

Submission of Child Rights Groups on the Terms of Reference of the ASEAN Commission on Women and Children

1. We, members of SAPA Task Force on ASEAN and Human Rights Child Rights Focal Point, and representatives of the Regional Child Rights Coalition in Southeast Asia, organized the Regional Consultation for Child Rights Organizations on the ASEAN Human Rights Body (AHRB) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in Jakarta, Indonesia, from 7 to 8 May 2009.
2. We are committed to working together and consider it our responsibility to ensure the effective promotion and protection of child's rights in ASEAN.
3. We have convened for the purpose of providing feedback on the existing draft terms of reference of the AHRB from a child rights perspective, and, input for the working group of the establishment of ACWC in order to ensure the accountable, effective and independent mechanism serving the best interest of the child.
4. We recognize that all member states of ASEAN have ratified the Convention on the Rights of the Child and that there is an increasing amount of ratifications of the two Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. And, we welcome the adoption of the Declaration on the Commitments for Children in ASEAN (2001) and the ASEAN Declaration against Trafficking in Persons particularly Women and Children (2004).
5. We are grateful for the initiative of ASEAN to come up with the establishment of an independent, accountable and effective AHRB that will protect the rights of the people in ASEAN.
6. Inspired by these developments and being aware that the drafting of the TOR of ACWC is in place, we, civil society therefore put forward the following recommendations for the independent, accountable and effective ACWC:

Purposes

7. The following are the suggested purposes of the ACWC:

- 7.1 To promote, protect and ensure fulfillment and realization of the rights of all children and women in and from ASEAN countries in accordance with the standards and principles of international human rights law, as well as the international customary law.
- 7.2 To uphold the rights of the peoples of ASEAN to live in peace, dignity and integrity with full and meaningful participation of all children and women;
- 7.3 To enhance regional cooperation with a view to improving and complementing national and international efforts of children and women's rights and ensure that each member state fulfills its obligation;
- 7.4 To mobilize and support each member states to ratify the international human rights instruments and enforce their international human rights obligations through the harmonization of the national laws and regulations with the international human rights standards;

Principles

8. We strongly recommend that the ACWC should be guided by the Convention on the Rights of the Child and other relevant instruments as the overall framework and in particular the following principles:

- 8.1 primacy of the best interest of the child;
- 8.2 recognition of children's evolving capacities and their right to participation;
- 8.3 protection of children from all forms of abuse, exploitation and violence; and
- 8.4 non-discrimination on the basis of sex, age, culture and ethnicity, religion, citizenship, legal status, class, sexual orientation, geographical area and differing abilities.

Mandate

9. We value the creation of the ACWC as it presents a regional mechanism for the protection and promotion of children's rights to complement other existing mechanisms at national and international level. As such we expect that the TOR of the ACWC shall be given the mandate to work on the promotion and protection of child's rights, and to create mechanisms and procedures which address the neglect and violation of child's rights, ensure the fulfillment of child rights, and the right to participation, with the following functions:

- 9.1 to review the policies and practices of states and non-state actors and ensure these comply with international child rights standards and principles;
- 9.2 to recommend to ASEAN members states and regional functional bodies the development and effective implementation of policies and programs to address children's rights.
- 9.3 to enhance wider public awareness, knowledge and understanding of children's rights in the region such as: carrying out, publishing and distributing child-friendly materials, organizing learning sessions for information multipliers such as teachers and the media, and enhance the teaching of child rights in formal and non-formal education settings;
- 9.4 to mobilize resources to enable ACWC to carry out its mandates and functions effectively
- 9.5 to engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, UN agencies, national HR institutions, civil society organizations, children and other stakeholders;
- 9.6 to set up monitoring and reporting mechanisms that will examine the general situation of children in member countries as well as specific cases of child rights violations;
- 9.7 to set up an accessible and effective complaints mechanism that will provide redress for victims of child rights violations;
- 9.8 to create special procedures such as special rapporteurs, independent experts and special representatives that will conduct individual or group communication with victims of child rights violations, dialogues with stakeholders and recommend to the ACWC policies and programmatic actions to address thematic child rights concerns;
- 9.9 to establish independent and impartial mechanisms to deal with cross-border concerns including but not limited to stateless children, refugees, trafficked children, migrant children and indigenous children;
- 9.10 to encourage members states to ratify without reservations and fully incorporate into domestic laws and implement in practice relevant child rights instruments;
- 9.11 to encourage member states to withdraw their reservations on the CRC and other relevant child rights instruments;
- 9.12 to review ASEAN member states' implementation of the general recommendations of the UN CRC committee;
- 9.13 to build a support mechanism to ensure that the ASEAN member states comply with the UN reporting obligation;

- 9.14 to take into account alternative/supplementary reports prepared by civil society organizations and children in developing recommendations to member states for the strengthening of the protection and promotion of children's rights;
- 9.15 to provide a supporting mechanism for civil society organizations to monitor and report the implementation of State's obligations to international child's rights instruments;
- 9.16 to develop capacities of actors/agencies mandated to protect the rights and welfare of children, including but not limited to policy makers, and other government officials, social workers, care givers, prosecutors, judges and law enforcers;
- 9.17 to develop and implement guidelines and procedures that guarantee children's right to participate in the overall implementation of the mandate and functions of the ACWC, AHRB and other functional bodies within ASEAN;
- 9.18 to encourage ASEAN member states to promote child participation without discrimination and ensure gender balance in decision making processes, in the development and implementation of its policies and programs at all levels;
- 9.19 to provide guidance to the other ASEAN functional bodies and mechanisms to ensure that their programs/plans of action, including the Political-security, socio-cultural and economic blueprints, respond to and address the rights and welfare of children.

Composition

- 10. We recommend that each ASEAN country shall select one independent child rights expert and one independent women's rights expert to the ACWC who will serve as a member/commissioner.
- 11. The selection of these representatives shall be done by a national process which engages civil society, children and government. The criteria for selection of representatives shall be the following:
 - 11.1 expertise and competence in the fields of children's rights and/or women's rights;
 - 11.2 previous experience working with children and/ or women;
 - 11.3 be of high moral standing and integrity.
- 12. Gender balance shall be ensured in the selection of ACWC members/ commissioners.

13. The members/commissioners of the ACWC shall ensure independence and autonomy from member state's political agenda in carrying out their functions.

14. The members/commissioners shall serve for a period of five years and are subject to re-appointment only once.

15. The ACWC shall be headed by a chairperson who will be selected by the members/commissioners.

Timeframe

16. Given the importance and urgency to protect the rights of children, we expect that the ACWC will be established and operational by October 2010.

Funding

17. The ACWC must have fiscal autonomy from ASEAN. Member states of ASEAN shall be responsible for providing funds for the operations of the ACWC. However, no member state shall have the right to withhold its funding support for ACWC for any reason.

ACWC Secretariat

18. The ACWC's secretariat shall be independent from the ASEAN secretariat in terms of planning, budgeting, and implementing programs, and shall be given adequate resources to carry out its mandate effectively. Technical Coordination with the ASEAN secretariat shall be maintained for the purpose of operational benefit.

While we support the creation of the ACWC, we recommend that the said mechanism be part of the AHRB only as such time as the latter has been established and functional.

Jakarta, Indonesia, 8 May 2009