

**REPORT ON THE ACWC+10:**  
ASSESSING THE  
COMMISSION'S IMPACT  
ON PROTECTING WOMEN  
AND CHILDREN'S RIGHTS  
IN ASEAN



REPORT ACWC+10: ASSESSING THE COMMISSION'S IMPACT ON  
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## ACRONYMS AND ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women and Children
ACW	ASEAN Committee on Women
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
AMMSWD	ASEAN Ministerial Meeting on Social Welfare and Development
AMMW	ASEAN Ministerial Meeting on Women
AMS	ASEAN Member States
APEC	WEFAsia-Pacific Economic Cooperation Women and the Economy Forum
APSC	ASEAN Political-Security Community
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
Asia ACT	Asia Against Child Trafficking
AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CICL	Children in conflict with the law
CoE	Council of Europe
COVID-19	Coronavirus disease
CRC	Convention on the Rights of the Child
CRC Asia	Child Rights Coalition Asia
CSO	Civil society organisation
EU	European Union
EVAC	Elimination of Violence against Children
EVAW	Elimination of Violence against Women
FORUM-ASIA	Asian Forum for Human Rights and Development.
FRA	European Union Agency for Fundamental Rights
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IA RWHR	Inter-American Commission on Human Rights Rapporteur on the Rights of Women
IACHR	Inter-American Commission on Human Rights
IDP	Internally displaced person
INGO	International non-governmental organisation
KRAS	Key results area
LGBT	Lesbian, gay, bisexual and transgender

LGBTIQ	lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning
MESCVI	Follow-up Mechanism to the Belém do Pará Convention
MOU	Memorandum of understanding
NGO	Non-governmental organisation
NHRI	National human rights institution
NOSSA	ASEAN Network of Social Service Agencies
OSCE	Organisation for Security and Co-operation in Europe
RPA	Regional Plan of Action
RPA EVAC	(ASEAN) Regional Plan of Action on the Elimination of Violence against Children
RPA EVAW	(ASEAN) Regional Plan of Action on the Elimination of Violence against Women
SAPA	Solidarity for Asian Peoples Advocacy
SAPA TFAHR	Solidarity for Asian Peoples Advocacy Task Force on ASEAN and Human Rights
SDGs	Sustainable Development Goals
SIDA	Swedish International Development Cooperation Agency
SOGIE	Sexual Orientation and Gender Identity Expression
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Sex Characteristic
SOMSWD	ASEAN Senior Officials Meeting on Social Welfare and Development
SRRWA	Special Rapporteur on the Rights of Women in Africa
SUHAKAM	Human Rights Commission of Malaysia
TIP	Trafficking in Persons
TOR	Terms of Reference
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNICEF	United Nations Children's Fund
UNICEFEAPRO	United Nations Children's Fund East Asia and the Pacific Office
UPR	Universal Periodic Review
VAC	Violence against children
VAW	Violence against women
WG-ACWC	Working Group towards the establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
WHO	World Health Organization
WLB	Women's Legal and Human Rights Bureau

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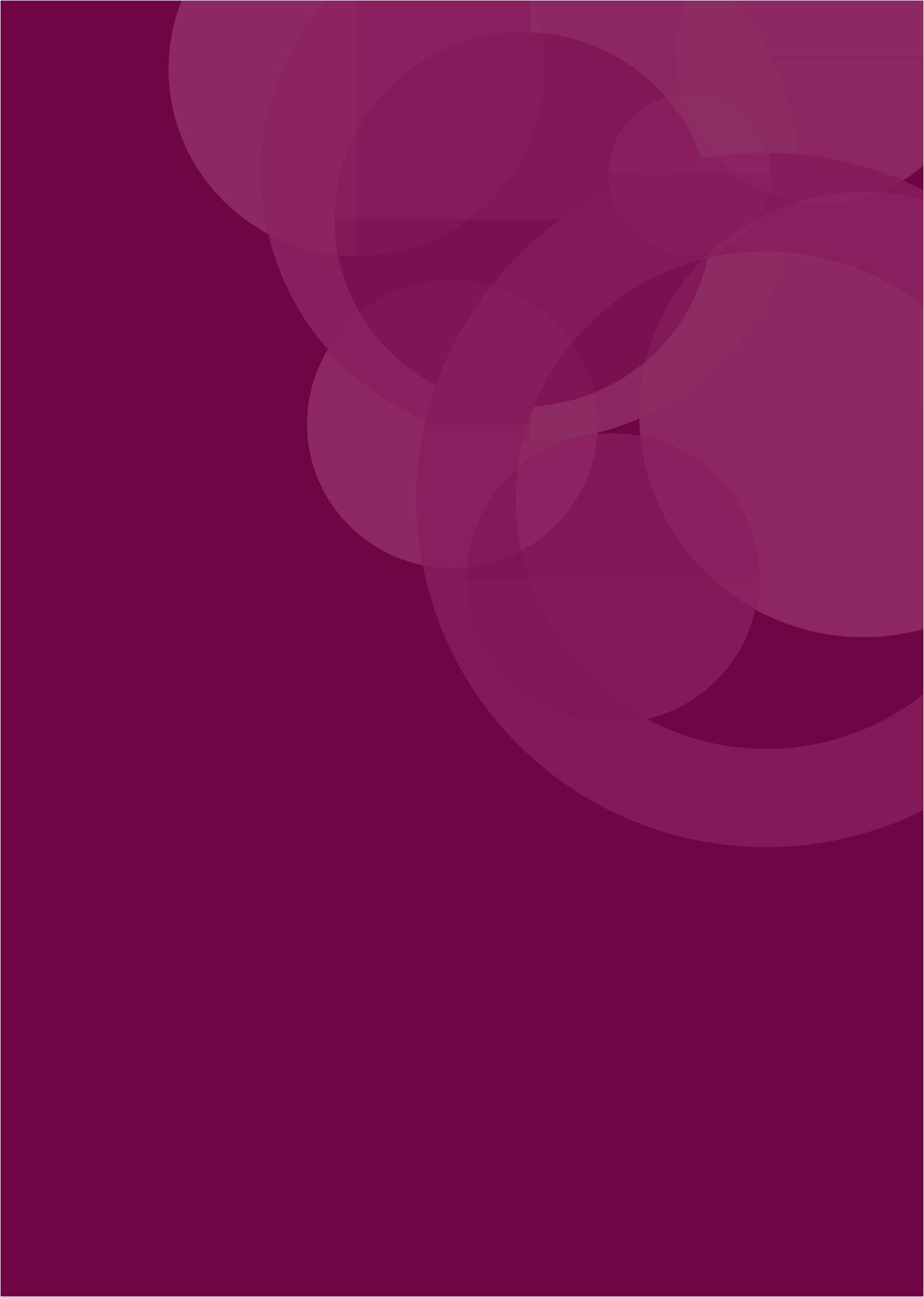
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About FORUM-ASIA:

The Asian Forum for Human Rights and Development (FORUM-ASIA) is a Bangkok-based regional network of 81 member organisations across 21 Asian countries, with consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity-development and solidarity actions in Asia and beyond. It has sub-regional offices in Geneva, Jakarta, and Kathmandu. **[www.forum-asia.org](http://www.forum-asia.org)**



# PREFACE

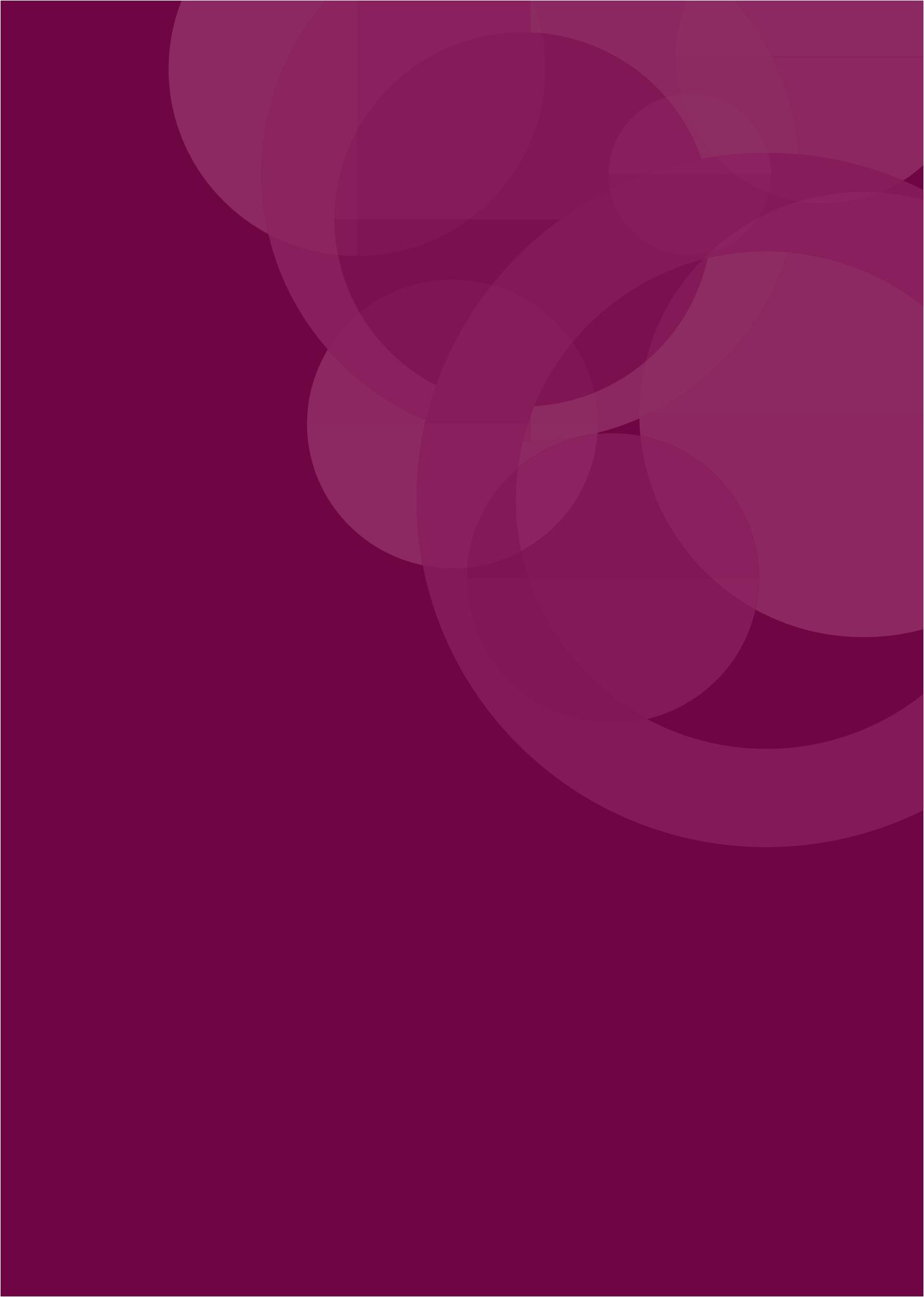
As part of its advocacy on the Association of Southeast Asian Nations (ASEAN) human rights mechanisms, the Asian Forum for Human Rights and Development (FORUM-ASIA) and the Solidarity for ASEAN People's Advocacy (SAPA) produce an annual assessment of the performance of the ASEAN human rights mechanisms: the ASEAN Intergovernmental Commission on Human Rights (AICHR), and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

From 2010 to 2019, FORUM-ASIA and SAPA have produced eight annual assessments and one ten-year assessment of the performance of the ASEAN human rights mechanisms, with key recommendations to strengthen the institution. This year marks the tenth anniversary of the creation of the ACWC as well as the fifth anniversary of the Regional Plans of Action (RPAs) on the Elimination of Violence Against Women (EVAW) and the Elimination of Violence Against Children (EVAC). We are therefore presenting a review of the ACWC, assessing its mandate and function in promoting, protecting and advocating for the rights of women and children in the region and making recommendations for the future.

This report is based on interviews, a survey, and content analysis of the impact of ACWC between its establishment from 2010 to 2020. It describes and assesses the ACWC's creation, evolution, milestones, key activities and challenges, including how the AICHR has implemented its work, and its engagement with Civil Society Organisations (CSOs) and other stakeholders. The ACWC's performance will be assessed in light of relevant international treaties and human rights standards, not least the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) – all ASEAN Member States have ratified these treaties, and both are explicitly mentioned in the ACWC's Terms of Reference.

This report also offers a set of recommendations to the ACWC, to ASEAN Member States, Foreign Ministers, and to relevant stakeholders to enhance the ACWC effectiveness in strengthening and implementing its mandate. It also provides practical recommendations for the ACWC to advance its ownership and independence in creatively utilising their current protection mandate to address the grave human rights situation in ASEAN region.

This review is based on primary and secondary sources, including official information from the ACWC, the ASEAN Secretariat, and ASEAN Member States; publicly accessible reports; and interviews with key individuals and organisations including United Nations (UN) experts, members of CSOs, activists, former and current ACWC representatives, and academics. The first draft of this report was shared with key respondents for further input. At the same time, this review was not designed as an exhaustive audit of the ASEAN human rights mechanism, but rather as a qualitative assessment from the viewpoint of civil society to contribute to the accountability and effectiveness of the ACWC in its service of human rights.



# EXECUTIVE SUMMARY

On 7 April 2020, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) marked its tenth anniversary. In recognition of this landmark, this report was commissioned by the Asian Forum for Human Rights and Development (FORUM-ASIA) and the Solidarity for Asian Peoples' Advocacy (SAPA) to reflect and examine the Commission's achievements, challenges, opportunities and setbacks over the decade. The purpose of this report is also to understand the experiences and lessons learnt from CSOs which have worked on women's rights or children's rights and engaged with ACWC and to inform future strategies and advocacy efforts to strengthen the promotion and protection of the rights of women and children in ASEAN.

A widely-held perception of ACWC is that it provides a receptive and inclusive space for CSOs to engage with its Representatives. In addition, the path leading towards the establishment of ACWC and its subsequent work, including the seminal Regional Plans of Action on the Elimination of Violence against Women and Elimination of Violence against Children (RPAs EVAW and EVAC), reflects the important role CSOs have played in advocating for the establishment of the Commission and for supporting and strengthening the Commission's work throughout the region.

Today, many CSOs share the impression that both the Terms of Reference (TOR) of ACWC and how the Commission works in practice have a progressive dimension that is – among ASEAN institutions - unique to the ACWC. At the same time, the ACWC also shares the characteristics observed in other ASEAN bodies, including the underlying principles of non-interference and consensus, which have informed and impacted the execution of the ACWC's mandate. The question then remains: To what extent has the ACWC been able to perform its key mandates of promoting, protecting and advocating for the rights of women and the rights of children, bearing in mind the numerous restrictions it has faced.

- The first chapter of this report provides an overview of the historical background and institutional features of the ACWC and its positioning within the larger ASEAN infrastructure.
- The second chapter describes the purpose and methodology of the report. To assess ACWC's compliance with its key mandate, this report draws upon original data collected from four sources: a desk review, an expert meeting held with stakeholders and other experts on ACWC in Jakarta on 5-6 March 2020, an online survey of CSOs, and interviews with key individuals.

- The third chapter presents the findings of the research and evaluates the responses from stakeholders regarding the performance of the ACWC on its different functions, as a regional human rights body outlined in its TOR.
- The fourth chapter outlines recommendations for ACWC, CSOs, and ASEAN member states going forward to enhance the Commission's ability and effectiveness in the promotion and protection of the rights of women and the rights of children in ASEAN.

Several factors have constrained ACWC's ability to maximise its impact, with the lack of commitment by ASEAN Member States (AMS) governments to support and sustain the ACWC being the most critical. This lack of ownership is indicated in the absence of an annual budget and resources from AMS to support ACWC's work. Furthermore, the structural positioning of ACWC within the ASEAN architecture, coupled with the varied processes among the Member States for selecting ACWC Representatives, have also called into question the accountability of ACWC. These concerns have characterised ACWC's ten-year history, and require solutions for the Commission to develop into a fully-fledged human rights mechanism that can meaningfully advance the rights of women and children in the region.

This report recommends concrete considerations for stakeholders to work together to ensure that ACWC can serve as a meaningful bridge between international human rights laws and regional and national implementation, as well as supporting the incorporation of women's and children's rights into regional and domestic policies. Among the most critical steps forward, the ACWC is strongly urged to develop more open and transparent selection processes of its Representatives, to advocate for increased political support from AMS, and to elicit and utilise the support of CSOs, particularly in developing, implementing, and monitoring its work plans.

The production of this report coincides with the COVID-19 pandemic, which brought to the forefront issues such as violence against women and at children and their linkages to public health, politics, security, and the economic underpinnings of the ASEAN community. Alongside the other challenges in the region, including the shrinking civic space and specific human rights crises, it remains to be seen whether the ACWC will be able to adapt into a stronger human rights mechanism, particularly in fulfilling its protection mandate, going forward. The lessons from the past decade ultimately reveal the potential for the ACWC and its partners to tackle these challenges in the pursuit of stronger promotion and protection of the rights of women and children in ASEAN.

**CHAPTER 1:**

PURPOSE AND  
METHODOLOGY



The research described in this chapter aims to elaborate on to what extent the ACWC has complied with its TOR in executing its mandates. To date, the ACWC's annual reports on its performance have not been made public. Without access to the ACWC's internal monitoring indicators, this report establishes the functions within the TOR as a yardstick against the impact of ACWC's performance over the past ten years. The decision to draw upon the TOR as the primary point of reference for this impact assessment was also supported by participants during the March 2020 Expert Meeting convened by FORUM-ASIA, who referred to the TOR's purpose and content for evaluating ACWC's performance over the last decade.

This report seeks to examine the progress, or lack thereof, and challenges faced by the ACWC in implementing its TOR and work plans, and its relationship with and role of CSOs in its ten-year history. As noted, the ACWC is defined by its TOR as an "intergovernmental" and "consultative" body whose decision-making is based on "consultation and consensus."<sup>1</sup> In the ASEAN context, in which non-interference and sovereignty of Member States are often emphasised, the Commission operates under substantial limitations and restrictions.

This impact assessment seeks, among other things, to provide a nuanced understanding of these and other challenges and their impact on the process by which ACWC has carried out its work over the last decade. It reflects on the extent to which ACWC has been able to maximise existing opportunities and respond to challenges pertaining to the promotion and protection of the rights of women and children. The creation of the ACWC was made possible in significant part due to the advocacy efforts of CSOs at various levels. This impact assessment draws upon the experiences and reflections of CSOs, with particular focus on the modalities of engagement between the ACWC and CSOs.

Research for this impact assessment consisted of four main components:

- Documentation from the Expert Meeting on Preparation of Ten Years Evolution of ACWC, organised by FORUM-ASIA
- An online survey on "Assessing the Impact of the ASEAN Commission on the Promotion and Protection on the Rights of Women and Children (ACWC)"
- Interviews with key stakeholders from CSOs, ACWC, ASEAN Secretariat and UN
- Desk review

### **1.1. Expert Meeting on the Preparation of the Ten-Year Evolution of the ACWC**

This research drew upon the records of a two-day Expert Meeting on "Preparation of Ten Years Evolution of ACWC," which was organised by FORUM-ASIA in Jakarta, Indonesia on 5-6 March 2020. The meeting's objectives were as follows:

- To facilitate discussions among feminists, child rights' activists, human rights experts, CSOs, and academics in ASEAN who have worked with the ACWC to highlight key events, challenges, opportunities and recommendations for the Commission to take into consideration for its next workplan; and

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<sup>1</sup> ACWC TOR, Articles 4, 7.1, respectively.

- To create collective action for strengthening the ACWC's role and increasing its efficiency, specifically by further utilising its mandate, standard-setting role and practice in protecting the human rights of women and of children in the region.

Twenty experts participated in the meeting, including representatives of local, regional, and international CSOs, academics, ACWC (current and former) representatives, and government officials who have worked in or with ASEAN for the past ten years.

Panel sessions in the meeting covered the following topics:

- ACWC's performance and challenges;
- Reflections on the cross-collaboration between the ACWC, sectoral bodies, and CSOs;
- Assessment of the RPAs EAW and EVAC;
- Emerging issues on women's rights and children's rights in ASEAN; and
- An advocacy plan to strengthen the role of ACWC going forward.

The meeting sought to develop discussion points and consolidated recommendations to strengthen the ACWC's mandate, role and performance, to be submitted to ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD), and to develop a CSO strategy to create momentum for the ACWC during Vietnam's 2020 ASEAN chairmanship.

## 1.2. Survey

An online survey entitled "Assessing the Impact of the ASEAN Commission on the Promotion and Protection on the Rights of Women and Children (ACWC)," was distributed during April and May 2020. The survey was made available in three languages (English, Bahasa Indonesia, and Thai), and was primarily distributed through email and social media to CSO networks in ASEAN countries.

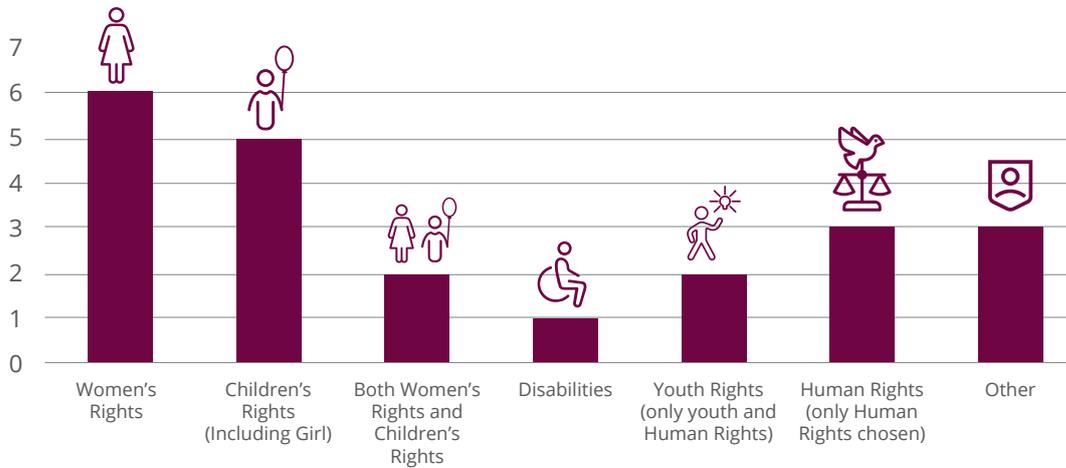
The survey consisted of four main sections.

- The first asked respondents to assess the ACWC's performance in fulfilling specific functions as articulated in ACWC's TOR;
- The second inquired about the experiences and interactions of CSOs with the ACWC at the regional and national levels;
- The third section requested respondents to provide their feedback on the RPAs EVAC and EAW; and
- The fourth asked questions specifically about the ACWC's previous workplan (2016-2020).

A total of 20 respondents submitted a completed survey. The highest proportion of respondents were based in Indonesia (35%) and Thailand (35%), followed by the Philippines (10%), Cambodia (5%) and Singapore (5%), while 10% indicated they were based outside of ASEAN. Women's rights organisations were represented by 30%, 25% of children's rights organisations, 15% of youth organisations, and 15% consisted of general human rights organisations, while 10% of the respondents indicated that their organisations focused both on women's rights and children's rights.

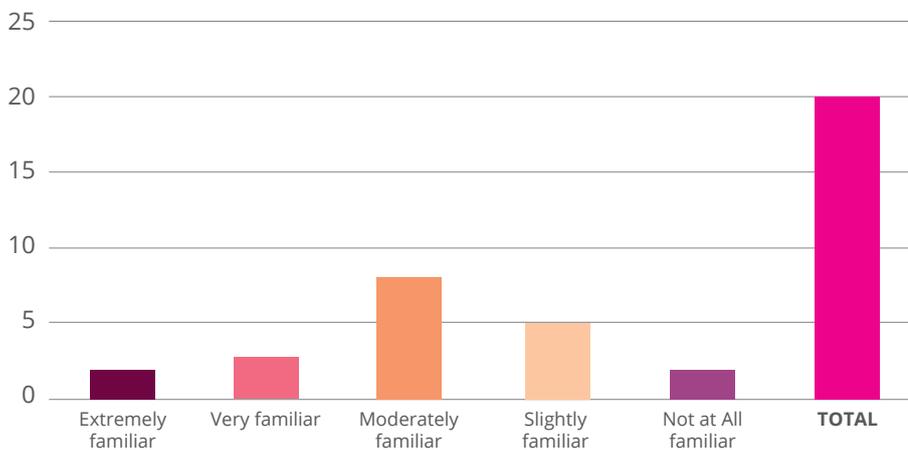
Figure 2: Organisational focus of online survey respondents

**Organisational focus of survey respondents**



Due to the nature of the topic and length of the survey, as well as the recruitment process which targeted members of CSOs within ASEAN, most, if not all of the respondents who completed the survey were already familiar with the ACWC. Before the main section of the survey, respondents were asked to indicate how familiar they were with the ACWC; 90% of respondents had some familiarity with the ACWC prior to the survey, with the largest proportion of respondents (40%) indicating they were moderately familiar with the Commission.

**Respondents' level of familiarity with ACWC (prior to survey)**



### 1.3. Interviews with key individuals

A total of 28 semi-structured interviews were conducted with key individuals, primarily through phone calls, while a small number of interviews were conducted via email. Interviews included 17 representatives of CSOs (61%), three current ACWC representatives, two former and one current AICHR representative, and two officers from ASEAN Secretariat. The identities of all interviewees are kept anonymous in this report. On average, each interview took one hour to conduct.

The interview template consisted of seventeen questions on ACWC's performance on its following functions:

- Standard-setting and institution-building;
- Responsiveness to developments relevant to women and children's rights in ASEAN;
- Engagement with CSOs;
- Collaboration with entities both within ASEAN, such as the AICHR and ACW and in the international system;
- Public transparency and accountability;
- Monitoring and evaluation;
- The process of selecting representatives;
- Fiscal independence;
- Review of its TOR;
- RPAs EVAC and EVAW.

Individual interviewees were asked only those questions relevant to their experience and expertise rather than the complete set of questions.

Interviewees were also asked for their recommendations to the ACWC and specifically for its next workplan. There was a small overlap between the interviewees and the survey respondents. Five people who completed the online survey were also invited for an interview.

### 1.4. Desk Review

Materials reviewed included existing literature, media reports and research on the ACWC. The literature review included academic publications on the ACWC, other ASEAN and other regional human rights mechanisms for the protection of the rights of women and of children. It also examined reports and statements concerning the ACWC and the rights of women and children in ASEAN issued by International Non-Government Organisations (INGOs) and NGOs, including the four annual reports from FORUM-ASIA and SAPA on the ACWC's performance (covering 2013, 2015, 2016, and 2017). Documents were collected through publicly available online resources, including the ACWC's official website, FORUM-ASIA-supported online platform "Human Rights in ASEAN," and CSOs' websites. The review also accessed archived documents, including meeting notes and workshop details, which had been internally collated by FORUM-ASIA.



**CHAPTER 2:**

# BACKGROUND



## 2.1. History of ACWC's establishment

The ACWC was inaugurated on 7 April 2010 during the 16<sup>th</sup> ASEAN Summit in Ha Noi, Vietnam. For many civil society actors, the establishment of the AICHR in 2009 and the ACWC in 2010 represented important milestones in addressing the gap between international human rights laws and national implementation and practice.<sup>2</sup> Indeed, among the many reasons for this historical development, the creation of AICHR and ACWC underscores the critical role civil society actors have played in efforts to incorporate human rights into ASEAN's agenda and institutionalise human rights within the Association since the 1990s.<sup>3</sup>

The momentum of civil society groups lobbying for stronger human rights promotion and protection in the region coincided with notable shifts within ASEAN that indicated a growing receptiveness among state and non-state actors to the global discourse on human rights, at least in theory. In 1993, ASEAN recognised the concept of introducing regional arrangements for the promotion and protection of human rights at the Bangkok Declaration of the Preparatory Regional meeting for Asia of the World Conference on Human Rights. In July of the same year, and a month following the Vienna World Conference and the subsequent Vienna Declaration and Programme of Action,<sup>4</sup> ASEAN Member States incorporated a section on human rights in the Joint Communiqué at the 26<sup>th</sup> ASEAN Ministerial Meeting, in which they agreed to “consider the establishment of an appropriate regional mechanism on human rights.”<sup>5</sup>

Progress on institutionalising a regional human rights mechanism did not immediately pick up traction within ASEAN following this agreement. However, civil society efforts, especially those from the Working Group for an ASEAN Human Rights Mechanism (established in 1996), continued to advocate and played an instrumental role in advancing ASEAN's agreement to promote human rights in the Vientiane Action Program, which was adopted in 2004.<sup>6</sup>

On 15 December 2008, the ASEAN Charter entered into force, which included Article 14 calling for the inclusion of an ASEAN human rights body. In March 2009 at the 14<sup>th</sup> ASEAN Summit, ASEAN leaders adopted the Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015), which included the ASEAN Political-Security Community (APSC) Blueprint and the ASEAN Socio-Cultural Community (ASCC) Blueprint. This Declaration further “reiterate[d] the establishment of an ASEAN commission on the promotion and protection of the rights of women and children as an important measure to ensure equitable development for women and children.”<sup>7</sup>

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2 These CSOs include the Women's Legal Bureau, Asia Pacific Forum on Women, Law and Development, International Women's Rights Action Watch Asia Pacific, and the ASEAN Working Group for the Establishment of an ASEAN Human Rights Group.

3 Mathew Davies, “Explaining the Vientiane Action Programme: ASEAN and the Institutionalisation of Human Rights,” 26(2) *Pacific Review* 385-406 (2013).

4 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, A/CONF.157/23, <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

5 Joint Communiqué of the 26th ASEAN Ministerial Meeting, Singapore, 23-24 July 1993, [https://asean.org/?static\\_post=joint-communicue-of-the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993](https://asean.org/?static_post=joint-communicue-of-the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993).

6 Sriprapha Petcharamesree, “The ASEAN Human Rights Architecture: Its Development and Challenges”, 11 *Equal Rights Review*, 48 (2013).

7 Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), issued February 2010. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

In the period leading to the creation of the ACWC, ASEAN also issued, following agreement among the ASEAN Member States (AMS), a number of declarations on gender, women's rights and children's rights, including the 1988 Declaration on the Advancement of Women in the ASEAN Region<sup>8</sup>, the 2004 Declaration on the Elimination of Violence Against Women in the ASEAN Region<sup>9</sup>, and the 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children<sup>10</sup>. These declarations reveal ASEAN's movement on gender issues predated its engagement with broader human rights issues.<sup>11</sup>

### One Commission for women and children

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

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

Support from both state and civil society actors for a specific Commission on women's and children's rights in ASEAN is indicative of the socialisation within the ASEAN Member States to the international human rights norms, particularly under the CEDAW<sup>12</sup> and CRC.<sup>13</sup> All ASEAN Member States signed and ratified the CEDAW and CRC in the decades prior to the establishment of the ACWC. Given the diversity among the ASEAN Member States, the universal ratification of these two Conventions signified a degree of consensus around the recognition of women and of children as rights-holders and the call for a more specialised focus on their rights, including specific needs and circumstances. However, not all AMS have followed ratifications with a robust implementation. In addition, AMS's reservations on specific articles of these conventions remain. The Commission's mandate envisioned its role as complementary to that of the international bodies established under the legal framework of CEDAW and CRC, with a view to further ensuring AMS's compliance with these Treaties.<sup>14</sup>

8 <https://cil.nus.edu.sg/wp-content/uploads/2019/06/1988-Declaration-of-the-Advancement-of-Women-in-the-ASEAN-Region.pdf>

9 <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2004-Declaration-On-The-Elimination-Of-Violence-Against-Women-In-The-ASEAN-Region.pdf>; [https://asean.org/?static\\_post=declaration-of-the-advancement-of-women-in-the-asean-region-bangkok-thailand-5-july-1988](https://asean.org/?static_post=declaration-of-the-advancement-of-women-in-the-asean-region-bangkok-thailand-5-july-1988)

10 <https://asean.org/asean-declaration-against-trafficking-in-persons-particularly-women-and-children-4/>

11 Matthew Davies, "Important but De-centred: ASEAN's Role in the Southeast Asian Human Rights Space," 5(1) *TraNs: Trans-Regional and National Studies of Southeast Asia* 99-119 (2017)

12 UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by UNGA resolution 34/180 of 18 December 1979, entry into force 3 September 1981, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

13 UN Convention on the Rights of the Child, adopted by UN General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

14 See ACWC TOR, Articles 1.1, 3.2, 3.4, 5.6, 5.7, 5(11). [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

**Table 1: ASEAN Member States' ratification status of CEDAW and CRC<sup>15</sup>**

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

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

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

15 United Nations Treaty Collection. [https://treaties.un.org/Pages/Content.aspx?path=DB/MTDSDG/page1\\_en.xml](https://treaties.un.org/Pages/Content.aspx?path=DB/MTDSDG/page1_en.xml)

## 2.2. Role and Mandate of ACWC

In May 2009, the ASEAN Committee on Women (ACW) and Senior Officials Meeting on Social Welfare Development (SOMSWD) formed a multidisciplinary Working Group for the Establishment of an ASEAN Commission on the Protection and Promotion of the Rights of Women and Children (WG-ACWC) to draft the Commission's Terms of Reference (TOR). Consultations included civil society organisations in the region.

As all ASEAN Member States have ratified the CRC and CEDAW, civil society groups, especially those from the women's movement, perceived the ACWC as having an important role in bridging national and global human rights systems: by localising international human rights laws within reflect regional circumstances, as well as complementing and supporting the implementation of AMS's obligations under CEDAW and CRC at the local level.<sup>16</sup>

As such, civil society groups lobbied for the ACWC to be mandated with contributing to the monitoring and implementation of CEDAW and CRC. They sought to ensure that the ACWC's role with respect to these international treaties became formalised in the Commission's TOR. Among other things, the TOR states the ACWC's role is "to complement, rather than duplicate, the function of CEDAW and CRC Committees."<sup>17</sup> The active lobbying of civil society groups and the relatively open consultations during the TOR drafting process are key reasons why the ACWC's TOR is widely considered more progressive than that of the AICHR.<sup>18</sup>

After the ACWC was established, ASEAN adopted the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children.<sup>19</sup> This Declaration reaffirmed the need for closer regional cooperation among AMS in promoting and protecting the rights of women and children, especially those living under disadvantaged and vulnerable conditions. It also aimed to strengthen the ability of ASEAN Member states to fulfil their obligations under CEDAW, CRC, and other international human rights treaties.<sup>20</sup>

ACWC's TOR only implicitly refers to the principles of non-interference and the respect for the sovereignty of AMS, through mentioning Article 2 of the ASEAN Charter, which in turn refers to those principles, among many others. It should be emphasised that nowhere in the ACWC TOR – or in the ASEAN Charter, for that matter – do these principles take precedence over others, such as "upholding the United Nations Charter and international law" (per the ASEAN Charter)<sup>21</sup> or the "To respect for human rights principles, including universality, indivisibility, interdependence and interrelatedness of all fundamental freedoms and the rights of women and children, the guiding principles of CEDAW and CRC," as the ACWC TOR explicitly provides.<sup>22</sup>

16 Interview with CSO representative, 23 March 2020.

17 ACWC TOR, Article 3.4. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

18 Interview with CSO representative, 23 March 2020.

19 Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children, adopted by the ASEAN Summit in Hà Noi, 28 October 2010, [http://news.chinhphu.vn/Uploaded\\_VGP/nguyensexuanhong/20101029/Ha%20Noi%20Declaration%20on%20the%20Enhancement%20of%20Welfare%20and%20Development%20of%20ASEAN%20Women%20and%20Children-BNG.doc](http://news.chinhphu.vn/Uploaded_VGP/nguyensexuanhong/20101029/Ha%20Noi%20Declaration%20on%20the%20Enhancement%20of%20Welfare%20and%20Development%20of%20ASEAN%20Women%20and%20Children-BNG.doc).

20 Attilio Pisanò (2016), "Towards an ASEAN human rights mechanism: The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, 20(3), *International Journal of Human Rights*, p. 329.

21 Charter of the Association of Southeast Asian Nations, adopted by the ASEAN Summit on 20 November 2007, came into force November 2008, Article 2.j, <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>.

22 ACWC TOR, Article 3.2. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

Therefore the “urban myth” in ASEAN, that the principles of sovereignty and non-interference trump human rights principles are simply untrue, particularly when it comes to the ACWC, which does not even mention the former principles explicitly.

Nevertheless, the TOR does reveal a distinctly ASEAN character. For instance, it states, following the TOR of the AICHR, that one of the purposes of ACWC is “to promote and protect the human rights and fundamental freedoms of women and children in ASEAN, taking into consideration the different historical, political, socio-cultural, religious and economic context in the region and the balances between rights and responsibilities.”<sup>23</sup> This clause dangerously implies that internationally recognised rights, in particular of women, maybe compromised on the pretext that respecting them would violate religious or socio-cultural norms. In reality, women’s rights in the region have often been violated in the name of religion.<sup>24</sup> For children’s rights, this clause also compromises child rights when harmful practices are accepted as “tradition” or disguised as “discipline”.

Under the TOR, ACWC is “to recognise that the primary responsibility to promote and protect the fundamental freedoms and rights of women and children rests with each Member State.”<sup>25</sup> This clause has been widely interpreted as a limitation of ACWC’s powers by reinforcing that any violation of women’s and children’s rights and fundamental freedoms is to remain a matter of domestic jurisdiction.<sup>26</sup> However, it reflects an internationally accepted principle, known as “the principle of complementarity,” under which the prime responsibility for respecting, protecting and fulfilling human rights lies with the State; regional or international bodies should materially intervene only when the State has failed to comply with its international obligation to do so.

The TOR also provides that ACWC is a consultative body.<sup>27</sup> It states that “decision making in the ACWC shall be based on consultation and consensus,”<sup>28</sup> and that the Commission is “to pursue a constructive non-confrontational and cooperative approach to enhance the promotion and protection of rights of women and children.”<sup>29</sup> This principle of consensus means that all 10 ASEAN Member States must reach a unanimous agreement before action may be taken; it further “requires that when one country says ‘no’ or expresses its desire to change some particular items, the rest are obliged to compromise if things are to progress.”<sup>30</sup>

This gives each Member State veto powers over decisions, or even discussions, on a topic or issues its government does not wish to discuss or act upon, creating a body that acts on the basis of the lowest common denominator.

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23 ACWC TOR, Article 2.1. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

24 See for instance Amnesty International, *Malaysia: Caning of two women “atrocious”*, 3 September 2018, <https://www.amnesty.org.uk/press-releases/malaysia-caning-two-women-atrocious>; Human Rights Watch, *Brunei’s Pernicious New Penal Code*, 3 April 2019, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.

25 ACWC TOR, Article 3.5. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

26 Attilio Pisanò (2016), “Towards an ASEAN human rights mechanism: The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, 20(3), *International Journal of Human Rights*, p. 332

27 ACWC TOR, Article 4. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

28 ACWC TOR, Article 7.1. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

29 ACWC TOR, Article 3.6. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

30 Petcharamesree, 2013, p. 52.

A unique aspect for an ASEAN document is found in ACWC's TOR, and is owed in part to the advocacy of civil society groups during its drafting: the notion of a participatory, multistakeholder approach to its work. Specifically, ACWC is to "adopt a collaborative and consultative approach with the ASEAN Member States, academia and civil society pertaining to the rights of women and children."<sup>31</sup>

Article 5 of the ACWC TOR specifies the Commission's "mandate and functions" as follows:

- 5.1. To promote the implementation of international instruments, ASEAN instruments, and other instruments related to the rights of women and children
- 5.2. To develop policies, programs and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN community
- 5.3. To promote public awareness and education of the rights of women and children in ASEAN
- 5.4. To advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage the ASEAN Member States to improve their situation
- 5.5. To build capacities of relevant stakeholders at all levels, e.g. administrative, legislative, judicial, civil society, community leaders, women and children machinery, through the provision of technical assistance, training and workshops, towards the realisation of the rights of women and children
- 5.6. To assist, upon request by the ASEAN Member States, in preparing for CEDAW and CRC Periodic Reports, the Human Rights Council's Universal Periodic Review (UPR) and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN
- 5.7. To assist, upon request by the ASEAN Member States, in implementing the Concluding Observations of CEDAW and CRC and other Treaty Bodies related to the rights of women and children
- 5.8. To encourage the ASEAN Members States on the collection and analysis of disaggregated data by sex, age, etc., related to the promotion and protection of the rights of women and children
- 5.9. To promote studies and research related to the situation and well-being of women and children with the view to fostering the effective implementation of the rights of women and children in the region
- 5.10. To encourage the ASEAN Member States to undertake periodic reviews of national legislation, regulations, policies, and practices related to the rights of women and children
- 5.11. To facilitate sharing of experiences and good practices, including thematic issues, between and among ASEAN Member States related to the situation and well-being of women and children and to enhance the effective implementation of CEDAW and CRC through, among others, exchange of visits, seminars and conferences
- 5.12. To propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims

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31 ACWC TOR, Article 3.9. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

- 5.13. To encourage the ASEAN Members States to consider acceding to, and ratifying, international human rights instruments related to women and children
- 5.14. To support the participation of ASEAN women and children in dialogue and consultation processes in ASEAN related to the promotion and protection of their rights
- 5.15. To provide advisory services on matters pertaining to the promotion and protection of the rights of women and children to ASEAN sectoral bodies upon request
- 5.16. To perform any other tasks related to the rights of women and children as may be delegated by the ASEAN Leaders and Foreign Ministers

The sixteen functions of the ACWC can be categorised under two overriding nodes of ACWC's role. In the first category, ACWC is envisioned as a body to bridge the international human rights system and the individual ASEAN States, including through supporting the reporting committees and procedures that concern women's rights and children's rights. The second set of functions reflect ACWC's role of supporting the ASEAN Member States at the national level through incorporating women's and children's rights into their domestic policies.<sup>32</sup>

### 2.3. ACWC's internal structure

The ACWC consists of 20 representatives; each AMS appoints one representative on children's rights and one on women's rights. ACWC representatives are required to convene at two regular meetings annually. The positions of Chair and Vice-Chair rotate alphabetically every three years (as practised after the first cycle when the Chair and Vice-Chair were selected by appointed representatives). However, we also noted that there has been a recent internal discussion regarding the rotation system. Unfortunately, we are unable to find supporting documents for the discussions.

Under its TOR, the ACWC is to produce and submit an annual report to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD), copied to the ACW and other ASEAN sectoral bodies.<sup>33</sup> However, the TOR does not provide for the annual report to be made public. As of the time of writing, none of the ACWC's annual reports have been made public.

### 2.4. Place of ACWC within the ASEAN System

In 2003, in an effort to promote regional cooperation and integration (under the tagline of "One vision. One Identity. One Community"), ASEAN leaders agreed to establish an ASEAN Community<sup>34</sup> consisting of three pillars: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC), with each pillar given a blueprint outlining steps to be taken such that the community is in place by 2015. The ACWC and AICHR, even though they address human rights issues, fall under different pillars; the AICHR falls under APSC pillar while the ACWC falls under the ASCC pillar.

32 Attilio Pisanò (2016), "Towards an ASEAN human rights mechanism: The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, 20(3), *International Journal of Human Rights*, p. 332

33 ACWC TOR, Article 7.5. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

34 Declaration of ASEAN Concord II (Bali Concord II), adopted by the 9th ASEAN Summit, Bali, Indonesia, 7 October 2003, [https://asean.org/?static\\_post=declaration-of-asean-concord-ii-bali-concord-ii](https://asean.org/?static_post=declaration-of-asean-concord-ii-bali-concord-ii).

While the AICHR is listed under the APSC pillar,<sup>35</sup> and reports to the ASEAN Foreign Ministers Meeting, the ACWC falls under the ASCC pillar, having been instituted by the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD), while the ASEAN Committee on Women (ACW) was set up by the ASEAN Ministerial Meeting on Women (AMMW).

Both the AICHR and the ACWC are described in their respective TORs as consultative bodies<sup>36</sup> rather than independent human rights Commissions. The AICHR's TOR describes it as "the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN"<sup>37</sup> and must "closely consult, coordinate and collaborate" with all ASEAN sectoral bodies dealing with human rights.<sup>38</sup> In contrast, the ACWC must coordinate with AICHR and "other relevant ASEAN sectoral bodies dealing with issues pertaining to women and children including consultations on the ultimate alignment between the ACWC and the AICHR as the overarching human rights institution in ASEAN"<sup>39</sup>.

With regard to other bodies, ACWC must also engage in "dialogue and consultation... with other national, regional and international institutions concerning the promotion and protection of the rights of women and children."<sup>40</sup>

The language used in the ACWC's TOR is reflected in the manner in which ACWC is to carry out its coordinating role with respect to the AICHR and other bodies. Under Articles 7.7 and 7.8 of the TOR, the ACWC can coordinate, consult and engage in dialogue on three fronts: within ASEAN, that is, with the AICHR and other sectoral bodies; with national institutes, presumably within ASEAN, and outside of ASEAN; and with regional and international institutions and entities.<sup>41</sup> Nevertheless, the ACWC has to coordinate with the ACW. The ACWC and the ACW now coordinate on gender mainstreaming; however, the ACW has been fulfilling the role of pushing for gender empowerment in ASEAN since 1975.

While the ACWC has made progress in putting out its own guidelines<sup>42</sup> and reports on women's rights issues, ACWC representatives must constantly contend with other bodies whose mandates overlap with (for example, gender mainstreaming and trafficking in person), and whose agenda often takes precedence over theirs when planning their actions, in particular when it comes to women's rights.

For instance, the AICHR and the ACW each have their own projects on women's rights and women's empowerment; and ACWC has to coordinate with both bodies. In contrast, ACWC appears to have greater authority and leadership when it comes to children's rights, in part because there is no ASEAN body on children's rights that is parallel to the ACW, while the AICHR appears to be less interested than it is in women's rights. The efficacy of the ACWC's engagement on children's rights is also reflected in the response by CSOs who engage with the ACWC on children's rights.

35 <https://asean.org/asean-political-security-community/asean-intergovernmental-commission-on-human-rights-aichr/>

36 Terms of Reference of ASEAN Intergovernmental Commission on Human Rights, adopted by the ASEAN Ministerial Meeting, 20 July 2009, Article 3, <https://www.asean.org/storage/images/archive/publications/TOR-of-AICHR.pdf>; ACWC TOR, Article 4

37 AICHR TOR, Article 6.8. <https://www.asean.org/storage/images/archive/publications/TOR-of-AICHR.pdf>

38 AICHR TOR, Article 6.9. <https://www.asean.org/storage/images/archive/publications/TOR-of-AICHR.pdf>

39 ACWC TOR Article 7.7. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

40 ACWC TOR, Article 7.8. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

41 *Ibid.*

42 Some example includes the ACWC guidelines procedures to address the need for trafficking in person victims (<https://asean.usmission.gov/acwc-regional-guidelines-procedures-address-needs-tip-victims/>)

Whereas, as noted, there are overlaps between the mandates of the ACWC, the ACW and the AICHR, other human rights issues appear to have fallen between the cracks. For example, the rights of young women, girls and vulnerable groups including indigenous peoples and Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) people have not been systematically addressed by any of the three bodies.

So far, while ACWC has had coordination meetings with the AICHR and ACW separately, there has yet to be any outcomes produced (or at least, accessible outside of ASEAN institutional channels) in which the role of these three bodies is clearly explained and delineated.

The need to review the ACWC's TOR, including for the purpose of clarifying the Commission's role vis-à-vis other ASEAN bodies, has been frequently flagged by several civil society organisations, but it has yet to be identified (at least openly) as a challenge to address among ACWC representatives and members of the ASEAN Secretariat.

In contrast, the AICHR representatives expressed the need to review their TOR, given the two consultations led by AICHR on TOR review in 2014<sup>43</sup> as well as the inclusion of a self-assessment in AICHR's 2021-2025 workplan. So far, despite being widely criticised as being deeply flawed, and despite both their TOR's calling for a review after five years,<sup>44</sup> neither TOR has undergone any changes. This reflects the deep conservatism within ASEAN and reluctance among many AMS to have strong regional human rights bodies that can monitor and document cases, as well as publish investigative findings to challenge States over human rights violations.

As a consultative body, the ACWC has the discretion to bring external dialogue and engagement into the work of the SOMSWD and the ACW. As such, the Commission may utilise this to inject fresh and critical thinking into the ASEAN system on women's and children's empowerment and rights. Unfortunately, this opportunity has remained underutilised so far. The only external partners with which the ACWC has conducted dialogue are the UN and international development agencies.

Despite ACWC being mandated to engage with CSOs,<sup>45</sup> NGOs are unable to have a sustainable and transformative engagement with the ACWC due to the absence of an engagement strategy with CSOs from the body. Instead, the interface engagement must rely heavily on individual ACWC representatives' willingness.

A revision of its TOR may improve the ACWC's structural positioning within the ASEAN ecosystem and apportion it more autonomous space to assist ASEAN institutions and bodies mainstream a rights-based approach on women's issues and children's issues.

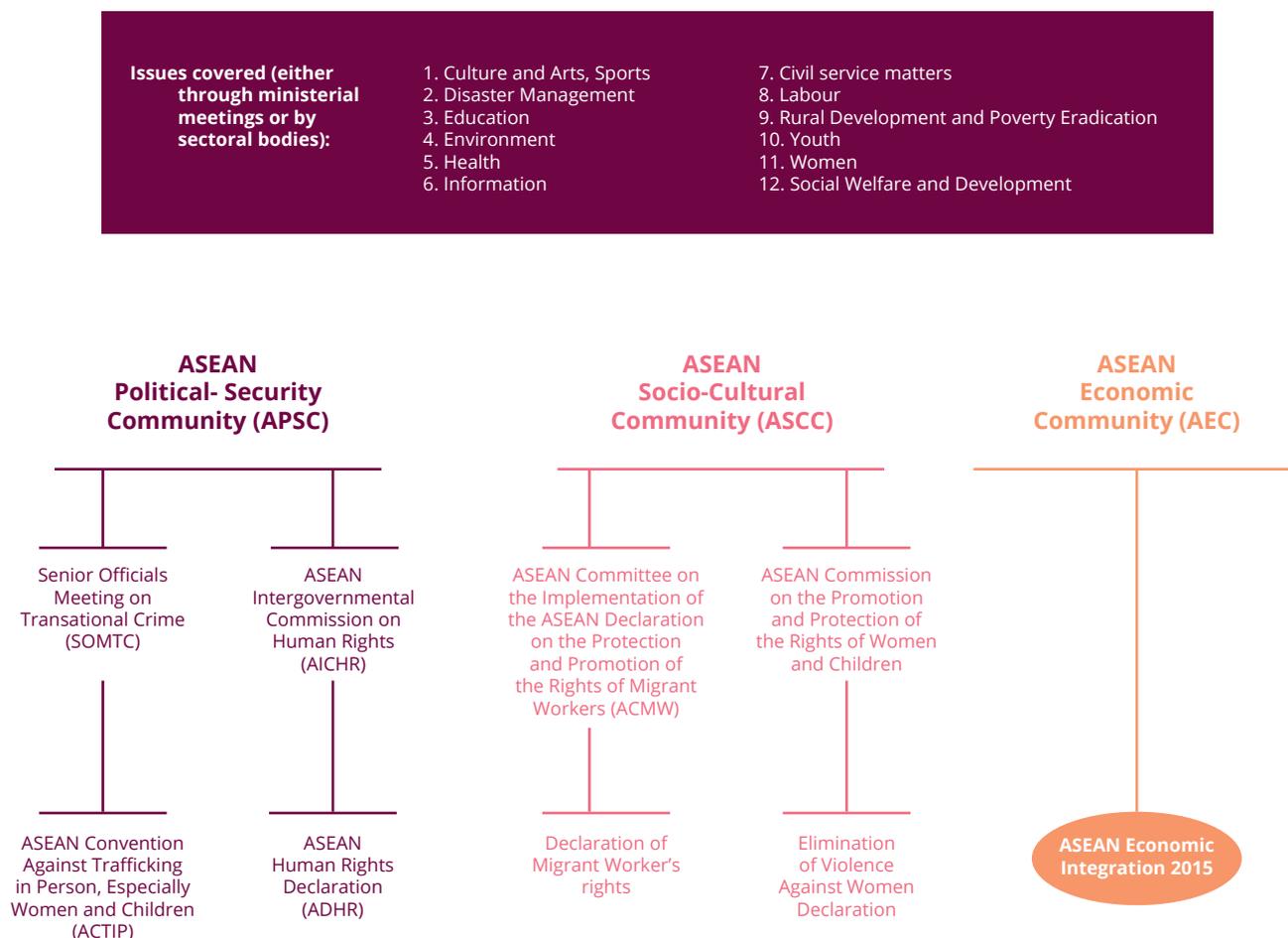
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43 Yuyun Wahyuningrum, "The ASEAN Intergovernmental Commission on Human Rights: Origins, Evolution and the Way Forward," *IDEA* (Sweden), 2014, <https://www.idea.int/sites/default/files/publications/the-asean-intergovernmental-commission-on-human-rights-origins-evolution-and-the-way-forward.pdf>

44 AICHR TOR, Article 9.6, ACWC TOR, Article 10.6.

45 ACWC TOR, Articles 3.9; 5.5.

Figure: ACWC and other sectoral bodies within the ASEAN system



## 2.5. Workplans

During its ten-year history, the ACWC has produced two five-year work plans, each containing the thematic areas, priorities, specific programmes, projects and activities, leading State as the coordinator, the timeline of completion, and potential partners for each activity or project. The ACWC's first workplan, which covered the period from 2012 to 2016, listed 18 thematic areas under which 23 main activities were designated.<sup>46</sup> The thematic areas included: trafficking of women and children; the promotion and protection of the rights of women and children with disabilities; promoting the implementation of international, ASEAN and other instruments related to the rights of women and children; strengthening the economic rights of women with regards to the feminisation of poverty and women's right to land and property; and implementing a gender perspective in the policies, strategies and programmes for migrant workers. The ACWC's activities during the period of its first workplan were heavily concentrated around the thematic area of eliminating violence against women and children. Thailand was the lead country for more than 11 activities in the first workplan, while the other half were led by Indonesia, Malaysia, Myanmar, and the Philippines.

<sup>46</sup> Not all thematic areas contained activities listed under them. Moreover, a few thematic areas included more than one activity. For instance, under the thematic area on "elimination of violence against women and children", the activities for the study and research on VAC and VAW are listed under the third activity in the workplan, but VAC and VAW are divided into two separate categories, which different countries designated as the lead and under different timelines.

The second workplan shares 15 thematic areas with the first workplan. The second workplan dropped three thematic areas of promotion of consultation and dialogue with stakeholders at national and regional levels; women and children living with and affected by HIV and AIDS; and active ageing among women. The second workplan also included early marriage as a new thematic area. This specific area comprised of a project, "ASEAN Workshop for Interventions on Early Marriages," and was led by Malaysia with the support of Lao PDR and Thailand.

The second workplan incorporates and aligns with the ASEAN Socio Cultural Council (ASCC) Blueprint 2025 as well as ASEAN Socio-Cultural Community's key results areas and strategic measures. As of 2020, the ASEAN Secretariat has reported to the ACWC that of these 48 project activities within the workplan, 12 (25%) have been completed, 14 (29.2%) are ongoing, and 22 (45.8%) are planned.<sup>47</sup> As the majority of activities have not been implemented during this period, some are expected to be extended to the anticipated workplan for the next period (2020-2025).

## 2.6. Selecting ACWC representatives

The ACWC TOR stipulates that each ASEAN Member State is to appoint two representatives, one on women's rights and one on children's rights.<sup>48</sup> Each representative may serve a term of three years and may be consecutively reappointed for only one additional term<sup>49</sup>. Representatives are to be appointed using staggered office terms, with each ASEAN Member State appointing one of its two representatives to serve an initial term of four and a half years.<sup>50</sup> The governments of AMS may decide to replace, at its discretion, its appointed representatives to the ACWC.<sup>51</sup>

The appointment of ACWC representatives using the staggered office terms in accordance with the TOR has been recognised as a good practice for ensuring continuity of work and transfer of institutional memory within the body.<sup>52</sup> This practice has continued among the current batch of ACWC representatives.

Questions have been raised with respect to ASEAN's transparency in providing official information on the appointed ACWC representatives. Due to the lack of updating, the ACWC's official website features only the resumes of ACWC representatives who served in this capacity in the year 2016.

As an alternative source, FORUM-ASIA's online platform, Human Rights in ASEAN, features the list of the names and biographies of current ACWC representatives<sup>53</sup>. However, this list has not been updated either, so as of September 2020, it does not reflect the changes in the Commission's composition with the appointment of Cambodia's representative on Women and Lao PDR's representative on Children in April 2019, given the limited information available of the structure of the body.

47 Presentation by ACWC representative at Expert Meeting in Jakarta, Indonesia on 5 March 2020. Henceforth: Expert Meeting.

48 ACWC TOR, Article 6.2. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

49 ACWC TOR, article 6.5. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

50 ACWC TOR, article 6.6. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

51 ACWC TOR, article 6.8. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

52 FORUM ASIA Report, 2015. <https://www.forum-asia.org/uploads/wp/2016/10/Breaking-The-Silence-AICHR-Performance-Report-2015.pdf>

53 <https://humanrightsinasean.info/mechanism/asean-commission-on-the-rights-of-women-and-children/>

Although the TOR mandates that each Member State appoint two representatives to the ACWC, two countries currently have alternate representatives on Children's Rights since their terms ended in 2018 and 2019, respectively.

In addition, information about the start and end of each representative's term is not publicly available, making it difficult to assess the Commission's compliance with the Terms of Office in the TOR.<sup>54</sup> Not all Member States appear to comply with the limit on terms of service in the ACWC's TOR; for instance, one representative, H.E. Mr Koh Choon Hui, has served as Singapore's representative for children's rights since the establishment of the ACWC, which is for more than a decade.

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<sup>54</sup> Articles 6.5-6.8, as quoted above.

Table 2: ACWC Representatives in 2020

Country	Representatives on Women	Term	Representatives on Children	Term
Brunei Darussalam	H.E. Hjh Misnah Bte Hj Bolhasan	19 September 2019 - 18 September 2022 (second term)	H.E. Dato Paduka Dr Haji Junaidi Bin Haji ABD. Rahman	7 October 2017 - 6 October 2020 (Vice-Chair: 1 January 2020 - 31 December 2020) (second term)
Cambodia	H.E. Ms Run Sovantevy	7 April 2019 - 6 April 2022 (first term)	H.E. Mr Theng Chhorvirith	7 October 2017 - 6 October 2020 (first term)
Indonesia	H.E. Ms Sri Danti Anwar	7 October 2017- 6 October 2020 (Chair: 17 January 2018- 6 March 2019) (first term)	H.E. Ms Yuyum Fhahni Paryani	7 April 2016 - 6 April 2019 (Acting Chair: 4 October 2017- 16 January 2018); serving as alternate representative since 6 April 2019 until the new representative is appointed (second term/ interim)
Lao PDR	H.E. Soukphaphone Phanit	7 October 2017 - 6 October 2020 (second term)	H.E. Ms Vatthana Inlorkham	7 April 2019 - 6 April 2022 (first term)
Malaysia	H.E. Dato' Junaidah Binti Kamarruddin	22 July 2019 - 21 July 2022 (first term)	H.E. Mr Arfan bin Sulaiman	8 October 2019 - 7 October 2022 (first term)
Myanmar	H.E. Ms May Yin Tun	7 April 2019 - 6 April 2022 (second term)	H.E. Ms Rupa Mya	7 October 2017 - 6 October 2020 (first term)
Philippines	H.E. Prof. Lourdesita Sobrevega-Chan	7 February 2017 - February 2020 (currently interim)	H.E. Ms Lina B. Laigo (alternate representative)	1 July 2018 - until the new representative is appointed
Singapore	H.E. Ms Laura Hwang Cheng Lin	7 October 2017 - 6 October 2020 (Vice-Chair: 6 March 2019 - 31 December 2019; Chair: 1 January 2020 - 31 December 2019) (second term)	H.E. Mr Koh Choon Hui	7 April 2019 - 6 April 2022 (fourth term)
Thailand	H.E. Dr Ratchada Jayagupta	7 October 2017 - 6 October 2020 (first term)	H.E. Mr Wanchai Roujanavong	7 April 2019 - 7 April 2022 (Chair: 6 March 2019 - 31 December 2020) (second term)
Viet Nam	H.E. Ms Hoang Thi Thu Huyen	7 October 2017 - 6 October 2020 (first term)	HE. Mrs Ha Thi Minh Duc	6 October 2016 - 6 April 2019 (Vice-Chair: 6 October 2016 - 6 April 2017) (second term)

Sources: <https://acwc.asean.org/about/>, <https://humanrightsinasean.info/mechanism/asean-commission-on-the-rights-of-women-and-children/>, and Presentation from ACWC representative at FORUM-ASIA's Expert Meeting in Jakarta, Indonesia

## 2.7. Qualifications of ACWC Representatives

The ACWC's official website underscores that "each ACWC representative is appointed by his or her government. The process of appointment differs in each country." While discretion is provided to each state as to the process of appointment, the TOR refers to the selection criteria of the representatives, stating: "When appointing their representatives to the ACWC, ASEAN Member States shall give due consideration to competence in the field of the rights of women and children, integrity, and gender equality."<sup>55</sup> However, the selection criteria for assessing such competence are not elaborated in the TOR and differ widely in practice across the Member States. Moreover, different government Ministries oversee the national selection process of ACWC representatives: this process falls under the Ministry of Women Empowerment in countries like Malaysia and Indonesia, and under the Ministry of Social Welfare in Myanmar, Thailand, and Singapore.

While there are no standardised indicators for selecting the ACWC representatives, Indonesia<sup>56</sup> and the Philippines<sup>57</sup> have initiated practices to publicise the call for nominations, together with indicators for selecting each representative. In the case of the Philippines, the selected indicators for the representative for women's rights were developed by the Philippine Commission on Women.

A widely-held perception is that at least a considerable portion of ACWC representatives are experts in their respective fields, and are more inclined to be drawn from academia and civil society backgrounds and networks in comparison to their counterparts in AICHR.<sup>58</sup> While incomplete, evidence for this perception may be partially gleaned from available information on the batch of ACWC representatives in 2016 and those in 2019. According to the ASEAN's official published resumes of the seventeen ACWC representatives in 2016, 11 (64.7%) were government officials (from Brunei, Cambodia, Myanmar, Thailand, and Viet Nam), two (11.8%) were academics (from the Philippines and Malaysia), and both representatives from Singapore came from the private sector. Among this batch, a few representatives have a more hybridised background, particularly among the representatives on children's rights. For instance, Malaysia's representative on children's rights was an academic, in addition to having served a long-term as Human Rights Commissioner in SUHAKAM. Thailand's representative on children's rights held the position of Special Prosecutor in the Office of the Attorney-General but was also worked for a number of CSOs on children's rights. Furthermore, Viet Nam's representative children's rights also had a position as both a government officer and journalist.

Among the eighteen ACWC representatives listed in FORUM-ASIA's more updated list<sup>59</sup> (some of which overlap with ASEAN's 2016 list), 12 (67%) have a background in the government sector, followed by three (17%) who are in academia, two (11%) from the private sector (both from Singapore), and one (5%) from civil society. As in the case with representatives from the 2016 list, a number of ACWC

55 ACWC TOR, Article 6.3

56 <https://drive.google.com/file/d/0B4Chy8fQ40ISVjF5OGctZ2czU00/view>

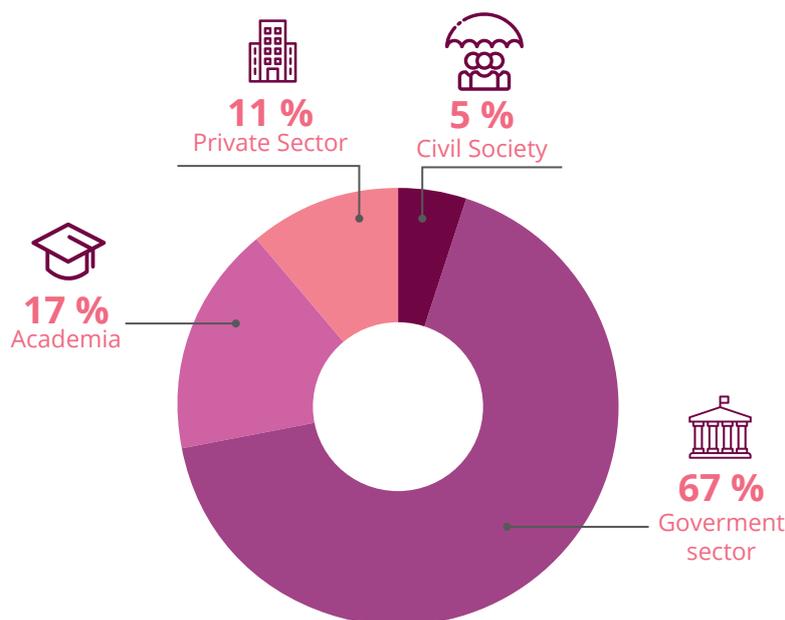
57 <https://www.pcw.gov.ph/international-commitments/acw>

58 This perception was expressed frequently in interviews held with officials from ASEAN Secretariat and CSOs.

59 "ASEAN Commission on the Rights of Women and Children," Human Rights in ASEAN website (as of 22 August), <https://humanrightsinasean.info/mechanism/asean-commission-on-the-rights-of-women-and-children/>.

representatives in 2019 who worked in government had qualifications in other related sectors. For instance, Cambodia's representative for children rights also worked for Save the Children prior to assuming his government position. Among the current representatives, Indonesia's representative on women's rights has had an extensive career in the Ministry of Women's Empowerment and Child Protection of Indonesia, and is also unique in having served as the Indonesian focal point to ACW and to Asia Pacific Economic Cooperation Women and Economic Forum (APEC WEF) prior to her appointment to ACWC. Others do not have robust experience and expertise on women and/or children's rights.

**Background of 2019 ACWC Representatives (n=18)**



This impression that many ACWC representatives come from academic or civil society backgrounds is also likely to have been created by a number of specially active and visible representatives, particularly from the first batch of ACWC representatives, who were selected from civil society backgrounds. ACWC representatives who tend to be more visible and well-known among civil society are also those who are more inclined to participate in multi-stakeholder engagement platforms and had working relationships with civil society organisations prior to their appointment. However, on the whole, the actual composition of the ACWC in 2016 and 2019 does not justify the view that ACWC representatives are often recruited from CSOs and/or academia, as the majority of representatives are career government officials.

Nonetheless, some ACWC representatives who come from the government sector do have relevant qualifications. Indeed, as one prominent example, the current Thailand's representative on children's rights has been identified by regional CSOs working on children's rights as particularly experienced in both the government and civil society sectors; given his experience and networks in both sectors, he has been acknowledged by multiple interviewees to be particularly adept at advancing the ACWC's work on children's rights in Thailand, especially during Thailand's

Chairship of ACWC. However, other Member States have a very little degree of transparency of the selection process, which will be explained below. These practices take a toll on the ability of other ACWC Chairs to systematically engage CSOs in a meaningful way.

## 2.8. Selection Process

ACWC's TOR further stipulates that "When appointing their representatives to the ACWC, ASEAN Member States shall conduct, in accordance with the respective internal processes, a transparent, open, participatory and inclusive selection process of their representatives to the ACWC."<sup>60</sup> FORUM-ASIA's 2015 report has called into question the transparency of the selection process, as its process is neither published nor made readily accessible to the public.<sup>61</sup>

The same report also acknowledged that the Philippine representative on Children's Rights at the time "was selected through a process of nomination that was open to CSOs in the country – a process that few other countries, such as Indonesia and Thailand, have similarly used, which should be seen as a good practice for ASEAN countries that do not currently do so."<sup>62</sup> With the country's subsequent change in government in 2016, the practice of CSO involvement in the nomination process is still in place; however, because of the veto powers of the President, the person chosen by the selection committee has not yet been appointed at the time of writing.

When reflecting on the selection of the Philippine representative on women's rights in the first batch of ACWC representatives, one CSOs interviewee recalled the high degree of contestation that took place to ensure a transparent, open, participatory and inclusive selection process, as prescribed in ACWC's TOR. The Women's Legal and Human Rights Bureau (WLB) pushed for an independent process and endorsed a specific candidate, who was not the final nominee. While this process created some tension initially between the women's CSO network and the appointed representative, the relationship gradually improved through the network's sustained engagement with ACWC and advocacy in an effort to influence the agenda-setting, including the seminal RPA EAW. According to the interviewee, this contested process was critical for fostering a constructive relationship among activists, academics, and NGOs with the ACWC representative on women's rights. The relatively open and competitive selection process ensured that the nominees who were considered and selected were likely to be qualified, savvy enough to work with other stakeholders, and able to navigate the resource constraints effectively. However, this practice did not continue into the subsequent nomination process in 2017. In the most recent selection process in 2017, the recommendations for nominees by CSOs were not reviewed. This blocking of CSOs participation may have been the reason of why the engagement of the current Philippines ACWC representative with Philippines CSOs working on women's rights, particularly those based in Manila, has been limited compared to the previous one.

60 ACWC TOR, Article 6.4. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

61 2015 FORUM ASIA Report on AICHR and ACWC. FORUM ASIA Report, 2015. <https://www.forum-asia.org/uploads/wp/2016/10/Breaking-The-Silence-AICHR-Performance-Report-2015.pdf>

62 *Ibid.*, p. 36.

The selection processes of ACWC representatives in Indonesia and Thailand also enabled a degree of CSOs engagement in the nomination process that has been institutionalised over time. One CSOs interviewee from Thailand noted the evolution of the selection process from being mostly conducted by government officials to becoming more CSO-oriented over the past ten years. This trend was noted as a positive development for NGOs seeking to engage with the ACWC in Thailand. Yet overall, the process in Thailand is still relatively closed, with only the initial application process being open and publicised so that CSOs may put forth recommendations for nominees. Following this open stage, the selection itself is closed and held by the ministries. A similar process is found in Indonesia, where initial recruitment was described as “very open” by the CSOs interviewees; the Ministry of Foreign Affairs and the Ministry of Women Empowerment and Child Protection were commended for being particularly active when publicising the nomination stage, including relevant criteria, through various mediums, such as media, ministries’ websites, emails and WhatsApp. However, the selection process itself, including when it comes to providing information about the candidates considered and the criteria used in their evaluation, was deemed “very closed.”

CSOs have continually pushed for a more open, inclusive, transparent and independent process of selecting ACWC representatives. While better practices were identified in Indonesia, Thailand, and the Philippines, at least in the relative openness of the nominating phase, CSOs have noted the absence of transparency and inclusion in the following selection phases, as well as the lack of sustainability and continuance of good practices from one selection process to the next (for example, in the case of the Philippines as noted previously). In response, CSOs have urged for improvements to ACWC’s selection criteria and processes of its representatives. For example, the International Commission of Jurists has advocated for regional human rights mechanisms in ASEAN to follow the guidance of the Paris Principles with respect to the appointment of commissioners.<sup>63</sup>

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63 Interview with CSO representative, 8 May 2020.

**CHAPTER 3:**

IMPACT  
ASSESSMENT  
AND RESEARCH  
FINDINGS



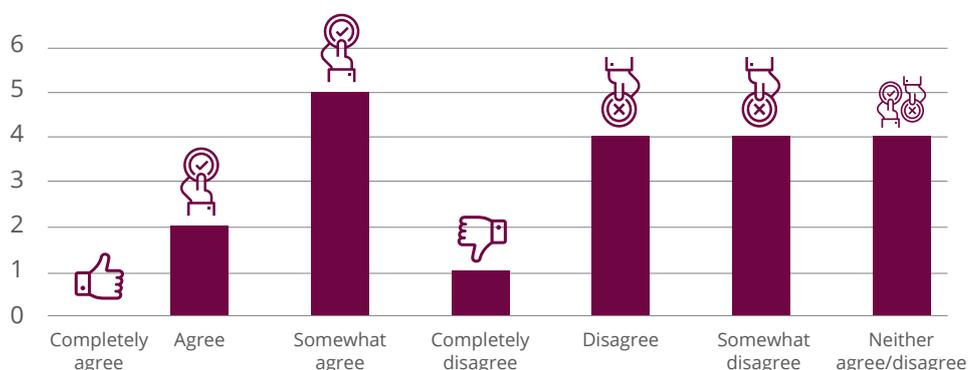
This chapter assesses the performance of ACWC as an institution tasked with promoting and protecting the rights of women and children in ASEAN. The assessment focuses on:

- 1) Review on its selection process;
- 2) Compliance with its TOR (especially concerning its promotion and protection functions), as well as alignment with the role and modality of the regional human rights mechanism;
- 3) Implementation of the ACWC's 5-year workplans;
- 4) Implementation of the Regional Plan of Actions on the Elimination of Violence against Women (RPA EVAW) and the Regional Plan of Actions on the Elimination of Violence against children (RPA EVAC);
- 5) Engagement with stakeholders within and outside ASEAN.

### 3.1. ACWC's selection process

In order to understand the performance of ACWC as an institution and as individuals, it is essential to glean the survey respondents' views of the selection process of ACWC representatives, leading to the composition of its memberships and how it affects its work, the latter to be described in this chapter.

**Have ASEAN Member States selected their ACWC Representatives in a transparent, open, participatory and inclusive section process?**



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

The level of CSOs’ engagement with ACWC highly depends on the willingness of the individual representative according to some respondents. At the same time, those from IOs and larger partners emphasised the importance of having representatives with technical expertise, practical savviness, and clout to engage with national governments and communities on the ground to advance the ACWC’s work.

Given the high dependency on individual representatives to carry out the ACWC's mandate, interviewees point to the importance of enhancing the selection process of representatives to ensure they meet the qualifications needed to leverage the ACWC's work. One interviewee recommended, incorporating the Paris Principles<sup>64</sup> as the standard for ASEAN Member States to adopt in the selection process of ACWC representatives.

### **3.2. Compliance with mandate as provided in the TOR**

People will enjoy their human rights to the full once these rights are protected, respected and fulfilled.<sup>65</sup> "Promotion" is not an end in itself, but rather an auxiliary means of ensuring that rights are respected, protected and fulfilled. Activities such as human rights education, training, capacity building and awareness-raising are of little use unless they cause those who are educated, trained, especially officials, to translate what they have learned and been trained into actual policies and practices which respect, protect and fulfil human rights. If this link is broken, the body conducting such activities is no different from an academic institution whose main task is to accumulate knowledge rather than to use knowledge in order to bring about change.

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

In ASEAN, however, governments of Member States, especially those wary of their oppressive laws, policies and practices undergoing independent scrutiny and exposure, have vigorously and successfully pushed for a sharp dichotomy between the two. They have forced the region's two leading human rights mechanisms into focusing on "promotion," which they see as theoretical activities, at the expense of "protection," namely researching and documenting actual human rights situations and violations in the Member States, not to mention intervening to stop violations. As a result, neither the AICHR nor the ACWC has ever officially intervened or even commented on any actual case of human rights violations in the region, even in the face of mass atrocities.

The following should be read in this context.

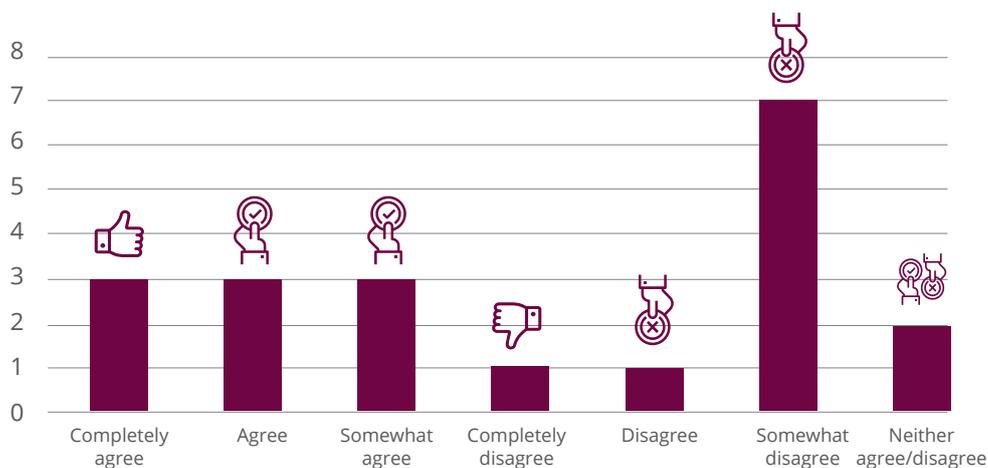
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64 Principles relating to the status of national institutions ("Paris Principles"), UN General Assembly Resolution 48/134 of 20 December 1993, annex.

65 See, for instance, UN Office of the High Commissioner for Human Rights, *From Exclusion to Equality: Realizing the rights of persons with disabilities* (Geneva: OHCHR, 2007), p. 20, <http://archive.ipu.org/PDF/publications/disabilities-e.pdf>.

### 3.2.1. ACWC's mandate on the promotion of human rights and fundamental freedoms of women and children in ASEAN

#### Has ACWC performed satisfactorily on the promotion of human rights and fundamental freedoms of women and children in ASEAN?



As seen in Chapter two, what is considered the promotion mandate of the ACWC encompasses awareness-raising, education, capacity-building and the like. Outputs have included training, conferences, workshops, research and studies. Respondents were asked to rate the extent to which they agreed or disagreed with the proposition that ACWC's performance has been satisfactory on the promotion of human rights and fundamental freedoms of women and children in ASEAN. 45% of respondents indicated they either somewhat agreed, agreed, or ultimately agreed that ACWC's performance has been satisfactory in this regard over the past ten years. 45% either disagreed, somewhat disagreed or completely disagreed with the statement.

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

Interviewees from CSOs also saw the promotion work of the ACWC as an achievement, especially in awareness-raising through its campaigns and media activities. During the Expert Meeting and interviewees with ACWC representatives, the social media campaign undertaken by the Thailand representative on women's rights was seen as a positive activity aimed at enhancing the Commission's visibility and highlighting women's rights as a regional issue that is central to the Commission's work. The campaign focused on crucial information about ACWC as well as the nexus between gender-based violence and trafficking in persons.

One respondent commented that there has rarely been any concrete promotion

work from ACWC. Key criticisms included a lack of information by the ACWC on its structure and the work. Those who doubted the success of the ACWC's promotion work also noted that the Commission has not adequately addressed the plight of most vulnerable groups of women and children, including those who are migrants and stateless, through its campaigns and workshops. Another interviewee noted that the promotion work of the ACWC has tended to lack a clear direction (especially in the second term of representatives), as indicated in the lack of follow-up for planned action after baseline studies are produced, such as the Progress Report on Women's Rights and Gender Equality.<sup>66</sup> The feedback indicated the need for ACWC to have a plan to utilise these studies and produce results through accentuating the linkage between promotion and protection mandates.

Lastly, interviewees noted that the provision of decision-making by consensus in the TOR, reflected in other ASEAN instruments, has had a massive impact on the ACWC's performance of its promotion mandate. According to many interviewees, the main achievement of the ACWC over the past decade has been the production of several guidelines and documents to promote awareness-raising, education, and capacity-building concerning the rights of women and children in ASEAN. As one current ACWC representative remarked, the ability of ten AMS to come to a consensus so that they can sign a document on the rights of women and children is a remarkable feat for the Commission.<sup>67</sup> However, it was noted by an ASEAN official during the expert meeting that many documents remain "stuck" within ACWC due to the lack of consensus among the Member States, making it impossible to go forward and authorise the release.<sup>68</sup> This was also an experience confirmed by interviewees who have contributed to the reports by ACWC. One noted that a study on online protection had been delayed more than a year due to the approval process alone.<sup>69</sup> Another interviewee noted that a report on children's citizenship rights had already been approved by ACWC representatives but remains unpublished a year later.<sup>70</sup> An AICHR representative shared that a similar delay in the production of documents occurs in AICHR, due to the protracted approval process requiring consensus among the AMS.<sup>71</sup>

Many interviewees expressed frustration at this process; since much of the ACWC's work is based on research, the delay whilst consensus is being sought could risk the research being outdated before its release, or subject to compromise, including dilution of its content, in order to improve the chances that the report is endorsed. The consensus-reaching dynamics within the ACWC may also negatively impact the ability of the Commission to plan its promotion and protection work beyond the publication of guidelines and documents. Thus, the Commission's capacity to develop a more programmatic and sustained approach to follow-up activities that make use of its research products is greatly hampered.

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66 ACWC, *Progress Report on Women's Rights and Gender Equality* (Jakarta: ASEAN Secretariat, October 2016), [https://asean.org/storage/2012/05/Progress-Report\\_Women-Rights-and-Gender-Equality.pdf](https://asean.org/storage/2012/05/Progress-Report_Women-Rights-and-Gender-Equality.pdf).

67 Remarks made at the Expert Meeting.

68 Remarks made at the Expert Meeting.

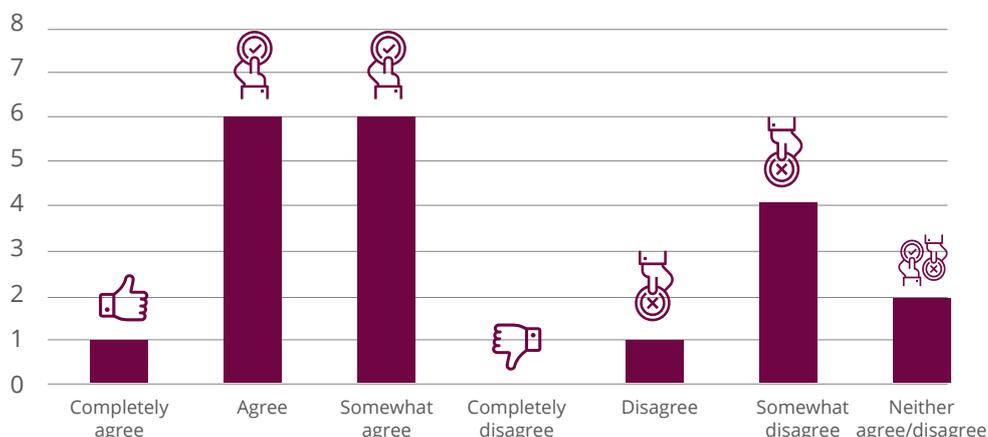
69 Interview with academic on 23 April 2020.

70 Interview with academic on 30 March 2020.

71 Interview with AICHR Representative on 8 May 2020.

### 3.2.2. ACWC's mandate on the protection of human rights and fundamental freedoms of women and children in ASEAN

**Has ACWC performed satisfactorily on the protection of human rights and fundamental freedoms of women and children in ASEAN?**



Among respondents, 65% either agreed, somewhat agreed, or ultimately agreed that the ACWC has performed satisfactorily its mandate to protect the human rights and fundamental freedoms of women and children in ASEAN, while 25% either disagreed or somewhat disagreed with the statement. However, we have to be mindful of the size of the survey participants that also serve as limits of this survey. Among those who agreed, several noted that there had been changes to national policies concerning violence against women and children. However, the ACWC's direct contribution to the changes in national policies remains unclear.

Besides, a specific mention of positive changes towards better national policies is also unspecified. Others noted that in the area of children's rights, ACWC's work on standard-setting, including in drafting the Declaration of the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN,<sup>72</sup> was also a significant step forward in the protection of children's rights specifically. Regarding women's rights, the ACWC's Regional Guidelines and Procedures to Address the Needs of TIP Victims was noted as an example of protection work. However, the implementation of these documents remain uncertain, and therefore overall protection functions cannot be achieved by ACWC. Also, during the Expert Meeting, a current AICHR representative remarked that the inclusion of "the protection of victims" was a unique aspect of the ACWC's TOR, and could be interpreted by ACWC as a basis for executing its protection mandate.<sup>73</sup> Nevertheless, ACWC has not made any effort to provide remedies nor to accept and process complaints from victims.

72 Declaration on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN, adopted by the 35<sup>th</sup> ASEAN Summit, Bangkok, 2 November 2019,

73 Remarks made at the Expert Meeting. The quotation is from ACWC TOR, Article 5.12.

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

The ACWC has also showed un-responsiveness and silence over critical violations of the rights of women and of children in the region, such as the attacks by the Myanmar army on Rohingya civilians in 2016-17 which included massive killings, rape and deportation of women and children.

A claim is often made that the ACWC (and also the AICHR) lacks a protection mandate. The claim, however, is patently wrong, given the simple fact that the first "purpose" that the TOR provides to the ACWC is to "promote *and protect* the human rights and fundamental freedoms of women and children in ASEAN" (emphasis added).<sup>74</sup> Indeed, the TOR does not make explicit provisions for the Commission receiving individual petitions, investigating submitted cases or initiating investigations on its own, or issuing resolutions and recommendations to governments or monitoring their laws, policies and practices relevant to the rights of women and children. However, nothing in the TOR prohibits the ACWC to engage in any of these activities either. For instance, the provision in Article 5.9 of the TOR for promoting "studies and research related to the situation and well-being of women and children" can be used, with some creativity, to conduct studies into situations where the well-being of women or children are at risk, namely where their rights are violated.

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

Thus, the ACWC rarely discusses the "protection" aspect singularly. Interviewees reaffirmed the ACWC's lack of monitoring and investigative work as symptomatic of the overriding non-interference approach in ASEAN. As one academic and former AICHR representative has noted, "ASEAN seems to be allergic to the term and concept of 'monitoring'. The bodies [of AICHR and ACWC] are expected by ASEAN member states to focus on the promotional aspect of their mandates, not on protection, although generally speaking they are supposed to promote and protect the rights of ASEAN people."<sup>75</sup>

In this context, it is unsurprising that ACWC representatives do refer to the ASEAN Way to explaining the perceived lack of a protection mandate in ACWC. This explanation is also reflected in the ACWC 2016-2020 Workplan's heavy

74 ACWC TOR, Article 2.1. See similarly AICHR TOR, Article 1.1.

75 Petcharareesmee, p. 50.

focus on promotion activities, such as public campaigns. In thematic areas that typically involve the protection of children and women, these activities remain limited to products such as guidelines; while these are important, they remain limited to awareness-raising without more concrete—and critical—actions in implementation.

During the expert meeting, participants discussed the need to develop comprehensive human rights protection strategies and measures that are based on international human rights law and standards. The ACWC was identified as being in a better position to leverage a protection strategy, as its mandate includes assisting with the implementation of the CEDAW and CRC (which all AMS countries have ratified).<sup>76</sup> The ACWC's TOR also includes a mandate to assist (upon request) with the periodic reports for CEDAW and CRC, and in the implementing the Conclusion Observations of the CEDAW and CRC.<sup>77</sup> Among the ten ASEAN countries, only Thailand ratified the CRC optional protocol on a communication procedure. In addition, Philippines and other AMS also ratified the CEDAW optional protocol.<sup>78</sup> This lack of ratification of the OP was provided by a current ACWC representative as a reason why the ACWC has focused its activities on prevention and promotion, rather than complaints.<sup>79</sup> A more protection-oriented approach would have been for the ACWC to step in and implement Article 3.4 of the TOR, which calls on the ACWC "to complement rather than duplicate the function of CEDAW and CRC Committees" by handling individual complaints pending ratification by AMS of the respective Optional Protocols.

A current ACWC representative noted that in countries like Indonesia, the Ministry of Women already has mechanisms in place to address complaints by victims who are women and children; however, the national women machinery 2019 report highlighted the mechanism flaws<sup>80</sup>. It should be borne in mind that it is always preferable to have a regional or international body to resort even to exist, so that the regional mechanism can be approached where the national mechanisms fail.

ACWC protection mandates are weaker compared to other regional mechanisms for women's rights, including the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI); the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO); the African Commission on Human and Peoples' Rights Special Rapporteur on the Rights of Women in Africa (A SRWHR); and the Inter-American Commission on Human Rights Rapporteur on the Rights of Women (IA RWHR).<sup>81</sup> This weakness is due in part to the lack of a communication and complaint mechanism as well as a clear mandate to conduct country missions, which are features in other regional mechanisms. Furthermore, the ACWC has yet to issue any guidelines on the protection of the rights of women and children groups such as women's human rights defenders, unlike other bodies.<sup>82</sup>

76 ACWC TOR, Article 5.11. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

77 ACWC TOR, Articles 5.6 and 5.7, respectively. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

78 [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN)

79 Remarks made by an ACWC representative at the Expert Meeting.

80 <https://www.komnasperempuan.go.id/file/Catatan%20Tahunan%20Kekerasan%20Terhadap%20Perempuan%202019.pdf>

81 <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CooperationGlobalRegionalMechanisms.aspx>

82 <https://www.achpr.org/resources>

As noted, the ACWC has not responded or even issued a statement or requested information on any human rights violations in the region, not least the atrocities against the Rohingya, including women and children. The lack of action in these critical areas reveals the relatively weak standing of the ACWC compared to other regional mechanisms in exercising its protection functions.

Some current ACWC representatives have shown some openness to the idea of beginning an internal dialogue about conducting monitoring activities. One former representative of ACWC put forth the suggestion that the ACWC monitor and evaluate the Concluding Observations from the CEDAW Committee under its mandate.<sup>83</sup> Another possible and potentially fruitful avenue for ACWC is to coordinate and work more closely with national human rights institutions (NHRIs) on the rights of women and of in assisting with regional monitoring and support when an NHRI receives a complaint, investigates a case, or addresses legal issues related to women and children.

During the expert meeting, participants discussed potential creative ways in which the ACWC could execute its function under point Article 5.12 of its TOR to protect victims. Suggestions included for ACWC in consultation with CSOs to launching digital campaigns (such as Google's initiative on online protection for children) and social media platforms to strengthen the protection mandate and activities of the ACWC and organise more public events and multi-stakeholder dialogues focused on protection strategies.

CSOs also reiterated their support of the ACWC's advocacy work, mainly through requesting ACWC representatives to work at the national level, on the protection of victims, particularly in cases of sexual violence, trafficking, issues concerning refugees and IDPs, and in post-conflict areas. This support also includes providing funds to host public dialogues with ACWC representatives and issuing public statements in support of the ACWC's work in raising awareness on the need for the protection of women and children victims.

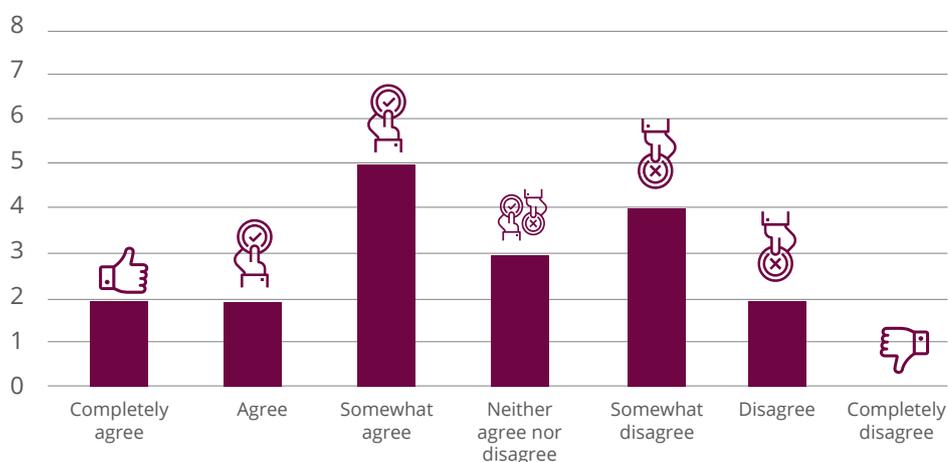
An interviewee also emphasised the need for the ACWC to adopt a creative approach to its protection mandate, which it can still fulfil by providing legal or advisory opinions to assist policymakers in complicated cases, such as those on victims' rights. Furthermore, the ACWC could provide technical assistance and information on the Optional Protocols and make a strong case for their ratification, and more generally help move states toward greater compliance with their international human rights obligations. Also, the ACWC could provide amicus briefs and other human-rights based legal assistance to states as complainants in domestic legal cases where CEDAW and CRC provisions are applicable.

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83 ACWC TOR, Article 5.7. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

### 3.2.3. ACWC's mandate on promoting public awareness and education of the rights of women and children in ASEAN

#### Has ACWC satisfactorily promoted public awareness and education of the rights of women and children in ASEAN?



When asked to rate ACWC's performance in its mandate to promote public awareness and education of the rights of women and children in ASEAN, 45% agreed, somewhat agreed, or ultimately agreed that ACWC has satisfactorily fulfilled this function, while 35% disagreed or somewhat disagreed. Comments from respondents highlighted that the ACWC had produced two interactive videos on "Violence Against Women Throughout the Life Cycle"<sup>84</sup> and "ASEAN Campaign on Ending Gender-Based Workplace Violence"<sup>85</sup> to educate the public about the rights of women and children in ASEAN. However, most respondents thought that the ACWC could work more collaboratively with CSOs to develop more initiatives to raise public awareness. Others commented the ACWC had not publicised its events or meetings. As a result, ACWC's activities have had limited reach to the public.

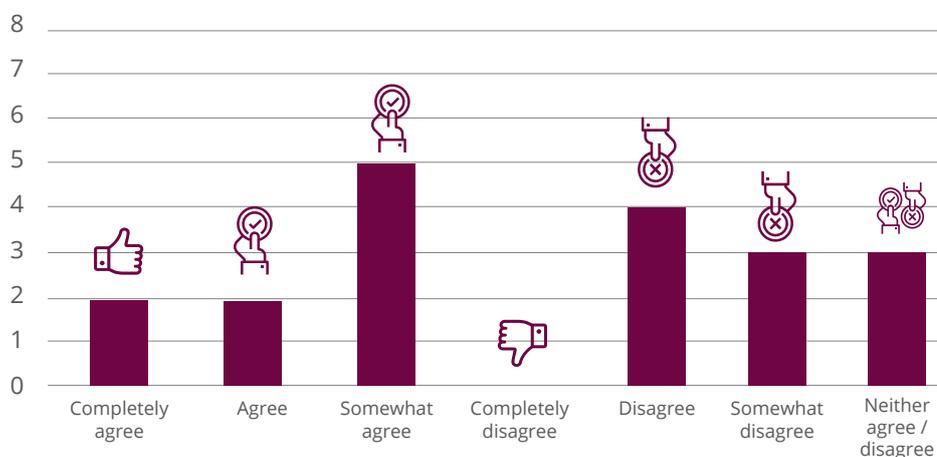
During the expert meeting, a CSO participant also suggested that ACWC representatives could lobby ministries more proactively to support public dialogues on topics, including sexual violence. Furthermore, some CSO members highlighted their activities in support of the ACWC by issuing public statements and holding public dialogues to assist the Commission in promoting public awareness of the rights of women and children.

84 "Violence Against Women Throughout The Life Cycle." Uploaded to ASCC Thailand's YouTube channel on 6 January 2016. <https://acwc.asean.org/multimedia/violence-women-throughout-life-cycle/> [https://www.youtube.com/watch?v=MEjYk\\_X-plY&list=UUalXqjBzTjm84Kk\\_2O3s1fA&index=15&t=0s](https://www.youtube.com/watch?v=MEjYk_X-plY&list=UUalXqjBzTjm84Kk_2O3s1fA&index=15&t=0s)

85 "ASEAN Campaign on Ending Gender-Based Workplace Exploitation." Uploaded to ACWC Thailand for Women's Rights YouTube channel on 26 December 2019. [https://www.youtube.com/watch?v=DWjxvDGv\\_lw](https://www.youtube.com/watch?v=DWjxvDGv_lw)

### 3.2.4. ACWC's mandate on capacity-building

#### Has ACWC satisfactorily built the capacity of relevant stakeholders?



The ACWC's TOR provides that the Commission is to “build the capacity of relevant stakeholders at all levels,” including civil society, community leaders, and “women and children machineries” (which may refer to the central coordinating units within national governments), through the provision of technical assistance, training and workshops towards the realization of the rights of women and children.<sup>86</sup> 50% of respondents agreed to varying degrees that the ACWC has performed this particular mandate satisfactorily, while 40% disagreed to varying degrees. Comments from respondents included that the ACWC does coordinate with national governments, but has had limited outreach, mostly due to limited funding.

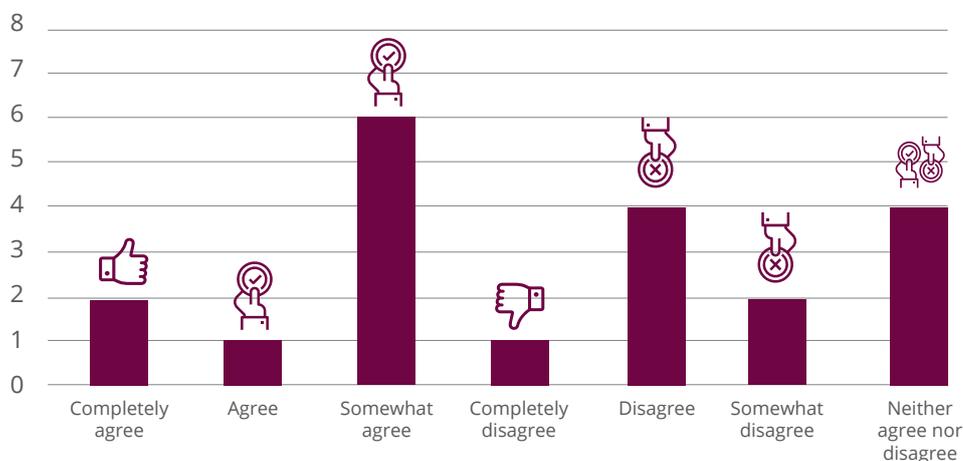
Other respondents noted that the ACWC does have partnerships with other organisations, and as one example, held a workshop on how to protect and respect women and girl victims of trafficking when interviewing them, for CSOs that work on human trafficking<sup>87</sup>. A respondent also remarked that individual representatives held activities that involved civil society, but these were on a national level only and were not official ACWC events. Those who disagreed also commented that among other things, respondents have never received information about ACWC's capacity-building events.

<sup>86</sup> ACWC TOR, Article 5.5.

<sup>87</sup> Practitioners' Workshop on the Implementation of the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons, held August 2-4, 2019 in Bangkok, Thailand. Press release: <https://asean.usmission.gov/launch-of-the-acwc-regional-guidelines-and-procedures-to-address-the-needs-of-victims-of-trafficking-in-persons-tip-and-practitioners-workshop/>

### 3.2.5 ACWC's mandate to advocate on behalf of women and children

#### Has ACWC satisfactorily advocated on behalf of women and children?



The ACWC is mandated to “advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage the ASEAN Member States to improve their situation.”<sup>88</sup> Here too, a creative, proactive Commission could have used this provision to receive complaints from individual women or children whose human rights have been violated and advocate with the relevant governments on their behalf; however, the political will to do that has been lacking.

Overall, 45% of respondents agreed to various degrees that ACWC satisfactorily complies with this mandate, while 35% disagreed overall. Among the comments, it was noted that the ACWC has not been progressive when discussing sensitive topics involving vulnerable groups such as transgender people who are HIV positive or sex workers’ rights to reproductive health support. As a positive example of the ACWC’s action on this mandate, a respondent indicated that the ACWC had shown a strong commitment to push forward the human rights and fundamental freedoms of people with disabilities in ASEAN. This commitment was reflected in the ACWC’s participatory role in the Task Force on Mainstreaming the Rights of Persons with Disabilities, which enabled the adoption of ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities<sup>89</sup>. Also, the ACWC played a vital advocacy role on the issue of trafficking. However, respondents also stated that the ACWC needed to advocate more on behalf of refugees and minorities, as well as LGBTIQ people.

According to several interviewees who represented CSOs, the ACWC has significantly underperformed in advocating for the most vulnerable and marginalised groups of women and children, which also includes indigenous women and children, female migrant workers, and women and children with disabilities.

88 ACWC TOR, Article 5.2. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

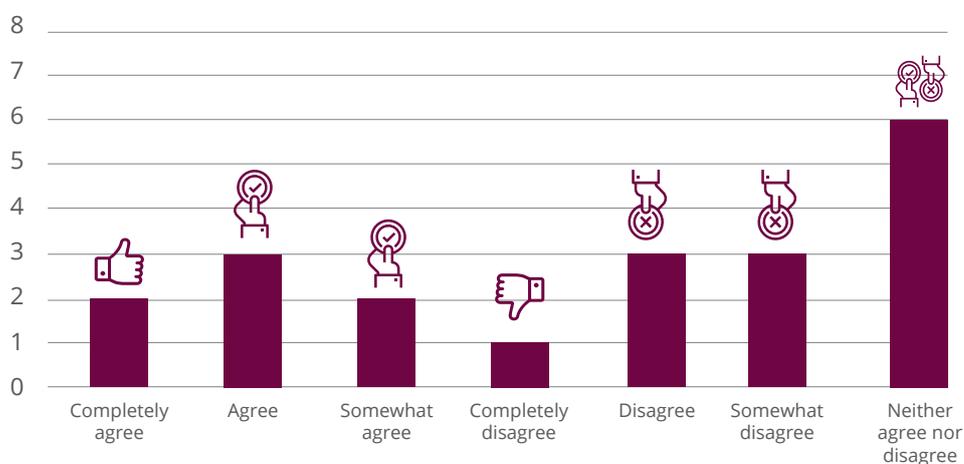
89 <https://asean.org/storage/2018/11/ASEAN-Enabling-Masterplan-2025-Mainstreaming-the-Rights-of-Persons-with-Disabilities.pdf>

Some interviewees expressed frustration at this failure. In particular, they noted that ACWC representatives could have executed this function more effectively by speaking out about marginalised women and children in discussions with national government officials and implementing agencies.

These interviewees also stated that the ACWC has failed to advocate on behalf of girls in particular. Some have noted that the division of ACWC representatives between women's rights and children's rights has resulted in neither contingent of representatives adequately advocating on behalf of girls' specific rights. Another interviewee remarked that the lack of attention to girls in programs for the elimination of violence had been a missed opportunity, given the clear need for a particular discourse on girls in tackling gender equality. This concern was also emphasised by another interviewee who noted that the prevention component in the elimination of violence depends heavily on paying attention to and addressing the issues of the specific needs that girls, as well as boys, face. In this regard, the ACWC appears to lag behind existing research on the elimination of violence by failing to strategise its advocacy efforts to reflect the strong connections between violence against women and violence against children.

### 3.2.6 ACWC's Mandate to assist AMS with reporting on CEDAW, CRC, UPR, and other Treaty Bodies

**Has ACWC satisfactorily assisted ASEAN Member States in preparing for CEDAW and CRC Periodic Reports, the UPR and reports for other Treaty bodies?**



Respondents were split in their assessment of the ACWC's performance in carrying out its mandate to assist ASEAN Member States in preparing for the CEDAW and the CRC periodic reports, the Human Rights Council's Universal Periodic Review (UPR) and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN. It should be noted that the ACWC may only provide such assistance "upon request." 35% of respondents agreed overall, 35% disagreed overall, and 30% neither agreed nor disagreed with the statement.

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

During the expert meeting, a participant noted that there exists a tension between the core mandate of ACWC on the rights of women and of children's and CEDAW and CRC, which are international treaties, that inhibit the execution of this function. Furthermore, the fact that this mandate grants discretion to the AMS as to whether or not to seek such assistance has usually meant that past assistance to AMS from ACWC on UN reporting has been done on an ad-hoc basis and on rare occasions.<sup>90</sup> CSOs representatives interviewed also flagged the lack of monitoring and advocating for compliance to CEDAW and CRC obligations among AMS as a missed opportunity by the ACWC in the past ten years. In particular, the ACWC could have leveraged the General Recommendations issued by CEDAW and General Comments issued by CRC committees and used in the Commission's reports and studies as a common baseline, rather than developing its own. Another CSO representative, the ability of the ACWC to fulfil this mandate is doubtful given the Commission's limitations as an investigative body and its protection mandate, which has resulted in most of its activities focused on the production of guidelines and reports. They questioned whether, under these conditions, the ACWC would be able to serve as a technical resource for any sectoral body or gender machinery to implement CEDAW and CRC obligations, under its TOR, as this role requires ACWC to take the lead in fulfilling this role and to prioritise this function in its work. As an example, the ACWC could support policymaking by providing an integrated assessment on how violations of the rights of women and children occur in contexts such as the COVID-19 pandemic, as resources are drawn away, thereby impacting the provision of social and legal support in cases of violence against women and children. It was also noted that the CEDAW committee has sought to collaborate with regional human rights mechanisms<sup>91</sup>, and the ACWC could support the CEDAW Committee by providing regional expertise. However, these possibilities have yet to be adequately considered, let alone integrated into ACWC's workplan.

### 3.2.7 ACWC's mandate on public communication and information

The ACWC's TOR provides that the Commission is to "keep the public regularly informed of its work and activities through appropriate public information materials produced by the ACWC."<sup>92</sup> 65% of respondents disagreed to varying degrees that ACWC has satisfactorily fulfilled this function, while 30% of respondents agreed.

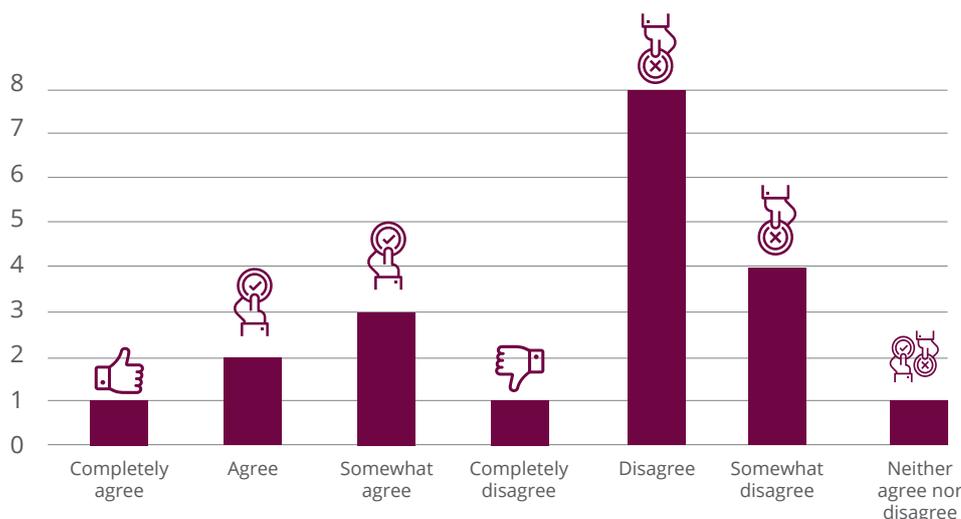
The most frequent comment was that the ACWC website was not updated. Most respondents who have visited the official ACWC website provided similar feedback – there are no updates or any information about current program implementation, work, events, or contact details of ACWC representatives.

<sup>90</sup> Remarks made at the Expert Meeting.

<sup>91</sup> <https://asean.org/joint-statement-of-the-asean-commission-on-the-promotion-and-protection-of-the-rights-of-women-and-children-acwc-and-the-special-representative-of-the-un-secretary-general-on-violence-against-children/>

<sup>92</sup> ACWC TOR, Article 7.6. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

### Has ACWC kept the public regularly informed about its work?



The survey asked respondents to provide feedback on how the ACWC may better distribute information to CSOs and the public at large. The most common suggestion was for the ACWC to update its website, including posting its annual reports and a regular newsletter. The updated website should also routinely feature a schedule of the ACWC's meetings, press conference and public events in advance, and post-follow-up information after the event.

Equally importantly, respondents underscored the necessity for the contact information of ACWC representatives to be made publicly available on the official ACWC website. Without this contact information, CSOs and the public are only able to reach ACWC representatives indirectly, through the ASEAN Secretariat's public email and telephone available on the ACWC website. However, ACWC representatives and CSOs alike acknowledge that initiating contact through the ASEAN Secretariat is less effective than direct, individual contact. CSOs still face difficulties in finding who the representatives themselves are, let alone locating biographical information such as their particular expertise or the means of contacting them. The public and CSOs must be able to quickly locate the names and emails of current ACWC representatives, which should, at the very least, be available on the official ACWC website.

Some respondents suggested that pending the updating of the ACWC website, each ACWC representative should have their own website with their contact information available. If an individual official website is not feasible, ACWC representatives could use social media platforms to disseminate information to the public and CSOs and facilitate communications.

Another suggestion by respondents to improve the ACWC's performance on communications and information is to hold more frequent and regularised consultative meetings with CSOs. This would require a proactive approach from the ACWC where it takes the lead and organises such meetings on its own, rather than depending heavily on CSOs and sectoral bodies such as the AICHR, to invite the ACWC to attend their events.

Organizing and headlining its meetings with CSOs will strengthen the ACWC's leadership and capacity, as taking the lead will require the ACWC to discuss and engage amongst themselves, with CSOs, and with other partners in order to identify the cross-sectional human rights issues that are relevant and resonate at the regional level. These meetings could be organised around developing joint workplans and projects for the ACWC and CSOs at both the national and regional levels. Coordinating the ACWC's work more effectively with CSOs and women's and children's communities on the ground will enhance the potential for the regional efforts to be better linked and translated into the national and regional-level impacts.

Respondents said they would like for the ACWC to leverage its website as a capacity-building tool for CSOs and those working on education on issues similar to the ACWC, including gender awareness, and information about the situation of women and children in ASEAN. Respondents also would like the ACWC's website to be a platform for CSO engagement, and to be a standalone website akin to the AICHR's. Furthermore, interviewees reported that the ACWC has yet to make full use of online communication channels and social media platforms to share information on its work. Especially during the COVID-19 pandemic, the use of webinars and dialogues with youth and women constituents could be a cost-effective way for the ACWC to fulfil its mandate to keep the public regularly informed of its work.

### 3.3. Implementation of ACWC Work Plans

Table 3: Thematic Areas covered in the ACWC's Workplans (2012-2016 and 2016-2020)

Thematic Area	Included in the first Workplan	Included in the second Workplan
Strengthening the institutional capacity of ACWC	Yes	Yes
Promotion of consultation and dialogue with stakeholders at national and regional levels	Yes	No
Elimination of violence against women and children	Yes	Yes
The right of children to participate in all affairs that affect them	Yes	Yes
Trafficking of women and children	Yes	Yes
Women participation in politics and decision making, governance and democracy	Yes	Yes
Promotion and protection of the rights of women and children with disabilities	Yes	Yes
Child Protection System: Comprehensive/Integrative Approach for Children in Need of Special Protection (e.g. Victims of Abuse and Neglect, Trafficking, Child Labour, Children affected by statelessness, undocumented migrant children, HIV/AIDS, Natural Disasters, Conflicts, and Children in Juvenile Justice System/Children in conflict with the law (CICL)	Yes	Yes
The right to early childhood and quality education	Yes	Yes
Promoting implementation of International, ASEAN and other instruments related to the rights of women and children	Yes	Yes
Gender equality in education (textbook, curriculum, access)	Yes	Yes
Women and children living with and affected by HIV and AIDS	Yes	No
Social impact of climate change on women and children	Yes	Yes
Strengthening the economic rights of women with regards to the feminization of poverty, women's rights to land and property	Yes	Yes
Adolescent physical and mental health	Yes	Yes
Active ageing among women	Yes	No
Gender perspective in policies, strategies and programmes for migrant workers	Yes	Yes
Gender Mainstreaming	Yes	Yes
Early marriage	No	Yes

While the ACWC's second workplan, which covers the period from 2016 to 2020, has a total of 16 thematic areas - fewer than the first - it contains 48 projects, which is more than twice the number of those in the first workplan. There is no apparent reason to explain the reason for the increased numbers of projects, programmes, and activities, when the financial structure and budget allocation to ACWC from governments has remained unchanged over this same period. One reason for this increase may be the individual, national-level priorities of ACWC representatives themselves. One interviewee noted that this is particularly among those representatives who rely on assistance from their national ministries. Countries like Indonesia and Thailand, who depend less on authorization from their national ministries, have led a large number of activities; these projects also reflect the alignment of priority areas of these representatives with their external partners.

While building a consensus might result in an agreement over the thematic areas in a workplan leading to its approval, it may also result in more compromises over country-level priorities to be included in a project. However, the inclusion of 48 projects is unrealistic as it overstretches the resource capacity of the ACWC, with more of the representatives' time needing to be spent on seeking external donor support. Interviewees suggested that this overstretching could be minimised if there was a consensus among ACWC representatives around prioritizing only a select number of thematic areas and developing activities under these accordingly. The challenge is that projects are more likely to appear on the work plan only if there is also financial support available (for instance, by UN Women, UNICEF or an INGO). The ACWC could better address this challenge by having more open consultations during the drafting of their workplans, especially to brainstorm with CSOs and other partners to develop more creative ways to finance projects.

Similarly, the number and types of projects on the workplan reflect national-level and country-based initiatives, without a more systematised regional understanding of how the ACWC could better use its resources to develop a more coherent approach to the project initiatives that are included in the final workplan. The large number of activities within ACWC workplan further put at risk the performance of ACWC representatives to complete their outputs within the stated timeframe of the workplan. The threat of overstretching the capacity of ACWC through approving a large number of activities is evidenced by the fact that only 25% of activities in the second workplan were completed, with 29.2% of activities ongoing and 45.8% still at a planning stage.

ACWC's workplan for 2012-2016 does include INGOs as identified partners under the category "Related ASEAN/UN Bodies and Remarks." For example, Plan International and Save the Children are frequently listed as partners in carrying out activities related to children's rights. World Vision, Asia ACT, and CRC Asia are also identified as potential partners. It is important to note that potential CSO partners were only identified explicitly concerning activities categorised under children's rights. For instance, CSOs are listed as a partner in three activities on children's rights - "setting performance standards on service delivery for children with disabilities," "setting

performance standards on integrative child protection system,” and “organis[ing] a Consultative Meeting on culture and religious practices impacting on the rights of children.” The inclusion of CSOs in the activities is likely a function of UNICEF’s requirement that CSOs be included in its regional and national-level work with the ACWC.<sup>93</sup> In contrast, activities that explicitly focused on women’s rights in the workplan do not list any CSO partners. While “CSOs—Women’s Caucus” is identified as a partner, they are listed under the category of children’s rights for the thematic area of “trafficking women and children.”

The inclusion of CSO partners in the ACWC Workplan 2012-2016 does not appear to have been strengthened in the subsequent ACWC’s Workplan 2016-2020. While CSOs were listed as a separate group in four activities in the first workplan, they were not mentioned at all in the second workplan (although CRC Asia was included in one activity, there is no mention of “CSOs” explicitly.)

The absence of CSOs listed under the category of potential partners is striking, primarily as more specific project details and outputs are provided compared to the previous workplan. Two exceptions are CRC Asia, which is listed under the project, “Public Investment in Children in ASEAN – Towards Child Focus Budgeting,” and ECPAT International, which is listed as a key partner working together with Thailand’s ACWC representative on the project, “Children’s Rights on the Regional Workshop for Promoting Comprehensive and Harmonized National Legislation Aimed at Preventing and Combating Online Child Sexual Exploitation (OSCE) in the ASEAN Member States.” The constructive partnership between ECPAT and Thailand’s ACWC representative is a case of an ACWC representative’s prior working experience with specific CSOs becoming instrumental for joint efforts to launch initiatives.

Outside of governmental agencies and ECPAT International (as the sole CSO listed), Chulalongkorn University is also identified as a partner for several activities related to women’s rights when Thailand’s representative on women’s rights was the lead, because the particular representative holds an academic position at that university. The absence of CSOs listed as partners in projects under this representative is disappointing because she comes from a CSO background, unlike her predecessors.

Survey respondents were asked for their feedback on ACWC’s second and latest workplan, from 2016-2020. Half of the respondents were familiar with the workplan, 3 (15%) of them were consulted in the development of the workplan. CSOs who were consulted during the drafting of the workplan were either those who had established a relationship with ACWC (for instance, CRC Asia) or were invited to take part in a consultative meeting by the country’s ACWC representative (i.e. in the case of the Indonesian ACWC representative on women’s rights) to participate as a CSO and provide input in a consultative meeting.

Respondents provided a variety of suggestions on areas of improvements in light of lessons learned from the previous workplans. One respondent remarked that the ACWC did not include work on economic violence, significantly as

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93 Interview with CSO representative on 23 March 2020.

Foreign Trade Agreements (FTAs) were being advanced by the ASEAN Economic Community. This absence reflects a missed opportunity for the ACWC to address in a timely fashion a critical component of violence during FTA discussions in ASEAN. The ACWC's Workplan for 2016-2020 features several projects under the thematic area of strengthening the economic rights of women with regards to the feminization of poverty and women's rights to land and property. However, these do not refer explicitly to the RPAs nor specifically to the elimination of economic forms of violence, and focus instead on women's economic empowerment. As one respondent noted, the ACWC has also yet to adequately integrate workers' rights into its programs. Especially given the SDGs' focus on poverty, the ACWC was strongly encouraged to develop standards or guidelines to protect the livelihood of women and children within the economic policies of ASEAN, as women and children are especially marginalised and more likely to be placed in vulnerable situations of violence due to the economic conditions and underlying causes of poverty.

Respondents also emphasised that the workplan must be aligned with international law and standards, including internationally-agreed definitions, and more generally the need for a greater focus on the implementation of CEDAW and CRC as a vital component of the ACWC's work. There remains a critical need to harmonise regional instruments and programs with Member States' international commitments under CEDAW and CRC. The ACWC's mandate concerning the implementation of CEDAW and CRC should thus be better integrated into the workplan, as its function concerning these conventions remains one of the most critical and underutilised components in its TOR through which the ACWC could fulfil its protection mandate.

The feedback in the surveys also underscored the necessity for the ACWC's workplan to contain budget commitments from AMS, so that the workplan reflects ASEAN's human rights priorities rather than the priorities and influence of donor agencies. Respondents further emphasised that the workplan is still lagging in ensuring inclusivity of marginalised groups among women and children, including LGBTIQ persons, and advocating for their pressing human rights concerns throughout the region. The recommendation for inclusivity reappeared in many survey responses, primarily through calls for more openness on the part of the ACWC in decision-making in its workplan and for ensuring that there is adequate consultation with CSOs.

Respondents also remarked on what they considered the skewed distribution of the workplan's activities, as a disproportionately large number of national projects are led and initiated by Thailand, Indonesia, and the Philippines. While the leadership of these three countries is commendable, respondents noted that ACWC-led projects are still lagging compared to their workplan. The lack of harmonization exists not only between international instruments and ASEAN but due to the fact that the ACWC does not have enough resources, while its decision-making process is slow. This therefore makes it easier for a representative to initiate activities locally and conduct them in whichever way they see fit.

## Priority areas for the next workplan

Respondents were asked to point out what they think should be included as the top three priority areas in the ACWC's next workplan (2021-2025). Responses included the following:

- Strengthen the initiatives to eliminate violence against women and violence against children under the RPAs EVAC and EVAW, including by developing accountability mechanisms within ASEAN
- Strengthen/revisit the RPA EVAC and EVAW strategies in the context of public health emergencies
- Develop a regional action plan on women, peace and security to support women in conflict and post-conflict situations in ASEAN
- Drive efforts on eliminating child, early and forced marriage in ASEAN
- Work to ensure more inclusivity and support for minority women and children groups in ASEAN, including women and children with disabilities
- Engage more with CSOs, especially at the community and grassroots levels
- Empower women and children by ensuring their public participation and freedom of expression through an intersectional lens (i.e. taking into account different women and children's backgrounds) in regional development
- Work to strengthen access to justice and assistance services for victims of sexual violence, not least girl children
- Create a complaint mechanism to ensure access to justice for women and child victims of human rights violations, especially of gender-based violence
- Initiate activities aimed at developing the capacity of government agencies, to protect the rights of women and children as well as to develop the capacity of CSOs and community groups to advocate for such protection
- Integrate and mainstream gender dimensions and perspectives of women's and children's rights across ASEAN bodies and into the national development plans of AMS
- Work to secure public investments in children as a significant component of development programs, including through policy advocacy and to leverage resources for children
- Increase financial investments under the thematic areas of the workplan, especially those areas related to eliminating violence against children and social protection
- Work to ensure gender equality and inclusiveness in the implementation of the SDGs in AMS
- Address women's income inequalities (i.e. compensation), workplace safety, and social protection including maternity benefits
- Work to integrate gender equality in education, including in textbooks and curriculum, and ensure access to all
- Include education on sexual and reproductive health and rights especially comprehensive sexuality education
- Address adolescent physical and mental health

### 3.4. Implementation of the Regional Plan of Actions (RPAs)

Respondents in the survey were specifically asked about the Regional Plan of Action on the Elimination of Violence Against Children (ASEAN RPA EVAC) and/or the Regional Plan of Action on the Elimination of Violence Against Women (ASEAN RPA EVAW)<sup>94</sup>. More than half (60%) of respondents were familiar with the RPAs (either one or both). Two respondents were directly involved in the drafting of an RPA, respectively.

Among those familiar with the RPAs, half of the respondents had been involved in activities related to the RPAs since their adoption in 2015. These activities mainly consisted of attending consultative meetings organised by their country ACWC representative (in the case of Indonesia) and those organised by FORUM-ASIA in 2016. Some respondents were also involved in providing technical assistance on specific projects or thematic areas of the RPAs, such as child marriage.

When providing feedback on ways to improve the RPAs, respondents highlighted the absence of an effective procedure and mechanism to monitor the progress and implementation of the RPAs. In order to address this gap, respondents urged the ACWC to involve those CSOs and NGOs with relevant field and technical experience for monitoring the progress on the work areas identified under the RPAs. While their strengths have been underutilised in the ACWC's work so far, CSOs and NGOs are especially essential partners for monitoring and implementing the RPAs due to their experience working directly with women and children as rights-holders themselves. Respondents also recommended that the ACWC, in collaboration with CSOs and NGOs and with the essential participation of women and children, hold regular annual meetings with AMS to engage for monitoring, and ensuring that women and children's rights and interests are protected. The outcome of these meetings would be an annual progress report on the implementation of the RPAs, which is to be made public on the ACWC's website. The website should also contain a specific section devoted to updates on the RPAs and access to the progress report on the RPAs' implementation. Respondents also further recommended that the ACWC have a specific budget assigned to the implementation of the RPAs, and to review the RPAs to ensure they are aligned with international law and standards.

In their feedback, respondents also widely noted that the RPAs have yet to be adequately implemented at the national level and integrated into national laws, policies and practices. In order to improve upon this, the ACWC is encouraged to ensure that copies of the RPAs are distributed and made more easily accessible in local languages. Training materials on the RPAs should also be made available in local languages to enhance community engagement. On top of this, respondents recommend that the ACWC refer directly to the RPAs in its workplan so that the Commission's activities could be integrated into national frameworks and institutions. This would require the ACWC to hold more national consultations on the RPAs. Notably, some CSOs have already launched their campaigns on EVAC or EVAW; respondents strongly urged the ACWC to work with these CSOs on those campaigns to utilise each other's resources, and equally critically, to avoid duplication and fragmentation.

94 [https://asean.org/?static\\_post=asean-regional-plan-action-elimination-violence-children-asean-rpa-evac](https://asean.org/?static_post=asean-regional-plan-action-elimination-violence-children-asean-rpa-evac)

### 3.4.1. RPA EVAC

The Regional Plan of Action on the Elimination of Violence against Children (EVAC) was seen as a milestone in the context of ASEAN given that the final document included what has been seen as controversial issues: the call for protection measures for stateless, migrant, and asylum-seeking children; the identification of children from the lesbian, gay, transgender or transsexual communities as a group susceptible to violence; and the attention to the issue of child marriage, particularly in its link to sexual violence.<sup>95</sup> This document was also seen as milestone as it includes a more comprehensive definition of violence which includes acts that are harmful to children, whether the acts are *accepted as tradition or disguise as 'discipline'*. According to CRC Asia, this definition is important to counter the controversial text in the ASEAN Human Rights Declaration which distort the universality of human rights, namely general principle 7:

*"At the same time, 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"*

A representative from an international organisations who was involved in the drafting of the RPA EVAC remarked that an internal competition among representatives took place within ACWC during the process of adopting the RPA, which had "not happened in the past."<sup>96</sup> According to the same interviewee, this internal sense of competition was healthy in hindsight, because it helped to advance a more robust version of the RPA EVAC than perhaps would have been reached through consensus otherwise. This reflection suggests that robust discussions and even disagreements within the ACWC need not necessarily be seen as a negative or counter to ASEAN principles, but rather as a process with the potential of tapping into the individual strengths and expertise among representatives.

The inclusion of child marriage in the RPA (as well as in the ACWC's second workplan) is an achievement that resulted from an inclusive process in the ACWC's agenda-setting efforts. In particular, the dialogue around child marriage gained traction, particularly from 2018 to 2020 in ASEAN, by capitalizing on research and evidence, both from outside and inside ASEAN, that has been accrued by IOs, and NGOs to describe and demonstrate the violations of children's rights from this practice. During the dialogue on the RPA, the ACWC called upon stakeholders with expertise and experience working on the issue of child marriage to provide their input. Due to this inclusiveness, there has been sustained engagement between the ACWC and these partners on the issue. The strategy to share research results about the policy options available at the country level, is aimed to increase the awareness-raising among policymakers and then provide a toolkit for policymakers to use. It was deemed effective for organisations to use the rubric of "awareness-raising" (as opposed to a "training" which can evoke more resistance) when engaging with the ACWC on child marriage, as many myths remain about child marriage in the region; it also offers a valuable platform for youth to participate in an intergenerational dialogue with ACWC representatives and other ASEAN officials.

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95 RPA EVAC, Pg. Seven on child marriage

96 Interview with a representative from the international organization on 1 April 2020.

This strategy of raising awareness aims to address myths that perpetuate child marriage, including the false perception that it is not prevalent in ASEAN. Placing the issue of child marriage on the agenda of the ACWC, and thus of ASEAN when AMS adopted the RPA EVAC, was identified as a milestone in the ACWC's work; however, this has yet to be translated into a policy framework of the issue, especially at the national level. In one interview, it was noted that the inclusion of child marriage in the RPA EVAC was contentious for countries like Malaysia and Brunei Darussalam; the Malaysian government proposed a "Malaysian way" in developing a roadmap to address child marriage while avoiding the related issue of sexual relations outside of marriage. As a result, there have been efforts among UN agencies to work with ASEAN on how Malaysia may "toe the line" on this sensitive issue.

The inclusion of migrant, asylum-seeking and refugee children in the RPA was also heralded as an accomplishment of the ACWC, especially the identification of this group in the "protection, response, and support services" section of the Plan: "Review/strengthen protective policies and measures for stateless, migrant, and asylum-seeking children who are victims of violence. (Regional)."<sup>97</sup> The RPA EVAC is notably one of the few ASEAN instruments that use the term "refugee," as ASEAN has generally been reluctant to use this term, preferring the term "irregular migrations" instead.<sup>98</sup> The inclusion of "stateless, migrant, and asylum-seeking children" in the protection, response and support clause in the RPA was attributed by an IO member in significant part to the advocacy efforts and leadership of Dr. Saisuree Chutikul, Thailand's ACWC representative on Children's Rights at the time.<sup>99</sup> She noted that Dr. Saisuree undertook a risk when lobbying for this inclusion in the RPA; her efforts are a testament to the willpower and determination through which individual representatives may be able to push for a more robust protection mandate or activities by the ACWC than could have been achieved otherwise.

The RPA EVAC has also been perceived a positive step in strengthening the protection of children's rights concerning CRC, as most of the AMS countries have made reservations at the time of ratification of the CRC. The RPA EVAC sought to address these lingering gaps in the promotion mandate for countries in ASEAN.

A central finding from the Midterm Review of the RPA EVAC, which was commissioned by UNICEF and conducted in 2018-19 through an independent consultancy,<sup>100</sup> was that the 2013 ASEAN Declaration on the Elimination of Violence against Women and the Elimination Violence against Children has not translated into national actions. This finding undermines the claim that regional declarations, followed by regional action plans, will necessarily bring about enhanced awareness at the national level. This reflects the absence of a significant linkage between ASEAN's regional human rights mechanisms and the national level of governance to produce change, which remains a crucial challenge for these mechanisms to tackle.

97 Pg. 9, point ix, under d) Vulnerable groups of children, Section 2 of the RPA EVAC.

98 Interview with IO member on 1 April 2020.

99 Interview with IO member on 1 April 2020.

100 Association of Southeast Asian Nations, *Ending violence against children in the ASEAN Member States: Midterm review of priority areas under the ASEAN Regional Plan of Action on the Elimination of Violence against Children 2016–2025*, ASEAN Secretariat, Jakarta, July 2019, [www.unicef.org/eap/media/3656/file/EVAC.pdf](http://www.unicef.org/eap/media/3656/file/EVAC.pdf).

### 3.4.2. RPA EVAW

CSOs working on women's rights in ASEAN frequently refer to the RPA EVAW as an achievement for ASEAN generally and the ACWC in particular. The document sets a common agenda on the elimination of violence against women for the AMS to implement at the national and regional level. In the five years since its adoption, the success of the RPAs is evident in the fact that governments in ASEAN do use the RPA as a guide for their national policies, particularly in regards to implementing the data collection required under the RPAs.<sup>101</sup>

The RPAs EVAW and EVAC were created as tools for implementing the Declaration on the Elimination of Violence against Women and Children in ASEAN. According to many interviewees who were involved with the ACWC at the time of its drafting, this Declaration was the idea and vision of the Indonesian ACWC representative on women's rights, Mdm. Rita Serena Kalibonso, who was a human rights activist before her appointment to the Commission. During the drafting process, she worked to ensure the distribution of the draft of the Declaration to the CSO network to solicit their input, including holding meetings on the draft where CSOs were invited to participate. Interviewees who participated in this meeting remarked on the open and participatory atmosphere with the ACWC. They also noted the comprehensive approach to the protection of women and children from violence in the Declaration.

On 24 July 2014, the Solidarity of Asian People's Advocacy – Task Force on ASEAN and Human Rights (SAPA TFAHR), a network of more than 70 CSOs in Southeast Asia, submitted an open recommendation to the ACWC, urging for the full alignment of the Declaration, then being drafted, with international human rights law and standards.<sup>102</sup> In this statement, SAPA TFAHR recommended separate Declarations on violence against women and violence against children and for the removal of the phrase “taking into consideration the different historical, political, socio-cultural, religious and economic context in the region” and “balances between rights and responsibilities” from the draft. Interviewees who were involved in the drafting of the Declaration recalled the extensive political wrangling that occurred over the public morality clause in the draft. In the end, the Declaration encompassed violence against women and violence against children under one document. Similarly, the phrase “taking into consideration the regional and national contexts bearing in mind the different historical, political, socio-cultural, religious and economic backgrounds in the region” remained. However, the phrase “balances between rights and responsibilities” was dropped from the final text of the Declaration.

The RPA EVAW similarly provides that it “will be implemented under regional and national contexts and circumstances” – but this formulation is much milder than in other ASEAN instruments. According to many interviewees, the RPAs also benefited from the leadership of Dr. Saisuree Chutikul, the Thailand representative on Children's Rights. In both the Declaration and the RPA processes, the leadership of individual representatives was a critical and necessary factor in bringing these

<sup>101</sup> Interview with IO representative on 1 April 2020.

<sup>102</sup> SAPA Taskforce, “Civil society's recommendation to the draft Declaration on the Elimination of Violence Against Women and Children in ASEAN,” 24 July 2013. <https://www.forum-asia.org/?p=16327>

initiatives to fruition. Interviewees from CSOs also remembered the preparation of the RPAs as a positive experience for them, as they found the ACWC receptive to the issues from the CSOs. In terms of the substance of the RPA EAW, interviewees also noted that the guidelines outlined a common position about access to services, including those in remote areas, that would enable an easier response from governments to violence against women. However, some interviewees expressed concern that the RPA EAW focuses too much on national-level workplans, lacking an approach to address cross-border issues and to identify common priority agenda issues.<sup>103</sup>

Furthermore, some interviewees critiqued the RPA EAW for the absence of monitoring and evaluation indicators. Women's groups had pushed the ACWC to consider areas in the RPA EAW which overlap with CEDAW obligations, in order to fast-track the implementation of RPA and CEDAW in the region. However, this push failed to be taken up by the ACWC, given the political nature of this conversation among AMS. Many interviewees viewed the lack of synchronicity between the RPA EAW and the CEDAW provisions as a missed opportunity when reflecting on the drafting process. Others also pointed to the weakness of ACWC's work on the prevention angles of RPA EAW; they encouraged the ACWC to put in place and implement strategies, based on the readily available research and aimed at prevention measures that go beyond awareness-raising.

Lastly, a common critique of the RPA EAW is that there is a disjuncture between the regional guidelines and local realities on the ground and at the grassroots level. Interviewees working on this angle encouraged the ACWC to put more resources into monitoring and evaluation of training aimed at awareness-raising for victims at the grassroots level, as this would ensure concrete follow-up which has been missing since the implementation of the RPA EAW began. Grassroots CSOs who were interviewed for this study emphasised the need for social assistance and social support, in addition to training, from the ACWC. They also emphasised that any training on EAW must be translated effectively into facts on the ground, particularly the more technical aspects and that it must include an understanding of the root causes of violence against women. However, the implementation of the RPA EAW so far reflects a reality in which regional recommendations do not reach the community level, and as a result, the RPA does not provide the tools to respond concretely to problems on the ground. One of the key recommendations from interviewees for the ACWC going forward concerning the RPA EAW is for the Commission to work more closely with CSOs for monitoring and advocating among communities.

### **3.5. Assessment of Stakeholder Engagement**

The ACWC is expected to collaborate with various stakeholders, including the AICHR, the ASEAN Secretariat, ASEAN sectoral bodies, dialogue partners, as well as CSOs in order to carry out its function of mainstreaming, promoting and protecting rights of women and children in the region. The relationship between the ACWC with these stakeholders is crucial to carry out its mission successfully. Therefore, the survey and interviews sought to scrutinise the relationship of the ACWC with these stakeholders, and examine how these have developed during the past decade.

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<sup>103</sup> Interview with CSO representative on 23 March 2020.

### 3.5.1. ACWC's Engagement with the AICHR and ASEAN Sectoral Bodies

More than half of respondents (55%) indicated their agreement with the statement that the ACWC has satisfactorily complied with its mandate to coordinate with the AICHR and other ASEAN sectoral bodies, including the ACW. 25% of respondents expressed disagreement. Many respondents commented explicitly about the close cooperation between the ACWC and the AICHR, particularly in Thailand.

Under its TOR, the ACWC reports to the ASEAN Ministerial Meeting for Social Welfare and Development (AMMSWD), which is a sectoral ministerial body under the ASEAN Socio-Cultural Community (ASCC) pillar. For secretariat support, ACWC relies on ASEAN Secretariat's Head of Poverty Eradication and Gender Division, which is under the Human Development Directorate of the ASCC Department.

Those CSOs that have engaged with the ACWC have continually raised the issue of accountability, as it remains unclear to whom the ACWC was accountable for its work and reporting. Institutionally and structurally, the ACWC works under and reports to SOMSWD and the ASEAN Secretariat. These two entities are the key power players and gatekeepers for the ACWC, as they are vital in endorsing and approving ACWC's workplans, budget and activities. While interviewees widely remarked on the importance and power of these two entities over the ACWC, the intricacies of this institutional relationship remain a "black box" due to the lack of transparency.

One of the examples, as noted from interviews, is the ambiguity of the relationship between the ACWC and the ASEAN Committee on Women (ACW), which is the subsidiary body of the AMMW and is composed of senior officials in the respective ministries in charge of women and girls. Many perceive the ACWC to be structurally positioned under ACW. One interviewee noted that the ACW is the "mother" of the ACWC, as the two bodies' work is closely related. Furthermore, according to one CSOs interviewee, the ACW is considered the "implementing agency" for the ACWC. Another interviewee adds that the two bodies' mandates and functions overlap so that it was difficult to differentiate between the two. The only aspect of the relationship between the ACWC and the ACW that is institutionally regulated is the provision in the ACWC TOR that it must send the ACW a copy of the annual report that it submits to AMMSWD.<sup>104</sup> There needs to be further research to understand the extent of the relationship between the two bodies.

Nevertheless, there are two distinctions in the characteristics of the two Commissions. One is the representation, with all members of the ACW being designated government officials, while the ACWC representatives are a mixture of government and non-governmental individuals. The second distinction is in the core function, with the ACWC being a regional human rights body, with part of its mandate relating to international treaties and other standards, while the ACW is an extended Member States' regional arm focusing on women issues and gender mainstreaming. The work of the two Commissions often overlaps, but the human rights lenses dominate the mandate of the ACWC.

<sup>104</sup> ACWC TOR, Article 7.5. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

### 3.5.2. ACWC's Engagement with External Stakeholders

From the time the ACWC was established to the present, UNICEF has played an indispensable and critical role in supporting the Commission and its work on children's rights. Key institutional features undergird the relationship between UNICEF and the ACWC. UNICEF signed a Memorandum of Understanding (MOU) with ASEAN in 2014, providing an official mechanism for engagement.<sup>105</sup> UNICEF also has country offices in all ten ASEAN Member States, with a regional office located in Bangkok, Thailand. Before the MOU, UNICEF's regional and national bodies have maintained active engagement with ACWC, including consulting and providing input in the drafting of ACWC's TOR.<sup>106</sup>

While stakeholders often characterise the role of UNICEF and other UN bodies as "donors" to those ACWC, those working within these UN bodies perceive and refer to themselves as providers of technical support for the ACWC in implementing its mandate. UNICEF does provide substantial funding to the ACWC, with one interviewee noting that funding in some AMS for ACWC's projects on children's rights depends entirely on UNICEF. Compared to other institutional relationships, UNICEF's engagement with the ACWC was described by an UN interviewee as having evolved to become a constructive and "solid" partnership based on trust. This trust has accrued over time through ongoing and consistent engagement.

UNICEF has engaged with both the ASEAN Secretariat directly and ACWC representatives individually, particularly those from "champion" governments in Thailand, Indonesia, and the Philippines.<sup>107</sup> According to an interviewee, a key reason why UNICEF has been able to work more effectively in these countries is partly due to their more open and inclusive selection processes in nominating their ACWC representatives. Interviewees representing other children's rights organisations also noted that they had previous working experience with the ACWC representatives, such as Mr. Wanchai Roujanavong from Thailand and Ms. Yuyum Fhahni Paryani from Indonesia, as both had worked for international organisations on children's rights prior to their appointments and had established relationships with members of these organisations. It was noted that ACWC representatives from Thailand, Indonesia, and the Philippines tended to have "more clout on the ground" compared to those countries where representatives were nominated by governments, who tended to be senior officials from departments on social welfare, health and education.<sup>108</sup> In the latter group, ACWC representatives did not have counterparts on the ground to facilitate UNICEF's work. Other interviewees also observed that ACWC representatives in these countries tended to be pulled from government sectors that are the "least powerful" and "least resourced," such as social protection, women's, and children's ministries. As a result, these individuals lack adequate resources and a foundation to build and capitalise on once they become ACWC representatives.

<sup>105</sup> 4 December 2014. "ASEAN, UNICEF Sign Framework Agreement for Cooperation." ASEAN.org. <https://asean.org/asean-unicef-sign-framework-agreement-for-cooperation/>

<sup>106</sup> Interview with a member of IO on 1 April 2020; Interview with academic on 23 April 2020.

<sup>107</sup> While previously healthy, engagement with ACWC's representative on Children's Rights from the Philippines has been limited since 2018, due to the absence of an appointed representative. Interview with a member of IO on 1 April 2020.

<sup>108</sup> Interview with IO representative on 1 April 2020.

According to one interviewee, ACWC representatives from Thailand, Indonesia and the Philippines have been able to act more independently on the mandate related to children's rights, based on the mutual understanding between the governments and ACWC representatives around the principle of the "best interest of the child," which is a binding international legal rule,<sup>109</sup> without having to ask for governmental permission for every activity or project.<sup>110</sup> As its East Asia and Pacific Regional Office (EAPRO) is located in Bangkok, Thailand, UNICEF Regional Office has historically tended to work more with Thailand's ACWC representatives on children's rights and projects and activities based in Thailand.

A number of other external organisations working in the field of children's rights have developed close relations with the ACWC over the decade, primarily through the ASEAN Secretariat. One key partner singled out by ASEAN Secretariat officials has been Plan International, which along with support from FORUM-ASIA, held partnership meetings during Thailand's Chairship of ACWC in 2019 under the leadership of Thailand's ACWC representative on Children's Rights, Mr Wanchai Roujanavong. These meetings, organised by Plan International, convened stakeholders, including those from the private sector and NGOs, who were ACWC curated to support the body. Those who participated in the meeting described the partnership as being positive in exchanging information through presentations and developing "concrete activities" to enact through partnerships between NGOs and the ACWC.<sup>111</sup>

organisations like Plan International and UNICEF have played an essential role in financing, planning, and leading the platforms for engagement between the ACWC and CSOs, especially those working on the ground, and other relevant stakeholders in the field of children's rights. However, a challenge remains to capitalise on the momentum once the workshops or meetings have ended. Interviewees have expressed frustration at the lack of follow-ups on the activities proposed and developed during the meetings.

ASEAN officials interviewed also referred to Plan International as an example of an organisations having a "constructive" partnership with ACWC. Indeed, organisations offering financial and technical assistance to the ACWC have had more discretion and negotiating power vis-à-vis the Commission in its decisions on activities or projects than those who do not, as these must be aligned with the priority areas of such organisations. This understanding of partnership has meant that ACWC representatives tend to propose projects that are aligned not only with their expertise and interests but also with the priority areas of their prominent donors. As a result, it is said that ACWC representatives must "think like an NGO" if they want to successfully fund and obtain other necessary external resources for their activities. This influence of this mentality is subsequently reflected in the workplans, in which activities are often linked to specific external partners.

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109 CRC, Article 3. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

110 Interview with ACWC representative on 28 April 2020.

111 Interview with a representative of NGO on 23 April 2020.

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

However, ensuring the follow-up to meetings and planning of activities remains a fundamental challenge for organisations working with the ACWC, even those which are financially resourceful; these relationships often require an extra effort on the part of CSOs in reaching out to the ACWC and ASEAN Secretariat to build a more sustainable and fruitful relationship based on trust. However, this lack of a guaranteed outcome (such as implementing joint projects with the ACWC that will contribute to the betterment of women and children’s rights), coupled with the absence of more institutionalised forms of engagement, means that many CSOs have reason to be sceptical on the returns of their investment over time from pursuing a similar type of engagement, mainly if they must rely on individual representatives more than on the ASEAN Secretariat for access to the ACWC.

### **3.5.3. ACWC’s engagement with the ASEAN Secretariat**

ASEAN Secretariat provides direct and secretarial support to the ACWC, which involves assisting the Commission in organising meetings, preparing the agenda, collecting and distributing background information on policy and programme initiatives. It also is involved in agenda-setting and generating policy recommendations in two aspects: first, the ACWC’s core work and second, the ACWC’s relations with ASEAN bodies, external entities, and other dialogue partners, on several thematic issues. These external stakeholders include international and regional CSOs, UN agencies, and the Right to Protect network. The ASEAN Secretariat also supports the ACWC in planning and implementing projects led by specific member states, which representatives conduct either by themselves or with other partners. The ASEAN Secretariat oversees the conceptualisation and preparation of any regional projects (such as the regional forum on ending child marriage), as well as monitoring the use of ASEAN funds for ACWC projects. It is also involved in raising the profile of the ACWC, resource mobilisation, as well as advocacy work with external stakeholders, such as UN agencies on VAC/W and in developing the joint workplan of ASEAN, UNICEF and UN Women.

However, the role of the ASEAN Secretariat concerning the ACWC has received its fair amount of criticism. One interviewee noted the ASEAN Secretariat has often taken the role as “a documenter” of ACWC meetings, as opposed to providing necessary strategic assistance to the ACWC. Nevertheless, the interviewees do not specify the details of strategic assistance to the ACWC. In addition to this documenting role,

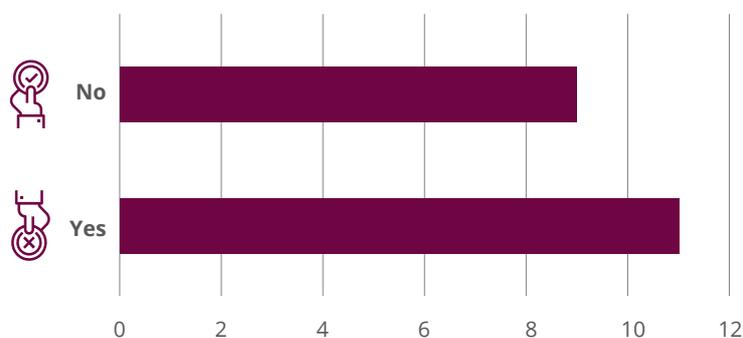
the ASEAN Secretariat coordinates workshops on behalf of the ACWC, which are often funded by UN Agencies, the EU, Sida and other large donors. However, some interviewees expressed concern over how the ASEAN Secretariat, on behalf of the ACWC, has approached donors with a proposed study as the suggested output of a planned workshop. As one recommendation put forward by the interviewees, the ASEAN Secretariat was encouraged to adopt a more constructive approach with donors, specifically providing them more comprehensive information, including identifying more concretely the added value of a proposed study and its justification, and any relevant data and/or research products already existing on the topic.

### 3.5.4. CSO Engagement with the ACWC

#### CSO's engagement with the ACWC: Survey responses

More than half of survey respondents indicated that they have previously interacted with their country's ACWC representatives at the national level. When asked about their experiences of such engagement, respondents varied widely in

#### Have you interacted with ACWC Representatives in your country?

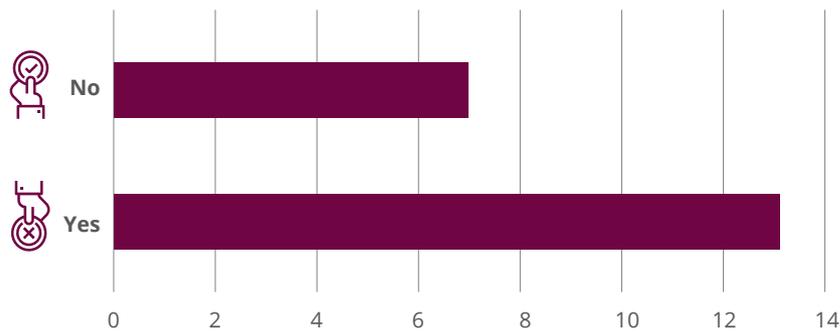


their answers. Some stated that they interacted many times and felt optimistic about these interactions. One respondent reflected on the slow response by the representative to the request for engagement, although the information received from them was eventually beneficial. Respondents from Indonesia reported interacting with their national ACWC representatives in various ways, including inviting an ACWC representative to participate in workshops as a resource person, and representatives participating in different platforms on a critical issue (such as the rights of children with disabilities). One respondent engaged in the early years of the ACWC but has noted that engagement has become rarer and more informal over time.

In contrast, another respondent noted that engagement happened rarely and only formally. One respondent hypothesised that CSO engagement with ACWC representatives on women's rights in their country is easier for those organisations in the National Council of Women. For ACWC representatives on children's rights, engagement is more likely for CSOs working on a specific issue (for instance, children with disabilities or bullying). For those who did not engage with national ACWC representatives, the reasons provided included that the respondent did not

know who their representatives were and/or found them difficult to contact. A respondent from Cambodia stated that the lack of ACWC activities within the country was both caused by and resulted in a lack of opportunity for engagement with representatives, as they were selected by the government with no transparency. This case might also be valid for other countries, like Lao PDR and Myanmar. 65% of respondents indicated that they had previously interacted with the ACWC at the regional level. When asked about their experiences, respondents indicated that they had attended regional meetings either held by the ACWC or organised

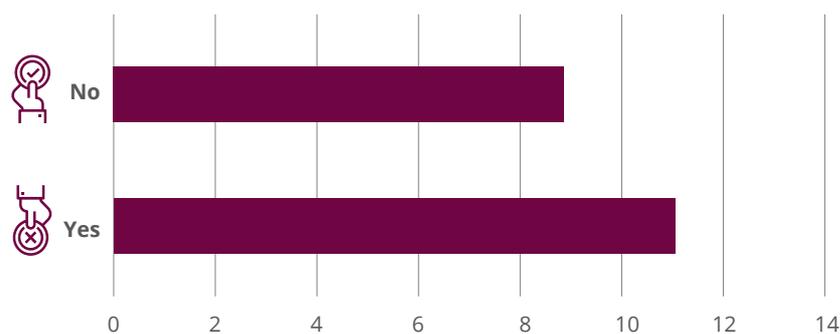
**Have you interacted with ACWC at the regional level?**



by other entities where ACWC representatives were also in attendance. Generally, they felt that these regional engagements with ACWC representatives were positive, referring to the commitment, openness, and expertise of the representatives. However, the follow-up of implementing joint activities or translating commitment to actions at the national level has not happened. Besides, some respondents also indicated that representatives were not very much action-oriented, possibly due to the limitations of their power. The overall positive feedback for regional engagement might also stem from the lack of distinction between official events held by the ACWC and events in which ACWC representatives participate (as an individual), which blurs the impression of representation.

Over half of respondents have shared their work (for instance, reports or recommendations) on critical issues that affect women and children's rights in ASEAN with ACWC representatives through email. The responses varied widely. Some respondents remarked that they had sent input, research, and offers of assistance to the ACWC, which was received, but there was no follow-up from the ACWC.

**Have you been able to share your work or key issues with ACWC representatives?**



The ACWC attempted an early experiment to institutionalise a modality of engagement with CSOs through the creation of the Network of Social Service Agencies (NOSSA), which was launched in April 2013 and led by Singapore. The 2013 Declaration on the Elimination of Violence against Women and Elimination of Violence Children in ASEAN called for the creation of a network composed of social service agencies.<sup>112</sup> Designed as a network of social service agencies from the ten AMS, NOSSA was envisioned as a project “to enhance the capability of social service providers throughout ASEAN for victims of VAW and VAC, through an exchange of experts and information, technical assistance, training and research. It also aims [ed] to provide direct assistance to the victims through rehabilitation, education and skills training, micro-finance, referrals and repatriation.”<sup>113</sup> NOSSA was perceived a milestone for the ACWC, as it provided an opportunity, albeit one “not fully realised,” as it sought to combine all acceptable practices and mechanisms among the ten AMS and form a regional network that could be tapped into when violence occurred in one country.<sup>114</sup>

However, NOSSA was also perceived as a short-lived and failed experiment, as it ceased to operate at the end of 2016. The lessons learned from the NOSSA experiment can inform the ACWC going forward as it works to conceptualise more effective ways of engagement with member states. NOSSA reflected the continued problem of the ACWC’s overlapping work with other ASEAN bodies - it was similar to the existing ASEAN Social Work Consortium within ASEAN’s social welfare sector. This consortium has been limited in its composition, consisting exclusively of social workers, but a movement is currently underway to include in it also paraprofessionals who provide social welfare services.<sup>115</sup> Besides, NOSSA faced challenges in its implementation, “including obtaining funding support from partner agencies, identifying the service agencies in each AMS to form the initial list for the NOSSA network and which would be strengthened to become role-models for the others.”<sup>116</sup> If the ACWC aims to institutionalise another way of engagement CSOs in its work, it must clarify the added value of forming an additional network.

Except for NOSSA, the ways by which CSOs and the ACWC have engaged reflect separate pathways between those working on children’s rights and those focusing on women’s rights. In the domain of children’s rights, the ACWC has developed more systematic and sustained forms of engagement. One such form has been the ACWC’s partnership with grassroots organisations through Child Rights Coalition (CRC) Asia, which is a regional network of children rights and human rights organisations working to protect, promote and mainstream children’s rights perspectives into regional and international advocacy bodies.<sup>117</sup> The engagement with CRC Asia is consultative, with the organisation helping the ACWC secure inputs and feedback from grassroots NGOs. UNICEF also plays a crucial facilitating role in bringing CRC Asia members to workshops and platforms with ACWC representatives.

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112 Ibid.

113 Aline Wong, “Promoting and Protecting Women’s and Children’s Rights in ASEAN – Some Observations on the ACWC”, in Tommy Koh, Sharon Seah Li-Lian and Chang Li Lin (eds), *50 Years of ASEAN and Singapore*, edited by (New Jersey: World Scientific, 2017).

114 Remarks made at the Expert Meeting.

115 Remarks made by ASEAN official at the Expert Meeting.

116 Aline Wong, “Promoting and Protecting Women’s and Children’s Rights in ASEAN – Some Observations on the ACWC”, in Tommy Koh, Sharon Seah Li-Lian and Chang Li Lin (eds), *50 Years of ASEAN and Singapore*, edited by (New Jersey: World Scientific, 2017).

117 See CRC Asia’s website, <http://www.crcasia.org/about-us/who-we-are/>.

UNICEF's role in bringing together CSOs and the ACWC was also noted in interviews with CSOs and ACWC representative, concerning the regional working group on child protection, which includes UNICEF EAPRO, CRC Asia, ECPAT, Plan International, Save the Children, and World Vision. This group convenes for specific purposes such as, in the ASEAN context, working together on the RPA EVAC and its midterm review. The working group is led by UNICEF, which provides these organisations with the options of either working with the ACWC directly through UNICEF's MOU with ASEAN or working on the target areas of the RPA outside of the ASEAN institutional framework. This flexible modality was seen as a strength by members of the organisations involved as it enables them to tailor both their group and individual organisation's strategies according to their capacity and assessment of the existing opportunities for policy impact. It immensely can benefit organisations that do not have a separate budget or resources to support or take the lead on regional work via ASEAN bodies but still aim to contribute to regional initiatives. This type of consortium model operates well in utilising the existing strengths of partnerships between organisations represented in the Working Group, as well as being able to leverage the strength and expertise of the organisations under the strong leadership of UNICEF. Each organisation has been able to find a niche within the RPA EVAC, for instance, in the case of ECPAT, a focus on child exploitation and for Save the Children a focus on corporal punishment, which are also aligned with UNICEF's work with ACWC.

Furthermore, said one of the CSOs interviewees, the Working Group is also pragmatic in orientation and adaptable to changing policy contexts. The Working Group is careful about how it frames the discussion around children's protection based on their experiences, and do not always "pull the card of women's and children's rights" if the environment is not receptive to rights-based language, and may require a different way to gain traction at the policy level. This advocacy approach correlates with the perception held by a member in the Working Group, of the ACWC as a body with limited resources, but which plays a critical role in supporting and coordinating efforts to protect children, particularly at the national level.<sup>118</sup> The ACWC attempts to influence national governments to invest more resources and put in place a proper child protection strategy that is line with the CRC and the SDGs and building upon the RPA EVAC.

One interviewee expressed the view that engaging with the ACWC is a way for organisations to receive "honest feedback and analysis," which could also help the organisations in the Working Group adapt their regional strategies. In contrast, other interviewees were still unsure about the usefulness of a regional mechanism like the ACWC to these organisations' respective work. However, the real hope in engaging with the ACWC is to see an impact at the national level. The Working Group also centres its activities on the Member State that is currently holding the ASEAN Chairship in order to maximise the opportunities that this brings, and has reported having been very successful when working with the ACWC when Thailand held its Chairship. This multilateral engagement among partners working to protect children's rights in ASEAN is an engine for creating momentum on implementing the RPA EVAC and related activities on children's rights, including on the issue of child marriage and protection against online sexual exploitation. According to one

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118 Interview with a representative from NGO on 7 May 2020.

interviewee, this type of regional coordination and joint efforts led by UNICEF and among partner organisations is remarkably strong in East Asia when compared to other regions in the world.

UN Women also has a close working relationship with the ACWC, albeit one that is not as strong as UNICEF's engagement. UN Women has country offices in 7 AMS. As in the case of UNICEF, UN Women provides technical support and has a shared workplan with the ACWC. During the drafting of the RPA EVAW, UN Women was recognised for its essential role in funding and convening multi-stakeholder platforms through which CSOs on women's rights participated in the process and engaged with the ACWC. However, the engagement between women's rights CSOs and the ACWC has declined since 2017, with a few interviewees noting that this limited engagement coincided with the decrease in overall funding from UN Women and other external partners to the ACWC. Interviewees also observed that UN Women has preferred to work directly at the national level and has worked more closely with the individual ACWC representative in Thailand on projects in the ACWC's second work plan than with the Commission as a whole. UN Women is also involved in the drafting of the new workplan, as well as the second midterm review of the RPA EVAW.

Two pathways are available for CSOs to initiate engagement with ACWC through a discussion-based platform. The first process requires a CSO (or consortium of CSOs) to submit a letter to the ASEAN Secretariat with a request to hold an official open meeting for the CSO to meet with ACWC representative(s). The ASEAN Secretariat assesses the request, which is then deliberated internally within the ACWC for a decision. Different representatives may have reservations, in which case a consensus may not be reached, and the request is turned down. According to one ACWC current representative, approval of an open meeting is a lengthy process and also is not guaranteed for all CSOs who submit requests, given the time and scheduling constraints of the representatives, as well as the number of requests received. Moreover, the absence of a unit within ASEAN Secretariat that is devoted exclusively to the ACWC means that a lengthy waiting period is likely before the CSO receives an official response to its submitted letter.

The second pathway is for CSOs to approach individual ACWC representative(s) and request a meeting with them directly. According to a current ACWC representative, this option is often more efficient and more frequently used. However, one member of a CSO in Indonesia noted that in their own experience, this process entailed a long waiting period between the initial contact with the ACWC representative and the meeting taking place. The member of CSO suspected that this delay was likely due to the busy work and travel schedules of the ACWC representative concerned. The capacity to accommodate individual requests from CSOs for meetings often depends on the resources of the individual ACWC representatives, who often have to schedule these meetings themselves (absent of a coordinating unit and resources within the ASEAN Secretariat to manage this role).

Furthermore, in the Indonesian CSO member's particular experience, discussions with the ACWC representative resulted in limited outcomes, one reason being the restricted mandates of the ACWC itself, for instance, their perceived inability to receive complaints from the CSOs on violations of the rights of women and children. However, the CSO representative remarked that despite the long waiting period, a meeting with the ACWC representative could still be useful for CSOs in terms of establishing working relations and facilitating further discussions.<sup>119</sup>

According to the CSOs interviewees, most CSOs in ASEAN have reported following the second track of engagement, meaning they have engaged with ACWC not on an institutional level, but through informal channels vis-à-vis individual ACWC representatives. Given the absence of a systematic pathway, CSOs who wish to have access to individual ACWC representatives must depend on the degree of openness, willingness, and capacity of that individual to meet them or initiate dialogue meetings, as well as on whether the individual representatives commit to attending events such as those hosted by the AICHR, where CSOs are also invited to attend. While more accessible than going through the ASEAN Secretariat, this dependency on individual representatives for access has serious drawbacks. Engagement happens only with a handful of ACWC representatives, namely those more inclined to support CSOs and/or who have existing relationships with CSOs or counterparts in other ASEAN sectoral bodies, like the AICHR and the ACW, so that they are invited to these platforms.

In many cases, the representative who meets with CSOs on an individual basis is the same individual who attends AICHR meetings. This means that engagement with CSOs tends to fall onto the workload of the individual representatives, as opposed to the ACWC as an institution. As a result, members of CSOs in ASEAN who were interviewed for this study could typically only name one to three individual ACWC representatives (out of the total of twenty) with whom they engaged with in the past ten years. These individuals are usually those who were quite active and whom CSOs met in workshops or events hosted by another ASEAN sectoral body or organisation.

The majority of CSOs working on human rights, including women's rights and children's rights, engage with the AICHR more than with the ACWC, because of the number of opportunities available, either through obtaining an accredited consultative status and/or being invited to workshops hosted by the AICHR or its representatives. Interviewees representing CSOs noted that they typically engaged with the ACWC through an AICHR and UN-hosted platform.

While CSOs are divided in their opinion on whether they found the first batch of ACWC representatives to be more active, engaged, and progressive than the second-batch, in addition nearly all the CSOs reported experiencing declined engagement with the ACWC over the past few years (2017-2020). This trend underscores the necessity for more routinised and systematic forms of engagement, in order to reduce dependency on individual representatives alone, to ensure sustainability after a change in the appointments of new representatives, and to increase trust between partners in order to maximise the ACWC's effectiveness.

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119 Remarks made at the Expert Meeting.

Many CSOs say there have been missed opportunities for engaging with the ACWC, especially following the positive experience during the drafting of the RPAs EVAC and EVAW, an experience that has not been strengthened or even repeated in subsequent years. They said that when compared to the AICHR, the ACWC appears to be “more accommodating” to CSOs and “willing to engage in critical issues,” and specifically willing to “address sensitive issues,” because of many representatives’ expertise, connection on the ground and relative independence. However, due to the ACWC’s limited resources, capabilities and, opportunities for engagement, CSOs overall reported more inclination to engage with the AICHR than the ACWC when having to choose between the two Commissions.

### Missed opportunities

When asked to elaborate on “missed opportunities” for engagement, many CSOs (across the spectrum of those working women rights and children’s rights) point to the ACWC’s failure to include LGBTIQ organisations in both formal and informal engagements, and relatedly, the absence of LGBTIQ perspectives in the ACWC’s work.<sup>120</sup> As noted earlier, the RPA EVAC included “children from the lesbian, gay, transgender or transsexual community” under “vulnerable groups of children.” Perceived as a direct result of UNICEF’s efforts to push for this inclusion, the clause itself was described as “carefully crafted” in the context of the RPA EVAC, in which LGBT children were identified as “victims of discrimination due to their vulnerability because their identities and expressions are the basis for their exploitation by non-state actors.”<sup>121</sup> However, this remains the sole reference to LGBTIQ people in any of the ACWC’s statements and documents. Interviewees have reported that since the RPA EVAC was adopted, there has been no follow-up on the issue of LGBTIQ children in the ACWC’s activities for the elimination of violence against children. While a representative from ASEAN Secretariat noted that there was an increased recognition of the issue within the ACWC and in ASEAN countries, the uptake has not accelerated as quickly due to “the political agendas at the ASEAN and national levels.”<sup>122</sup>

Those advocating for LGBTIQ rights within the ACWC have reported encountering even more significant challenges in doing so within the ACWC’s work on women’s rights as well. Women’s groups in ASEAN advocated for a provision recognising LGBTIQ women to be included in the declaration on the Elimination of Violence against Women and the Elimination of Violence against Children; however, these efforts were not successful. Women’s groups from the Women Legal Bureau Philippines and the Women’s Caucus in ASEAN then advocated for the inclusion of LGBTIQ women during the RPA EVAW and issued a statement warning that they would not approve the document without the inclusion of SOGIE in the draft. However, these efforts were also unsuccessful in securing a provision on LGBTIQ issues in the final RPA text. Interviewees from CSOs also noted a continued lack of interest and willingness among ACWC representatives on women’s rights to accommodate LGBTIQ issues within their mandates and activities thus far.

120 Some within ASEAN have noted that the ACWC is receptive to discussions about LGBTIQ, but this perspective is not shared by CSOs and is not yet demonstrable within the ACWC’s work (that is publicly accessible), mostly since the RPA EVAC was adopted.

121 Interview with CSO representative on 30 April 2020.

122 Remarks made at the Expert Meeting.

Interviewees representing CSOs explained that difficulties that LGBTIQ organisations experienced when advocating for the inclusion of LGBTIQ issues within ACWC's activities, as LGBTIQ stemmed partly from the fact that they are recognised neither as women's rights organisations nor as children's rights organisations by the ACWC. This structural division to women's rights and children's rights within ACWC—and the resistance of representatives from both areas of the ACWC's mandate to take ownership of LGBTIQ rights in their work— have been disappointing and challenging for CSOs, as this type of advocacy requires a more intersectional approach on the rights of vulnerable groups. As a result, CSOs working on LGBTIQ rights have found more traction—and thus a prefer to invest their time and resources—in engaging with the AICHR instead. The AICHR provides more interface exchanges, and more AICHR representatives are open to discuss LGBTIQ issues. On the whole, however, members of CSOs specialising on LGBTIQ rights have acknowledged that direct inputs into regional human rights mechanisms like the AICHR and the ACWC have generally not been effective and have since shifted their engagement strategies accordingly. According to one interviewee, these organisations currently prefer to employ a “boomerang strategy,” through which CSOs engage with UN mechanisms, with the aim that this international-level advocacy would in turn influence ASEAN. For instance, ASEAN SOGIE Caucus consulted with LGBTIQ children in the Philippines, which resulted in a report that was integrated into their UPR submission during the third cycle for the Philippines<sup>123</sup>. A regional workshop was held in 2018 on CRC and CEDAW, where UN Women, UNICEF, and Save the Children assisted local CSOs in submitting reports, including on anti-bullying and corporal punishment, to UN mechanisms. These regional activities, which did not directly involve the ACWC, were seen as effective. Instead, an organisational strategy that focuses on the “power players” around the ACWC, such as UNICEF and Save the Children, could also eventually be effective in influencing the agenda of the ACWC and encourage it to engage on SOGIE and children's rights—particularly by capitalising on the number of General Comments and Concluding Observations by the CRC Committee that address the rights of LGBTIQ children.

Given that the ACWC's mandate includes assistance with reporting to the CRC and CEDAW committees (upon request), as well as promoting research, a CSO representative encouraged the ACWC to address LGBTIQ issues through “creatively interpreting the provisions of CRC and CEDAW, for example, through specialised research using an intersectional approach.”<sup>124</sup> As the UN Committee on the Rights of the Child has already produced 25 General Comments, six of them referencing sexual orientation, gender identity, gender expression and sex characteristics or LGBTIQ, these could be used as the baseline for ACWC's work in ASEAN on this topic. Besides, they recommended that the ACWC complies with its mandate to build the capacity of its stakeholders<sup>125</sup> by including SOGIE members in all its training programs.

123 <https://aseansogiecaucus.org/images/resources/publications/Bata%20at%20Bahaghari%20-%20Experiences%20of%20LGBT%20Children%20in%20the%20Philippines.pdf>

124 Interview with CSO representative on 30 April 2020.

125 ACWC TOR, Article 5.5. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

As the ACWC is also explicitly mandated to advocate on behalf of vulnerable women and children,<sup>126</sup> it must also abide by the principle of inclusion, not only by ensuring the participation of SOGIE groups, but also at the very least, by “addressing the situation of LGBTIQ women and children in Southeast Asia” within its work.<sup>127</sup>

### 3.6. Accountability of ACWC: To Whom?

The question of the ACWC's accountability has not only been raised repeatedly in the literature and interviews with stakeholders during this research but has also been one of the most contentious issues and provided a range of responses. As in the case of the AICHR, the ACWC is defined as an “intergovernmental body” in its TOR, indicating, at least for some, that its representatives are accountable to governments and that it was not intended to be an independent body. A previous study noted the frequency with which AICHR representatives emphasise this intergovernmental quality of their Commission. Interestingly, in the course of the study, the reference to the intergovernmental nature of the ACWC was less frequently mentioned by ACWC representatives. Although the ACWC is not an independent body nor was envisioned as such, this nuance may be related to the perception of the ACWC as being more independent and expertise-driven and less controlled by governments than in the AICHR. Also, whereas the AICHR receives an annual budget from AMS, the ACWC receives voluntary payments from each AMS. According to several interviewees, both from within the ACWC and among CSOs, the significant difference in the amount of funding provided to AICHR compared to the ACWC also reflects the disparate degrees of ownership that AMS have of the two Commissions.

As another factor mentioned by an interviewee, AICHR representatives fall under the purview of the ASEAN Foreign Ministers, as the AICHR is located within the ASEAN Political-Security Community, and therefore, closer to the governmental decision-making power. In contrast, ACWC representatives fall under the purview of Senior Officials Meeting on Social Welfare Development (SOMSWD) and the Socio-Cultural Community and thus tend to be overseen by less powerful ministries (for example, social welfare, education, women, and children's ministries) and maybe less beholden to political interests.

However, one expert has argued that the commonalities between the AICHR and the ACWC are more significant than their perceived differences. They contend that the AICHR and the ACWC have followed similar paths in developing, as “both carry more or else the same characteristics in terms of structure, memberships, and appointment as well as mandates and functions.”<sup>128</sup> Even if the ACWC is more independent than the AICHR, this is a shallow bar to overcome, and neither Commission is anywhere near to the levels of independence enjoyed by human rights bodies in other regions, be it Africa, the Americas or Europe.

At an individual level, ACWC representatives vary in their level of independence, including whom they identify as being accountable. Those from countries more progressive in their approach towards women and children's rights are more likely to state that they act independently of their government and that they are accountable to their constituents, namely women and children.

126 ACWC TOR, Article 5.4. [https://www.asean.org/wp-content/uploads/images/2012/Social\\_cultural/ACW/TOR-ACWC.pdf](https://www.asean.org/wp-content/uploads/images/2012/Social_cultural/ACW/TOR-ACWC.pdf)

127 Remarks made at the Expert Meeting.

128 Petcharasmesree, p. 43

Representatives from other countries, particularly those appointed by their governments, are more likely to emphasise the intergovernmental nature of the ACWC and to state that they are accountable to the line ministries and their country governments.

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

The research for this impact assessment coincided with the COVID-19 pandemic in ASEAN countries and around the world. Therefore, interviewees often referred to the context of COVID-19 in elaborating on the ACWC's role in the promotion and protection of the rights of women and children, especially given the vulnerabilities of these groups during the pandemic.

With the global agenda focused on COVID-19, and the pandemic firmly on people's minds, this period also provides an opportunity to examine whether and how the ACWC has implemented its mandate during a crisis, especially in comparison to the efforts made by different regional human rights bodies in other regions to protect the human rights of women and children in a pandemic.

By the time this study commenced at the end of February 2020, the World Health Organization (WHO) had already declared COVID-19 a Public Health Emergency of International Concern (30 January 2020) and later upgraded it to the status of a pandemic, on 11 March 2020. When announcing the assessment, the WHO Director-General noted: “[t]his is not just a public health crisis, it is a crisis that will touch every sector...countries must take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimise the impact.”<sup>129</sup>

Outside of East Asia, ASEAN was the first sub-region to be affected by the pandemic (the first official case of COVID-19 outside of mainland China was recorded in Thailand) and by early February, many countries in Southeast Asia began to see an uptick in cases.

ASEAN held its first Special Summit on Coronavirus Disease 2019 (COVID-19) on 14 April 2020. The declaration which came out of this Summit highlights six measures, namely to:

1. Strengthen public health cooperation;
2. Assist ASEAN nationals who are outside their country of origin;
3. Enhance public communication on the pandemic;
4. Mitigate the economic and social impact of the pandemic including providing social safety nets especially for at-risk populations;
5. Adopt a multi-stakeholder, multi-sectoral response to COVID-19 and any future public health emergencies; and finally,
6. Establish the COVID-19 ASEAN Response Fund<sup>130</sup>.

The declaration was the first concrete joint action strategy by ASEAN; it also signifies a political commitment from all ten Member States to tackle the pandemic together, across multiple pillars. Up until the Special Summit, the issue of COVID-19 had only been addressed in two ASEAN ministerial meetings (the economic ministers'

129 Ghebreyesus, 2020, opening remarks at a media briefing, delivered on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

130 <https://www.thejakartapost.com/seasia/2020/04/14/leaders-support-establishment-of-asean-covid-19-response-fund.html>

meeting, and the health ministers' meeting), so the Special Summit in which the heads of State participated indicates the priority accorded by ASEAN members to take joint action over COVID-19. However, ASEAN has been criticised for its slowness to act.<sup>131</sup> While both ASEAN and the African Union (AU) had declared their commitment to developing a collective regional response (or continental in the case of the AU), around the same period,<sup>132</sup> the AU Continental Strategy was circulated much earlier, on 20 March, with clear working groups and contact points established. Likewise, the European Union (EU) also established its Coronavirus Response Team in early March 2020, and by early April it had set out plans for a targeted EU response to support efforts across public health, vaccine support, borders, economic support and communication.<sup>133</sup>

By April 2020, the Organization of American States (OAS) also began to coordinate a Pan-American response to COVID-19, and on 7 April, introduced a practical guide to rights-based responses to COVID-19 in the Americas.<sup>134</sup>

This relative slowness in ASEAN's response also meant that it had more time to study the impact of the pandemic on different social groups, and could include in its Declaration measures to protect and respect the rights of ASEAN people in this crisis. Indeed, as international borders began to close and stay-at-home orders came into place, it was soon realised that containment measures would affect different groups of people differently; as Damian Barr summed up people's experiences of COVID-19 in what is now an oft-repeated quote, "We are not all in the same boat. We are all in the same storm." However, the ASEAN Declaration refrained from directing States to ensure that policy measures should take special consideration of vulnerable groups including (but not limited to) older people, women, children, LGBTIQ, migrants, refugees, informal sector workers, persons with disabilities, etc.

In ASEAN, when national pandemic measures began to hit the economy, workers in the hotel, restaurant, and entertainment sectors were laid off in large numbers. Without any welfare provisions, many were forced to migrate back to their hometowns and villages, sometimes crossing international borders through irregular routes, thus unfortunately further exposing local communities to COVID-19. The second wave of cases that broke out in Singapore and Malaysia among the migrant communities highlighted how migrant workers are also vulnerable to COVID-19 and policy actions aimed at reducing community transmission should not exclude them. While economic recovery measures in many countries target formal enterprises, workers in the informal sector have not been able to claim any support. Given that nearly 60% of ASEAN migrants work in the informal sector, the need to secure regional protections for both migrant workers and informal economy workers from COVID-19 ought to be a common concern for all governments in Southeast Asia.

131 ASEAN Today, 2020, "ASEAN has failed to cooperate on COVID-19, leaving marginalised groups exposed", published online on 9 April 2020, <https://www.aseantoday.com/2020/04/asean-has-failed-to-cooperate-on-covid-19-leaving-marginalized-groups-exposed/>.

132 15 February for ASEAN and 24 February for the African Union

133 Timeline of EU action. [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/timeline-eu-action\\_en](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/timeline-eu-action_en)

134 "OAS Launches Practical Guide to Inclusive Rights-Focused Responses to COVID-19 in the Americas). 7 April 2020. OAS. [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-032/20](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-032/20)

With increased lockdowns and restrictions on movement, both civil society and intergovernmental agencies reported on persons with disabilities, refugees, older persons, LGBTIQ people and others being affected.<sup>135</sup> At the same time, studies have noted an increase in gender-based violence and domestic violence against women and children.<sup>136</sup> Even with both men and women working from home, unpaid domestic work has been distributed on gendered lines - childcare, cooking, cleaning and elderly care are seen as “feminine” tasks, so women have seen a disproportionate increase in their unpaid care burden.<sup>137</sup> Women are also on the frontline as essential workers; the majority of nurses and care workers are women, yet with strict restrictions on mobility, women’s access to medical, reproductive and sexual health services has suffered. Children, although not an at-risk group for contracting the virus, are also equally vulnerable to the impacts of the COVID-19 pandemic: disrupted education through school closures, setbacks to public health services (such as vaccination programmes), loss of family livelihoods and other consequences of the pandemic can all have a profoundly negative impact on children’s lives, especially those children living in poverty, where at times their food security was undermined.

Mindful of the potential implications of the pandemic on human rights, by mid-March 2020 both the EU’s Fundamental Rights Agency (FRA) and the Inter-American Commission on Human Rights (IACHR) began coordinating rapid assessments of the COVID-19 impact on human rights in their region.<sup>138</sup> Both bodies have issued statements and reports regularly, reminding governments of their regional responsibilities to protect and promote human rights in the time of COVID-19.<sup>139</sup> In Southeast Asia, the AICHR finally issued its first (and so far only) public statement on 1 May 2020; supporting the outcomes from the Special ASEAN Summit on COVID-19, the AICHR also called on States to follow their human rights obligations as per the AHRD. As far as is known, the AICHR took no measures to advocate further with governments on this issue, let alone monitor how anti-COVID measures have impacted human rights. The ASEAN Labour Ministers issued a Statement on 14 May 2020, calling on ASEAN to protect labour and employment rights of all workers, including migrant workers and all workers in high-risk sectors during this time.<sup>140</sup>

The ACWC is mandated, among other things to “promote public awareness and education of the rights of women and children in ASEAN” and “[t]o advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage ASEAN Member States to improve their situation”<sup>141</sup>.

135 <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>; [https://www.forum-asia.org/uploads/wp/2020/08/LO-CovidASIAF2\\_final2.pdf?fbclid=IwAR0SMYgyLulRyXB0\\_bnmAmi1w6tYx-NKQdSYGBf6qVf02TOTYpuO1Q3wAlw](https://www.forum-asia.org/uploads/wp/2020/08/LO-CovidASIAF2_final2.pdf?fbclid=IwAR0SMYgyLulRyXB0_bnmAmi1w6tYx-NKQdSYGBf6qVf02TOTYpuO1Q3wAlw)

136 <https://www.cgdev.org/publication/covid-19-violence-against-women-and-children-what-have-we-learned-so-far>; <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>; <https://www.bmj.com/content/369/bmj.m1712>

137 <https://www.oecd.org/dev/development-gender/MEASURING-WOMENS-ECONOMIC-EMPOWERMENT-Gender-Policy-Paper-No-16.pdf>

138 “Fundamental rights of refugees and migrants at European borders.” 7 March 2020. COE.int. [https://www.coe.int/en/web/human-rights-rule-of-law/covid19/-/asset\\_publisher/GRaJjwP0ts/content/fundamental-rights-of-refugees-and-migrants-at-european-borders?\\_101\\_INSTANCE\\_GRaJjwP0ts\\_viewMode=view/](https://www.coe.int/en/web/human-rights-rule-of-law/covid19/-/asset_publisher/GRaJjwP0ts/content/fundamental-rights-of-refugees-and-migrants-at-european-borders?_101_INSTANCE_GRaJjwP0ts_viewMode=view/); “COVID-19: How the Inter-American Commission on Human Rights is responding to the pandemic. 10 May 2020. International Service for Human Rights. <https://www.ishr.ch/news/covid-19-how-inter-american-commission-human-rights-responding-pandemic>

139 “Inter-American Commission issues precautionary measures as COVID-19 threatens indigenous communities.” 22 July 2020. International Justice Resource Center. <https://ijrcenter.org/2020/07/22/inter-american-commission-issues-precautionary-measures-as-covid-19-threatens-indigenous-communities> 30 July 2020. “New FRA report on the impact of COVID-19 on fundamental rights in the EU focuses on older people.” FRA. <https://www.age-platform.eu/publications/new-fra-report-impact-covid-19-fundamental-rights-eu-focuses-older-people>

140 14 May 2020. “Joint Statement of ASEAN Labour Ministers on Response to the Impact of Coronavirus Disease 2019 (COVID-19) on Labour and Employment.” <https://asean.org/storage/2012/05/ALM-Joint-Statement-on-Response-to-the-Impact-of-COVID-19-on-Labour-and-Employment-ADOPTED-14-May-2020-final.pdf>

141 ACWC TOR, Articles 5.3, 5.4.

These two aspects of its mandate have particular importance in times of crises. ACWC representatives have had the opportunity to reaffirm their commitment to protect and promote women's rights during the pandemic. However, as of the end of August 2020, it has been conspicuous in its silence, neither taking any actions nor addressing the ASEAN authorities on mainstreaming children and gender perspectives into the regional and national pandemic responses.

In contrast, the IACHR and Council of Europe (CoE) have called on States to incorporate a gender perspective in their COVID-19 responses, and to assess the particular discriminations faced by women in the pandemic; the CoE has focused mainly on women's access to sexual and reproductive health services.<sup>142</sup> The Inter-American Commission of Women has published a detailed analysis of how COVID-19 impacts women, especially women from vulnerable groups (such as migrants, refugees, indigenous, LGBTIQ, and women in conflict situations).<sup>143</sup> The AU, together with the UN Office of the High Commissioner for Human Rights, issued detailed guidance for States on gendered responses and women's human rights protection during COVID-19.<sup>144</sup> The AU's Women and Gender Development Directorate are developing actions plans and practical measures to support gender equality and women's empowerment in African COVID-19 responses.<sup>145</sup>

ASEAN institutions tend to work in silos, with the different pillars seemingly maintaining distance from each other. This is unfortunate because the ACWC, in theory, could take the initiative to highlight how women's and children's needs are to be addressed in all ASEAN COVID-19 responses as per suggestion by CRC Asia<sup>146</sup>, it could remind the Member States of their relevant international obligations under CEDAW and CRC, such as refraining from discriminatory measures and ensuring that the best interests of the Child are a primary consideration all measures affecting children. It could also provide guidance on how the international standards such as recommendations issued by the CEDAW and CRC committees, as well as guidance by UN Women and UNICEF – who are also ACWC dialogue partners – can be applied by ASEAN Member States responding to COVID-19 at the regional and national levels. With the support of their national line ministries, the ACWC could research and provide disaggregated data on how the pandemic is affecting women and children, and where policy gaps affecting human rights are emerging in the regional and national responses.

Besides, the ACWC could focus on the setbacks caused to its work plan by the pandemic, and how its new workplan will seek to reduce the gender-divide and build more women and child-friendly region in a post-COVID ASEAN. Issues such as increased violence against women and children and the violations of the rights of women migrant workers during the pandemic are in line with ACWC's existing priorities and have already been well-documented<sup>147</sup>.

142 7 May 2020. "COVID19: Ensure women's access to sexual and reproductive health and rights." Statement from COE. <https://www.coe.int/en/web/commissioner/-/covid-19-ensure-women-s-access-to-sexual-and-reproductive-health-and-rights>

143 10 April 2020. "COVID-19 in Women's Lives: Reasons to Recognise the Differential Impacts." OAS. <http://www.oas.org/es/cim/docs/ArgumentarioCOVID19-EN.pdf>

144 5 May 2020. "7 Possible Actions – Women's Rights and COVID-19". United Nations Human Rights Office of the High Commissioner and the African Union. <https://www.ohchr.org/EN/NewsEvents/Pages/SevenActions.aspx>

145 30 June 2020. "The impact of COVID-19 on gender equality and women's empowerment." African Union. <https://au.int/en/newsevents/20200630/impact-covid-19-gender-equality-and-womens-empowerment>

146 [https://www.crcasia.org/wp-content/uploads/2020/05/Joint-Statement-ASEAN-and-SAARC-children-and-COVID19-response\\_JF-CRCA-CRConnect-ECPAT.pdf](https://www.crcasia.org/wp-content/uploads/2020/05/Joint-Statement-ASEAN-and-SAARC-children-and-COVID19-response_JF-CRCA-CRConnect-ECPAT.pdf)

147 ILO/UN Women, COVID-19 and women migrant workers in ASEAN, 4 June 2020, [https://www.ilo.org/asia/publications/issue-briefs/WCMS\\_746979/lang-en/index.htm](https://www.ilo.org/asia/publications/issue-briefs/WCMS_746979/lang-en/index.htm).

For other areas that the ACWC plans to focus on for its future work plans such as *Women, Peace and Security*, this is a crucial moment for the ACWC to speak to relevant civil society and academic experts to understand the structural issues exposed by the pandemic.

For women's economic empowerment, the exclusion of women in the informal economy from economic support and the gender digital divide that the pandemic has exposed (and its resultant impact on some women's ability to access online financial services or participate in a digital economy) are of relevance for the ACWC. Similarly, adult job losses, restrictions on health services and school closures have had negative impacts on children and adolescents' well-being; girls, LGBTIQ, refugee, and children with disabilities are particularly vulnerable groups at the best of times, and the pandemic has in some cases exacerbated their vulnerabilities. The ACWC is currently committed, through its workplan, to address gender equality in education, early marriage and trafficking in women and children—again these are areas in which the pandemic's impacts have been well-noted,<sup>148</sup> these are also areas that the ACWC could improve collaboration with the other ASEAN bodies, especially on health and education.

Finally, it cannot be emphasised enough the importance of the ACWC working to protect the human rights of women and children in ASEAN, as protection is the essential mandate of the ACWC as a human rights mechanism. The Commission's promotion work is at risk of being rendered meaningless if it does not lead to the protection of women and children's rights – it is like planting a tree without nurturing it to ensure that it grows and bears fruit.

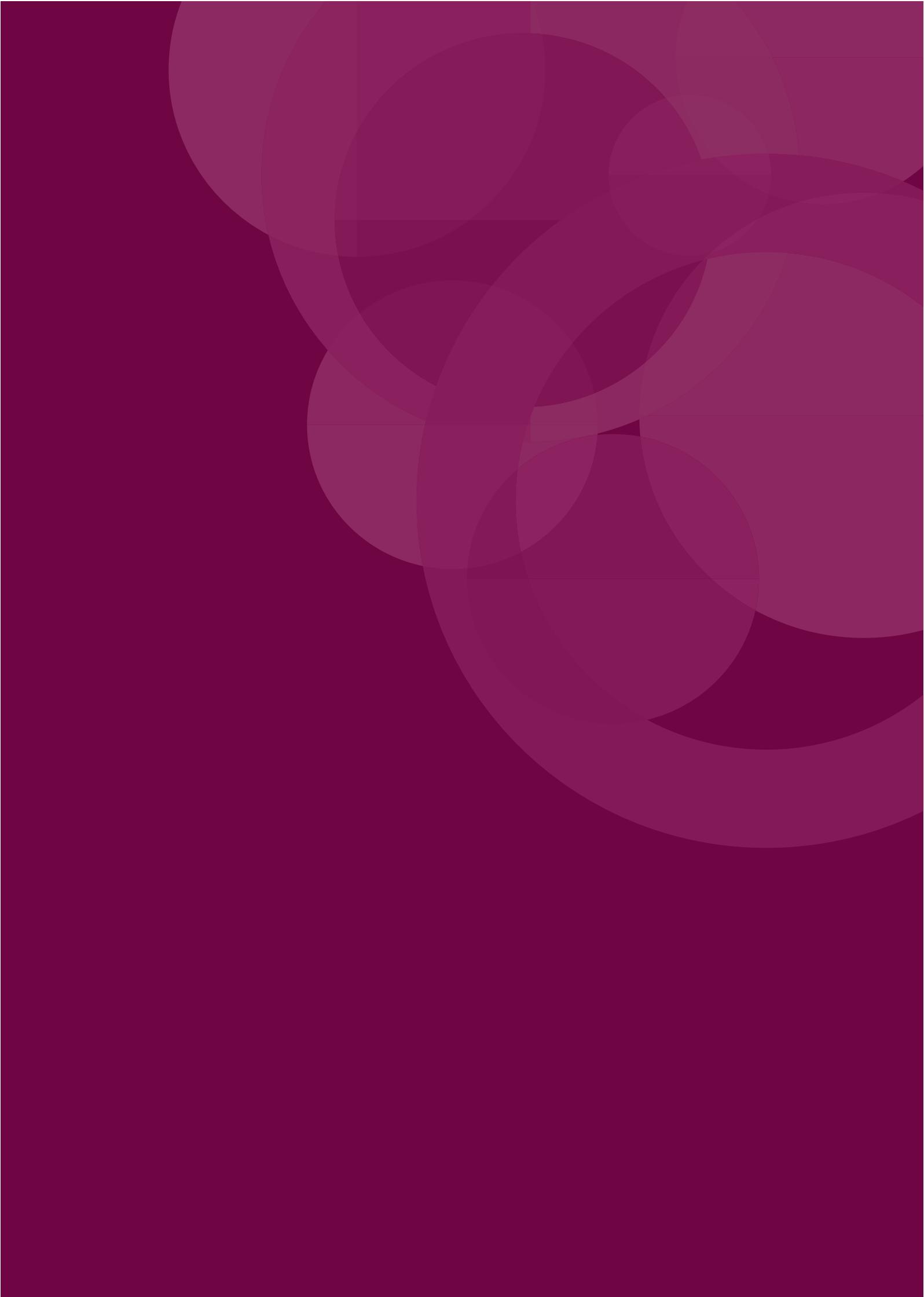
The ACWC has taken necessary initial steps towards protecting the rights of women and of children in ASEAN, especially in creating the EAW-EVAC Declaration and the RPAs EAW and EVAC. Nevertheless, the outstanding fact remains that in the decade since its establishment, the ACWC has not monitored, documented,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

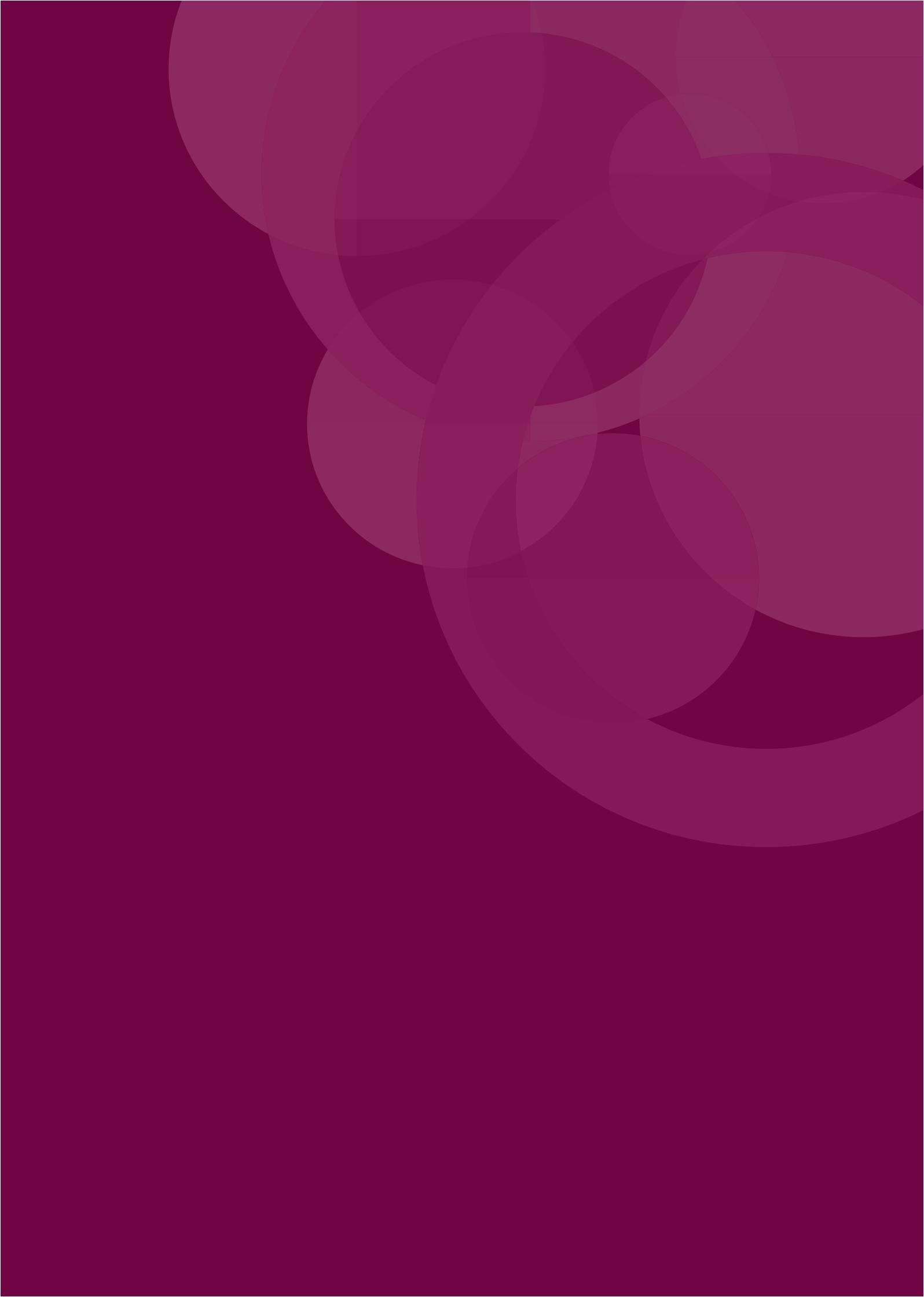
The relatively high level of satisfaction among CSO representative and others with the ACWC's protection work as shown in this report may therefore reflect an ongoing hope that the declaration, the RPAs and other ACWC initiatives will sooner or later be translated from well-meaning texts to substantial positive changes in the actual lives of women and children in ASEAN. Alternatively, it may reflect a deficient level of expectations from the ACWC.

It is up to the ACWC itself in the coming years to implement its protection mandate actively, fearlessly, aggressively and creatively, so that it can ultimately fulfil its vision as a regional human rights mechanism for the promotion and protection of women's and children's rights in ASEAN.

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148 Plan International, COVID-19: The Impact on Girls, 2020, <https://plan-international.org/publications/covid-19-impact-girls>





## **CHAPTER 4:**

# RECOMMENDATIONS



In what follows, FORUM-ASIA and the Solidarity for ASEAN People's Advocacy (SAPA) are presenting their recommendations to the ACWC and its stakeholders, to ensure that it becomes a real force in the protection and promotion of the human rights of women and children in ASEAN. These recommendations have greatly benefited from the input by the expert meeting participants and people interviewed in preparation of this report.

### **To the ACWC:**

- Turn the ACWC into a space where women and children whose rights have been violated or are at risk can find a true ally, an enthusiastic advocate and a fierce defender of their rights;
- Draft, in collaboration with CSOs and experts, a revised TOR for the ACWC, and lobby for its adoption by the ASEAN establishment.

The revised TOR should include, among other things:

- a clear mandate for the ACWC to document and address violations by AMS of the human rights of women and children, including through launching, of its own accord, investigations into reported violations as well as receiving complaints from individuals and CSOs, bringing these to the attention of the relevant government, ensuring that complainants and others involved are not targeted for retaliation and following up to ensure a human rights-friendly resolution such as removal and prosecution of a violent partner or parent, release from prison or reparations;
- a clear mandate for the ACWC to monitor the implementation by AMS of the Declaration on the Elimination of Violence against Women and Elimination of Violence Children in ASEAN, the RPAs ERAW and EVAC and the aspects of ACTIP relating to women and children. Monitoring would include field research and public reporting;
- a revised process for the selection and appointment of ACWC representative that is open, transparent, inclusive and ensures that representatives are professional, independent and committed to human rights;
- a decision-making process that, while preserving consensus as to the preferred way of reaching decisions, allows for decisions by majority where a consensus cannot be reached;
- the guaranteed provision of adequate financial, human and technical resources to the ACWC, including dedicated support staff while maintaining the ACWC's independence;
- institutionalising relations with CSOs including through regular periodic meetings, while maintaining the flexibility that allows working together ad hoc or through individual professional relations to continue;

- Pending the revision of its TOR, use the existing TOR to the full in innovative and creative ways to fulfil its protection mandate, including by:
  - Intervening, as *amicus curiae* (friends of the court) in cases involving violations of the rights of women and of children as provided in the CEDAW and CRC as a means of promoting the implementation of these treaties, which is mandated in Article 5.1 of the ACWC's TOR;
  - advocating with individual AMS and the ASEAN as a whole – including publicly on behalf of specific individual women or children or groups of women or children whose rights are being violated, as mandated in Article 5.4. of the TOR
  - actively and where necessary publicly offer to assist AMS in preparing their reports to the CEDAW and CRC Periodic Reports, the UPR and reports to other treaty bodies, including by pointing out to flawed laws, policies and practices that lead to violations of the rights of women and children, as well as pointing to specific violations that these reports should address, as mandated in Article 5.6. of the TOR;
  - actively and where necessary publicly offer to assist AMS in implementing the Concluding Observations of CEDAW and CRC and other Treaty Bodies related to the rights of women and children, including by conducting field and other research documenting and monitoring such implication, as mandated in Article 5.7. of the TOR;
  - promote studies and research on the human rights of women and children as mandated in Article 5.9. of the TOR, including by itself conducting such studies, through collaboration with CSOs, field research and data gathering. Such reports should priorities the groups of women and children most vulnerable to violations, and be made public;
  - encourage the ASEAN Member States to undertake periodic reviews of national legislation, regulations, policies, and practices related to the rights of women and children as mandated in Article 5.10. of the TOR, including by the ACWC undertaking such reviews by itself, in collaboration with national CSOs, and publishing its findings;
  - monitor the implementation of the declaration on the Elimination of Violence against Women and Elimination of Violence Children in ASEAN, the RPAs EAW and EVAC as envisioned in these instruments, including through field research, with support from CSOs that are familiar with on-the-ground situations and focussing particularly on bridging the divide between the plans and national-level action. This work should include public reporting, and aim to propose and promote measures, mechanisms and strategies to end such violence as mandated in Article 5.12. of the TOR, including specific forms of violence documented during research. Follow-up with states to ensure they have taken measures to end violations;

- Update the website and ensure continual updating. If ASEAN cannot designate a webmaster to maintain the ACWC website, consider connecting with universities and/or CSOs to locate a student or intern to maintain and update the website. Ensure that the list of current representatives is up-to-date and that individual contacts are provided;
- Ensure that the ACWC website contains an easily accessible (including to people with disabilities and children), user-friendly "contact us" page, and that trained staff regularly and frequently visit this page, pass on messages to representatives and respond in a timely fashion, especially to complaints about human rights violations;
- Maintain transparency and accountability to the public by providing up-to-date, detailed and accessible information about the ACWC's work, meetings, and activities, especially on the official ACWC website. Publish the ACWC annual report on the website;
- Establish, in collaboration with CSOs, a clear, "user-friendly" framework for mutual engagement. This framework should include consultations on the current human rights situation for women and girls, both regionally and in specific member states, the development and implementation of workplans and the implementation of the RPAs EVAC and EAW. Besides, the ACWC and CSOs should utilise the untapped potential of online platforms for working together, communicating and meeting. It should also include an annual meeting through which the ACWC and CSOs could discuss and coordinate joint plans and projects and mutual assistance;
- Host more events under the auspices of the ACWC, and inviting marginalised groups of women and children, including LGBTIQ people, migrants and asylum seekers and persons with disabilities. These could be joint events organised with other INGOs and NGOs, but the ACWC should take the lead to more efficient collaboration in defending the human rights of women and of girls as well as enhance the ACWC's visibility and the ability of CSOs and other potential partners to reach out and engage with the ACWC;
- Ensure that the ACWC's annual meeting with the AICHR, become a real opportunity for both Commissions to coordinate their work better, and to increase their effectiveness in protecting and promoting human rights in ASEAN. These meetings could also reduce the likelihood of unnecessary duplication and misalignment between the activities and objectives of the two Commissions. However, the ACWC must maintain its independence and not seek the lowest common denominator with the AICHR, not least when it comes to protection work;
- Explore the possibility of conducting joint fundraising efforts with CSOs and other partners through a regional approach towards donors;

- Heighten and further publicise the ACWC's role and activities in advocating for the rights of women and children, especially those from marginalised groups, at the national, ASEAN, and international levels. Consult and coordinate with CSOs to support its advocacy work and, build upon existing research studies and promote new ones focused on marginalised and at-risk groups of women and children;
- Use a consortium approach vis-à-vis interested donors to identify the key priority areas and decide a common agenda to inform work on the RPAs, workplans, and the country processes;
- Utilise a programmatic approach to ACWC's work by prioritising key objectives to ensure continuity, efficiency and sustainability in its work. This should include monitoring and evaluation indicators across its work.

**To ASEAN Member States:**

- Allocate more funds, human resources and technical support to the ACWC;
- Support more open and transparent processes in the selection of ACWC representatives, including input from CSO. The aim of the process should be to appoint independent and knowledgeable representatives committed to the protection and promotion of the rights of women and children;
- Provide an annual budget to ACWC representative so that they do not have to rely solely on external donor support for implementing its activities. However, the provision of the annual budget must not be conditional upon the representative complying with government instructions.
- Encourage and support a revision of the ACWC TOR along the lines recommended above;
- Pending such revision, encourage and support, including through the allocation of resources, the use by the ACWC of its existing TOR to the full in innovative and creative ways to fulfil its protection mandate along the lines recommended above;
- In particular, pending the revision of the TOR, mandate an annual budget to the ACWC from AMS contributions;
- Ensure inclusion of the ACWC within ASEAN platforms, especially in the ASEAN Economic Community (AEC) and ASEAN Political-Security Community (APSC) where the rights of women and children are affected by decisions made in these two pillars;
- Support the ACWC and ACW's efforts for gender mainstreaming across ASEAN;
- Ensure improved alignment between the ACWC, the AICHR, ACW and other ASEAN sectoral bodies while protecting the ACWC's independence;
- Provide the ACWC with funding and technical support to ensure it can update its website regularly and expand its coverage and visibility.

### **To CSOs:**

- Convene, or allocate time in CSO meetings, to discuss ways of ensuring that the ACWC performs as an active, efficient, professional, inclusive, transparent and progressive human rights body, and strategies of engagement with the ACWC;
- To CSOs who have individual relationships with ACWC representatives: enhance existing informal channels with other to incorporate those who have not previously engaged significantly with the ACWC to ensure they too are informed and capable of engaging with the Commission;
- Identify the type of support that each CSO can provide to the ACWC and decide upon entering partnerships with it accordingly;
- Advocate for playing a broader role in implementing the ACWC's workplan and the RPAs.
- Engage with the ACWC while maintaining CSO independence; engage to the extent that accords with CSOs fundamental principles and is beneficial to achieving their aims but not at the expense of compromising principles or accepting lower levels of protection for the rights of women and girls than that provided internationally.

### **To the International Community:**

- Ensure that the ACWC advocates and implements international human rights law and standards, in particular, CEDAW and CRC, and that regional instruments and policies do not fall short of these standards;
- Encourage ASEAN to reform its human rights mechanisms, in particular, to make them more independent and professional and enable them to protect human rights and implement international human rights law and standards;
- Support more inclusive platforms for the ACWC to engage with CSOs in its work;
- Support and facilitate interfaces between the ACWC and bodies working on the rights of women and children's in other regions.

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