

HANDBOOK

WOMEN, DEVELOPMENT & ACCESS TO JUSTICE



United Nations Entity for Gender Equality
and the Empowerment of Women



Foreign Affairs, Trade and
Development Canada

Affaires étrangères, Commerce
et Développement Canada

International Women's Rights Action Watch Asia Pacific



HANDBOOK

WOMEN, DEVELOPMENT & ACCESS TO JUSTICE





Handbook on Women, Development and Access to Justice

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FOREWORD

We know that growing income inequality and widespread poverty are some of the key challenges facing the world, as states and development activists continue to respond to the burdens of the world's population of almost 7 billion people.

Women continue to face the brunt of these inequalities – more than half of the women in Southeast Asia work in the informal sector in vulnerable jobs as self-employed persons or unpaid family workers/care providers and are not protected under legal and social welfare schemes.

Women continue to face discrimination in relation to their economic, social and cultural (ESC) rights in the context of liberalisation, deregulation, privatisation, globalisation and various development agendas and policies pursued by the corporations and global powers. Political instability, conflict, natural disasters place women in further precarious situations.

Thus, ongoing inequality in the sphere of economic, social and cultural rights contributes to the continuing subordination of women. This makes them especially vulnerable to violence, abuse and exploitation and reduces their capacity to exercise their rights and obtain the developmental gains in a growing socio-economic context. Realisation of women's economic, social and cultural rights has transformative potential which answers women's immediate material needs and seeks a comprehensive response to unequal societal power relations.

IWRAW Asia Pacific has been working in the last 20 years to contribute to the progressive interpretation, universalisation, implementation and realisation of women's human rights through the lens of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

In this Handbook on Women, Development and Access to Justice we explore the use of the complementary framework of CEDAW, and the International Covenant on the Economic, Social and Cultural Rights (ICESCR), as well as other policy instruments such as the United Nations Guiding Principles on Business and Human Rights, which can be used to strengthen the accountability of states and responsibility of non-state actors on women's human rights. This Handbook on Women, Development and Access to Justice documents and collates several tools and resources developed by various experts, analysts and activists in the field of human rights, law and economics to strengthen our analysis of the impact of regional economic integration on women's daily lives and our rights. It is intended to help women's groups explore the rights context under the ASEAN regional integration to ensure we can strategise and advocate for women's economic social and cultural rights, and women's access to justice in this evolving political economy.

Audrey Lee

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Kuala Lumpur

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Through its increased involvement in the area of women in development in the recent years, IWRAP Asia Pacific and its partners have collectively developed a great deal of expertise in this area. 2015 marks a milestone in both global and regional development agenda. While globally the states are working towards finalising the post-2015 Sustainable Development Goals (SDGs), regionally key aspects of the ASEAN Economic Community (AEC) will be formed to develop regional economic integration and cementing regionalism. This will provide a single market and production base, a highly competitive economic region, a region of equitable economic development fully integrated into the global economy. The AEC will thus transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital. The Nay Pyi Taw Declaration on the ASEAN Community's Post-2015 Vision (adopted on 12 November 2014) further provides for the development of a regional Post-2015 Vision of ASEAN Community and its Attendant Documents to be adopted at the 27th ASEAN Summit in November 2015. It is aimed at continuing to promote ASEAN as a rules-based community bound by shared principles, values and norms.

Noting the context in ASEAN as well as the layers of challenges and related discrimination, it is essential to locate women's human rights at the heart of development and also increase the participation of women within the development process. This is important in order to lead to women's empowerment and full and equal participation in all spheres of society, including participation in decision-making processes, and access to power, which are fundamental for the achievement of gender and social justice, substantive democracy and peace for all. International women's human rights norms and standards enumerated in international human rights treaties, in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognise the obligations of states parties to take "*all appropriate measures to eliminate discrimination against women*", need to inform the current development discourse and mechanisms in order for women to truly enjoy their rights and fundamental freedoms through economic and social development. This presents an opportunity for women to be empowered by the new economic environment as women's ability to understand ASEAN's impact on their lives and communities, to mobilise for protection of their rights, and to influence the developmental process, depends on their status in society, their resources and access to information, and their formal and informal work in the ASEAN economy.

To engage successfully with ASEAN institutions and with opportunities and risks in implementation of the ASEAN Blueprints, practitioners need increased knowledge, capacity, and resources; and constructive strategies to achieve a systemic change of state and private sector institutions in order to ensure the promotion and protection of women's human rights and access to justice.

This ***Handbook on Women, Development and Access to Justice*** is a part of IWRAP Asia Pacific's effort to consolidate and record the collective experience of the organisation, its partners at the national, regional and international level as well as its more than 20 years of experience and expertise – with specific regard to the application of international standards and mechanisms such as CEDAW, ICESCR and the UNGP on Business and Human Rights in drawing accountability of states – in a way that it could be usefully incorporated into future work on the ground. The processes towards ensuring gender justice and equality for women in the context of development indisputably requires further strengthening through enhanced realization of State Obligations to respect, protect and fulfil women's human rights and substantive equality of women.

The Handbook particularly seeks to integrate and consolidate and complement existing expertise on the subject as well as the varying initiative of IRAW Asia Pacific, such as the ***Southeast Asia Consultation: Using CEDAW to Strengthen Accountability for Women's Human Rights in Development (2012)*** and the ***Regional Training of Trainers (RTOT) for Southeast Asia on "Women, Development and Access to Justice: The ASEAN Context" (2014)*** as well as its other related publications.

The Handbook is intended to be further contribution to these ongoing efforts in its engagement particularly in the ASEAN sub-region. Undoubtedly, owing to the specificity of the national and regional context and other factors, each use must take into consideration the diversity and dynamics when being applied at the national or in varying context.

IRAW Asia Pacific wishes to take this opportunity to convey its appreciation and thanks to a number of individuals who have taken principal responsibility for the development of this Handbook.

We would like to thank all of the authors - Angie Umbac (Philippines), Dorathy Stanislaus Benjamin (IRAW-AP), Gauri Bhopatkar (India), Frenia Triasiholan (Indonesia), Prof. Savitri Bisnath (USA) and Sinet Seap (Cambodia), for their valuable and insightful contributions.

We are grateful to Wathshlah Naidu (consultant and former IRAW-AP programme officer) for editing the Handbook. We wish to thank the programme staff of IRAW Asia Pacific, particularly Shanti Uprety who co-edited and coordinated the development and publication of this handbook.

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We appreciate the generous support of United Nations Entity for Gender Equality and the Empowerment of Women Regional Office for Asia and the Pacific which made the production of this handbook possible.

As experience evolves in this relatively dynamic and changing environment the numerous updates on the global and regional development agenda will no doubt need to be improved and applied in revised form to different situations. For this reason the Handbook will mainly be made available in electronic format, so that it can more easily be modified, applied and split into teaching modules as required. All those who consult and use this Handbook are encouraged to suggest ways in which it can be improved.

IRAW Asia Pacific
September 2015

ACRONYMS AND ABBREVIATIONS

ACMW	- ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACWC	- ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AEC	- ASEAN Economic Community
AFTA	- ASEAN Free Trade Agreement
AICHR	- ASEAN Intergovernmental Commission on Human Rights
ASCC	- ASEAN Socio-Cultural Community
ASEAN	- Association of Southeast Asian Nations
BPFA	- Beijing Platform for Action
BRICS	- Brazil, Russia, India, China and South Africa
CBDR	- Common But Differentiated Responsibility
CEDAW	- Convention on the Elimination of All Forms of Discrimination against Women
ESCR	- Economic, Social and Cultural Rights
ETOs	- Extra-Territorial Obligations
FDI	- Foreign Direct Investment
GRs	- General Recommendations/General Comments
ICESCR	- International Covenant on Economic, Social and Cultural Rights
ICPD	- International Conference on Population and Development
ICT	- Information and Communications Technology
IFIs	- International Financial Institutions
ILO	- International Labour Organisation
MDGs	- Millennium Development Goals
MNCs	- Multinational Corporations
NGOs	- Non-governmental Organisations
RCEP	- Regional Comprehensive Economic Partnership
UN	- United Nations
UNGP	- United Nations Guiding Principle on Business and Human Rights
UPR	- Universal Periodic Review
WESCR	- Women's Economic Social and Cultural Rights
WHRs	- Women's Human Rights
WTO	- World Trade Organisation

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INTRODUCTION TO THE HANDBOOK

Over the last 20 years and more IWRAW Asia Pacific and its partners have developed considerable experience and expertise in the field of women's human rights and development. This **Handbook on Women, Development and Access to Justice** seeks to draw together that expertise and make it assessable to future practitioners in this field so that they can be more effectively informed and able to draw accountability and move towards the strengthening of the realisation of women's human rights. Given the dynamic and the ever changing policy environment in ASEAN and related global fora it is critical that practitioners receive comprehensive understanding of the context of development, emerging concerns and impact on women's human rights and available accountability mechanisms.

The overall objective of the Handbook is to generate and improve understanding, develop required skills and advance critical application of international principles and standards in addressing women's human rights and access to justice in the context of development. To that end, this Handbook provides a broad overview of the key issues and debates to be considered in the context of development and draws on a wealth of feminist analysis generated by women's human rights organisations engaged in furthering women's human rights. The Handbook specifically focuses on generating and strengthening the knowledge and capacity of women's human rights practitioners in and within the ASEAN context. It may also benefit inter-governmental or other NGOs by engendering their analysis of the development agenda and strengthen their understanding of the related legal framework to draw accountability for the violations of the rights in the context of development.

The Handbook is divided into five modules that addresses specific components that builds on each module. It is ideally to be used as a training tool or as reference in advocacy strategies on the specific issues related to development and women's human rights. The doctrines and participatory methodology used sets forth an understanding of applicable international human rights standards and mechanisms to draw accountability; approaches identifying violations and impact of development on women's human rights; and the related framework to access justice for women in the differencing context and environment.

Module 1 focuses on highlighting some of the larger development concerns and debates that have impacted women's human rights movement and activism with respect to development and women's human rights. This module elaborates on key concepts and development trajectory which collectively informs the discourse and activism on women and development. The brief overview of what would be considered a vast spectrum of context, issues and existing advocacy platforms would foreground the subsequent focus areas.

Module 2 builds on from the previous component and is structured to provide specific understanding of the ASEAN development paradigm and the impact of its current trade and economic policies on human rights of women in the ASEAN region.

Module 3, drawing from the contextualized critique in the previous modules, proceeds to set the framework to enable drawing of accountability using the UN Guiding Principles on Business and Human Rights and its linkages to CEDAW and women's human rights. It also discusses engagement with state and non-state actors (business and corporations) on promoting women's human rights.

Module 4 aims to enable practitioners to make the connection of the macroeconomics, development paradigm and its impact on women's human rights. It further maps out the prevalent legal framework, specifically the interlinkages between CEDAW, ICESCR, the United Nations Declaration on the Right to Development and the Maastricht Principles, as accountability tools to facilitate the realisation of women's human rights.

Module 5 discusses possible elements of women's access to justice framework and how it works within national contexts. It relies on broad framework on State Obligations, primarily derived from CEDAW and ICESCR, and explores approaches and indicators to measure women's access to justice in the context of economic, social and cultural rights.

Each session in the respective modules provides specific objectives and expected learning outcomes. The proposed methodologies are also supplemented with additional notes for the facilitators to ensure that the key learning points are captured. The additional references listed under each session are intended to provide users with further materials and tools to strengthen understanding and application. While generally the Handbook builds on each module, specific modules can also be stand-alone content for a training or dialogue to promote specific components. The Handbook will mainly be made available in electronic format so as to be more accessible to a wide range of users. The additional resource and reading materials including powerpoint presentations and videos are included in the compact disk (CD) drive that is attached in the last page of this Handbook.

MODULE 1 provides an overview of the development contexts at the national, regional and international level and sets the framework for identifying issues and challenges within these contexts



SESSION: 1.1

Development Issues and Impact on Women's Lives in ASEAN

Time Plan: 2 hours

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objectives:

- To initiate discussions on the development paradigm and to identify related issues which impact developmental gains at the national level;
- To gain understanding of the complexities of the development processes and its impact on the status of women.

Learning outcomes:

By the end of the session practitioners are able to:

- Identify and understand development issues and context at the national level;
- Articulate how the development related concerns and challenges impact the status of women in ASEAN.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined approach of group work and direct input to facilitate discussion and analysis.

Step 1: Exercise: What is Development? (30 minutes)

(Requirements: metacards, pentel pens, tape, paper for posting metacards)

Ask the participants to group themselves into five. Each person will write two items on two metacards the answer to the above statement. They will discuss their answers with their group. They will put their answers together, and will assign one person per group to do a presentation.

“When I see ____ in my community, I know there is development.”

Sample answers: *infrastructure, buildings, roads, bridges, factories, and airplane.*

The facilitator will cluster these manifestations of development and demonstrate the interlinkages between economic development and social and other forms of development. In the event these other forms are not highlighted, the facilitator will also include good health, food, education, social justice, mobility, or happy family life as manifestations of development.

Step 2: Exercise – Understanding the development trajectory (60 minutes)

Taking forward the discussions above, the participants are to be clustered into groups (by country if regional training), and tasked to map the development trajectory in their respective countries using the following format:

COUNTRY	1950– 1960	1960– 1970	1970– 1980	1980– 1990	1990– 2000	2000– 2010	2010– 2015
Forms/ manifestation of development							
What are specific elements or features of governments’ economic and development policies, plans or programs that have an impact on WHRs?							
What are the specific impact on women?							
What have been the development/ economic demands made by women in their respective countries in order to advance WHRs?							

Ask participants to write their answers on a separate metacard for the respective time frame and post it on the wall map. Participants to be asked to explain/elaborate on their responses if needed. Facilitator to finally provide a synthesis based on the responses.

Step 3: Synthesis and input (30 minutes)

Taking off from the above synthesis the facilitator provides further inputs on the parallel between the national development agenda and the global trends, including on the impact on the status of women. *Note: Additional insights on the global trajectory will be discussed in the session below.*

The input to focus on the following:

- Development trajectory and trends
- Synthesis on the impact of development on the status of women

A brief discussion to follow.

PART 3: FACILITATOR'S NOTES

Understanding Development and its Context

- Development is a comprehensive process¹ that aims at the constant improvement of the well-being of all. Development is intended to improve lives and to make life better.
- Development may be the result of national economic planning and infrastructure, and other legal arrangements and social policies. Key thrusts of development may be different in each country. Some countries focus on drawing foreign investment. Some countries privatise national resources and encourage growth of domestic business entities. Knowing what is prioritised by countries and business actors is important for our analysis.
- Countries have different metrics for measuring economic and people's wellbeing. There are some common indices for development. The constant improvement of well-being affects all aspects of human life. It means that development is inclusive of health, food, safety, education, even in advancements of law and economy.
- The different actors in development and economic activity are an important consideration - business sector, financial institutions, state actors (government agencies), legislature, etc. In discussing the impact of development on women's lives, consider how important is infrastructure for women who are fetching water; roads can also transport food, and bring children to schools.
- There are benefits, but despite development, women are still tied to traditional gender roles which limit their opportunities. In addition, they are often disadvantaged by the other consequences of development.

Development Issues

- Go through the manifestations of development that the participants have listed down in the Step 1 Exercise. Ask the participants what it took to make the development happen and the impact on the people who were affected.
- For example, in the making of roads and bridges: Were some indigenous communities displaced? Did farmers lose their farmlands, resulting in lack of food production and poverty?
- Being displaced causes migration usually to urban areas where they can find work. As women are still tied to unpaid care work for their families, they seek alternative forms of income-generation in the informal sector. These would be small-scale, family-based, and would not offer financial stability or social insurance for women. These are often unregulated, and unaccounted for.

Global Development Trajectory

- Development can be in line with the rights of women. The 2014 World Survey² provided three criteria to assess whether policy actions and investments for sustainable development adequately address gender equality: first, compliance with human rights standards and the realization of women's capabilities; second, attention to the unpaid care work of women and girls especially those in poor and marginalized communities, and third, full and equal participation of women and girls in all aspects of sustainable development. The UN Declaration on the Right to Development also makes it the obligation of the States to formulate the national development policies, but the role of civil society is also clear. Vigilance

¹ UN Declaration on the Right to Development. Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free, and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

² UN Women: World Survey on the Role of Women and Development (2014).

is important to see that these policies protect the rights of all, and will not cause further marginalization especially of women.

- Close the session by stating how we can monitor our State actions through mechanisms that include CEDAW Review, Optional Protocols (OPs), or the Universal Periodic Review (UPR).

PART 4: REFERENCES

- UN Declaration on Right to Development (General Assembly Resolution 41/128)
- UN Women: World Survey on the Role of Women and Development (2014)

SESSION 1.2

The Realisation of Women's Human Rights: Development Policies, Planning and Practices Linkages

Time Plan: 2 hour 30 minutes

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objective:

- To introduce and promote an understanding of development policies, planning and practices;
- To gain understanding of the multi-sectoral – economic, social, political - development agenda pre- and post-2015 at the global, regional and national levels;
- To promote an understanding of the indivisibility of human rights, inter-sectionality, and tools and processes to create and facilitate a development agenda grounded in women's human rights; and
- To recognise the importance of accountability of state and non-state actors, including corporations and the International Financial Institutions (IFIs), in the realisation of women's rights and gender equality, including the Extra-territorial Obligations (ETOs).

Learning outcomes:

By the end of the session practitioners are able to:

- Gain basic understanding of the global development context and agenda;
- Develop skills to understand and apply the international human rights principles and standards in facilitating a development agenda grounded in a rights perspective;
- Understand the importance of holding state and non-state actors, including corporations and IFIs accountable through existing accountability and enforcement mechanisms.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined approach of plenary discussion, group work and direct input to facilitate discussion and analysis.

Step 1: Discussion – Identifying challenges related to women's human rights in the context of development (30 minutes)

Based on the synthesis in Session 1.1 above on the impact of development on women's human rights, the facilitator is to initiate a quick brainstorming in categorising these challenges/issues. The challenges/issues may be categorised as follows: (Convert this list into a table or some sort of design)

- Food security and sovereignty
- Employment
 - Decent work
 - Migrant workers – internal and cross border
 - Gender pay gap
 - Women in Informal sector

- Energy and Climate Change
 - Climate change adaptation
- Land rights
 - Land economic concession and land social concession
 - Mining, land grabbing and displacement
 - Unequal ownership to land
 - Indigenous rights
- Water and sanitation
- Health and social protection
- Other issues
 - Unequal/lack of access and opportunities for women to participate in developing policies and program
 - Sexual harassment and other forms of violence against women
 - Lack of public service facilities (water, electricity, hospitals)
 - Lack of education service for women in rural and remote communities/ areas.

Step 2: Group work – Mapping the global policy framework and development agenda (60 minutes)

Participants are to be divided into three groups. Each group is to take on any one issue as discussed and synthesised above. In relation to the issue, the participants are to respond to the following (30 minutes):

- i) To map the global policy frameworks, development plans and programmes and other factors which have contributed to the violations/challenges related to the issue in the last 6 – 7 decades (post World War II, 1960s – 2010s).
- ii) To map the successes of the demands of the global women's movement in addressing the challenges/violations related to the issue in the last 6 – 7 decades (post World War II, 1960s – 2010s).

The participants may use flipcharts posted on the walls in carrying out their mapping. Each group will be given 10 minutes to present their mapping.

There should then be a discussion to see the synergy and trajectory of the development issues and policy evolution and framework in relation to all three issues and how it has impacted women's overall human rights in the context of development agenda of the states globally.

Step 3: Input – Understanding Key Development Terminologies and Concepts (60 minutes)

The facilitator is to start with a powerpoint presentation on key development terminologies and concepts. The following should be covered:

1. Development policies and planning
2. Key development actors and institutions
3. Impact of current development policies on women's human rights

A summary is then to be provided by the facilitator on the background and evolution of the development trajectory from World War II until now which includes looking at the UN development agendas (by decades from the 1960s up to present) and World Trade Organisation (WTO) tracks, as well as important conferences which lay the foundation for the promotion of women's human rights such as the Beijing Platform for Action (BPFA), Rio Conference on Sustainable Development, International Conference on Population and Development (ICPD), Vienna Conference on Human

Rights, Millennium Development Goals and current discussions on Post-2015 Sustainable Development Goals.

The session is to be concluded with the understanding of the development paradigm globally and to examine the link between human rights and development, and to deliberate on the policy approaches used for development which has gendered effects on women.

Points to consider/derive from the activity

- What is development? What are development policies? What is development planning?
- What are development institutions at the national, regional and international levels? Who are development actors at the national, regional and international levels? How development policies and planning are biased against women? How can development policies and planning be feminist? What are the implications for the institutions and actors therein?
- The role of the Millennium Development Goals (MDGs) in the development agenda;
- The Post-2015 Sustainable Development Agenda - key processes at the global level, including the sustainable development goals and Post 2015 processes, and articulated priorities of governments in region, international organisations (IOs) and civil society;
- The Post 2015 Sustainable Development Agenda – issues and potential effects on women in Southeast Asia, including means of implementation (MoI) and financing, common but differentiated responsibilities (CBDR), multi stakeholder partnerships and corporate capture;
- The policy and planning implications of the indivisibility of human rights and intersectionality in the context of a multi-sectoral development agenda and reality;
- The shifting geopolitical relations (BRICS) and implications for women's rights, gender equality and development at the national, regional and international levels;
- Influencing the global development agenda from a feminist perspective from the ground up; and
- The importance of accountability mechanisms, including the UPR, and the importance of ETOs for the promotion of women's human rights and gender equality.

PART 3: FACILITATOR'S NOTES

The facilitator will introduce, explore and promote an understanding of the ways in which development, linked with economic and trade policies, and the processes of economic globalization, have the potential to promote and/or erode the realization of women's human rights. The facilitator should use a combination of presentation and small group discussions to:

- Define development from the point of view of the international financial institutions (IFIs), the United Nations (UN) government, civil society and feminists;

- Trace the evolution of development over time (since late 1980s) and highlight concrete examples of changes in development policies and practices, linked with trade and economic policies within the context of neoliberalism, the Washington Consensus³ and economic globalisation;
- Make the discussion more concrete for the participants by choosing and discussing examples suggested by them, such as the provision of water, first as a public service and now as a private product;
- Contextualise the discussions within the current economic moment, bring in roles of the private corporation, the World Bank and WTO and link to discussions of poverty, inequality, unpaid care work;
- Identify and discuss key development objectives as well as development policies and practices of the countries represented by the participants – this should be very interactive and examples shared by the participants should be used;
- Identify and discuss the ways in which the identified key development objectives are linked to economic, including macro-economic performance objectives, and trade policies and women's rights;
- Identify and discuss the human rights approach as a useful tool in facilitating the realisation of women's human rights;
- Identify and discuss linkages between the process of development and the human-rights based approach; Identify and discuss the importance of feminist analysis and inter-sectionality to discussions of development;
- Identify and discuss the contributions of feminist analysis to development planning;
- Identify and discuss geographically-specific structural and policy constraints related to the realisation of women's rights – within the context of development policy and planning;
- Identify and discuss the importance of development policies, planning and practice for the realisation of women's human rights, with concrete, context-specific examples shared by participants;
- Identify and discuss the ways in which the national budget and government expenditure are important for the realisation of women's rights – identify who is taxed, identify what the tax revenues are currently used for, identify the needs of women and marginalised communities, discuss the extent to which they benefit from government expenditures;
- Introduce and discuss government expenditures for those services that are prioritised by participants as critical for women;

³ John Williamson, Senior Fellow, Institute for International Economics, **The Washington Consensus as Policy Prescription for Development**, A lecture in the series "Practitioners of Development" delivered at the World Bank on January 13, 2004

The Washington Consensus as originally stated by John Williamson to summarize commonly shared themes among policy advice by Washington-based institutions at the time, such as the International Monetary Fund, World Bank, and U.S. Treasury Department, which were believed to be necessary for the recovery of countries in Latin America from the economic and financial crises of the 1980s. It included the following ten broad sets of relatively specific policy recommendations:

1. Fiscal policy discipline, with avoidance of large fiscal deficits relative to GDP;
2. Redirection of public spending from subsidies ("especially indiscriminate subsidies") toward broad-based provision of key pro-growth, pro-poor services like primary education, primary health care and infrastructure investment;
3. Tax reform, broadening the tax base and adopting moderate marginal tax rates;
4. Interest rates that are market determined and positive (but moderate) in real terms;
5. Competitive exchange rates;
6. Trade liberalization: liberalization of imports, with particular emphasis on elimination of quantitative restrictions (licensing, etc.); any trade protection to be provided by low and relatively uniform tariffs;
7. Liberalization of inward foreign direct investment;
8. Privatization of state enterprises;
9. Deregulation: abolition of regulations that impede market entry or restrict competition, except for those justified on safety, environmental and consumer protection grounds, and prudential oversight of financial institutions;
10. Legal security for property rights.

- Discuss the process of putting together the budget, the actors and institutions involved, the role of civil society and in particular women, etc (link this to the point above);
- Discuss the effects of compartmentalising discussions of “economic policy” and “development policy” on the realisation of women’s rights and gender equality and within the contexts of inter-sectionality and the reality of a multi-sectoral development agenda;
- Highlight and discuss the processes and relevance of development policy making within the context of women’s human rights;
- Why it is important to work with the key development actors, discuss linkages and overlaps with economic actors and institutions;
- Discuss the ways in which international and regional trade agreements, as both economic and development policies, including the ASEAN Economic Community Blueprint, affect national realities as well as the material realities of women, communities, using agriculture, decent work, land grabbing and unpaid care work, etc as examples; and
- Discuss the importance of substantive participation in facilitating state accountability for the realisation of women’s rights and gender equality in the context of development policy-making, identify ministries/institutions, processes, etc.

PART 4 : REFERENCES

- Lourdes Beneria and Savitri Bisnath eds. 2004. **Global Tensions: Opportunities and Challenges in the World Economy**. New York: Routledge.
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- Beneria, Lourdes *Feminist Economic for the 21 st Century*, with Ann Mari May and Diana Strassmann, Vol. I, II, and III, Edgar Elgar Economics Series.

MODULE 2 is structured to help practitioners understand the ASEAN development paradigm and its impact on the human rights of women in ASEAN



SESSION 2.1

ASEAN Integration and its Implication on Women's Human Rights

Time Plan: 2 hours

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objectives:

- To gain knowledge of ASEAN, its history and context;
- To understand the complexities of the ASEAN Community 2015 integration and its implication on women's human rights;
- To provide an overview of ASEAN as a possible advocacy platform on women's human rights.

Learning outcomes:

By the end of the session practitioners are able to:

- Articulate their understanding of ASEAN and its relevance to women's human rights;
- Critique the ASEAN regional integration process and its impact on women's economic, social and cultural rights;
- Identify strategic entry points within the ASEAN structures and mechanisms for advocacy on women's human rights.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined approach to facilitate input, discussion and analysis.

Steps 1: Discussion – ASEAN and I (30minutes)

Facilitator to elicit responses to the following trigger questions:

- What is ASEAN?
- Have you ever worked with ASEAN? Which ASEAN bodies/meeting and context?
- Why is ASEAN relevant to our work/issue?

Ask participants to write their answers on a separate metacard for each question. Facilitator to collect the metacards and post it on flip chart and ask participants to explain/elaborate on their responses if needed. Facilitator to provide a synthesis based on the responses.

Notes:

- This methodology can be used to identify participants' knowledge of ASEAN its structures and mechanisms; as well as to lay the foundation in identifying its potential use.
- If there are participants who have concrete experience on ASEAN related advocacy, s/he can provide an example later on.

Step 2: Input – Understanding ASEAN (20 minutes)

Taking off from the above synthesis the facilitator provides further inputs on what is ASEAN and its structures and mechanisms. A brief discussion can follow.

The input to focus on the following:

- History of ASEAN
- Current structures
- ASEAN and human rights
- ASEAN and development (put this in some graphical timeline)
 - 1977-1992: Preferential Trading Arrangement (PTA) – 25-50% Margin of Preference on 1000 tariff lines
 - 1993: ASEAN Free Trade Area (AFTA) – key was the Agreement on Common Effective Preferential Tariff. Revised as ASEAN Trade In Goods Agreement in 2010
 - 1995: ASEAN Framework Agreement on Services (AFAS) – Progressive Liberalisation
 - 1998: ASEAN Investment Area (AIA) – Investment Liberalisation. Revised as the ASEAN Comprehensive Investment Agreement (ACIA) in 2009
 - 2004-2010: ASEAN FTAs with Dialogue Partners (China, Japan, Korea, India, Australia & New Zealand) - RCEP with existing ASEAN's FTA Partners under negotiations (target substantial completion by end of 2015)
 - 1993: Sub – Regional Economic Growth Areas [Brunei Darussalam-Indonesia-Malaysia-Philippines – East ASEAN Growth Area (BIMP-EAGA), Indonesia-Malaysia-Thailand – Growth Triangle (IMT-GT), Singapore-Johor-Riau Growth Triangle (SIJORI), ASEAN-Mekong Basin Development Cooperation (AMBDC), East-West Corridor and the Cambodia-Laos-Viet Nam Development Triangle]
 - 2008-2015: Integration through ASEAN Economic Community (AEC)
 - Post 2015 community vision
 - ASEAN Community 2015 (specific focus on the ASEAN Economic Community - AEC)
 - Single market and production base
 - Competitive economic region
 - Equitable economic development
 - Integration into global economy
- ASEAN Community's Post-2015 Vision
 - Nay Pyi Taw Declaration on the ASEAN Community's Post 2015 Vision
 - ASEAN Coordinating Council (ACC) tasked to oversee the overall process of developing the Post-2015 Vision to be submitted to the 27th ASEAN Summit and to develop the attendant documents to implement the vision

Step 3: Case Study and Group Discussion – ASEAN Economic Integration (AEC) (40 minutes)

The facilitator to start by showing one of the following videos on land grabbing:

<https://www.youtube.com/watch?v=FoO5YDclv9o> (Bahasa Indonesia – 3:04 minutes)

<https://www.youtube.com/watch?v=r51vsEP0wil> (Khmer – 3:13 minutes)

<https://www.youtube.com/watch?v=ExCQlobfAUU> (English – 1:52 minutes)

Group Discussion

Questions:

- What are possible links between the incident in the video and ASEAN economic integration?
- What would be the impact on women if the land grabbing proceeds?
- What human rights violations occur in the video (especially the human rights of women)?

Step 4: ASEAN Structure and Working Methods – Input (20 minutes)

The input to focus on the following:

- First and foremost ASEAN is a trade bloc – previously criticised as an ineffective trade bloc. Trade blocs are intended to lower the price of doing business between participating countries (no tariffs, economic and financial transactions made easier, cohesive laws and policies on trade, tax and business related matters).
- The recent changes to ASEAN since its Charter and development of human rights bodies has to be seen in the light of its character still strongly being an intergovernmental arrangement to facilitate trade and business.
- Dynamics of ASEAN structures and mechanisms (mandate; powers; effectiveness).
- Challenges:
 - guiding principles (non-inference; state sovereignty; consensus; ASEAN values; public morality; etc) and its limitations;
 - lack of institutional spaces for civil society engagement;
 - prioritizing economic development over human rights;
 - ineffective human rights mechanisms (AICHR; ACWC; ACMW);
 - adoption of new declarations/policy documents that are ineffective in addressing human rights violations in the region;
 - etc.
- Potential:
 - Increased spaces for civil society to input into ASEAN documents;
 - Potential in ACWC as a mechanism in forwarding women's human rights in the region;
 - Possibilities of influencing standard setting processes
 - Adoption of newer declarations.
- Way forward:
 - Identifying effective entry points/spaces for engagement

Step 5: Final synthesis and wrap-up (10 minutes)

PART 3: FACILITATOR'S NOTES

- ASEAN previously known as diplomat club now as a business club, will work mostly on trade and economic development.
- ASEAN's development strategy has consistently followed a market-driven model that fails to guarantee redistributive, economic, gender, social and environmental justice, or accountability to the people.

- While ASEAN claims to be people-centered, its policies and agreements are often state centric as there is no institutionalized process of engaging with the people, especially civil society. Thus, it is crucial for civil society to identify and engage in the various processes to ensure that we are able to influence the standard setting and implementation processes.
- There is lack of coherence between the various ASEAN pillars. AEC indicators don't necessarily promote ASCC indicators (AEC has scorecard—more advanced than other communities).
- ASEAN integration has no guarantees of realization of human rights and in fact can further harm or violate women's human rights.
- Influencing and impacting ASEAN policies and processes requires two levels of engagement – national and regional level.
- Strict adherence to non-interference and state sovereignty principle is often used to legitimise non-action by ASEAN member states, particularly in relation to human rights violations.
- The failure of ASEAN, as a regional organisation, to substantially and meaningfully address the peoples' issues is deeply rooted in the organisation's adoption that prioritizes corporate interests and elite groups over the interests of the people.
- ASEAN's approach to economic integration results in the systematic dispossession of the people's access to land, water, safe and nutritious food, social protection and universal public services in the implementation of liberalisation of trade, deregulation of markets, and privatisation of public services.
- While there is a strong move to increase women's participation in the workforce, there are no clear laws or policies to guarantee their labour rights and social protection. It can be seen that women are economically disadvantaged in earnings ratio, access to property and resources and overall wealth. Women in the informal sector such as domestic workers and sex workers are largely underpaid, undervalued and continue to be exploited. In the formal sector, women face discrimination in wages, unequal access to employment and experience the phenomena of glass-ceiling.
- There is clear inter-relatedness of the current ASEAN development paradigm and the vulnerabilities of different groups of women. For example, privatisation of public services, including utilities and health care, decreases accessibility for indigenous, rural and urban poor women. Thus, this reduces the ability for women to engage in gainful employment and in fact continue to result in women taking on unpaid care work and limited to unpaid household tasks. This has severe consequences on the time and space for women to participate in decision making processes in their communities, thus leading to their further marginalisation in negotiations and decision over community resources, such as land and water.
- AEC is also heavily premised on large-scale acquisition of land for projects related to water, energy, agro-business and mining. Women who are already experiencing structural barriers to ownership are now at greater risk of loss of access to land impacting their housing and livelihoods. They again continue to be excluded from so-called consultation processes that take place between these large-scale proponents and affected communities. As a result, women are frequently left dispossessed, uncompensated, and deprived of their livelihoods.
- Further, gender stereotyping and inadequate legal frameworks leave little opportunity for women to redress these issues. Women have also been largely excluded from the formulation of national and local development plans.
- We cannot deny that there have been measures put in place to address specific conditions of vulnerable and marginalised communities. The Socio-Cultural Community Blueprint does include specific measures targeted at women, intersecting with youth, children, persons with disabilities, migrant workers, indigenous people and the elderly, such as increasing their participation in the workforce, strengthening social protection; and promoting social justice and mainstreaming people's rights into its policies, amongst others.

- In reality this is not reflected in the other Community blueprints. Despite claiming to reduce poverty and socio-economic disparities in the region, the AEC adopts a homogenous approach to the people in the region. There is blanket silence on how the policies and measures would specifically be targeted at the different marginalised communities. The Political Security Blueprint too is limited to just the mentioning the promotion of the rights of women and children through the ACWC and the recognition of the contribution of women in the field of humanitarian operations.
- The lack of cohesiveness in the way the Blueprints address the issues related to women mirrors the way the ASEAN member states address the rights of said community. There is no holistic review of areas of discrimination or violations; total disregard to actual persecution of some of the marginalised communities; policies and measures are isolated and do not cover all areas of civil, political and economic rights of women.
- A huge concern is also how the realisation of substantive equality of all peoples of ASEAN can be measured. While there may be on paper certain laws or policies targeted at the certain communities, this does not always translate to actual access or opportunities that would result in real change for the constituencies. For example, there may be a policy on increasing ICT literacy for women. However, given the growing incidences of censorship measures such as blocking and filtering internet content have the effect of disproportionately restricting women's right to information and freedom of expression. Similarly, violence against women that is committed, abetted or aggravated through the use of ICT and in online spaces is a significant barrier to women and girl's ability to take advantage of the opportunities that ICT provide. Further, there is no concerted effort to include women in the drafting of policies related to ICT governance.
- Thus, unless there is a holistic approach that takes into consideration all the issues in a comprehensive manner that recognises the inter-relatedness of all issues, there would be no substantive impact on the different intersecting communities of women.

Spotlight on ASEAN and Development

- The Association of Southeast Asian Nations (ASEAN) was formed as a political and economic organization. Its intention was to accelerate economic growth among its members, as well as to protect regional peace and stability. Through the ASEAN Economic Community Blueprint, it decided to transform into a region with free movement of goods, services, investments, skilled labour and freer flow of capital.
- Some examples of development issues are: to be economically competitive, the ASEAN members will enter into mining cooperation that would cause the displacement of communities. In addition, Cambodia, Laos, Myanmar, and Viet Nam (CLMV) are required to develop policies to increase domestic and foreign direct investments (FDIs), and expand private sector enterprises. This impacts on women as foreign direct investment (for example, the garments and other manufacturing sectors) entails exploitation with little contractual protection and hazardous working conditions. Furthermore, the vulnerable occupations in the opening up of industries all over ASEAN would involve low-skilled workers, domestic workers and entertainers, which are mostly women.
- Ask the participants to consider the other areas where development creates a negative impact on women.

PART 4: REFERENCES

- ASEAN Charter and ASEAN Declaration on Human Rights
- ASEAN Community Blueprints
- Nay Pyi Daw Declaration on ASEAN Community's Post-2015 Vision (12 November 2014). *Note: The Post-2015 Vision of the ASEAN Community and its Attendant Documents (2016 – 2025) is planned to be adopted at the 27th ASEAN Summit in November 2015*
- Terms of Reference of AICHR and ACWC
- Workplans of AICHR and ACWC
- ASEAN Civil Society Conference/ ASEAN People Forum statements, etc

MODULE 3 sets the framework to enable drawing of accountability using the UN Guiding Principles on Business and Human Rights and its linkages to CEDAW and women's human rights

SESSION 3.1

Understanding the United Nations Guiding Principles (UNGPs) on Business and Human Rights

Time Plan: 2 hours

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objectives:

- To understand the role of businesses and corporations in our communities/societies and the impact on women's human rights;
- To provide an overview of the UN Guiding Principles on Business and Human Rights (UNGPs) framework;
- To determine the usefulness of the UNGPs in their work on women's human rights.

Learning outcomes:

By the end of the session practitioners are able to:

- Gain a good understanding of the usefulness of applying the UNGPs especially in the ASEAN context;
- Understand the legal frameworks for holding states accountable for human rights violations versus frameworks for responsibility of business actors
- Able to contextualise and locate the legal frameworks applicable to business actor responsibility for violations of people's rights
- Develop critical understanding of the positive and negative impact of businesses/corporations to our communities/societies.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined approach of group work, plenary discussions and inputs to facilitate discussion and analysis.

Step 1: Understanding the role of businesses/corporations and its impact on women – Group work and presentation (30 minutes)

Materials: Coloured papers, scissors, flipchart paper, glue and coloured markers/pencils/crayons
Depending on the size of the group, participants should be divided into small groups of 3-5 persons. In each group, they will need to create two collages.

First collage – How businesses/corporations have positively impacted on my community?
Second collage – How businesses/corporations have negatively impacted on my community?

Once they have completed their collage, they will need to select a spokesperson to present their collage to the group at large via a plenary. Presentations per-group should not take more than 8-10 minutes.

Step 2: Analysis and discussion (30 minutes)

Quick analysis should be done by facilitator at the end of the session using some of the sample questions provided below:

Sample questions:

- What would happen if the businesses/corporations suddenly decided to shut-down and leave your community without any notice?
- What is the relationship between the businesses/corporations and the local authorities (municipality officers, police officers, tax department, land office, etc)
- What is the relationship between the businesses/corporations and the community (donations to schools, play-ground, etc)
- Are the businesses/corporations viewed as members of your communities?

Step 3: Identifying duties of the State and responsibilities of businesses (60 minutes)

Given the above discussion on the gaps/challenges related to the role and responsibilities of businesses/corporation, the participants shall be tasked to identify related duties of the State in regulating, monitoring and holding business/corporations accountable.

There should be 2 flipcharts prepared with the following questions:

1. What are specific responsibilities of business/corporations in ensuring the promotion and protection of women's human rights?
2. What are specific duties of the State in regulating, monitoring and holding businesses/corporations accountable towards the realisation of women's human rights?

Participants shall be divided into 2 groups. The first group is to answer Question 1, while the second group will answer Question 2. After 15 minutes the groups shall switch places and add on their answers to the same questions. The facilitator is then to move the whole group to Question 1 and have a brief discussion followed by a discussion related to responses to Question 2.

This is then to be followed with a synthesis which shall then flow into the discussion on the UNGP on Business and Human Rights.

Points to consider/derive from the activity

- Participants will need to be able to form an objective view of businesses/corporations – e.g businesses/corporations do provide jobs for a community, use of natural resources, sometimes giving back to society via donations or corporate social responsibility activities, etc.
- Facilitator will need to draw out whether the participants identify the businesses/corporations as external entities completely or as an integral part of community because the businesses/corporations provide jobs, etc.
- Participants will need to be able to identify why and when businesses/corporations are deemed 'bad' or 'violators' of human rights; e.g when corrupt practices are used, workers rights are not respected, profit becomes more important than people, etc
- Participants will need to be able to distinguish between good and bad practices adopted/used by businesses/corporations

- Participants to articulate and elaborate on specific duties and obligations of the state. Participants should also be able to identify whose role it is to protect the rights of people – i.e. the State through all its agents such as the police, tax department, municipality, etc

To note:

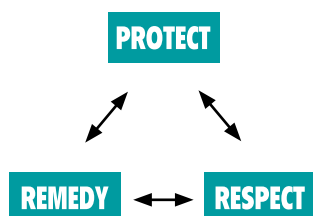
All discussions must lead to the understanding that businesses/corporations provide both advantages and disadvantages to our communities/societies. It is important to remember that businesses/corporations main goal for existence is the maximization of profit. Effective legal frameworks in which these businesses/corporations have to operate in will help ensure better protection for the people. The stronger the legal framework and the more citizens are aware of their rights, the less likelihood of businesses/corporations engaging in activities that are detrimental to the community/society.

Option: Change the activity into a role play

If there is sufficient time, the above activity could be converted into a role-play exercise as well. This is a much more powerful method as the audience is better able to identify and empathize with the characters when this is acted out. Role-plays help humanize the context depicted in the above activity. The questions and discussion points remain the same.

PART 3: FACILITATOR'S NOTES

- Using the above activity, the facilitator will need to explain that it was against this backdrop that the UNGP came about.
- Issues around business and human rights became permanently implanted on the global policy agenda in the 1990s, reflecting the dramatic worldwide expansion of the private sector at the time, coupled with corresponding rise in transnational economic activities. These developments heightened social awareness of businesses' impact on human rights and also attracted the attention of the United Nations.⁴
- The UNGP or also known as the “protect, respect and remedy” framework was unanimously adopted by the UN Human Rights Council in June 2011.



- The first pillar is the State **duty to protect** against human rights abuses by third parties, including business enterprises, through appropriate policies, regulations and adjudication.⁵
- The second pillar is the corporate responsibility to **respect human rights**, which means that businesses should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.⁶
- The third pillar is the need for greater access by victims to **effective remedy**, both judicial and non-judicial.

⁴ Report of the Special Rapporteur of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (2011). Accessed on 9 December 2014. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement>

⁵ ibid

⁶ ibid

- On the concern of the binding nature of the UNGP, it must be pointed out that it is still extensively invoked by various United Nations procedures. To date many multi-nationals have agreed to subscribe to the UNGP especially since the International Organization for Standardization (ISO) and the Organization for Economic Cooperation and Development (OECD) have drawn upon the UNGP in developing their own initiatives on business and human rights.
- The UNGP has managed to create a new and interesting discourse in the human rights field about the responsibilities of businesses and corporations to respect and protect human rights. In many countries, big businesses and corporations are even more powerful than governments. The UNGP allows for discussions on these issues using a rights-based approach. The UNGP invokes all other treaties and international norms on human rights for example the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW), etc.
- The UNGP's normative contribution lies not in the creation of new international legal obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template.⁷
- UNGP should be used in combination with other treaties/frameworks that each individual country has ratified and accepted.
- As per the activity undertaken at the start of the session, it is clear that businesses and corporations also have a role to play in each community or society. The world we live in is based on a capitalist model. We will need to be able to employ as many tools as we can to ensure that businesses and corporations respect rights of the people.

PART 4: REFERENCES

- IRAW Asia Pacific- Occasional Paper Series No.15: The Business of Women's Human Rights
- IRAW Asia Pacific- The Business of Women's Human Rights: A Primer on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) & The UN Guiding Principles on Business and Human Rights
- IRAW Asia Pacific - Video on CEDAW and UNGP found at <https://www.youtube.com/watch?v=W8eDfo3tR68&feature=youtu.be>

⁷ ibid

SESSION 3.2

Engaging with Non-State Actors (Businesses and Corporations) using the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and United Nations Guiding Principles on Business and Human Rights (UNGPs)

Time Plan: 1 hour 30 minutes

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objectives:

- To understand the tools provided under the CEDAW and UNGP framework to engage with businesses and corporations;
- To understand the emerging need to be able to engage with non-state actors, especially businesses and corporations, for the protection of women's human rights and end discrimination against women.

Learning outcomes:

By the end of the session practitioners are able to:

- Gain clarity on the relevant articles under CEDAW and UNGP for engagement with non-state actors (businesses and corporations);
- Strategically ensure inclusion of the work on the engagement with non-state actors (businesses and corporations) into existing organizational work.

PART 2: SUGGESTED METHODOLOGY

Step 1: Case-study (1 hour)

Participants to break into small groups of 4 – 5 persons to analyse the case study below. They are to deliberate on the following questions:

Questions:

- What possible problems could a woman face working at Factory A?
- Are there sex or gender specific problems that could be faced by women workers?
- What possible actions/steps could be taken to help overcome the problems identified above?

Once they have completed their case study analysis in groups they will need to select a spokesperson to present their response in plenary. Presentations per-group should not take more than 8-10 minutes.

Case study: Women Employed in a Garment Factory

Factory A is a garment factory situated in a developing country in Southeast Asia. Factory A supplies blouses and skirts to five major and well-known retail outlets in the United States of America (USA).

There are 200 women employed in this factory and they all have to work 12-hours each day for 6 days a week. These women are mainly from poor families in rural areas who have moved to the city to find jobs to help supplement their family incomes back in their villages. The ages of the women range from 15-45 years old. Many of them have had no or minimal education.

They are given 2 half-hour breaks each day. This means they spend 13 hours each day at the factory. Each woman also has a quota of skirts and blouses that she must sew each day. If she does not fulfil her quota, her salary is deducted. She is paid USD200 per-month. Her other benefits include 8 days annual leave per-year and a place to stay with her other co-workers. Each woman shares a room with 3 other women in a dormitory. She has no medical or maternity benefits; neither does she have any other allowances. The workers are also not allowed to form a union.

The cost of producing one blouse is USD0.20 cents and a skirt is USD0.30 cents. This selling cost of one blouse is USD50.00 and the skirt at USD65.00.

Step 2: Analysis and discussion (30 minutes)

Quick analysis should be done by facilitator at the end of the session to ensure all relevant points are captured.

Points to consider/derive from the case-study:

- Women face different problems from men – e.g menstruation (biology); expectation to get married have families (gender).
- The work conditions are based on male standards – e.g half hour breaks (men can stand to urinate while women have to squat). This means there needs to be adequate bathrooms.
- Most people (both men and women) cannot work 12 hours a day for 6 days a week without developing medical problems. For example, the fingers may be damaged due to long term over-use.
- Long hours will also have an impact on their social lives and health-inability to visit family, friends.
- No maternity benefits would mean women have to quit if they get pregnant. This is compounded if there is no social welfare protection.
- No privacy in dormitories-what would be the consequences?
- Salary of USD200 a month without any medical benefits means that if she falls ill, she must use her own salary to buy medicine
- Annual leave of eight days a year would mean that those from distant rural areas may not be able to see their families frequently – what would be some of the consequences of long absences?

- The company is making huge profits at the expense of the women's lives – what could/should be done? And who is responsible for the well-being of the women workers?
- Other concerns that have an impact on the decisions by the women who work in this factory – poverty, illiteracy, having family that depend on them for survival. This must be addressed adequately as sometimes participants will ask why the women continue to work under these deplorable conditions. Participants must be made to understand that in many cases, women do not have a choice in this matter.
- Possible actions to be taken – educating the workers about their rights, helping to form a union which would facilitate dialogues with the management of the factory for improved working conditions. And if this fails - ensuring media coverage on the working conditions of the women, lobbying the huge retail outlets in the USA to ensure that this factory abides by international human rights standards on wage and working conditions, ensure that the government (where factory A is situated) is also taken to task for not protecting their citizens, etc
- Most countries have labour protection and health and safety laws governing the workplace that make this type of labour practice illegal. Did the company breach the law or were there policies in place exempting some of these protections from being applicable? In some countries, the governments turn a blind eye to wrong-doings of international corporations because they fear these corporations will leave and deprive the governments with income from investments.

To note:

All discussions must lead to the understanding that the women's rights must be protected and upheld. Concepts related to state obligation including extraterritorial obligation and the responsibilities of business actors or corporations should be emphasised. That all stakeholders in this scenario (factory management, government, retail outlets and even the consumers must be held responsible for the deplorable working conditions in Factory A). Everyone has the right to live lives of dignity.

Option: Change the case study into a role play

If there is sufficient time, the above case-study should be converted into a role-play exercise. This is a much more powerful method as the audience is better able to identify and empathize with the characters when this is acted out. Role-plays help humanize the context depicted in the case study. The questions and discussion points remain the same.

PART 3: FACILITATOR'S NOTES

- All ASEAN member states have signed and ratified CEDAW. This means that all States' are obligated to ensure the respect, protection, promotion, fulfilment and realisation of women's human rights (Article 2b). CEDAW obligates the State to ensure that non-state actors such as businesses and corporations do not violate the rights of any women (Article 2e).
- When analysing the above case-study, the three key principles of CEDAW, namely substantive equality, non-discrimination and state obligation, must be used as the basis for forming any analysis or synthesis. Any feedback from participants must be discussed using these principles; which include dealing around issues of patriarchy, gendered roles, stereotypes and cultural influence on the lives of women.

- In addition to CEDAW, the UNGP also expands on the duty to respect human rights by businesses and corporations.
 - In UNGP, it is defined the scope of the duty of states to ensure that third parties, including businesses do not abuse human rights (Principles 1-10). This reaffirms the states' obligations under international law which forms the first pillar of UNGP. These principles spell out the practical steps that states must take to meet their obligations.
 - Business enterprises should respect human rights and these include at minimum those reflected in the International Bill of Human Rights and principles on fundamental rights in the ILO Declaration of Fundamental Principles and Right at Work⁸. UNGP Principles from 11-24 relate specifically to the corporate responsibility to respect human rights. Businesses can no longer pretend that they do not understand the relationship between business and human rights.
- By using the combination of CEDAW and UNGP, activists are better equipped to deal with non-state actors such as businesses and corporations. These two frameworks provide a broadening of understanding women's human rights, the role of the State vis-à-vis dealing with non-state actors.

PART 4: REFERENCES

- IRAW Asia Pacific- Occasional Paper Series No.15: The Business of Women's Human Rights
- IRAW Asia Pacific- The Business of Women's Human Rights: A Primer on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) & The UN Guiding Principles on Business and Human Rights
- IRAW Asia Pacific - Video on CEDAW and UNGP found at <https://www.youtube.com/watch?v=W8eDfo3tR68&feature=youtu.be>

⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement>

SESSION 3.3

Women and Employment: Stereotypes and Gender Roles

Time Plan: 2 hours

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objective:

- To understand the linkages between gender and employment opportunities;
- To develop skills in understanding and applying the principles and standards of CEDAW in this context.

Learning outcomes:

- By the end of the session practitioners are able to:
- Understand and articulate the importance of having a gender perspective in the context of employment or workplace.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined approach of group work using a case study, plenary discussions and input to facilitate discussion and analysis.

Step 1: Case Study (1 hour)

Participants to break into small groups of 4 – 5 persons to analyse the case study below. They are to deliberate on the following questions:

Questions:

1. How would you describe women in Saudi Arabia? Explain your reasoning.
2. Based on your answer/s in Question 1, do you think that the above case study illustrates the breaking down of stereotypes? Briefly explain your answer.
3. What does CEDAW say about stereotypes? Is it applicable here? Briefly explain your answer.
4. What are the advantages of more women being able to work in factories, especially disabled women? What measures (and by whom) should be taken to encourage more women to work in factories?

Once they have completed their case study analysis in groups they will need to select a spokesperson to present their response in plenary. Presentations per-group should not take more than 8-10 minutes.

Case Study : “Factory run by female workers in Saudi Arabia breaks stereotypes”

The Saudi government’s drive to draw more women into the labor force appears to be bearing fruit, as the jobs occupied by women seems to be breaking the stereotypical ideology of suitable jobs for women in the kingdom.

A factory producing baby diapers and female hygiene pads operating in Riyadh is currently operating with a 75 percent capacity of a female labour force. The women are responsible for the offline production and manual packaging of these sanitary products. A third of the 65 women working have special needs and the assistance they require is provided such as an on-sight sign language translator. Amina al-Shamary, the production line supervisor at the plant, told Al Arabiya that she had been working as an administrator at a hospital before deciding to utilize her experience in a different field. She has not looked back since.

The employment arrangement, she added, works well with Saudi women from conservative backgrounds, saying that a female-only environment suited the workers’ preferences as some of the women minded joining a co-ed working environment.

“The owners are planning to build another factory set to employ 170 women comprising of 1/3 of the plant’s workforce capacity,” al-Shamary said.

Employment data issued by the Saudi Arabian Monetary Agency (SAMA) in its 2013 Annual Report showed a big increase in the number of employed women. The increase has been particularly marked in the private sector, partly in response to government incentives to private companies to employ Saudis. Saudi Arabia currently has the lowest female labor force participation rate in the Gulf.

Source:

<http://business-humanrights.org/en/factory-run-by-female-workers-in-saudi-arabia-breaks-stereotypes>. Accessed on 10 December 2014

<http://english.alarabiya.net/en/perspective/features/2014/11/16/First-factory-run-by-Saudi-female-workers-.html> (full news article). Accessed on 10 December 2014.

Step 2: Analysis and discussion (1 hour)

Quick analysis should be done by facilitator at the end of the session to ensure all relevant points are captured.

Points to consider/derive from the activity

- Participants will need to critically analyse the case study and determine if women working in factories does indeed help break stereotypes? For example, the facilitator can draw their attention to the fact that this particular factory was a baby-diaper and sanitary pad producing factory – and whether this had anything to do with the fact that there were more women employed than men.

- Participants will also need to deal with their own prejudices/biases about women living in the Middle East. This is linked to understanding trans-nationalism feminism initiatives.
- Participants will need to be able to identify the need to have concrete evidence to back up their own arguments to ensure that they themselves are not condoning or using stereotypical arguments about women and their cultures when analysing the case study. Sometimes, people are completely unaware of personal prejudices that they may have on issues of sex/gender and culture.
- Gender roles and stereotypes often are the biggest barriers for women to choose/decide on the types of jobs they would like to undertake. In many societies, there are gender-specific jobs to which women are encouraged to take such as teachers, nurses, etc. And then there are jobs that women are discouraged to take such as pilots, soldiers, construction, etc.
- Many of the 'female-majority' jobs also tend to pay less than jobs dominated by men. The gender pay gap even in the same sector between men and women still exists.
- Participants will need to be able showcase their understanding of CEDAW in a holistic manner and the inter-connectedness of all the articles in this convention when discussing this case study.

To note:

All discussions must lead to the understanding that all forms of gender stereotypes or roles are fallacies. All gender stereotypes were created in a patriarchal system that governs almost all societies in the world with the primary intention of placing women in a subordinate role to men. These stereotypes are so pervasive that many people, including women believe these to be undisputed truths.

PART 3: FACILITATOR'S NOTES

- Using the above activity, the facilitator will need to explain that the critical importance of viewing employment and work-related issues and examples through appropriate frameworks such as CEDAW, ILO Conventions, and any other relevant tools. These standards or frameworks help determine the highest standards attainable in a particular context or environment. It also showcases whose responsibilities it is to ensure these standards – generally it's the duty of the State.
- Using the lens of CEDAW, facilitator should draw up Articles 1-5 to explain the context of interpretation and link it to Article 11. Using the three principles, the facilitator should be able to challenge any of the stereotypical statements of women in employment, especially in countries where there is a general impression that there is minimal or no recognition of women's human rights. Women activists should always strive to create a more global movement for the advancement of women's human rights. And cultural stereotypes or cultural relativism attitudes are often the biggest obstacles faced in transnational feminism endeavours.
- Useful points from the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: Articles 21-23
 - Art 21. All governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.⁹

⁹ Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 100) and Recommendation (No.90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

- Art 22. Multinational enterprises should be guided by this general principle throughout their operations without prejudice to the measures envisaged in paragraph 18 or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment¹⁰. Multinational enterprises should accordingly make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.
 - Art 23. Governments should never require or encourage multinational enterprises to discriminate on any of the grounds mentioned in paragraph 21, and continuing guidance from governments, where appropriate, on the avoidance of such discrimination in employment is encouraged.
- The Guiding Principles on Business and Human Rights helps to illustrate some measures that businesses can undertake to meet their human rights obligations. These measures or strategies should focus on companies showing that they respect human rights, including by preparing a human rights policy, carrying out human rights due diligence (an ongoing process based on risk management), and implementing measures, including operational-level grievance mechanisms, to address human rights violations. The UNGP also shows the steps that a State or governments should take to prevent business-related human rights abuses. The principles in UNGP should influence domestic legal and policy standards applicable to all business and corporations. They are an important focal point for businesses, governments, and civil society organisations as they work to strengthen their respective approaches to business and human rights.¹¹
 - Facilitators who are also familiar with the International Covenant on Economic, Social and Cultural Rights (ICESCR) should also be able to draw links between rights and breaking gender stereotypes. Especially on articles 6(1) and 7.

PART 4: REFERENCES

- IRAW Asia Pacific- Occasional Paper Series No.15: The Business of Women's Human Rights
- IRAW Asia Pacific- The Business of Women's Human Rights: A Primer on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) & The UN Guiding Principles on Business and Human Rights
- IRAW Asia Pacific - Video on CEDAW and UNGP found at <https://www.youtube.com/watch?v=W8eDfo3tR68&feature=youtu.be>
- The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: ILO (2006). Can be found at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf (Last accessed on 10 December 2014)
- ILO Convention 111: Convention Concerning Discrimination in Respect of Employment and Occupation.
- http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C111. Last accessed on 10 December 2014.
- The International Covenant on Economic, Social and Cultural Rights. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Last accessed on 10 December 2014

¹⁰ ILO codes of practice: HIV/AIDS and the world of work, ILO code of practice, 2001, ILO, Geneva; Managing disability in the workplace, ILO code of practice, 2002, ILO, Geneva.

¹¹ <https://www.humanrights.gov.au/education/business-and-human-rights>

MODULE 4 is to enable practitioners to make the connection of macroeconomics, development paradigm and its impact on women's human rights



SESSION 4.1

Linkages: The Realisation of Women's Human Rights Macroeconomics

Time Plan: 3 hour 30 minutes

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objective:

- To create an understanding of the ways in which macroeconomic policies, linked with trade and development policies and the processes of globalisation, have the potential to promote and/or erode the realization of women's human rights;
- To create clarity on the interlinkages between CEDAW, ICESCR and the United Nations Declaration on the Right to Development¹² as instruments that serve to promote women's human rights and substantive equality;
- To promote clarity on accountability tools, including the Maastricht Principles¹³, to facilitate the realization of women's human rights.

Learning outcomes:

By the end of the session practitioners are able to:

- Understand and articulate knowledge of:
 - (i) key concepts;
 - (ii) processes;
 - (iii) actors; and
 - (iv) tools that serve to either promote or erode the realisation of women's human rights within the context of economic policies.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined interactive approach using games, plenary discussions and inputs to facilitate discussion and analysis.

Step 1: Exercise – Economy and Macro-economy 101 (30 minutes)

Materials: Box, papers, music.

Participants will be gathered in a circle. The facilitator to prepare a box filled with key terminologies related to economy and macro-economy which are written on individual chits of paper. In the format of “passing the parcel game” the box is to be circulated and the start of the music. When the music is stopped (strategically by the facilitator) each participant who holds the box shall pick a chit from it and explain their understanding of the terminologies. Several rounds could be done to ensure that the key terminologies are captured.

¹² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/176/79/PDF/G1417679.pdf?OpenElement>

¹³ http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

Key concepts and terminology to be captured:	
• Economy	• Fiscal policy
• Macro-economy	• Taxation
• Micro-economy	• Inflation
• Globalisation	• Deficit
• Trade	• Debt
• Neo-liberal policy	• Revenue and expenditure
• Market	• Living wages
• Consumer	• Gross Domestic Product (GDP)

The facilitator will explore further the understanding of the ways in which macroeconomics, linked with trade and development policies and economic globalization processes, have the potential to promote and/or erode the realization of women' human rights.

Step 2: Interactive Exercise – Economic structures at the national (30 minutes)

The facilitator begins by providing an overview of economic structures and how it refers to the changing balance of employment (decent jobs), incomes (living wages), output and trade. The different sectors in the formal economy are also highlighted.

The participants are asked to discuss examples for each sectors in the region:

- **Primary sector** - farming, fishing, mining (extractive);
- **Secondary sector** - manufacturing and construction industries (transformative);
- **Tertiary sector** - tourism, banking (service);
- **Quaternary sector** – research, education, engineering, software (services with complex processing and information).

The discussion then focuses on the relevant actors and institutions at the national, regional and international levels that influence the macro-economic policies.

Step 3: Group work – Feminist analysis of macro-economic policies in Southeast Asia (1 hour 30 minutes)

Participants to be divided into 5 small groups to analyse the situation below.

The groups will be divided into the following five key elements of the first thrust of AEC to be a single market and production base:

Free flow of goods

Free flow of services

Free flow of investment

Freer flow of capital

Free flow of skilled labour

Each group is to deliberate on the following questions:

1. What are the key descriptions of their respective area?
2. Who are the key actors?
3. What national laws, policies and programmes respond/relate to this area?
4. What are the impacts on women's human rights in the region?

Once they have completed their analysis in groups they will need to select a spokesperson to present their response in plenary. Presentations per-group should not take more than 8-10 minutes.

A quick analysis should be done by the facilitator at the end of the session to ensure that all relevant points are captured. The conclusion of the plenary discussion should capture the various forms of discrimination and women's human rights violations that are likely to emerge as a result of macroeconomic policies which are gender blind.

Snapshot of ASEAN Economic Community (AEC)

AEC BLUEPRINT

- 1997 (Kuala Lumpur) – ASEAN leaders decided to transform ASEAN into a stable, prosperous, highly competitive region with equitable economic development and reduced poverty and socio-economic disparities by 2020.
- 2003 (Bali) – this vision and plan was revised by the ASEAN leaders.
- 2007 (Cebu) – ASEAN leaders decided to accelerate the establishment of the ASEANCommunity including the AEC to 2015. The AEC Blueprint was subsequently adopted.

Four major thrusts of the AEC:

1. A single market and production base;
2. A competitive economic region;
3. region of equitable economic development; and
4. A region fully integrated in the global economy

Key points to consider/derive from the session:

- Important to note that in the single market and production base:
 - Free flow of services allows for no restriction to ASEAN service suppliers in establishing companies across national borders within the region; mutual recognition arrangements (MRAs) for architectural services, accountancy services, surveying qualifications, medical and dental practitioners, amongst others.
 - Free flow of skilled labour allows for issuance of visa and employment passes for ASEAN professionals and skilled labours engaged in cross-border trade and investment related activities, university students and staff.
 - Food agriculture and forestry focuses on the development of quality management systems, use of pesticides, combat illegal logging and illegal fishing, etc.
- It is worth noting that the potential economic impact of labour mobility of unskilled labour is large despite the lack of recognition within the AEC.
- *It is critical to include a feminist analysis as:*
 - Feminist analysis brings in the issue of intersectionality;
 - Women's structural positioning vary depending on age, class/caste, location, race, sexuality, and their country's structural position in the international economic and political orders;
 - These structural positions shape the individual's life chances, because they situate us within the relatively stable networks of power relations that shape the distribution of material resources;
 - Intersectional analysis enables us to more comprehensively understand, for example, that some women's lack of access to sustainable livelihoods, decent jobs and a living wage as well as their unpaid care work undermines women's rights and perpetuates poverty and inequality in particular locations.

Step 4: Input and analysis (1 hour)

This part is to take off from the synthesis of the impact of macroeconomic policies on women's human rights as discussed above in Step 3. With the summary of violations and discrimination likely to be experienced by women as a result of macroeconomic policies as a backdrop, the facilitator is to provide input on the interlinkages between key legal instruments and accountability tools such as CEDAW, ICESCR, the United Nations Declaration on the Right to Development and the Maastricht Principles as instruments that serve to promote women's human rights and substantive equality.

PART 3: FACILITATOR'S NOTES**Key macro-economic terminologies/concepts to be understood from a feminist perspective/approach**

The facilitator will introduce, explore and promote an understanding of the ways in which macroeconomics, linked with trade and development policies and economic globalization processes, have the potential to promote and/or erode the realization of women's human rights. The facilitator will use a combination of presentations and small group discussions to:

- Introduce “the economy”, discuss what is meant by the “macro-economy” and “micro-economy”, the policies therein, as well as relevant actors and institutions at the national, regional and international levels;
- Define the economic structure at the national level;
- Introduce the different sectors of the economy - primary, secondary, informal; etc;
- Discuss changes in the overall economic structure (over time) and/or in a particular sector, e.g., the manufacturing sector and potential effects on decent jobs/employment, wellbeing, and women's human rights – drawing from concrete examples for the country or region;
- Identify and discuss macro-economic performance objectives and indicators, and linkages with development policies and planning;
- Discuss the ways in which women “pick up the pieces” and buttress the economy through work in the informal sector and/or unpaid care work, using structural adjustment programmes (SAPs) and or fallout from financial crises as examples;
- Contextualise the discussions within the current neo-liberal moment and within the process of globalisation, briefly explore historical trajectory, bring in roles of the World Bank, International Monetary Fund and World Trade Organisation, as well as the changing geo-political relations with the rise of the BRICS (Brazil, Russia, India, China, South Africa);
- Identify and discuss key economic policy objectives of the countries represented by the participants;
- Identify and discuss the ways in which these key objectives are linked to development policies, planning and practice and the realisation and/or erosion of women's rights;
- Identify and discuss the importance of macroeconomic policies for the realisation of women's human rights - from economic management through fiscal and monetary policies, with concrete, context-specific examples;
- Introduce and discuss two main instruments of fiscal policy: (i) taxation; and (ii) expenditure with concrete, context-specific examples:

The two main instruments of fiscal policy are government taxation and expenditure.

Taxation is governed by national codes and regulations. Tax revenues, from citizens, residents and the private sector, are used to finance government expenditures.

Government expenditures are used for public services, such as health care and education, infrastructure maintenance and development, including roads and bridges, and the military.

Government expenditures are financed in different ways, including: (i) taxation; and (ii) borrowing.

- Introduce and discuss the national budget: promote an understanding about why is it an important tool for the realisation of women's rights. Discuss the ways in which the budget affects people in general, and women in particular, in multiple ways: (i) *primary* impact through distribution of resources to people via services, infrastructure and income transfers; and through taxes and other measures, such as charges for use of public services; (ii) *secondary* impacts related to job creation, economic growth and inflation. Engage in small group discussions using concrete, context-specific examples;
- Introduce and discuss, within the context of budgets, expenditures and the realisation of women's human rights, the following: deficit, debt, government revenues and government expenditures;
- Discuss the process of putting together a budget, the actors and institutions involved, the role of civil society and in particular women, highlight the importance of transparency and substantive participation; and
- Discuss what is meant by the "invisible hand of the market" and its impact in terms of processes of accountability and participation.

Impact of macroeconomic policies on women's human rights

- Discuss the enabling environment – gender roles and gender-blind state policies in the areas of economics and development – and implications for the realisation of women's rights: Constraints imposed by care responsibilities also contribute to the concentration of women in low-waged, precarious, unprotected employment, in hazardous or unhealthy conditions, with high risk to their health and well-being. Highlight the links between unpaid care work and public services such as health care and social protection;
- Introduce the exercise on the feminist analysis of macroeconomic policy using the first thrust of the AEC blueprint to be a single market and production base as a case study.
- Using the case study to illustrate the impact on women's human rights in ASEAN discuss how macroeconomic or development policies which are gender blind have negative effects on women, particularly depending on their positions in the labour market and communities. It can impair, deny and/or restrict:
 - Freedom of association, expression, assembly and movement
 - The right to the highest attainable standard of health
 - The right to just and favourable working conditions
 - The right to adequate food, housing and social security
 - Freedom from arbitrary interference with privacy, family, home or correspondence
 - Freedom from torture and cruel, inhuman or degrading treatment or punishment
 - Freedom from slavery or slave-like conditions
 - Freedom from arbitrary arrest or detention
 - The right to access justice
- Identify and discuss the importance of feminist analysis and intersectionality to discussions of economics;

- Note that for women, substantive equality requires having access and the ability to exercise, social and economic rights, including the right to food, having access to political systems and being able to defend oneself, whether in court, the community or household. Only by addressing different forms of discrimination, including by challenging the existing distribution of unpaid care work between women and men, will the root causes of the poverty and inequality faced by women be effectively addressed.
- Discuss how a human rights approach in development policy making can be an effective accountability tool.
- From a human rights perspective, the Government is under a minimum obligation to establish a regulatory and policy framework that ensures access to non-discriminatory economic and development measures and practices.

Key UN human rights treaties:

- **International Covenant on Economic, Social and Cultural Rights (ICESCR)** – ratified by: Cambodia, Indonesia, Lao, the Philippines, Thailand, Vietnam
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** – ratified by all ASEAN member states

Key UN Declarations related to development:

- Declaration on the **Right to Development** – adopted by the UN General Assembly (December 1986)
- The **Maastricht Principles on the Extraterritorial Obligations** of States in the Area of Economic, Social and Cultural Rights are the outcome of an expert meeting which was convened by the Maastricht Centre of Human Rights and the International Commission of Jurists in September 2011. This normative set of Principles aims at defining and clarifying the extraterritorial human rights obligations of States in an era characterized by economic globalization.

Key legal instruments and accountability tools

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.

- Human rights obligations of the state:
 - The duty to **respect** requires States to refrain from violations of rights
 - The duty to **protect** requires States to prevent violations of rights by others.
 - The obligation to **fulfil** requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of rights.
 - The obligation to fulfill is sometimes subdivided into obligations to **facilitate** and to **provide** for its realization. The former refers to the obligation of the State to engage proactively in activities that would strengthen people's ability to meet their own needs. The obligation to "provide" goes one step further, involving direct provision of services if the right(s) concerned cannot be realized otherwise, for example to compensate for market failure or to help groups that are unable to provide for themselves.

- Human rights law recognizes that a lack of resources can impede the realization of human rights. Some human rights obligations are of a **progressive** kind, while others are **immediate**. For socio-economic rights, the following obligations are of immediate effect:
 - The obligation not to discriminate between different groups of people in the realization of the rights in question;
 - The obligation to take steps (including devising specific strategies and programmes) targeted towards the full realization of the rights in question; and
 - The obligation to monitor progress in the realization of human rights. Accessible mechanisms of redress should be available where rights are violated.

Human Rights principles:

- **Non-discrimination and Substantive Equality** - de jure and de facto discrimination, formal and substantive discrimination, and direct and indirect discrimination. Non-discrimination is more than mere avoidance of active discrimination. It includes proactive measures to ensure that the specific needs of vulnerable and/or marginalized groups, women, people living in informal settlements, and excluded minorities are addressed.
- **Accountability, Participation and Transparency** - governments are obliged to provide mechanisms through which citizens can hold the State accountable, participate in policy-making, and access information required to do so. Participation is an objective, as well as a means, of development. Participation should be viewed as fostering critical consciousness and decision-making as the basis for active citizenship. Women in rural areas have the right to participate in development planning at all levels: CEDAW, art. 14.
- Requirement of **Progressive Realization** - States must take specific steps to ensure that people's rights improve over time (ICESCR, Art 2).
- **Maximum Available Resources** - requires States to show that they are using the maximum of their available resources to ensure realization of rights (ICESCR, Art 2). Resource availability depends on the level of economic output, growth rate, the level and growth of inflows of resources from other economies and the ways in which States mobilize resources from citizens to fund its obligation to fulfill human rights.
- **Non-Retrogression** - once a particular level of enjoyment of rights has been realized, it should be maintained.
- **Minimum Core Obligations/Minimum Essential Levels** - there is a threshold within which States must comply.

Key Point

Using a human rights approach in development policy making can be an effective organizing tool. From a human rights perspective, the Government is under a minimum obligation to establish a regulatory and policy framework that ensures access to essential services of acceptable quality on a non discriminatory basis, and to see to it that nobody is deprived of such services solely because they are unable to pay. During analysis and subsequently through all stages of decision making, implementation, monitoring and evaluation processes should be transparent and participatory.

Right to development:

- Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.
- **Article 8:** States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.
- Human Rights Based Approach to Development promotes an appreciation of the political dimensions of development. Programming is directed to supporting States in identifying the root causes of the non-realization of human rights, structural causes, and addressing them. This requires for a better understanding of the authority, motivation and resources required to produce social change, involving awareness-raising, advocacy, social mobilization.

PART 4: REFERENCES

- ASEAN Economic Blueprint
- UN Declaration on the Right to Development
- Maastricht Principles
- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

MODULE 5 draws the linkages
between CEDAW and access to
justice for women in the context
of economic, social and cultural
rights



SESSION 5.1

Women's Access to Justice and Protection of Economic, Social and Cultural Rights

Time Plan: 2 hours

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objective:

- To create an understanding of the concepts and processes of access to justice from a women's human rights perspective;
- To create an understanding to use access to justice for analysing the gaps and challenges in state obligation to respect protect and fulfil women's economic, social and cultural rights.

Learning outcomes:

- By the end of the session practitioners are able to:
- Strengthen knowledge and understanding of the concept of access to justice and its elements;
- Locate women's human rights within the context of access to justice;
- Apply the CEDAW framework to demystify access to justice as a concept and as a process.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined interactive approach using exercises, plenary discussions and inputs to facilitate discussion and analysis.

Step 1: Ice-breaker (10 minutes)

On a flip chart, post one card in the centre with the term 'Rights' written on it. Invite the participants to post one card each around that card with a word that cross their minds when they hear the term 'Rights'.

Key words to remember – rights holder, duty-bearer, equality, law, justice, women's rights, CEDAW, violence, land, property, work, food, education, police and access to justice.

The facilitator is to add specific keywords that are not included in the flip chart.

While summing up, the facilitator co-relates each of these keywords with 'Rights' and 'Justice', and then states that the term or concept of 'access to justice' is critical for securing 'Rights' and claiming of 'Rights'. In general terms, the word or phrase Access to Justice includes all the terms on the chart paper, yet it means more than those words and thus, needs to be demystified for increasing its efficacy and efficiency towards advancing women's human rights.

Step 2: Exercise – What is Access to Justice? (30 minutes)

(Requirements: metacards, pentel pens, tape, paper for posting metacards)

Put this on a slide:

Name ONE WORD that comes to mind when you hear the term “Access to Justice”

Participants are divided into small groups. Each person will write on metacards the answer to the above question. They will discuss their answers with their group. They will put their answers together, and will assign one per group to do a presentation.

Sample answers: *legal aid, court structures, laws and procedures, legal awareness, etc.*

The facilitator will cluster these manifestations and concepts of access to justice and provide an illustration of the following **key components** of Access to Justice:

- **Normative Legal Framework** (i.e. the set of rules, procedures, actors and institutions) that promotes access to justice
- **Legal Awareness** regarding the law, rights, obligations and how to access channels to resolve grievances
- **Access to Appropriate Forums** where the disadvantaged can translate their legal awareness into action and availability of legal aid and public defense
- **Effective Administration of Justice** through formal institutions and informal mechanisms
- **Monitoring & Oversight** - Accountability and Transparency in the above 4 areas

Step 3 : Input – CEDAW and Women's Access to Justice in the context of development

The facilitator shall next provide an interactive lecture on engendering access to justice through the CEDAW lens. Particular emphasis shall be placed on understanding the perceptive and components of Access to Justice as it has been evolved in relation to the State Obligation understood in Articles 2, 3 and 4 of the CEDAW.

Key points to consider/derive from the session:

- Access to Justice- definition and elements
- Locating women in Access to Justice-rights holders; duty- bearers (within the administration of justice); victims; witnesses
- CEDAW and Access to Justice – CEDAW as a methodology to realise women's human rights; holistic approach by the Convention
- Access to Justice = Principle of Substantive Equality & Principle of Non Discrimination
- Principle of State Obligation and Accessing Justice by Women – nature, scope and elements- General Recommendations (GRs), reporting guidelines, achieving substantive equality

PART 3: FACILITATOR'S NOTES

- Access to Justice is fundamental to the realisation of any human rights and a key to realising these rights. When a right is violated, it is presumed that there is a remedy to rectify the act of violation.
- Under international human rights law, every country is expected to 'Respect, Protect and Fulfill' the universal human rights of all individuals regardless of the inherent diversities. This notion of 'Respect, Protect and Fulfil' mandates a scheme for persons whose rights are violated to seek justice and a remedy.
- Rule of Law is one of the key elements of modern age governance, which guarantees Equality in Law and Equality before Law to all on an equal basis, irrespective of their gender, social, political, economic status, ethnicity and other statuses. There will be no differential treatment, discrimination and inequalities between the men and women, adult and children, majority and minority, one ethnicity against another, rich and poor, urban and rural and so on, when it comes to guarantee of rights and their exercise & realisation. In order to transform the "de jure" rights into "de facto" rights, access to justice is the answer.
- There are key legal concepts and principles that are necessary to ensure access to justice for women - due process, equality before the law, legally recognised equal rights based on substantive equality and non-discrimination, legal awareness and education, efficient and effective legal mechanisms.
- Historically Access to Justice has been seen as a fundamental right or as one's capability of securing a remedy. Access means one's ability, right or permission to approach, enter, speak with or use; Justice means the exercise of authority in vindication of right by assigning reward or punishment. Access to Justice therefore connotes one's ability to approach or speak with or use and exercise her or his authority in vindication or in evidence of a right.
- In any human rights discourse, access to justice is very critical for recognition, exercise and protection of human rights. Without Access to Justice, rights have no meaning in real terms.
- At this point, the facilitator can share definition of access to justice given by various experts and organizations highlighting the significance of those definitions in participant's country context.
- The facilitator then to provide a critique of existing approaches to access to justice (highlighting particularly the UNDP, World Bank and UN Women's approaches) and the need to analyse the gendered component of women's access to justice using the CEDAW lens.
- The discussion then to focus on women's rights to access to justice, especially its significance given the inequalities and discrimination women experience in both private and public sphere.
- Women continue to be discriminated when it comes to accessing justice. This has its roots in the historic discrimination and inequalities experienced by women. International human rights instruments and in particular CEDAW have been advocating for elimination of discrimination and ensuring substantive equality to women in realisation of their civil, political, economic, social and cultural rights.
- The Asian values debate of prioritising needs over freedoms or development over rights has played an important role in perpetuating invisibility of women's agency and issues from the public policy discourse. Women are often seen as custodians of culture and social ethos. Their private lives continue to be ruled by religion, culture and patriarchy. Gender-based violence

continues to be a widespread phenomenon globally. The culture of impunity is at the very heart of continuing and aggravated forms of violence against women, both within household and in the society, by individuals, non-state actors and by State and its agents.

- In many of the Southeast Asian countries, women have experienced extreme forms of violence and multiple forms of discrimination because of ethnic, religious and political conflicts. The conflict-affected countries have compelled women to be the breadwinners of their families. Both internal and cross-border migration and participation of women in the informal sector have increased women's vulnerability to newer forms of discrimination such as trafficking, etc
- The high levels of male-migration across and outside Southeast Asia have put tremendous pressure on women to look after the young and elderly at home, and at times take the responsibility of farming for the survival and well-being of the families. In such a scenario women are at risk of being exploited and discriminated. Further, the recent trend of religious fundamentalism and intolerances as well as the cultural relativist discourse has threatened and continues to undermine the universal principles of human rights of women.
- The presence and authority of plural legal system contributes to this inequality through its various manifestations. These systems perpetuate subordination and subjugation of women as they tend to be procedurally biased against women, especially when cases of violence against women are being mediated. When traditional rules are incorporated into state and non-state legal and justice systems, women's human rights in the private and domestic sphere, including their rights to live free from violence and make decisions about their sexuality, marriage, divorce, child custody, inheritance and reproductive health, can be limited.
- At this point, the facilitator is to explain the key components of Access to Justice as highlighted in Step 2, with examples from the region.
- The *first* step to guarantee Access to Justice to individuals is to have a normative legal framework that articulates right to access justice. The right to access justice is universal and equal to all under the national constitutions and legal framework and is understood as laws, policies, administrative rules and procedures which describe the purpose, nature and scope of rights including access to justice. For Southeast Asia, gender equality legislations are a significant step by the State to show their commitment to the international women's rights norms and standards.
- It also includes the structures, mechanisms, and institutions to implement the normative standards to guarantee the realisation of rights. For example, domestic violence legislation is enacted to guarantee women's right to live a violence-free life. However, if the law fails to establish mechanism or if it fails to make budgetary allocations for the implementation of such law, then the law becomes practically ineffective for women.
- The second component of Access to Justice is legal awareness. Socialisation of law is very important to ensure the effective implementation of any law.. States have a fundamental duty to ensure that all actors involved in implementation of the law or policy and also the right holders are adequately sensitised, educated and informed by various means and strategies.
- Third component of access to justice is access to appropriate forums. This includes having access to courts, administrative tribunals, consumer forums, traditional dispute resolution mechanisms, national human rights/women's rights commission, etc. These forums must be physically, socio-culturally and economically accessible to women seeking legal remedy and justice for violation of their right.
- The fourth component, effective administration of justice, is meant to highlight rules and procedures guiding the courts and tribunals in their delivery of justice. Questions one may

ask here is whether these procedures are sensitive to women's realities? How complex or user-friendly are the procedures? Are the informal justice institutions bound by the normative legal framework of the country? Whether women who were denied appropriate remedies by the informal institutions able to access the formal courts?

- And the final key component of access to justice is the process of monitoring and evaluation to draw accountability of the structures and mechanisms to ensure effective and efficient redress for violation of women's human rights. Who has the authority to regulate, monitor and demand accountability of these institutions? Are there any laws or regulatory measures adopted specifically for this purpose? Whether adequate budgetary allocations have been earmarked for this purpose by the parliament or executive? The monitoring is not merely of the structures and institutions but it is also of the normative legal framework. Are there any provisions or measures to review the effectiveness and gaps in laws and policies? How often laws are reviewed? Who oversees such reviews? Are there any pre-determined criteria? Are international human rights frameworks used as the basis for monitoring and evaluation? Is this an ongoing process or conducted at specific intervals? How transparent is this process? Are the rights-holders invited and included in determining the normative legal framework, socialisation of law, monitoring, etc? Do individuals have access to information?
- The normative legal standards and mechanisms are found not only in national constitutions, laws and policies but also in the international human rights treaties and jurisprudence of human rights bodies (for example, CEDAW).
- CEDAW is the key women's human rights treaty that has ensured that women are able to access, exercise and claim their existing human rights without any form of discrimination. It has articulated specific situations and contexts where women are most likely to be discriminated against and their rights are likely to be violated, restricted or denied on the pretext that women are different and not equal but inferior to men. Women's lives and their entitlement to rights are always distinguished between private and public spheres, and the most harsh and horrifying discrimination and violence committed against women occurs within the private sphere, and its impact is seen in women's role and participation in the public sphere.
- CEDAW is the first treaty that has explicitly recognized the inter-relatedness and inter-dependent nature of women's civil, political, economic, social and cultural rights.
- CEDAW provides a philosophical base for women's rights: substantive equality and non-discrimination. It is a very useful tool or framework in assessing nature and extent to which women have been able to exercise their rights to access justice, as it not only looks into the individual violations but also undertakes a scrutiny from a feminist lens of the lacunae in the system and institutions which is then likely to perpetuate and/or contribute towards discrimination against women.
- The facilitator to run through key features and principles of CEDAW- Substantive Equality, Non-Discrimination and State Obligation.
- Note: Facilitator can use CEDAW Quick and Concise Videos to explain these Principles:
- <https://www.youtube.com/watch?v=OCtnD-6R2so>
- <https://www.youtube.com/watch?v=c1SpUadCdug>
- <https://www.youtube.com/watch?v=uHJSp788wjU>
- The discussion after the viewing of the videos are aimed at drawing the linkage between the core principle and how they are to be applied in the context of women's access to justice.

- The principle of substantive equality and the principle of non-discrimination are inter-related. Without full understanding and analysis of - what, where, whom, who, when, why and how – of discrimination, it is difficult to arrive at appropriate measures to ensure substantive equality. At the same time without adopting a corrective approach to equality the discrimination experienced by women may not be eliminated.
- In the context of women's access to justice, elements of State Obligation are key to ensure that no woman is denied, restricted or discriminated against while accessing justice and legal remedy. Both the de jure and de facto measures by the State - ranging from adoption of laws and policies, setting up implementation mechanisms and procedures, allocating budgetary resources, establishing internal and external monitoring and accountability mechanisms to changing attitudes, practices and societal values towards women and their participation in all spheres of life, sensitisation and awareness creation amongst the key actors, are significant towards ensuring women's fullest access to justice.

Synthesis

Women are discriminated against in all walks of life. The gender stereotypes are prevalent in the society and also within the institutions which perpetuates subjugation and subordination of women by men. CEDAW provides the framework and guides the State parties in their legal obligation to respect, protect and fulfil civil, political, economic, social and cultural rights of women.

PART 4: REFERENCES

- CEDAW Text
- Handouts on Principle of Substantive Equality, Principle of Non-Discrimination and Principle of State Obligation
- CEDAW Concept Note on Women's Access to Justice

SESSION 5.2

Mapping Access to Justice Institutions and Effective Engagement in ASEAN

Time Plan: 3 hours 30 minutes

PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES

Key objective:

- To measure the situation of women's access to justice in the national context;
- To understand the context and accountability institutions at the regional (ASEAN) and international level;
- To identify the various stakeholder and actors and develop possible strategies in promoting women's access to justice.

Learning outcomes:

By the end of the session practitioners are able to:

- Improve understanding about the actors and institutions involved and are available to women in accessing justice;
- Understand the normative legal framework at the national level and able to identify the most effective entry-points;
- Develop a strategy to improve the current status of women in accessing justice.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined interactive approach using exercises, group work, plenary discussions and inputs to facilitate discussion and analysis.

Step 1: Brainstorming – What is access to justice (5 minutes)

Facilitator does a quick recap and brainstorming on what is understood on women's access to justice and key components.

Step 2: Group Exercise – Understanding access to justice (45 minutes)

The participants are divided into country groups and they are asked to select one issue from the above issues discussed in the preceding Modules (especially Session 1.2).

The participants are requested to work on the following discussion questions.

- Legal Protection:
 - Name the law, policy or regulation where the specific rights of women in relation to identified issues are recognised;

- Describe the key elements of legal recognition or protection;
- Provide information on the international women's rights standard applicable to the specific context;
- Identify and name gaps or challenges in the context of actual implementation of right/s guaranteed to the women;
- Legal Structure/System:
 - Name the types of courts or forums available to women to claim their rights in general and in the specific context of the issue selected;
 - Name specific constitutional or legal provisions regulating functioning of these forums in general and in the specific context of issue selected;
 - Provide a critical assessment of the functioning and effectiveness of these forums, including their relevance to ensure justice to women in the situation of rights violation.
- Legal Empowerment:
 - Provide information on how laws are communicated to the people in general and women in particular. Also discuss access in urban and rural areas;
 - Name agencies tasked to create legal awareness and legal education amongst right-holders and duty-bearers;
 - Provide your own critique of the legal empowerment in your country in the context of women's access to justice;
- Legal counsel and assistance:
 - Name laws or regulations guaranteeing women their right to access legal aid, engage lawyers and to seek financial assistance from the State while claiming of their rights;
 - State the agency or institution that oversees this aspect;
 - Identify gaps or challenges women experience in the above context.
- Legal Remedy and Enforcement:
 - Describe nature of legal remedy women can obtain in the specific context
 - Identify agencies or individuals responsible to enforce/implement the court's or tribunal's orders/decisions;
 - Provide analysis of legal remedies provided by the courts/forums and their enforcement to ensure rights of women in the specific context.
- Oversight and monitoring:
 - Identify the agency entrusted to oversee and monitor peoples' access to justice in general, and by women in particular?
 - Are there any gaps in the manner in which this task is accomplished?

Each group is given an hour for their discussion and 15 minutes for their presentation.

Step 3: Facilitated discussion – Ways and Means to Strengthen Access to Justice (30 minutes)

The facilitator then continues with a discussion on possible strategies to be considered in strengthening access to justice for women and by women in the national context.

Step 4: Discussion and final synthesis (10 minutes)

The facilitator provides final analytical inputs on the women's access to justice in the national level within the context of ASEAN. The facilitator can also explore possible means of accessing justice through the AICHR and ACWC mechanisms.

Points to consider/derive from the activity

- Mapping Access to Justice arena – *Country level* - *Regional level* (ASEAN) *International level* (CEDAW, ICESCR, UPR, Special procedures, etc);
 - actors (individuals/institutions), specific laws or policies, women's access to justice
 - issues, gaps, challenges, innovations – to strengthen women's access to justice
 - possible strategies and/or recommendations
- Engaging with the institutions – State, National Human Rights Institutions, ASEAN processes & institutions, reporting, litigation strategy, CEDAW compliant policy analysis and policy;
- Drawing a road-map to improve women's accessing justice in ASEAN – country level (directed to specific key institutions or context of WHRs).

Option: Enhance the activity

If there is sufficient time, the facilitator can divide the questions about assessment, analysis or critique, and can develop another Group Exercise to have much deliberated analysis using Concluding Observations of the CEDAW Committee and of the Human Rights Council at the Universal Periodic Review. By doing this Facilitator can manage the time as well as have participants' attention span more productively

PART 3: FACILITATOR'S NOTES

- The Facilitator begins the session with a recap of what is understood on women's access to justice as a concept.
- Conventionally the arena of access to justice has been seen and dealt with as 'men's domain' and women are seen as beneficiaries of the whole regime of access to justice. Women's agency in shaping the nature, scope and functioning of access to justice regime has been hardly welcomed.
- Women's issues are considered as soft issues which require 'protection of rights' rather than 'assertion of rights'. However, in current global political economy, the situation is changing and credit goes to the national, regional and international women's rights movement who, through their advocacy, have managed to convince the law makers and society in general, to see women's human rights or gender issues as intrinsic part of public policy debates.
- Within the ASEAN region there has been a positive change in perception and treatment by the State or policy makers to women's human rights and gender issues. The region represents a diversity of political and economic experiences. The region has been inconsistent in its engagement with the UN led international human rights system. Increasingly, in ASEAN we see windows of opportunities in advancing women's human rights since the establishment of the ASEAN Inter-governmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

The debates around 'Needs versus Rights' 'Freedom versus Development' 'Individual Rights versus Collective/Community Rights' have played a significant role in the participation and contribution of SEA region in shaping the language and implementation of international human rights standards.

- The facilitator here may want to invite some responses from the participants on progression in their national context on human rights and in particular, women's human rights.
- Women' human rights advocacy is paving way into the legal and political system to influence women centric policy and law making. Of the eleven countries in Southeast Asia, seven countries have Gender Equality legislations as a measure to incorporate CEDAW into the state's normative legal framework. However, these incremental advances haven't in reality impacted women's de facto equality, including their access to justice. Women in the region have undergone a range of adverse circumstances including conflict, natural disasters, economic crisis, etc. The legal system and justice delivery mechanisms remain neglected by the policy makers.
- The facilitator is then to task the participants to critically assess the situation of women's access to justice in their national context.
- The discussion is to also elicit suggestions on ways to overcome or eliminate the challenges faced by women in accessing justice.
- From the sharing and discussions on the Group Exercise the facilitator would have a list of agencies or bodies which are responsible to deliver justice to women in situations of rights violations.
- Largely the Southeast Asia region has courts and administrative structures including those of mass organizations to facilitate women's accessing justice.
- There are other agencies like the national women's machinery as well as women's commission or national human rights commission which play a critical role in ensuring women de facto equality through strengthening their access to justice.
- On this point, the Facilitator may flash a PowerPoint presentation on 'Engaging with the institutions to strengthen women accessing justice'. This input is aimed at highlighting the mandate of the State institutions, such as the courts, tribunals, informal institutions, national human rights and women's rights commission and its adherence to international women's human rights standards, in particular CEDAW.
- The participants are also acquainted with specific strategies for example, reporting, monitoring of concluding observations, litigation strategy and CEDAW compliant law and policy making, towards ensuring women their full and equal right to access justice.

Synthesis:

In the synthesis, the key points the facilitator must include are:

- ASEAN represents diversity but also have some commonalities when it comes to women's access to justice;
- In the context of access to justice, gender discrimination is both directly apparent and at times subtle in different contexts for women;
- A range of institutions are available in the region, where women seek legal remedy and justice;
- The institutions and agencies like women's machinery and women's commission in many countries within the region, are not empowered enough with resources and authority to play a pivotal role in their oversight in the context of women accessing justice;
- There is urgent need to implement CEDAW Committee's and other treaty bodies recommendations aimed at strengthening women's access to justice, including through adoption of temporary special measures;
- ASEAN human rights mechanism and other structures may certainly have an impact on the quality and quantity of women's access to justice. However, the women's rights activists need to understand that ASEAN structures are channels to empower national level institutions and agencies involved in access to justice, rather than they themselves acting as human rights monitoring mechanisms. There is a danger in ASEAN human rights structures taking up this role, as it may dilute the human rights/women's rights standards set internationally, and allow the Freedom versus Development discourse to determine nature, scope and implementation of the women's human rights/human rights within national contexts;

- It is essential that any engagement with the ASEAN processes and mechanisms aimed at advancing women's human rights in the region be anchored in the agenda to influence the national governments' adherence and commitment to the implementation of international human rights standards.

PART 4: REFERENCES

- Briefing Paper prepared and shared by IRAW Asia Pacific with the CEDAW Committee before its deliberation on the General Recommendation on Women's Access to Justice.

SESSION 5.3**Developing Indicators to Assess Women's Access to Justice in ASEAN****Time Plan: 2 hours 30 minutes****PART 1: KEY OBJECTIVES AND LEARNING OUTCOMES****Key objective:**

- To gain clarity on how the development framework and its emergence in ASEAN impacts women's access to justice;
- To strengthen skills in understanding the application of the WESCR framework in the context of women's access to justice;
- To brainstorm on developing indicators to measure access to justice in the context of development in ASEAN.

Learning outcomes:

By the end of the session practitioners are able to:

- Improve knowledge on WESCR in the context of development and access to justice
- Strengthen skills and practical application on developing indicators to assess women's access to justice.

PART 2: SUGGESTED METHODOLOGY

Overview: The proposed methodologies include a combined interactive approach using group work, plenary discussions and inputs to facilitate discussion and analysis.

Step 1: Input – WESCR and Access to Justice (20 minutes)

The facilitator, through a powerpoint presentation, to facilitate discussion on women's access to justice in the context of economic, social and cultural rights. The facilitator to draw the linkages between the CEDAW and ICESCR framework and illustrate the guiding principles and key obligations in the context of development.

Step 2: Development of Indicators (2 hours)

Participants will be divided into 3 – 4 groups to develop qualitative and quantitative indicators to evaluate and measure status and performance of the State in securing access to justice for women in the specific context.

Each group to be allocated 15 minutes to present the conclusion of their respective discussions.

Step 3: Synthesis (10 minutes)

The facilitator is to provide a synthesis of the key points emerging from the presentations and discussions.

Points to consider/derive from the activity

- Understanding the linkages and inter-dependence of development, access to justice and accountability towards realisation of women's human rights;
- Understanding the convergence of the development framework and access to justice framework and its impact on women's economic, social & cultural rights;
- Different contexts create different obstacles for women to access justice.
- Access to justice goes beyond legal justice. It must be social, economic and political as well. The obligations and commitments undertaken by the State parties under CEDAW and other international human rights treaties encompasses State's duty to take all possible steps to strengthen access to justice institutions in the country, and in particular, women's ability to seek justice.
- The context of development and post-2015 development agenda will pose newer challenges for women in the area of access to justice.
- The plural legal systems and presence of informal/traditional justice institutions have the potential to undermine the principle of substantive equality and become a threat to women in securing justice.
- Women are burdened in the globalised economies with additional responsibilities of breadwinner as well as homemaker. The circle of poverty is making women continue to struggle to meet the needs of their families and this has compelled them to move to foreign land for livelihood and sustenance of their loved ones. When women migrate from their own country to a foreign country they are alienated from the familiar institutions and mechanisms delivering justice, and have to depend on the justice mechanisms in the new country in seeking justice in situations of rights violations or exploitation.
- Access to justice is a very intrinsic aspect of realisation of rights, and therefore, in evaluating State's performance on implementation of women's human rights standards, it is important that a list of indicators – qualitative as well as quantitative is developed. This will provide a yardstick for both, State and its agencies, as well as bodies like human rights or women's commissions to monitor the status, access and effectiveness of justice in the country.
- The strategy for women's human rights advocates towards ensuring women of their rights including the ability to seek effective legal remedy and justice is to build a CEDAW based indicators, and see whether the reforms or measures undertaken by the State to improve women's access to justice is CEDAW compliant and will in fact promote and ensure substantive equality for women. Access to justice for women must be 'de jure' as well as 'de facto'.
- Some indicators can be listed as under:
 - **Engaging with international instruments, mechanism and processes:** Ratification of core international human rights treaties, including CEDAW; removal of reservations; number of reports submitted; OP CEDAW cases; pledges made under the Universal Periodic Review process;
 - **Implementation of international women rights standards domestically:** Domestication of CEDAW and international standards; CEDAW compliant laws; decisions by national courts relying on international human rights standards;
 - **Legal pluralism:** Mapping of informal justice institutions; assessing consistency of these systems with CEDAW standards; consultations with CSOs, religious leaders, etc; decisions of national courts rejecting or overruling discriminatory practices or laws;
 - **Effective structures and procedures:** Review of existing laws, policies and programmes; monitoring of implementation; training of judges, lawyers, etc; laws ensuring timely justice; allocation of funds; infrastructure;
 - **Dealing with practical and logistical obstacles:** Legal awareness; participation of CSOs and NGOs; translation of laws into local language; beneficiaries of legal aid and assistance.

PART 3: FACILITATOR'S NOTES

- Access to Justice is both – a concept and a process. A constitutional provision guaranteeing women equal access to seek justice and protection under the law will not be adequate for women accessing effective justice. It is important that the State and its agencies work towards creating 'enabling conditions' for women so that they can claim their rights without discrimination, with no fear and which will be SMART in providing legal remedy for rights violated.

Note: facilitator to explain the terminologies 'enabling conditions' and 'SMART.'

- The input session will put into perspective the impact of an unbalanced and growth driven development policy discourse within national context on the realisation of women's human rights and restricts women's ability to seek legal remedy and justice, particularly in the context of WESCR?
- The facilitator draws the attention of the participants to CEDAW, specifically where the State parties are mandated to Respect, Protect and Fulfill WESCR and eliminate all forms of discrimination against women.

The key WESCR contexts highlighted in CEDAW are – employment including migration, health, social security and credit, access to developmental programmes and schemes, access in terms of transportation and communications. CEDAW also highlights the inter-relatedness of economic rights of women with civil and political rights, for example in relation to the economic consequences of dissolution of marriage, inheritance, etc.

- It is important to emphasise that the CEDAW Committee has expressed concern on the ASEAN member states have responded to issues related to WESCR. The facilitator is to highlight a few examples of issues raised by the Committee in the CEDAW Concluding Observations related to WESCR.

An example - the mining projects in Cambodia, Laos and Myanmar. When the State enters into an agreement with a MNC, a foreign country or a trade bloc permitting the latter to extract minerals and develop a mining business, this often leads to eviction and displacement of thousands of people, compelling them to lose their homes, livelihood, children dropping out of schools and women having to find jobs as men become jobless. In short the community is uprooted and are forced to migrate to nearby urban cities or foreign countries to ensure the survival of their families. The increasing number of migrant workers including women migrant workers within and from the region is indicative of this reality.

- The context of access to justice adds another dimension to the discourse on development and women's human rights as it makes the situation more complex for women. Access to justice begins with the legal justice, but it encompasses social, economic and cultural justice. Legal justice or ability to seek a legal remedy in cases of violation of any right ensures and strengthens other dimensions of justice.
- The Facilitator can expand on the earlier example using the case of women migrant workers. In national or sub-regional level advocacy, women's human rights groups always need to be vigilant in their analysis on the complexities created because of the changes in political, economic or social scenario due to varying development policies or contexts and access to justice for women is very critical and must be assessed in these contexts.

- The facilitator then asks participants to think about situations/incidents of discrimination against women or denial of equal access to justice because of the changing development agenda in the country. And with this evidence of discrimination and failure of State to fulfil its obligations, the facilitator takes the participants through a Power Point Presentation on WESCR, and facilitates a learning process to see similarities and synergy between CEDAW and the ICESCR.
- The current jurisprudence on economic, social and cultural human rights has proven wrong the historic argument that ESC rights cannot be challenged in the court of law; as they are not justiciable. In addition, the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) has debunked this argument.
- At national level as well, the position of economic, social and cultural rights are at par with the civil and political rights. The national courts in different regions, e.g. Asia, Africa and Americas - in cases that have come before them; have opined that definition, nature and scope of ESC rights can be questioned/challenged for its relevance and significance in a given context.
- The human rights standards of universality, inalienability, inter-dependence, equality and non-discrimination are required to be adhered to by the state in fulfilling their obligations on economic, social and cultural rights of its peoples. And non-fulfillment or failure on the part of the State to do so, may invite international scrutiny and criticism, including through the monitoring and accountability mechanisms.
- In relation to WESCR, the full spectrum of obligations related to women's economic, social and cultural rights are drawn from many sources. At the international level the two most relevant are the ICESCR and CEDAW.

CEDAW framework of substantive equality, non-discrimination and state obligation shall be the foundation for determining nature, scope and impact/outcome of development policies/agenda as well as undertaking measures to minimize adverse effects of these policies on women, including protecting their ability to seek justice. Drawing accountability is the key for realization of women's human rights, and women to access justice.

With the equally strong jurisprudence emerging at the international level, the ESC rights are not merely 'guiding or directive principles' but are in fact 'legal obligations' of the State parties.

- In addition to international agreements and mechanisms, there are several important regional human rights agreements and mechanisms which are directly relevant to women's economic, social and cultural rights, including:

- African System – *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)*;
- Inter-American System - Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (**Convention of Belém do Pará**), and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (**Protocol of San Salvador**);
- European System – **European Social Charter** and **Council of Europe Convention** on preventing and combating violence against women and domestic violence.¹⁴

¹⁴ Article 14 of the Association of South East Asian Nations (ASEAN) Charter, adopted in Singapore on 20 November 2007, established the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2010.

- For the ASEAN region, the recently adopted ASEAN Human Rights Declaration is the reference point for member states on obligations related to the realisation of economic, social and cultural rights.
- The difference and distinction in comparing ASEAN with other regional human rights system, is that ASEAN is predominantly a political and economic cooperation body, and when established never meant to evolve into a regional system monitoring performance of Member States on their commitment to international human rights standards.
- The national governments are the primary beneficiaries of ASEAN and citizens of these countries never meant to have any direct or indirect voice in the functioning of ASEAN. There is certainly a great amount of scepticism in relation to ASEAN and its evolving human rights mechanisms. Yet, this can be considered a window of opportunity. The international community, the UN and its agencies have taken a great interest in the ASEAN processes around human rights protection, and UN through its various agencies is working with ACWC and AICHR to have a human rights mechanisms for the region with a strong mandate and authority to intervene and influence the national and regional human rights policy making and implementation.
- In the context of MDGs and forthcoming SDGs, the broad spectrum of international human rights/women's human rights are under risk to be compartmentalized and narrowed down to development goals and measureable indicators. One cannot equate gender equality or realization of women's human rights with numbers or percentages. It's not about quantity but of quality. In the post-2015 development agenda, gender equality is not merely in education or political participation or about maternal mortality. It must be the philosophical basis for the state in all its actions and decisions impacting advancement of women's human rights.

- WESCR as illustrated in the ICESCR and CEDAW do share a similar if not identical framework. There are a total of 10 human rights commonly found in both ICESCR and CEDAW (here the Facilitator refers to the power point slide). CEDAW is central to arguing the discriminatory effect of ESC rights violations on women and ICESCR will be critical to elaborating the substantive scope of the economic, social and cultural rights as international standards which the State parties must adhere to. Within the Southeast Asia region there are countries which have not ratified ICESCR but all have ratified CEDAW. In such situation the women's human rights advocacy must revolve around pushing for ESC rights standards as recognized in ICESCR, but through the normative framework of CEDAW. The State cannot be given any concession to dilute or reject the ESCR standards from the ICESCR, for the reason that the State has not ratified the Covenant.

- The facilitator then explains the Integrated Framework on WESCR based on Substantive Equality, Non-discrimination and Temporary Special Measures. The principle of intersectionality, as crucial for the realization of rights in CEDAW, does play a significant role in shaping the nature, scope and impact of women's ESC rights in the context of development and access to justice.
- The facilitator now begins with the next part of the Session, and that is Development of Indicators for assessing women's access to justice using the CEDAW lens.
- Access to justice has been an ongoing concern for the CEDAW Committee, which has continuously reminded States of the need to take measures to ensure that women have access to fair and effective remedies when their rights are affected. The Committee has addressed the issue of access to justice through its various general recommendations, concluding observations, as well as decisions on individual communications.¹⁵
- According to the CEDAW Committee, respect and protection of women's human rights can only be guaranteed with the availability of effective domestic remedies. Indeed, legal rights are only meaningful if they can be asserted. Access to justice is therefore also an essential component

¹⁵ Concept Note on Access to Justice, prepared and presented by the CEDAW Committee on its Day of General Discussion on the proposed General recommendation at 53rd Session

of rule of law and a means for women to actively claim the entire range of rights provided for in CEDAW. In practice, elements of discrimination and challenges remain in many instances when women seek justice, both within the laws and within justice systems¹⁶.

PART 4: REFERENCES

- Centre for Women Global Leadership (CWGL) handout on post-development 2015 development framework.
- Concept Note prepared and presented by the CEDAW Committee on the day of General Discussion on its GR on Access to Justice (53rd Session).

¹⁶ *ibid*

International Women's Rights Action Watch Asia Pacific (IWRAP-Asia Pacific)

is an independent, non-profit NGO in Special Consultative Status with the Economic and Social Council of the United Nations. IWRAP Asia Pacific has gained expertise, experience and credibility from 20 years work of mobilizing and organizing women's groups and NGOs to support the work of the State in fulfilling its obligations to Respect, Protect and Fulfill women's human rights under CEDAW, through capacity building, advocacy and knowledge creation initiatives aimed towards development of effective national women's rights advocacy strategies.

