

# IWRAW-Asia Pacific and Oxfam



## Women's Economic Rights: Training Materials

2015



## INTRODUCTION

These training materials are one of the components of a project by IWRAW Asia Pacific in partnership with Oxfam to build capacity of women's rights organisations on **women's economic rights in ASEAN**. The national project partners are women's rights organisations and activists from **Cambodia, Laos, Myanmar, Vietnam, Thailand, Philippines and Indonesia**. Three thematic issues were identified to anchor the project and drive both the analysis of women's economic rights as well as further advocacy in the region. These are:

- (i) Women migrant workers**
- (ii) MNCs and gender in the value chain, and**
- (iii) Natural resource governance.**

The training materials have been put together with the objective of building capacity to analyse women's economic rights applying a CEDAW lens. The materials attempt to link the relevant international and regional standards, norms, obligations and guidelines that demand a State's accountability for the enjoyment and exercise of women's economic rights, taking into account the interrelatedness of rights and how intersecting elements can compound the violations that a woman experiences. It also contextualises the analysis within ASEAN by calling for an assessment of current developments within the region and its impact on women.

These materials are aimed at activists and trainers who have basic familiarity with the CEDAW framework and have experience in facilitating discussions and trainings. The materials do not provide a step by step guidance on how to run a training on women's economic rights in ASEAN. Rather, they provide a starting point for developing a training programme that can then be tailored depending on context and focus, target audience and resources and length of time available.

The material covers **substantive information and analysis** on specific issues of women's economic rights along with **case studies** which can be used as exercises on the application of those concepts and analysis. Much of the content is drawn from IWRAW Asia Pacific's training material and resources and these **references** are highlighted as additional useful training tools. This document is not an exhaustive authority on the subject matter and it is hoped that users can draw guidance and inspiration from the core content and case studies in preparing a training and facilitating discussions.

### ***How to use these materials***

The materials are presented in four sections that cover:

- 1. CEDAW & CESC: Setting the standard for women's rights**
- 2. ASEAN**
- 3. Women's economic rights: three thematic areas**
- 4. Advocacy**

Each section has an introduction briefing users on the flow and layout of the content. Each of the sections was prepared in such a way that they can be used separately and to some extent independently of the other if, for example, the target group has sufficient familiarity with CEDAW and the work of ASEAN. After an initial read through, users can pick and choose sections that would be relevant for their purpose.

Case studies and discussion questions are suggested within each of the sections as examples of the kind of individual / group work that might be useful to deepen understanding and analysis. There however is no prescribed methodology to the presentation of material or exercises as it is anticipated that due to the varying contexts and levels of understanding among participating organisations, these would have to be adapted and tailored accordingly. The intention is to identify and provide the core content (both in terms of substantive information and case studies) that users can rely on as a starting base to creating awareness or train activists on the ground.

Relevant references in the form of videos, publications or websites are also provided as additional information and tools that activists can use when discussing the subject matter.

## **1. CEDAW & CESCR: SETTING THE STANDARDS FOR WOMEN'S RIGHTS**

This journey on women's economic rights begins with the international standards and norms as established in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As a bill of rights for women, CEDAW calls for the elimination of discrimination against women "in all fields, in particular in the political, social, economic and cultural fields" (Article 3). This is further strengthened by the definition of discrimination in Article 1 of CEDAW that can be used to assess discrimination against women in any situation.

Any analysis on women's economic rights therefore should start with CEDAW and further draw out the linkages with other relevant treaties, like the International Covenant on Economic, Social and Cultural Rights (ICESCR) for more specifics on economic rights. Linkages between rights and how the denial of one right impacts the enjoyment of another (i.e. the interrelatedness of rights), also needs to be understood and identified so as to assess where elements of direct or indirect discrimination might be preventing the full enjoyment and exercise of rights.

The materials in this section cover:

- The principles of CEDAW
- The application of CEDAW at the domestic level
- CEDAW and ICESCR

The following parts contain substantive information as background as well as case studies as exercises for individuals or group work. However as expressed in the introduction, these materials are not meant to be an exhaustive reference on the subject matter, but rather highlights of key elements and suggestions of case studies for activists conducting trainings. References are also provided in the form of videos and additional reading material.

## 1.1 The principles of CEDAW

It is important to recognise that “gender creates differences in the experiences of human rights in the lives of women and men”.<sup>1</sup> The lack of understanding of the impact of gender on the exercise and enjoyment of equal rights underlies many laws, policies and practices that continue to discriminate against women. While the biological differences between women and men are more obvious, the social and historical differences that persist as systemic obstacles to the full enjoyment of rights have to also be identified. CEDAW demands that we overcome these differences through the application of the principles of **substantive equality and non discrimination**.

The following examples show how formal equality or gender neutral policies that **fail to recognise the impact of past discriminatory practices or social norms** impact on women's ability to access opportunities.

*“During the reconstruction period of post-war Liberia, the government recruited applicants for a new police force. Men and women were both eligible as long as they had at least six years of education and were literate. No women applied because historically they hadn't had the opportunity to attend school. This disadvantage was corrected by recruiting women and giving them six months of intense education so that they could qualify – thus facilitating de facto equality.”<sup>2</sup>*

*“The government of Bangladesh set aside 10% of senior government posts for women – but had a prerequisite that all senior positions be filled by individuals who had previously held Officers' posts. Most women were not eligible due to historical discrimination that had denied women the opportunity to become Officers. The neutral prerequisite was modified to allow applicants to qualify if they had “relevant experience” outside the government – thus increasing the number of women who qualified for senior posts.”<sup>3</sup>*

Important questions to ask in such scenarios are “*why were women not applying for these positions?*”, “*what was holding them back?*”, “*what rights were women denied by not being able to access these positions?*” Gender neutral laws and policies often fail to take into consideration other factors that impede on women attaining the necessary merits / qualifications/ resources needed to access opportunities.

As an international human rights treaty that is **ratified by all ten ASEAN member states**, the CEDAW Convention is the standard on women's human rights and equality that ASEAN upholds. It is acknowledged and referenced in the various ASEAN documents: ASEAN Declaration on the Elimination of Violence against Women in the ASEAN Region (2004), Declaration on the Protection and Promotion of the Rights of

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<sup>1</sup> UN Women, Women's Rights to Equality: The Promise of CEDAW, 2014. Available at <http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2014/7/the%20promise%20of%20cedaw%20final%20pdf.ashx>

<sup>2</sup> Towards Achieving Substantive Gender Equality, Report of Seminar organised by UN Women and AICHR, 2011. Available at <http://aichr.org/external-relations/aichr-with-un-women/>

<sup>3</sup> Ibid.

Migrant Workers (2007), Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children (2013).

A clear understanding on the principles of CEDAW are vital to ensure its full and effective implementation at the national / domestic level. The goal of CEDAW is the fulfilment of women's rights and equality as an exercisable right, rooted in the reality of women's lives.<sup>4</sup> Substantive equality means that whatever laws, policies and services that the state puts in place must lead to **equal opportunities, equal access to such opportunities and results**. There must also be recognition that discrimination includes both **direct and indirect forms** and therefore even unintentional discriminatory outcomes need to be identified and removed. States who are party to the treaty are legally obligated to ensure both **in law (de jure) and the outcomes/ results (de facto)** of its laws, policies, and programmes uphold the principles of CEDAW.

#### **Videos:**

- IWRAW AP videos on (i) Substantive equality, (ii) Non-discrimination and (iii) State obligation.

#### **Temporary special measures**

Temporary special measures is provided for under Article 4.1 of CEDAW and is an important tool to achieving substantive equality for women. There are various obstacles that continue to impede women's access to rights and opportunities. These could come in the form of discriminatory traditions, culture, practices and even historic or past discriminatory laws or regulations. **Corrective measures** need to be put in place to overcome the continued impact of these discriminatory elements on women.

The CEDAW Committee in **General Recommendation No. 25** explains that the purpose of temporary special measures is to “**accelerate** the improvement of the position of women to **achieve their de facto or substantive equality** with men, and to effect the structural, social and cultural changes necessary to **correct past and current forms and effects of discrimination** against women”.<sup>5</sup>

*Despite the building of schools equipped with teachers in the rural areas, it was found that girl children were not coming to school. Upon investigation, it was found that since the majority of teachers were men, the family was not willing to allow their daughters to be educated by men. Secondly, the family relied on the labour of female children to take care of household responsibilities. This was a cultural and economic impediment to the education of girls in the rural areas. The government then put in place a policy to recruit 60 per cent female teachers in rural schools (an enabling condition) and to give the family a stipend to compensate for the loss of labour of the female children.*

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<sup>4</sup> UN Women, Women's Rights to Equality: The Promise of CEDAW, 2014, p 14-15. Available at <http://asiapacific.unwomen.org/~media/field%20office%20eseasia/docs/publications/2014/7/the%20promise%20of%20cedaw%20final%20pdf.ashx>

<sup>5</sup> CEDAW, General Recommendation No. 25, para 15.

This form of corrective measure is meant to be temporary and to be discontinued once the objective has been achieved and sustained. It is to be distinguished from other permanent social policies that need to be in place to guarantee the range of rights for women. For example, measures aimed at protecting maternity, as provided for in Article 4.2 are meant to be permanent measures that recognise the biological differences between women and men.

### ***Intersectionality***

The recognition of intersectional discrimination is the recognition of the “combination of various oppressions (i.e. sexism, racism, xenophobia, homophobia, etc.) which, together, produce something unique and distinct from any one form of discrimination standing alone.”<sup>6</sup> This combination often results in women **experiencing compounded levels of discrimination**. This analysis requires a “shift from a single ground perspective to an analysis based on the assumption that an individual’s experiences are based on **multiple identities that can be linked to more than one ground of discrimination**.”<sup>7</sup>

For example, even when analysing violations of housing rights experienced by different groups of women (e.g. nomadic, migrant, rural women, etc.), these in combination with other factors such as age, ethnicity, caste, ability and sexual orientation “produce new forms of discrimination against women.”<sup>8</sup>

### ***Case studies***

The following case studies highlight:

- The principle of substantive equality versus formal and protectionist approaches to equality.
- The different dimensions of discrimination, i.e. direct and indirect.
- The systemic nature of discrimination and the need to identify the obstacles (economic, social, cultural, historic, etc.) that women face and respond more holistically.
- That the obligation to eliminate discrimination does not rest with just the prohibition of discrimination but that it includes the obligation to remove obstacles and put in place certain corrective measures in the form of affirmative action or temporary measures; and
- Understand that discrimination is interconnected and leads to the denial of rights.

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<sup>6</sup> Aggarwal, Allisson G., UN Special Rapporteur on Adequate Housing, Strengthening gendered norms for the right to adequate housing, [2004] AUJHRights 8; (2004) 10(1) Australian Journal of Human Rights 8. Available at <http://www.austlii.edu.au/au/journals/AJHR/2004/8.html>

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

(a) Formal vs substantive equality<sup>9</sup>

In a prison in the city of Kanpur, all the prisoners were men. Of these, 20% who were dangerous sex offenders were scattered throughout the dormitories of the prison. Because of the absence of adequate facilities, the prisoners were not classified or segregated according to their offence or level of dangerousness. The wardens in this prison were both women and men. Consequently, the prison authorities issued a regulation providing that the women wardens would do desk jobs, prohibiting them from contact positions with the prisoners. The women wardens challenged the regulation in court. The court upheld the regulation, reasoning that given the volatile nature of this situation in the prison, the greater vulnerability of women to sexual attack justified their exclusion. This was in spite of the fact that the prisoners in question had previously filed a lawsuit on the grounds that the violent and chaotic conditions of the prison were themselves illegal and had won their case. The prison authorities nevertheless had not complied with this decision of the court.

*(Based on Dothard v. Rawlinson, 433 U.S. 321 (1977))*

**Discussion guidelines:**

1. Do you agree or disagree with the court? Give your reasons in terms of its implications for the women.
2. In case of disagreement, please give other options for the way in which the court could have ruled. Which of the options would you choose and why?

(b) Discrimination<sup>10</sup>

A fish farm project in Lomak, an Asian country, had a policy that it would provide equal opportunities to women and men to be trained to become fish farmers. One of the conditions for taking part was that all participants should have a pond. Everything else such as fish fry, technical training, fish food, etc., would be provided. As the implementation of the project proceeded, it was seen that no women were participating, as they did not own ponds. Most of them had married into this village. The inheritance laws were discriminatory and did not allow women to inherit property. Even if they owned ponds in their native village, because of the culture, they had to move into their husband's village and hence, had no access or control over the ponds there. In Lomak, because of the culture, women are also unable to have control or at times, even access to family income and assets.

**Discussion guidelines:**

1. Do you think that this fish-farming project discriminated against the women? If yes give reasons for your answer (e.g. How is it discrimination? What assumptions is the discrimination based on? What other rights have been impacted?)

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<sup>9</sup> IWRAW Asia Pacific, Building Capacity for Change: A training manual on the Convention on the Elimination of All Forms of Discrimination against Women, 2001. Updated 2008.

<sup>10</sup> <sup>10</sup> IWRAW Asia Pacific, Building Capacity for Change: A training manual on the Convention on the Elimination of All Forms of Discrimination against Women, 2001. Updated 2008.

2. If you think there was no discrimination against women, explain why you think so.
3. In case you find there was discrimination against women in the project, discuss in what ways the project could be reformulated in order for women to fully participate in the project.

## 1.2 The application of CEDAW at the domestic level

Articles 1 to 5 of CEDAW form the core of what it means to apply CEDAW at the domestic level and can be summarized as follows<sup>11</sup>:

Articles of CEDAW	
2a, 2b, 2f, 2g	incorporate the principle of equality and non-discrimination of men and women in the legal system, abolish all discriminatory laws and practices, and adopt appropriate ones prohibiting discrimination against women
2c	establish tribunals and other public institutions to ensure the effective protection of women against discrimination: mechanisms for enforcement
2d, 2e	ensure elimination of all acts of discrimination against women by the public sector as well as by the private sector including persons, organisations or enterprises
3	implement programmes, make relevant institutional arrangements and any other laws necessary that will enable women to exercise the equality rights given in the law
4	accelerate the achievement of de facto rights by implementing temporary special measures such as affirmative action
5	eliminate cultural and traditional practices and attitudes including stereotypical roles for women and men

This critical area is consistently stressed by the CEDAW Committee in its review of the State party reports.

*The Committee calls on the State party to consider including a strong substantive equality guarantee in its Constitution and amending the existing definition of discrimination to encompass both direct and indirect discrimination and discrimination in the public and private spheres, in accordance with article 1 of the Convention. The Committee further calls on the State party to explicitly provide in its Constitution or other appropriate legislation that the provisions of international human rights agreements, in particular the Convention, be directly applicable and prevail over conflicting legislation.*

<sup>11</sup> IWRAW Asia Pacific, Occasional Paper Series No.1, The Status of CEDAW Implementation in ASEAN Countries and selected Muslim Countries, 2004. Available at <http://www.iwraw-ap.org/organisation/our-publications/training-materials/>

CEDAW Committee's review of the Government of Myanmar<sup>12</sup>

When assessing its applicability at the domestic level, specific technical questions can be (and should be) asked of our governments<sup>13</sup>:

- Has the CEDAW Convention been incorporated at the national level? In some legal systems, treaties are self executing, however in others, they require enabling legislation to make them applicable at the domestic level. Incorporation is important in so far as it might hinder the application of CEDAW in courts. However, the State remains obligated to implement CEDAW “by all appropriate means and without delay”.
- Has the definition of substantive equality and discrimination as given in Article 1 of the CEDAW Convention been adopted in the Constitution or other relevant laws?
- Has any other appropriate legislation been enacted to make discriminatory acts in the public and private sectors actionable? Such legislation could take the form of an Equal Opportunities Act or an Anti-Sex Discrimination Act. (Article 3)
- Has there been a review of all existing legislation and have all discriminatory provisions in the law been eliminated?
- As a result of this review have any other relevant laws such as laws to protect women against domestic violence or sexual harassment been enacted and enforced?
- Have policy directives been issued to the public and private sectors to adopt codes of practice that will help to eliminate discriminatory practices and to develop equality plans for the acceleration of the de facto equality status of women?
- Are there legislation and programmes to combat violence against women, which is identified under the CEDAW Convention as an extreme form of discrimination against women?
- Has the convention been translated and widely disseminated at all levels of the public and private sectors to raise awareness of the obligations under this treaty?
- Have all relevant government officers in all sectors as well as the judiciary and relevant legal personnel been trained to carry out their obligations under the convention?
- Is the CEDAW Convention applicable in the courts? In other words has it been cited in the courts to gain equality rights for women?
- Has an inter-sectoral monitoring mechanism been established to gather data on compliance with the obligations under the convention and to assess effectiveness of laws and policies meant to promote women's equality?
- Is there adequate data to assess progress made in the implementation of the convention such as data disaggregated by sex and data that needs to be collected to identify obstacles to the achievement of de facto rights for women and to assess the effects of laws and policies on women?

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<sup>12</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations for Myanmar, 2008, CEDAW/C/MMR/CO/3. Available at [http://www.bayefsky.com/pdf/myanmar\\_t4\\_cedaw\\_42.pdf](http://www.bayefsky.com/pdf/myanmar_t4_cedaw_42.pdf)

<sup>13</sup> The following questions are derived from IWRAW AP's Occasional Papers No. 1 on The Status of CEDAW Implementation in ASEAN Countries and Selected Muslim Countries. Available at <http://www.iwraw-ap.org/organisation/our-publications/training-materials/>

- Is there a plan for implementation that sets out benchmarks for progress? Are there plans for special programmes to enable women to access rights given in the law, or plans that delineate responsibility, identify inter-sectoral cooperation, allocate budgets and integrate capacity building measures for the implementers. Are these integrated into the mainstream national development plans?

**Reference:**

- UN Women, Women's Right to Equality: The Promise of CEDAW, 2014, chapter III (p 33-38) for a discussion and assessment of the application of CEDAW in domestic courts, Constitutional provisions and other legislation in selected ASEAN countries.
- Partners for Law in Development, Developing Capacities for Strengthening the Application of CEDAW; A Trainers' Guide, 2012, chapters 5 & 7

Case studies

The government has submitted its report to the CEDAW Committee. Review these aspects of the report and respond.<sup>14</sup>

- (i) The government has done its best to ensure women's labour force participation. For example, they have adopted a law that provides equal pay for equal work, and provided 12 weeks paid maternity leave.

Question: What further indicators would you ask for to enable you to assess whether the government has fulfilled its obligation under the CEDAW Convention. What elements of the CEDAW framework would the indicators you ask for refer to?

- (ii) The government, as part of its flood control programme decided to build an embankment to protect a certain area belonging to the government which was a lowland region, and prone to floods. This embankment created the possibility of year-round cultivation protected from flooding. It was assumed in the project document that the many poor women living in this area and who had been using the low land for some simple cultivation would benefit equally from the improvements in agriculture that were associated with the building of the embankment. However, the document did not specify any provisions or plans whereby women could avail of the employment opportunities generated by the intensification of agriculture.

Once the embankment was completed, the rich farmers of the locality managed to take control over the land and benefited because they had the capital and expertise to carry out the advanced forms of agriculture that was now possible.

Question: What are the rights denied to these women under the CEDAW Convention and identify the relevant articles of the CEDAW Convention that have been violated.

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<sup>14</sup> Cases from IWRAW AP, Building Capacity for Change: A Training Manual on the Convention on the Elimination of All Forms of Discrimination against Women, 2001. Updated version August 2008.

### 3. CEDAW and ICESCR

All human rights are “indivisible, interdependent, inter-related, and of equal importance for human dignity.”<sup>15</sup> In relation to women’s economic, social and cultural rights, the two relevant international human rights treaties are CEDAW and the International Covenant on Economic Social and Cultural Rights (ICESCR).<sup>16</sup> The articles of the ICESCR recognise a range of economic, social and cultural rights and articles 2.2 and 3 stress the **right to non-discrimination and the equal right of women and men** to the enjoyment of all economic, social and cultural rights. The ICESCR embraces the principles of **substantive equality and non-discrimination** and recognises the impact of gender on the equal rights of men and women.

*“Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.”<sup>17</sup>*

Taking on board the **interconnectedness of rights** and the need to “address rights-violations in an **intersectional** way based on the affected women or group of women (or girls)”,<sup>18</sup> the full range of human rights treaties are important. The intersection of sex with race, colour, language, religion, political and other opinion, national or social origin, property, birth, age, ethnicity, disability, marital, refugee or migrant status, can cause women to experience distinct forms of discrimination, resulting in compounded disadvantage.<sup>19</sup> The Committee on Economic, Social and Cultural Rights (CESCR) in General Comment no.20<sup>20</sup> discusses the various prohibited grounds of discrimination and the “unique and specific impact” multiple forms of discrimination can have on individuals. Violations of human rights are rarely isolated incidents and “both reflect and perpetuate patterns of inequality”.<sup>21</sup>

*“States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination... ensuring that all individuals*

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<sup>15</sup> Vienna Declaration and Programme for Action, adopted by the World Conference on Human rights in Vienna (25 June 1993), UDHR, Preamble.

<sup>16</sup> Women’s economic, social and cultural rights are also well established in treaties of the International Labour Organisation (ILO) and the various Special Procedures of the Human Rights Council such as the Special Rapporteurs have looked at the right to adequate housing, health, food, etc.

<sup>17</sup> CESCR, General Comment 16 (2005), para 14

<sup>18</sup> IWRAW AP & ESCR Net, Claiming women’s economic, social and cultural rights; A resource guide to advancing women’s economic, social and cultural rights using the Optional Protocol and Convention on the Elimination of all Forms of Discrimination against Women and the Optional Protocol and International Covenant on Economic, Social and Cultural Rights, 2013, p 12

<sup>19</sup> CESCR, General Comment No.16 (2005), para 5

<sup>20</sup> CESCR, General Comment No.20 (2009)

<sup>21</sup> COHRE, ESCR-Net and IWRAW AP, A primer on women’s economic, social and cultural rights.

*have equal access to adequate housing, water, sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.”<sup>22</sup>*

Within ASEAN, six out of the ten member states have ratified ICESCR: Cambodia, Indonesia, Lao People's Democratic Republic, Philippines, Thailand and Vietnam. The CEDAW Committee, in its review of the other member states has called for the ratification of ICESCR and other human rights treaties to “enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life.”<sup>23</sup>

#### ***Other related key concepts<sup>24</sup>***

**Non-regression:** Refers to the state not regressing, eroding or reducing existing rights for reasons like lack of funding.

**Non-derogation:** There are certain rights, like the right to non-discrimination that cannot be limited or restricted by the state.

**Progressive realisation:** Requires states to demonstrate that they are making progress towards the fulfilment of rights even if unable to secure all rights immediately. Progression can be shown through the mobilising of necessary resources, setting of clear targets and timeframes.

**Maximum available resources:** Requires that even where a state's resources are clearly insufficient, the state has to ensure the best enjoyment of rights possible under the circumstances.

**Minimum core obligations:** Keeping progressive realisation in mind, the state has some minimum essential levels that it has to at meet for each substantive right. These would include essential foodstuff, basic housing and education.

**Extraterritorial obligation:** The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights covers situations where the state is involved with situations occurring outside the states territory and affects economic, social and cultural rights.

**Due diligence:** This includes the state's obligations to investigate, prosecute and punish human rights violations by non-state actors or private actors.

**Interdependence and interrelatedness:** Relates to the recognition that one right is often dependant on the fulfilment of another or the deprivation of one right could potentially lead to the non-enjoyment of a range of other rights.

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<sup>22</sup> CESCR, General Comment No.20 (2009), para 8 (b)

<sup>23</sup> For example, see the Concluding Observations for Myanmar, 2008, CEDAW/C/MMR/CO/3. Available at [http://www.bayefsky.com/pdf/myanmar\\_t4\\_cedaw\\_42.pdf](http://www.bayefsky.com/pdf/myanmar_t4_cedaw_42.pdf)

<sup>24</sup> The following section has been drawn from IWRAW AP's Framework on Women's Economic Rights in ASEAN, 2014.

## Case studies

### **(a) Discrimination in Employment<sup>25</sup>**

Rina is a very worried woman. She had just been told that the government was very grateful to her for bearing six children, and has therefore decided to allow her to spend time with them. She would retire at the end of the coming month, as she had just turned 45 years of age.

She married at the age of 21, just after qualifying as a medical nurse. At the time, it had not occurred to her that her caring husband would turn out to be a drunkard and a drug addict. In the early days of her marriage, she had thought he enjoyed his drink, she had not even imagined that he was a drunkard. That all he wanted to do was drink, abuse drugs and fight with her for the money she earned came as a shock. When Rina spoke to her mother about his irresponsibility, she was advised to have children, as that would make him realise what life was about. Even after having six children, the situation had not improved. However, she had not been entirely unhappy. She had wonderful children, and who does not have problems? Perhaps a drunkard was better than a womaniser! She felt lucky to have her job. There were so many women who had no source of income, only the responsibility of bringing up children.

She had heard about the law that mothers of large families were “honoured” by the government, and were paid to stay at home to bring up the children, but did not think that it would apply to her. Just this month, she had decided to file a petition for divorce as she had had enough of the beatings and the money-snatching. She had to think of her children after all. It was hard work looking after the house and taking care of very ill people, but she liked the work and it would all improve after the divorce.

Suddenly all her plans were over. One minute she had been in the operation theatre helping the doctor wash up, and the next minute she was being congratulated by the doctor and her colleagues that she was to retire. She would have a pension and allowance for each child. She was to be honoured and therefore the government would retire her. How would she manage? The amount would still be less than what she had earned! The senior nurse was about to retire and she was the next in line for promotion. She was a good worker. The doctors and management knew that. Her salary was about to increase. Why was she being retired? They had all been sympathetic, but had not helped her! They kept saying that she was being honoured, and that she could still work part-time in the private hospitals and that she would never have to work quite as hard.

Where would she find a part-time job? This was the only hospital in a 20-mile radius. She could not even get a job as a health extension worker. Who would hire her at this

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<sup>25</sup> Case study from IWRAW AP, *Building Capacity for Change: A Training Manual on the Convention on the Elimination of All Forms of Discrimination against Women*, 2001. Updated version August 2008.

age? She could not move house on the money that she had, not with six children. She had no savings. What would she do now?

**Discussion questions:**

1. Describe the problem that the woman in the story is facing.
2. What are the full range of rights that seem to have been denied this woman?
3. Identify obstacles to the fulfilment of the rights that you have identified, particularly in terms of: (where applicable)
  - culture, tradition, social norms
  - social and economic status
  - the way state policies and practices act on inequalities and differences in different institutions of the State (judiciary, bureaucracy, police etc.)
4. What are the recommendations and/or arguments that need to be made to remove the obstacles/barriers: laws, policies, programmes and services, infrastructural development and institutional strengthening, training for awareness creation and attitudinal change etc.? List the recommendations as short-term and/or long-term.
5. Which provisions of the Convention could support a demand for the above recommendations, and to whom would you address these demands? Please also identify relevant parts of the General Recommendations that can be applied or invoked to establish obligations of the State.

**(b) State agriculture policy<sup>26</sup>**

Country X has achieved rapid industrialisation and has also diversified its economy over the last twenty years. In keeping with this trend of development, the agricultural sector had to some extent been modernised. This had led to a certain amount of land consolidation in the area of rice production along with mechanisation. Invariably, this resulted in the impoverishment of poor land holding and landless farmers and the displacement of agricultural workers, the majority of whom are women. The country has now promulgated a New Agricultural Policy (NAP), which it is hoped will lead to the further modernisation of this sector.

**Objectives of NAP**

1. The enhancement of the agricultural sector's integration into the manufacturing sector through commercialised agriculture and value-added productions. This entails a shift from rice to vegetables, fruits, flowers, fish and livestock production.
2. The achievement of a higher level of expansion of the development of the food industry.
3. The promotion of agro-based industrial development and agribusiness leading to:

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<sup>26</sup> Case from IWRAW AP, Building Capacity for Change: A Training Manual on the Convention on the Elimination of All Forms of Discrimination against Women, 2001. Updated version August 2008.

- the enhancement of research and development efforts and technological diffusion;
- reformed market strategy;
- optimal use of resources;
- human resource development;
- the transformation of small holders into farmer entrepreneurs;
- the transfer of agriculture into the hands of a smaller percentage of viable enterprises and the strengthening of farmers institutions such as cooperatives;
- farmers' associations etc., as the means through which training, marketing, and the rest of the transformation will take place.

### **Some implications for women**

1. There are women in the rural areas who are full-time subsistence farmers on small plots of land. Their husbands are absent farmers or weekend farmers as they work in the towns. Many of them are also farm or plantation workers with very little technological skill.
2. Women also engage in small-scale food processing using no technology. Such commercial ventures are very small scale, and are in the realm of the informal sector.
3. The majority of educated young people, male and female, have gone to the nearest towns to find employment. The majority of women only work in low-paid factory work.
4. The women concerned are not homogenous, they differ by marital status, education, age and by experience according to the type of crop they grow.
5. Women are under-represented in the farmers' institutions and in the department of agriculture which is responsible for undertaking the modernisation of the agricultural sector.
6. The income tax laws of the country require that women's business income cannot be separately taxed but has to be combined with that of their husbands. Furthermore, the national laws retain the doctrine of a married woman's dependent domicile. Women who marry foreigners cannot confer citizenship on their husbands. Unless he is self-employed, the husband concerned is unable to obtain residence in the country. A woman cannot also confer citizenship on any child born outside the country to a non-citizen father. All other legislative provisions draw no distinction on the basis of sex or marital status.

### **Discussion questions:**

1. What aspects of the NAP do you think may have negative implications for women? Or what barriers do you think women will face in trying to benefit from the NAP?
2. What policy and legislative changes would you recommend? What special measures or special projects would you recommend for women?
3. How can the CEDAW Convention or other human rights treaties, standards and norms be used to ensure women benefit from the NAP?

**(c) Intersectionality**

*The discrimination older women experience is often multidimensional, with age discrimination, compounding other forms of discrimination based on sex, gender, ethnic origin, disability, levels of poverty, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, or who are internally displaced or stateless often experience a disproportionate degree of discrimination. (CEDAW General Recommendation 27, para 13)*

**Discussion question:**

Think of how different groups of women experience multiple forms of discrimination. Identify the ways in which these women are denied economic rights and how this denial is compounded or experienced differently due to intersectional discrimination.

## **2. ASEAN: REALISING HUMAN RIGHTS STANDARDS FOR THE REGION**

This section on ASEAN is relevant not only because of the geographical location of the project in the region, but also because of the developments that have been taking place in relation to human rights, business and human rights and also regional integration. These developments have an impact at the country level and on women's rights. It is therefore critical as activists to firstly be aware of these developments, be able to understand and assess its function and potential, and finally to engage and challenge them when necessary.

This section provides the backdrop for understanding

- (i) Human rights within an ASEAN framework
- (ii) The Roadmap for an ASEAN Community
- (iii) Women's rights and ASEAN
- (iv) Business and Human Rights

## 2.1 Introducing ASEAN

The Association of Southeast Asian Nations (ASEAN) was established in 1967 as an organisation to accelerate the economic growth, social progress and cultural development in the region, promote regional peace and stability, as well as promote active collaboration and mutual assistance on matters of common interest (ASEAN Declaration). In 2008, the ASEAN Charter<sup>27</sup> affirmed the legal and institutional framework of the Association.

To date the Association is made up of 10 member nations - Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. Its 10 member countries make up a combined population of 680 million. With a “predicted combined growth rate of around 5% in 2015, it is an increasingly powerful economic force. As an economic bloc it is growing faster than China or India and if growth trends continue it could become the fourth-largest economy in the world by 2050”.<sup>28</sup> However, the development level of each of the countries vary greatly which raises questions on how effectively the region can move forward as the single market it aspires to be.

### ASEAN human rights architecture<sup>29</sup>

ASEAN did not start out with human rights as part of its objectives. Over the years, it would appear to have tried to align itself with the global discourse on human rights. The first time ASEAN included a section on human rights in its Joint Communique was in 1993, one month after the Vienna World Conference.<sup>30</sup> Later in 1998 during the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR), ASEAN announces the establishment of a **Working Group for an ASEAN Human Rights Mechanism** and **recognizes the importance of international conventions on human rights**.<sup>31</sup> This is an important note on the persuasive effect of international discourse and global events at the national and regional levels.

In 2008, the ASEAN Charter includes a provision on the establishment of a human rights body (article 14) and this marks a turning point for ASEAN – showing it has the **‘political will’ to “develop a human rights regime in the region”**.<sup>32</sup> Since then, the human rights architecture within ASEAN has been growing and to date it has adopted the following declarations and established several commissions.

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<sup>27</sup> Available at <http://www.asean.org/archive/publications/ASEAN-Charter.pdf>

<sup>28</sup> Irene Pietropaoli, Are human rights being side-lined to make way for ASEAN economic integration?, Business & Human Rights Resource Centre. Available at <http://business-humanrights.org/en/are-human-rights-being-side-lined-to-make-way-for-asean-economic-integration>

<sup>29</sup> Reference to an ASEAN human rights ‘architecture’ is from Sriprapha Petcharamesree, The ASEAN Human Rights Architecture: Its Development and Challenges, The Equal Rights Review, Vol Eleven (2013)

<sup>30</sup> Sriprapha Petcharamesree, The ASEAN Human Rights Architecture: Its Development and Challenges, The Equal Rights Review, Vol Eleven (2013), p 48.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid, p 50.

#### Human Rights declarations adopted by ASEAN

- Declaration on the Advancement of Women (1998)
- Declaration on the Elimination of Violence Against Women (2004)
- Declaration against Trafficking in Persons, particularly women and children (2004)
- Declaration on the Protection and the Rights of Migrant Workers (2007)
- ASEAN Human Rights Declaration (2012)

#### Human Rights bodies established by ASEAN

- ASEAN Intergovernmental Commission on Human Rights (AICHR) (2009)
- ASEAN Intergovernmental Commission on the Protection of the Rights of Women and Children (2009)
- ASEAN Committee on the Implementation of the ASEAN Declaration of the Protection of the Rights of Migrant Workers (2007)

While these structures are in place, ASEAN continues to face many **challenges in its understanding and implementation of human rights** in the region<sup>33</sup>.

- (i) ASEAN believes that “human rights are shaped by each society’s specific history, traditions, cultures and religions. All these elements form the basis for social values.

*“[B]asic human rights, while universal in character, are governed by the distinct culture and history of, and socio-economic conditions in each country, and that their expression and application in the national context are within the competence and responsibility of each country” (Joint Communiqué of the 25<sup>th</sup> AMM, 1992<sup>34</sup>).*

- (ii) Priority has been given to economic, social and cultural rights over political and civil rights. The concept of the indivisibility of rights is not something ASEAN is comfortable with.

- (iii) “Many ASEAN governments believe that individual rights must give way to the demands of national security and economic growth”.<sup>35</sup>

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<sup>33</sup> The following 4 points are taken from Sriprapha Petcharamesree, The ASEAN Human Rights Architecture: Its Development and Challenges, The Equal Rights Review, Vol Eleven (2013), p 55–57.

<sup>34</sup> Sriprapha Petcharamesree, The ASEAN Human Rights Architecture: Its Development and Challenges, The Equal Rights Review, Vol Eleven (2013), p 56.

<sup>35</sup> Ibid.

- (iv) ASEAN has always identified with the principles of “non-intervention and freedom “from external interference in any form or manifestation in order to preserve their national identities””.<sup>36</sup>

**Treaty of Amity and Cooperation – Article 2**

In their relations with one another, the High Contracting Parties shall be guided by the following fundamental principles:

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;
- b. The right of every State to lead its national existence free from external interference, subversion or coercion;
- c. Non-interference in the internal affairs of one another;
- d. Settlement of differences or disputes by peaceful means;
- e. Renunciation of the threat or use of force;
- f. Effective cooperation among themselves.

- (v) The commissions are not equipped “with monitoring and/ or investigative powers. It cannot reconcile the principle of non-interference in internal affairs with that of the protection of rights”.<sup>37</sup>

#### Roadmap for ASEAN Community

The roadmap for an ASEAN Community came into being in 2009 through the Ch-am Hua Hin Declaration. The roadmap consists of:

- (i) ASEAN Political-Security Community Blueprint,
- (ii) ASEAN Economic Community Blueprint,
- (iii) the ASEAN Socio-Cultural Community Blueprint and
- (iv) Initiative for ASEAN Integration / IAI Work Plan 2 (2009-2015).

The **ASEAN Political-Security Community (APSC) Blueprint** “subscribes to a comprehensive approach to security” and “acknowledges the interwoven relationships of political, economic, social-cultural and environmental dimensions of development.”<sup>38</sup> One of its aims is to promote “adherence to the principles of democracy, the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedoms as inscribed in the ASEAN Charter.”<sup>39</sup>

The APSC has identified three key characteristics:<sup>40</sup>

- (i) a rules-based community of shared values and norms;
- (ii) a cohesive, peaceful, stable and resilient region with shared responsibility for comprehensive security; and

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> ASEAN, Roadmap for ASEAN Community 2009–2015, p 5-20. Available at <http://www.asean.org/images/2012/publications/RoadmapASEANCommunity.pdf>

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

(iii) a dynamic and outward-looking region in an increasingly integrated and interdependent world.

**ASEAN Economic Community Blueprint (AEC)** aims by 2015 to transform ASEAN into a region with free movement of goods, services, investments, skilled labour and capital. The AEC identifies 4 major thrusts:<sup>41</sup>

- (i) A single market and production base – barriers to the free flow of goods, investment, capital, services and skilled labour will be removed. Mutual recognition arrangements for architectural services, accountancy services, surveying, medical practitioners and dental to be established. Quality resource management systems will be developed and regional efforts taken to curb illegal resource extraction. It does not recognise free flow of unskilled labour.
- (ii) A highly competitive economic region – introducing competition policy, consumer protections, regional cooperation on intellectual property, infrastructure development and maritime transport.
- (iii) A region of equitable economic development.
- (iv) A region fully integrated into the global economy.

It also addresses the development divide and accelerated integration of Burma, Cambodia, Laos and Vietnam.

The **ASEAN Socio-Cultural Community (ASCC) blueprint** is seen as representing the 'human dimension of ASEAN cooperation'.<sup>42</sup> Its main aim is to "contribute to realising an ASEAN Community that is people-centred and socially responsible with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood, and welfare of the peoples are enhanced."<sup>43</sup> Characteristics of the ASCC are:

- (a) human development
- (b) social welfare and protection
- (c) social justice and rights
- (d) ensuring environmental sustainability
- (e) building the ASEAN identity, and
- (f) narrowing the development gap.<sup>44</sup>

The **Initiative for ASEAN Integration (IAI) Strategic Framework** aims to "narrow the development divide and enhance ASEAN's competitiveness as a region to provide a framework for regional cooperation".<sup>45</sup> The Hanoi Declaration on Narrowing the Development Gap (NDG) for Closer ASEAN Integration calls for accelerating the economic integration of Cambodia, Laos, Myanmar and Vietnam (CLMV) to enable "all member states to move forward in a unified manner and that the benefits of ASEAN

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<sup>41</sup> Ibid, p 21-66.

<sup>42</sup> Forum-Asia, Corporate Accountability in ASEAN: A Human Rights-based Approach, 2013, p 65. Available at <http://www.asean.org/images/2012/publications/RoadmapASEANCommunity.pdf>

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid

integration are shared".<sup>46</sup> It is essentially about the ASEAN-6 supporting and assisting the CLMV countries through their contribution to the IAI workplan or bilateral agreements.<sup>47</sup>

### **Trade agreements**

Some of the identified "milestones" of the AEC have been the signing of trade agreements to facilitate trade in the region and among other countries. The following are some of these agreements:<sup>48</sup>

- (i) The ASEAN Trade in Goods Agreement and ASEAN Comprehensive Investment Agreement in 2009,
- (ii) The elimination of tariffs in the Inclusion List for ASEAN-6 of Brunei Darussalam, Indonesia, Malaysia, the Philippines, Thailand and Singapore as of 1 January 2010, and the achievement of tariffs at 0-5% under AFTA for Cambodia, Laos, Burma/Myanmar and Vietnam by 2015, and
- (iii) Realization of the free trade areas with Australia and New Zealand, China, India, Japan, Republic of Korea as of 1 January 2010.

The Trans-Pacific Partnership (TPP) which is currently being negotiated between twelve nations in the Pacific Rim and corporations' covers trade issues like market access to goods and services. However this only represents a small portion of the agreement.<sup>49</sup> Many of the provisions impose constraints on a range of domestic non-trade policies that impact the environment, telecommunications, labour, etc.<sup>50</sup> and require greater scrutiny. Many of these have specific implications on women's rights to work, health and land and resources.<sup>51</sup> It is important to understand these implications and where rights are effectively denied or limited.

#### **Podcast:**

APWLD's Kate Lappin speaking on Development Justice – Realistic aspiration or pipe dream?<sup>52</sup>

## **2.2 Women's Rights in ASEAN**

There is concern that the current trajectory and model of regionalism has been detrimental to women's human rights.<sup>53</sup> This will have an impact on women's economic, social and cultural rights and also on the work of women's organisations. "The adoption of a single common market and production base with a concomitant single economic

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<sup>46</sup> Ibid

<sup>47</sup> Ibid.

<sup>48</sup> Forum-Asia, Corporate Accountability in ASEAN: A Human Rights-based Approach, 2013, p 20. Available at <http://www.asean.org/images/2012/publications/RoadmapASEANCommunity.pdf>

<sup>49</sup> APWLD, Women against the Trans-Pacific Partnership.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> <http://apwld.org/development-justice-realistic-aspiration-or-pipe-dream/>

<sup>53</sup> APWLD, IWRAW Asia Pacific, ARROW, Southeast Asian Women's Caucus, Vision 2025: ASEAN Women's Blueprint for Alternative Regionalism, 2015

model, may promote economic growth but it does so in ways that prioritise foreign capital and corporate interests at the expense of the most marginalised women.”<sup>54</sup>

Similar challenges exist within the Roadmap as with the human rights architecture of ASEAN. The lack of synergy between the Community pillars especially on the point of the protection of human rights is notable – it is glaringly absent in the AEC.<sup>55</sup> A lot of emphasis has been placed on the economic pillar (AEC) and too little on the other two pillars (APSC and ASCC) which highlight the need to also address the social, environmental and human rights aspects within the region.<sup>56</sup>

For women, the import-dependent and export-oriented economies has led to the growth of export processing zones and the “gendered demand for women’s labour – that is undervalued and underpaid.”<sup>57</sup> Lands are being claimed by the state and corporations for development – plantations or extraction of minerals – creating additional burden and violations of rights of communities living there. Among other effects, women are forced into low paying jobs by migrating into urban centres or processing zones. The migration of women, fuelled by the growing poverty of families and the need to provide for their children or the elderly conveniently feed into the global value chains mentioned earlier.

### 2.3 Business and human rights in ASEAN

In 2011, the Human Rights Council endorsed the Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie’s Guiding Principles (UNGP):

- (i) The **state duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
- (ii) The **corporate responsibility to respect** human rights, which means acting with due diligence to avoid infringing on the rights of others and addressing adverse impacts with which they are involved; and
- (iii) The need for greater access by victims to **effective remedy**, both judicial and non-judicial.

#### **References:**

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- IWRAW Asia Pacific, The Business of Women’s Human Rights: A primer on the United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) & The UN Guiding Principles on Business & Human Rights, 2014.

#### **Video:**

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid, p 3

<sup>56</sup> Forum-Asia, Corporate Accountability in ASEAN: A Human Rights-based Approach, 2013, p 21. Available at <http://www.asean.org/images/2012/publications/RoadmapASEANCommunity.pdf>

<sup>57</sup> APWLD, IWRAW Asia Pacific, ARROW, Southeast Asian Women’s Caucus, Vision 2025: ASEAN Women’s Blueprint for Alternative Regionalism, 2015

IWRAW Asia Pacific, Business and Women's Human Rights: UNGP, CEDAW and WEP.<sup>58</sup>

Business & Human Rights Resource Centre reviewed 280 allegations of human rights abuses by companies operating in the region that highlight “widespread intimidation of human rights defenders, forced labour and poor working conditions, including in the garment and fishing sectors and land grabs and displacement to clear the way for extractive and hydropower operations, agribusiness and the development of special economic zones.”<sup>59</sup> Driven by the pace of economic integration in the region, governments are “rolling back protections and repressing dissent to encourage inward investment and rapid infrastructure development.”<sup>60</sup>

In 2011, the **ASEAN CSR Network** was established by Singapore, Indonesia, Malaysia, Thailand and the Philippines to realise the ASCC Blueprint, integrate international social responsibility standards and ensure multi-stakeholder engagement.<sup>61</sup> The network's policy statement “supports the UN Global Compact principles and ISO26000” and calls for engagement with stakeholders “to achieve the greater goal of sustainable development.”<sup>62</sup> The policy statement, among others, calls for businesses to:

- Support and respect the protection of internationally proclaimed human rights;
- Make sure that they are not complicit in human rights abuses.<sup>63</sup>

Ongoing issues with regards CSR programmes and policies in the region include the lack of any agreed definition of CSR, the lack of an “authoritative assessment of the performance of CSR in the ASEAN region”.<sup>64</sup> A strong CSR policy could function as the benchmark for companies to aspire towards, however a weak policy could mean it is nothing more than a public relations campaign.<sup>65</sup> The Corporate Social Responsibility programmes and policies within ASEAN are yet to truly embrace the UNGP and continue to engage with CSR as a public relations strategy to improve relations and the corporate image.<sup>66</sup> Within that, women's rights are not fully considered in relation to the impact of the operations of corporations.<sup>67</sup>

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<sup>58</sup> Available at <https://www.youtube.com/watch?v=W8eDfo3tR68>

<sup>59</sup> Irene Pietropaoli, Are human rights being side-lined to make way for ASEAN economic integration?, Business & Human Rights Resource Centre. Available at <http://business-humanrights.org/en/are-human-rights-being-side-lined-to-make-way-for-asean-economic-integration>

<sup>60</sup> Ibid. p 2

<sup>61</sup> Forum-Asia, Corporate Accountability in ASEAN: A Human Rights-based Approach, 2013, p 65. Available at <http://www.asean.org/images/2012/publications/RoadmapASEANCommunity.pdf>

<sup>62</sup> Available at <http://www.asean-csr-network.org/c/news-a-resources/csr-policy-statement>

<sup>63</sup> Ibid.

<sup>64</sup> Forum-Asia, Corporate Accountability in ASEAN: A Human Rights-based Approach, 2013, p 61. Available at <http://www.asean.org/images/2012/publications/RoadmapASEANCommunity.pdf>

<sup>65</sup> Ibid.

<sup>66</sup> Women's Caucus on ASEAN, Corporate social accountability for a people-oriented and socially responsible ASEAN community, 2014.

<sup>67</sup> Ibid.

### 3. WOMEN'S ECONOMIC RIGHTS: ANALYSING ISSUES

The CEDAW principles of **substantive equality, non-discrimination and state obligation** are key to any analysis of women's enjoyment and exercise of economic rights. Other key concepts, including the **interrelatedness of rights** and **intersectional discrimination**, are especially important to ensure a comprehensive picture of the women's situation is captured – in terms of factors that cause and compound the discrimination and the entire range of rights being violated. See Part 1 of the materials on **CEDAW: Setting the standard for women's rights and equality** for details of these concepts.

The materials in this section focus on three thematic areas which were identified under the WEL project:

- **Women migrant workers**
- **MNCs and gender in the value chain**
- **Natural resource governance**

Each of these thematic issue areas contain:

- **Substantive information** on key aspects of the subject matter: a general understanding of the issue, key dimensions of the issue in ASEAN, a gender analysis and relevant international human rights standards.
- **Questions** for consideration: these are strategic questions that challenge activists to analyse the issue and deepen their understanding of the issue from a national and regional context.
- **Case studies:** exercises that can be used for further discussions on specific aspects of the issue.

It is suggested that the section on women's migrant workers be reviewed first as an example of the scope of analysis on women's economic rights and relevant standards. While not exhaustive, it attempts to highlight how an issue can be analysed using a gender lens and the framework of international human rights standards and norms.

The following sections on the other two issues (i.e. gender value chain and natural resource management) might have less substantive information but identify strategic questions that need to be asked and challenging activists to research, discuss and analyse these areas along with linkages to their respective countries.

Case studies are provided for each of the thematic issues as suggestions of different ways of triggering group discussions in workshops or trainings.

These materials and suggested case studies are not intended to be an exhaustive approach to discussions or trainings on the three thematic areas. Rather, they highlight important aspects within these issues to spark discussion and further analysis.

### 3.1 Migrant women workers

Migration is not a new phenomenon but has been part of human history for centuries. For various reasons and motivations, people have moved to other countries to work and live - generally in search of a better life. International migration has been described as a “defining feature of the 21<sup>st</sup> century” that has **impacted not only the people who move but also the “societies and economies of countries of origin, destination and transit”**.<sup>68</sup> In a 2004 publication, the ILO estimated there were around 22.1 million active migrants in Asia out of about 86 million globally.<sup>69</sup>

There are clear links between migration and development and how migration contributes to economic growth in both the home and host countries. In Southeast Asia, migration of labour is a crucial economic driver and the “mutual economic dependency is substantial”.<sup>70</sup>

- Singapore has the highest ratio of foreign labour to local population in Southeast Asia;
- 25 per cent of Malaysia’s workforce consists of migrant workers who fill several sectors such as manufacturing and agriculture;
- In the Philippines, inward remittances from expatriates account for about 10 per cent of the annual country’s GDP.<sup>71</sup>

However, many migrants face a range of human rights violations, including fundamental economic and social rights, throughout the migration process as well as at work in destination countries. It is a growing human rights challenge that is rooted in discriminatory laws and practices that directly or indirectly adopt and also fuel attitudes of prejudice and xenophobia against migrants.

#### ***Key dimensions of migration in ASEAN***

The ASEAN Economic Community (AEC) that was fast tracked to come into effect in 2015 pushes for a single market and production base. However, it has focused only on the free flow of skilled labour and has remained silent on the mobility of unskilled labour. Through the existing Mutual Recognition Agreements (MRAs) that have been signed, eight sectors stand to benefit: engineers, nurses, surveyors, architects, accountants, medical practitioners, dental practitioners, and tourism professionals. However the flow of labour within these sectors has been reported to account for less

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<sup>68</sup>Global Migration Group, International Migration and Development, UN General Assembly High Level Dialogue on International Migration and Development, 2013, p1. Available at <http://www.globalmigrationgroup.org/sites/default/files/uploads/news/GMG-position-paper-on-2013-High-Level-Dialogue.pdf>

<sup>69</sup> IOM, Gender and Labour Migration in Asia, 2009. Available at

[http://publications.iom.int/bookstore/free/gender\\_and\\_labour\\_migration\\_asia.pdf](http://publications.iom.int/bookstore/free/gender_and_labour_migration_asia.pdf)

<sup>70</sup> Kaewkamol Pitakdumrongkit, ASEAN Economic Community: Slow progress on labour issues, RSIS Commentary, No.058, 18 March 2015. Available at

<http://www.rsis.edu.sg/wp-content/uploads/2015/03/CO15058.pdf>

<sup>71</sup> Ibid.

than 1.5 per cent of the ASEAN labour force.<sup>72</sup> What is missing is the recognition and acknowledgment that most of ASEAN's migrants are unskilled workers - more than 87 per cent.<sup>73</sup>

Within ASEAN, except for Singapore and Brunei, all of the other ASEAN members are countries of origin for migrants.<sup>74</sup> Countries like Cambodia, Malaysia and Thailand are both destination and countries of origin. Data shows that there is a large migration flow between developing countries and that 40 per cent of the total global migrant population have moved to a neighbouring country within the same region.<sup>75</sup>

One of the key aspects of labour migration in ASEAN that has been noted is the **high levels of undocumented migration** among certain countries.<sup>76</sup> Malaysia and Thailand have been estimated to have around 2.1 million undocumented migrant workers.<sup>77</sup> The **Convention on the Protection of the Rights of All Migrant Workers and their Families** defines irregular or non-documented migrants as those who are not authorised to enter, stay and engage in a remunerated activity in the State of employment pursuant to the law of that State.<sup>78</sup> The ILO and OHCHR have identified irregular entries, including stay and work not as criminal offences but administrative misdemeanours. It is important to distinguish between the two terms so as not to reinforce negative stereotypes of undocumented migrants as criminals.

What is also needed is clarity on distinguishing between a migrant, refugee and trafficked person.

- The **Convention relating to the Status of Refugees** defines refugee as a person who "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions" is unable or unwilling to avail himself of the protection of that country."<sup>79</sup>
- Trafficking in persons refers to the "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other

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<sup>72</sup> Guntur Sugiyarto and Dovelyn Rannveig Agunias, A 'Freer' Flow of Skilled Labour within ASEAN: Aspirations, Opportunities and Challenges in 2015 and Beyond, Issue No.11, December 2014. Available at

[http://publications.iom.int/bookstore/free/MPI\\_Issue11\\_2Dec2014.pdf](http://publications.iom.int/bookstore/free/MPI_Issue11_2Dec2014.pdf)

<sup>73</sup> Ibid.

<sup>74</sup> UN Women, Managing Labour Migration in ASEAN, Concerns for women migrant workers, 2013. Available at

[http://unwomen-eseasia.org/docs/publication/sitecore/managing\\_labour\\_migration\\_asean.pdf](http://unwomen-eseasia.org/docs/publication/sitecore/managing_labour_migration_asean.pdf)

<sup>75</sup> OHCHR, Migration and Human Rights. Available at

<http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>

<sup>76</sup> UN Women, Managing Labour Migration in ASEAN, Concerns for women migrant workers, 2013. Available at

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<sup>77</sup> UN Women, Managing Labour Migration in ASEAN, Concerns for women migrant workers, 2013. Available at

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<sup>78</sup> International Convention on the Protection of Rights of All Migrant Workers and Members of their Families, Article 5.

<sup>79</sup> Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol. In <https://www.iom.int/key-migration-terms>

forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".<sup>80</sup>

The distinction is relevant as the proper identification of victims is so important to ensure appropriate action, assistance, prosecution and remedial steps are taken by the authorities that reflect the situation of the victim.

### ***A gender analysis of migration***

The CEDAW Committee has highlighted that migration is not a gender-neutral phenomenon despite large numbers of both men and women migrants. The Committee identifies several areas within which **women migrants might face different and specific challenges / discrimination**: legal migration channels, sectors into which they migrate, forms of abuse they suffer and the consequences of those.<sup>81</sup> Gender is in fact very relevant in understanding the different aspects of migration, patterns of migration and especially how migration effects men and women differently both in terms of its causes and consequences.

Although it is difficult to get accurate data on migration flows, informal estimates are revealing a pattern of **increasing irregular women migrants** within ASEAN. For example, between 2005 to 2009, the percentage of newly hired documented women migrants from the Philippines has decreased from 71 per cent to 52 per cent which experts are saying are indicative of a rise in women's undocumented migration.<sup>82</sup> These could be driven by the high cost of legal migration which is especially difficult for women migrants who have less access to resources, be it family funds or personal assets that they can use to pay for the documentation they need. "Migrant women and girls are particularly at risk of trafficking. In Malaysia, where there were over 250,000 registered migrant domestic workers in 2011, mostly from Indonesia, an additional 100,000 documented and undocumented migrant domestic workers may be trafficking victims according to the report."<sup>83</sup>

Due to the social context of women's limited access to education or reliable information, many migrant women workers are vulnerable to **different forms of discrimination and abuse in the entire course of their migration** – departure at country of origin, in transit and in country of destination.

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<sup>80</sup> Art. 3(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000. In <https://www.iom.int/key-migration-terms>

<sup>81</sup> CEDAW General Recommendation 26, pg 4

<sup>82</sup> UN Women, Managing Labour Migration in ASEAN, Concerns for women migrant workers, 2013. Available at [http://unwomen-eseasia.org/docs/publication/sitecore/managing\\_labour\\_migration\\_asean.pdf](http://unwomen-eseasia.org/docs/publication/sitecore/managing_labour_migration_asean.pdf)

<sup>83</sup> UN Women, Managing Labour Migration in ASEAN, Concerns for women migrant workers, 2013. Available at [http://unwomen-eseasia.org/docs/publication/sitecore/managing\\_labour\\_migration\\_asean.pdf](http://unwomen-eseasia.org/docs/publication/sitecore/managing_labour_migration_asean.pdf)

Even before women migrants leave their country, they might face discrimination in the form of:<sup>84</sup>

- Bans or restrictions on migration/ travel based on their sex, sex and age, marital status, pregnancy or maternity status, occupation specific restrictions or requirements that women must have written permission from male relatives to obtain a passport to travel / migrate;
- Detention by recruiting agencies for purposes of training before departure but which at times leave them vulnerable to financial, physical, sexual or psychological abuse;
- Exploitation by employment agents who charge excessive amounts in fees which leave women in even greater financial dilemmas having to pay off agents and borrowings.

As half of the world's migrant population, women are driven to migrate for various reasons. It cannot be denied that migration has offered many women economic empowerment and other opportunities like the development of certain skills. However, for women migrants, the sectors and type of work they engage in are also driven by the "sex-specific divisions of labour" and a "male-centered culture of entertainment" which drive demand for women's work in the formal and informal domestic work, manufacturing and entertainment sectors.<sup>85</sup> It is important to recognise further how the rights accorded to women migrants also flow from the values and recognition placed on these gendered divisions of labour and stereotyping.

Many women migrants are drawn into informal work in small and medium enterprises and employed in homes or employer owned businesses and services.<sup>86</sup> In destination countries, women migrants face more challenges:

- Both de jure and de facto discrimination. Many of the informal workers in ASEAN are migrant women and some of the national laws that govern these sectors exclude migrant workers from labour laws and social protections. The sectors that women migrant workers most work in, e.g. domestic work within households, are especially restrictive and the workers most vulnerable;
- Further restrictions or bans on women's employment in particular sectors;
- Limitations on women's mobility and access to relevant information on rights and entitlements.<sup>87</sup>

States must promote "safe migration procedures and the **obligation to respect, protect and fulfil the human rights of women throughout the migration cycle**".<sup>88</sup> The integration of a gender analysis is crucial if policies and programmes are to counter the specific discrimination and exploitation that women migrants face.

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<sup>84</sup> CEDAW General Recommendation 26, p 5

<sup>85</sup> CEDAW General Recommendation 26, p 4

<sup>86</sup>UN Women, Managing Labour Migration in ASEAN, Concerns for women migrant workers, 2013. Available at [http://unwomen-eseasia.org/docs/publication/sitecore/managing\\_labour\\_migration\\_asean.pdf](http://unwomen-eseasia.org/docs/publication/sitecore/managing_labour_migration_asean.pdf)

<sup>87</sup> CEDAW General Recommendation 26

<sup>88</sup> CEDAW General Recommendation 26, pg 3, 4

**References:**

UN Women, Managing Labour Migration in ASEAN, Concerns for women migrant workers, 2013, pages 22 – 25 for the international human rights framework for ASEAN Women migrant workers throughout the migration cycle.<sup>89</sup>

***Applying international human rights standards***

**The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)** is one of the core UN human rights treaties and provides the “standards for domestic policies and law that recognize the specific vulnerabilities of migrants”, “promotes humane working and living conditions for migrant workers, and sets out the rights of often neglected family members.”<sup>90</sup> The Convention, together with **International Labour Organization Convention 97 on Migration for Employment** and **Convention 143 on migrant workers** (Supplementary Provisions), establishes a comprehensive framework for national migration policies and international cooperation.<sup>91</sup>

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** and the CMW together concretise the standard and norms around the rights of migrant women.

*“All categories of women migrants fall within the scope of the obligations of States parties to the Convention and must be protected against all forms of discrimination by the Convention.”* (CEDAW General Recommendation 26, para 4)

The CEDAW Committee in fact, recognising the “specific vulnerability of many women migrant workers and their experiences of sex- and gender-based discrimination as a cause and consequence of the violations of their human rights” drafted **General Recommendation 26 on women migrant workers**.

The CEDAW Committee highlighted that that States are entitled to “control their borders and regulate migration”, but emphasised that they have an **obligation to the international treaties they have ratified and to the rights provided for in the Universal Declaration of Human Rights (UDHR) to ensure the rights of migrant women workers are upheld**. “Human rights violations against migrants are often closely linked to discriminatory law and practice, and to deep-seated attitudes of prejudice and xenophobia against them.”<sup>92</sup> The fundamental principle of non-discrimination “runs across all international human rights instruments inspired by the

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<sup>89</sup> [http://unwomen-eseasia.org/docs/publication/sitecore/managing\\_labour\\_migration\\_asean.pdf](http://unwomen-eseasia.org/docs/publication/sitecore/managing_labour_migration_asean.pdf)

<sup>90</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/HumanRightsFramework.aspx>

<sup>91</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/HumanRightsFramework.aspx>

<sup>92</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>

Universal Declaration..."<sup>93</sup> and all ASEAN member states have ratified at least one of the international human rights treaties, namely the CEDAW Convention.

Examples of the CEDAW Committee's response to countries during the CEDAW review on the issue of migration:

The Committee's review of the **Philippines**, a sending country:

*The Committee urges the State party to continue conducting bilateral agreements and memorandums of understanding with countries and regions to which Filipino women migrate in search of work. In addition, it requests the State party to develop policies and measures to protect women migrant workers who go abroad through informal channels from all forms of violations of their rights. The Committee also encourages the State party to take a coherent and comprehensive approach to addressing the root causes of women's migration, including through the creation of conditions necessary for sustainable development and of safe and protected jobs for women as a viable economic alternative to migration or unemployment.<sup>94</sup>*

The Committee's review of **Singapore**, a receiving country:

*While recognizing the comprehensive set of legislative, administrative and educational measures adopted by the State party to protect foreign domestic workers, and the adoption of the new employment agency regulatory framework under the Employment Agencies Act in April 2011 to raise the standard of recruitment processes and minimise abuses and malpractices, the Committee remains concerned at the situation of foreign domestic workers, in particular, with regard to the mandatory regular testing for pregnancy and sexually transmitted diseases, the prohibition to marry Singaporeans and the lack of mandatory day off.<sup>95</sup>*

The **Special Rapporteur on the Human Rights of Migrants** stressed that the obligation to respect, protect and fulfil human rights extends to migrants and is irrespective of their immigration status.<sup>96</sup> Identifying undocumented women migrant workers as "particularly vulnerable to exploitation and abuse", the CEDAW Committee has called for specific attention to be placed on their situation.

*Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights. Undocumented women migrant workers must have access to legal remedies and*

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<sup>93</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>

<sup>94</sup> CEDAW Committee, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Philippines, CEDAW/C/PHI/CO/6, 2006, para 22.

<sup>95</sup> CEDAW Committee, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Singapore, CEDAW/C/SGP/CO/4/Rev.1, 2012, para 31.

<sup>96</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>

*justice in cases of risk to life and of cruel and degrading treatment, or if they are coerced into forced labour, face deprivation of fulfilment of basic needs, including in times of health emergencies or pregnancy and maternity, or if they are abused physically or sexually by employers or others. If they are arrested or detained, the State parties must ensure that undocumented women migrant workers receive humane treatment and have access to due process of the law, including through free legal aid. In that regard, States parties should repeal or amend laws and practices that prevent undocumented women migrant workers from using the courts and other systems of redress.”<sup>97</sup>*

**Video:**

IWRAP Asia Pacific's video on Business and Women's Human Rights: Women Migrant Workers.<sup>98</sup>

### ***ASEAN and migration***

The **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers** was signed in 2007 and draws its core principles from the UDHR, CEDAW and CRC.<sup>99</sup> One of the main obligations of States parties is to “protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers” (article 5). However, one of the concerns with the Declaration has been its deference to the national laws, regulations and policies of the ASEAN member states (article 1) as opposed to ensuring the international standards around the protection of migrant workers are adopted and applicable within all member states.

Along with the Declaration was the creation of the **ASEAN Committee to Implement the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)**. The objectives of this Committee are:

- (i) Ensuring the effective implementation of the commitments made under the Declaration and
- (ii) Facilitating the development of an **ASEAN instrument on the protection and promotion of the rights of migrant workers**.<sup>100</sup>

The Taskforce on ASEAN Migrant Workers (TFAMW) has identified four central principles that the ASEAN instrument must be guided by:

**(i) To include and cover all migrant workers in ASEAN**

Refer to the UN Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW), Article 2 that defines a migrant

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<sup>97</sup> CEDAW General Recommendation 26, para 26 (I)

<sup>98</sup> <https://www.youtube.com/watch?v=U8ni5GkMNGM>

<sup>99</sup> Full text of the Declaration is available at <http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-3>

<sup>100</sup> Ibid.

worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” It is important to ensure that **all categories of migrant workers** are covered by a regional instrument.

*\*Has your country ratified the CMW? What was the motivation to ratify the CMW? If your country hasn't ratified, what arguments can you give for them to ratify it?*

- (ii) To recognise that the protection of the rights of migrant workers is a **shared obligation of both sending and receiving countries**

*\*Is your country a sending or receiving country? What laws, policies and regulations are in place to protect the rights of migrant workers in your country?*

- (iii) To follow the **principles of non-discrimination** in treatment provided to migrant workers and their families

*\*Does your country have a non-discriminatory / equality provision in the Constitution or an equality law? Has the definition of discrimination as given in Article 1 of the CEDAW Convention been incorporated into the Constitution or laws of your country? Do the laws address both direct and indirect discrimination?*

- (iv) To ensure migration policies and practices are **gender-sensitive**.<sup>101</sup>

*\*Are the migration policies and practices in your country gender-sensitive or gender-neutral? How do they impact women migrant workers?*

The **Roadmap for an ASEAN Community's** updated action plan recognises the importance of protecting and promoting the rights of migrant workers and also specifically calls for the strengthening of ASEAN cooperation in the protection of women migrant workers.<sup>102</sup>

## Case studies

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<sup>101</sup>Wah, Joseph, ACMW is still drafting the asean framework instrument on the protection and promotion of the rights of migrant workers, ACSC/APF, 2015. Available at <http://aseanpeople.org/acmw-is-still-drafting-the-framework-on-the-protection-and-promotion-of-the-rights-of-migrant-workers/>

<sup>102</sup>Friedrich-Ebert-Stiftung, Migrant Workers' Rights to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand, 2011. Available at [http://www.fes-asia.org/media/publication/2012\\_MigrantWorkersRightsToSocialProtectionInASEAN\\_Hall.pdf](http://www.fes-asia.org/media/publication/2012_MigrantWorkersRightsToSocialProtectionInASEAN_Hall.pdf)

**Notes for facilitators:**

The case studies cover the following areas:

- (i) Understanding the range of human rights violations that women migrant workers could face in the course of the migration process and what are the contributory factors to these violations;
- (ii) Distinguishing a protectionist vs substantive equality approach to promoting and protecting the rights of women migrant workers;
- (iii) Reflection on the different status accorded migrant women workers and its implications;
- (iv) Identifying the existing international human rights instruments and the standards and norms around the rights of women migrant workers;
- (v) Identifying the core principles, standards and norms that are needed in an ASEAN instrument covering the rights of women migrant workers. This would also entail discussing critically the existing instruments and commitments made by ASEAN on this protection and promotion of the rights of migrant women.

(a) Interviews with migrant women factory workers

*"I am an elder daughter and I need to go to work in a country where wages are higher. My salary is going to support the daily expenses of my household and school fees for my sisters and brother"*

*"My supervisor always tells me not to make mistakes and she says I am very slow. I feel like a lime and she is squeezing me all the time. I cannot finish 650 pieces per day in these first months as I am new to this factory and work. I didn't get any overtime payment and I earned only RM 150 [£30] per month after all the deductions. I want to change employers but I am afraid to ask my agency."*

*"I signed on to this recruitment agency because they told me in Burma I will get paid more than RM 900 [£180] per month, but now I learned they are cheating us. We do not receive according to our contract and what they promised us. Last month I earned only RM 280 [£56] after deductions."*

*"The agency deducted RM 500 [£100] per month from me for recruitment fees and other expenses. I didn't earn any money so I decided to leave that agency and factory. When I asked them to return my passport and work permit, they said that I would have to pay RM 1500 [£300] to the recruitment agency."*

*"We pay RM 8 (£1.60) per month for electricity for one worker, RM 2 (£0.40 pounds) per month for water. Last month the basin in our hostel broke down and we had to pay for it to be repaired; it cost us RM 27 (£5.40) each. In the hostel 10 people live together in a two bedroom apartment and have only one toilet."*

*"In the last few months, we saw some Japanese people come to our factory. One day before that the manager told us to clean the factory and our rooms. We learned later that the visitors were from the well-known brand and they were*

*checking our working conditions. But the problem is that those who represented us in the meeting room were workers selected by the factory without our knowledge."*

Source: Interviews with migrant women between the ages of 18 and 32 years old, working in the garment and electronics factories. Available at <http://www.waronwant.org/sites/default/files/Restricted%20Rights.pdf>

**Discussion questions:**

- (i) Map out the range of human rights violations that women migrant workers endure throughout the migration process from her decision to migrate to her life in the destination country and to the time she returns.
- (ii) Identify the international and regional treaty/ declaration and specific articles that are relevant to protect those rights.
- (iii) Discuss the status of these women migrant workers? Are they documented, irregular or trafficked workers? And how does that impact their access to redress?

(b) Should Indonesia stop sending migrant workers abroad?

*"This work wasn't what I expected it to be. It was totally different. I would wake up to start cooking, then cleaning, washing clothes, and then cooking again. No rest, there was just no rest... Because she kept yelling, I cried and asked to go back to agency, but madam said "I already bought you". – Farah S., a 23 year-old Indonesian domestic worker, Dubai, December 7, 2013.<sup>1</sup>*

*"Indonesia will stop sending new domestic workers to 21 Middle Eastern countries, reports said Tuesday after the recent execution of two Indonesian women in Saudi Arabia angered Jakarta. The ban affects countries including Saudi Arabia – a major destination for Indonesian maids – United Arab Emirates, Qatar, Bahrain and Egypt, and will come into effect in three months' time, Manpower Minister Hanif Dhakiri was cited as saying in local media. Jakarta, which has long complained about the treatment of Indonesian maids in the Middle East, had already placed a moratorium on sending new helpers to Saudi Arabia in 2011 following the beheading of a worker. The new move is meant to be permanent. Maids already working in the affected countries will be allowed to stay and continue in their positions."<sup>103</sup>*

*"President Joko Widodo said Indonesia will stop sending its women to work as maids overseas to preserve the country's dignity – and is working on a target to enforce this. "I have given Manpower Minister a target to come up with a clear roadmap on when we can stop sending female domestic workers. We should have pride and dignity," he said ... Mr Joko's comments are not the first by an Indonesian leader. In 2012, his predecessor Susilo Bambang Yudhoyono promised to provide one million jobs by 2013 to encourage*

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<sup>103</sup> <http://www.straitstimes.com/asia/se-asia/indonesia-to-stop-sending-domestic-workers-to-middle-east-permanently-reports>

*Indonesian women to return to the country, as part of a wider aim to increase formal sector jobs and ease poverty. The programme did not take off.”<sup>104</sup>*

**Discussion questions:**

Discuss the government of Indonesia's response to ban women to work overseas as domestic workers:

- (i) Why has it responded in this way? What are the issues?
- (ii) What is the impact of its response on women who work as domestic workers?
- (iii) What are other possible responses that the government could take in this case?

Participants can be divided into groups of three to prepare key points on the part of:

- (i) the government – defending its response
- (ii) a women's rights NGO – raising its concerns
- (iii) the CEDAW Committee – identifying key questions and responses to the government.

(c) Creating a rights based ASEAN instrument to protect and promote migrant workers' rights.

The ASEAN Committee to Implement the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) convened a drafting team in 2009 to work on the ASEAN instrument on the protection and promotion of the rights of migrant workers (AIMW). The initial composition of the drafting team was Indonesia, Malaysia, Philippines and Singapore. This was later expanded to include all ten ASEAN members. As of 2013, negotiations to build consensus on a “Zero Draft” document were still ongoing.<sup>105</sup> An ASEAN instrument on the protection and promotion of migrant workers continues to be debated and negotiated by ASEAN member states.

**Discussion questions:**

- (i) What are some of the key principles or core elements that need to go into this instrument to ensure it is an effective tool in the protection and promotion of migrant women's rights?
- (ii) Are there any conflicting principles within ASEAN that limit or present obstacles to the full implementation of the core elements identified above?

**References:**

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<sup>104</sup> <http://www.straitstimes.com/asia/se-asia/indonesia-will-stop-sending-its-women-to-work-as-maids-overseas-says-jokowi>

<sup>105</sup> <http://humanrightsinasean.info/asean-committee-migrant-workers/about.html>

- <http://thediplomat.com/2015/01/the-need-for-an-asean-treaty-on-migrant-workers/>
- <http://aseanpeople.org/acmw-is-still-drafting-the-framework-on-the-protection-and-promotion-of-the-rights-of-migrant-workers/>

### 3.2 Multinational corporations, gender and the value chain

In a globalised world, the production of goods takes on a global dimension – the sourcing of raw materials, the production or assembling of goods, the packaging, the distribution and the ultimate consumer could all lie in different countries but together form a chain of production. These are the “**integrated global value chains**”<sup>106</sup> producing anything from garments, shoes, electronics, food products, etc. “The management and control of production and distribution over dispersed locations is substantively controlled by Multinational Enterprises (MNEs).”<sup>107</sup>

Global value chains can be producer-driven or buyer-driven:

- Producer-driven value chains are controlled by industrial Multinational Enterprises who own and run their own plants, e.g. Ford automobile plants in Mexico or INTEL plants in Costa Rica,
- Buyer-driven value chains are controlled by commercial capital who sub-contract the production process to national suppliers. E.g. Walmart, Nike, Starbucks.<sup>108</sup>

Key dimensions of a value chain production include:

- A high degree of supply flexibility across countries<sup>109</sup> “ability to encompass all aspects of production and distribution from the conception of a product till its delivery to the end user all over the globe.”<sup>110</sup>
- Mobility of capital and finance.<sup>111</sup>
- The just-in-time global delivery system.<sup>112</sup>
- Encourages flexible employment (part-time, temporary, and casual).<sup>113</sup>
- Employment is also informal – without employment contract or associated rights that flexible workers with contracts should receive<sup>114</sup>.

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<sup>106</sup> Barrientos, S et al, The gender dimensions of the globalization of production, Working paper No.17, ILO, May 2004, p 1.

<sup>107</sup> Nigam, Shipra, Gender and GVC in the ASEAN context with special reference to CLMVs, IWRAW Asia Pacific, 2015, p 11

<sup>108</sup> Ibid.

<sup>109</sup> Barrientos, S et al, The gender dimensions of the globalization of production, Working paper No.17, ILO, May 2004, p 1.

<sup>110</sup> Nigam, Shipra, Gender and GVC in the ASEAN context with special reference to CLMVs, IWRAW Asia Pacific, 2015, p 30

<sup>111</sup> Barrientos, S et al, The gender dimensions of the globalization of production, Working paper No.17, ILO, May 2004, p 1.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

- Accelerated in a climate of deregulation with the creation of export processing zones. Employees are made to work long hours, in unhealthy conditions and any attempts to organise and claim their rights are undermined.
- The power relationships and hierarchies within the chain leave the most vulnerable at the bottom (i.e. the farmers, indigenous people, SMEs, etc.). Without adequate regulation, they are vulnerable to exploitation.<sup>115</sup>

### ***Key dimensions of global value chain in ASEAN***

- ❖ *Consider how the AEC specifically or any of the ASEAN documents deal with MNCs and the global value chain? Is there a difference in approach?*
- ❖ *Consider what would be some of the key concerns around gender in the value chain and the role of MNCs in ASEAN.*
- ❖ *Consider how your country is part of a global value chain and what laws or policies are in place to respect, protect and fulfil the rights of women in the value chain.*

### ***A gender analysis of the global value chain***

The growing number of women working in the global value chain has meant that “industrialisation in the context of globalisation is as much **female-led as it is export-led**”.<sup>116</sup> It has been argued that the informal working arrangements that many global value chains adopt benefit women, offering much needed wages and contributing to a “sense of economic agency and self-worth and the capacity to renegotiate relations with parents and husbands”.<sup>117</sup>

However, the **concentration of women at the informal end of the value chain continuum**, while the men are found more at the formal end is an important distinction that surfaces the **gender inequality and discrimination that lies within the sector**.<sup>118</sup> The more formal work is usually at “prominent” or important points within the chain, but it gets more informal as the supply chain “becomes more fragmented” and the use of contract labour and homeworkers increases at these points.<sup>119</sup> Workers in the informal sector are generally paid less, have less secure jobs and are unprotected under labour laws. The notion that women prefer to work this way, informally, in small workshops or home-based, fails to recognise the lack of options many women have or how women have to balance work with their reproductive roles and other tasks.<sup>120</sup> The fact that women in the manufacturing sectors work longer hours and receive lower wages than

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<sup>115</sup> Nigam, Shipra, Gender and GVC in the ASEAN context with special reference to CLMVs, IWRAW Asia Pacific, 2015, p 30

<sup>116</sup> Barrientos, S et al, The gender dimensions of the globalization of production, Working paper No.17, ILO, May 2004, p 4.

<sup>117</sup> Ibid., p 6

<sup>118</sup> Barrientos, S et al, The gender dimensions of the globalization of production, Working paper No.17, ILO, May 2004, p 2.

<sup>119</sup> Ibid., p 1.

<sup>120</sup> Ibid., p 2.

men and that they are the first to lose their jobs in the face of automation or the introduction of new technology reveals the existence of **structural barriers that discriminate and impact women's choices and security of employment**.

One such barrier is the **gender roles and stereotype** that determines women's responsibilities in the home and in relation to childcare. It has been described as a critical factor that has an impact on the "gender gap in earnings and promotion prospects", on the "life cycle pattern of labour force participation", where women are "located in the labour market", and their respective "occupational trajectories".<sup>121</sup> The double burden that many women bear of both productive and reproductive roles also impacts employment options and choices. Barriers, created by social and cultural practices that limit women's access to resources like land, capital, technologies etc., all impact women's participation and access to much needed financial resources and information. This further impacts women's ability to participate in higher levels of the value chain.

**Reference:**

Mayoux, Linda; Mackie, Grania, A practical guide to mainstreaming gender analysis in value chain development, ILO, 2008, pp 31-32 for diagrams on women's participation in the honey value chain.<sup>122</sup>

An analysis of gender in the value chain should surface where and what the barriers are to women enjoying and exercising their rights. An intersectionality lens is integral when evaluating where women are found and dominate in a value chain. A woman's age, migrant status, education, marital status, pregnancy status etc. all have an impact on where she will be found in the value chain. The analysis needs to also recognise the indivisibility and interconnectedness of rights and how the denial of certain rights impact the woman's enjoyment of other rights.

- ❖ *Consider the impact of intersectionality on women in the value chain and their ability to exercise their rights.*
- ❖ *Consider direct and indirect forms of discrimination that women in the value chain encounter.*
- ❖ *Consider how these rights are interconnected / interrelated.*
- ❖ *Consider how the previous analysis of women migrant workers feeds into this analysis of women in the value chain.*

***Applying international human rights standards***

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<sup>121</sup> Ibid., p 13.

<sup>122</sup> [http://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_ent/documents/instructional/material/wcms\\_106538.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/instructional/material/wcms_106538.pdf)

**Article 11 of the CEDAW Convention** calls for States parties to “take all appropriate measures to eliminate discrimination against women in the field of employment”.<sup>123</sup> The article covers in particular the inalienable right to work; same employment opportunities; free choice of profession and employment; promotion, job security, benefits and training; equal remuneration; social security, paid leave and healthy and safe working conditions. These rights are also covered in the ICESCR.<sup>124</sup>

**The Committee on Economic, Social and Cultural Rights in its General Comment No.18** on Article 6 of the Covenant states that:

*Work as specified in article 6 of the Covenant must be decent work. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.*<sup>125</sup>

Violation of the right to work “comprises a broad cluster of violations affecting all stages of life, from basic education to retirement, and can have a considerable impact on the work situation of individual and groups.”<sup>126</sup>

The General Comment further elaborates on employment in the informal sector and what is driving that sector. “States parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection.”<sup>127</sup>

Even though the employers are private corporations, the State has an obligation to prevent discrimination by private actors by regulating their activities including with regards work conditions and standards.<sup>128</sup> Article 2 (e) of CEDAW provides that States agree to “take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.”

- ❖ *Identify other international and regional instruments that would be relevant to this issue.*
- ❖ *Consider how the UN Guiding Principles (UNGP) would be useful.*
- ❖ *Consider the above in relation to your country context as well as developments nationally and regionally. (Refer to state and NGO reports as well as CEDAW Committee's Concluding Observations and Summary Records).*

Case studies

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<sup>123</sup> CEDAW, Article 11.1

<sup>124</sup> ICESCR, Articles 6, 7, 8 and 9.

<sup>125</sup> CESCR, General Comment No. 18, para 7.

<sup>126</sup> CESCR, General Comment No 18, para 31.

<sup>127</sup> CESCR, General Comment No.18, para 10.

<sup>128</sup> CEDAW, General Recommendation No. 20, para 13.

These case studies attempt at broadening our understanding of:

- (i) the scope of global value chains and where women are positioned within the continuum.
- (ii) how gender impacts where women are positioned and how they exercise their rights.
- (iii) the range of human rights violations that women encounter - link to women's economic rights and labour rights.
- (iv) the international standards and norms.

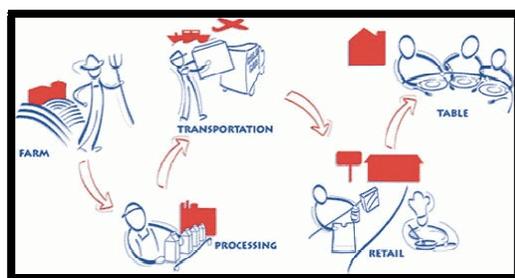
(a) Where are the women?

In West Africa, there is a growing and profitable market for processed shea nut butter in Europe, North America and Japan for use in cosmetics and chocolate manufacture, with a consequent rise in the final price in northern markets. But women who collect shea nuts are often totally unaware of this trend and continue to sell to middlemen who then supply the more profitable global markets as well as domestic and regional markets. Thus, these women are integrated in global value chains without any knowledge of these chains or their position and rights within them, and without any means of exploiting more profitable markets to their own advantage.<sup>129</sup>

### **Discussion questions:**

- (i) Map out the value chain for the above case study (or an example of a value chain that you are familiar with or exists in your country).

Example of diagram mapping out value chain<sup>130</sup> -



- (ii) Where would you place women in these steps? What role/s do women play in this value chain?
- (iii) How are women's roles impacted by different factors like:
  - a. Ownership of resources e.g. land
  - b. Decision-making power / women's agency

<sup>129</sup> IDRC, 2004, Mainstreaming Informal Employment and Gender in Poverty Reduction: A handbook for policy-makers and other stakeholders, London: Commonwealth Secretariat. In Randriamaro, Zo, Gender and Trade: Overview report, BRIDGE. Available at <http://www.bridge.ids.ac.uk/>

<sup>130</sup> <http://www.whichwarehouse.com/blog/news/importance-logistics-agri-food-sector-warehouse-space/>

- c. Access to education/ literacy
- d. Patriarchy
- e. Culture/ tradition / religion
- f. Rural / urban divide
- g. Neo-liberal policies

Are there any other factors that contribute to or impact the level and type of roles women have in a value chain?

**(b) Factory workers in the garment industry**

Country M is a member state of ASEAN. To stimulate its economic growth and expand into the regional and global economy, Country M has several factories that produce garments to send overseas to foreign companies. These factories specialise in assembling clothes from imported fabric based on designs that have been produced by buyers.

The garment industry relies primarily on female labour force and the majority of women are concentrated in the sewing stage of the process. In Country M, sewing is promoted as a 'feminine' skill. Owners/ managers prefer to recruit young women because they are perceived to be 'cheap and dutiful', as well as 'passive', 'submissive' and 'obedient'.

Recruiters prefer unmarried female workers with no children. Pregnancy related discrimination is common throughout the employment process. A compulsory requirement for new female employees is to undergo a pregnancy test to ensure that no new employee is pregnant when they work at the factory. For women that fall pregnant during their employment, there is no maternity leave and most women try and conceal their pregnancy because it would result in the termination of their contract.

Men working in the garment factories are concentrated in operating machinery: primarily repairing and maintaining the sewing machines, unloading and loading containers. The wages for the women garment workers are 30% less than their male counterparts. However, the managers justify this because of the different roles the men and women have, explaining that women sew and men maintain the machines.

The foreign companies that receive the assembled clothes from these factories report that they have an 'ethical supply chain'. As the majority of the factory labour force are women, the government of Country M proudly announced that it is bridging the gender inequality gap by creating employment opportunities for young women.

(Source: IWRAW Asia Pacific)

**Discussion questions:**

- (i) Discuss the gender dimensions of this value chain. How do gender stereotypes impact where women are found and concentrated in the value chain?
- (ii) In what ways could a business / corporation violate the human rights of its employees?

- (iii) Should a business be accountable for human rights standards?
- (iv) How should the state be accountable for these human rights violations?

### **(c) Fisheries**

A national fisheries infrastructure improvement project had the overall objective of promoting modernization and greater efficiency in the marine fisheries sector. It included the upgrading of 10 fishing ports as well as the establishment of environmental monitoring units and loans to selected private sector investors to establish ice plants and cold storage facilities at the ports.

The project design recognised gender specialisation in specific areas of marine fisheries and anticipated that the project would “uplift the status and living conditions of women in fisher folk households’ – improve earnings, living conditions and health of the women due to improvements in fish transporting, supply of freshwater and ice.

However, it was discovered that the project design did not accurately capture women’s roles in this industry. The upgraded ports would mainly benefit the larger boat owners and large fish-processing businesses and only some of the women fish buyers and ice sellers experienced its benefits. The women were mostly involved in on shore fisheries activities in marketing and processing. They were also employed by the large fish-processing businesses but working conditions needed to be improved. Further, the modernisation of the ports actually had the effect of reducing labour demand and eliminating the need for the tasks performed by women in marketing and processing of the fish. The loans component of the project also failed to consider the serious impediment of women obtaining loans due to lack of resources to offer as collateral.<sup>131</sup>

#### **Discussion questions:**

- (i) What went wrong in the project and why?
- (ii) How were rights of the women violated and how could this be corrected?

### **3.3 Natural resource governance**

Economic and development reforms have put a strain on natural resources and changed the power dynamics between stakeholders of these resources. Communities who have been using these resources for years now find that they are not included in the management of these resources – be it at the decision making or implementation stages.

This issue effects a range of **natural resources** besides land and forests. It includes water, resources within the sea, oil and gas, minerals and also metals that are extracted

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<sup>131</sup> IWRAW Asia Pacific GVC paper which quoted Coles and Mitchell (2009) and ADB 2001.

from the earth. As a result, various communities are facing development projects that impact where they live, causing displacement, loss of livelihood and even their culture and identity.<sup>132</sup> One of the issues is the lack of consent and consultation by the state and developers with these affected communities.

Reference to **natural resource governance** is the strategy of “improving the transparency and accountability of governments and private companies during the licensing, exploration, contracting, extraction, revenue generation and allocation of natural resources.”<sup>133</sup> **Governance** that is based on key principles of accountability, transparency, participation “accountability, transparency, participation and the rule of law” is the “keystone of sound natural resource management”.<sup>134</sup>

However, there are several concerns that surface around the issue of natural resource governance. One of these is land grabs that do one or more of the following:

- violate human rights, particularly the equal rights of women,
- flout the principle of free, prior and informed consent (FPIC) – under which affected communities are informed about and are able to give or refuse consent to a project,
- are not based on a thorough assessment of, or disregard, social, economic and environmental impacts, including the way they are gendered,
- avoid transparent contracts with clear and binding commitments on employment and benefit sharing,
- eschew democratic planning, independent oversight and meaningful participation.<sup>135</sup>

Land grabbing results in the displacement and eviction of local communities often with violence and without adequate compensation. Drivers for land grabs in the region include foreign investment, commercial agriculture, mineral extraction and energy/ fuel production.

### **ASEAN and natural resource governance**

In Asia, natural resource governance is greatly impacted by the ongoing economic and public sector reforms, including decentralisation processes and changes in roles and relationships between the stakeholders.<sup>136</sup> Within ASEAN member states there are abundant reserves of fossil fuel energy and mineral resources in the form of oil, natural

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<sup>132</sup> AIPP, No Rights, No Justice: Experienced of Indigenous Peoples Affected by Corporate Activities, 2014, p 7.

<sup>133</sup> Acosta, Andrés Mejía, Review of Impact and Effectiveness of Transparency and Accountability Initiatives: Natural Resource Governance, Annex 4, IDS, 2010. Available at <https://www.ids.ac.uk/files/dmfile/IETAAnnex4NatResGovMejiaAcostaFinal28Oct2010.pdf>

<sup>134</sup> Patti Moore, Xuemei Zhang, and Ronnakorn Triraganon, Natural Resource Governance: Trainers' Manual, IUCN, RECOFTC, SNV, 2011. Available at [https://cmsdata.iucn.org/downloads/governance\\_training\\_manual\\_v\\_5\\_web\\_.pdf](https://cmsdata.iucn.org/downloads/governance_training_manual_v_5_web_.pdf)

<sup>135</sup> Our Land, Our Lives: Time out on the global land rush, Oxfam Briefing Note 2012.

<sup>136</sup> Patti Moore, Xuemei Zhang, and Ronnakorn Triraganon, Natural Resource Governance: Trainers' Manual, IUCN, RECOFTC, SNV, 2011. Available at [https://cmsdata.iucn.org/downloads/governance\\_training\\_manual\\_v\\_5\\_web\\_.pdf](https://cmsdata.iucn.org/downloads/governance_training_manual_v_5_web_.pdf)

gas, coal and minerals like tin, nickel and copper. These are vibrant industries that contribute to the economic development of the ASEAN member states.<sup>137</sup> They are also attributed as contributing to raising the standard of living in the region through employment opportunities and “generating export revenues and investment in infrastructure and human capital”.<sup>138</sup>

“With increasing investment and economic integration in the region, pressures on land and natural resources are likely to intensify, and protests about forced evictions are likely to increase unless governments provide protection and regulate for proper compensation. Instead new legislation in many ASEAN countries is moving in the direction of undermining land rights”<sup>139</sup>

There are several factors that would impact and determine the inflow of foreign direct investment (FDI) into a country and region. Some of these are based on the geological potential, others based on political stability, economic viability and how friendly administrative and legal process are for business.

- ❖ *Consider how ASEAN member states attempt to create a favourable landscape for foreign direct investment and whether there is conflict with the states human rights obligations.*

## **A gender analysis of natural resource governance**

Women in communities have an important role to play in the family's subsistence and have responsibilities like collecting food, fuel and water. Women in communities are also farmers and have unique knowledge of certain local crops.<sup>140</sup> Despite that, women have less access and control over these resources and this is “most evident in relation to access to land where several countries and communities have customs that prohibit ownership of land by women”.<sup>141</sup>

Women's role and involvement and natural resource governance is impacted by the **unequal power relations as well as cultural and societal norms** that tend to exclude women from negotiations or deals that involve use and ownership of land or other resources. Often, these agreements are concluded with male members of the community or leaders with women generally excluded from any part of the decision making process. Even if women inherit land from their parents, they often do not have control

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<sup>137</sup> Institute for essential services reform, the framework for extractive industries governance in asean, 2014. Available at <http://www.iesr.or.id/wp-content/uploads/the-framework-on-extractive-industries-governance-in-asean-full-content.pdf>

<sup>138</sup> Ibid.

<sup>139</sup> Irene Pietropaoli, Are human rights being side-lined to make way for ASEAN economic integration?, Business & Human Rights Resource Centre. Available at <http://business-humanrights.org/en/are-human-rights-being-side-lined-to-make-way-for-asean-economic-integration>

<sup>140</sup> <http://www.fao.org/gender/gender-home/gender-programme/gender-natural/en/>

<sup>141</sup> <http://www.fao.org/gender/gender-home/gender-programme/gender-natural/en/>

over the land and if an agreement needs to be entered or an official title issued on the land, often it is the men who sign these contracts, effectively eliminating women's rights to make decisions on the use and management of the land.

Women, whether within rural communities or indigenous communities are particularly affected by land clearing for development projects, forced evictions and displacements. If the community no longer has access to forest produce or subsistence farming, this raises food security concerns as the community will either have to find new land or purchase their supplies. Women in this context are either reduced to home-bound roles<sup>142</sup> as husband head out to find jobs, or they are pushed in vulnerable positions of taking up employment with plantations or becoming migrant workers. It has been said that poverty affects women more severely than men as the "burden to provide for the family rests more heavily on women" although the "decisions affecting domestic economy and even most crucial issues directly affecting women like reproduction are taken by men."<sup>143</sup>

Communities also report increased domestic and gender-based violence.<sup>144</sup> At times, there are conflicts within the communities, thus eroding support systems that mainly the women might turn to.<sup>145</sup> Other times, it is the women who appear to be at the forefront of protests against the evictions or land clearings and "suffering abuse and imprisonment in addition to the loss of their land and livelihoods."<sup>146</sup>

- ❖ *Consider what aspects of social and cultural norms that prevent women from ownership and control of natural resources. Consider the impact of intersectionality on these women.*
- ❖ *Consider direct and indirect forms of discrimination that also impact women's rights to own and make decisions on resources.*

### ***Applying international human rights standards***

The loss of land and its resources can impact communities in many ways affecting a range of human rights: right to water, food, adequate housing, right to adequate standard of living, rights of indigenous persons and right to development, etc. It would be a human right violation if states, by leasing or selling land to foreign or local investors, deprive local communities of access to resources needed for their livelihood. The state has an obligation to ensure their actions do not create food insecurity, that

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<sup>142</sup> Charlotte Hinterberger, Bernice See, et al., Threatened land, threatened lives: Human Rights Situation of Indigenous Peoples in Cambodia, 2014. Available at [http://iphndefenders.net/images/documents/ebook//Low%20resolution%20HRIPKH3\\_Feb\\_17\\_2015.pdf](http://iphndefenders.net/images/documents/ebook//Low%20resolution%20HRIPKH3_Feb_17_2015.pdf)

<sup>143</sup> AIPP, IWGIA, Forum Asia, ASEAN's Indigenous Peoples, 2010. Available at [http://www.aippnet.org/docs/hr/ASEAN%20BRIEFING%20PAPER\\_print\\_Foma:.pdf](http://www.aippnet.org/docs/hr/ASEAN%20BRIEFING%20PAPER_print_Foma:.pdf)

<sup>144</sup> Charlotte Hinterberger, Bernice See, et al., Threatened land, threatened lives: Human Rights Situation of Indigenous Peoples in Cambodia, 2014. Available at [http://iphndefenders.net/images/documents/ebook//Low%20resolution%20HRIPKH3\\_Feb\\_17\\_2015.pdf](http://iphndefenders.net/images/documents/ebook//Low%20resolution%20HRIPKH3_Feb_17_2015.pdf)

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

they take into account the existing users of resources on the land and their rights to development and self-determination.<sup>147</sup>

The processes applied in taking over use and management of resources can also violate the rights of communities and the individuals living on and off the land in question. These can impact other rights, like the right to information, participation and not to be forcibly evicted. The **United Nations Declaration on the Rights of Indigenous People (UNDRIP)** is clear that there is an obligation to obtain the free and prior informed consent (FPIC) of communities.

*“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” (UN DRIP, article 32.2)*

All ASEAN member states voted in favour of UNDRIP<sup>148</sup> and FPIC has “emerged as an international human rights standard” that “supplements and is a means of effectuating these substantive rights” – including rights to identity, property, land and territories, participation, self-governance, etc.<sup>149</sup> It has been interpreted as applying to “all self-identified peoples who maintain customary relationships with their lands and natural resources”.<sup>150</sup>

The Special Rapporteur on the Right to Food has identified Eleven Principles which make up the minimum standards and principles based on international human rights law to address the challenges and impact of large-scale land acquisitions and leases on human rights. The Eleven Principles<sup>151</sup> call on the parties above to meet their respective responsibilities to:

- (i) conduct investment negotiations in full transparency with the participation of host communities;
- (ii) consult with local populations prior to any shifts in land use, with a view towards obtaining their free, prior, and informed consent for the investment project;
- (iii) enact and enforce legislation that safeguards the rights of host communities;

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<sup>147</sup> Schutter, Olivier De, Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge, United Nations, 2009. Available at [http://www.srfood.org/images/stories/pdf/otherdocuments/20090611\\_large-scale-land-acquisitions\\_en.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/20090611_large-scale-land-acquisitions_en.pdf)

<sup>148</sup> AIPP, IWGIA, Forum Asia, ASEAN's Indigenous Peoples, 2010. Available at [http://www.aippnet.org/docs/hr/ASEAN%20BRIEFING%20PAPER\\_print\\_Foma:.pdf](http://www.aippnet.org/docs/hr/ASEAN%20BRIEFING%20PAPER_print_Foma:.pdf)

<sup>149</sup> FAO, Respecting Free, Prior and Informed Consent: Practical guidance for governments, companies, NGOs, indigenous peoples, and local communities in relation to land acquisition, Governance of Tenure Technical Guide No.3, 2014. Available at <http://www.fao.org/3/a-i3496e.pdf>

<sup>150</sup> Ibid.

<sup>151</sup> Center for Human Rights and Global Justice, Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment, NYU School of Law, 2010. Available at <http://chrgj.org/wp-content/uploads/2012/07/landreport.pdf>

- (iv) ensure that investment revenues are used for the benefit of local populations;
- (v) adopt labour-intensive farming systems that maximize employment creation;
- (vi) adopt modes of agricultural production that respect the environment;
- (vii) ensure that investment agreements include clear obligations and predefined sanctions, with non-compliance determined by independent and participatory ex post impact assessments;
- (viii) ensure that investment agreements require that a minimum percentage of food crops produced be sold locally;
- (ix) conduct participatory impact assessments prior to the completion of negotiations;
- (x) comply with indigenous peoples' rights under international law; and
- (xi) provide agricultural waged workers with adequate protection of their fundamental human and labour rights.

The Special Rapporteur also highlighted the role of other private players or stakeholders like investors or corporations and financial institutions and how they too have a responsibility to respect these rights and not prevent the State from fulfilling its obligations.<sup>152</sup>

- ❖ *Consider whether and how some of the key ASEAN instruments deal with this issue and the related rights. E.g. the ASEAN Human Rights Declaration, the ASEAN Economic Community Blueprint (AEC), The ASEAN Political- Social Community Blueprint (APSC).*
- ❖ *Consider whether national laws uphold the rights of these communities in dealings that involve use of land and access to resources and whether these are consistent with the requirement to obtain FPIC.*

## **Case studies**

### **(a) Land grabs and natural resources**

#### **Oxfam animated video on land grabs**

<https://www.youtube.com/watch?v=5GL5400QthE>

#### **A community in Brazil fights the occupation of their land by sugar plantations**

<https://www.oxfam.org/en/multimedia/video/2013-community-brazil-fights-occupation-their-land-sugar-plantations>

#### **Land grab case**

In August 2008, XX rubber Plantation Company were given the concession to a 1000 hectare in an indigenous village. The company began clearing the land without providing villagers any information on development plans or licences. The community, made up of about 58 families, have lived in that area for hundreds of years. They farm and collect forest produce for livelihood and for income. They are also reliant on a special tree that grows to build their homes, make equipment and food. The clearing of the land has destroyed wildlife and edible plants, rattan and vines and other non-timber

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<sup>152</sup> Ibid.

forest products. The houses of the spirits, their ancestor burial land and other sacred areas have been destroyed.

“We mothers and our children have to work. Some of our children have left us to find jobs elsewhere” claims a villager from the area. Since losing the land she has only one hectare (2.5 acres) of personal land to farm which is insufficient to support her family.<sup>153</sup>

Villagers live in fear because company guards carry guns to enforce a ban forbidding anyone from entering the forests. The company told the villagers to sell their land at set prices of 100 USD per hectare for farmed lands and 50 USD per hectare for unfarmed lands. Refusal to sell is threatened with confiscation of their land.<sup>154</sup>

**Discussion questions:**

- (i) What is your understanding of a land grab?
- (ii) What do you think fuels land grabs?
- (iii) What would be the impact of a land grab on women and their control and access to natural resources?

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<sup>153</sup> <http://www.rfa.org/english/news/cambodia/land-05122015162114.html>

<sup>154</sup> Charlotte Hinterberger, Bernice See, et al., Threatened land, threatened lives: Human Rights Situation of Indigenous Peoples in Cambodia, 2014. Available at [http://iphndefenders.net/images/documents/ebook//Low%20resolution%20HRIPKH3\\_Feb\\_17\\_2015.pdf](http://iphndefenders.net/images/documents/ebook//Low%20resolution%20HRIPKH3_Feb_17_2015.pdf)

#### **4. ADVOCACY**

A strong understanding of the CEDAW framework and other human rights standards and principles makes a solid foundation for advocacy. However, along with the substantive knowledge, what is needed is a broad sense of the various platforms and avenues where advocacy on issues can be launched. Decisions on how and where to locate one's advocacy are strategic decisions that will differ based on political climate, the DNA of an organisation, timing, resources, etc.

This section on advocacy aims to:

- create an understanding of some of the components that make up advocacy,
- create awareness of the different advocacy opportunities at the international and regional levels, and
- start the process of thinking of effective and relevant strategies for different scenarios or issues.

Several references/ publications are identified for more detailed information on how to access these avenues as part of an advocacy campaign.

## 4.1 Understanding Advocacy

Advocacy is the phase where one moves from theory into action – it is about “engagement and bringing about change”.<sup>155</sup> Advocacy has been defined as getting decision makers, be it government or institutions (e.g. including private enterprises) to “**correct an unfair or harmful situation affecting people in the community through a range of means including persuasion, compromise or political or legal action.**”<sup>156</sup> It is an umbrella term that describes various strategies - campaigning, lobbying, research, communications, alliance building, etc.<sup>157</sup>

Advocacy can take place at the **community, national, regional or international levels**, depending on one's objective, strategy and opportunities. The strategy that one adopts needs to be **informed by the objective or outcome** that is sought. Are we seeking for new laws or policies or better enforcement of existing laws? Do we advocate at the government level to change a national policy on women? Do we advocate at the international level as an added push for action? How could regional level advocacy help?

In these different spaces, different types of engagements will be needed. Most organisations at the national level will need to make strategic decisions at which level/s to engage as different spaces will require a different set of resources both financial and human and carry a different set of opportunities and risks.

### *Basic components of developing an advocacy strategy*<sup>158</sup>

- **Understand the issue** and **who has the power** to make a difference/ influence the change you are advocating for.
  - *Why create this advocacy campaign? What is the objective?*
  - *Is the advocacy based on research and realities of women's lives?*
- **Identify allies** who support the issue as a **broader support base** will give greater credibility and visibility to the cause.
  - *Who or what is this advocacy campaign supporting?*
  - *Who are our allies in this campaign and why?*
- **Identify opponents** and the **reasons for resistance** without assumptions of who an opponent or ally might be.
  - *Why would others resist / oppose this campaign?*
  - *Who are the opponents to this campaign?*

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<sup>155</sup> AWID, An Advocacy Guide for Feminists, No.1, 2003.

<sup>156</sup> Community Tool Box, Section 1: Getting an advocacy campaign off the ground, 2014.

<sup>157</sup> AWID, An Advocacy Guide for Feminists, No.1, 2003.

<sup>158</sup> Adapted from Community Tool Box, Section 1: Getting an advocacy campaign off the ground, 2014 and AWID, An Advocacy Guide for Feminists, No.1, 2003.

- **Develop a plan** for advocacy based on a mapping of the issue, power, allies and opponents / resistance.
  - *Who is the target audience and what do we want to achieve through them?*
  - *Will the campaign raise awareness of people, encourage participation or influence policy?*
  - *Are there national, regional or international opportunities that the campaign can use as a platform or tie into to amplify its impact and reach?*
  - *How will impact / outcome be assessed?*

**Strategy: Advocacy based on research and targeting different levels<sup>159</sup>**

Central to the movement to gain recognition for women's land rights is collective struggle and action. It was in this spirit that the Working Group on Women's Landownership, a network of 23 organizations working for women's rights in 12 districts of Gujarat, came together in June 2002. Before undertaking any advocacy for women's land rights, they felt it important to understand the situation on the ground, and gather evidence that was meaningful and reliable. So the Working Group's first **strategy was to study the status of women in agriculture** in Gujarat (2004), to **review the gap between law and practice and the extent of legal awareness** (2004), and to **analyse Muslim women's land rights** (2006).

These studies gave insights into the issues at hand and **helped develop responsive and sensitive strategies to address them**. The first study conducted with 403 women owning land in Gujarat found that 48 per cent were widows who had claimed a share in their husband's property, 41 per cent were wives who had received titles with a view to claiming particular State-announced tax benefits or to their husbands avoiding land ceilings laid down by law (many did not even know they held land titles) and less than 5 per cent were women who had inherited a share of their parents' property because there were no male heirs. Women, however, accounted for only 12 per cent of total landholders. Twenty per cent of the women did cultivate their own land, take decisions on cropping and sales, yet faced difficulties in accessing irrigation, credit and technical information (less than 10 per cent had access to credit or agricultural cooperatives), a negative attitude from their family members, and a lack of State support.

As a result, the Working Group initiated work at several levels:

- (a) **Organizing women at the grass-roots level** and building peer-support groups, increasing the capacity of different types of grass-roots organizations to introduce and negotiate the issue of women and landownership, legal awareness and implementation of existing laws (with back-up from a group of lawyers), facilitating collective learning, exchange and experience-sharing;
- (b) **Raising the awareness of the tax officials** as well as caste/community institutions through training programmes, regular dialogues and consultations,

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<sup>159</sup> UN Women, Realising Women's Rights to Land and Other Productive Resources, 2013 (Source cited in publication: Nitya Rao, University of East Anglia, United Kingdom)

participating in varsai (titling) camps, as well as advocacy; and  
(c) **Changing the public mind set** by reaching out to the media, other networks (including women's and development organizations), academic institutions, through organizing public events, research reports, newsletters, and taking up cases.

Most important perhaps is the emphasis on establishing institutional mechanisms to promote women's access to a range of productive assets. Called gender justice centres, women and land committees, people's rights centres, legal aid centres, panchayat information centres or just women's federations, these mechanisms facilitate the interface between the women and the State to realize entitlements, be they kisan credit cards, widow pensions, ration cards or registration. They also seek to work with local panchayats, in particular supporting elected women representatives to take forward their agendas and struggles. Such participation and engagement with local government help bring their demands to legitimate forums and governance structures, establishing systems of accountability in the process, rather than carrying out small-scale independent activities.

The **systematic demonstration of gaps between policy and implementation** through collectively gathered and analysed data has enabled the Working Group to demand accountability from government institutions at all levels – the panchayats, the tax office as well as different departments of the State government. A good example of the attempts by the State here to ensure the rule of law and good governance is the varsai camps, which provide titles with minimum bureaucratic hurdles, while at the same time incentivizing households to register land in women's names.

#### **Strategy: Identifying important allies and seizing opportunities for advocacy**

*"Mining is a new issue for the local NGO community in Loei as well as the villagers. Therefore, the most important strategy to raise the mining issue as human rights issue is to **increase the awareness among civil society and to organise themselves.**"*

Three important strategies Loei civil society has used are:

- **Learning from other community leaders** who have experience in people's movement on mining issue: People in Udon Thani province in the northeast Thailand have been organising themselves and protesting against the potash mining which has been operating in the province for around ten years. The NGO staff and community leaders from Udon Thani visited Loei several times and had discussions with NGOs and villagers affected by the mining in Loei. They emphasised the community's right to decision making on the land and natural resource management, which is guaranteed in the Constitution and various laws. Learning from them, 70-80 villagers in Loei organised a rally to the provincial governor's office and demanded investigation of water and air pollution as well as the impact of daily blasts happening at the mining operation. It was the first big event where the villagers got involved in the mining issue.

- **Using accessible official mechanism to raise awareness on mining:** National Health Commission Office (NHCO), the implementation body of the newly passed law on public health, has started a Health Impact Assessment. This assessment aims to raise awareness on health issues and promote people's participation in the process of drafting health policy. NGOs and academics have been closely working with NHCO on the assessment to ensure community participation. Since health is one of the major concerns for the villagers with regard to the mine operating near their village, it was a good entry point for villagers to get more involved in the mining issue.
- **Role of local media:** In Thailand, there is a non-profit nation-wide public broadcasting TV station (Thai PBS) while civil society also has local radio stations. The Thai PBS made an hour-long documentary programme on the mining in Loei, in cooperation with the local NGOs and the villagers affected, which was broadcast in June 2008. NGOs have been using the documentary as a tool to raise awareness among more villages as well as at national level. The local radio stations are consolidated in a nationwide civil society radio network and in Loei, it is closely working with NGOs on the mining and other sustainable development issues.<sup>160</sup>

“Social change for gender equality is a slow, long-term, political process of transforming power relations.”<sup>161</sup> It is important, especially in relation to advocacy on women's rights and equality to connect the research and advocacy with power analysis and keep questioning why the situation is the way it. This enables one to **get to the root cause of the inequality or inability to exercise a certain right.**<sup>162</sup>

Advocacy built on this kind of assessment is also able to target the norms, instruments or institutions that are perpetuating discrimination or violating women's rights.

## 4.2 International advocacy

### (i) Engaging the treaty bodies

#### *Treaty body review process*

One of the key advocacy strategies for NGOs at the international level is to participate in the treaty body review process of their respective governments. Through this process, States are held accountable for their obligation to implement the human rights treaty that has been ratified at the domestic level. Although reference here is made to the **CEDAW Committee** as an example, NGOs are encouraged to make the linkages and engage with other human rights treaties the country has ratified. In relation to how women's economic rights are impacted as migrant workers, as informal workers within

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<sup>160</sup> APWLD, Mining and Women in Asia: Experiences of women protecting their communities and human rights against corporate mining, 2009. Available at <http://apwld.org/wp-content/uploads/2013/09/Women-and-Mining-in-Asia1.pdf>

<sup>161</sup> AWID, An Advocacy Guide for Feminists, No.1, 2003

<sup>162</sup> AWID, An Advocacy Guide for Feminists, No.1, 2003

the global value chain or as members of a community displaced by mining or plantations, engaging the **Committee on Economic, Social and Cultural Rights (CESCR)** should be considered. On women migrant workers, engaging the **Committee on Migrant Workers** would be relevant as well.

The reporting process for States involves the **submission of periodic reports** to the CEDAW Committee for review: an initial report a year after ratifying the treaty, and then a report every four years. The CEDAW Committee engages in a **constructive dialogue** with the government delegation and finally produces **Concluding Observations** that highlight positive developments and critical areas of concern with recommendations for the government to work on.

This reporting process, provides NGOs an opportunity to **submit shadow / alternative reports** to the CEDAW Committee with information on the ground realities of women's access to rights and opportunities and whether there have been results. As an advocacy strategy this serves to support and strengthen the work of the CEDAW Committee, enabling them to ask more informed and targeted questions of the government delegation with the aim of getting a government response to the area of concern and having it identified by the CEDAW Committee as a critical issue in the **Concluding Observations**. The Concluding Observations then become a **strategic tool for national level advocacy** and women's groups are also able to use it to hold governments' accountable to their specific obligations under CEDAW.

***Strategy: Using the Concluding Observations for national advocacy***

*In Sri Lanka, after the CEDAW review, the government and the NGOs held a consultation on every paragraph of the Concluding Comments. The consultation discussed plans for implementing the recommendations of the Committee and NGOS offered their expertise and resources in pursuing the plan of action.<sup>163</sup>*

*"In 2004, Moroccan women's groups successfully lobbied for amendments to Morocco's Personal Status Code, involving the removal of discriminatory provisions. Again, such a recommendation had been made by the CEDAW Committee (CEDAW 1997, 13-14, paras 64 and 71 and CEDAW 2003, 105-6, para 163). As a result of the advocacy of these groups, Muslim women in Morocco now enjoy formal equality on the basis of their country's family laws. The new Family Code raises the minimum age of marriage for girls to eighteen, makes polygamy almost impossible, improves inheritance rights, makes divorce provisions more equal for women and men..."<sup>164</sup>*

Part of advocacy at this level would also involve **NGOs attending the CEDAW review to lobby the CEDAW Committee** to raise and question the government delegation on

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<sup>163</sup> Dairiam, Shanthi, Impact of the Convention at the Domestic Level, IWRAW Asia Pacific, 2004. Available at

<http://www.un.org/womenwatch/daw/cedaw/cedaw25anniversary/cedaw25-SD.pdf>

<sup>164</sup> Schopp-Schilling, Hanna Beate (ed.), The Circle of Empowerment; Twenty-five years of the UN Committee on the Elimination of Discrimination against Women, The Feminist Press, 2007, p 322

certain priority or critical issues. Further, the presence of NGOs also enables them to **monitor the governments' responses** during the review and draw further accountability for statements or commitments made by the government at the international level.

***Strategy: Publicising the Concluding Observations***

*When the Croatian Government presented its second report to the CEDAW Committee, a women's NGO coalition attended and submitted a shadow report. The government delegation promised the CEDAW Committee that it would publicise the outcome of the review at the national level but didn't. The women's NGO coalition contacted the government and tried to arrange a joint press conference on the CEDAW review but the government declined to participate. The coalition started a publicity campaign highlighting the Concluding Observations through the media, translations of the Concluding Observations into local language and distribution to all members of parliament to raise awareness of the commitments of the government to certain issues and the fulfilment of its obligations under CEDAW.<sup>165</sup>*

**References:**

- IWRAW Asia Pacific Participation in the CEDAW reporting process: Process and guidelines for writing a shadow/alternative report
- IWRAW Asia Pacific NGO Interventions during and after the CEDAW Session: How and when to lobby
- Participation in ICESCR and CEDAW Reporting Processes: Guidelines for writing on women's economic, social and cultural rights in Shadow / Alternative Reports, 2010.<sup>166</sup>

***Procedures under the Optional Protocol to CEDAW***

The **Optional Protocol (OP) to CEDAW** is a separate treaty that states can ratify once they have ratified the CEDAW Convention. The OP establishes two mechanisms<sup>167</sup>:

- (i) A **communications procedure** for women to submit communications/complaints on violations of rights under CEDAW.
- (ii) An **inquiry procedure** that allows the CEDAW Committee to conduct national level inquiries on grave and systematic violations of rights under CEDAW.

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<sup>165</sup> Landsberg-Lewis, Ilana (ed.), *Bringing Equality Home; Implementing the Convention on the Elimination of All Forms of Discrimination against Women*, UNIFEM, 1998

<sup>166</sup> IWRAW Asia Pacific and ESCR-Net, *Participation in ICESCR and CEDAW Reporting Processes: Guidelines for Writing on Women's Economic, Social and Cultural Rights in Shadow/Alternative Reports*, 2010. Available at

[https://docs.escr-net.org/usr\\_doc/CEDAW\\_CESCR\\_reporting\\_guidelines\\_FINAL\\_Oct\\_6\\_2010.pdf](https://docs.escr-net.org/usr_doc/CEDAW_CESCR_reporting_guidelines_FINAL_Oct_6_2010.pdf)

<sup>167</sup> See *Claiming Women's Economic, Social and Cultural Rights* for flow chart of both procedures – pp 36-37 and 54-55

Through the OP, an individual can submit a communication/ complaint to the CEDAW Committee alleging a specific violation of her rights. The CEDAW Committee will consider the case on its admissibility (procedural requirements) and if this is satisfied, on its merits. To date the CEDAW Committee has heard several questions on employment matters dealing with discriminatory practices, sexual harassment and maternity benefits.

Within ASEAN, only three countries have ratified the OP<sup>168</sup>. The Philippines has to date a decision on communication<sup>169</sup> (on the right to an effective remedy and against wrongful gender stereotyping in a case on gender based violence) and a report on an inquiry<sup>170</sup> (on the provision of sexual and reproductive health rights and services in Manila).

*"...an important purpose served by the Optional Protocol under the CEDAW Convention, when it is used by women, is that it provides States parties the opportunity to assess the weaknesses in the procedures, the legal and administrative institutions and implementation processes of the legal system that do not allow women to obtain the benefit of the law as intended and to take remedial action."<sup>171</sup>*

**Reference:**

- ESCR-Net & IWRAW Asia Pacific, Claiming Women's Economic, Social and Cultural Rights: A resource guide to advancing women's economic, social and cultural rights using the Optional Protocol and Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol and the International Covenant on Economic, Social and Cultural Rights, 2013.

**(ii) Other UN procedures**

National NGOs are now engaging more actively and effectively with other special procedures and mechanisms at the international level.

***Universal periodic review (UPR)***

The objective of the UPR is to review the fulfilment of human rights obligations and commitments of all 192 UN member states. States are reviewed every four years on progress, challenges and needs for improvement. The review is conducted by the 47 members of the Human Rights Council (HRC) and other observer states and is seen as an intergovernmental, peer-review process. The UPR provides a new avenue for civil society to engage with the international mechanisms. It also provides another

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<sup>168</sup> Cambodia, Philippines and Thailand.

<sup>169</sup> CEDAW, Communication No 18/ 2008, 2010, CEDAW/C/46/D/18/2008

<sup>170</sup> CEDAW, Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 2015, CEDAW/C/OP.8/PHL/1

<sup>171</sup> PLD, A trainers guide, p 78

opportunity for women's groups to make the linkages with violations of other human rights and ensure the gender dimension of those violations are also captured.

***Strategy: Lobby for cross referencing of recommendations by UPR and CEDAW Committee<sup>172</sup>***

*"One example of the UPR reinforcing Convention standards and CEDAW's concluding observations may be found in the appearance of Vanuatu before the UPR in 2009. Among the 48 recommendations made by States to Vanuatu were a number in which they referred explicitly to the Convention or to CEDAW's recommendations to Vanuatu, and urged Vanuatu to take steps to fully implement the Convention and those recommendations at the domestic level. Vanuatu responded to these recommendations by characterizing them as acceptable", creating the expectation that it will undertake steps to give effect to those recommendations. No doubt these matters will be followed up when it next appears before CEDAW and other bodies.*

*An example of the converse -- CEDAW's reinforcement of UPR recommendations and commitments -- appears in the review of the 6th periodic report of Japan at the Committee's 44th session in 2009. At Japan's appearance before the UPR in 2008 a number of States had recommended that Japan establish a Paris Principles-compliant national human rights institution, a suggestion which had previously been made by a number of treaty bodies (including CEDAW). In its response to the review, Japan agreed "to follow up" this recommendation. CEDAW took up this recommendation and Japan's commitment, and in its concluding observations urged Japan to "establish within a clear time frame an independent national human rights institution in accordance with the Principles, whose competencies should include issues related to the equality of women and men."*

***Other treaty bodies***

Reviewing the Concluding Observations the State has received from other treaty bodies could also yield key recommendations on women's rights that could help with national level advocacy.

***Special Procedures***

The UN Special Procedures are made up of human rights experts that report and advise on thematic or country-specific human rights issues. These include Special Rapporteurs that work on specific thematic issues like food, education, violence against women, cultural rights and Working Groups that work on issues like human rights and transnational corporations and other business enterprises.<sup>173</sup> Often these are mandated to integrate the gender dimension into their reports. The Working Group on the issue of

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[http://www.un.org/womenwatch/daw/beijing15/interactive\\_panel\\_III/Byrnes%20paper.pdf](http://www.un.org/womenwatch/daw/beijing15/interactive_panel_III/Byrnes%20paper.pdf)

<sup>173</sup> <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>. For a visual directory see [http://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryJune2015\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryJune2015_en.pdf)

human rights and transnational corporations and other business enterprises which was established in 2011 is mandated to “**integrate a gender perspective** throughout the work of its mandate...”<sup>174</sup> Communications on specific violations can also be submitted under this mechanism to relevant mandate-holders irrespective of whether a State has ratified the relevant human rights treaties.<sup>175</sup> It is important that women’s organisations engage with these procedures to ensure the development of the jurisprudence that can support national level work on these issues.

**Reference:**

- OHCHR, Working with the United Nations Human Rights Program, A Handbook for Civil Society, 2008.<sup>176</sup>

### 4.3 Regional advocacy

Recent developments within the ASEAN region has increased the interest of civil society (national level groups or regional level networks) to engage with ASEAN processes. The ASEAN Charter (2008) acknowledges the importance of engagement with civil society “to promote a **people-oriented ASEAN** in which **all sectors of society are encouraged to participate** in, and benefit from, the process of ASEAN integration and community building.”<sup>177</sup>

The Roadmap for an ASEAN Community (2009 – 2015) calls for the convening of “the **ASEAN Social forum and the ASEAN Civil Society Conference** on an annual basis to explore the best means for effective dialogue, consultations and cooperation between ASEAN and ASEAN civil society.”<sup>178</sup> There is therefore basis for civil society to claim advocacy space within ASEAN and there appear to be more such opportunities as well as the High Level Task Forces and Eminent Persons Groups have accommodated **formal and informal dialogues and submissions by civil society** on the drafting of the ASEAN Charter, the AICHR, AMWC and ACWC. Also there are **ad hoc consultations** that take place on issues of “human rights, labour, migration, women, children, environment, and disaster management, among others.”<sup>179</sup> However there are no permanent mechanisms or processes in place for civil society engagement within ASEAN.<sup>180</sup>

Several networks like FORUM-Asia and the Southeast Asian Women’s Caucus on ASEAN engage critically on human rights and women’s rights.

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<sup>174</sup><http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

<sup>175</sup> Information required and questionnaire to be filled is available at

<http://www.ohchr.org/EN/HRBodies/SP/Pages/QuestionnairesforsubmittingInfo.aspx>

<sup>176</sup> Available at [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf)

<sup>177</sup> ASEAN Charter, 2008, para 13

<sup>178</sup> ASEAN Social Cultural Blueprint, Art E.4

<sup>179</sup> CSOS’ Engagement with ASEAN: Perspectives and Learnings

<sup>180</sup> CSOS’ Engagement with ASEAN: Perspectives and Learnings

*The Southeast Asia Women's Caucus on ASEAN (known as the Women's Caucus) is a network of organisations that engage with ASEAN on the realisation of women's rights in the region. It was formed by the Asia Pacific Forum on Women, Law and Development (APWLD) and International Women's Rights Action Watch Asia Pacific (IWRAW Asia Pacific) in 2008 and to date consists of organisations from 11 countries within Southeast Asia. The network consists of over 100 diverse women's human rights partners and this creates a broad constituency with expertise and collective knowledge and experience on a range of issues and advocacy strategies. The Women's Caucus has worked on ensuring women's rights are integrated into the processes working on development of ASEAN mechanisms and instruments on human rights (e.g. AICHR, ACWC, etc.).*

Regional advocacy campaigns could be based on specific campaigns targeting certain issues (e.g. migration, trade, environment, etc.) or more open platforms that cross nations and interests to lobby institutional changes within the region (e.g. advocacy on the AICHR). An assessment of such campaigns has shown that some of the elements to consider for success include<sup>181</sup>:

- building up sufficient thematic country constituencies,
- capacity of regional organisations to sustain country awareness,
- larger constituency building to support regional advocacy through consultations, unity building, organising delegations, dialogues, media campaigns and writing workshops to draft submissions to ASEAN.<sup>182</sup>

**Links:**

- <http://apwld.org/our-work/asean-the-womens-caucus/>
- <http://www.forum-asia.org/>

#### **4.4 Case studies**

##### **(i) Effective engagement**

A representative from the organization Neptune, a renowned women's human rights organization was invited to participate at a UN meeting on the SDGs; the meeting is specifically looking at the role of multinational corporations in the promotion of the SDGs.

Jane, the Neptune representative, has expertise on violence against women. Before she goes to the meeting; there is no internal discussion at Neptune to identify the position of the organization on the issue. At the meeting Jane feels that the issues should be linked to violence against women and makes recommendations regardless of the content of the discussion. Because of her insistence of always linking the issue to violence against women, Jane creates discomfort amongst the other participants because they are not quite sure what the primary objective of her interventions are.

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<sup>181</sup> CSOS' Engagement with ASEAN: Perspectives and Learnings

<sup>182</sup> CSOS' Engagement with ASEAN: Perspectives and Learnings

During meal times, a few participants who have known Jane previously, try to engage with her to explain to her what the primary objective of the meeting is and she does not take this well and gets extremely defensive. She would like to link violence against women to economics and gets upset with the other participants for refusing to include this definition of economic violence. As the other participants got upset with Jane's defensive behaviour, they did not invite her when they were having informal discussions with the panellists; afraid that she would derail discussions.

There were different groups there who had done extensive campaigning on the SDGs before attending this meeting; but Jane didn't do her homework and was unaware of existing campaigns and initiatives on economic violence and violence against women. While they were present at the meeting, she did not speak to anyone leading the campaigns.

Jane returns to the office and writes up a report about the meeting and indicates that the other organisations didn't want to take up economic violence and the SDGs. The Executive Director who reads the report and files it away. No further action is taken. Subsequent to that, Neptune does not get invited to other events on other issues. (Source: IWRAW Asia Pacific)

**Discussion questions:**

- Why would a meeting like this be important for the organisation?
- Identify what could have been done differently for more effective engagement by the NGO representative at this meeting.
- Keeping in mind the elements or components of developing an advocacy strategy, discuss a strategy for Neptune to advocate its issue.

**(ii) Oil palm plantations**

“Since 2002, the provincial government of Palawan initiated the conversion of forests and agricultural land into oil palm plantations, a move that raised the concerns of farmers, rural communities, indigenous groups, and civil society. One of the issues raised was the displacement of indigenous communities and lack of compensation for rural communities due to the expansion of plantations. Another concern is the conversion of Palawan's forests into plantation areas, disrupting the natural ecological system in the area. Lastly, policy and legal issues are also involved since laws that protect Palawan's biocultural diversity are ignored in favour of oil palm expansion. Despite the setbacks, rural communities and civil society groups continue to launch several advocacies to draw government's attention on the issues against oil palm expansion. These advocacies include passing a resolution to halt oil palm expansion at the barangay level, forming a working group to initiate dialogue between government offices and local communities, and initiating a signature campaign addressed to Malacañang that resulted in the investigation of oil farm industries by the Department of Environment and Natural Resources.

However, until now, there has been no response to the various calls to suspend the expansion of oil palm industries in Palawan. Thus, civil society groups are still looking for new ways to pursue their aim in protecting the country's ecological frontier. Broadening the signature campaign and resorting to legal action are the options considered by different groups."<sup>183</sup>

**Discussion questions:**

- As a women's organisation, how would you engage effectively on this issue to ensure women's rights are not marginalised in the process?
- Assessing the effectiveness of the advocacy efforts to date, discuss how (i) current efforts could be made more effective and (ii) what other remedies could be explored.

**(iii) Gender and the global value chain**

Watch the video on the work of Women Working Worldwide, South Africa

<https://www.youtube.com/watch?v=jUNxj0MOoqk>

**Discussion questions:**

- Discuss the advocacy strategies that were identified by Women Working Worldwide and whether you think they are effective.
- What could be done to increase the effectiveness of this campaign?

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<sup>183</sup> Extracted from Contested Access to Land in the Philippines and Indonesia: How can the rural poor (re) gain control?: Rapporteur's report. 2015. Available at <http://calpi.up.edu.ph/wp-content/uploads/2015/02/2A-Mayo-Anda.pdf>