

# Child Rights Situation Analysis Within the ASEAN Region

Institute of Human Rights and Peace Studies



**Mahidol University**

Commissioned by: Save the Children Philippines



**Save the Children**



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*The Regional Study Team*

### Disclaimer

This material is fully financed by Sida, the Swedish International Development Authority. Sida does not necessarily share the views here expressed. Responsibility for the content is solely the author's.

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## FOREWARD

The realization of children's rights is at the core Save the Children work. It is Who we are. It is What we do. Our vision is a world in which every child attains their rights to survival, protection, development and participation. Save the Children is working to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives.

The Child Rights Situation Analysis (CRSA) has informed Save the Children's strategic decision-making since the United Nations Convention on the Rights of the Child came into force in 1990. CRSA enables us to understand the extent to which children's rights are being fulfilled and the obstacles to their realization. CRSAs inform Save the Children's program priorities and where we focus our resources and partnerships to improve the lives of children in the 120 countries where we work.

This **Child Rights Situation Analysis within the Association of Southeast Asian Nations (ASEAN)**, which was carried out by the Institute of Human Rights and Peace Studies, Mahidol University, is the first of its kind in Asia. It provides a comprehensive overview and analysis of the situation of children in 10 ASEAN Member States. The report examines the gaps and violations of children's rights and the underlying causes holding back the achievement of rights within the ASEAN region. This analysis looked into the legal and policy frameworks at national and regional levels which impact both positively and negatively on children. It examines how governments are progressing in their obligation to respect, protect and fulfill children's rights.

As a member of the international development community, Save the Children recognizes the importance of working collaboratively with civil society and governments at local, national, regional and international levels to address children's issues and fulfil children's rights. The findings from this study will inform our program priorities in the ASEAN region. We hope you will find this study relevant for the promotion and protection of children's rights in the ASEAN region.

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## LIST OF ACRONYMS

ACF	ASEAN Children's Forum
ACMW	ASEAN Committee on the Implementation of the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AHRC	Ateneo Human Rights Center
AMMSWD	ASEAN Ministerial Meeting on Social Welfare and Development
AMS	ASEAN Member States
ASEAN	Association of Southeast Asian Nations
ASCC	ASEAN Socio-Cultural Community
BDC	Barangay Development Council - Philippines
CBCP	Commune Councils and Community-Based Child Protection Networks – Philippines
CBOs	Community-Based Organizations
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CNCC	National Council for Children - Cambodia
CPCC	Committee for the Protection and Care of Children – Vietnam
CPMS	Child Protection Monitoring and Response System – Thailand
CPNs	Child Protection and Assistance Network – Lao PDR
CRBP	Children's Rights and Business Principles
CRC	Convention on the Rights of the Child
CRG	Child Rights Governance
CRSA	Children's Rights Situation Analysis
CSEC	National Plan of Action against Commercial and Sexual Exploitation against Children – Lao PDR
CSOs	Civil Society Organisations
CSR	Corporate Social Responsibilities
CWC	Council for the Welfare of Children - Philippines
EVAWC	Eliminating Violence Against Women and Children
FGD	Focus group discussions
GDP	Gross Domestic Product
HIV/AIDS	Human immunodeficiency virus infection / acquired immunodeficiency syndrome
IAI	Initiative for ASEAN Integration
IBL	Indonesia Business Links
ICRMW	International Convention on the Protection of the Rights of Migrant Workers and Members of their Families
ICT	Information and Communications Technology

IDPs	Internally displaced persons
IGCN	Global Compact Network
ILO	International Labour Organisation
IO	International Organisations
IOM	International Organisation on Migration
KPPPAI	Ministry of Women's Empowerment and Child Protection - Indonesia
LCPC	Local Council for the Protection of the Child - Philippines
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning people
MAPC	Malaysian Association for the Protection of Children
MCRI	Malaysian Children Resource Institute
MDG	Millennium Development Goals
MKKM	Malaysia Council of Child Welfare
MLSW	Ministry of Labour and Social Welfare – Lao PDR
MSF	Ministry of Social and Family Development – Singapore
MWFCD	Ministry of Women Family and Community Development – Malaysia
NAPC-CBS	National Anti-Poverty Commission Children Basic Sector - Philippines
NCMC	National Commission for Mother and Child – Lao PDR
NCRC	National Committee on the Rights of the Child - Myanmar
NHRC	National Human Rights Commission
NHRIs	National Human Rights Institutions
NGOs	Non-Governmental Organizations
OECD	Organisation for Economic Co-operation and Development
ODA	Official Development Assistance
OP-CRC-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP-CRC-CP	Optional Protocol to CRC on communication procedure
OP-CRC-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
POs	People Organizations
SCI	Save the Children International
SDGs	Sustainable Development Goals
SLOM	Senior Labour Officials Meeting
SMEs	Small and Medium Enterprises
TOR	Terms of Reference
UN	United Nations
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
VAP	Vientiane Action Programme
WHO	World Health Organisation

## EXECUTIVE SUMMARY

### Background

In the endeavor of promoting and protecting rights and well beings of the child, Save the Children sees the importance of having a good understanding of the situation for children in the country context in order to inform its strategic decisions at the regional level. Save the Children therefore commissioned the Institute of Human Rights and Peace Studies, Mahidol University, to carry out a comprehensive Regional Children's Rights Situation Analysis (CRSA) in ASEAN.

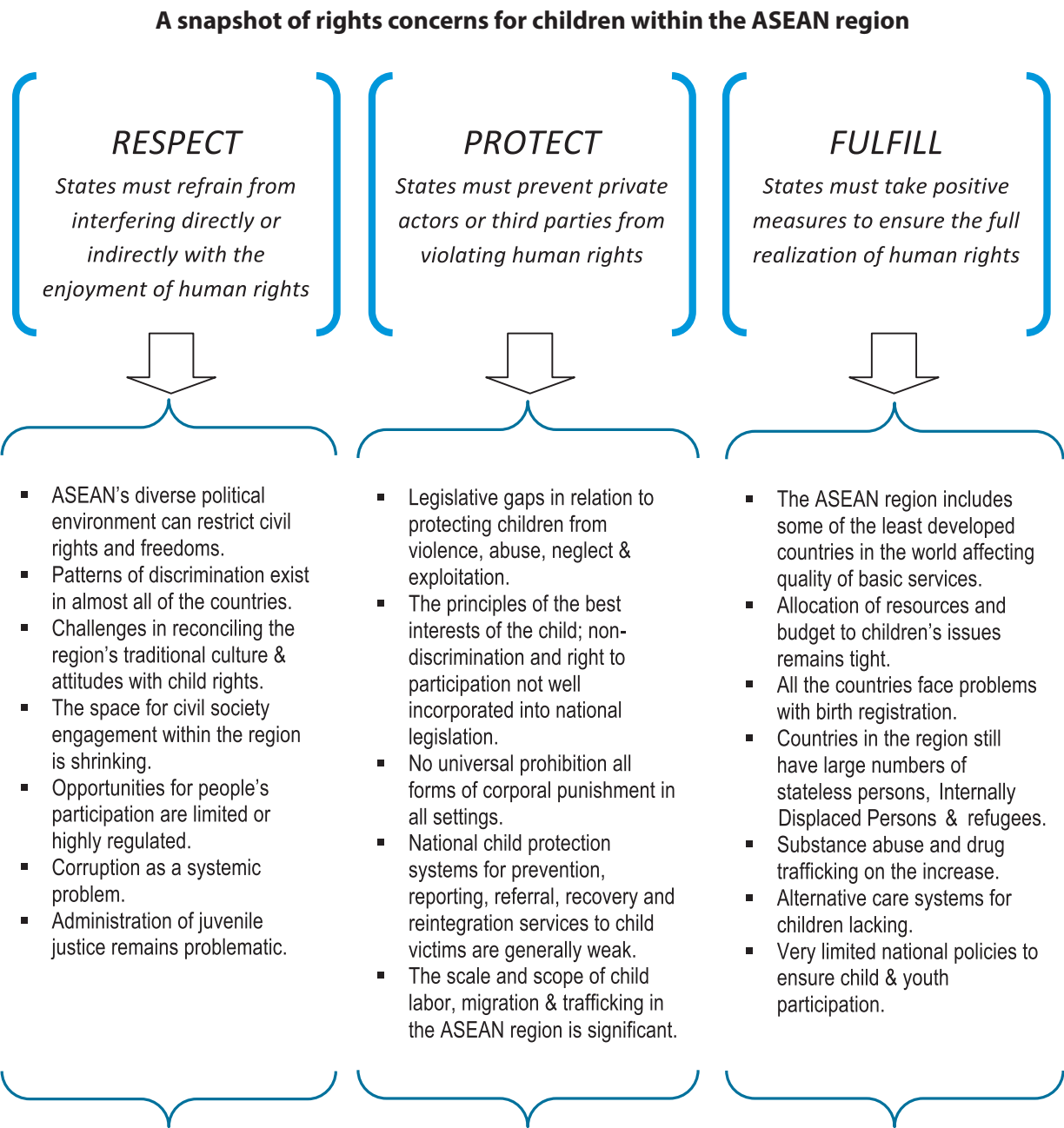
The overall purpose of the Regional Children's Rights Situation Analysis is to provide a comprehensive overview and analysis of the current situation of children in ASEAN member countries. The Regional CRSA includes, among others, an examination of current rights violations and its underlying causes, including the accountabilities of duty bearers; analysis of relevant legal frameworks and of the perspectives of other stakeholders, including children, as well as, looking at the environment of changes taking place and likely to take place over the next three to five plus years and how these may affect children's rights. The purpose is to enable Save the Children and its partner civil society organizations to make the appropriate strategic choices about what needs to be done to improve children's lives, in the context of ASEAN and ASEAN Member States (AMS), in particular.

The study has employed mainly desk reviews and a detailed study including field researches in three countries where Save the Children does not have presence (namely Brunei, Malaysia and Singapore). It also examines other sources of literatures and policy statements of ASEAN and AMS. The study also looks at emerging/new children's rights issues or those that Save the Children in Southeast Asia has not worked on in the past so as to balance program experience with new opportunities for engagement that will have a positive impact on children's lives. The Study Team also conducted stakeholders' interviews and focus group discussions with children especially in the three countries as stated earlier. Two regional consultations were organized with relevant Save the Children staff as well as representatives from civil society, government and academia in ASEAN Member States.

There are some limitations that the Team faced in the process of this study. The quantitative data is scarce in the region and this has implications on analyzing the disaggregation of children's rights mapping disaggregation of data by gender, ethnicity, disability and age. The Team, to a certain extent was able to do a stakeholder analysis by looking at roles and responsibilities, capacity gap analysis, and trends analysis; however, there is room for further research.

## Rights Concerns

Using the generic state human rights obligations of “respect-protect-fulfill” as a framework for synthesis, the human rights concerns for children in ASEAN could be summarized as follows.



It has been demonstrated in the studies that most, if not all countries in ASEAN, have made significant progress in promoting and protecting child rights. Laws and policies were put in place with institutions established in order to implement their commitments. Nevertheless, gaps and risks remain to be filled and there is a need for every country to prepare themselves for future challenges lying ahead.

At the regional level, ASEAN has made a clear commitment to ensure rights and well-being of children in the region. Not only were legal and political documents adopted but institutions such as the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Inter-governmental Commission of Human Rights (AICHR) were also established to follow up the implementation, although not without constraints and challenges.

Based on the findings of this study, the following are trends that Save the Children may consider paying attention to in the next one to 10 years.

## Regional Trends

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The analysis of 10 country child rights studies reveals some common trends among ASEAN Member States regarding child rights and factors which may impact children, namely:

- 1. *Difficulties with the move towards democracy in AMS.*** There has been political recession in a number of countries in ASEAN such as Thailand, Malaysia and Indonesia while status quo is maintained in a few others including Vietnam, Lao PDR, and Brunei. In these countries changes would be minimal. Positive political changes are seen in Myanmar after the November 2015 elections whereby the results were accepted by the military and current leaders. Across the region, the political situation is a barometer which could measure the political space that CSOs could have in each society. Not only does it determine people's participation but it also affects child participation in decision making. At the regional level, the ASEAN post 2015 vision seems to be more open to CSO engagement.
- 2. *Continued bias in development towards industrialization.*** ASEAN seems stuck in the "middle income trap" as most of the countries try to become middle income nations as part of narrowing the development gap not only within a country but also within the region. The middle income endeavor has put many countries at risk as it depends highly on the industrialization and service sector such as tourism in order to boost their economies. For example, harmful practices, including child labor in the service industry can have a rather negative impact on children. In most countries, government investments are prioritized for economic development rather than social development. Although basic social services such as health care and education are available, the problem is accessibility and affordability of quality social services.
- 3. *Environment and climate change.*** Environmental-related problems including that of climate change are affecting people including children in the region more severely. The rising trend of more frequent occurrence of natural disasters including floods and droughts is resulting in more damage to the livelihood of people especially the poor and marginalized, and those living in the rural areas. The recent haze crisis in the region stemming from forest fire/ burning has led to temporary closure of schools in Indonesia, Malaysia and Singapore and many children have ended up missing out on their education. Yet, effective disaster risk reduction and emergencies response programs and interventions, especially those which are child-sensitive, are not in place in many countries. With the problem of climate change affecting people and children across countries and regions, commitments are needed at the national and regional level to tackle the issues from a more holistic approach.

- 4. Corruption remains a critical issue.** Unfortunately, corruption still plagues the region as most public institutions in many countries in ASEAN continue to lack transparency and accountability. Lack of anti-corruption laws and restricted civil society engagement in public policy as well as in budgeting planning and monitoring also contribute to the sustained practice of corruption in many ASEAN countries. According to Transparency International, “almost 50 per cent of people in ASEAN countries believe corruption has increased, while only a third say their government’s efforts to fight corruption have been effective” With many countries in the region still needing to deliver quality social services such as healthcare and education for their people, corruption will continue to pose great risk to the countries’ development and well-being of the people. Reversing this trend should constitute a key priority for countries in the region.
- 5. More critical roles for the private sector.** As a main driver of economic growth in many ASEAN countries, the private sector plays increasing roles both as potential contributors to and violators of people’s and children’s rights. With the anticipated growing cross-border trade and investment that accompany regional economic integration, there is a greater need for the private sector (both domestic and international origins) to be more accountable to the people and communities affected by their operations. While there are emerging good practices regarding the private sector’s engagements in the promotion and protection of children rights, especially through the development of Child Rights Business Principles, the trend in this direction remains limited. In this regard, the potential roles and engagement with the private sector as a supporter of children’s and people’s rights need to be further explored and promoted.
- 6. Lesbian, Gay, Bisexual and Transgender (LGBT).** Recognition of the rights of LGBT is growing within some countries of the region. Vietnam has just become the first country in ASEAN to adopt a law on same sex marriage and Thailand has a draft law that is being prepared for parliament that seeks to offer LGBT the same rights as heterosexuals. Still concrete changes are limited. LGBT rights are limited in the ASEAN region compared to many other regions of the world. ASEAN countries currently do not have anti-discrimination laws to guarantee equality of all citizens regardless of their sexual orientation and gender identity. Social stigma and discrimination across ASEAN of LGBT people limit job and education opportunities, as well as access to healthcare. Violence, bullying and other forms of abuse and harassment against LGBT are also found in schools. Homosexuality remains criminalized in places which abide by strict Sharia law, and the Roman Catholic Church remains in opposition to any such unions. Some countries still adhere to out-dated colonial-era law that bans same-sex intercourse. This situation seems set to remain.
- 7. Migration.** Migration has been always problematic in the region. There is no unified regional policy on the issues regarding migrant workers, refugees, stateless persons and unaccompanied and separated children. The establishment and consolidation of the ASEAN Economic Community will continue to increase the migration of people facing economic, political difficulties as well as conflicts and persecution in their own countries. Challenges created by migration concern child welfare and protection. In addition, most of migrants leave their children behind when migrating internally or transnationally. It is also estimated that 5-10 % of migrants are children and many of them do not have birth registration.

- 8. Ongoing internal conflicts.** A number of ASEAN member states seem to be experiencing prolonged internal conflicts which have negatively affected socioeconomic and democratic development of the countries. People, including children, living in the conflict areas are directly impacted and their basic rights to bodily integrity, safety, livelihood, healthcare and education, among others, are violated on a daily basis. The involvement of children in armed conflict, as child soldiers in some countries, also pose serious concerns. The number of children who have become refugees or are displaced and separated from their families as a result of a conflict situation is also increasing. Given that effective protection mechanisms for children affected by armed conflict are either weak or non-existent in several ASEAN Member States, greater efforts are needed at the regional level to address the issues of protection of children in this particular context.
- 9. Persistence of some traditional values that undermine human rights and children's rights.** Despite socioeconomic changes that have accompanied development in countries across ASEAN (including the impact of globalization that has brought about new ideas and practices) the impact of globalization that has brought about new ideas and practices certain values remain strong in ASEAN societies. Among these are values and practices relating to gender roles and relations that favor male superiority, and the power relationship between adults and youngsters that helps to condone the practice of corporal punishment in children. The trend and manifestations of continuing and growing violence against women and children in ASEAN societies are a reflection of societal acceptance of such practices. Reversing the trend will require not only a re-socialization of the current and the new generation of ASEAN citizens toward the culture of respect for rights and equality, but also to put in place effective institutional mechanisms to enable rights-respecting culture to take roots.
- 10. Maintaining the status quo of regional human rights mechanisms.** ASEAN has developed the regional human rights regime with political documents and mechanisms such as the AICHR and ACWC. However, the two existing human rights bodies are still struggling to perform effectively due to a lack of independence, personal resources, proper secretariat, capacity and expertise. The struggle, unfortunately, will continue because of the ASEAN working principles of consultation and consensus as well as respect for state sovereignty and non interference in internal affairs of the AMS. While a few member states are trying their best to keep the current status and situation of the two bodies, which is not conducive to better performance, engagement with different individual representatives is possible and could be useful.

## **ASEAN Vision 2025 and the UN Sustainable Development Goals: Prospects?**

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The key question here is whether the ASEAN Post-2015 vision offers any prospects? The ASEAN leaders, during its 27 Summit held in Kuala Lumpur on the 18-22 November 2015 adopted a number of documents. One of the most important for ASEAN to move forward together is the **ASEAN 2025: Forging Ahead Together**. The document contains an ASEAN Community Vision 2025 and three Community Blueprints (namely ASEAN Political-Security Community Blueprint 2025, ASEAN Economic Community Blueprint 2025, and the ASEAN Socio-Cultural Community Blueprint 2025). The Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together “welcomes the formal establishment of the ASEAN Community 2015” and “adopts the ASEAN Community Vision 2025”. It charts the path for



ASEAN Community building over the next ten years. ASEAN is working towards a Community that is “politically cohesive, economically integrated, and socially responsible socially responsible”. Whatever these grand statements mean, the implementation of many strategies and action points will have direct or indirect impact on children and child rights.

The ASEAN vision 2025 emphasizes a rules-based, people oriented, people centered ASEAN Community, where “peoples enjoy human rights and fundamental freedoms, higher quality of life and the benefits of community building”. It was said that one of the focuses for the ASEAN Community over the next ten years would be guided by, but not limited to, broad goals that will further consolidate and strengthen the regional grouping. These are meant to include, among others, “greater emphasis on the peoples of ASEAN and their well-being” and “ensure fundamental freedoms, human rights and better lives for all ASEAN peoples”. It commits to undertake to realize among others, “an inclusive and responsive community that ensures our peoples enjoy human rights and fundamental freedoms as well as thrive in a just, democratic, harmonious and gender-sensitive environment in accordance with the principles of democracy, good governance and rule of law”. For a region where democracy seems to be in deficit in a majority of the member states and where human rights violations are rampant, the post-2015 vision is ambitious. Nevertheless, the fact that human rights and fundamental freedoms have become cross-cutting through all three communities could be a step towards a more human rights friendly community, including for children.

For the first time, the endeavor to build an ASEAN people-oriented and people-centered society is reflected through all communities including the ASEAN Economic Community. Although compromised, space is now open for peoples of ASEAN, including children, to advocate/demand for more participation in any decisions which may affect them.

The post 2015 ASEAN vision touches upon various issues identified as risks and challenges for children and the promotion and protection of child rights as follows:

- 1. Political-security blueprint.** Among the four characteristics to be pursued include “a rules based, people-oriented, people-centered community... in which our peoples enjoy human rights, fundamental freedoms and social justice, embrace the values of tolerance and moderation...”. Under this, a number of elements were identified as essential for community consolidation including: promotion of the principles of democracy; instill the culture of good governance; the culture of integrity and anti-corruption; promotion and protection of human rights, fundamental freedoms and social justice; as well as increase the engagement and participation of entities associated with ASEAN and relevant stakeholders. Out of 15 action lines under “the promotion and protection of human rights, fundamental freedoms and social justice”, more than half aim at supporting the AICHR to properly discharge its mandates and functions as well as implementation of the ASEAN Human Rights Declaration (AHRD). The “mainstreaming of human rights across all three pillars of ASEAN Community” was clearly stated in the blueprint. Engagement and interactions with existing human rights mechanisms and CSOs concerned with human rights were mentioned in a few action points.

Children were also mentioned in the political and security blueprint. Action line fourteen “encourage coordination and consultation among relevant ASEAN organs and bodies with a view of enhancing the implementation of the AHRD, the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children...”. The Ha Noi Declaration, which was adopted in 2010, prescribes very clear measures regarding the promotion and protection of child rights (as well as women’s rights) including to “achieve the goals for children in the



ASEAN region as regards the child's rights to survival, protection, development and participation in a comprehensive and systematic way" and "promote and encourage child participation in the ASEAN Community building through the establishment of the ASEAN Children's Forum and other relevant programs or activities". The next ASEAN Children's Forum will be hosted by Vietnam in 2016. In addition, the blueprint also prescribes the "early ratification of the ASEAN Convention against Trafficking in Persons, Especially Women and Children and its effective implementation, as well as carry out the ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children. The said Convention was adopted by the ASEAN leaders on November 22, 2015.

2. **Economic blueprint.** This is a continuity of economic integration which will be consolidated in the next 10 years. It still emphasizes the "free flow" of trade in goods, services, investment as well as skilled labor. It focuses on a competitive ASEAN and connectivity through physical infrastructures and information technology. The blueprint reflects more or less "business as usual" based on neo-liberalism aims at integration with the global economy. Tourism, health care and the primary extractive industries are sectors which may have direct impact on children. However, a few elements could be positive for human rights in general and child rights such as consumer protection, sustainable economic development and "a resilient, inclusive, people-oriented and people-centered ASEAN" are there. This is new for ASEAN to incorporate the idea of "people-oriented and people-centered" within the economic community with key elements such as strengthening small and medium enterprises (SMEs), public-private partnerships, narrowing the development gap and a contribution of stakeholders to regional integration efforts. The corporate social responsibility is mentioned here but this element is not as clear as it could be. The fact that the concept is there however, leaves room for interpretation in an innovative way.
3. **Socio-cultural blueprint.** The socio-cultural blueprint could be qualified as the most relevant and the most progressive blueprint among the three when it comes to human rights and child rights. In many ways, the blueprint incorporates elements adopted by the Sustainable Development Goals (SDGs) which were adopted by the UN General Assembly in September 2015 (ranging from ending poverty, ensuring inclusive and equitable quality education, achieving gender equality and empowerment of women and girls, to promoting peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all). The terms 'engage, inclusive, empower, reducing barriers, sustainable, resilient, and dynamic' have been used throughout the document. Issues of climate change and its impacts were also included here. One whole section was dedicated to promotion and protection of human rights which includes social protection and early childhood care (B.3.ii), enhancing regional initiatives to promote and protect the rights of women and children... through the work of the ACWC (B.3.vi), and enhancing regional initiatives and stakeholder participation to promote elimination of all forms of discrimination-institutionalized or otherwise-exploitation, trafficking, harmful practices, and violence and abuse against children, women, persons with disabilities,...(B.3.vii). Ethnic minorities groups and vulnerable and marginalized groups are also mentioned.

In addition, the blueprint provides for "strengthened social protection for women, children, youths,..., and people living in at risk areas, including people living in remote and border areas and climate sensitive-related crises, disasters and other environmental changes" by "encouraging risk and vulnerability assessments and other scientific and evidence-based

measures for policies and plans to promote targeted response measures as well as establish platforms to empower people living in at risk areas...". With all characteristics and action lines specified in the blueprint, Save the Children has plenty of space to engage and contribute to children and rights of the child in ASEAN framework.

## Recommendations

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Over the last 15 years, significant progress has been made within the ASEAN region in reducing child mortality, increasing school enrollment and legislating to protect children amongst others. However, while the children of ASEAN enjoy more rights than the generations before them, this ASEAN child rights situational analysis and synthesis has identified common concerns relevant to the survival, development and protection of children in the region. While each country is unique, a number of child rights violations are common across the region such as child trafficking, exploitation, child labor, children living on the streets, children in conflict with the law and children deprived of a safe family environment. Excluded and vulnerable groups of children appear to be particularly disadvantaged.

As a regional body, ASEAN has an important role to play in influencing positive changes in child rights issues and various regional mechanisms and bodies have already introduced a number of commitments to better safeguard children's welfare and development. However, adequate social services and the protection of children from abuse, neglect and exploitation remains a distant actuality as no member state is sufficiently enforcing laws or implementing policies for the benefit of *all* children.

A selection of specific recommendations for different levels and stakeholders within ASEAN are given below which also reflect the inter-related and cross-cutting concerns identified through this study. It is hoped that these proposed areas of action can help guide ASEAN, its member states and partners (including Save the Children) in the region to build on the progress that has so far been made so that all rights for all children are fulfilled.

### **National level recommendations for states that are relevant to a number of countries**

National governments are directly responsible for promoting and protecting the rights of children. To advance political obligations and commitments, progress is needed in strengthening legal and policy frameworks followed up by more systematic implementation through national institutions that deal with children's issues.

#### *Child Survival and Development*

- Improve national data collection systems capable of providing better disaggregated data on children and measurable indicators, goals and targets for improving child survival and development.
- Increase public investment and budget allocations in social spending and the provision of basic services – particularly for vulnerable and marginalized groups and those living in more remote locations.
- Strengthen early childhood education. Provide free primary education to *all* children (not just citizens) and improve the quality of education services. To take better advantage of the ASEAN Economic Community 2015, provide basic secondary school education so that children and youth become employable.

- Address the key drivers that are causing the regional average for malnutrition of children to remain high, particularly in the poorer countries in ASEAN. Awareness raising and health service delivery need to be strengthened, particularly in poor, hard to reach and isolated locations.
- Introduce targeted social welfare systems and social protection interventions for the region's poor, vulnerable and socially excluded groups.
- Repeal laws which are incongruous to universal standards and tackle discrimination and abuse of vulnerable groups of children such as LGTB, ethnic or religious minorities, stateless persons, foreign migrants, children with disabilities etc.
- Resolve political conflicts affecting the security and welfare of children in a number of ASEAN member states.

#### Child Protection

- Address and review narrow interpretations, gendered definitions and the lack of specific laws that offer children a mixed degree of protection in the region. For example, ASEAN member states should harmonize definitions and ages of children within all laws nationally.
- Ratify all international child rights related instruments, withdraw all reservations and revise national laws where necessary.
- Review national child protection laws so that legislation exists to ban all forms of physical, emotional and sexual violence against a child. For example: all ASEAN states need to prohibit corporal punishment in both the home as well as in institutions. Within the region, sexual abuse and exploitation needs to be more clearly defined and legislated against.
- Protect children engaged in child labor from hazardous and harmful work as per international standards. Irregular migrants should be protected from rights violations and trafficking.
- Strengthen national laws in all ASEAN states so as to criminalize offering, obtaining, procuring and providing both girls and boys for child prostitution. Children involved in all forms of sexual exploitation (including online) should be explicitly recognized as victims.
- Develop in each of the ASEAN Member States a specific juvenile justice law that ensures the welfare, dignity and best interest of the child.
- Increase resources, facilitate better coordination across law enforcement agencies and address corruption across the ASEAN region.
- Ensure compliance with Human Rights and Business Principles and Children's Rights and Business Principles. Establish government regulated child protection standards for the private sector. Step up efforts to engage the private sector in ensuring accountability to child protection.
- Include child rights impact assessments for all national economic development plans and trans-boundary economic projects.

#### Child Participation

- Develop national policies for child and youth participation and facilitate meaningful children's participation in planning and policy making.

### **Regional level recommendations for the ASEAN mechanism**

Significant disparities exist within the ASEAN region in relation to the full realization of children's rights which negatively affects the overall stability and development of the region. ASEAN must therefore continue to prioritize child rights high on the regional political agenda. Civil society within ASEAN can assist in supporting these actions if the space for their engagement is expanded.

### Child Survival and Development

- ASEAN mechanisms could influence member states to accede and ratify all international human rights instruments.
- Build a platform for dialogue and cooperation to assist in developing time-bound targets and indicators for children re: the SDGs for the ASEAN region.
- Mainstream 'preparedness' capacity building to reduce the effect of disasters and environmental degradation, conflict or other emergencies on children in the region. Promote regional responses to support recovery, transition and stabilization post natural disasters in the region.
- Develop and disseminate regional guidelines (building on national and international good practices) that can promote dialogue within ASEAN on the best interest of the child. Promote the regional sharing of good practices and experiences on practical and successful child rights policy and program interventions.
- Review and promote rights-based policies and measures for stateless, irregular migrants, refugee and asylum-seeking children.

### Child protection

- Promote the enforcement of cross-border protection that can enhance immigration laws and administrative procedures to facilitate safe child migration. Situate the problem of trafficking in persons within the wider context of migration. Promote and foster international cooperation through bilateral and multilateral agreements and regional cooperation programs to combat child trafficking.
- Endorse coherent extraterritorial jurisdiction for offences and transnational crimes related to violence against children such as trafficking, sale of children, child prostitution, child grooming, child pornography and other grave offences against children.
- Develop ASEAN guidelines on child protection systems which advance quality care, protection, recovery and reintegration services of children in all settings (e.g. home, school, community, juvenile justice center, alternative care institutions).
- Promote campaigns and initiatives on elimination of all forms of violence against children in ASEAN in collaboration with the media, civil society organizations and private sector.

### Child Participation

- Uphold the key child rights principle of children as agents of change and encourage their participation in planning and policy making at regional and national levels.

## **Cross cutting recommendations for civil society at the regional level**

This assessment has identified where children within ASEAN cannot grow up in a safe and protected environment. At the regional level, CSOs have the potential to support policy development and capacity building within relevant ASEAN mechanisms (such as the ACWC, AICHR, Senior Officials Meeting on Social Welfare and Development and the ASEAN Children's Forum). In carrying out these actions, civil society would benefit from expanding engagement with other groups of stakeholders beyond the usual child rights sector actors (e.g. private sector, academia, traditional and religious leaders, groups working on women's issues, gender-based violence, disabilities or LGTB issues).

- Promote, facilitate and support regional debate and dialogue on key child rights concerns with appropriate ASEAN mechanisms and bodies.
- Advocate for renewed and sustained commitment for child rights in ASEAN mechanisms and expanding opportunities for strengthening cooperation amongst member states.

- Promote and support the contextualization and harmonization of international rights-based standards with guidelines and tools for analyzing and strengthening child rights within ASEAN. Facilitate and share experiences and good practice.
- Support CSO coalitions (nationally and regionally) in advocating for and monitoring children's rights by engaging strategically and constructively with ASEAN and its member states. Build capacity and provide technical assistance and funds to strengthen local, national CSOs and regional coalitions.
- Innovate with new forms of media to facilitate regional level engagement and political dialogue on child rights.
- Promote and support meaningful and active participation of children and young people in the region. Integrate children's views into policies, plans and programs. Support national and regional level children's forums networks and facilitate consultative processes.

### **ASEAN Research Agenda**

Better evidence-based research across the ASEAN region is needed that uses both quantitative and qualitative data analyzed within more in-depth conceptual frameworks. Partnerships between research collaborators (such as academic, civil society, IOs and government) can lead to more robust findings that better inform regional and national level policy making and programming.

- Promote and undertake research to better understand specific ASEAN social, cultural, gender and structural norms that impede the full realization of children's rights.
- Research the practical obstacles for effective implementation and cooperation across sectors, agencies and countries within ASEAN in order to properly respect, protect and fulfill the rights of children.
- AICHR could specifically commission thematic studies relating to child rights within ASEAN.
- Build a centre for research on children in ASEAN that could act as a focal point for data collection, analysis, documenting and sharing good practice within the region.
- Specific research needs to better understand the benefits and threats to children's rights from the imminent implementation of the ASEAN Economic Community 2015 due to the socio-economic diversities within member states.
- Research structural policies and regional attitudes that tend to discriminate against those children who are not part of a family structure; children with disabilities; and conservative attitudes that allow for discrimination because of sexual orientation.
- Study key drivers of dynamism across the region (such as economic growth, globalization, the internet, tourism and infrastructure projects) that are changing the lives of children both for good but may also increase their risks to harm.



# CHAPTER I: INTRODUCTION

## Background

The way children are treated is an issue that Save the Children around the world has been focusing on since its inception with the main objective to achieving positive changes in the lives of children. With the endeavor of promoting and protecting rights and well-beings of the child, Save the Children sees the importance of having a good understanding of the situation for children in the country context in order to inform our strategic decisions at the regional level. Save the Children, therefore, commissioned the Institute of Human Rights and Peace Studies, Mahidol University to carry out a comprehensive Regional Children's Rights Situation Analysis in ASEAN.

The overall purpose of the Regional Children's Rights Situation Analysis is to provide a comprehensive overview and analysis of the current situation of children in ASEAN member countries. The study has four specific objectives namely:

1. To better understand and identify the obstacles and constraints to children enjoying their rights from the perspective of stakeholders: children (girls and boys); other rights-holders; and duty-bearers (including individual Save the Children country offices in ASEAN);
2. To have a macro overview and analysis of the environment: the changes currently taking place in ASEAN/Southeast Asia and the future trends which might positively or negatively impact on the fulfillment of children's rights. Particularly, to identify the trends and issues affecting children at the national and regional levels, and anticipate what children's situation will likely be beyond 2015;
3. To inform strategic decision-making of Save the Children for its Regional Child Rights Governance Program strategy. Further, to provide implications of the regional CRSA for relevant actions at national and ASEAN level engagement;
4. To be used as a basis/reference for regular updating of data/information on the child rights situation within ASEAN.

The study covers the 10 ASEAN member countries: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. The Regional CRSA includes, among others, an examination of current rights violations and its underlying causes, including the accountabilities of duty bearers; analysis of relevant legal frameworks and of the perspectives of other stakeholders, (including children), as well as, looking at the environment of changes taking place and likely to take place over the next three to five plus years and how these may affect children's rights. The purpose is to enable Save the Children and its partner civil society organizations to make the appropriate strategic choices about what needs to be done to improve children's lives, in the context of ASEAN and ASEAN Member States in particular.



## Study Methods

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The study employed mainly desk reviews and field research in three countries where Save the Children does not have presence: namely Brunei, Malaysia and Singapore. The literature reviews start with looking at what information on children's rights issues already exists. This includes looking at country level child rights situation analysis produced by Save the Children Offices in Southeast Asia; situation analyses conducted by/from other agencies and other civil society organizations; and building on the data and evidence that they have already gathered. By examining other sources of literature and policy statements of ASEAN and the AMS, the study also looked at emerging/new children's rights issues or those that Save the Children in Southeast Asia has not worked on in the past so as to balance existing program experience with new opportunities for engagement.

In addition to the desk review of relevant documents, the Study Team also conducted stakeholders' interviews and focus group discussions with children in three of the countries as stated earlier. Two regional consultations were organized with relevant Save the Children staff as well as relevant stakeholders. Although the Study Team tried to apply both quantitative and qualitative data gathering and analysis, quantitative data is scarce in the region and this has implications on analyzing the disaggregation of children's rights data by gender, ethnicity, disability, age. The Study Team received unreserved support from Save the Children, represented by the Manager for the Regional Child Rights Governance (CRG) Program and the Technical Advisor for CRG in Asia.

Specifically, the Study Team undertook the following tasks:

1. Collection and review of secondary data. In light of the availability of a significant amount of secondary data related to the situation of various aspects of child rights in ASEAN, the study primarily focused on the review of the following documents:
  - a) Save the Children country level CRSAs: Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, Vietnam;
  - b) State Reports on the implementation of the Convention on the Rights of the Child submitted to the UN Committee on the Rights of the Child;
  - c) Non Governmental Organizations (NGOs) Alternative Reports submitted to the UN Committee on the Rights of the Child;
  - d) Concluding Observations and Recommendations of the UN Committee on the Rights of the Child;
  - e) Mapping of Stakeholders for the Promotion and Protection of Children's Rights conducted by the Ateneo Human Rights Center;
  - f) Where gaps existed in reporting, data is supplemented from other reports/studies on thematic areas affecting children.
2. Key informant interviews and focus group discussions (FGD) including views and perspectives of children and adult stakeholders in Brunei Darussalam, Malaysia and Singapore. The key informants included categories of adult key informants such as relevant government agencies, International Organizations and the United Nations agencies, civil society groups, and National Human Rights Institutions (where present) etc. Wherever possible, approximately 15 key informants per country were reached. The research teams in three countries organized FGD with specific groups of children (e.g. children in institutions, migrant children, children in education settings) and/or around particular child rights issues (e.g. meaningful child and youth participation) and thematic areas. One to two FGDs per country were undertaken.



3. The findings were presented at two regional consultation workshops.
  - The first regional workshop reviewed the findings from the secondary data collection of the country profiles. The meeting was small and limited to key Save the Children International (SCI) staff and close working partners. The meeting helped in refining research areas for the three country studies and agreeing on the framework for the regional level analysis and priority areas.
  - The second regional workshop had a wider involvement of key regional level stakeholders. The main objective of this workshop was to validate the regional report findings and to seek any final inputs including recommendations.

The Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against women (CEDAW) have been used as the primary framework for the collection and analysis of relevant information. The actual or potential impact of emergencies and climate change on the realization of children's rights were also analyzed. The analysis for the report is also linked to the current mechanisms within ASEAN at the regional level by looking at the commitments, progress and gaps to address issues related to child rights.

The Regional Children Situation Analysis is composed of eight main chapters:

- Introduction
- Contextualizing ASEAN and Children in ASEAN
- ASEAN Standards and Mechanisms for the Promotion and Protection of the Rights of the Child
- Rights-based Analysis to Child Rights (four principles of the CRC)
- Legal Framework and Policies on Child Rights in ASEAN
- Regional Strategic Components
- Critical Issues and Gaps ('Cluster approach')
- Conclusions, Regional Trends and Recommendations

## CHAPTER II: CONTEXTUALIZING ASEAN AND CHILDREN IN ASEAN

### ASEAN at a Glance

The Association of Southeast Asian Nations or ASEAN was established in 1967 with the Bangkok Declaration by five founding members, namely: Indonesia, Malaysia, the Philippines, Thailand and Singapore. Brunei Darussalam joined ASEAN soon after it gained its independence in 1984. Vietnam became full member of ASEAN in 1995 followed by Lao PDR and Myanmar in 1997 and then Cambodia in 1999. Timor Leste is still waiting for being accepted as a full member of ASEAN. After 40 years of its existence without legal basis, ASEAN adopted, in 2007, the ASEAN Charter which entered into force in December 2008. ASEAN, therefore, became a legal entity with legal basis.

Out of seven objectives of ASEAN at its inception two are the most relevant here:

- to accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for prosperous and peaceful Southeast Asian nations;
- to promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific, and administrative fields.

To this end, ASEAN leaders agreed in 2003 that an ASEAN Community shall be established. The Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015 was signed by ASEAN leaders in 2007.<sup>1</sup>

The ASEAN Community is comprised of three pillars, namely: the ASEAN Political-Security Community; the ASEAN Economic Community; and the ASEAN Socio-Cultural Community and each have its own blueprint. In 2009, the Roadmap for an ASEAN Community 2009-2015 was adopted. While ASEAN set itself to achieve the ASEAN Economic Community by the end of 2015, because of sensitivity that emanated from differences in political systems and socio cultural diversities, it has proved challenging to build political-security and socio-cultural communities by the set deadline.

The 2008 ASEAN Charter, for the first time, formally recognized the promotion and protection of human rights and fundamental freedoms as well as the strengthening of democracy, governance, and rule of law in its purposes. The Charter also prescribed the enhancement of the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice.<sup>2</sup> The adherence to rule of law, good governance, the principles of democracy and constitutional government as well as respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice were again re-stated in article 2 of the ASEAN Charter.<sup>3</sup>

<sup>1</sup> ASEAN Overview, [asean.org](http://asean.org), accessed 14 October 2015.

<sup>2</sup> ASEAN Charter, [asean.org](http://asean.org), *ibid*.

<sup>3</sup> *Ibid*.

To concretize these purposes and principles, the ASEAN Charter prescribes, in article 14, the establishment of an ASEAN human rights body with the Terms of References (TORs) to be determined by the ASEAN Foreign Ministers Meeting. This was included in the political-security blueprint. As for the purpose of “enhancement of the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice”, this was reflected in the Socio-Cultural Blueprint. The Blueprint, as said in its introduction, “represents the human dimension of ASEAN cooperation and upholds ASEAN commitment to address the region’s aspiration to lift the quality of life of its peoples”<sup>4</sup> aiming at “building a caring and sharing society which is inclusive and where the well-being, livelihood, and welfare of the people are enhanced”.<sup>5</sup> A detailed analysis of the socio-cultural blueprint will be undertaken in the next section. To be noted at this stage however are that issues of poverty alleviation, social safety net and protection from the negative impacts of integration and globalization, access to healthcare and promotion of healthy lifestyles, to name but a few, were included. Under the section social justice and rights, rights and welfare of “disadvantaged, vulnerable and marginalized groups such as women, children, the elderly, persons with disabilities and migrant workers”<sup>6</sup> were mentioned. The first action point of the blueprint prescribes “working towards the establishment of an ASEAN commission on the promotion and protection of the rights of women and children”.<sup>7</sup>

It is important to note as well that the ASEAN structure is quite complex in nature as one issue could be dealt with by different entities. The issues relating to children primarily fall under the purview of the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) but it could be also addressed by ASEAN Ministerial Meeting on Disaster Management, ASEAN Education Ministers Meeting, ASEAN Health Ministers Meeting, ASEAN Labor Ministers Meeting, ASEAN Ministerial Meeting on Women, and ASEAN Ministerial Meeting on Youth. However, it’s to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) that the ASEAN commission on the promotion and protection of the rights of women and children is reporting.

## ASEAN and its Peoples

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As of 2015, ASEAN was home of approximately 630 million people with an average population growth rate of 1.2 %. Indonesia has the highest population of about 256 million and Brunei with population less than half a million (see Table 1). The highest population growth rate is found in Lao PDR and the Philippines followed by Brunei, Cambodia and Indonesia. Thailand and Myanmar have the lowest population growth.

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4 ASEAN Socio-Cultural Blueprint, Ibid.

5 Ibid.

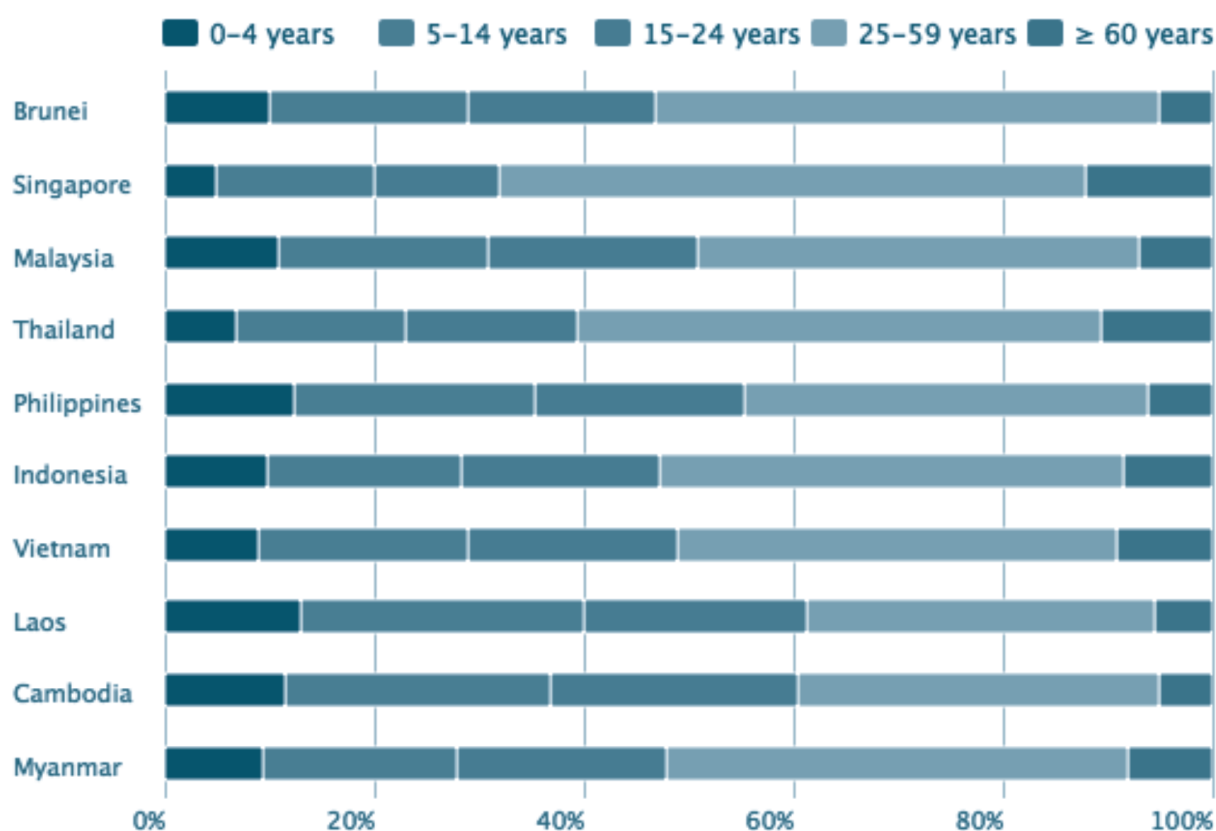
6 Ibid.

7 Ibid.

**Table 1: ASEAN population**

Country	2014	2015	Population growth /%
Brunei Darussalam	423,205	428,539	1.7
Cambodia	15,408,270	15,677,059	1.5
Indonesia	252,812,245	255,708,785	1.3
Lao People's Democratic Republic	6,894,098	7,019,652	1.9
Malaysia	30,187,896	30,651,176	1.0
Myanmar	53,718,958	54,164,262	0.9
Philippines	100,096,496	101,802,706	1.9
Singapore	5,517,102	5,618,866	1.3
Thailand	67,222,972	67,400,746	0.6
Viet Nam	92,547,959	93,386,630	1.0
<b>Total</b>	<b>624,829,201</b>	<b>631,858,421</b>	<b>1.2</b>

Source: Statistics Times 27 March 2015 at <http://statisticstimes.com/population/asian-countries-by-population.php> and Selected Basic ASEAN Indicators, August 2015. [http://www.asean.org/images/2015/september/selected-key-indicators/table1\\_as%20of%20Aug%202015.pdf](http://www.asean.org/images/2015/september/selected-key-indicators/table1_as%20of%20Aug%202015.pdf), accessed 13 October 2015.

**Table 2: ASEAN population age group.**

Source: <https://www.google.co.th/search?q=population+structure+of+ASEAN&biw=1280&bih=913&tbm=isch&tbo=u&source=univ&sa=X&ved=0ahUKEwj7iOqnvNXJAhUCH44KHZtiAyEQsAQIUA>, accessed 13 October 2015.

As appears in Table 2, 20 % of the ASEAN population is below 14 years of age while about 40% of the total population is below 25 years old. However, the statistics in Tables 3 and 4 (compiled by ASEAN in 2013) reveal that 38.1 % of population in ASEAN is below 19 years old. Cambodia, Lao PDR and the Philippines have more than 30% of children due to the high population growth rate and fertility rate while Singapore has the lowest percentage of children followed by Thailand and Vietnam. Singapore and Thailand are now considered as 'aging societies'. In term of sex ratio, ASEAN average looks equal but if we examine in more detail, it can be found that Brunei and Malaysia have a higher percentage of male population while in Cambodia, Myanmar, Singapore, Thailand and Vietnam the percentage of females is higher than male.

**Table 3: ASEAN population by age group in 2013**

Country	Number ('000)						Percentage					
	0-4	5-19	20-54	55-64	> 65	Total	0-4	5-19	20-54	55-64	> 65	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Brunei Darussalam	32	103	230	27	16	406	7.9	25.3	56.5	6.5	3.8	100.0
Cambodia	1,584	4,629	7,235	852	662	14,963	10.6	30.9	48.4	5.7	4.4	100.0
Indonesia	23,994	67,173	127,636	17,143	12,872	248,818	9.6	27.0	51.3	6.9	5.2	100.0
Lao PDR	947	2,255	2,876	321	244	6,644	14.3	33.9	43.3	4.8	3.7	100.0
Malaysia	2,579	8,063	15,524	2,134	1,648	29,948	8.6	26.9	51.8	7.1	5.5	100.0
Myanmar	5,735	17,801	30,253	4,153	3,626	61,568	9.3	28.9	49.1	6.7	5.9	100.0
Philippines	11,226	30,542	46,895	6,098	4,624	99,385	11.3	30.7	47.2	6.1	4.7	100.0
Singapore <sup>1)</sup>	183	687	2,067	503	404	3,845	4.8	17.9	53.8	13.1	10.5	100.0
Thailand	3,919	14,237	37,035	7,124	5,936	68,251	5.7	20.9	54.3	10.4	8.7	100.0
Viet Nam	7,625	21,351	47,097	7,266	6,369	89,709	8.5	23.8	52.5	8.1	7.1	100.0
ASEAN <sup>2)</sup>	57,825	166,840	316,848	45,622	36,401	623,536	9.3	26.8	50.8	7.3	5.8	100.0

Source: ASEAN Member States' data submission

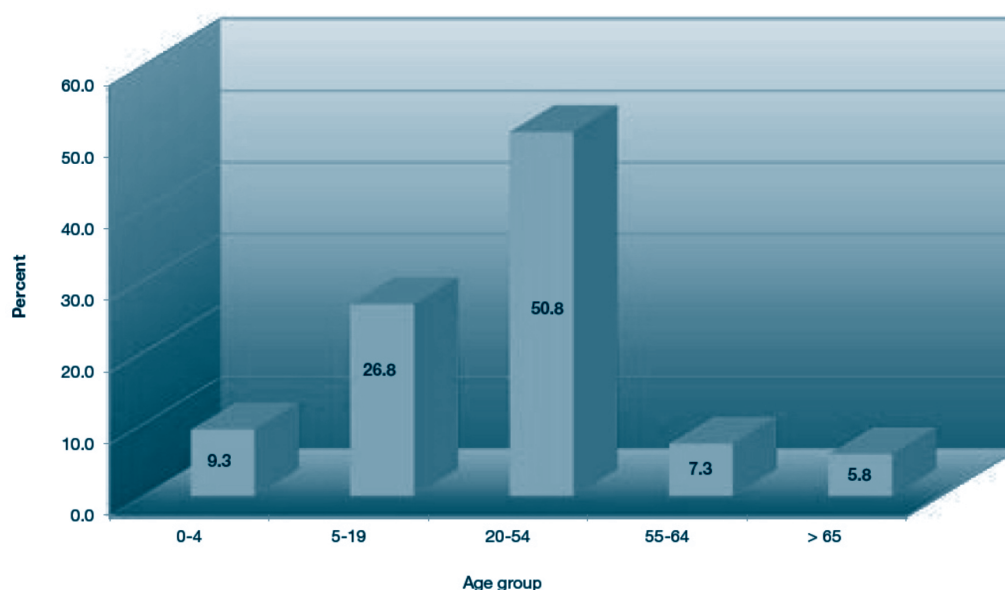
Notes: 1) Total Singapore residence only -- different with total population in Table 1.1

2) Total ASEAN excludes Singapore's non-residents population

Source: ASEAN Yearbook, 2014, <http://www.asean.org/images/2015/July/ASEAN-Yearbook/July%202015%20-%20ASEAN%20Statistical%20Yearbook%202014.pdf> accessed 13 October 2015.

**Table 4: ASEAN population by age group**

**Graphic I.2.  
ASEAN Population by Age Group, 2013**



Source: ASEAN Yearbook, 2014, <http://www.asean.org/images/2015/July/ASEAN-Yearbook/July%202015%20-%20ASEAN%20Statistical%20Yearbook%202014.pdf> accessed 13 October 2015.

**Table 5: Population by sex**

Country	Number ('000)			Percentage			Sex Ratio
	Male	Female	Total	Male	Female	Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Brunei Darussalam	210	196	406	51.8	48.2	100.0	107.4
Cambodia	7,320	7,642	14,963	48.9	51.1	100.0	95.8
Indonesia	125,051	123,767	248,818	50.3	49.7	100.0	101.0
Lao PDR	3,320	3,324	6,644	50.0	50.0	100.0	99.9
Malaysia	15,396	14,552	29,948	51.4	48.6	100.0	105.8
Myanmar	30,432	31,136	61,568	49.4	50.6	100.0	97.7
Philippines	49,946	49,439	99,385	50.3	49.7	100.0	101.0
Singapore <sup>1)</sup>	1,892	1,953	3,845	49.2	50.8	100.0	96.8
Thailand	33,481	34,770	68,251	49.1	50.9	100.0	96.3
Viet Nam	44,454	45,255	89,709	49.6	50.4	100.0	98.2
ASEAN <sup>2)</sup>	311,502	312,034	623,536	50.0	50.0	100.0	99.8

Sources: ASEAN Member States' data submissions

Notes: 1). Using Singapore residents structure and total residents  
2). Total ASEAN exclude Singapore's non-resident's population

Source: ASEAN Yearbook, 2014, <http://www.asean.org/images/2015/July/ASEAN-Yearbook/July%202015%20-%20ASEAN%20Statistical%20Yearbook%202014.pdf> accessed 13 October 2015.

If we look at some other statistics which are crucial for child development such as education, it's found that the average literacy rate in ASEAN is rather high as in 8 out of 10 ASEAN countries the literacy rate is higher than 94% (with Brunei and Singapore scoring the highest at 97.2% and 96.5% respectively). The lowest literacy rates are found in Cambodia and Lao PDR, at 80.7% and 79.0% respectively.<sup>8</sup> Net enrollment in school by sex ratio is far from being complete which shows the challenges for having disaggregated statistics not only by age but also by sex.

## **Children in ASEAN: The perspective before the advent of ACWC<sup>9</sup>**

The examination of ASEAN documents done in 2009 before the establishment of the ASEAN Commission on the Protection and Promotion of the Rights of Women and Children (ACWC) reveals that children and youth have been mentioned in various official policy documents of ASEAN and have been included as part of Functional Cooperation programs,<sup>10</sup> the focus has largely been on youth development and youth employment. The declarations issued by ASEAN clearly show the emphasis ASEAN places on youth as since 1983 there have been a number of declarations pertaining to youth. Since then, ASEAN has adopted other documents (and issued a number of press releases each year) recognizing the importance of youth development and youth participation in the development of ASEAN. On the ASEAN website there is an entry on Youth and Children (although the information provided is mainly about youth).<sup>11</sup> In the 12th ASEAN Summit's Cebu Declaration, entitled Towards One Caring and Sharing Community, ASEAN leaders agreed to prepare ASEAN youth for regional leadership and to increase the competitiveness of the peoples of Southeast Asia through education. The programs on youth were incorporated into the Vientiane Action Program (VAP) which states that "The VAP urges increased participation of youth in the productive workforce, and encourages their entrepreneurship and employability, leadership and regional awareness".

Although youth matters are given prime priority in ASEAN as compared to children issues, the commitment of ASEAN to the development and welfare of children is not negligible. The Resolution on The ASEAN Plan of Action for Children (adopted in Manila, Philippines on 2 December 1993) is the first document in ASEAN dealing directly with children's issues. The Plan followed closely the 1990 World Declaration on the Survival, Protection and Development of Children and Plan of Action for Child Survival, Protection and Development by prescribing three areas of concern - child survival, child protection, and child development. Although the details of the Plan substantially reflect the content of the CRC, the term 'rights of the child' is not used in any part of the document.

For the effective implementation of the Plan, the Resolution designated a Children's Desk Officer both at ASEAN and at national levels to coordinate regional programs on children with relevant bodies and committees of ASEAN involved in children's issues. The Senior Officer position is meant to assist in coordinating the implementation of the programs for children in the absence of an institutionalized

8 ASEAN Yearbook, 2014, <http://www.asean.org/images/2015/July/ASEAN-Yearbook/July%202015%20-%20ASEAN%20Statistical%20Yearbook%202014.pdf> accessed 13 October 2015. Statistics showed are for 2013.

9 This part of the paper is based on the study done in 2009. Sriprapha Petcharamesree et al, Towards an ASEAN Commission for the promotion and protection of rights of women and children, Working Group for an ASEAN Human Rights Mechanism, Manila, 2009. Updates have been made for this research.

10 ASEAN Functional Cooperation is related to the scope and activities of cooperation in specific areas such as the ASEAN Committee on Science and Technology (COST), the ASEAN Experts Group on the Environment (AEGE), and the ASEAN Committee on Culture and Information. It also includes the ASEAN Committee on Social Development. There are also the task forces on women, health and nutrition, youth education, labor, disaster management, and HIV/AIDS, etc. The Functional Cooperation was put under different communities under the new ASEAN structure, see details <http://www.asean.org/storage/images/archive/21071.pdf>, accessed 6 February 2016.

11 This has changed. The entry on ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) immediately refers to ACWC and nothing else.



sub-committee on children. ASEAN put a time frame to “achieve the objectives of the ASEAN Plan of Action for Children by the year 2000.”

Apart from the Hanoi Plan of Action and the ASEAN Declaration against Trafficking in Persons, particularly Women and Children, adopted in Vientiane in 2004, another important document which reflects the commitment of ASEAN to children is the Declaration on the Commitments for Children in ASEAN adopted in Singapore in August 2001. This time the document was guided by the CRC, the outcomes of the World Summit on Children, the World Summit for Social Development and other international instruments concerning children. This document is seen as ‘a human rights-based’ document as it fully incorporates the very essence and spirit of the CRC and relevant documents relating to rights of the child. The very first four points are remarkable in that they declare to:

- (1) “Promote regional cooperation for the survival, development, protection and participation of ASEAN children, as an integral part of ASEAN’s efforts to improve the lives of peoples in the region.
- (2) Intensify ASEAN economic and social development cooperation so as to eradicate the scourges of poverty, hunger and homelessness, which have a far-reaching impact on children, in order to promote their welfare and well-being.
- (3) Protect, respect and recognize the rights of all children, including those of indigenous people, consistent with the customs and traditions of their respective communities.
- (4) Recognize and encourage respect for children’s rights through mutual sharing of information on the rights of the child by ASEAN members, taking into account the different religious, cultural and social values of different countries”.

In fact, the 18 points of agreement prescribed in the Declaration on the Commitments for Children in ASEAN 2001 follow precisely the provisions enshrined in the CRC. While the implementation of the Declaration is hard to trace, by looking at the list of projects one may see the initiatives (and/or efforts) made by ASEAN. In 2002, a number of projects pertaining to children were identified and formulated at the ASEAN level. These included projects on juvenile justice, ASEAN computer-based information networks for families and child development, the development of a homepage on ASEAN children, hosting a symposium on children in especially difficult circumstances, studies on child abuse and neglect, a feasibility study and workshop on the establishment of ASEAN Regional Center for Family and Child Development, and projects on early child care and development. The implementation of the commitments made at the ASEAN level was to be done at the national level.

It should be noted that while there was an ASEAN Committee on Youth and an ASEAN Committee on Women, the ASEAN Sub-Committee on Children mentioned in the Resolution on The ASEAN Plan of Action for Children of 1993 has yet to be established. In fact, the issues relating to children have been in the works of the ASEAN Committee on Social Development for some time. In 2006 the ASEAN Strategic Framework and Plan of Action for Social Welfare, Family and Children (2007 – 2010) was adopted by the Fourth ASEAN Senior Officials Meeting on Social Welfare and Development. In the Joint Communiqué of the Sixth ASEAN Ministerial Meeting for Social Welfare and Development (made public in Hanoi on 6 December 2007) children, along with the elderly and women, are considered “socially vulnerable groups.” For ASEAN, they require the provision of social welfare and “social development activities with sustained impact both nationally and regionally” as stated in the Joint Statement. A rights-based perspective has not been, in any instance, articulated in the document. The establishment of an ASEAN Commission on the promotion and protection of the rights of women and children specified in the VAP and then in the ASEAN Socio-Cultural Community was therefore a big step towards programs and projects based on a rights-based approach in ASEAN. The next section will examine the ASEAN standards and mechanisms already put in place after the establishment of the AICHR and the ACWC.



## CHAPTER III: ASEAN STANDARDS AND MECHANISMS FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE CHILD

### Commitments and Implementation So Far: Reflections

As mentioned in the previous section, the Socio-Cultural Blueprint (2009-2015) aimed at enhancing well-being, livelihood, and welfare of the peoples. It also provided for the promotion of human and social development, respect for fundamental freedoms, gender equality, the promotion and protection of human rights and the promotion of social justice.<sup>12</sup> This is an echo of the Political and Security Community Blueprint which is not only aiming at: “promot(ing) political development in adherence to the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms as inscribed in ASEAN Charter”.<sup>13</sup> It also has one whole section on Promotion and Protection of Human rights with seven action points which include among others the establishment of an ASEAN commission on the promotion and protection of the rights of women and children.<sup>14</sup> The Blueprint also incorporated non-traditional issues such as combating transnational crimes and other transboundary challenges, cooperation on disaster management and emergency response, and protection of victims of trafficking, among others.<sup>15</sup>

The ASEAN Socio-Cultural Community Blueprint, as mentioned, has identified children among “disadvantaged, vulnerable and marginalized groups”. However, if compared with the period before the adoption of the Blueprint in 2009, the ASEAN commitment to rights and welfare of children is more explicit (as already explained in the previous section). Different sections of the Blueprint could be interpreted to include children as its target such as human development aiming at achieving universal access to primary education, promoting child care and development<sup>16</sup>, social welfare and protection under which ASEAN has committed to “enhancing the well-being and the livelihood of the peoples of ASEAN through alleviating poverty, ensuring social welfare and protection, building a safe, secure and drug free environment, enhancing disaster resilience and addressing health development concerns”.<sup>17</sup>

<sup>12</sup> ASEAN Socio-Cultural Community Blueprint, [asean.org](http://asean.org), accessed 13 October 2015.

<sup>13</sup> ASEAN Political-Security Community Blueprint, Ibid.

<sup>14</sup> which include, among others, i) establishment of ASEAN human rights body; ii) complete a stock-take of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children by 2009; iii) cooperate closely with efforts of the sectoral bodies in the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers; strengthen interaction between network of existing human rights mechanisms as well as other civil society organizations, with relevant ASEAN sectoral bodies; and vii) cooperate closely with efforts of the sectoral bodies in the establishment of an ASEAN commission on the promotion and protection of the rights of women and children. Ibid.

<sup>15</sup> Ibid (B.4.1).

<sup>16</sup> with action points including

- a) Achieving universal access to primary education across ASEAN by 2015 with priorities to eradicate illiteracy and to ensure compulsory primary education for all and gender equality in education through advocating for equal opportunity in education regardless of social class, geographical ethnicity, and background or physical disabilities...;
- b) Improve the quality and adaptability of education...
- c) Use ICT to promote education and life-long learning particularly underserved communities...
- d) Promote equal access to education for women and girls and enhance the exchange of best practices on gender-sensitive school curriculum;
- e) Establish platforms for networking and sharing of best practices on ASEAN children and youth development strategies and tools;
- f) Promote early child care development through sharing of best practices, experiences and capacity building;

<sup>17</sup> The strategy identified different actions including

- a) Develop and implement an ASEAN Roadmap towards realizing the UN MDGs;
- b) ...narrowing the development gap within ASEAN;
- c) Intensify efforts to implement projects related to poverty alleviation particularly in area of rural infrastructure, water supply, sanitation...;
- d) Aiding families living under poverty with appropriate support system...;

In addition, some other actions were identified under the social safety net and protection from the negative impacts of integration and globalization namely:

- a) Undertake a survey of existing social protection regimes in ASEAN;
- b) Establish a network of social protection agencies to promote the well-being and living conditions of the poor, vulnerable, underserved and disadvantaged groups affected by the impacts of integration process and globalization;
- c) Develop appropriate actions and preventive measures against the use of internet and pornography which exploit women, children, and other vulnerable groups;

There are other strategies and action points which are directly or indirectly related to the rights and welfare of the child, such as: access to healthcare and promotion of healthy styles, improving capability to control communicable diseases, ensuring a drug free ASEAN, building disaster-resilient nations and safer communities, ensuring environmental sustainability, addressing global environmental issues, managing and preventing transboundary environmental pollution which includes transboundary haze pollution, transboundary movement of hazardous wastes, promoting environmentally sound technology responding to climate change and addressing its impacts, etc.<sup>18</sup>

However, the strategy which is most directed to children and other groups is social justice and rights. It provides for the promotion and protection of the rights and welfare of women, children, the elderly, and persons with disabilities, migrant workers, and promoting corporate social responsibility. Actions which are directed to children include:

- a) Work towards the establishment of an ASEAN commission on the promotion and protection of the rights of women and children;
- b) Continue to implement the Work Plan to Operationalise the Declaration on Elimination of Violence Against Women;
- c) Implement programs on child survival, development and protection consistent with the CRC;
- d) Establish an ASEAN network of social workers by 2013;
- e) Support activities in promoting and developing care and welfare and the quality of life and well-being of the elderly, persons with disabilities, women and children living under poverty;
- f) Develop and implement program to assist children living under disadvantaged and vulnerable conditions.<sup>19</sup>

It is important to note that although the four pillars of the CRC were mentioned in the ASEAN Plan of Action for Children, the term “rights” and the CRC were not referred to in the document. The ASEAN Socio-Cultural Community Blueprint is explicit whereby it states that it will “implement programs on child survival, development and protection consistent with the CRC”. It is interesting to see that the other two principles namely child participation and the best interest of the child were not mentioned in the document. Also, for the first time, a mechanism, supposedly to “monitor” the implementation of the CRC was prescribed.

The commitment of ASEAN to the promotion and protection of the rights of the child is clearly there but how much those strategies and actions have been implemented so far is questionable.

<sup>18</sup> For further details, see ASEAN Socio-Cultural Community Blueprint, Ibid.

<sup>19</sup> Ibid.

The mid-term review of the ASEAN Socio-Cultural Community Blueprint (2009-2015) published in 2014<sup>20</sup> assessed the implementation of the Blueprint both at regional and national levels. It was stated in the report that out of 339 action lines, about 90% have been addressed.<sup>21</sup> It is important for this research to look at two characteristics with strategies which are directly relevant to the rights and welfare of the child, namely human development and rights and social justice. The report reveals that:

‘With 57 out of 61 action lines (~93%) having been addressed, the implementation of the human development characteristic is positively progressing towards realizing its goal to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to human development opportunities. This is confirmed by statistics showing the average number of school years completed by the adult population increased from 7.5 years for ASEAN-6 and 4.6 years for Cambodia, Laos, Myanmar and Viet Nam (CLMV) in 2005 to eight years and five years respectively in 2010. The literacy rate of the youth population across ASEAN-6 countries inched closer to 100 per cent while the CLMV<sup>22</sup> countries have significantly improved their literacy rate from around 81 per cent in 2009 to 92 per cent in 2010. Data from UNESCO and Viet Nam show that this rate was more than 93% in Viet Nam in 2010’<sup>23</sup>

The report goes further by stating that:

‘with regard to the education gap between ASEAN-6<sup>24</sup> and CLMV countries, the recent publication, entitled *Narrowing the Development Gap in ASEAN: Drivers and Policy Options*, shows that the gap between the ASEAN-6 and the CLMV countries in terms of the Human Development Index (HDI) has been decreasing over the past decade. In the overall implementation of the social welfare and protection characteristic, progress is more than satisfactory as activities relevant to 91 out of 94 action 2 ASEAN Community Progress Monitoring System 2012 (ASEAN, 2013) Mid-Term Review of the ASCC<sup>25</sup> Blueprint’<sup>26</sup>

However, as the report reveals, less than 79% (21 out of 28) of action lines under the social justice and rights characteristic have been implemented.<sup>27</sup> However, it was reported that ‘Institutional mechanisms to facilitate cooperation to promote social justice and rights of vulnerable groups have been strengthened with the establishment of the ACWC, and the ongoing development of an ASEAN instrument for the protection and promotion of the rights of migrant workers’.<sup>28</sup> In addition, the ‘5th Senior Officials Meeting on Social Welfare and Development held on 3-4 December 2008 in the Philippines and the Preparatory Senior Officials Meeting for the 7th AMMSWD<sup>29</sup> on 23-24 November 2010 in Brunei Darussalam helped in the formation of the ASEAN Children’s Forum, which serves as a platform for children’s participation at the regional level’.<sup>30</sup> The ASEAN Decade of Persons with Disabilities 2011-2020 proclaimed at the 19<sup>th</sup> ASEAN Summit in 2011 has been translated into joint efforts. Nevertheless, challenges have remained in the implementation of the human rights and social justice component of the Blueprint.

20 ASEAN, *The Mid-Term Review of the ASEAN Socio-Cultural Community Blueprint(2009-2015) : Regional Assessment*, The ASEAN Secretariat, Jakarta, 2014, asean.org, accessed 14 October, 2015.

21 Ibid, (xiii,xv).

22 Cambodia, Lao PDR, Myanmar and Vietnam

23 Ibid.

24 ‘ASEAN + 6’ refers to Australia, China, India, Japan, New Zealand, and South Korea.

25 ASCC-ASEAN Socio-Cultural Community

26 Ibid.

27 Ibid.

28 Ibid.

29 ASEAN Ministerial Meeting of Social Welfare and Development

30 Ibid.

The mid-term review of the ASEAN Socio-Cultural Community Blueprint (2009-2015) argues that ‘many of the activities implemented are categorized under confidence building and joint efforts with the challenge of advancing some of these towards harmonization or developing regional implementing mechanisms. A feature under this characteristic is the continuing engagement with civil society through sectoral dialogue platforms and partnerships with Dialogue Partners that augur well for long-term sustainability.’<sup>31</sup>

At national level, the report, although noting some satisfaction with progress, mentions that ‘implementation produces challenges as some AMS mentioned bottlenecks occurring with regards to resources like funding, expertise and human resources. Coordination with different sectoral bodies is also challenging as some AMS found duplication in implementation among sectoral bodies.’<sup>32</sup> The report further points out that ‘challenges faced by AMS in the implementation of the ASCC Blueprint relate to financial and human resources, technical expertise or language proficiency, coordination and cross-sectoral mechanisms, problems on the use of the ASCC monitoring tools, and awareness of the ASCC Blueprint among government officials and the general public.’<sup>33</sup> It remains to be seen if the standards and mechanisms that exist in ASEAN could contribute to overcoming some of those challenges.

## Existing Relevant Regional Documents and Mechanisms Pertaining to Children

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Member States of ASEAN have been active in participating in the UN’s existing human rights regime. Although with varying degrees of engagement, it could be said that AMS have been attempting to be on the train of human rights at the global level.

The next chapter will show in more detail the commitment of AMS to international human rights instruments. However, the ratifications of international human rights treaties, as will be seen, vary from one country to another ranging from so-called human rights ratifying “champions” such as Cambodia and the Philippines to very limited ratifications as evident in the cases of Brunei Darussalam, Singapore and Malaysia. One has to remember that all international human rights instruments recognize the rights of everyone which also includes children. Unfortunately, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) which includes “members of families” was only ratified by two countries, the Philippines and Cambodia, while Indonesia has signed but not yet ratified. In addition to international human rights instruments, AMS are also parties to some core ILO Conventions including the ILO Conventions on minimum age and child labor.

At the regional level, there are a number of policy documents: namely the ASEAN Declaration against Trafficking in Persons, particularly Women and Children adopted in 2004; the Joint Declaration and ASEAN Roadmap on the Attainment of the Millennium Development Goals in ASEAN; the Brunei Darussalam Declaration on Strengthening Family Institution; the Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children; the Declaration on the Commitments for Children in ASEAN; the Resolution on the ASEAN Plan of Action for Children; the ASEAN Declaration on Strengthening Social Protection and its Regional Framework and Action Plan to Implement the ASEAN Declaration on Strengthening Social Protection; the ASEAN Declaration on the Protection and Promotion

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

of the Rights of Migrant Workers and the ASEAN (2007); and the ASEAN Human Rights Declaration (AHRD 2012). In addition, ASEAN adopted in November 2015 the ASEAN Plan of Action on Elimination of Violence against Children and the ASEAN Plan of Action on Elimination of Violence against Women. It is important to note here as well that during the 27<sup>th</sup> ASEAN Summit, the ASEAN Leaders adopted the ASEAN Convention against Trafficking in Persons, Especially Women and Children - one of the very few legally binding documents that ASEAN has ever adopted.

In addition to the child specific or child relevant policy and legal documents mentioned, ASEAN has recently adopted some other documents which may contribute to the promotion and protection of child rights such as the Declaration on ASEAN Post-2015 Environmental Sustainability and Climate Change Agenda and the Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together. The latter is the new Blueprint for ASEAN Community building. The two documents will be examined in the successive sections.

Since the entry into force of the ASEAN Charter, ASEAN has established human rights institutions for the promotion and protection of the rights of people in ASEAN. These include the ASEAN Intergovernmental Commission on Human Rights, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, and, to a certain extent, the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

### **ASEAN Convention against Trafficking in Persons, particularly Women and Children**

As mentioned, ASEAN adopted in 2004 the ASEAN Declaration against Trafficking in Persons, particularly Women and Children. AMS pledged to adopt measures in order to prevent fraudulent use of passports and official travel and identity documents, exchanging information on migration flows, trends and patterns, improve victim identification and protection procedures, take coercive measures against people trafficking and strengthen regional and international cooperation to prevent and combat trafficking through the establishment of a regional focal network. Although the Declaration shows the seriousness of the issues as well as the commitment of ASEAN (recognizing the regional nature of the problem), the Declaration only requires Member States to take measures “to the extent permitted by their respective domestic laws.” In terms of implementation, ASEAN has not made much progress in addressing this ever-growing regional problem. Even though the ASEAN Ad-Hoc Interagency group was established in 2006, the efforts of ASEAN are limited to the areas of information exchange, training of responsible officials and law enforcement agencies, and workshops. In addition, although the issue of human trafficking was included in the Political and Security Community blueprint adopted by ASEAN in 2009 under the Section B.4 Non –Traditional Security Issues, “ASEAN States continue to treat the problem of human trafficking as an ordinary crime not as a security problem that poses existential threat that requires extraordinary measures.”<sup>34</sup> It is to be noted here that trafficking of children is considered as a crime without any exception.

It has to be acknowledged that ASEAN has been giving attention to the issue of human trafficking. After long negotiations, the ASEAN Convention against Trafficking in Persons, particularly Women and Children which was adopted in November 2015 by the ASEAN leaders and is subjected to six ratifications in order to enter into force. The Convention is distinctive in many ways. First, it is not very often that ASEAN departs from its usual “consensus” principle as the Convention requires 6 out of 10 ratifications for the entry into force. This is considered a progressive way of moving forward. Second, the definition of trafficking as defined by article 2 (a) is inclusive in the sense that it follows more or less the definition of the trafficking protocol (although the phrase “wherever applicable” was mentioned

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34 Rizal Sukma, 2008



as not all AMS are party to the Palermo Protocol). The same article defines a child as “any person under 18 years of age”<sup>35</sup>. Considering the fact that not all AMS define a child in accordance to the CRC, this definition is a progressive move as well. The Convention also prescribes criminalization, prevention, areas of cooperation, protection of victims at different stages, law enforcement and prosecution as well as mutual legal assistance, and extradition.

Despite progressive elements in the Convention, ASEAN still sticks to the notion of protection of state sovereignty as appearing in articles 4 and 12 which specify that cooperation will be in conformity with the domestic laws of respective parties.<sup>36</sup> It further states in article 18 that in relation to mutual legal assistance in criminal matters, it is also “subject to their respective domestic laws.”<sup>37</sup> This is the reiteration of what was specified in the ASEAN Declaration against Trafficking in Persons, particularly Women and Children as discussed earlier. This has impacts on the proper implementation and monitoring of the Convention itself. Moreover, the Convention does not prescribe the establishment of an independent monitoring body. Instead, the Convention entrusts “the ASEAN Senior Official Meeting on Transnational Crime to be responsible for the monitoring, reviewing and reporting periodically on the effective implementation of this Convention”<sup>38</sup> One would expect either AICHR or ACWC or both to implement those mandates but unfortunately this is not the case.

### **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers**

The issue of labor migration has also been a concern in Southeast Asia. In 2007, as initiated by the Philippines, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Declaration, in a way, articulated a more rights-based approach to migration. However, this approach was immediately countered by the Member States recognizing that “the sovereignty of states in determining their own migration policy relating to migrant workers, including determining entry into their territory and under which conditions migrant workers may remain.” This particular preamble weakens the whole Declaration as it curtails any possibility for any regional approach to migration and migrant workers. Each state has full authority to deal with migrant workers including child migrant workers in spite of the regional recognition for the need to address cases of abuse and violation. The Preamble was further strengthened by the general principles which essentially say that the treatment of migrant workers will be in accordance with the laws, regulations, and policies of respective ASEAN Member countries. Moreover, the Declaration is not to be interpreted as “implying the regularization of the situation of migrant workers who are undocumented.” The Declaration does not provide any provisions on the protection of irregular migrant workers in ASEAN. As we know, many children are working in a country other than their own and have irregular status. Moreover, the Declaration does not include members of family of migrant workers.

In order to follow up the implementation of the Declaration, ASEAN established the ASEAN Committee on the Implementation of the ASEAN Declaration on the protection and promotion of the Rights of Migrant workers (ACMW) in 2007. It was tasked to conduct an annual ASEAN Forum on migrant workers, develop an ASEAN instrument on migrant’s workers’ rights, prepare pre-departure information for ASEAN migrant workers and to collaborate with relevant international organizations on “Safe Migration” campaigns and pre-departure literature to migrants as well as to strengthen the dialogues between the ACMW and those working on human smuggling and trafficking. The ACMW has been making very

35 The ASEAN Convention against Trafficking in Persons, particularly Women and Children , Article 2, <http://www.asean.org/images/2015/November/actip/ACTIP.PDF>, accessed 9 December 2015.

36 Ibid.

37 Ibid.

38 Ibid.

slow progress in fulfilling its mandates due to sensitivity of the issue and the lack of consensus among members.

The ACMW has been making even slower progress in terms of drafting the 'ASEAN Instrument' tasked by the ASEAN Labor Ministers Meeting. The Task Force on ASEAN Migrant Workers noted in its document published in March 2014 that "there are challenges to be overcome before the instrument agreement by ASEAN Member states as the sending countries aspire for a legally binding regional "agreement" but other mostly receiving countries are bargaining for non-legally binding guidelines. There are also fundamental differences in drafting process of the content, like the definition and scope of migrant workers, which has already resulted in four years of deadlock. The protection of the rights of the migrant workers in the legal framework instrument should become the priority to progress toward an ASEAN community with social justice by 2015." Indeed, the differences in attitude, policies, laws regarding migrant workers and their rights make it difficult for the ACMW to finally come up with a draft instrument.

To be noted, the overall policies and work plan on workers (and migrant workers) are overseen by the ASEAN Labor Ministers and the Senior Labor Officials Meetings (SLOM). The ASEAN Labor Ministers' Work Program 2010-2015 identifies a number of thematic areas and actions including a few on child labor namely to "study the development of regional guidelines with respect to eliminating the worst forms of child labor". The Work Plan tasks SLOM to "coordinate, as the need arises, with the AICHR and other ASEAN bodies in protecting labor rights, including migrant workers' rights."

### **Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN**

The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN was adopted at the 23rd ASEAN Summit in 2013. As identified in this study, all ASEAN countries, to different degrees, show that children have been victims of violence in different forms. In 2004, ASEAN has adopted the Declaration on the Elimination of Violence against Women, so, the new Declaration added Elimination of Violence against Children to it. The Declaration acknowledges that it should play a complementary role to existing international mechanisms, noting that ASEAN Member States commit to strengthen national mechanisms in "implementing, monitoring and reporting the implementation of the Concluding Observations and Recommendations of CEDAW, CRC and other Treaty Bodies as well as the accepted recommendations under the Universal Periodic Review Process of the United Nations Human Rights Council related to the elimination of all forms of violence against women and violence against children".

The declaration recognizes that violence against women and violence against children can occur "in public or private (including cyber space)". It also includes a long list of specific forms of violence and vulnerable groups to be addressed by Member States, including "domestic violence, women and children who are sexually exploited, women and children with disabilities, women and children living with and affected by HIV and AIDS, women and children in conflict with laws, cyber pornography and cyber prostitution, trafficking in women and children, women and children in disasters, women and children in armed conflict, women and children in refugee camps, women and children on the move, stateless women and children, migrant women and children, women and children belonging to ethnic and/or indigenous groups, children in early marriage, physical abuse of children, bullying, discrimination against women and children in mass and social media, and others".

Importantly, the Declaration recognizes the role of civil society in prevention and responses to violence against women and children requiring states to “create an enabling environment for the participation of women and children, including victims/survivors, in the prevention and elimination...”

The Declaration invites criticism, for example, as given from Southeast Asia Women’s Caucus on ASEAN saying that the “Declaration falls short in some areas”. The Caucus, however, sees positive ‘positive elements and one specific achievement of this declaration is that it encourages ASEAN Member States to report on efforts to eliminate violence against women and children through the Universal Periodic Review Process, in which notably the ACWC is to assist where necessary’. The Declaration also tasks the ACWC to “promote the implementation of the Declaration and review its progress”. This could include assisting with national plans of implementation, for example. This gives the ACWC a stronger mandate. In following up on the said Declaration, ASEAN adopted in November 2015, and the ASEAN Regional Plan of Action on Elimination of Violence against Children. The Plan provides for a wide range of actions from prevention to protection, responses and support services as well as legal framework, prosecution and justice system. It also includes capacity building, partnership and collaboration, etc. The Work Plan outlines each part in detail. However, there is no time frame and that the definition of “a child” follows the article 1 of CRC which allows different definitions in accordance to national laws. In addition to child specific documents, ASEAN has also adopted the broad based human rights declaration.

### **ASEAN Human Rights Declaration (AHRD)**

The adoption of the ASEAN Human Rights Declaration is another milestone for ASEAN. Although some provisions of the AHRD are below international standards and it does not contain any specific provisions on the rights of children, the general principles clarify that:

- Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status;
- Every person has the right of recognition everywhere as a person before the law; every person is equal before the law;
- Every person is entitled without discrimination to equal protection of the law; and
- The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalized groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.

The reference to “every person” in most provisions (and children in one) could positively and potentially contribute to the promotion and protection of the rights of the child. Article 27 para.3 specially mentions that ‘no child or any young person shall be subjected to economic and social exploitation. Those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labor should be prohibited and punished by law. Although the term “should” was used rather than “shall”, this provision is not only strong but among very few in the AHRD which addresses the rights of the child.

There are also specific provisions which are directly relevant to children, specifically article 31 on the right to education which is elaborated in three paragraphs.<sup>39</sup> It also emphasizes making ‘primary

<sup>39</sup> Namely articles, 10. right to life; 13. right not to be held in slavery; 14. right not to be tortured; 15. right to freedom of movement; 18. right to a nationality; 22-23 rights to freedom of thoughts and expression; 28. right to an adequate standard of living; 29. right to health; 30. right to social security; 32. right to association and to take part in cultural life.



education compulsory and available free for all'. However, as one can guess, economic and social rights, as specified in article 33, are to be realized progressively and to the maximum available resources. Articles 35, 36, 37 and 38 also recognize rights to development, to clean and sustainable environment and to peace. These rights are considered as important factors which could contribute to the promotion and protection of the rights of the child.

Although ASEAN has been willing to adopt different policy documents in the form of Declarations and Plans of Action, monitoring is still problematic despite the establishment of regional human rights mechanisms.

### **ASEAN Intergovernmental Commission on Human Rights (AICHR)**

The establishment of the ASEAN Intergovernmental Commission on Human Rights in 2009 and the ASEAN Intergovernmental Commission on the Promotion and Protection of the Rights of Women and Children in April 2010 presented great promise for the protection and promotion of human rights and the rights of women and children in the region.

The AICHR is a Charter-based body with the mandates to promote and protect human rights of all ASEAN peoples. As an overarching body in ASEAN, AICHR not only deals with all categories of human rights but also has obligations to promote and protect human rights of all groups of the population of ASEAN, children included. There have been criticisms against the AICHR in the sense that the body does not have an explicit mandate to perform a protection duty. Although the criticisms rest on some facts, AICHR could, if the Representatives so desired, interpret their mandates and functions expansively and creatively. For example, the AICHR could influence ASEAN Member States to consider acceding to and ratifying international human rights instruments (4.5 mandates and functions). AICHR could also seek to obtain information from AMS on the protection and promotion of human rights (4.10) which could include the rights of the child. AICHR could as well conduct thematic studies relating to human rights in ASEAN (4.12). So far, AICHR has identified a number of issues for thematic studies including issues of corporate social responsibility and human rights and migration. Some other themes include the right to education, women and children in armed conflicts and natural disasters, and, children in conflict with the law. These thematic studies are directly related to child protection and child development and could be beneficial to the promotion and protection of the rights of the child. In addition, the issue of statelessness, although faced with some reluctance, has already found its way to the AICHR agenda. While activities organized so far have focused mainly on awareness-raising, in the long run, this may lead to better sensitization and more concrete actions to be taken by the AICHR.

### **ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)**

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children was established in April 2010 in Hanoi. Terms of Reference (TOR) of the ACWC as adopted could be said to be a bit more advanced than the one of AICHR. However, its protection mandates are still hindered by the core ASEAN principle of non-interference in internal affairs of AMS and delays caused by the principles of consultation and consensus. Nevertheless, the ACWC is a specialized body dealing specifically with the rights of women and children.

The establishment of the ACWC was strengthened by the adoption of the Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children in October 2010. It affirmed existing ASEAN communiqués and declarations on children and women pursued by the Association. This Declaration aims at strengthening ASEAN's commitment to ensure that women and children

fully benefit from the process of integration and community building. The said Declaration, although focusing on welfare and well-being of children and women does have a few provisions that promote “closer cooperation in promoting and protecting the rights of women and children especially those living under disadvantaged and vulnerable conditions including those in disaster and conflict affected areas”. The Declaration (in point 16) further aims to achieve goals for children in ASEAN as regards the child’s rights to survival, protection, development and participation in a comprehensive and systematic way”. In point 18, ASEAN is committed to “improve quality of and gender equality in education and school enrolment to children, including children of ethnics and /or indigenous groups as well as children with disabilities...” It still remains to be seen how much ASEAN has achieved to promote and protect rights of children. The Declaration, if interpreted broadly, may also include children who are on the move.

The Work Plan of the ACWC (2012-2016) adopted and released by the ACWC contains thematic areas and activities which include the promotion and protection of women and children namely the elimination of violence against women and children<sup>40</sup> and the review of existing practices on treatment of victims of trafficking.<sup>41</sup> The Work Plan also includes the area of child protection systems.<sup>42</sup> The ACWC Work Plan for 2012-2016 and their implementation includes action points which, if properly implemented will largely contribute to child rights such as “Review legislations, national plans/programs, and other national mechanisms relating to the prevention, protection, prosecution, rehabilitation, recovery, reintegration of VAC, Children’s rights: Development of guidelines for non-violent approach to child rearing and child caring in various settings, the rights of children to participate in all affairs that affect them by creating an enabling environment for children to participate in decision making process, promotion and protection of the rights of women and children with disabilities, Child Protection Systems, the right to early childhood and quality education, social impact of climate change on women and children, and adolescent physical and mental health.”<sup>43</sup>

It can be seen that the outlines of thematic areas and activities identified in the work plan of ACWC are comprehensive covering a wide range of issues critical to the promotion and protection of the rights of the child as identified in the 10 countries of ASEAN. Moreover, some areas such as child education, trafficking, child labor, children affected by statelessness, undocumented migrant children, HIV/AIDS, natural disaster, conflicts, and children in juvenile justice system/children in conflict with the law, climate change are also dealt with, to some extent, by the AICHR and other ASEAN sectoral bodies. ACWC seems to be open to engage with different partner organizations including CSOs. Save the Children (from both Sweden and UK) were mentioned in some specific activities.

So far, the ACWC (in its statement issued after its Eighth Meeting held in February 2014) stated that twenty four projects and activities under the ACWC Work Plan 2012-2016 were implemented and reviewed.<sup>44</sup> Indeed, ACWC has been organizing many meetings, workshops, and visits as well as campaigns and production of campaign materials. It is worth noting for example, the ACWC organized in partnership with UNHCR the Regional Workshop on Promoting the Right to a Nationality for Women and Children

40 which include the review of legislations and mechanisms relating to the VAW and VAC, compilation of ASEAN best practices in eliminating VAW and VAC, development of guidelines for non-violent approach to child rearing and caring in different settings;

41 i.e., rescue, recovery, repatriation, rehabilitation, reintegration, referral system and assistance of victims of trafficking in women and children among countries of origin, transit countries and receiving countries to strengthen the assistant mechanisms for victims of trafficking.

42 which covers comprehensive and integrative approach for children in need for special protection. This expands to cover victims of abuse and neglect, trafficked children, child labor, children affected by statelessness, undocumented migrant children, HIV/AIDS, natural disaster, conflicts, and children in juvenile justice system/children in conflict with the law.

43 See details in The Work Plan of the ACWC (2012-2016) , <http://www.asean.org/resources/publications/asean-publications/item/asean-commission-on-the-promotion-and-protection-of-the-rights-of-women-and-children-acwc-work-plan-2012-2016-and-terms-of-reference>, accessed 10 October 2015.

44 Ibid.

in the Implementation of CEDAW and CRC in ASEAN in Da Nang, Vietnam in August 2013; followed by another Regional Workshop on Promoting the Rights of ASEAN Women and Children through Effective Implementation of the Common Issues in CEDAW and CRC Concluding Observations with Focus on Girl Child at the same venue in 2013. It produced the “stop violence against women” public campaign posters, pamphlets, stickers and videos for dissemination to ASEAN Member States to commemorate the International Day for the Elimination of Violence against Women, etc.

In addition, ACWC has meetings with Chairs and/or Representatives of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN sectoral bodies in charge of women’s affairs, social welfare, rural development and poverty eradication, education, labor and migrant workers, as well as trafficking in persons. As mentioned, ACWC also published and produced a number of materials such as:

- Guidelines for Handling of Women Victims of Trafficking in Persons,
- An outcome document of the Workshop on the Promotion of Access to Justice for Women Victims of Violence in Trafficking Cases.
- Good Practices: Eliminating Violence against Women and Children (EVAWC)

It can be seen that policies and frameworks, as well as mechanisms for the protection of children, are not lacking in ASEAN, giving potential for the rights of the child to be properly promoted and protected. ASEAN has developed an ASEAN human rights system although it is still weak. Mechanisms such as a human rights court has yet to be developed. Moreover, existing human rights commissions are not equipped with the mandates to receive complaints or to investigate. This is true because of the strong practice of ASEAN’s working principles- respect for state sovereignty, non-interference in international affairs of member states as well as consultation and consensus. What is more regretful is the fact that the overall implementation of policies and laws on children are left to the will of national governments, which, in many ways, do not comply, or indeed conflict, with international human rights standards.

## CHAPTER IV: RIGHTS-BASED ANALYSIS TO CHILD RIGHTS (FOUR PRINCIPLES OF THE CRC)

The CRC has laid down the foundation for state parties to protect and promote the rights of children. The four principle pillars enshrined in the CRC: non-discrimination; the best interest of the child; child survival and child development; and child participation, form a very crucial rights-based framework for states.

### Non-Discrimination

In ASEAN Member States, national Constitutions (where they exist) guard generically against the forms of discrimination based on race, color, sex, language, political opinion, national origin and social, property or other status. However, they do not specifically single out discrimination against children and they generally only refer to their own citizens. As such, patterns of discrimination exist in almost all of the countries. The most common discrimination concerns are around ethnic origin, migrant workers, gender, disabilities and children with HIV/AIDS. Discrimination is uniformly found in education, health care, and other institutionalized institutions.

While article 12 of the Constitution of Singapore guarantees equality and non-discrimination to all Singapore citizens including children, Singapore has no anti discrimination legislation. The government takes the position that Article 12 provides sufficient protection to vulnerable groups although protection under Article 12 of the Constitution does not extend to non-citizens (including non-citizen children).<sup>45</sup> The Constitution of Lao PDR similarly prescribes in Article 22 that only “Lao citizens are all equal before the law.” Although Vietnamese legislation prescribes to the principle of non-discrimination, structural discrimination occurs due mainly to economic development gaps, urban-rural divided, family situation as well as physical conditions of children. It is noteworthy that The Philippines is the only country in ASEAN with specific legislation prohibiting discrimination against children.

The Thai Constitution B.E. 2550 states in Article 30 that “all people are equal before the law and are equally protected by law.” It further states that “discrimination based on birthplace, race, language, sex, age, disabilities and physical condition or health, personal status, economic or social position, creed, education and political ideology not contradictory to the provisions in the Constitution is prohibited.” The provision included in the Thai Constitution could be considered as the most comprehensive provision on non-discrimination as it includes the aspects of disabilities as well as health conditions which are not commonly recognized by other national constitutions.<sup>46</sup>

Across the region, girls experience greater disadvantages than boys on almost all human rights indicators with the inequalities greatest in rural and remote places. Of note is Indonesia’s constitution which specifically recognizes the child’s right to protection from discrimination which has appeared to prevent girls from being more disadvantaged than boys. However, discrimination on the basis of ethnicity still exists.

<sup>45</sup> D’Cruz, M 2015, *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

<sup>46</sup> Petcharamesree, S et al, 2009, *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila.

In fact, children of ethnic minority groups across the region (e.g. Myanmar, Cambodia, Laos, Vietnam, Indonesia, Malaysia<sup>47</sup>, Thailand, Philippines) face systematic discrimination and in some cases cannot attain birth registration, effectively leaving them undocumented or stateless. Of special concern at present are an estimated 810,000 Rohingya Muslims (self-identified) in Rakhine state of Myanmar facing discrimination and persecution and remain effectively stateless<sup>48</sup>. Given the geographical, ethnical and cultural characteristics of various indigenous groups in different parts of the region, great disparities exist when compared to the majority populations.<sup>49</sup>

Children with disabilities have particular health care needs and so are especially affected by inadequate health and medical services. These children's education needs are also poorly met. For example, inclusive education for children with special needs is not reflected in the design of Indonesian education.<sup>50</sup> In Cambodia, while limited support is available for children with hearing or sight disabilities, none exists for children with intellectual disabilities.<sup>51</sup> Despite an excellent education system in Singapore, the Compulsory Education Act does not cover children with disabilities, effectively making them exempt from compulsory education. Malaysia still has a formal reservation to the Convention on the Rights of Persons with Disabilities. In Vietnam, children with severe disabilities and critical family problems can apply for social welfare assistance although it is still moderate in terms of quantity.<sup>52</sup>

Malaysia still maintains reservations against Article 2 of the CRC regarding non-discrimination resulting in a dual system of rights for children under Syariah law, while civil law applies to non-Muslims.<sup>53</sup>

Children on the move are one of the most vulnerable groups in Thailand whose rights in all areas are not adequately protected. They are foreign migrants, refugees, stateless, and ethnic minorities. These groups of children have faced discrimination with access to education, healthcare and other social protection services.

## Best Interest of the Child

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Article 3 of the CRC stipulates that “the best interest of the child must be the primary consideration in all decisions concerning the child, and that the state must provide appropriate assistance if parents, or others legally responsible, fail in their duties.” This means that laws and policies/plans/programs affecting children should put the child's best interest first.

Prioritizing children's best interests as the primary consideration across ASEAN is particularly missing in laws on nationality, disability, sexual exploitation, child labor, drugs and children in detention. The principle is not consistently applied in practice due to challenges in reconciling the region's traditional culture with child rights. For example, not only does the Laos Government lack the human resources to ensure that the rights of the child are protected, the social and traditional norms in Laos toward children also inhibit the acceptance and practice of this principle more widely.<sup>54</sup>

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47 The Malaysian Government maintains its reservations against Article 2 of the CRC (regarding non-discrimination) and Article 28(1) (a) regarding compulsory and free primary education for all).

48 UNHCR, Myanmar Page, <http://www.unhcr.org/pages/49e4877d6.html>

49 Noel, J, Atabekian, V, Sidoti C, and Hecht, M 2006, *Making Children's Right Work*, IBCR.

50 Save the Children, *supra* note \_\_\_ at 84.

51 Noel, J, Atabekian, V, Sidoti C, and Hecht, M 2006, *Making Children's Right Work*, IBCR.

52 Noel, J, Atabekian, V, Sidoti C, and Hecht, M 2006, *Making Children's Right Work*, IBCR.

53 Abubakar A and Emkic E, 2015, Malaysia CRSA Field Research Report (Unpublished), Mahidol University.

54 NGO Group for the CRC.

In Vietnam, the best interest principle of the CRC is not explicitly specified in the Constitution or in the child-specific legislation. The best interest principle is not well covered in the 1993 Cambodian Constitution and within government strategies, policies and programs. This is evidenced by the allocation of resources and budget to children's issues which are particularly tight.<sup>55</sup>

The principle of the best interests of the child is mentioned in Article 27 of the Myanmar Child Law. However, the knowledge of this principle remains insufficient and no action has been taken by the State party to include it in any other legislation or budgets, or to ensure that it is sufficiently applied in the judicial and administrative decisions.

Singapore has translated the CRC notion of best interests of the child into a national statement on the best interests of the child. This statement takes the shape of operational principles that are meant to act as a point of reference for agencies and organization working with children. As such, the principle is not well integrated into legislation and policy formulation.<sup>56</sup> In Malaysia, similar gaps in legislation and government policies are especially apparent by the discrepancies between the Penal Code and Syariah Laws, particularly in relation to children in conflict with the law.<sup>57</sup>

An examination of the Concluding observations made by the Committee on the CRC until 2009 illustrated that the principle of the best interests of the child is one of the concerns expressed to all states parties in ASEAN (except The Philippines) as it is not always a primary consideration in all actions taken by the government and other actors, including in matters related to family law, adoption, welfare, etc.<sup>58</sup> Across the region, the Committee on the Rights of the Child has noted that domestic legislation as well as policies and programs for children do not uniformly make reference to the principle of best interests of the child. It could be interpreted that most countries in ASEAN probably believe that only parents know what is best for children.<sup>59</sup>

## Survival and Development

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The right to life, survival and development ensures the child's inherent right to life and sets out the obligation of the state to ensure the child's survival and development. The meaning of the 'right to life' has to be interpreted broadly. Child survival includes health care, nutrition, sanitation and hygiene, and prevention against the transmission of HIV/AIDS. Child development primarily covers education and training.

In the State reports of all countries of ASEAN it is noted that the areas of child survival and child development are the most advanced among the four principles.<sup>60</sup> In the ASEAN region, increased access to better health services, immunization, improved water and sanitation services have all led to a fall in child deaths in the region. Brunei Darussalam and Singapore are the two most developed countries with the highest standard of living in ASEAN. As such, the two countries lead the way in the ASEAN

55 IBCR, 2006, *Making Children's Rights Work: Country Profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste and Vietnam*, International Bureau for Children's Rights.

56 D'Cruz, M 2015, *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

57 Abubakar A and Emkic E, 2015, *Malaysia CRSA Field Research Report* (Unpublished), Mahidol University.

58 Petcharamesree, S et al, 2009, *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila.

59 Ibid.

60 Petcharamesree, S et al, 2009, *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila.



region in child survival and development. Brunei for example has achieved almost all of the Millennium Development Goal (MDG) targets. Extreme poverty has already been eradicated and infectious diseases have been successfully eliminated.<sup>61</sup>

A reduction in the under-five mortality rate (U5MR) has been most marked in Vietnam, Malaysia, Philippines and Thailand where particular investments have been made in primary health care. However, in the Lao PDR, the national budget allocation for core health care services remains very low.<sup>62</sup> Cambodia still has high rates of infant and under-five mortality despite recent government efforts to improve primary health-care.<sup>63</sup> Low quality rural education, lack of clean water, inadequate sanitation and poor nutrition all contribute to a systematic pattern of childhood illnesses.<sup>64</sup> The mortality rate of infants and children below five years of age in Indonesia remains among the highest in the ASEAN region.<sup>65</sup> Limited access to clean drinking water in both rural and urban areas of Indonesia is cited as one of the main causes for the poor health of children.<sup>66</sup>

Cambodia will not achieve most of its' MDG targets in relation to nutrition and rates of malnourishment and stunting amongst children have actually increased in recent years.<sup>67</sup> The nutrition status of Filipino children varies greatly with higher income groups having advantage over the poorest revealing major disparities across the country.

Reducing child deaths also requires improvements in the health and well-being of the mother. Malaysia, Thailand and Vietnam have made the most progress in achieving MDG Goal 5 to reduce maternal mortality by three quarters.<sup>68</sup> However, data reveals that the Philippines has struggled to reach its MDG target because of the slow reduction in maternal deaths at only 22% way below the 75% target. This is reportedly caused by various factors such as poor health practices, lack of access to information, financial or geographical barriers, and weak-child service delivery systems among others.<sup>69</sup> A further risk is to mothers living with HIV who can pass the virus on to their babies during pregnancy, delivery or breastfeeding. While a number of countries have scaled up HIV counseling and testing for pregnant women, Cambodia has been the most successful in reducing a trend of increasing HIV infection across the entire population.<sup>70</sup>

A holistic concept of child development includes physical mental, and spiritual, moral, psychological and social aspect as articulated in Article 6 of the UNCRC General Measure of Implementation (Comment 5).<sup>71</sup> Education remains at the forefront as one of the most effective ways to contribute to a child's development. The ASEAN region has made most progress in increasing primary school enrollment and nearly all countries officially met the MDG 2 goal of achieving universal primary education. Despite this success, vulnerable groups of children such as irregular child migrants and children with disabilities continue to be deprived of the right to basic education. High drop-out rates and poor secondary

61 Khalon, H 2015, *Child Rights Situational Analysis in Brunei*, Research Report (Unpublished), Mahidol University.

62 Human Rights Council Working Group on Universal Periodic Review, Twenty-First session, Geneva, 19-30 January 2015 A/HRC/WG.6/21/LAO/2.

63 UNICEF 2013, *The Right to Water, Sanitation and Hygiene, Cambodia Issue Brief*.

64 Ibid.

65 Save the Children International (SCI), *Indonesia Country Child's Rights Situation Analysis 2014* (Unpublished).

66 Ibid.

67 Kingdom of Cambodia, 2003, *The Phnom Penh Urban Poor Assessment: A Baseline Survey on the Social and Economic Situations and Capacity of Existing Services in Urban Poor Communities*.

68 UNICEF, 2007, *Situation Review of Children in ASEAN*, UNICEF East Asia and Pacific Regional Office, Bangkok.

69 UNICEF, Health and Nutrition at [http://www.unicef.org/philippines/health\\_nutrition.html#.VWv3z9Lt2ko](http://www.unicef.org/philippines/health_nutrition.html#.VWv3z9Lt2ko) (last accessed: May 30, 2015).

70 National Aids Authority, 2014, *Cambodia Country Progress Report: Monitoring Progress towards the Targets of the 2011 UN Political Declaration on HIV and AIDS*.

71 Haegeman, E. (2013) *Child Rights Situational Analysis (Part 1: Secondary Data Review)*.



school enrollment remain challenges for a number of countries in the region.<sup>72</sup> Disparities exist also with regards to gender, geographical locations and ethnic groups. In Myanmar, only 54 percent of children complete primary school. This is low compared to the regional average of 94 percent. Lack of government investment in education coupled with decades of intellectual isolation under the military junta, have left Myanmar with an education system that is inadequate to meet children's rights.

## Children's Participation

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Article 12 of the CRC recognizes a child's right to express his/her views, and to have his/her views taken into consideration in any decisions that affect them. The right to participation includes the right to information, to freedom of thought and expression, to the right to join and form associations, and the right to identity and privacy. All these rights are interlinked and cannot exist independently.

The ASEAN region has an overwhelming population of children and youth. The right and ability of children to express their views and participate in decision-making in matters of their concerns constitutes an important step for them to enjoy other rights and well-being. Child participation includes both expression and respect for the views of the child and it is not enough to focus on just one. The notion of children having the right to participate in decision making processes that affect them is a new concept in ASEAN and only The Philippines provides for the respect of this principle in law. Strong social-cultural traditions, family values and gender norms challenge the promotion of children's participation throughout the ASEAN region. Myanmar society for example is very hierarchical and generally patriarchal resulting in an authoritarian approach to raising children. Children are expected to listen and obey their elders. Girls and boys are not expected to express their views or to ask questions. For example, Brunei Darussalam is both a traditional and hierarchical society with a very particular view of the position, role and duty of the child. Such set views and expectations limit the child's participation in the public sphere.<sup>73</sup>

Thailand is also a hierarchical society and children occupy the lowest position of the hierarchy. The Thai word for child itself ('dek') seems to refer to a hierarchical state rather than a stage in development. As such, across the region, children are not encouraged to participate and initiatives, which are mainly led by civil society, vary in content and comprehensiveness (mainly public events, forums and ad hoc consultations). Indeed, in Indonesia the state appears to prefer this role to be undertaken by NGOs, while in Vietnam, Save the Children has been particularly successful in institutionalizing child participation at the district, provincial and national levels.<sup>74</sup>

A few countries in the region have though developed national policies for child and youth participation. For example, the developing democracy in Indonesia and the decentralization of power has opened the door for children to participate in governance affairs. This is especially true in the national planning of the development budget although it is a challenge to insure inclusive participation of all groups of children.<sup>75</sup> Child participation in governance in the Philippines has also been institutionalized in school through student bodies and in local, sub-national, and national-level structures, such as the Local Child Protection Councils (LCPC), Barangay Development Council (BDC), CWC Board, and National Anti-Poverty Commission Children Basic Sector (NAPC-CBS). Every barangay also has a Youth Council

<sup>72</sup> UNESCO, 2005, *Education for All Global Monitoring Report*.

<sup>73</sup> Khalon, H 2015, *Child Rights Situational Analysis in Brunei*, Research Report (Unpublished), Mahidol University.

<sup>74</sup> IBCR, 2006, *Making Children's Rights Work: Country Profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste and Vietnam*, International Bureau for Children's Rights.

<sup>75</sup> SCI, *supra* note \_\_ at 32.

('Sangguniang Kabataan'), which serves as the voice of the youth in the local government.<sup>76</sup> Similarly, although participation of children at the community level in Cambodia has been fairly non-existent to date, opportunities are now arising following the establishment of Commune Councils and Community-Based Child Protection Networks (CBCP) which are mandated to promote children's rights.<sup>77</sup>

In Vietnam, Article 20 of the Law on Child Protection, Care and Education stipulates the right of children to access information, express opinions and participate in social activities. The term "suitable to their development and suitable to their demands and capabilities" is problematic for proper participation of the child as it is not defined and question could be asked who defines what and when is deemed suitable. This article is, in fact, immediately counter balanced by Article 21 which prescribes children's duties. Arguing for participation, questioning teachers or parents or state agencies may be interpreted as impolite, not respectful or even not ethical. Not only are children not listened to by parents and teachers but there are no proper mechanisms in place to promote child participation.<sup>78</sup>

In Singapore, domestic legislation also provides for the right of the child to express his or her own views on issues such as care and custody, education, sexual sterilization and abortion, amongst others, although there is no formalized and systematic process for children to put forth their views in the course of proceedings that affect them.<sup>79</sup>

To conclude, traditional attitudes about the place of ASEAN children in society inhibits them from expressing their views on issues that affect them at home, in school and within society at large. While national legal and policy frameworks can be seen to facilitate participation of children and youth in micro and macro level decision making, they are rare, and children's participation activities are generally ad-hoc and generally involve a small proportion of the more well-off children.

76 Council for the Welfare of Children (CWC) and UNICEF. *Case studies on child and youth participation in the Philippines*. Manila as cited in Institute of Philippine Culture and Save the Children, *Child Rights Situation Analysis-Philippines* (2014).

77 UNICEF 2009, *An Analysis of the Situation of Children and Women in Cambodia*, UNICEF Cambodia.

78 Petcharamesree, S et al, 2009, *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila.

79 D'Cruz, M 2015, *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

## CHAPTER V: LEGAL FRAMEWORK AND POLICIES ON CHILD RIGHTS IN ASEAN

This section considers commitments by the governments of ASEAN countries to child rights through i) the ratification of the UN Convention on the Rights of the Child (CRC), ii) the development of national legislations relevant to as well as policies and plans of actions on child rights child rights. Issues concerning definition of children and minimum age of marriage, criminal responsibility and employment as contained in domestic laws in ASEAN member states will also be examined.

### Ratification of CRC and its optional protocols

All members of ASEAN are parties to the UN Convention on the Rights of the Child. It is interesting to observe that all of the so-called older ASEAN members, with the exception of the Philippines, have made reservations on a number of key CRC articles upon ratification, with Singapore, Indonesia and Malaysia having made the most extensive declarations/ reservations.<sup>80</sup> In contrast, the newer ASEAN members including Cambodia, Laos PDR and Vietnam ratified the CRC without any reservations while Myanmar withdrew its reservations made after two years. For Singapore, the government gave three major reasons for its declaration and reservations including: i) the necessity of ensuring that due regard and respect was given to the authority of parents; ii) declarations/reservations were needed given Singapore's multiracial and multi religious context; and iii) the necessity to protect the sovereignty of Singapore's laws and policies.<sup>81</sup> Indonesia made reservations on articles which were not in conformity with the country's 1945 Constitution while Malaysia stated that "...provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia."<sup>82</sup> To a lesser extent, Brunei Darussalam and Thailand have also maintained reservations on articles which do not conform to the countries constitutions, religious and national laws.<sup>83</sup>

As indicated in table 6 below, as of 2015, some progress could be seen with regard to the withdrawing of reservations, especially in the case of Indonesia where all reservations were withdrawn in 2005, making the CRC fully adopted by the Indonesian government.<sup>84</sup> Malaysia also withdrew reservations on article 1, 13 and 15 in 2010. However, there remains common reservations among the four ASEAN countries on important articles including article 7 (on the right to name and nationality) by Malaysia and Singapore; article 14 (on freedom of thought, conscience and religion) by Brunei, Malaysia; and article 22 (on refugee children) by Singapore and Thailand. Reservations made on the CRC have important implications on the commitment and the ability of state parties to implement child rights principles, as well as to ensure the protection for and the enjoyment of rights by all children as enshrined in the Convention.

80 Singapore made declarations on Art.12-17, 19 and 39 / and reservations to Art.7, 9, 10, 12, 22, 28 and 32.

For Indonesia, declarations/reservations were initially made on articles 1, 14, 16, 17, 21, 22 and 29.

The Government of Malaysia expressed reservations on articles 1, 2, 7, 13, 14, 15, [...], 28, [paragraph 1 (a)] 37.

81 D'Cruz, M 2015, *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

82 Petcharamesree, S et al, 2009. *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila

83 Brunei Darussalam made reservations on articles 14, 20 and 21 while Thailand still keeps its reservation on article 22.

84 Unicef Indonesia, Indonesia and UNCRC: 25 years of progress and challenges. <http://unicefindonesia.blogspot.com/2014/11/indonesia-and-uncrc-25-years-of.html>

In addition to the CRC, most members of ASEAN have also ratified the two optional protocols namely the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Optional protocol 1) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Optional Protocol 2). As of 2015, all countries except Brunei Darussalam have ratified or signed the OP-CRC-AC (with Myanmar signing in September 2015). For OP-CRC-SC, Singapore is the only remaining ASEAN member that has not signed onto it. It should be noted that for the Optional Protocol on the involvement of children in armed conflict, some countries have made declarations on voluntary recruitment, compulsory military service, the duty to defend the homeland, or military training, where the attained age is 18 years old. Singapore however has made a declaration such that “the minimum age at which persons may be voluntarily recruited or enlisted into the Singapore Armed Forces is 16 years and 6 months” is allowed with some safeguarding measures.<sup>85</sup> As for the Optional Protocol on the Sale of children, child prostitution and child pornography, Lao PDR and Vietnam have made reservations upon their accession and ratification to the OP-CRC-SC, The former made a reservation on Article 5 (2) and the latter to Articles 5(1), (2), (3), and (4) of this Protocol. With regard to the third Optional Protocol to CRC on a communication procedure (which was adopted by the UN General Assembly resolution 66/138 on in December 2011 and became open for signature in February 2012), the only ASEAN member that has signed onto and ratified this protocol is Thailand.

**Table 6: Status of Ratification of CRC and the two Optional Protocols**  
(as of 15 October 2015)<sup>86</sup>

Country	Ratification/Accession	Reservations
Brunei Darussalam	CRC: 27/12/1995 OP1: Not signed OP2: 21/06/2006	Art. 14,20,21
Cambodia	CRC: 15/10/1992 OP1: 16/07/2004 OP2: 30/05/2002	NO
Indonesia	CRC: 05/09/1990 OP1: 24/09/2012 OP2: 24/09/2012	NO
Lao PDR	CRC: 08/05/1991 OP1: 20/09/2006 OP2: 20/09/2006	NO
Malaysia	CRC: 17/02/1995 OP1: 12/04/ 2012 OP2: 12/04/ 2012	Art. 2,7,15,28,37
Myanmar	CRC: 15/07/1991 OP1: Signed 25/09 2015 OP2: 16/01/2012	NO
Philippines	CRC: 21/08/1990 OP1: 26/08/2003 OP2: 28/05/2002	NO
Singapore	CRC: 05/10/1995 OP1: 11/12/2008 OP2: Not signed	Declarations on Art. 12-17, 19&39/ Reservations to Art. 7,9,10,12,22,28 and 32
Thailand	CRC: 27/03/1992 OP1: 27/02/2006 OP2: 11/01/2006 OP3: 25/09/2012	Art. 22
Vietnam	CRC: 28/02/1990 OP1: 20/12/2001 OP2: 20/12/2001	NO

85 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en); accessed 17 October 2015.

86 [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=en); accessed 17 October 2015.

In addition to the CRC and its Optional Protocols, ASEAN Member States have also ratified a number of major international human rights treaties including ILO Conventions. Many, if not all, of those international human rights and labor standards have some bearing on the promotion and protection of child rights. Table 7 and 8 show that in varying degree, the AMS have committed themselves to international human rights framework.

**Table 7: Status of Ratifications of International Human Rights Instruments**

HR Treaties / Country	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
<b>1. ICCPR</b>	-	1992 a	2006 a	2009	-	-	1986	-	1996 a	1982 a
ICCPR-OP1	-	2004 s	-	-	-	-	1989	-	-	-
ICCPR-OP2	-	-	-	-	-	-	2007	-	-	-
<b>2. ICESCR</b>	-	1992 a	2006 a	2007	-	2015 s	1974	-	1999 a	1982 a
ICESCR - OP	-	-	-	-	-	-	-	-	-	-
<b>3. CEDAW</b>	2006 a	1992 a	1984	1981	1995 a	1997 a	1981	1995 a	1985 a	1982
CEDAW-OP	-	2010	2000 s	-	-	-	2003	-	2000	-
<b>4. CRC</b>	1995 a	1992 a	1990	1991 a	1995 a	1991 a	1990	1995 a	1992 a	1990
CRC- OP-AC	-	2004	2012	2006 a	2012 a	2015 s	2003	2008	2006 a	2001
CRC- OP-SC	2006 a	2002	2012	2006 a	2012 a	2012 a	2002	-	2006 a	2001
CRC- OP-CP	-	-	-	-	-	-	-	-	2012	-
<b>5. ICERD</b>	-	1983	1999 a	1974 a	-	-	1967	2015 s	2003 a	1982 a
<b>6. CAT</b>	2015 s	1992 a	1998	2012	-	-	1986 a	-	2007 a	2015
CAT-OP	-	2007	-	-	-	-	2012 a	-	-	-
<b>7. ICRMW</b>	-	2004 s	2012	-	-	-	1995	-	-	-
<b>8. CRPD</b>	2007 s	2012	2011	2009	2010	2011 a	2008	2013	2008	2015
CRPD- OP	-	2007 s	-	-	-	-	-	-	-	-
<b>9. ICCPED</b>	-	2013 a	2010 s	2008 s	-	-	-	-	2012 s	-

Source: Office of the United Nations High Commissioner for Human Rights. [www.ohchr.org](http://www.ohchr.org). Accessed on 6 February 2016.

**Table 8: Status of Ratifications ILO Core Conventions**

ASEAN Member States	Freedom of association		Forced labour		Discrimination		Child labour	
	C.87 Freedom of Association and Protection of the Right to Organize Convention, 1948	C.98 Right to Organize and Collective Bargaining Convention, 1949	C.29 Forced Labor Convention, 1930	C.105 Abolition of Forced Labor Convention, 1957	C.100 Equal Remuneration Convention, 1951	C.111 Discrimination (Employment and Occupation) Convention, 1958	C.138 Minimum Age Convention, 1973	C.182 Worst Forms of Child Labor Convention, 1999
Brunei Darussalam	-	-	-	-	-	-	2011	2008
Cambodia	1999	1999	1969	1999	1999	1999	1999	2006
Indonesia	1998	1957	1950	1999	1958	1999	1999	2000
Lao PDR	-	-	1964	-	2008	2008	2005	2005
Malaysia	-	1961	1957	(1958) <sup>87</sup>	1997	-	1997	2000
Myanmar	1955	-	1955	-	-	-	-	2013
Philippines	1953	1955	2005	1960	1953	1960	1998	2000
Singapore	-	1965	1965	(1965) <sup>88</sup>	2002	-	2005	2001
Thailand	-	-	1969	1969	1999	-	2004	2001
Vietnam	-	-	2007	-	1997	1997	2003	2000

Source: ILO Convention Ratifications by country <http://www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO::> Accessed on 15 December 2015.

## National laws on child rights

There are numerous laws and legislations relating to child rights in ASEAN member countries. In countries like Singapore and the Philippines, efforts to protect the rights of children came even before the ratification of the CRC. Singapore has the oldest Children and Young Persons Act of the region, dating back to 1949,<sup>89</sup> with the latest amendment in 2011.<sup>90</sup> As for the Philippines, protections of children's rights are already enshrined in the country's 1935 and 1973 Constitution. To implement the provisions of the Constitution, in 1974, the country promulgated the Child and Youth Welfare Code (Presidential Decree [PD] No. 603). This code created the Council for the Welfare of Children to serve as the lead agency in coordinating the formulation, implementation, and enforcement of all policies, programs, and projects for the survival, development, protection, and participation of children.<sup>91</sup>

<sup>87</sup> Convention denounced in 1990.

<sup>88</sup> Convention denounced in 1979.

<sup>89</sup> Petcharamesree, S et al, 2009 *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila.

<sup>90</sup> Ministry of Social and Family Development; <http://app.msf.gov.sg/Policies/Children-Youth/Protection-under-Children-Young-Persons-Act>.

<sup>91</sup> Child and Youth Welfare Code, Presidential Decree 603 (1974), cited in Estorninos, K.A.C. 2015, *Child Rights Situational Analysis in the Philippines*, Research Report (Unpublished), Mahidol University



Upon ratification of the CRC, most ASEAN members have adopted at least one child-specific piece of legislation and various child-related laws. Being the first Asian state to ratify CRC in 1990, Vietnam adopted the law on “Protection and Care and Education of the Child” in 1991 (with amendment in 2004). Article 2(1) of the Act stipulates that the “Law prescribes the fundamental rights and duties of children; responsibilities of the family, State and society in child protection, care and education.”<sup>92</sup> In December 2014, the Vietnam’s National Assembly endorsed two child-related national legislations including the Law on Civil Status ensures the right to birth registration, including a guaranteed provision of a birth certificate, for all children in Vietnam and the Law on Court Organization which prescribes the creation of Vietnam’s first ever specialized children’s court – the Family and Juvenile Court.<sup>93</sup> For Lao PDR, the National Law on the Protection of the Rights and Interests of the Child (2007) is the key legal instrument addressing various aspects of child rights in the country. In addition, a number of legislations and amendments that are in line with CRC have been passed during the last decade including a Law on Development and Protection of Women (2004); Law on Health Care (2005); a Family Law and a Law on Education (both were amended in 2008); and a Law on Prevention and Combating of HIV/AIDS (2010).<sup>94</sup> Most recently, a Law on Juvenile Criminal Procedure has been adopted in December 2013. In Myanmar, the various provision of the CRC manifests through the framework of the 1993 Child Law. However, as there are various deficiencies in the law, amendment process has been underway since 2011. Some efforts to review and amend other laws and policies concerning children including labor laws, Minimum Standards for the Protection of Working Children, a law concerning people with disabilities, and a law concerning violence against women are also underway or planned in coming years.<sup>95</sup> In the case of Cambodia, there is no comprehensive or consolidated Children’s Act in Cambodian law. However, provisions of particular relevance to children can be found throughout a number of Codes, Laws and Decrees. Several provisions in the Cambodian Constitution specifically require the state to support and protect children. Article 48 in particular requires the State to protect the rights of children as stipulated in the “Convention on Children”, particularly the right to life, education, protection during wartime and from economic or sexual exploitation. The state is also required to protect children from acts that are injurious to their educational opportunities, health and welfare.<sup>96</sup>

In Brunei Darussalam, the main legislation dealing with various aspects of child rights is that of Children and Young Persons Act (2006). It contains provisions for the protection of children in case of physical, emotional and/or sexual risk or abuse from their guardians, trafficking of children and young persons and the setting up of juvenile court and Action Team on Child Protection.<sup>97</sup> The country also amended the Penal Code in 2012 in order to further protect the young and vulnerable from sexual exploitation and also provide prosecutors with a handle to prosecute a wider range of sexual offences.<sup>98</sup> As for Indonesia, the provisions of the CRC are generally binding on Indonesia given its Law No. 39 of 1999 on Human Rights, which provide that international human rights instruments ratified by the country are legally binding.<sup>99</sup> Furthermore, its Law on Child Protection (Law No. 23 of 2002) covers much of the rights guaranteed by the CRC. Other child rights-related laws include Law No. 3 of 1997 on Juvenile Justice,

92 Law on Child Protection, Care, and Education, available at [https://www.google.co.th/?gws\\_rd=ssl#q=Child+rights+situation+in+Vietnam&start=20](https://www.google.co.th/?gws_rd=ssl#q=Child+rights+situation+in+Vietnam&start=20), accessed 4 July 2015.

93 Petcharamesree, S. 2015 *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

94 Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

95 Luthra, A. 2015. *Child Rights Situational Analysis in Myanmar*, Research Report (Unpublished), Mahidol University.

96 Child Rights International Network (CRIN) *Cambodia: National Laws*, <https://www.crin.org/en/library/publications/cambodia-national-laws>; accessed 18.11.2015.

97 Laws of Brunei: Children and Young Persons Act Amended 2008, revised edition 2012 <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73344/115574/F-1341495003/BRN73344%20.pdf>; accessed 18.11.2015.

98 Kahlon, H. 2015. *Child Rights Situational Analysis in Brunei Darussalam*, Research Report (Unpublished), Mahidol University.

99 Child Rights International Network (CRIN), *Indonesia: National Laws, National laws on children's rights*, available at <https://www.crin.org/en/library/publications/indonesia-national-laws>, cited in Quan, R.J.D. 2015 *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.



Law No. 13 of 2003 concerning Manpower, Law No. 20 of 2003 on the National Education System, Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 12 of 2006 on Indonesian Citizenship, and Law No. 21 of 2007 on the Eradication of Trafficking in Persons.<sup>100</sup> For Malaysia, the country passed the Child Act 2001 as comprehensive implementing legislation for the CRC. Like in other countries however, there are different laws which are relevant to child rights including, among others, the Education Act (1996), the Children and Young Persons (Employment) Act 1966, the Domestic Violence Act (1994), and the Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007).<sup>101</sup> Finally, in Thailand, key legislation includes but is not limited to, the Child Protection Act (2003) which aims to provide protection for children from all forms of abuses, exploitation, violence and gross negligence by clearly stipulating that any child below the age of 18 is protected by the state; the Compulsory Education Act (2002); the Domestic Violence Victims Protection Act (2007); the Labor Protection Act (amended 2008); and the Juvenile Family Court and its Procedure Act (2010). There is also the National Child and Youth Development Promotion Act of 2007 which is intended to promote the role of private and community organization on child and youth development in line with the principle on best interests of the child.<sup>102</sup>

## Definition of a child and minimum legal age

An issue which merits a greater attention with regards to State Parties' compliance to the CRC is that of the definition of a child. It can be observed that the definitions of the child in relevant domestic laws in ASEAN countries are not always consistent with what is prescribed by the CRC. While it can be argued that the CRC itself gives room for State Parties to the convention to define a child in ways they deem appropriate,<sup>103</sup> the different minimum ages stipulated in various domestic laws in ASEAN member countries which are inconsistent with what is suggested in the CRC have important implications on the well-being of and the protection for children in different contexts and especially the ones concerning marriage, criminal responsibility and employment. Moreover, there is also a lack of harmonization on definitions of the child between the various legal instruments applicable in the same country. This section examines the definitions of a child as contained in the core national legislation on child protection and those concerning with marriage, criminal responsibility and employment.

With regards to the definition of a child as contained in the national legislations on child protection, only four ASEAN countries have laws under which the definition of a child is consistent with the CRC i.e., a child is any person below the age of 18. These include Indonesia (Child Protection Act 2002), Lao PDR (National Law on the Protection of the Rights and Interests of the Child 2007), Malaysia (Child Act 2001), and Thailand (Child Protection Act 2003). National laws on children in the remaining ASEAN countries define a child either as below the age of 14, as in the case of Brunei Darussalam (Children and Young Persons Act 2006) and Singapore (Children and Young Persons Amendment Act 2001); or at the age below 16 as in Myanmar (Child Law 1993) and Vietnam (Protection and Care and Education of the Child 1991); or in case of the Philippines, a child is defined as any person below the age of 21 in the Child and Youth Welfare Code of 1974. As Cambodia is the only ASEAN country with no child-specific legislation, the definition of a child can be found in relevant national laws.

<sup>100</sup> Ibid.

<sup>101</sup> Abubakar A and Emkic E, 2015, *Malaysia CRSA Field Research Report*, Research Report (Unpublished), Mahidol University.

<sup>102</sup> Child Rights International Network (CRIN) *Thailand: National Laws*; <https://www.crin.org/en/library/publications/thailand-national-laws>; accessed 19.11.2015

<sup>103</sup> Art.1 states that "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

In ASEAN countries where the core legislations pertaining to welfare and protection of children prescribe the age of the child to be inconsistent with that of CRC, there are concerns over the gaps in ensuring protection of children. Furthermore, there are discrepancies in the minimum legal age in the laws concerning marriage, criminal responsibility and employment in all ASEAN countries which have important implications on the rights and well-being of children in the region.

With regards to the minimum age of marriage, relevant legislations in five ASEAN Member States stipulate 18 years as minimum age (Cambodia, Lao PDR, the Philippines, Singapore, and Vietnam). In Malaysia, although the Law Reform (Marriage and Divorce) Act 1976 [Act 164] which applies to non-Muslims stipulates 18 years as the minimum age of marriage, a different provision exists under Islamic law. Under the Islamic Family Law Act (Federal Territory) 1984, the minimum age for marriage is 18 for males and 16 for females.<sup>104</sup> There are exceptions in both civil and Islamic laws however. Under the Marriage and Divorce Act, those aged between 16-18 years can marry with authorization of the Chief Ministry while under the Islamic law, young persons below 16 years of age can marry with the approval from the Shariah Court. In this connection, a growing trend of early marriage can also be observed in the country.<sup>105</sup> For Brunei Darussalam, the country follows similar practice as in Malaysia with a dual legal system for marriage and other matters. In fact, concerning marriage, there are three different laws that can be applied in the country. The first one is the Marriage Act (1948) which applies to non-Muslim and allows for a union for any persons who are 14 with parental consent. Second is the Chinese Marriage Act which provides that females must be at least 15 to marry and does not stipulate a minimum age for male. Third is the Islamic Family Law Order, which is applicable to the majority of the population, does not clearly state the minimum age of marriage for Muslims.<sup>106</sup> In the case of Indonesia which has the largest Muslim populations, the Marriage Act (1974) stipulates minimum age of marriage for female at 16 and male at 19. As for the remaining ASEAN countries, the Marriage law in Myanmar set the minimum age of marriage for girls at 14 which is among the lowest in ASEAN, and has no minimum age stipulated for boys. In Thailand, Family Law requires that those entering into marriage must be at least 17 years of age. However, the Thai Penal Code, section 277 allows male juvenile younger than 18 years who committed sexual violation against a girl aged between 13-15 years old to marry the girl, with her consent,<sup>107</sup> the issue which has raised concerns over the best interest of the child.

Another set of legislation under which discrepancies exist between national laws and the CRC concern the minimum age of criminal responsibility. The penal code of ASEAN Member States stipulate minimum age of criminal responsibility ranging from as low as seven years old as in Brunei Darussalam,<sup>108</sup> Myanmar and Singapore, to the higher minimum age of 15 as in the case of Lao PDR and the Philippines.<sup>109</sup> Although the penal code in Brunei Darussalam and Singapore and the Child Law in Myanmar similarly provide that children aged seven to 12 years may be held criminally responsible where they have “attained sufficient maturity of understanding to judge the nature and consequences of their conduct,” the low minimum age of criminal responsibilities in these states are in conflict with their obligations to respect the rights of all children. Similarly, although the minimum ages of criminal responsibility in other ASEAN member

104 CRC/C/MYS/CO/1 2 February 2007 Committee on the Rights of the Child, Concluding Observation: Malaysia, [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_MYS\\_CO\\_1.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_MYS_CO_1.pdf).

105 The Star online, “Child marriage on the rise”, Oct 6, 2013 <http://www.thestar.com.my/News/Nation/2013/10/06/Child-marriages-on-the-rise-1022-applications-approved-in-2012-compared-to-900-in-2011/>; accessed 17.11.2015.

106 The Brunei Times, “Brunei urged to raise minimum age of marriage”, Mar 14, 2015 <http://www.bt.com.bn/news-national/2015/03/14/brunei-urged-raise-minimum-age-marriage>; accessed 17.11. 2015.

107 Deesawas, R. 2015. *Child Rights Situational Analysis in Thailand*, Research Report (Unpublished), Mahidol University.

108 During the consultation meeting with GOs in Brunei on Mapping and Analyzing Current Child Rights Situation in Brunei Darussalam, it was mentioned that the minimum age of criminal responsibility has been raised to 9 years., 7 November 2015, Brunei Darussalam.

109 Information on minimum ages of criminal responsibility is taken from several country profiles and from data compiled by CRIN; [www.crin.org/en/home/ages/asia](http://www.crin.org/en/home/ages/asia).

countries are higher than seven (i.e., eight years of age in Indonesia; 10 in Malaysia and Thailand; and 14 in Cambodia and Vietnam), the treatment of young offenders as criminals goes against the principles of the CRC. It must be further noted that in Brunei Darussalam and Malaysia where there is a dual system of secular and Islamic law, determining criminal responsibility of a child is also dependent on his/her religious background. In Malaysia for example, the Syariah Criminal Offences (Federal Territories) Act 1997 provides that Muslim children can be held criminally responsible from the onset of puberty.<sup>110</sup> Likewise, Muslim child offenders in Brunei Darussalam may be subjected to more severe punishments under the Syariah Penal Code Order which has been amended and came into force in May 2014.<sup>111</sup>

With regards to employment of children, labor laws in Indonesia, Lao PDR, Philippines, Thailand and Vietnam prescribe the minimum age of employment at 15 years while Myanmar and Singapore fix the minimum age of employment at 13 years, Brunei Darussalam 14 years and Cambodia at 16 years of age. For Malaysia, the Young Persons (Employment) Act 1966 is being amended which is expected to raise the minimum age of employment from 14 to 15 years.<sup>112</sup> In addition to the prescription of minimum age of employment, existing labor laws in different countries also contain provisions specifying the conditions of work allowed for minors. For example, the Manpower Law (2003) of Indonesia does not allow for employment of children below 15 years of age. However, it also stipulates that children aged 13-15 years may be employed in light work job as long as it does not interfere with the child's holistic development. Children may also work for their parents in the family business. The law prohibits employment of children in the worst forms of labor including prostitution and work that damage the health, safety or morals of the child.<sup>113</sup> In the Philippines, an Act Prohibiting the Employment of Children Below 15 years of Age in Public and Private Undertakings provides exceptional cases when a child below fifteen years of age may be employed, i.e. under sole responsibility of parents and such does not endanger his/her life safety, health, morals, and the child's education.<sup>114</sup> Similarly, in the case of Cambodia, article 173 of the Cambodian Labor Act provides that children of either sex below the age of 16 may not be employed as wage or salary earners, supervisors or apprentices in any enterprise, and article 177 specifies that parental consent is required for the employment of children below the age of 18.<sup>115</sup> However, as will be discussed later in this report, gaps exist in both laws and the actual practice leaving children in ASEAN countries engaging in hazardous work and poor protection in the informal work sectors.

It can be seen from the above review of national laws relevant to child rights that in many ASEAN countries, the definition of a child within national law is not always clear and consistent with what is recommended by the CRC (see also Table 9 below). As pointed out earlier, it can be argued that the clause on majority in article 1 of the CRC itself gives room for State Parties to the convention to define a child in ways they deem appropriate. In this regard, a question should be raised whether such provision has contributed to impeding the full implementation of the CRC at the national level, including among ASEAN member states. It is also evident that even in the same country, the definition of who constitute a child varies between different laws. In the case of Malaysia and Brunei Darussalam where a dual legal system is observed, there are further discrepancies in definitions of a child between civil and Islamic law. The two legal systems could result in uncertainty among families of mixed religious background and potentially unequal levels of protection for children of different backgrounds. In this regard, the Committee on the Rights of the Child has recommended State Parties to the CRC to review

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Personal communication with a government representative at the Regional Consultation 21-22 Oct, 2015, Bangkok.

<sup>113</sup> Republic of Indonesia Law Number 13 (2003) on Manpower cited in Quan, R.J.D. 2015 *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

<sup>114</sup> Committee on the Rights of the Child, Philippines 2<sup>nd</sup> periodic report: CRC/C/65/Add.31, 5 November 2004.

<sup>115</sup> Committee on the Rights of the Child, Cambodia Initial report: CRC/C/11/Add.16, 24 June 1998.

their domestic laws to define that a child is any person below eighteen years old and that the relevant laws concerning children should be harmonized as to eliminate inconsistencies and contradictions.<sup>116</sup>

**Table 9: Definition of a child and minimum age in legislations relevant to child rights in ASEAN countries**

Countries	Age of a child as defined in legislation relating to child protection	Minimum age of marriage	Minimum age of criminal responsibility	Minimum age of employment
Brunei Darussalam	A child is a person below 14; young person is someone aged between 14-18; and juvenile means a person aged 7-18 <sup>117</sup>	14 for non-Muslims; 15 under Chinese Marriage Act; No minimum age specified under Islamic law	7 <sup>118</sup>	14
Cambodia	No specific child law	18	14	16
Indonesia	Below 18	16 for female and 19 for male	8	15
Lao PDR	Below 18	18	15	15
Malaysia	Below 18	18 under civil law; 16 for female and 18 for male under Islamic law	10 (penal code) Onset of puberty (Islamic law)	14 and is being raised to 15
Myanmar	Below 16	14 for female and no minimum age for male	7	13
Philippines	Below 21	18; with those between 18-21 requiring parental consent	15	15
Singapore	Below 14 (youth being 14-16)	18	7	13
Thailand	Below 18	17	10	15
Vietnam	Below 16	18	14	15

<sup>116</sup> See for example the CRC Concluding Observations for Myanmar, Malaysia, Singapore. [http://app.msf.gov.sg/Portals/0/Summary/publication/RPD/Concluding%20Observations%20\(CRC%20C%20SGP%20CO%202-3\\_en\).pdf](http://app.msf.gov.sg/Portals/0/Summary/publication/RPD/Concluding%20Observations%20(CRC%20C%20SGP%20CO%202-3_en).pdf).

<sup>117</sup> Laws of Brunei: Children and Young Persons Act Amended 2008, revised edition 2012 <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73344/115574/F-1341495003/BRN73344%20.pdf>; accessed 18.11.2015.

<sup>118</sup> During the consultation meeting with GOs in Brunei on Mapping and Analyzing Current Child Rights Situation in Brunei Darussalam, it was mentioned that the minimum age of criminal responsibility has been raised to 9 years., 7 November 2015, Brunei Darussalam.

## National policies and plans on child rights

Aside from the various legislations relevant to child rights that exist within the ASEAN Member States, all countries have also adopted different policies and plan that focus on development and protection of children.

Among all ASEAN members, the Philippines has adopted the most elaborated long-term plans and strategies on child rights known as the Philippine Plan of Action for Children and the Philippine National Strategic Framework for Plan on Children: (2000-2025) or CHILD 21. Countries like Thailand, Malaysia, Myanmar and Vietnam have also adopted national plans on children and child protection. In Thailand, Five-Year National Plans for Child and Youth Development have been adopted since 1982 to coincide with the country's Five-Year National Economic and Social Development Plan. The current Child and Youth Development Plan (2012-2016) is aimed to increase life immunity, protect and ensure development of children in need of special protection measures, and improve administration and management systems. The country is also drafting the National Master Plan on Child Protection 2015 – 2019 to serve as a guideline for the implementation of the Child Protection Act of 2003.<sup>119</sup> For Malaysia, the National Policy on Children and the National Child Protection Policy together with related Action Plans were adopted in 2009. These policies and plans aim to address the rights of the child to survival, protection, development, and participation.<sup>120</sup> In Myanmar, a National Plan of Action for Children (2006 – 2015), consisting of plans based on the MDGs and the WFFC was adopted. The Plan has four focus areas of implementation including health and nutrition, water and sanitation, education and child development, and child protection.<sup>121</sup> In the case of Vietnam, the National Plan of Action for Children for 2012-2020 has been adopted “with an aim to carrying out the comprehensive goal of building a safe and friendly living environment for better accomplishment of the right of the child; closing the gap in living conditions between groups of children and children in different regions and areas; enhancing quality of life; and providing a chance at equal development for all children.”<sup>122</sup> It has been pointed out that Vietnam's Poverty Reduction Plan for 2011-2020 and the Socio-Economic Development Strategy for 2011-2020 also include issues relating to children.<sup>123</sup>

Aside from these broad-based plans and policies, most ASEAN countries have formulated policies and plans dealing with specific children and youth issues. In Cambodia, Indonesia, Lao PDR, Philippines, Thailand, and Vietnam, national plans which address the issue of commercial sexual exploitation, trafficking of children as well as violence against children have been adopted. In Cambodia for example, a series of National Plans Against Sexual Exploitation of Children have been formulated since 2000, with the most recent one being the National Plan of Action on the Suppression of Human Trafficking and Sexual Exploitation (2010 – 2013).<sup>124</sup> Similarly, Indonesia completed the second National Plan of Action on the Eradication of the Criminal Act of Trafficking in Persons and Sexual Exploitation of Children, with the timeframe 2009-2014.<sup>125</sup> Lao PDR also has a National Plan of Action against Commercial and Sexual Exploitation against Children (CSEC) (2007-2011) and a National Plan of Action on the Prevention and the Elimination of Violence against Women and Violence against

119 Deesawas, R. 2015. *Child Rights Situational Analysis in Thailand*, Research Report (Unpublished), Mahidol University.

120 Ministry of Women, Family and Community Development, Child Protection and Child Welfare Services in Malaysia, Beijing High Level Meeting 4-6 November, 2010. [http://www.unicef.org/eapro/Malaysia\\_Beijing\\_paper\\_26\\_Oct\\_2010\\_FINAL.pdf](http://www.unicef.org/eapro/Malaysia_Beijing_paper_26_Oct_2010_FINAL.pdf).

121 Ministry of Welfare, Relief and Resettlement, Myanmar National Plan of Action for Children (2006-2015); [http://ovcsupport.net/wp-content/uploads/Documents/Myanmar\\_National\\_Plan\\_of\\_Action\\_for\\_Children\\_2006\\_2015\\_1.pdf](http://ovcsupport.net/wp-content/uploads/Documents/Myanmar_National_Plan_of_Action_for_Children_2006_2015_1.pdf); accessed 20.11.2015.

122 CRIN, Viet Nam: Children's Rights References in Universal Periodic Report; <https://www.crin.org/en/library/publications/viet-nam-childrens-rights-references-universal-periodic-review>; accessed 20.11.2015.

123 Petchamesree, S. 2015. *Child Right Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

124 Ecpat, Executive Summary: Cambodia [http://resources.ecpat.net/Ei/pdf/A4A\\_II/EXSUM\\_A4A\\_EAP\\_CAMBODIA.pdf](http://resources.ecpat.net/Ei/pdf/A4A_II/EXSUM_A4A_EAP_CAMBODIA.pdf).

125 Ecpat, Executive Summary, Indonesia; [http://resources.ecpat.net/Ei/pdf/A4A\\_II/EXSUM\\_A4A\\_EAP\\_INDONESIA.pdf](http://resources.ecpat.net/Ei/pdf/A4A_II/EXSUM_A4A_EAP_INDONESIA.pdf).



Children (2014-2020).<sup>126</sup> Furthermore, guidelines and plans to fight against child labor are also found in Indonesia, the Philippines, Thailand and Vietnam.<sup>127</sup>

In addition to the common national plans of actions against trafficking, sexual exploitation and violence against children, a few ASEAN countries have adopted plans and policies that respond to specific children issues in the country. In Indonesia for example, the government adopted a “Policy on Separated Children, Unaccompanied Children and Single-Parent Children Affected by Emergency Situations” in response to the tsunami that devastated parts of Indonesia in December 2004. As a great number of children had been orphaned or separated from their parents and in the process, were abducted or abused, this policy tried to ensure that children are taken care of and thus should not be separate from their family in the situation of emergencies and disaster.<sup>128</sup>

Although Brunei Darussalam and Singapore have not adopted national action plans specifically on children, there are other plans which address the well-being of children. Brunei Darussalam is currently implementing the Plan of Action on Family Institution and Women which also covers children issues including: the strengthening of parenting skills; promoting moral integrity among school children; propagation of child online protection; and providing residential schooling, home tuition educational subsidies and transportation for children from poor families.<sup>129</sup> Various national programs and plans relating to health and education have also been adopted both in Brunei Darussalam and Singapore. For Singapore, as the country takes a holistic approach in ensuring the well-being and development of children, policies relating to different aspect of children’s life have reportedly been integrated into key policies and programs of different government agencies.<sup>130</sup>

To conclude, as evident in this section, countries in ASEAN are equipped with laws, policies and national plans on child rights. However, it can be observed that the extent of compliance of various national laws to the international standards vary from country to country. One of the main gaps concerns the discrepancies in the definition of a child and the minimum age standard between those contained in relevant national laws and that of the CRC. At the same time, there are inconsistencies in the definition of a child between various laws relating to children in the same country. Such gaps can have important implications on the protection, rights and well-being of children in ASEAN especially when the legal provisions are concerned with marriage, criminal responsibility and employment of children. Thus, the issue of definition of a child will need to be addressed more strategically so as to enable a greater state compliance and the enjoyment of rights of children in ASEAN.

126 This National Plan of Action has been jointly developed by the National Commission for Mothers and Children (NCMC) and the National Commission on the Advancement of Women (NCAW).

127 Petcharamesree, S et al, 2009. *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila.

128 Save the Children, Indonesian ‘Orphans’ on the Increase as Tsunami Pushes Parents into Poverty and Children into Institutions, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/A33B5EE2179FE21FC1257230004FC11A-sc-idn-27nov.pdf> (last accessed Aug. 26, 2015), cited in Quan, R.J.D. 2015 *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

129 CRIN, Children’s Rights References in the Universal Periodic Review <https://www.crin.org/en/library/publications/brunei-darussalam-childrens-rights-references-universal-periodic-review>.

130 Singapore 2<sup>nd</sup> and 3<sup>rd</sup> Periodic Report to the UN Committee on the Rights of the Child; <http://app.msf.gov.sg/Portals/0/Files/Singapore-Periodic-Report-on-the-UNCRC-Jan-09.pdf>.

## CHAPTER VI: REGIONAL STRATEGIC COMPONENTS

Ensuring the rights of children requires more than the understanding of child rights principles and existence of positive legal framework at the international, regional national level. There are various actors and larger political, social, economic and cultural contexts which have direct and indirect impacts on the realization of children's rights. This chapter considers the roles and potential of different stakeholders in contributing to ensuring the rights of the child. Risks and dynamism relating to political, social, economic and cultural contexts at national and regional level and their implications on rights and well-being of children are also explored.

### Stakeholders and accountability

While it is recognized that under international human rights treaties, states have the primary responsibility to respect, protect and fulfill the rights of people. When it comes to ensuring the rights of children, other stakeholders including civil society and the private sector also have an important role to play in respecting, protecting and ensuring the rights of children as enshrined in the Convention on the Rights of the Child. However, considering the diverse political and economic contexts among ASEAN member states, the roles/functions and the level of accountability of different stakeholders in contributing to the realization of children's rights in each of the ASEAN country vary. The following section examines these aspects in greater detail.

#### 1. Government agencies:

In all ASEAN member countries, the development of policies and programs concerning different aspects of children's rights and well-being are placed under the mandate of ministries or departments dealing with social welfare and development as indicated below:

<b>Brunei Darussalam</b>	Community Development Department, Ministry of Culture, Youth and Sports
<b>Cambodia</b>	Ministry of Social Welfare
<b>Indonesia</b>	Department of Social Welfare, Minister for Women's Empowerment and Child Protection
<b>Lao PDR</b>	Ministry of Labor and Social Welfare
<b>Malaysia</b>	Department of Social Welfare, Ministry of Women, Family and Community Development
<b>Myanmar</b>	Social Welfare Department, Ministry of Social Welfare, Relief and Resettlement
<b>Philippines</b>	Department of Social Welfare and Development



<b>Singapore</b>	Ministry of Social and Family Development <sup>131</sup>
<b>Thailand</b>	Department of Children and Youth, Ministry of Social Development and Human Security
<b>Vietnam</b>	Department of Child Protection and Care (DCPC), Ministry of Labor, Invalids and Social Affairs

An important function of these department/ministries is on child protection. For example, the Community Development Department of Brunei has an Action Team on Child Protection to coordinate locally-based services to families, children and young persons in cases where children or young persons are or are suspected of being in need of protection. Similarly, in Lao PDR, the Ministry of Labor and Social Welfare (MLSW) is responsible for the development of the Child Protection and Assistance Network (CPNs) as mandated in the National Law on the Protection of Rights and Interests of Children.<sup>132</sup> For Singapore, the Ministry of Social and Family Development (MSF) adopted the National Standards for the Protection of Children<sup>133</sup> and works with different stakeholders including judges, child protection and welfare officers, the police, schools, private and voluntary sector as well as the general public to deliver the child protection work. The Malaysian government established the Ministry of Women Family and Community Development (MWFCD) to lay the foundation for an effective and operational child protection system in Malaysia. In Thailand, the Department of Children and Youth has recently been established under the Ministry of Social Development and Human Security to integrate the work on the promotion and protection of child rights at both policy and implementation level into a single unit.<sup>134</sup>

As all ASEAN members have ratified the CRC, each country has also set up separate national machineries to promote and monitor the implementation of the Convention on the Rights of the Child. Brunei has set up a National Children's Council and a Working Group on the CRC Report/Monitoring. Similarly, the Cambodian National Council for Children (CNCC) was established in 1995 to promote, coordinate and oversee implementation of the CRC. In Indonesia, the National Commission for Child Protection was set up in 1998 to ensure the implementation of the CRC while in Lao PDR, the National Commission for Mother and Child (NMC) established in 1992 is the main body for coordinating and monitoring the implementation of Children Convention. Similar mechanism has been set up in Myanmar (National Committee on the Rights of the Child (NCRC)), Malaysia (National Advisory and Consultative Council for Children) and the Philippines (the Council for the Welfare of Children (CWC)). Singapore has set up an Inter-Ministry Committee on the CRC consisting of representatives from various ministries. In Thailand, the National Child and Youth Development Promotion Commission and the National Child Protection Committee are responsible bodies for formulating national policies and plans as well as monitoring policy implementation relating to child protection including the CRC. In the case of Vietnam, the National Committee on Population, Family and Children is the main agency for the CRC monitoring and reporting.

131 This Ministry was established in 2012 and replaced the Ministry of Community Development, Youth and Sports which was overseeing children issues.

132 Haegeman, E. (2013) Child Rights Situational Analysis (Part 1: Secondary Data Review), cited in Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

133 National Standards for Protection of Children < [http://app.msf.gov.sg/portals/0/Summary/publication/Resource\\_Materials\\_Standards\\_Protection\\_Children.pdf](http://app.msf.gov.sg/portals/0/Summary/publication/Resource_Materials_Standards_Protection_Children.pdf) > [Accessed: 12 October 2015], cited in D'Cruz, M. 2015. *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

134 Department of Children and Youth, Child Protection System in Thailand, Ministry of Social Development and Human Security, 7 July 2015, cited in Deesawas, R. 2015. *Child Rights Situational Analysis in Thailand*, Research Report (Unpublished), Mahidol University.

While agencies to promote and monitor the implementation of the CRC exist in all ASEAN countries, there are challenges in ensuring the independence and effectiveness of these machineries. It has been pointed out that the various national Councils, Commissions and Committees established in most ASEAN countries to coordinate and monitor the implementation of the CRC consist of representatives from different government agencies.<sup>135</sup> As such, the level of independence of these bodies may be questioned. Furthermore, the ineffectiveness of these machineries in some countries has been observed. For example, it has been pointed out that the work of National Children's Council and a Working Group on the CRC Report/Monitoring in Brunei Darussalam is carried out on an ad hoc basis<sup>136</sup> while enforcement mechanisms by the National Council for Children in Cambodia reportedly has remained weak due to limited resources.<sup>137</sup> In Lao PDR, the National Commission for Mother and Child continues to depend on international and bilateral assistance for both financial and human resources necessary to carry out its mandate – the situation which leads to blurred lines of responsibilities between the NCMC and its development partners.<sup>138</sup> In Singapore, it has been pointed out that mandate of the Inter-Ministry Committee on the CRC does not extend to the coordination of all policies and programs for children and the strategy papers they produced fell short of a National Plan of Action for the implementation of the CRC.<sup>139</sup> For Thailand, concerns have been raised over the fragmentation in the implementation of policies and programs on child rights due to the lack of coordinations between different responsible bodies.<sup>140</sup> Although the Department of Children and Youth has recently been established in 2015 under Ministry of Social Development and Human Security to integrate the work on child rights, its effectiveness remains to be seen. Aside from the above gaps, it is important to note that among all ASEAN countries only Vietnam has put in place national machinery with a mandate to investigate cases of violations of children rights i.e., the Committee for the Protection and Care of Children (CPCC). In the case of Indonesia where the National Commission for Child Protection has been established as an independent institution, the Commission does not have a mandate to receive complaints or give remedies in cases of violations of child rights.<sup>141</sup>

In response to such shortcomings, the UN Committee on the Rights of the Child, in its Concluding Observations, recommended countries such as Brunei, Cambodia, Lao PDR, Myanmar, Singapore, and Vietnam, to "...establish an independent and effective mechanism, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights ... which is provided with adequate human and financial resources and easily accessible to children and which monitors the implementation of the Convention, deals with complaints from children in a child-sensitive and expeditious manner, and provides remedies for violations of their rights under the Convention."<sup>142</sup>

It should be noted however, that in ASEAN countries where a National Human Rights Commission (NHRC) exists (including Indonesia, Malaysia, Philippines and Thailand), this national human rights institution is usually mandated to investigate complaints with the power to recommend. In Myanmar,

135 See Petcharamesree, S. et al, 2009. *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila, for further details on the composition of these machineries.

136 Input from NGO consultation in Brunei Darussalam, 7 November 2015.

137 Committee on the Rights of the Child, 2011, Concluding Observations: Cambodia, CRC/C/HM/CO/2-3, 3 August 2011, cited in Capaldi, M. 2015. *Child Rights Situational Analysis in Cambodia*, Research Report (Unpublished), Mahidol University.

138 Haegeman, E. (2013) *Child Rights Situational Analysis (Part 1: Secondary Data Review)*, cited in Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

139 Committee on the Rights of the Child, Concluding Observations: Singapore 2011 & 2003, cited in D'Cruz, M 2015, *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

140 Deesawas, R. 2015. *Child Rights Situational Analysis in Thailand*, Research Report (Unpublished), Mahidol University.

141 Petcharamesree, S. et al, 2009. *Towards an ASEAN Commission for the promotion and protection of rights of women and children*, Working Group for an ASEAN Human Rights Mechanism, Manila, for further details on the composition of these machineries.

142 Concluding observations, Singapore, CRC/C/15/Add.220, 27 October 2003, para.13. More or less the same concern was raised to Brunei Darussalam, Cambodia, Myanmar and Vietnam, cited in Ibid.

a Human Rights Commission was formed in September 2011 and it has been trying to perform independently although with some constraints.<sup>143</sup> Aside from a NHRC, in a country like the Philippines, there are networks of governmental agencies and NGOs working together in addressing the issues of child rights from national to local level. Local Council for the Protection of the Child (LCPC) are established in each 'barangay' to raise awareness on children's rights in the community, set up a referral and response system and provide service for children who are abused, exploited or in conflict with the law.<sup>144</sup> At the same time, the Barangay Human Rights Action Centers are entrusted by the Philippines Commission on Human Rights to receive and investigate cases of human rights violations including child rights.<sup>145</sup> Indonesia is the only country to have established the National Commission on Elimination of Violence against Children.

The existence of various government machineries on child rights among ASEAN countries is an important indication of State Parties' commitment to promote and protect the rights of children in the region. Another area of government commitment is concerned with resource allocations. While data on government budget segregated for children is not available, information on social sector expenditure, especially in the areas of health and education provide some indications on the level of commitment in the key areas affecting the well-being and development of children.

**Table 10: Expenditure on Health and Education in ASEAN Countries**

Country/Spending Categories	Public Health expenditure (public and private) as % of GDP (2012)	Public Health expenditure as % of total govt expenditure (2012)	Education expenditure as % of GDP	Education expenditure as % of total govt expenditure
<b>Brunei Darussalam</b>	2.3	6.0	3.5 (2013) 3.8 (2014) <sup>146</sup>	9.7 (2013)
<b>Cambodia</b>	5.4	6.7	2.6 (2010)	13.1 (2010)
<b>Indonesia</b>	3.0	6.9	3.6 (2012)	18.1 (2012)
<b>Lao PDR</b>	2.9	6.1	2.8 (2010)	13.2 (2010) <sup>147</sup>
<b>Malaysia</b>	4.0	6.2	5.9 (2011)	20.9 (2011)
<b>Myanmar</b>	1.8	1.5	0.8 (2011)	4.4 (2011)
<b>Philippines</b>	4.6	10.3	2.7 (2009)	13.2 (2009)
<b>Singapore</b>	4.6	11.4	3.0 (2013)	18.1 (2013)
<b>Thailand</b>	3.9	14.2	7.6 (2012) <sup>148</sup>	31.5 (2012)
<b>Vietnam</b>	6.6	9.5	6.3 (2010)	20.9 (2010)

Source: ESCAP Statistical Database, Escap Online Statistical Data, [www.unescap.org/stat/data/statdb/DataExplorer.aspx](http://www.unescap.org/stat/data/statdb/DataExplorer.aspx); accessed 23.11.2015

<sup>143</sup> Luthra, A., 2015. *Child Rights Situational Analysis in Myanmar*, Research Report (Unpublished), Mahidol University.

<sup>144</sup> Estorninos, K.A.C. 2015. *Child Rights Situational Analysis in the Philippines*, Research Report (Unpublished), Mahidol University.

<sup>145</sup> Second periodic reports of States parties due in 1997, Philippines, CRC/C/65/Add.31, 5 November 2004, para. 29-30., cited in Ibid.

<sup>146</sup> Kahlon, H. 2015. *Child Rights Situational Analysis in Brunei Darussalam*, Research Report (Unpublished), Mahidol University.

<sup>147</sup> This figure was expected to rise to 17% during Fiscal Year 2012/13. However, no confirmed figure could be obtained, World Bank Group (2015). *Lao Economic Monitor: Towards Restoring Macroeconomic Stability and Building Inclusive Growth*, cited in Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

<sup>148</sup> The education expenditure as percentage of GDP in Thailand was 3.8% in 2010, and 5.6% in 2011. [www.unescap.org/stat/data/statdb/DataExplorer.aspx](http://www.unescap.org/stat/data/statdb/DataExplorer.aspx); accessed 23.11.2015.

As indicated in Table 10 above, countries such as Myanmar and Lao PDR have a low level of public expenditure on healthcare and education. While the Cambodian government also allocates small resources in education, the higher level of healthcare expenditure as a percentage of GDP reflects the higher out-of-pocket spending for healthcare services in the country. The relatively high healthcare expenditure as a percentage of GDP as compared to spending as percentage of total government expenditure in Vietnam and Malaysia can also reflect a high level of private spending in this sector. Myanmar reportedly has the highest out-of-pocket expenses on healthcare in the region, at 87% of total expenditure.<sup>149</sup>

Among all ASEAN members, Thailand has the largest public expenditure on healthcare and education. This reflects the commitment of the Thai government to improve healthcare and education provisions (through the universal healthcare scheme and free education policy). Aside from Thailand, Vietnam, Malaysia, Indonesia and Singapore also record a higher spending on education. However, compared to the OECD which spent 6.1% of their collective GDP on education,<sup>150</sup> ASEAN member countries spend less on education on average.

Concerning resource allocation for children, the UN Committee on the Rights of the Child generally recommends State Parties to take into account its recommendations resulting from its 2007 day of general discussion on resources for the rights of the child - responsibility of States. Specifically, as in its Concluding Observations for Thailand<sup>151</sup> for example, the committee recommends the State Party to, among others: "Allocate adequate budgetary resources to the maximum extent possible from the available resources in accordance with article 4 of the Convention for the implementation of the rights of children and in particular increase the budget allocated to the social sectors"; and "Build capacity to utilize a child rights approach in the elaboration of the national budget and implement a tracking, monitoring and evaluation system for the allocation and the use of resources for children by all relevant sectors and agencies at local level throughout the budget, thus providing visibility to the investment in children."

In this respect, all ASEAN member states will need to put in place budget allocations and tracking systems specific for persons under 18 years so that the state obligations to respect, protect and fulfill the rights of the child including through budgetary measure may be better monitored.

## 2. Civil society

Aside from the government sector, an important stakeholder in the promotion and protection of child rights is civil society. As political, economic and social contexts of each of the ASEAN countries vary, the roles and nature of engagement of civil society in different countries also depend on the individual country contexts. In countries such as Cambodia, Lao PDR, Myanmar and Vietnam which are classified as low-income nations (although Vietnam has now reached the status of a lower middle-income country), assistance from international donors has been a major source of funding for social sector development and social service delivery in the country. In Lao PDR for example, about two-thirds of the total development assistance in 2011-2012 went directly to the government line ministries as implementing agencies, with the Ministry of Public Transport receiving the highest share of ODA (27.1%), followed by the Ministry of Public Health

149 Ministry of National Planning and Economic Development and UNICEF Situation Analysis of Children in Myanmar, Nay Pyi Taw 2012, cited in Luthra, A. 2015. *Child Rights Situational Analysis in Myanmar*, Research Report (Unpublished), Mahidol University.

150 OECD Family Database, OECD - Social Policy Division - Directorate of Employment, Labor and Social Affairs [http://www.oecd.org/els/soc/PF1\\_2\\_Public\\_expenditure\\_education\\_Sep2014.pdf](http://www.oecd.org/els/soc/PF1_2_Public_expenditure_education_Sep2014.pdf).

151 The UNCRC, Concluding Observations: Thailand, CRC/C/THA/CO/3-4; fifty-ninth session 16 January-3 February 2012, available at: [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_THA\\_CO\\_3-4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_THA_CO_3-4.pdf); accessed on 3.11.2015.

(16.4%), and the Ministry of Education and Sports (16.1%).<sup>152</sup> A number of international NGOs on child rights are also present in these countries (especially in Cambodia) and have been active in providing support and facilitate the implementation of projects on the key social sectors such as in health and education, with a smaller number working on capacity building and advocating for changes in laws and policies.

At the same time, there are local NGOs engaging on children issues, most of which tend to focus their work on providing services and addressing basic needs. Due to the political context of the countries however, civil society in the CMLV is still evolving. There are issues concerning overlap of work and competition for funding among local NGOs in Cambodia while in Vietnam there have reportedly been limited collaborations between international and local NGOs due to a weak legal framework that governs their legal status in the country.<sup>153</sup> Furthermore, in Cambodia, despite the introduction of Social Accountability Framework 2015-2018<sup>154</sup> which intends to facilitate collaboration between government and civil society organizations, the government is at the same time seem to be tightening up control over civil society, thus limiting its roles to service delivery.<sup>155</sup> The latter situation is also taking place in Lao PDR where the Lao Government regards CSOs as service providers and strongly opposes the idea that they can have different roles including advocacy.<sup>156</sup> In the case of Myanmar, the number of national NGOs and community-based organizations (CBO) has been growing and they play an important role in filling the gap in delivering services in the area such as education which has been neglected by the government.<sup>157</sup> At the same time, there is a high level of distrust between the government and civil society groups leading to limited collaboration and participation of civil society in formulation of policies/program.<sup>158</sup> However, considering potential changes in the political context that will take place in Myanmar as a result of the national election in November 2015, it is expected that civil society will have an important role to play in formulating the country's future social and development agenda including on child rights.

In countries like Singapore, Malaysia and Brunei Darussalam which have a higher level of economic development and which have been under one-party rule, or ruled by an absolute monarchy in case of Brunei Darussalam, the presence and roles of civil society is of increasing importance. In Brunei Darussalam, civil society consists of mostly voluntary organizations although there are also some societies or associations set up and which may be funded by the government to achieve specific objectives. All voluntary societies and associations are required to register and get approval from the government to function. Most of them are engaged in welfare and charity-type activities targeting different groups of people in needs.<sup>159</sup> There are quite a number of voluntary organizations working to support children with physical and mental disabilities as there is a high rate of children with disabilities in the country.<sup>160</sup> More recently, the Brunei Council of Social Welfare has been active in raising awareness on child rights among young people. It is evident that CSOs can be quite effective in providing assistance in the cases where government's support falls short and thus their roles are also recognized as complimentary to government's efforts.<sup>161</sup>

152 Laos Government and UN (2013) MGD Progress Report for Lao PDR 2013, cited in Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

153 Petcharamesree, S. 2015. *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

154 I-SAF 2014, Implementation of the Social Accountability Framework 2015-2018. Available at: [http://www.ncdd.gov.kh/jdownloads/Strategic%20plan-policy/implementation\\_plan\\_i-saf.pdf](http://www.ncdd.gov.kh/jdownloads/Strategic%20plan-policy/implementation_plan_i-saf.pdf), cited in Capaldi, M. 2015. *Child Rights Situational Analysis in Cambodia*, Research Report (Unpublished), Mahidol University.

155 Capaldi, M. 2015. *Child Rights Situational Analysis in Cambodia*, Research Report (Unpublished), Mahidol University.

156 Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

157 Romain Cailland and Carine Jaquet, 2011. "Civil Society in Myanmar" in Terence Chong and Stefanie Elies (Eds) *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement*. Friedrich Ebert Stiftung <http://library.fes.de/pdf-files/bueros/singapur/08744.pdf>, accessed 24.11.2015.

158 Luthra, A. 2015 *Child Rights Situational Analysis in Myanmar*, Research Report (Unpublished), Mahidol University.

159 Hajah Sainah Haji Saim, 2011. "Civil Society in Brunei Darussalam" in Terence Chong and Stefanie Elies (Eds) *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement*. Friedrich Ebert Stiftung <http://library.fes.de/pdf-files/bueros/singapur/08744.pdf>, accessed 24.11.2015.

160 It is estimated that 25% of children in Brunei suffer from some types of disabilities, NGO Consultation in Brunei, cited in Kahlon, H and Deesawas, R. 2015. *Brunei Darussalam CRSA Field Research Report*, Report (Unpublished), Mahidol University.

161 Kahlon, H and Deesawas, R. 2015. *Brunei Darussalam CRSA Field Research Report*, Report (Unpublished), Mahidol University.



Similar types of voluntary and state-funded organizations exist in Singapore where, through the “many helping hands” approach to social welfare, the bulk of the services provided to children such as education and other social services tend to come from voluntary welfare organizations, ethnic self help groups and faith based organizations. However, there exist NGOs and CSOs that do take up child rights promotion and advocacy work including through dialogue sessions or the submission of Shadow Reports to the treaty bodies and UPR processes. The government tends to monitor these organizations more and as such they have less access and opportunities to engage in official processes.<sup>162</sup> In the case of Malaysia, records showed that there were about 58,000 registered societies in the country in 2007, although many of them were said to be inactive. Despite restrictive conditions, civil society in Malaysia is considered to be vibrant and there are many groups working on the issues of race- ethnicity, environment and gender.<sup>163</sup> A number of associations/societies have also been established to work on children issues including the Malaysia Council of Child Welfare (MKKM) set up in 1954 to support the government in providing services to children. Other groups which have been established in the 1990s like the Malaysian Children Resource Institute (MCRI), Malaysian Association for the Protection of Children (MAPC) and Protect and Save the Children of Selangor and Kuala Lumpur focus their work on child development and protection. Some NGOs like SUKA Society and Voice of Children also engage in advocacy work, with the former focusing on advocating for alternative detention for children and the latter on changing laws and policies to protect the rights of children in Malaysia.<sup>164</sup>

With regard to Indonesia, Philippines and Thailand, civil societies in these countries are large and diverse, and they have played important roles in the national development and democratization process in their respective countries during the last few decades. In these countries, UN agencies and international NGOs are present and active while national, community- and faith-based groups engage in various issues including on child rights.

Although there are many CSOs that focus their work on addressing basic needs and delivering services to children similar to those in other ASEAN countries, there seem to be more groups which have adopted the rights-based approach and engage in advocacy work. In Indonesia, the *Kelompok Kerja Sosial Perkotaan* (KKSP) Foundation for example focuses its work on children’s rights, with a main emphasis on children in need of special protection, including those who are economically and sexually exploited, internally displaced children and victims of disasters. While KKSP runs an Alternative Education for Street Children program to provide education to street children, the organization at the same time carries out awareness raising campaign on the condition of children in need of special protection.<sup>165</sup> Other NGOs also engage in a combination of developmental and advocacy work that target policy changes.

Similarly, in the Philippines there are numerous CSOs at national and local level that undertake service delivery programs catering to the poor and marginalized, especially in the area of health and education. At the same time, many NGOs in the Philippines are active in advocating for legislative and policy reforms as well as in building capacity for community-based groups and people’s organizations (including children groups) to claim their rights. As civil society activities have generally been sanctioned by the government and with the environment for CSO-government engagement becoming more favorable in the recent years, Philippines’ CSOs are able to engage more constructively with the government. There is a greater space for CSOs to participate not only in policy formulation processes at local and national levels, but also in planning, budgeting and monitoring of government projects.<sup>166</sup>

162 D’Cruz, M 2015, *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

163 Lee Hock Guan 2011. “Civil Society in Malaysia” in Terence Chong and Stefanie Elies (Eds) *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement*. Friedrich Ebert Stiftung pp.73-85 <http://library.fes.de/pdf-files/bueros/singapur/08744.pdf>, accessed 24.11.2015.

164 Abubakar, A and Emkic, E, 2015. *Malaysia CRSA Field Research Report*, Report (Unpublished), Mahidol University.

165 Terre Des Hommes, Foundation’s Profile, available at <http://www.tdhgsea.org/?q=node/58> accessed Oct. 28, 2015), cited in Quan, R.J.D. 2015 *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

166 Patrick Wilson O. Lim 2011. “Civil Society in the Philippines” in Terence Chong and Stefanie Elies (Eds) *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement*. Friedrich Ebert Stiftung pp.97-110 <http://library.fes.de/pdf-files/bueros/singapur/08744.pdf>, accessed 24.11.2015.

In the case of Thailand, while NGOs and CBOs are numerous and engaging in a multitude of issues, they do not always have the opportunity to engage constructively with the government. This is especially true with those which focus their work on mobilizing around the issues of natural resources and the impact of large-scale development projects. However, those national and international NGOs working on softer issues including on children rights have been able to advance the cause over the last decades. CSOs in Thailand and international organizations such as UNICEF and UNHCR and have been successful in working with government agencies to push forward national policies and laws in protecting the rights of the child and building awareness on child right issues. For example, a model for a comprehensive child protection monitoring and response system (CPMS) has also been developed since 2006 and expanded through collaboration between UNICEF, government agencies and other civil society partners.<sup>167</sup>

In this respect, it is clear that civil society organizations in ASEAN countries have been contributing toward the promotion and protection the rights of children in the region. Although in most cases, their roles in providing social services to children have been mostly complimentary to that of the government, in some countries CSOs have contributed in important ways in raising awareness on child rights, building capacity and creating space for people's including children participation. Nevertheless, there are issues which pose concerns for the civil society groups in ASEAN. Firstly, many of the CSOs - especially those at the national and local level - are dependent on external financial resources unless they are funded by the state. There are thus issues related to organizational and human resource management and sustainability which are common to national and local NGOs in many countries. NGOs which are more established can raise resources more easily while smaller ones and those without many years of a track record find it more challenging to raise fund to do their work. Secondly, accountability and transparency of NGOs has become a concern, especially in light of better educated and more demanding citizens. NGO's accountability concerns not only financial matters and upward reporting, but is linked to decision making process and how they are responsible to the people, including children and communities they work with. Lastly, in the context of ASEAN countries, CSOs can generally be more effective in advocating for children rights by adopting a constructive engagement approach with the government. They will also need to identify ways to engage more strategically with the private sector which has played increasingly critical role both as violators and promoters of human rights including the rights of children.

### 3. Private sector

In ASEAN countries, the private sector has been the main engine of economic growth. This is especially true now for countries such as Cambodia and Lao PDR where private investment in manufacturing (in the case of Cambodia) and extractive, resource-based industries in Lao PDR has spurred employment and economic growth which has contributed to poverty reduction in both countries over the last two decades. In Lao PDR for example, the private sector now accounts for over 80% of the country's GDP and foreign direct investment dominated the private sector.<sup>168</sup> However, concerns have been raised over the negative effect emerging from business and industry operations in different countries especially those involving large scale development projects that impact on the livelihood of poor and marginalized people including children. There are also issues relating to child labor in different industrial sectors such as garment industry (Cambodia), mining (Indonesia and Myanmar), plantations (Malaysia), and the shrimp and seafood industry (Thailand).<sup>169</sup> Concerns over sexual exploitation of children in the travel and tourism industries have also been raised in Cambodia, Indonesia, Philippines and Thailand.

<sup>167</sup> Deesawas, R. 2015. *Child Rights Situational Analysis in Thailand*, Research Report (Unpublished), Mahidol University.

<sup>168</sup> GIZ and BGR (2015), *CSR in Lao PDR: Baseline Assessment of Social and Environmental Regulations & Standards*, Vientiane, February 2015, <https://www.giz.de/de/downloads/giz2015-en-corporate-social-responsibility-laos.pdf>, cited in Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

<sup>169</sup> ILO Country Office for Thailand, Cambodia and Laos PDR, *Combating the Worst Forms of Child Labor in Shrimp and Seafood Processing Areas of Thailand*, January 2014, cited in Deesawas, R. 2015. *Child Rights Situational Analysis in Thailand*, Research Report (Unpublished), Mahidol University.



Although there is a growing interest in the area of corporate social responsibilities (CSR) among business operators in ASEAN countries, the level of awareness and practices of CSR vary across countries and business sectors as well as between national and international operators. In Lao PDR for example, international and local investors in the country's hydropower and mining sectors have different levels of awareness of and commitment to corporate social responsibility, with the former (especially those funded by international/Western finance institutions) being required to follow international safeguards in the development of the project.<sup>170</sup> Similarly, in Thailand it was reported that multinational companies operating in the country engage in more CSR activities than local ones although the kinds of activities carried out seem to evolve around the donation of educational materials to underprivileged children and organizing activities for them on special occasions. The situation is not very different in the Philippines where promotion and protection of children's rights in the private sector is reportedly limited to charitable CSR activities of occasional gift-giving and donating to orphanages and shelters.<sup>171</sup>

In the case of Singapore, it has been pointed out that the country neither has CSR parameters for local or multinational enterprises that are in line with the international standards on business and human rights, nor a framework for multinational companies headquartered in Singapore to identify or report on the child rights impacts.<sup>172</sup> However, there is an increasing presence of the private sector on child rights issues with existing initiatives which are non-profit or privately run with little direction or input from the State. As for Cambodia, there has been limited knowledge and information on the private sector's role in the promotion and protection of children rights in the country. Some attention has been given to addressing the issue of child labor in the garment industry and sexual exploitation of children in tourism industry.<sup>173</sup> However, the Cambodian government is reportedly aiming to adopt a national CSR framework by 2018.<sup>174</sup>

In Malaysia, Indonesia and Vietnam, there have been some important developments during the last few years for the private sector to become more active in adopting CSR practices that are geared toward the promotion and protection of children's rights. In Malaysia, the Government has been a supporter of the CSR concept, using it to differentiate the business investment climate in the country. It encourages companies' adoption of CSR through policy and regulation, tax incentives, reporting and voluntary standards among others.<sup>175</sup> With regard to CSR and child rights, an important development can be seen through the introduced the Children's Rights and Business Principles (CRBP) in 2012 by UNICEF Malaysia.<sup>176</sup> Together with Companies Commission Malaysia, UNICEF also drafted an advocacy document which ties into the CRBP 'Principle Three' that raises issues regarding treatment of employment for young workers, addresses high rates of school drop-out at secondary school level and the need for the State to provide non-formal educational opportunities. There are a number of companies in Malaysia which are involved in CSR with a focus on child rights including Khazanah, Digi, Sime Darby, Bursa Malaysia, UMW, UN Global Compact Malaysia, RSPO and SSM.<sup>177</sup>

In Indonesia, Indonesia Business Links (IBL) has tried to integrate child rights into business principles and operations through the practices of CSR. The UN and international agencies like UNICEF and Save

170 Ibid.

171 Estorninos, K.A.C. 2015. *Child Rights Situational Analysis in the Philippines*, Research Report (Unpublished), Mahidol University.

172 D'Cruz, M 2015, *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

173 The NGO Friends International has made progress with its' Child Safe Network amongst tourism industry partners (including the informal tourism sector). See: <http://friends-international.org/childsafecampaigns.asp?mm=cs&sm=ccam>, cited in Capaldi, M. 2015. *Child Rights Situational Analysis in Cambodia*, Research Report (Unpublished), Mahidol University.

174 NGO Forum on Cambodia, 2015, Private Sector and NGOs meet to adopt Terms of Reference of National Corporate Social Responsibility Platform in Cambodia. Available at: <http://www.ngoforum.org.kh/index.php/en/hot-news/events/314-private-sectors-and-ngos-meet-to-adopt-term-of-reference-of-national-corporate-social-responsibility-platform-in-cambodia>, cited in ibid.

175 Abubakar, A and Emkic, E, 2015. *Malaysia CRSA Field Research Report*, Research Report (Unpublished), Mahidol University.

176 UNICEF (2013), Annual Report-Malaysia, available at: [http://unicef.org/about/annualreport/files/Malaysia\\_COAR\\_2013.pdf](http://unicef.org/about/annualreport/files/Malaysia_COAR_2013.pdf).

177 Ibid.

the Children together with local partners such as Global Compact Network (IGCN) and the Ministry of Women's Empowerment and Child Protection (KPPPAI) have also been promoting "Children's rights and Business Principles" (CRBP) in Indonesia.<sup>178</sup> Industry-specific guidance for the implementation of CRBP have been developed which cover a wide-variety of industries ranging from consumer goods, information and communication technologies, travel and tourism, to banking and insurance.<sup>179</sup> It should be noted however, that although many companies are committed to CSR, there are still gaps in establishing quantified commitments.<sup>180</sup> Most recently in 2014, UNICEF, the UN Global Compact and Save the Children also helped developed and introduced the Children's Rights and Business Principles to guide companies to respect and support children's rights in Vietnam. However, it has been reported that while a 90% of managers surveyed reported their willingness to support CSR, only 28% of companies have well established CSR activities. Moreover, most of the companies prefer a charitable approach to CSR rather than adopting the rights perspective including the rights of children into their business strategies and practices.<sup>181</sup>

#### 4. People's participation

Space for people's participation in politics and decision making processes is an important aspect of ensuring government's accountability. In many ASEAN countries however, such space is limited due to unfavorable political contexts, gaps in the national legal framework and a prioritized focus on economic development. In countries such as Cambodia, Myanmar, Lao PDR and Vietnam or in more economically developed nations like Singapore and Brunei Darussalam, participation of people in public affairs is highly regulated. With the countries having been ruled by one-party or in the case of Brunei Darussalam, an absolute monarchy, political climate in these ASEAN countries do not allow for active political participation. Although there are policy and legal frameworks that enable citizen participation and access to information in some countries, meaningful participation of people does not seem to take place. In Lao PDR for example, despite the Government's adoption of the idea of 'people's participation' as a mean to eradicate poverty since 2000,<sup>182</sup> the focus of participation seemed to evolve around consultations and dialogue with international development agencies, private sectors and among government officials themselves. Likewise in Vietnam, despite the enactment of Grassroots Democracy Decree (1998) and Ordinance (2007) which intend to promote greater participation of people in public affairs, participation remains highly regulated.<sup>183</sup> The situation in Cambodia is not much different. Although the country has implemented decentralization reform since 2001 and has, along with the development of Commune Council, made legal provisions for budget allocation and access to such information in the recent years, there has reportedly been no significant improvement in people's participation and monitoring in the budgeting process.<sup>184</sup> It has further been pointed out that budget allocation for social services or children related issue was very small despite an increase in overall budget allocated to Commune Council.<sup>185</sup>

178 UNICEF, Children are Everyone's Business: Children's Rights and Business Principles in Indonesia, available at [http://www.unicef.org/csr/css/UNICEF\\_CRBP\\_Indonesia\\_Brief\\_-\\_081013-final.pdf](http://www.unicef.org/csr/css/UNICEF_CRBP_Indonesia_Brief_-_081013-final.pdf), cited in Quan, R. J. D. 2015. *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

179 UNICEF, Children's Rights and Business Principles, 12 (2011), available at [http://www.unicef.org/indonesia/CHILD\\_RIGHTS\\_AND\\_BUSINESS\\_PRINCIPLES.pdf](http://www.unicef.org/indonesia/CHILD_RIGHTS_AND_BUSINESS_PRINCIPLES.pdf), cited in ibid.

180 UNICEF, CSR | Children's Rights in Business (2013), available at [http://www.unicef.org/csr/css/Ipsos\\_Mori\\_survey\\_summary\\_-\\_CSR\\_INDONESIA.pdf](http://www.unicef.org/csr/css/Ipsos_Mori_survey_summary_-_CSR_INDONESIA.pdf), cited in ibid.

181 Petcharamee, S. 2015. *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

182 The Government presented at the 7th Roundtable Meeting in November 2000 its medium-term strategic approach: "Fighting Poverty through Human Resource Development, Rural Development and People's Participation." This strategy was further developed into the National Poverty Eradication Program (NPAP) and has been renamed the National Growth and Poverty Eradication Strategy (NGPES) and is the Lao version of the PRSP. <https://www.imf.org/external/pubs/ft/scr/2004/cr04393.pdf>, cited in Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

183 Petcharamee, S. 2015. *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

184 Niatzi, T 2011, Deconcentration and decentralization reforms in Cambodia: Recommendations for an institutional framework, Asian Development Bank, Manila; COMFREL, 2013, Assessment of the Second Term of Decentralization in Cambodia: Commune Council Performance and Citizens' Participation, 2007-2012, cited in Capaldi, M. 2015. *Child Rights Situational Analysis in Cambodia*, Research Report (Unpublished), Mahidol University.

185 Save the Children, 2014, Child Rights Situation Analysis Cambodia 2014, Save the Children International, Phnom Penh, cited in ibid.

In Singapore and Brunei Darussalam, the political system does not promote free and meaningful participation. However, with the internet, proliferation of alternative media and social media has provided new opportunities for political space and discourse in Singapore<sup>186</sup> and to a more limited extent, in Brunei Darussalam.<sup>187</sup> It has been noted that in Singapore, limited public access to government data, particularly disaggregated data on the impact of laws and policies effects on children presents another obstacle to effective participation by people and civil society groups.<sup>188</sup>

Although participation and accountability processes in most of the ASEAN countries remains weak, countries like Philippines, Indonesia, and Thailand have seen a greater space for people's participation in public affairs including in budgeting processes. In the Philippines, the Local Government Code of 1991 provides the legal framework for the institutionalization of popular participation in local development administration through a process of decentralization. Citizens groups including people organizations (POs) and non-governmental organizations (NGOs) are encouraged to participate in decision-making processes and undertake community development programs. They are also represented in local policy-making and planning bodies such as the local development council, the local pre-bid and awards committee, the local health boards, and the local school boards. Good practices in participatory governance have been reported in the area of environmental management and the delivery of social services.<sup>189</sup> More recently, the Philippine government has decided to include Grassroots Participatory Budgeting approach into its poverty reduction policy so that funds can be targeted more closely to the needs of individual local government units (LGUs), but also it helps to make the delivery of social services within an LGU more efficient.<sup>190</sup>

In the case of Indonesia and Thailand, both countries introduced the Decentralization Laws in 1999 which have resulted in a greater awareness and participation of the people in local governance. In Indonesia, it has been reported that Indonesian citizens are becoming more organized and engaged in government affairs.<sup>191</sup> For instance, civil society groups have been successful in lobbying for a higher allocation for education and health care for the poor and more gender-sensitive budgets, among others. They have also developed and used citizen report cards and citizen charters to monitor improvements in government processes and services.<sup>192</sup> In Thailand however, although there have been some initiatives to engage people in the planning and monitoring of budget at the municipality level as provided by the directive of Ministry of Interior since 1998, such a process has been carried out on an ad hoc basis and with uneven results.<sup>193</sup>

186 George, Cherian 2014, 'Divide and Rule' in *Air-conditioned Nation*, 17 April. < <http://www.airconditionednation.com/category/my-choice/> > [Accessed: 5 October 2015], cited in D'Cruz, M. 2015. *Child Rights Situational Analysis in Singapore*, Research Report (Unpublished), Mahidol University.

187 Kahlon, H. 2015. *Child Rights Situational Analysis in Brunei Darussalam*, Research Report (Unpublished), Mahidol University.

188 Ibid.

189 Alex B. Brillantes, Jr. (2007) The Philippines: Civic Participation in Local Governance- Focus on Subnational Budgeting and Planning, in Anwar Shah (ed), *Participatory Budgeting, Part III Country Case Studies on Civic Participation in Subnational Budgeting*; available at: [https://openknowledge.worldbank.org/bitstream/handle/10986/6639/394980v20\\_Case0101OFFICIAL0USE0ONLY1.pdf?sequence=1](https://openknowledge.worldbank.org/bitstream/handle/10986/6639/394980v20_Case0101OFFICIAL0USE0ONLY1.pdf?sequence=1), accessed 29.11.2015.

190 DELGO'SEA (Partnership for Democratic Local Governance in Southeast-Asia), *Grassroots Participatory Budgeting Process – A New Approach from the Philippines*, available at: <http://www.delgosea.eu/cms/News/Grassroots-Participatory-Budgeting-Process-a-New-Approach-from-the-Philippines>, accessed on 30.11.2015.

191 UNICEF Indonesia, *Making Decentralisation Work for Children in Indonesia*, available at [http://www.unicef.org/indonesia/A2-\\_E\\_Issue\\_Brief\\_Decentralisation\\_REV.pdf](http://www.unicef.org/indonesia/A2-_E_Issue_Brief_Decentralisation_REV.pdf) (last accessed Oct. 27, 2015), cited in Quan, R.J.D. 2015. *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

192 Ibid.

193 See Charas Suwanmala (2007). Thailand: Civic Participation in Subnational Budgeting, in Anwar Shah (ed), *Participatory Budgeting, Part III Country Case Studies on Civic Participation in Subnational Budgeting*; available at: [https://openknowledge.worldbank.org/bitstream/handle/10986/6639/394980v20\\_Case0101OFFICIAL0USE0ONLY1.pdf?sequence=1](https://openknowledge.worldbank.org/bitstream/handle/10986/6639/394980v20_Case0101OFFICIAL0USE0ONLY1.pdf?sequence=1), accessed 29.11.2015.

## Risk Analysis

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As countries in ASEAN have been going through changes and development in different dimensions, there are issues which can be seen as posing risks to the realization of rights and well-being of the people of ASEAN including those of children. These risks are socio-economic, political, cultural and environmental related.

### **a) Socio-economic related risks**

Despite the growing economy in ASEAN, citizens of countries in the region such as from Myanmar, Lao PDR, Philippines, Cambodia and Vietnam still face risks stemming from poverty and a lack of access to basic social welfare, education and health. In Myanmar, about 32% of the population live below the poverty line.<sup>194</sup> The poverty rate for Lao PDR was 27.6% (2008); Cambodia 20.5% (2011); the Philippines 25.2% (2012) and 17.2% (2012) for Vietnam.<sup>195</sup> Poverty is more prevalent among people living in remote areas and rural households as well as members of different ethnic minority groups. In Lao PDR for example, the poverty rate is about 42% among the non Lao-Tai ethnic minorities<sup>196</sup> while about 50% of the ethnic population in Vietnam are living in poverty.<sup>197</sup> Gaps in access to basic healthcare (especially maternal health and reproductive health for women in remote areas) still poses risks and have important implications on the well-being of children. At the same time, there are issues relating to limited access to education and employment opportunities for those from the poorer households as well as the lack of effective welfare services, safety-net and social protection system for children in many ASEAN countries, which can pose further risks for child labor and the exploitation of children.

The issue of poverty and socio-economic inequality also leads to another important area of concerns and risks common to ASEAN countries, especially in light of the ASEAN economic integration - migration. While internal and cross-border migration within the region has taken place for many decades, ASEAN is expected to see an increasing flow of people in the coming years with the official launch of the ASEAN Economic Community. Although migration brings economic and other benefits to the migrant themselves, their families and the communities, there are also risks and negative implications associated with migration by both adult and children. In the case of adult migration, there are risks that children left behind may be raised without the proper guidance and that they may be exposed to exploitation and abuse.<sup>198</sup> Children may be migrating with adults or on their own for a variety of reasons which make them more at risk of trafficking and exploitation. Attention will need to be paid to mitigating such risks given the likelihood that an increasing number of younger populations will be migrating in light of the open borders and the widening socio-economic gaps within and between countries in ASEAN. Another aspect of risk analysis is related to cultural values and practices.

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194 Luthra, A. 2015. *Child Rights Situational Analysis Report in Myanmar*, Research Report (Unpublished), Mahidol University.

195 ESCAP Statistical Database, Escap Online Statistical Data, available at: [www.unescap.org/stat/data/statdb/DataExplorer.aspx](http://www.unescap.org/stat/data/statdb/DataExplorer.aspx), accessed on 2.11.2015.

196 ILO (2014). *Understanding Children's and Youth Employment Outcome in Laos*.

197 Petcharamesree, S. 2015. *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

198 Philippines Significant Advancement at: <http://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/philippines.pdf>, cited in Estorninos, K.A.C. 2015. *Child Rights Situational Analysis in the Philippines*, Research Report (Unpublished), Mahidol University.

## **b) Cultural-related risks**

Although ASEAN countries have undergone rapid economic changes during the last decades, certain cultural values and practices which have important implications on the promotion and protection of children's rights still remain.

Gender stereotyping and gender inequalities are not uncommon in ASEAN societies. Despite the overall high rate of female participation in the economy of all of the ASEAN countries, the role of women in local and national decision-making arena is still quite limited. According to statistics by UNESCAP, the percentage of women in national parliament in ASEAN countries as of 2014 ranges from 6% in Myanmar, 10% in Malaysia to 25% and 27% in the Singapore and Philippines respectively.<sup>199</sup> Similarly, while girl children and female youth are gaining more access to education at all levels, more women in the Southeast Asian region remain concentrated in so-called vulnerable employment than men.<sup>200</sup> The relatively inferior position of women and girls in the ASEAN societies can also be seen through the rather high incidence of violence against girls and women in the region. Statics by the World Health Organization indicate that 40.2% of women aged 15 and above in Southeast Asia reported having experienced either intimate partner violence (physical and/or sexual) or non- partner sexual violence or both in their lifetime. This is a high percentage compared to 27.2% in Europe or 32.7% in high income countries.<sup>201</sup> The health and other implications of violence against women and girls are well documented.<sup>202</sup> Furthermore, gender-based violence is also seen as one of the push factors in the trafficking in women and girls.<sup>203</sup> Unfortunately, the culture in this region which see males as more superior and thus tolerates violence against women and children acts an important obstacle to reducing the prevalence of violence while posing increasing risks to well-being and the exercise of rights of many women and girls in ASEAN countries.

Another cultural challenge for ASEAN states concerns the acceptance and continued practice of corporal punishment. Studies point to the widespread use of physical and other humiliating punishment methods as a means to instill discipline in children in many ASEAN societies including in the Philippines,<sup>204</sup> Indonesia,<sup>205</sup> and Lao PDR,<sup>206</sup> among others. There are deeply held views among parents and teachers that some degree of violent punishment is necessary or even a duty in childrearing.<sup>207</sup> The perception that children are born without a sense of right and wrong and that parents have to guide them through the exercise of power and authority means that corporal punishment is not perceived as an abusive or violent act unless it reaches some level of severity.<sup>208</sup> This way of thinking and practice which is rooted in cultural norm needs to be addressed in a comprehensive way as to prevent further risk of violence against children of this and other forms.

199 ESCAP Statistical Database, Escap Online Statistical Data, available at: [www.unescap.org/stat/data/statdb/DataExplorer.aspx](http://www.unescap.org/stat/data/statdb/DataExplorer.aspx), accessed on 2.11.2015.

200 United Nations, (2010). *The Worlds' Women 2010: Trends and Statistics*, Figure 4.5: Employed Persons in Vulnerable Employment by Region and Sex (2004-2007), p. 87.

201 The Guardian (online) WHO report into violence against women: key data, 20. June.2013; <http://www.theguardian.com/news/datablog/2013/jun/20/women-violence-worldwide-statistics-who> <https://docs.google.com/spreadsheets/d/13b2EaFpT4gTDtZg6Zfya0loB6ALGkfrDQWG-SWeENys/edit?pli=1#gid=4&vpid=A1>; table 5; accessed 2.11.2015.

202 See for example the UN Women Ending Violence Against Women and Girls: Programing Essentials, available at: <http://www.endvawnow.org/uploads/modules/pdf/1372349234.pdf>, accessed on 2.11.2015.

203 Ibid.

204 A Time for Change: Ending All Forms of Corporal Punishment of Children Corporal Punishment in the Philippines, cited in Esroninos, K.A.C. 2015. *Child Rights Situational Analysis in the Philippines*, Research Report(Unpublished), Mahidol University.

205 Save the Children International (SCI), *Indonesia Country Child's Rights Situation Analysis 2014*, cited in Quan, R.J. D. 2015. *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

206 NCAW, NCMC, Unicef, Plan, Child Fund and Save the Children (undated) Factsheet, Violence against Children in Lao PDR; [http://www.unicef.org/laos/VAC\\_factsheet\\_-\\_23\\_May\\_2014\\_final\\_Eng.pdf](http://www.unicef.org/laos/VAC_factsheet_-_23_May_2014_final_Eng.pdf), cited in Boontinand, V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Report (Unpublished), Mahidol University.

207 Global Initiative to End All Corporal Punishment of Children and Save the Children, *Progress towards prohibiting all corporal punishment of children in ASEAN member states*, November 2014 edition, available at: <http://www.endcorporalpunishment.org/assets/pdfs/briefings-regional/ASEAN-briefing-2014-11.pdf>, accessed on 2.11.2015.

208 Ibid.



### **c) Political and security-related risks**

There are issues concerning national and regional politics and security which can have important implications on the rights and well-being of ASEAN citizens including children. At the national level, corruption has become a systematic problem in many countries. The 2014 results of the Corruption Perceptions Index published by Transparency International indicated that only Singapore scored at the very top end, ranking 7 out of 175 which makes the country one of the “very clean” states. This was followed by Malaysia which ranked 50 out of 175. The rest of ASEAN countries (excluding Brunei Darussalam whose data is not included) were ranked toward the middle to the bottom ends of the index of being “highly corrupted” at 85/175 (Philippines and Thailand), 107/175 (Indonesia), 119/175 (Vietnam), 145/175 (Lao PDR), and 156/175 for Cambodia and Myanmar.<sup>209</sup>

Public sector corruption affects the ability of the government to deliver adequate and quality social services to the people, especially the most vulnerable groups. The absence of strong civil society and accountability systems in many of the ASEAN countries has contributed to the chronic problems of corruption in the region and will continue to pose risks not only to the development and well-being of the citizens but also to the trust and stability of the governments.

At the regional level, there are risks that may be arising from political and security tensions involving Brunei Darussalam, China, Malaysia, the Philippines, Taiwan and Vietnam. These countries have laid territorial and maritime claims over the South China Sea for many decades and there have been sporadic clashes between a few of the countries since 2009.<sup>210</sup> In the absence of a regional crisis management system, it is unlikely that tensions will diminish. As such, there are risks of regional armed conflict stemming from accidental confrontation or political miscalculation between various claimants. Any armed confrontation could have direct impacts on the life and security of children especially those living near the conflict zones.<sup>211</sup> Furthermore, in the situation of armed conflict the countries’ budget would most likely be diverted from the social sector to defense spending, hence, potentially depriving citizens, including children, of their various services and entitlements. At the same time, political tensions and conflict between members of ASEAN would likely hamper other regional efforts including the ones which focus on the well-being of the people of ASEAN.

### **d) Environmental-related risks**

An important phenomenon which has posed increasing risks to people in all parts of the world, including in ASEAN, is that of climate change. Although floods and draughts have been common occurrences in many countries in the region, countries like Cambodia, Indonesia, Lao PDR, Philippines, Thailand and Vietnam have seen more severe incidences of droughts and floods as well as other natural disasters in the past decades. The impact of climate change on the life and well-being of people especially children cannot be underestimated. In the Philippines, Indonesia and Lao PDR for example, it has been pointed out that as climate change affects the availability of water and food, biodiversity and human health, children are the most vulnerable to the adverse effects of the climate-related hazards.<sup>212</sup> According to WHO, it is estimated that more than 88 percent of the diseases caused by

209 Transparency International, Corruption Perceptions Index 2014 Results, available at: <http://www.transparency.org/cpi2014/results>, accessed on: 3.11.2015.

210 See details at <http://country.eiu.com/article.aspx?articleid=1163219300&Country=Vietnam&topic=Politics>, accessed 8 July 2015, cited in Petcharamesree, S. 2015. *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

211 Petcharamesree, S. 2015. *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

212 Institute of Philippine Culture and Save the Children (2014), *Child Rights Situation Analysis- Philippines*; WWF (2007), *Climate Change in Indonesia: Implications for Humans and Nature*, available at [http://d2ouvy59p0dg6k.cloudfront.net/downloads/inodesian\\_climate\\_change\\_impacts\\_report\\_14\\_nov07.pdf](http://d2ouvy59p0dg6k.cloudfront.net/downloads/inodesian_climate_change_impacts_report_14_nov07.pdf); Ministry of Agriculture and Forestry, Lao PDR (2013), *Risks and Vulnerability Survey 2012/13 Analysis Report*.

climate change is experienced by children less than 5 years of age.<sup>213</sup> Aside from diseases and health concerns, natural disasters also affect the right of the child to safety and education. In the Philippines, it is reported that natural disasters contribute to the displacement of trafficking of children as well as an increased exposure to hazardous environments and the increased push factor to enter into hazardous work.<sup>214</sup> Similarly, in Lao PDR, it is found that children living in a household hit by natural disasters are more likely to work and less likely to attend school, possibly as a household coping mechanism.<sup>215</sup>

With increasing global climate change and local deforestation in ASEAN countries especially in Indonesia and Lao PDR,<sup>216</sup> it is expected that the climate-related hazards will continue to rise, resulting in significant risks on livelihood, food security as well as health and well-being of people, especially children in the region.

## Dynamism

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Many ASEAN member states have enjoyed a relatively high level of economic growth over the past decade. However, the development gaps between countries in the region remain large. This issue needs to be tackled in order for all citizens and children of ASEAN to benefit and enjoy the fruits of economic growth and development more equally. The ASEAN Economic Integration that will officially take effect in December 2015 presents an opportunity for increasing connectivity, trade and employment opportunities for all of the ASEAN countries. While there are concerns over the negative implications of the increasing flows of people that accompany the freer flow of capital and services as discussed in the earlier section, the opportunities for ASEAN members to tap into the increasing share of knowledge and resources in the region for the development of a more people- and children-centered development agenda should not be missed. Regional cooperation will require countries with a high level of economic development such as Singapore to share knowledge and assist the rest of the region in, for example, the post-2015 development agenda, given that it has been successful in meeting and exceeding the MDG targets. Singapore itself has demonstrated a willingness to share its knowledge and experience in urban planning, environmental sustainability and transport systems.<sup>217</sup> At the same time, less developed countries will need to push for a more expansive Initiative for ASEAN Integration (IAI) program to address development gaps and promote more inclusive and sustainable development goals in the region.

With regard to the promotion and protection of children rights, there are growing opportunities for the empowerment of children through increasing flow of communication, knowledge and participation through the use of digital media that is expanding rapidly in many ASEAN countries. In Indonesia, Malaysia, Thailand and Singapore, young people have utilized social media as a platform for expressing their political opinions and to participate in social activism.<sup>218</sup> While the negative implications of the internet and social media on development and safety of children cannot be ignored,<sup>219</sup> their potential as a tool to enhance the rights of children in ASEAN need to be better explored. Similarly, with the coming of the ASEAN economic

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213 Institute of Philippine Culture and Save the Children, (2014), *Child Rights Situation Analysis- Philippines*,

214 Philippines Significant Advancement <http://www.dol.gov/ilab/reports/childlabor/findings/2013TDA/philippines>. Pdf, cited in Estorninos, K.A.C. 2015. *Child Rights Situational Analysis in the Philippines*, Research Report (Unpublished), Mahidol University.

215 ILO (2014) Understanding Children's and Youth's Employment Outcome in Laos

216 See Quan, R.J. D. 2015. *Child Rights Situational Analysis in Indonesia* and Boontinand V. 2015. *Child Rights Situational Analysis in Lao PDR*, Research Reports (Unpublished), Mahidol University.

217 Ministry of Foreign Affairs, Singapore and the UN Millennium Development Goals <[http://www.mfa.gov.sg/content/mfa/international\\_issues/un\\_millennium\\_development\\_goals.html](http://www.mfa.gov.sg/content/mfa/international_issues/un_millennium_development_goals.html)>, cited in Singapore Country Profile.

218 See respective Child Rights Situational Analysis Reports, Mahidol University.

219 See for example Infographic: The Sexual and Internet Behavior of the Filipino Youth at: <http://www.philstar.com/news-feature/2014/02/13/1289914/infographic-sexual-and-internet-behaviour-filipino-youth>, cited in Estorninos, K.A. 2015. *Child Rights Situational Analysis in the Philippines*, Research Report (Unpublished), Mahidol University.



integration, the dynamics of migration on children and the issue of youth employment need to be better understood. The growing number of young people who will enter the employment market will likely be more mobile and have greater opportunities than the previous generation to learn new knowledge and develop skills to improve their economic conditions. There is a need to ensure that the rights of children and young people in the context of migration and employment will be protected across the 10 ASEAN states.

Finally, in the political realm, there has been some positive development at the national level in Myanmar with the recent national election that saw the opposition party winning the majority of seats in the parliament. It is anticipated that the situation of people, including children in Myanmar, will improve positively as the country moves toward democracy. Other ASEAN countries seem to be becoming more open to/accepting of the international and regional human rights mechanism. For example, it is reported that Vietnam has paid more attention to the Universal Periodic Review process and played an active role at the ASEAN level on regional human rights mechanism.<sup>220</sup> Similarly, Cambodia was instrumental in getting the ASEAN Human Rights Declaration adopted in 2012 when the country acted as ASEAN Chair.<sup>221</sup> Other countries have also played some roles in 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), the two bodies which are trying to engage a regional level discussion on human rights as well as the rights of women and children. Last but not the least, it is hoped that ASEAN integration would also provide a greater space for participation of children especially through the establishment of the ASEAN Children's Forum (ACF), a platform where child representatives from ASEAN Member States can actively discuss and advocate on issues concerning the rights and well-being of children in the region.<sup>222</sup>

220 Petcharamesree, S. 2015. *Child Rights Situational Analysis in Vietnam*, Research Report (Unpublished), Mahidol University.

221 Capaldi, M. 2015. *Child Rights Situational Analysis in Cambodia*, Research Report (Unpublished), Mahidol University.

222 Child Rights Coalition Asia, ASEAN and Child Rights, available at <http://childrightscoalitionasia.org/asean-and-child-rights/> (last accessed Sept. 25, 2014), cited in Quan, R.J.D. 2015. *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

## CHAPTER VII: CRITICAL ISSUES AND GAPS (‘CLUSTER APPROACH’)

Critical issues and gaps within the ASEAN region can be organized according to a framework of principles and standards that follow a cluster approach of rights. States, civil society and the UN use a similar framework when reporting on the CRC. The following chapter analyses specific issues concerning the five clusters of substantive rights.

### Civil rights and freedoms

The realization of children’s rights are either supported or unduly influenced by the politics of a state which should provide an appropriate environment for civil rights and freedoms to flourish. Unfortunately, the political environment in ASEAN is diverse. Oppressive political and legislative developments occur in a number of countries in ASEAN, negatively impacting on governance and accountability which then hampers children’s participation and the fulfillment of their rights. When combined with cultural traditions and attitudes towards children prevalent in the region, it is unsurprising that poor realization of children’s civil rights and freedoms occurs.

Decades of conflict, oppression and civil wars have shaped the modern day political conditions in many parts of ASEAN. After years of military rule Myanmar presents a beacon of hope of emerging democracy in the region, especially after the November 2015 elections. Freedoms at the macro level are limited in Vietnam and the Communist Party places a very high priority on maintaining social stability and has the power to prevent isolated outbreaks of unrest from spreading nationwide. Following the 2013 general election in Cambodia, gains made by the opposition party resulted in violent protests and corresponding restrictions of civil rights and a crackdown on civil society.<sup>223</sup> The Thai army government, which took over in a coup in 2014, is accused of being involved in serious violations of human rights concerning threats, harassment, arbitrary detention, and forced evictions of people, farmers, students and migrant workers by the military government. At least 80,000 Cambodian migrants fled Thailand in June 2014 due to fear of a crackdown on migrant workers under Thailand’s new military government (according to the IOM, more than half of the migrants were women and children<sup>224</sup>). Violence and unrest due to ethnic separatist insurgency have continued in Southern Thailand. Freedom of expression has reemerged as a hot-topic issue in Singapore in recent months following the conviction of 16 year old Amos Yee, for a blog and video post about the death of Lee Kuan Yew. Singapore’s prosecution of Amos Yee has drawn international criticism with Amnesty International calling Yee a prisoner of conscience and the sentence a “dark day for freedom of expression” in Singapore.<sup>225</sup>

With these strong political regimes, come stringent regulations that manifest into restrictions of civil society operations and advocacy. Reports from Human Rights Watch indicate that many civil society organizations in the region experience restrictions to freedom of expression or security threats from the state or from non-state actors that impede their ability to provide or promote protection and services to vulnerable children.<sup>226</sup>

223 COMFREL, 2013, *Democracy, Elections and Reform in Cambodia: Annual Report 2013*.

224 <http://www.scmp.com/news/asia/article/1532647/cambodians-fearing-crackdown-migrant-workers-exodus-thailand>.

225 Amnesty International. *Singapore: Amos Yee sentence a dark day for freedom of expression*. 6 July 2015.

< <https://www.amnesty.org/en/latest/news/2015/07/singapore-amos-yee-sentence-a-dark-day-for-freedom-of-expression/> >

226 Human Rights Watch. *World Report 2013 and 2014*.

Birth registration is one of the most important precursors to the attainment of civil rights and essential to ensure access to basic services, including immunization, health care and school enrolment. All countries in ASEAN face problems with birth registration despite widespread campaigns across the region. In Cambodia, only half of children under age five have a birth certificate.<sup>227</sup> Children from certain religious and indigenous groups in Indonesia, such as Ahmadiyah, Jehovah, Merapu and Boti groups, remain unregistered.<sup>228</sup> Children born out of wedlock are likewise unregistered, or even if they are registered, only the mother's name is listed in the certificate.<sup>229</sup> Similar issues plague Malaysia which has maintained a reservation to Article 7 of the CRC (regarding birth registration, the right to a name and nationality).

Despite Article 7 of the CRC being guaranteed in the Lao Constitution and various national laws, a survey in 2012 indicated that a quarter of children born in Laos did not have their birth registered.<sup>230</sup> In Myanmar, while birth registration is supposed to be free of charge, it remains common practice for midwives to charge a fee for issuing a birth certificate.<sup>231</sup> While the Civil Registration Act 2008 entitles every child born in Thailand to be registered regardless of nationality or legal status, many migrants are either unaware of this right or unable to complete the process, thus preventing them from obtaining the necessary documentation.<sup>232</sup> In the 2nd Philippine National Plan of Action for Children 2011–2016, the number of unregistered children aged 0 to 6 years, as reported by the Birth Registration Project, totaled 1,863,232 in 2007. The country was also said to be facing the problem of undocumented children of Filipino mothers working overseas, who numbered 2,000 to 3,000 in Saudi Arabia alone during the same period.<sup>233</sup> In the alternative report to the CRC on Vietnam it stated about civil rights that although “as many as 87 % of children under the age of five have been registered. The government acknowledges the fact that not all children in remote areas and belonging to ethnic minorities are registered.”<sup>234</sup> Of grave concern in the region are the Rohingya ethnic group (810,000 people living in Myanmar) who are not from ‘recognized ethnic groups’, have not been granted citizenship and are thus stateless impeding their access to basic services and increasing their vulnerability to persecution and trafficking.<sup>235</sup>

## Basic education, health and welfare

Poverty and related issues is the biggest challenge facing the provision of basic services for children in many countries in ASEAN as the region includes some of the least developed countries in the world.

While states such as Brunei, Malaysia and Singapore receive praise for their investment in primary education, the average number of years in school that ASEAN youth aged 25 years was 6.65 years with Cambodia, Indonesia, Laos, Myanmar and Vietnam achieving less than six.<sup>236</sup> In most of these poorer countries, causal factors preventing children from realizing their right to education are the poor quality of education services, the insufficient number of schools and the costs of attendance; the latter being identified by children in Cambodia as one of the biggest barriers to staying in school.<sup>237</sup> The issues

227 See: <http://unicefcambodia.blogspot.com/2013/07/unicef-supports-cambodian-commune.html>

228 Quan, R.J.D. 2015. *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

229 Ibid.

230 Haegeman, E. (2013) *Child Rights Situational Analysis (Part 1: Secondary Data Review)*.

231 2013 CRG Sector Analysis Report, SCI Myanmar, cited from Save the Children 2014.

232 Deesawas, R. 2015. *Child Rights Situational Analysis in Thailand*, Research Report (Unpublished), Mahidol University.

233 Council for the Welfare of Children, *The State of Filipino Children* (2010).

234 Complementary Report to the 3<sup>rd</sup> and 4<sup>th</sup> Periodic Country Report on Vietnam's Implementation of the UNCRC, [www2.ohchr.org](http://www2.ohchr.org), accessed 8 July 2015.

235 Luthra, A. 2015 *Child Rights Situational Analysis in Myanmar*, Research Report (Unpublished), Mahidol University.

236 UNDP, 2010.

237 Save the Children 2014, *Child Rights Situation Analysis Cambodia 2014*, Save the Children International, Phnom Penh.

of a high student-teacher ratio and low quality of teachers' skills remain to be areas for improvement in both the Indonesian and Malaysian educational systems.<sup>238 239</sup> Countries with reservations against Article 28.1 (a) of the CRC (Singapore and Malaysia) only provide free primary education to children who are its' own citizens.

Nevertheless, progress made in expanding basic education has seen an increase in net enrollment in primary education across the region although government spending in the education sector remains too low. In Thailand, unequal distribution of educational expenditure across regions leads to further unequal development outcomes, especially in terms of human development.<sup>240</sup> Schooling in remote areas of the region often require children to travel hours on foot, cross rivers or climb mountains just to attend. The rate of out-of-school youths also increases within the region as a child moves up to higher levels of learning. High rates of drop-outs for secondary-level students are particularly found in mainly agrarian based economies of ASEAN due to families lack of financial capacity or cultural values of familial obligation whereby children opt to enter the labor force early to be able to contribute to their family's needs. However, in countries with dynamic or emerging economies, if they wish to take advantage of the forthcoming ASEAN Economic Community 2015, then a basic secondary school education is at least required for children to become employable.

Children in Singapore, Brunei and Malaysia generally enjoy a high standard of healthcare due to good infrastructure and services. However, one of the critical factors facing the poorer countries in ASEAN is the persistent high rate of malnutrition among children which contributes to their poor health. While Cambodia, Indonesia, Laos, Philippines, Thailand and Vietnam have seen the prevalence of undernourishment decrease over the last decade, the regional average is still far greater than in developing nations.<sup>241</sup> Service delivery is particularly weak in rural and remote areas and as a result, children and women in such areas and those from poorer families tend to have substantially worse health and survival outcomes. In the Lao PDR for example, it is reported that about 37% of children under five are underweight while 40% are chronically malnourished with the situation even worse in more hard to reach and isolated villages.<sup>242</sup>

The levels of public expenditure on health services in these countries are very low. Access to health care is also seriously penalized by endemic corruption and discrimination. Approximately 87 per cent of the overall expenditure on health care in Myanmar is incurred by consumers in out-of-pocket expenses – the highest in the region. When families are forced to pay high costs for health care and medicines then they become more vulnerable to debt and greater poverty. In the more conservative and traditional countries, awareness about sexual and reproductive health is low and knowledge of HIV prevention is low and teen pregnancies high (Thailand for example has one of the highest rates of adolescent pregnancies<sup>243</sup>).

Robust and comprehensive health care services do exist in a few countries of the region. A high standard of healthcare for children in Singapore, Brunei and Malaysia is made possible due to a good infrastructure and healthcare programs that effectively target mothers and children. The provision of healthcare services for children covers a wide range of issues from bodily health to nutrition, mental wellness, oral health, injury prevention and education on sexually transmitted diseases.

238 Save the Children, *supra* note \_\_\_ at 89 cited in Capaldi, M. 2015. *Child Rights Situational Analysis in Cambodia*, Research Report (Unpublished), Mahidol University.

239 Abubakar A and Emkic, E 2015, CRSA Malaysia Field Research Report (Unpublished), Mahidol University

240 Danuvus S 2012, *The Analysis of Determinants of Education Expenditures in Thailand*, Doctoral Degree Dissertation.

241 WHO, 2013.

242 Ibid.

243 UNFPA, *The State of Thailand's Population 2013*, *Motherhood in Childhood: Facing the Challenges of Adolescent Pregnancy*, April 2014

As discussed though, the poor provision of basic services in certain countries of ASEAN negatively impacts on children. In these contexts there is an urgent need for effective social welfare systems and social protection interventions for both children and their families, which at present is largely lacking. Pockets of exclusion and serious inequalities throughout ASEAN are becoming more prominent in spite of overall rapid economic progress. Large numbers of children in the region come from vulnerable and socially excluded groups such as the poor, ethnic minorities, and children in remote and rural areas and they remain without adequate healthcare, nutrition, protection and education.<sup>244</sup>

## Special protection measures

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Children face multiple protection issues within ASEAN due to a poor social understanding or respect of children's rights. In many ASEAN Member States, national child protection systems are weak and are still being developed. Even where child protection policies, laws and regulations may largely be in place, they are in the nascent stages and too often poorly implemented in responding to cases of child neglect, abuse, violence and exploitation. The enforcement of child protection policies and laws need to be urgently strengthened with an emphasis on preventive and responsive interventions and services.<sup>245</sup>

Article 19 of the CRC protects children from all forms of violence while Article 28 should protect them from violence in the school. Yet multiple studies from ASEAN show systemic patterns of abuse and violent disciplinary methods, including within schools.<sup>246</sup> Corporal punishment, as is the case in most ASEAN countries, is embedded in culture and tradition. In Indonesia, corporal punishment is practiced in homes, schools, child care institutions, and juvenile detention centers.<sup>247</sup> A Lao Social Indicator Survey in 2011 found that 75.7% of children aged 2-14 years have experienced 'any violent discipline' method while 70.8% indicated that they have experienced psychological aggression.<sup>248</sup> 30% of Thai sixth grade students reported physical abuse (despite corporal punishment in schools being banned) and 50% of children in the Philippines experienced corporal punishment in schools.<sup>249</sup> In Myanmar, there are also concerns with the on-going use of corporal punishment in various settings including in detention. Singapore and Malaysia<sup>250</sup> take the position that corporal punishment is an accepted mode of disciplining children and is not considered an act of violence against children. Shariah Law remains a critical concern in Brunei, not only because of the inhumane nature of the punishment but because much of the power to determine punishment is vested in State officials and is open to interpretation based on morality.<sup>251</sup> While corporal punishment is officially illegal in Vietnam, the law tends to be ignored.

Myanmar is the only state in ASEAN that has not ratified both ILO Convention 138 (regarding minimum working age) and ILO Convention 182 on the worst forms of child labor. The CRC, ratified by all ASEAN Member States also includes articles which especially prohibit the worst forms of child labor (Articles

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244 ASEAN Strategic Framework for Social Welfare and Development 2011-2015, available at: [http://www.dpiap.org/resources/pdf/SOMSWD\\_Strategic\\_Framework\\_2011-2015\\_FINAL\\_12\\_01\\_04.pdf](http://www.dpiap.org/resources/pdf/SOMSWD_Strategic_Framework_2011-2015_FINAL_12_01_04.pdf)

245 ECPAT International et al., 2013, Child Protection Systems Mapping in Southeast Asia.

246 UNICEF, 2012, Child Maltreatment: prevalence, incidence and consequences in the East Asia and Pacific region. Accessible at: [http://www.unicef.org/eapro/Child\\_Maltreatment.pdf](http://www.unicef.org/eapro/Child_Maltreatment.pdf).

247 SCI, *supra* note \_\_\_ at 35. cited in Quan, R.J. D. 2015. *Child Rights Situational Analysis in Indonesia*, Research Report (Unpublished), Mahidol University.

248 NCAW, NCMC, Unicef, Plan, Child Fund and Save the Children (undated) Factsheet, Violence against Children in Lao PDR; [http://www.unicef.org/laos/VAC\\_factsheet\\_-\\_23\\_May\\_2014\\_final\\_Eng.pdf](http://www.unicef.org/laos/VAC_factsheet_-_23_May_2014_final_Eng.pdf)

249 UNICEF, 2012, Child Maltreatment: prevalence, incidence and consequences in the East Asia and Pacific region. Accessible at: [http://www.unicef.org/eapro/Child\\_Maltreatment.pdf](http://www.unicef.org/eapro/Child_Maltreatment.pdf).

250 Malaysia has not yet withdrawn its reservation to Article 37 of the CRC regarding torture and cruel or inhuman punishment.

251 Shariah Law also proliferates the rates of child marriage in the strongly Islamic countries within ASEAN.



33 to 36). Yet child labor violations are rampant throughout the region. Child labor is most prevalent in the Mekong Sub-region and is an accepted concept in many rural communities. In Cambodia, an estimated 11% of all children work, which is generally linked to poverty and limited access to schools.<sup>252</sup> Unfortunately, gaps exist in the country's *Labor Law* leaving children vulnerable to hazardous work and poor protection in the informal work sectors.<sup>253</sup> In Indonesia, the ILO notes that child laborers are often exposed to sexual, physical or psychological abuses.<sup>254</sup> Lao children and youth are reportedly engaging in employment in agricultural and other sectors in large numbers<sup>255</sup> and the issue of child exploitation remains an important concern. In The Philippines, the incidence of child labor (working children aged 5 to 17 years) increased by 35%, from 4.1 million in 2001 to 5.5 million in 2011. Around 62.4% of working children were in the agriculture sector (with boys outnumbering the girls) and 30% were in the service sector.<sup>256</sup> The three wealthiest countries in ASEAN - Singapore, Brunei and Malaysia - report negligible rates of child labor.

None of the countries in ASEAN have received an unblemished score card from the US Department of State in the 2015 Trafficking in Persons Report. Cambodia, Laos, Malaysia and Myanmar were all placed on the Tier 2 Watch List with Thailand demoted to Tier 3.<sup>257</sup> Child trafficking for sexual purposes is closely linked to migration and labor exploitation – there is an emerging phenomenon of girls being trafficked for sexual purposes within the Mekong Sub-region into 'special economic zones'.<sup>258</sup> The internet has been a game changer for the exponential increase of online child sexual abuse and exploitation in the region. The sheer speed and enormous breadth of ICT developments within ASEAN has meant that efforts to establish policies, laws and instruments to ensure the ethical and safe use of ICT tools are sorely outpaced. For example, in 2007, there were 500,000 sexually seductive web pages and 250 websites showing nude video clips of teenagers in Thailand, some of them self produced.<sup>259</sup> In other countries in the region there is a serious lack of research on the issue and data on the prevalence of child and adolescent sexual abuse online is unknown.

Sadly, Southeast Asia is still infamous for being one of the worst regions in the world for the commercial sexual exploitation of children. Accurate estimates of the number of likely child victims are impossible to collate although places like Thailand, Cambodia, the Philippines and Vietnam admit to the presence of minors in their commercial sex sector. Booming tourism development in Laos and Myanmar is inevitably going to draw sex tourists. While all ten ASEAN Member States have laws prohibiting child sex trafficking<sup>260</sup>, the region remains a top destination for travelling child sex offenders.<sup>261</sup>

252 Save the Children 2014, *Child Rights Situation Analysis Cambodia 2014*, Save the Children International, Phnom Penh.

253 Huang, S 2010, *Children's Rights and Cambodian Law: An assessment of gaps in the law and its implementation for the International Organisation for Migration*, University of San Francisco, School of Law.

254 ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Observation (CEACR) - adopted 2012, published 102nd ILC session (2013), Worst Forms of Child Labour Convention, 1999 (No. 182)*, available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3076116:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3076116:NO) (last accessed 17 July 2015).

255 According to the Lao Labor Force and Child Labor Survey (2010), 6.5% of children aged 6-13 and 34.7% for 14-17 age group were engaging in employment. Cited in ILO, 2014

256 National Statistics Office, The number of working children 5 to 17 years old is estimated at 5.5 million (2012), at <http://www.census.gov.ph/content/number-working-children-517-years-old-estimated-55-million-preliminary-results-2011-survey> (last accessed: July 4, 2015); International Labor Organization-*International Program on the Elimination of Child Labor (ILO-IPEC)- Philippines tracer study: Measuring longer term impact on children and families of interventions against child labor* (2012) as cited in Institute of Philippine Culture and Save the Children, *Child Rights Situation Analysis-Philippines* (2014)

257 US Department of State, 2015, *Trafficking in Persons Report 2015*.

258 ECPAT International, 2014, *Southeast Asia Study on Sexual Exploitation of Children in Travel and Tourism*

259 Pol.Col.Naras Savestanan, *Thailand's Response to Online Child Sexual Abuse and Exploitation: Its Progress and Challenges*; Ministry of Justice, Thailand, 2011.

260 INTERPOL, 2010, *Legislation of INTERPOL member states on sexual offences against children*. Accessible at: <http://interpol.int>.

261 Bergman, J 2013, *Can Burma avoid the curse of sex tourism?* Time. Accessible at: <http://world.time.com/2013/04/12/can-burma-avoid-the-curse-of-sex-tourism/>

Article 38 of the CRC and numerous other multilateral agreements ban the use of child soldiers and following the ratification of the Optional Protocol, the use of child soldiers has reportedly decreased worldwide.<sup>262</sup> However, long standing conflicts within Southeast Asia still result in the consistent use of child soldiers. Myanmar is often cited as having the highest number of child soldiers in the world.<sup>263</sup> Violence and unrest due to ethnic separatist insurgency have continued in Southern Thailand causing damages and casualties to civilians, including women and children. Children have been victims of grave violations, or affected by attacks on schools, which have resulted in the killings of teachers and disrupted education.<sup>264</sup> Armed groups operating in southern Thailand have recruited children as young as 14-years-old and used them to participate in hostilities, either in active fighting or in supporting roles, such as lookouts and informers.<sup>265</sup> Filipino children affected by armed conflict in Mindanao numbered more than 300,000 in 2009, according to the government. Some of them were involved either directly as a combatant or indirectly as a messenger, spy, cook, porter, or assistant in military checkpoints. Others were used for sex.<sup>266</sup> Although the civil wars in Cambodia and Vietnam have long finished, the countries are still plagued with landmines and other explosive devices resulting in some of the highest rates of child disabilities found worldwide.<sup>267</sup>

Children whose families flee from their homes owing to conflict have to endure the lack of basic human necessities, including shelter, proper nutrition, medical care, and physical security. For example, there are an estimated 372,000 internally displaced persons (IDPs) in Myanmar, and 479,608 refugees originating from the country.<sup>268</sup> These figures are not fully indicative of levels of forced migration, as obtaining reliable data for IDPs remains difficult, while millions of regular and irregular migrants have also left the country. Thailand and Malaysia bear the brunt of undocumented and stateless persons and refugees seeking asylum (while the largest number of refugees in Malaysia come from Myanmar, significant numbers also come from Sri Lanka, Pakistan, Somalia, Southern Philippines, Syria and other middle east nations<sup>269</sup>).

Other notable special protection concerns in the region included children in conflict with the law who are often subject to justice systems and detention facilities designed for adults. Prisons in the region are generally poor and over-crowded. Cambodia for example, still has no existing legislation requiring separate juvenile courts, special police units, child friendly procedures or the support of specially trained personnel<sup>270</sup> and in Thailand the context is variable, particularly outside of Bangkok. A key issue in Myanmar is the age of legal culpability, which has only recently increased from 7 years to 10 years but is still far below international standards.<sup>271</sup> The criminal responsibility age is eight years old in Indonesia and 10 years in Malaysia. Children older than 7 but younger than 12 in Brunei can be held criminally responsible where they have been judged as having sufficient maturity of understanding

262 Child Soldiers International, 2012, *louder than words*. Accessible at: [www.child-soldiers.org/global\\_report\\_reader.php?id=562](http://www.child-soldiers.org/global_report_reader.php?id=562).

263 Healey, J 2011, Former Burmese child soldier to speak in Congress. Huffington Post. Accessible at: [http://www.huffingtonpost.com/jack-healey/former-burmese-child-sold\\_b\\_915566.html](http://www.huffingtonpost.com/jack-healey/former-burmese-child-sold_b_915566.html).

264 Child Soldiers International and Cross Cultural Foundation, 2014, *Southern Thailand: Ongoing recruitment and use of children by armed groups*, September 2014.

265 Child Soldiers International and Cross Cultural Foundation, *Southern Thailand: Ongoing recruitment and use of children by armed groups*, September 2014.

266 Save the Children UK, *Breaking rules: Children in conflict with the law and the juvenile justice process- The experience in the Philippines* (2004); Philippine Human Rights Information Center (PHILRIGHTS), *Deadly playgrounds: The phenomenon of child soldiers in the Philippines* (2005).

267 Noel, J, Atabekian, V, Sidoti C, and Hecht, M 2006, *Making Children's Right Work*, IBCR.

268 Luthra, A., 2015. *Child Rights Situational Analysis in Myanmar*, Research Report (Unpublished), Mahidol University.

269 Abubakar A and Emkic E, 2015, Malaysia CRSA Field Research Report, Mahidol University.

270 NGO Coalition on the Rights of the Child, 2014, UPR Submission on Cambodia Child Rights (2009-2013).

271 State Party Examination of Myanmar's Fourth Periodic Report, 59<sup>th</sup> Session of the Committee on the Rights of the Child, 16 January – 3 February 2012.



with regards to the nature and consequences of their actions at the time of the offence.<sup>272</sup> All of these very low ages of criminal responsibility are certainly not in the best interest of the child.

Finally, the ASEAN region has some of the most stringent laws and punishments for substance abuse and drug trafficking. However, it is widely believed that drug abuse is on the increase amongst young people and that the age of initiation is declining (and may be as low as 12 years in some countries).<sup>273</sup> In 2013, Thailand was ranked number four in the world for methamphetamine seizures<sup>274</sup> which is reportedly used by between 5-7% of Thai adolescents, with rates among boys as high as 14%.<sup>275</sup> Myanmar is suspected as the main source of methamphetamine pills in East and Southeast Asia and is the world's number two producer of opium. Within the Golden Triangle nations of Laos, Myanmar and Thailand, opium poppy production has steadily increased in recent years.<sup>276</sup> Filipino children using drugs were estimated to number 3.4 million based only on the records of the Philippine National Police.<sup>277</sup> As such, children and youth in many parts of the region are exposed to illicit drugs (not to mention abuse of legal substances such as alcohol and tobacco), a problem that could easily grow as income rises within the ASEAN Economic Community.

## Family environment and alternative care

The CRC highlights the primary role of the family in ensuring the growth, development and protection of children except where the child's best interests require some alternative arrangement. In the poorer countries of ASEAN, the greatest challenge for parents in bringing up their children is poverty in which case, children may be placed informally with grandparents or other family members as parents then migrate for work.

A further significant factor influencing the family environment across the whole of the ASEAN region is the social and political conditions which mean that traditional norms dominate whereby children are seen less as having rights but instead responsibilities. Globalization and the changing pattern of family structure and economic pressure are adversely affecting parent and child relationships, sometimes resulting in family breakdown. Often, family violence is considered a private matter and so is generally under-reported. This can all lead to a dangerous tolerance to the physical violence of children and meta-analyses of estimates support the assertion that violence against children is widespread in ASEAN.<sup>278</sup> For example, violence against children is endemic in all settings in Cambodia with over half of children recently surveyed reporting some form of violence before the age of 18 years.<sup>279</sup> 94% of children under 14 years of age in Vietnam and 74% in Laos have reported experiencing violent disciplinary methods.<sup>280</sup> Beating as a form of discipline is traditionally accepted and some children think they need to be beaten

272 See: <https://www.crin.org/en/home/ages/asia>

273 Kampan P and Tanielian, A 2014, Securing the Future of the Community: Child Protection in ASEAN, Asian Social Science, Vol. 10, No. 11, pp. 172-184.

274 UNODC, 2013, *World Drug Report*. Available at:

275 Pengpid S and Peltzer, K 2013, Prevalence and psychosocial correlates of illicit drug use among school-going adolescents in Thailand. *Journal of Social Science*, 34 (3), pp. 269-275.

276 UNODC, 2013, *World Drug Report*. Accessible at: [http://www.unodc.org/unodc/securedwdr/wdr2013/World\\_Drug\\_Report\\_2013.pdf](http://www.unodc.org/unodc/securedwdr/wdr2013/World_Drug_Report_2013.pdf)

277 Department of Justice (DOJ) Committee for the Special Protection of Children, *Protecting Filipino children from abuse, exploitation and violence: A comprehensive program on child protection, 2012–2016. Building a protective and caring environment for children* (2012).

278 Kampan P and Tanielian, A 2014, Securing the Future of the Community: Child Protection in ASEAN, Asian Social Science, Vol. 10, No. 11, pp. 172-184.

279 Kingdom of Cambodia and UNICEF 2014, Findings from Cambodia's Violence Against Children Survey 2013.

280 Kampan P and Tanielian, A 2014, Securing the Future of the Community: Child Protection in ASEAN, Asian Social Science, Vol. 10, No. 11, pp. 172-184.

if they do something wrong or they do not follow their elders' guidance.<sup>281</sup> While children in low and lower middle income countries fare the worst, prevalence rates of up to 13% of children experiencing violent discipline has been recorded in the upper middle and high-income countries in the region.<sup>282</sup>

While child sexual abuse is more prevalent in girls (11-22%) than boys (3-16.5%) across East Asia and the Pacific, the trend is different for the lowest income countries with UNICEF reporting more boys victimized than girls.<sup>283</sup> For example, in a 2013 study, 4.4% of females and 5.6% of males aged 18 to 24 years claimed to have experienced some form of sexual abuse as a child.<sup>284</sup> Further research is needed to understand why these prevalence rates may be different for boys.

All forms of violence against children are a major reason why children run away from homes and live or work on the streets. Street work for children in the poorest countries in ASEAN includes begging, hawking, prostitution or the provision of cheap labor.<sup>285</sup> Street children are especially susceptible to violence, arbitrary arrest and detention.

When children are deprived of an appropriate family environment, the formal alternative care systems in the region generally consists of institutions such as children's homes, orphanages or child welfare centers. These can be either government or NGO operated residential care facilities. However, monitoring and supervision of these establishments is often weak. In Cambodia for example, the majority of children's care homes are owned and managed by NGOs and recent concerns were raised about Cambodian 'orphanages'. It was found that children were being placed in these institutions by poor parents, as a result of dysfunctional families or even to help generate NGO funds and voluntourism.<sup>286</sup> The situation of children placed in public and private institutions for alternative care also poses other concerns as the children are reportedly not consulted in the placement process and that protection for safety and health of the children are not duly ensured.

In general, more attention across the region needs to be given to alternative forms of care such as foster families. Of note is Brunei Darussalam which has a blanket reservation to CRC Articles 20 and 21, which state the provisions for adoption and foster care respectively. The country maintains its reservations to the CRC on the grounds that all adoptions in the country will be conducted through the Shariah law. As such, there are no orphanages in Brunei as all children in need are cared for by the extended family system and through adoption.<sup>287</sup>

281 Save the Children, 2014 Child Rights Situational Analysis in Cambodia.

282 UNICEF, 2014a, *Violence against Children in East Asia and the Pacific: A regional review and synthesis of findings*, UNICEF EAPRO, Bangkok.

283 UNICEF, 2014a, *Violence against Children in East Asia and the Pacific: A regional review and synthesis of findings*, UNICEF EAPRO, Bangkok.

284 UNICEF, 2014b, Findings from Cambodia's Violence Against Children Survey 2013, Steering Committee on Violence Against Children, Phnom Penh.

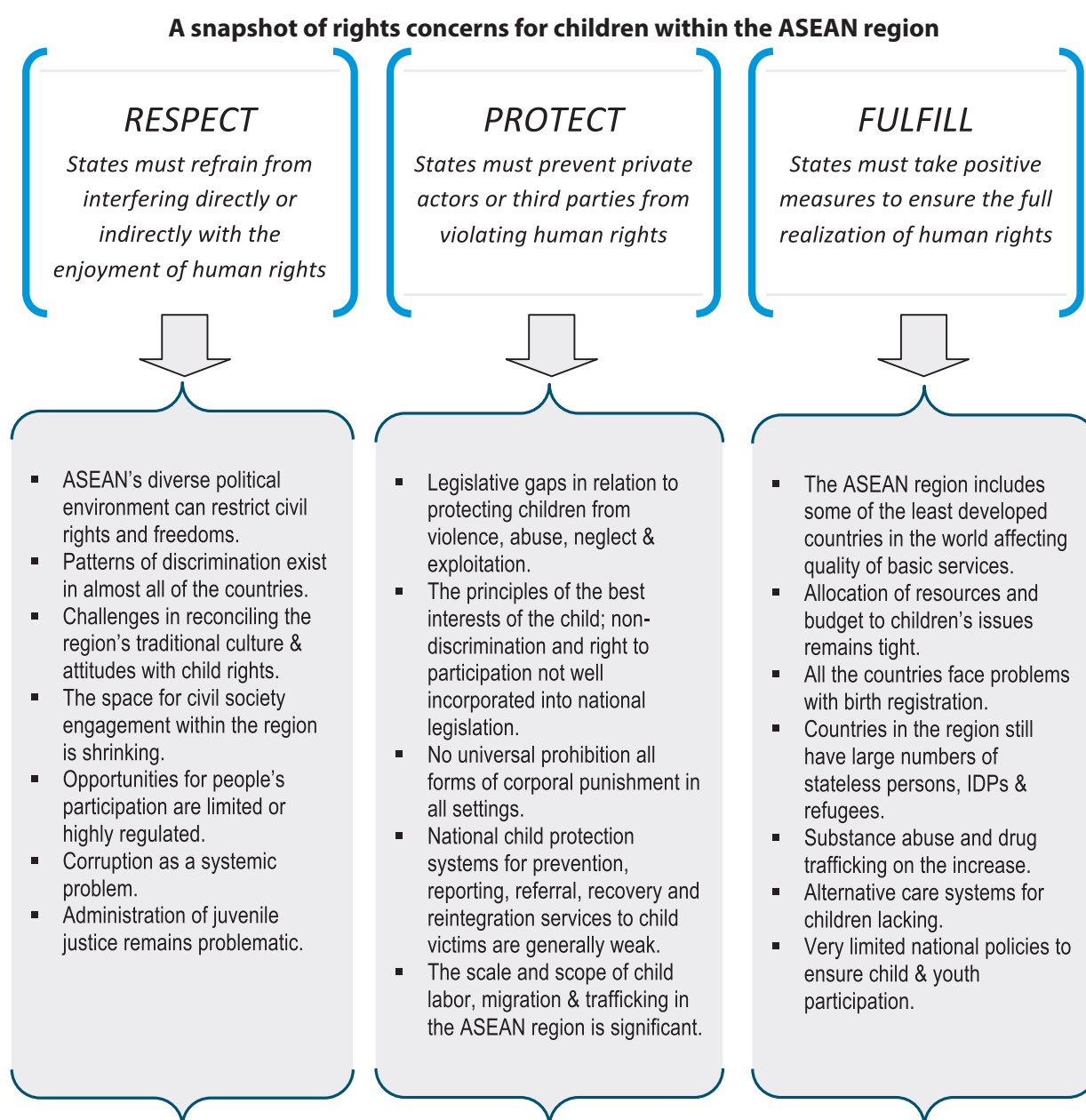
285 Noel, J, Atabekian, V, Sidoti C, and Hecht, M 2006, *Making Children's Right Work*, IBCR.

286 Schyst resande, 2013, *No child's play: Respect for children's rights at tourist destinations: Examples from Thailand, Cambodia & South Africa*.

287 Khalon, H 2015, *Child Rights Situational Analysis in Brunei*, Research Report (Unpublished), Mahidol University.

## CHAPTER VIII: CONCLUSIONS, REGIONAL TRENDS AND RECOMMENDATIONS

Using the generic state obligations “respect-protect-fulfill” as a framework for synthesis, the situation could be summarized as follows.



In addition, it has been demonstrated in previous chapters that most, if not all countries in ASEAN have made significant progress in promoting and protecting child rights. Laws and policies were put in place with institutions established in order to implement their commitments. Nevertheless, gaps and risks remain and there is a need for every country to prepare themselves for future challenges lying ahead.

At the regional level, ASEAN, as a group, has made a clear commitment to ensure the rights and well-being of children in the region. Not only were legal and political documents adopted but institutions such as ACWC and AICHR were also established to follow up the implementation, albeit not without constraints and challenges.

This study has identified the following trends that Save the Children may consider paying attention in the next one to 10 years.

## Regional Trends

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The analysis of 10 country child rights studies reveals some common trends among ASEAN Member States regarding child rights and factors which may impact children, namely:

- 1. Difficulties with the move towards democracy in AMS.** There has been political recession in a number of countries in ASEAN such as Thailand, Malaysia and Indonesia while status quo is maintained in a few others including Vietnam, Lao PDR, and Brunei. In these countries changes would be minimal. The positive political changes are seen in Myanmar after the November 2015 elections when the result of which was accepted by the military and current leaders. Across the region, the political situation is a barometer which could measure the political space that CSOs could have in each society. Not only does it determine people's participation but it also affects child participation in decision making. At the regional level, the ASEAN post 2015 vision seems to be more open to CSO engagement.
- 2. Continued bias in development towards industrialization.** ASEAN seems stuck in the "middle income" trap as most of the countries try to become middle income nations as part of narrowing the development gap not only within a country but also within the region. The middle income endeavor has put many countries at risk as it depends highly on the industrialization and service sector such as tourism in order to boost their economies. For example, the harmful practices in the service industry can have a rather negative impact on children and child rights in terms of child labor or vulnerability. On the other hand, whilst quality services such as health care and education are good for all, including for children, quality service has been a problem in most of the countries under study and so whilst highly welcome, this could be detrimental in terms of accessibility and affordability for those who are already facing difficulties to access to services.
- 3. Environment and climate change.** As highlighted in nearly all country study reports, environmental-related problems including that of climate change are affecting people including children in the region more severely. The rising trend of more frequent occurrence of natural disasters including floods and droughts is resulting in more damage to the livelihood of people especially the poor and marginalized, and those living in the rural areas. The recent haze crisis in the region stemming from forest fire/ burning has led to temporary closure of schools in Indonesia, Malaysia and Singapore and many children have ended up missing out on their education. Yet, effective disaster risk reduction and emergencies response programs and interventions, especially those which are child-sensitive, are not in place in many countries. With the problem of climate change affecting people and children across countries and regions, commitments are needed at the national and regional level to tackle the issues from a more holistic approach.

4. **Corruption remains a critical issue.** Unfortunately, corruption still plagues the region as most public institutions in many countries in ASEAN continue to lack transparency and accountability. Lack of anti-corruption laws and restricted civil society engagement in public policy as well as in budgeting planning and monitoring also contribute to the sustained practice of corruption in many ASEAN countries. According to Transparency International, “almost 50 per cent of people in ASEAN countries believe corruption has increased, while only a third say their government’s efforts to fight corruption have been effective”<sup>288</sup> With many countries in the region still needing to deliver quality social services such as healthcare and education for their people, corruption will continue to pose great risk to the countries’ development and well-being of the people. Reversing this trend should constitute a key priority for countries in the region.
5. **More critical roles for the private sector.** As a main driver of economic growth in many ASEAN countries, the private sector plays increasing roles both as potential contributors to and violators of people’s and children’s rights. With the anticipated growing cross- border trade and investment that accompany regional economic integration, there is a greater need for the private sector (both domestic and international origins) to be more accountable to the people and communities affected by their operations. While there are emerging good practices regarding the private sector’s engagements in the promotion and protection of children rights, especially through the development of Child Rights Business Principles<sup>289</sup>, the trend in this direction remains limited. In this regard, the potential roles and engagement with the private sector as a supporter of children’s and people’s rights need to be further explored and promoted.
6. **Lesbian, Gay, Bisexual and Transgender (LGBT).** Although LGBT activism has been growing within the region. Vietnam has just become the first country in ASEAN to adopt a law on same sex marriage and Thailand has a draft law that is being prepared for parliament that seeks to offer LGBT the same rights as heterosexuals. Still concrete changes are limited. LGBT rights are limited in the ASEAN region compared to many other regions of the world. ASEAN countries currently don’t have anti-discrimination laws to guarantee equality of all citizens regardless of their sexual orientation and gender identity. Social stigma and discrimination across ASEAN of LGBT people limit job and education opportunities, as well as access to healthcare. Violence, bullying and other forms of abuse and harassment against LGBT are also found in schools. Homosexuality remains criminalized in places which abide by strict Shariah law, and the Roman Catholic Church remains in opposition to any such unions. Some countries still adhere to out-dated colonial-era law that bans same-sex intercourse. This situation seems set to remain.
7. **Migration.** Migration has been always problematic in the region and there is no unified regional policy on the issues regarding migrant workers, refugees, stateless persons and unaccompanied and separated children. The establishment and consolidation of the ASEAN Economic Community will continue to increase the migration of people facing economic, political difficulties as well as conflicts and persecution in their own countries. Challenges created by migration concern child welfare and protection. In addition, most of migrants leave their children behind when migrating internally or transnationally. It is also estimated that 5-10 % of migrants are children who, many of them, do not have birth registration.

288 [http://www.transparency.org/news/feature/why\\_asean\\_needs\\_to\\_confront\\_corruption\\_in\\_southeast\\_asia](http://www.transparency.org/news/feature/why_asean_needs_to_confront_corruption_in_southeast_asia).

289 Supported by UNICEF, Save the Children and the UN Global Compact.

8. **Ongoing internal conflicts.** A number of ASEAN member states seem to be experiencing prolonged internal conflicts which have negatively affected socioeconomic and democratic development of the countries. People, including children, living in the conflict areas are directly impacted and their basic rights to bodily integrity, safety, livelihood, healthcare and education- among others- are violated on a daily basis. The involvement of children in armed conflict, as child soldiers in some countries, also pose serious concerns. The number of children who have become refugees or are displaced and separated from their families as a result of a conflict situation is also worrying. Given that effective protection mechanisms for children affected by armed conflict are either weak or non-existent in several ASEAN Member States, greater efforts are needed at the regional level to address the issues of protection of children in this particular context.
9. **Persistence of some traditional values that undermine human rights and children's rights.** Despite socioeconomic changes that have accompanied development in countries across ASEAN, as well as the impact of globalization that has brought about new ideas and practices over the last many decades, certain values remain strong in ASEAN societies. Among these are values and practices relating to gender roles and relations that favor male superiority, and the power relationship between adults and youngsters that helps to condone the practice of corporal punishment in children. The trend and manifestations of continuing and growing violence against women and children in ASEAN societies are a reflection of societal acceptance of such practices. To reverse the trend will require not only a re-socialization of the current and the new generation of ASEAN citizens toward the culture of respect for rights and equality, but also to put in place effective institutional mechanisms to enable rights-respecting culture to take roots.
10. **Maintaining the status quo of regional human rights mechanisms.** ASEAN has developed the regional human rights regime with political documents and mechanisms such as the AICHR and ACWC. However, the two existing human rights bodies are still struggling to perform properly due to a lack of independence, personal resources, proper secretariat, capacity and expertise. The struggle, unfortunately, will continue because of the ASEAN working principles of consultation and consensus as well as respect for state sovereignty and non interference in internal affairs of the AMS. While a few member states are trying their best to keep the current status and situation of the two bodies, which is not conducive to better performance, engagement with different individual representatives is possible and could be useful.

## ASEAN Vision 2025 and the UN Sustainable Development Goals: Prospects?

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The key question here is whether the ASEAN Post 2015 vision offers any prospects? The ASEAN leaders, during its 27 Summit held in Kuala Lumpur on the 18-22 November 2015 adopted a number of documents. One of the most important for ASEAN to move forward together is the ASEAN 2025: Forging Ahead Together. The document contains an ASEAN Community Vision 2025 and three Community Blueprints (namely ASEAN Political-Security Community Blueprint 2025, ASEAN Economic Community Blueprint 2025, and the ASEAN Socio-Cultural Community Blueprint 2025). The Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together “welcomes the formal establishment of the ASEAN Community 2015” and “adopts the ASEAN Community Vision 2025. It charts the path for ASEAN Community building over



the next ten years. ASEAN is working towards a Community that is “politically cohesive, economically integrated, and socially responsible”. Whatever these grand statements mean, the implementation of many strategies and action points will have direct or indirect impact on children and child rights.

The ASEAN vision 2025 emphasizes a rules-based, people oriented, people centered ASEAN Community, where ‘peoples enjoy human rights and fundamental freedoms, higher quality of life and the benefits of community building’. It was said that one of the focuses for the ASEAN Community over the next ten years would be guided by, but not limited to, broad goals that will further consolidate and strengthen the regional grouping: which include among others “greater emphasis on the peoples of ASEAN and their well-being” and “ensure fundamental freedoms, human rights and better lives for all ASEAN peoples”. It commits to undertake to realize among others, “an inclusive and responsive community that ensures our peoples enjoy human rights and fundamental freedoms as well as thrive in a just, democratic, harmonious and gender-sensitive environment in accordance with the principles of democracy, good governance and rule of law”. For a region where democracy seems to be in deficit in a majority of the member states and where human rights violations are rampant, the post 2015 vision is ambitious. Nevertheless, the fact that human rights and fundamental freedoms have become cross-cutting through all three communities could be a step towards a more human rights friendly community, including for children.

It is also interesting to note that the endeavor to build an ASEAN people-oriented and people-centered society is reflected through all communities including the ASEAN Economic Community. Although compromised, space is now open for peoples of ASEAN, including children, to advocate/demand for more participation in any decisions which may affect them.

The post 2015 ASEAN vision touches upon various issues identified as risks and challenges for children and the promotion and protection of child rights as follows:

- 1. Political-security blueprint.** Among the four characteristics to be pursued include “a rules based, people-oriented, people-centered community... in which our peoples enjoy human rights, fundamental freedoms and social justice, embrace the values of tolerance and moderation...”. Under this, a number of elements were identified as essential for community consolidation including promotion of the principles of democracy, instill the culture of good governance, the culture of integrity and anti-corruption, promotion and protection of human rights, fundamental freedoms and social justice as well as increase the engagement and participation of entities associated with ASEAN and relevant stakeholders. Out of 15 action lines under “the promotion and protection of human rights, fundamental freedoms and social justice”, more than half aim at supporting the AICHR to properly discharge its mandates and functions as well as implementation of the ASEAN Human Rights Declaration (AHRD). For the first time, the “mainstreaming of human rights across all three pillars of ASEAN Community” was clearly stated in the blueprint. Engagement and interactions with existing human rights mechanisms and CSOs concerned with human rights were mentioned in a few action points.

Children were also mentioned in the political and security blueprint for the first time. Action line fourteen “encourage coordination and consultation among relevant ASEAN organs and bodies with a view of enhancing the implementation of the AHRD, the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children...”. The Ha Noi Declaration, which was adopted in 2010, prescribes very clear measures regarding the promotion and protection of child rights (as well as women’s rights) including to “achieve the goals for

children in the ASEAN region as regards the child's rights to survival, protection, development and participation in a comprehensive and systematic way" and "promote and encourage child participation in the ASEAN Community building through the establishment of the ASEAN Children's Forum and other relevant programs or activities". The next ASEAN Children's Forum will be hosted by Vietnam in 2016. In addition, the blueprint also prescribes the "early ratification of the ASEAN Convention against Trafficking in Persons, Especially Women and Children and its effective implementation, as well as carry out the ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children. The said Convention was adopted by the ASEAN leaders on November 22, 2015.

**2. Economic blueprint.** This is a continuity of economic integration which will be consolidated in the next 10 years. It still emphasizes the "free flow" of trade in goods, services, investment as well as skilled labor. It focuses on a competitive ASEAN and connectivity through physical infrastructures and information technology. The blueprint reflects more or less "business as usual" based on neo-liberalism aims at integration with the global economy. Tourism, health care and the primary extractive industries are sectors which may have direct impact on children. However, a few elements could be positive for human rights in general and child rights such as consumer protection, sustainable economic development and "a resilient, inclusive, people-oriented and people-centered ASEAN" are there. This is new for ASEAN to incorporate the idea of "people-oriented and people-centered" within the economic community with key elements such as strengthening small and medium enterprises (SMEs), public-private partnerships, narrowing the development gap and a contribution of stakeholders to regional integration efforts. For the first time, corporate social responsibility is mentioned here but this element is not as clear as it could be. The fact that the concept is there however, leaves room for interpretation in an innovative way.

**3. Socio-cultural blueprint.** The socio-cultural blueprint could be qualified as the most relevant and the most progressive blueprint among the three when it comes to human rights and child rights. In many ways, the blueprint incorporates elements adopted by the Sustainable Development Goals (SDGs) which were adopted by the UN General Assembly in September 2015 (ranging from ending poverty, ensuring inclusive and equitable quality education, achieving gender equality and empowerment of women and girls, to promoting peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all). The terms 'engage, inclusive, empower, reducing barriers, sustainable, resilient, and dynamic' have been used throughout the document. Issues of climate change and its impacts were also included here. One whole section was dedicated to promotion and protection of human rights which includes social protection and early childhood care (B.3.ii), enhancing regional initiatives to promote and protect the rights of women and children... through the work of the ACWC (B.3.vi), and enhancing regional initiatives and stakeholder participation to promote elimination of all forms of discrimination-institutionalized or otherwise-exploitation, trafficking, harmful practices, and violence and abuse against children, women, persons with disabilities,...(B.3.vii). For the first time as well, ethnic minorities groups and vulnerable and marginalized groups are mentioned.

In addition, the blueprint also provides for "strengthened social protection for women, children, youths,..., and people living in at risk areas, including people living in remote and border areas and climate sensitive-related crises, disasters and other environmental changes" by "encouraging risk and vulnerability assessments and other scientific and evidence-based measures for policies

and plans to promote targeted response measures as well as establish platforms to empower people living in at risk areas...". With all characteristics and action lines specified in the blueprint, Save the Children has plenty of space to engage and contribute to children and rights of the child in ASEAN framework.

## Recommendations

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Over the last 15 years, significant progress has been made within the ASEAN region in reducing child mortality, increasing school enrollment and legislating to protect children amongst others. However, whilst the children of ASEAN enjoy more rights than the generations before them, this ASEAN child rights situational analysis and synthesis has identified common concerns relevant to the survival, development and protection of children in the region. While each country is unique, a number of child rights violations are common across the region such as child trafficking, exploitation, child labor, children living on the streets, children in conflict with the law and children deprived of a safe family environment. Excluded and vulnerable groups of children appear to be particularly disadvantaged.

As a regional body, ASEAN has an important role to play in influencing positive changes in child rights issues and various regional mechanisms and bodies have already introduced a number of commitments to better safeguard children's welfare and development. However, adequate social services and the protection of children from abuse, neglect and exploitation remains a distant actuality as no member state is sufficiently enforcing laws or implementing policies for the benefit of *all* children.

A selection of specific recommendations for different levels and stakeholders within ASEAN are given below which also reflect the inter-related and cross-cutting concerns identified through this study. It is hoped that these proposed areas of action can help guide ASEAN, its member states and partners (including Save the Children) in the region to build on the progress that has so far been made so that all rights for all children are fulfilled.

### **National level recommendations for states that are relevant to a number of countries**

National governments are directly responsible for promoting and protecting the rights of children. To advance political obligations and commitments, progress is needed in strengthening legal and policy frameworks followed up by more systematic implementation through national institutions that deal with children's issues.

#### *Child Survival and Development*

- Improve national data collection systems capable of providing better disaggregated data on children and measurable indicators, goals and targets for improving child survival and development.
- Increase public investment and budget allocations in social spending and the provision of basic services – particularly for vulnerable and marginalized groups and those living in more remote locations.
- Strengthen early childhood education. Provide free primary education to *all* children (not just citizens) and improve the quality of education services. To take better advantage of the ASEAN Economic Community 2015, provide basic secondary school education so that children and youth become employable.

- Address the key drivers that are causing the regional average for malnutrition of children to remain high, particularly in the poorer countries in ASEAN. Awareness raising and health service delivery need to be strengthened, particularly in poor, hard to reach and isolated locations.
- Introduce targeted social welfare systems and social protection interventions for the region's poor, vulnerable and socially excluded groups.
- Repeal laws which are incongruous to universal standards and tackle discrimination and abuse of vulnerable groups of children such as LGTB, ethnic or religious minorities, stateless persons, foreign migrants, children with disabilities etc.
- Resolve political conflicts affecting the security and welfare of children in a number of ASEAN member states.

#### *Child Protection*

- Address and review narrow interpretations, gendered definitions and the lack of specific laws that offer children a mixed degree of protection in the region. For example, ASEAN member states should harmonize definitions and ages of children within all laws nationally.
- Ratify all international child rights related instruments, withdraw all reservations and revise national laws where necessary.
- Review national child protection laws so that legislation exists to ban all forms of physical, emotional and sexual violence against a child. For example: all ASEAN states need to prohibit corporal punishment in both the home as well as in institutions. Within the region, sexual abuse and exploitation needs to be more clearly defined and legislated against.
- Protect children engaged in child labor from hazardous and harmful work as per international standards. Irregular migrants should be protected from rights violations and trafficking.
- Strengthen national laws in all ASEAN states so as to criminalize offering, obtaining, procuring and providing both girls and boys for child prostitution. Children involved in all forms of sexual exploitation (including online) should be explicitly recognized as victims.
- Develop in each of the ASEAN Member States a specific juvenile justice law that ensures the welfare, dignity and best interest of the child.
- Increase resources, facilitate better coordination across law enforcement agencies and address corruption across the ASEAN region.
- Ensure compliance with Human Rights and Business Principles and Children's Rights and Business Principles. Establish government regulated child protection standards for the private sector. Step up efforts to engage the private sector in ensuring accountability to child protection.
- Include child rights impact assessments for all national economic development plans and trans-boundary economic projects.

#### *Child Participation*

- Develop national policies for child and youth participation and facilitate meaningful children's participation in planning and policy making.

### **Regional level recommendations for the ASEAN mechanism**

Significant disparities exist within the ASEAN region in relation to the full realization of children's rights which negatively affects the overall stability and development of the region. ASEAN must therefore continue to prioritize child rights high on the regional political agenda. Civil society within ASEAN can assist in supporting these actions if the space for their engagement is expanded.

### *Child Survival and Development*

- ASEAN mechanisms could influence member states to accede and ratify all international human rights instruments.
- Build a platform for dialogue and cooperation to assist in developing time-bound targets and indicators for children re: the SDGs for the ASEAN region.
- Mainstream 'preparedness' capacity building to reduce the effect of disasters and environmental degradation, conflict or other emergencies on children in the region. Promote regional responses to support recovery, transition and stabilization post natural disasters in the region.
- Develop and disseminate regional guidelines (building on national and international good practices) that can promote dialogue within ASEAN on the best interest of the child. Promote the regional sharing of good practices and experiences on practical and successful child rights policy and program interventions.
- Review and promote rights-based policies and measures for stateless, irregular migrants, refugee and asylum-seeking children.

### *Child protection*

- Promote the enforcement of cross-border protection that can enhance immigration laws and administrative procedures to facilitate safe child migration. Situate the problem of trafficking in persons within the wider context of migration. Promote and foster international cooperation through bilateral and multilateral agreements and regional cooperation programs to combat child trafficking.
- Endorse coherent extraterritorial jurisdiction for offences and transnational crimes related to violence against children such as trafficking, sale of children, child prostitution, child grooming, child pornography and other grave offences against children.
- Develop ASEAN guidelines on child protection systems which advance quality care, protection, recovery and reintegration services of children in all settings (e.g. home, school, community, juvenile justice center, alternative care institutions).
- Promote campaigns and initiatives on elimination of all forms of violence against children in ASEAN in collaboration with the media, civil society organizations and private sector.

### *Child Participation*

- Uphold the key child rights principle of children as agents of change and encourage their participation in planning and policy making at regional and national levels.

## **Cross cutting recommendations for civil society at the regional level**

This assessment has identified where children within ASEAN cannot grow up in a safe and protected environment. At the regional level, CSOs have the potential to support policy development and capacity building within relevant ASEAN mechanisms (such as the ACWC, AICHR, Senior Officials Meeting on Social Welfare and Development and the ASEAN Children's Forum). In carrying out these actions, civil society would benefit from expanding engagement with other groups of stakeholders beyond the usual child rights sector actors (e.g. private sector, academia, traditional and religious leaders, groups working on women's issues, gender-based violence, disabilities or LGTB issues).

- Promote, facilitate and support regional debate and dialogue on key child rights concerns with appropriate ASEAN mechanisms and bodies.
- Advocate for renewed and sustained commitment for child rights in ASEAN mechanisms and expanding opportunities for strengthening cooperation amongst member states.

- Promote and support the contextualization and harmonization of international rights-based standards with guidelines and tools for analyzing and strengthening child rights within ASEAN. Facilitate and share experiences and good practice.
- Support CSO coalitions (nationally and regionally) in advocating for and monitoring children's rights by engaging strategically and constructively with ASEAN and its member states. Build capacity and provide technical assistance and funds to strengthen local, national CSOs and regional coalitions.
- Innovate with new forms of media to facilitate regional level engagement and political dialogue on child rights.
- Promote and support meaningful and active participation of children and young people in the region. Integrate children's views into policies, plans and programs. Support national and regional level children's forums networks and facilitate consultative processes.

### **ASEAN Research Agenda**

Better evidence-based research across the ASEAN region is needed that uses both quantitative and qualitative data analyzed within more in-depth conceptual frameworks. Partnerships between research collaborators (such as academic, civil society, IOs and government) can lead to more robust findings that better inform regional and national level policy making and programming.

- Promote and undertake research to better understand specific ASEAN social, cultural, gender and structural norms that impede the full realization of children's rights.
- Research the practical obstacles for effective implementation and cooperation across sectors, agencies and countries within ASEAN in order to properly respect, protect and fulfill the rights of children.
- AICHR could specifically commission thematic studies relating to child rights within ASEAN.
- Build a centre for research on children in ASEAN that could act as a focal point for data collection, analysis, documenting and sharing good practice within the region.
- Specific research needs to better understand the benefits and threats to children's rights from the imminent implementation of the ASEAN Economic Community 2015 due to the socio-economic diversities within member states.
- Research structural policies and regional attitudes that tend to discriminate against those children who are not part of a family structure; children with disabilities; and conservative attitudes that allow for discrimination because of sexual orientation.
- Study key drivers of dynamism across the region (such as economic growth, globalization, the internet, tourism and infrastructure projects) that are changing the lives of children both for good but may also increase their risks to harm.





