficking especially women and children with in-depth and more specific analysis for different sub-topics.
3. Be more open and up to date in providing information to the public, including on relevant human rights developments in the region and within countries, but also budgets and work plans.
4. Consider and deliberate on the possibility of having a complaint mechanism similar to that existing at the international level under CEDAW and CRC Committees, as part of its function as stated in paragraph 5.12 of the ToR, to propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violations of the rights of women and children, including the protection of victims.
5. Utilise its mandate and functions to advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage AMS to ensure respect and protection of their rights and improve their situation, as stipulated in paragraph 5.4 of the ToR.
6. Create a better alignment strategy for engaging with the AICHR and other ASEAN Sectoral Bodies beyond invitations to events and short meetings.

Recommendations for ASEAN:

1. For the AMM to review the AICHR's ToR as requested by the AICHR in the 49th AMM in 2016.
2. For the AMS to deliberate on the necessity to provide all ACWC Representatives with functioning national secretariats that provide administrative and expert support.

Recommendations from the 2015 review for both the AICHR and the ACWC:

1. Develop extensive human rights protection strategies and measures, based on international human rights treaties and other instruments.
2. Conduct frequent, regular, broad-based and inclusive meetings on issues concerning human rights and its institution building with a range of stakeholders including CSOs, national human rights institutions, affected communities, human rights defenders, victims of human rights violations at the regional level and national level in every AMS.
3. Provide CSOs with adequate time and information in order to formulate sound and valuable inputs and recommendations.
4. Be more transparent in the process of formulating work plans, annual budgets, drafting thematic studies and in the deliberation of other important issues.

ANNEX 1

**LIST OF 16 ORGANISATIONS
WITH CONSULTATIVE RELATIONSHIP STATUS
WITH THE AICHR IN 2016**

ASEAN Service Employees Trade Union Council
Asia Indigenous Peoples Pact
Centre for Reintegration of Ex-prisoners into Society
Child Rights Coalition Asia
Human Rights and Development Foundation
Human Rights Resource Centre
Institute for Strategic and Development Studies, Inc.
International Women's Rights Action Watch Asia Pacific
Working Group for an ASEAN Human Rights Mechanism, Singapore (MARUAH)
Movement for the Intellectually Disabled of Singapore
Persatuan Penyandang Disabilitas Indonesia (Indonesia Disabled Association)
Pusat Komunikasi Masyarakat (Pusat KOMAS)
Raoul Wallenberg Institute of Human Rights and Humanitarian Law
Save the Children Philippines
Singapore Council of Women's Organisation
Vietnam Peace and Development Foundation

ANNEX 2

GENERAL OBSERVATION NO. 1/2016 INTERPRETATION OF ARTICLES 6, 7 & 8 OF THE ASEAN HUMAN RIGHTS DECLARATION 2012 BY THE REPRESENTATIVE OF MALAYSIA TO THE AICHR

CONTEXT

1. The Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Human Rights Declaration (AHRD) on 18 November 2012.
2. The AHRD has been the subject of criticism that it dilutes international human rights standards. In particular:
 - 2.1 That, under Article 6, rights must be balanced with duties.
 - 2.2 That, under Article 7, the realisation of rights may differ from one ASEAN Member State to another due to different national contexts.
 - 2.3 That, under Article 8, the limitation provision applies to all rights under the AHRD, without exception.
3. Pursuant to my mandate in paragraphs 4.1, 4.3 and 4.8 of the Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (AICHR), I set out my response to these arguments in this Observation.

INTERPRETATION

4. The AHRD contains a mixed basket of rights. Some of these rights are not 'new' in the sense that Articles 10 and 26 merely affirm all existing civil and political, and economic, social and cultural rights in the Universal Declaration of Human Rights 1948 (UDHR).
5. By virtue of the affirmation, the specific rights listed in Articles 11 to 25 and 27 to 34 are not exhaustive.
6. Further, the Preamble to the AHRD reaffirms the commitment of ASEAN Member States to the UDHR, the Charter of the United Nations, the Vienna Declaration and Programme of Action and other international human rights instruments to which the States have signed.
7. As such, there must be no inconsistency or conflict between the AHRD and the UDHR (and other international human rights norms) in relation to the minimum applicable standards of human rights.
8. To achieve a harmonious interpretation of the AHRD with the UDHR (and other international human rights norms), reference would constantly need to be made to the interpretation of the UDHR rights as the foundational starting-point for rights under the AHRD.

ARTICLE 6 AHRD

9. In relation to Article 6:

- 9.1 It should be noted that a similar provision appears in Article 29(1) of the UDHR, and a more extensive emphasis on 'duties' appears in Articles 27 to 29 of the African Charter on Human and Peoples' Rights 1981.
- 9.2 Article 6 merely calls for a 'balance' in the performance of 'corresponding duties'. The enjoyment of one's right does not rely on his or her due performance of duties because ultimately the primary responsibility still rests with ASEAN Member States to promote and protect all the rights of the right-holders.
- 9.3 Notwithstanding, Article 6 is not a specific 'limitation' clause that permits restrictions to the enjoyment of rights.

ARTICLE 7 AHRD

10. In relation to Article 7:

- 10.1 Article 7 states that all human rights are universal, indivisible, interdependent and interrelated. All human rights must be treated in a fair and equal matter, on the same footing and with the same emphasis. This is the correct minimum international standard that defines the core features of human rights.
- 10.2 However, the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds. This is a recognition that different regional and national contexts may serve to enrich the discourse on human rights. For as long as the minimum standards are met, then the concern about Article 7 is misguided.
- 10.3 Further, it is now commonly accepted that certain rights may be realised through different means so long as the minimum standards are met. In some instances, and in respect of certain types of rights, States may be given the benefit of a 'margin of appreciation' or deference through a 'progressive realisation' of the rights to the maximum of their available resources.
- 10.4 Notwithstanding, Article 7 is not a specific 'limitation' clause that permits restrictions to the realisation of rights.

ARTICLE 8 AHRD

11. In relation to Article 8:

- 11.1 It should be noted that a similar provision appears in Article 29(2) of the UDHR. The same argument made against Article 8 may also be made against Article 29(2).
- 11.2 However, Article 29(2) was drafted the way it was because none of the specific rights under the UDHR also provided for specific limitation clauses, where

applicable. New instruments were required to elaborate on the specific rights, hence the International Covenant on Economic, Social and Cultural Rights 1966 and the International Covenant on Civil and Political Rights 1966.

- 11.3 Similarly, the specific rights enumerated in the AHRD in Articles 11 to 25 and 27 to 34 were not restricted by specific limitation clauses. Rather, Article 8 provides for permissible restrictions couched in a general way without meaning to potentially apply to all human rights under the AHRD. The intention could not have been to apply to all rights considering by the time the AHRD was adopted, certain rights had been well-entrenched as being non-derogable.

12. In any event, it is well-established that any interpretation of human rights must be towards the promotion, and not the destruction of, the same rights.

Dated this 23rd day of September 2016

Edmund Bon Tai Soon
Representative of Malaysia to the AICHR

