

TOWARDS ACHIEVING SUBSTANTIVE GENDER EQUALITY

Report of the Seminar

5-6 SEPTEMBER 2011, JAKARTA, INDONESIA



ORGANIZED BY:

UN Women and ASEAN Intergovernmental Commission on Human Rights (AICHR)



Supported by:  Canadian International Development Agency  Agence canadienne de développement international

List of Abbreviations

AICHR	ASEAN Intergovernmental Commission on Human Rights
AIPA	ASEAN Inter-Parliamentary Assembly
ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination on the Discrimination Against Women
CEDAW GR	CEDAW General Recommendation
CIDA	Canadian International Development Agency
CSR	Corporate Social Responsibility
IACHR	Inter-American Commission on Human Rights
MDG	Millennium Development Goals
NCAW	National Commission for the Advancement of Women [of Lao PDR]
OSCE	Organization for Security and Cooperation in Europe
OP CEDAW	Optional Protocol to CEDAW
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

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A. EXECUTIVE SUMMARY

On September 5-6, 2011, the ASEAN Intergovernmental Commission on Human Rights (AICHR), in cooperation with UN Women, held a Seminar “Towards Achieving Substantive Gender Equality” to discuss the latest developments in the international normative frameworks on gender equality and women’s human rights.

Based on AICHR priorities, the seminar aimed to help participants gain a better understanding of principles of non-discrimination and substantive equality and state obligation as prescribed in CEDAW; share international good practices on compliance with CEDAW in selected areas of women’s human rights; and make recommendations to AICHR on its possible actions on gender equality in ASEAN.

Panelists and speakers at the seminar included: experts on CEDAW, legal advocates, AICHR members, members of the ASEAN Secretariat and representatives from UN Women. Representatives from each ASEAN country were present at the meeting, including members of the Drafting Group of the ASEAN Human Rights Declaration.

During the seminar all participants joined in formulating recommendations to AICHR for regional and national level action on gender equality. In the recommendations participants highlighted the importance of capacity building on substantive equality and non-discrimination, as well as implementing concluding observations from treaty bodies, and incorporating international human rights standards into legal systems. They also recommended mainstreaming gender equality in AICHR’s work plan and in ASEAN’s three pillars and blueprints, and promoting human rights based approach in implementing ASEAN’s MDG roadmap. Exchanging best practices on eliminating discrimination against women was also deemed important, along with developing guidelines for law enforcement and legal professionals who handle issues regarding discrimination against women. Participants also recommended that AICHR develop a framework, based on international human rights standards, to protect both documented and undocumented women migrant workers, and collect sex-disaggregated data on their situation in ASEAN member states. The establishment of guidelines for mutually recognized professional accreditation of skills among ASEAN member states was also seen as a priority.

Participants also discussed the ASEAN Human Rights Declaration currently being drafted that will serve as a guiding framework for regional cooperation on human rights protection and promotion. There was consensus that, as part of the process, the drafting committee should review a variety of international regional instruments on equality including the Inter-American Human Rights Convention and Belem do Para, which were presented at the seminar. Participants also made specific recommendations regarding rights and obligations to be defined in the Declaration, including:

- A provision prohibiting a broad range of discrimination including sexual orientation and gender identity, however, the list should be non-exhaustive in order to accommodate inclusion of future/additional forms of discrimination.
- Reference to non-discrimination and equality, as well as equal benefits and equal protection of women.
- Inclusion of a provision that the Declaration shall be incorporated into the national laws; or at a minimum promotion of the incorporation of the spirit of the Declaration in the policy process and practices of ASEAN member states.
- Incorporation of ASEAN's minimum standards for protection of women's rights, which should not be less than international standards
- A provision for periodic review on the progress of implementation of the Declaration.

A more detailed list of recommendations can be found under section III of this report.

A clear message from the seminar was that, while equality for women cannot be achieved without appropriate legal and policy frameworks, before *substantive* equality can be achieved, there must also be concrete action aimed at ending systemic and entrenched discrimination. At the seminar participants exchanged information about where progress has been made in the region and where gaps in protection of women's rights still exist. It is hoped that this exchange will inspire further cooperation and collaboration to promote and secure the rights of women within ASEAN.

B. REPORT OF PROCEEDINGS

1. Opening Session

Mr. Dato' Misran Karmain, the Deputy Secretary-General of ASEAN, opened the meeting by noting its timeliness given that AICHR is currently in the process of drafting an ASEAN Human Rights Declaration, which will serve as a roadmap for regional cooperation on human rights promotion and protection. He indicated that information exchanged by participants at the seminar would be forwarded to AICHR to ensure that the draft declaration addresses gaps and challenges to achieving gender equality in the ASEAN region.

Mr. Karmain commented on some of the main problems still faced by women in the region including feminization of poverty, particularly among female-headed households, gender wage inequality, and pervasive ideologies that glorify subservience and sacrifice as female virtues. He noted that women's issues and concerns cut across socio-cultural, economic and political sectors. Thus, efforts to achieve substantive gender equality are not the responsibility of any particular segment of the government – but require coordination and dialogue among ASEAN sectoral bodies and member states as well as with ASEAN's partners.

Mr. Karmain also highlighted the fact that ASEAN's 1988 Declaration on the Advancement of Women in the ASEAN Region, the 2004 Declaration on the Elimination of Violence Against Women in ASEAN, and the 2010 Hanoi Declaration on the Enhancement of Welfare of ASEAN Women and Children all provide a foundation for gender equality. However, he stressed, along with legal and policy frameworks, concrete actions are necessary to enable women in the region to be active agents and beneficiaries of national and regional development.

This was followed by Ms. Moni Pizani, the Regional Programme Director for UN Women who spoke on behalf of Ms. Michelle Bachelet, the Under Secretary-General of the UN and Executive Director of UN Women. Ms. Bachelet expressed appreciation to AICHR for working with UN Women to make non-discrimination and equality a reality for women and girls in the ASEAN region. She noted that since signing the ASEAN-UN Women Framework for Cooperation in 2006, ASEAN and UN Women have worked closely to promote and implement the 1988 ASEAN Declaration for the Advancement of Women, the 2004 Declaration on the Elimination of Violence against Women, and the gender equality goals of CEDAW, the Beijing for Action and MDGs.

She also noted that much still needs to be done to address the systemic and entrenched discrimination women in the region continue to face, including domestic violence and limited access to justice. Ms. Bachelet expressed her hope that seminars such as this

become a regular feature in UN Women and AICHR's cooperation in promoting and protecting human rights.

The Chairperson of AICHR, Mr. Rafendi Djamin expressed appreciation to UN Women and ASEAN Secretariat for organizing the seminar. He noted that almost all members of the drafting group for ASEAN's Declaration on Human Rights were present. He also expressed his regret that representatives from the ASEAN Committee on the Promotion and Protection of Women and Children could not join due to their official meeting, taking place at the same time in Solo, Indonesia. Mr. Rafendi remarked on the importance of enhancing knowledge and understanding of international human rights norms, especially given that AICHR is currently in the process of drafting a human rights declaration. To that end the seminar aims to give participants a better understanding of gender equality principles; discuss how CEDAW has thus far been implemented in the region, and identify possible actions by AICHR to address challenges in promoting and protecting the human rights of women. These discussions will assist ASEAN in incorporating a gender perspective into national and regional policies, and in promoting women's participation in all fields, including political, decision-making as well as socio-economic empowerment.

2. Introduction of AICHR

An introduction to AICHR's Principles, Procedures, Programmes, and Projects was provided by Ms. Leena Ghosh, Assistant Director, ASEAN Secretariat. Ms. Ghosh discussed the development of a human rights framework within ASEAN. She explained that while ASEAN recognizes that primary responsibility to promote and protect human rights and fundamental freedoms lies with the individual Member States, regional cooperation is important. To that end, ASEAN has established several human rights related bodies including: the ASEAN Commission on Protection and Promotion of the Rights of Women and Children; the ASEAN Committee on Migrant Workers; and the Intergovernmental Commission on Human Rights (AICHR), inaugurated in 2009.

AICHR's mandate includes: the promotion and protection of human rights; developing an ASEAN Human Rights Declaration; enhancing public awareness of human rights; encouraging ASEAN Member States to accede and ratify international human rights instruments; and developing common approaches to promoting the full implementation of ASEAN human rights instruments. In its work, AICHR must uphold international human rights standards as prescribed by the Universal Declaration of Human Rights while taking into account particularities of the member states and maintaining mutual respect for different historical, cultural and religious backgrounds.

AICHR is comprised of ten Representatives from various backgrounds who hold three-year terms and are accountable to their respective appointing governments.

Decision-making is by consultation and consensus. To date, AICHR has adopted a Five-Year Work Plan, 2010-2015; issued Guidelines on the Operations of the AICHR; issued Rules of Procedure of the AICHR Fund; established a Drafting Group for the Asian Human Rights Declaration; and identified thematic studies to be undertaken including: Corporate Social Responsibility (CSR) and Human Rights (2010); Trafficking in persons, particularly women and children; Women and children in conflicts and disasters; Right to Health; Right to Education; Right to Life; and Right to Peace. This work confirms ASEAN's commitment to the promotion of and respect for human rights in the region.

3. CEDAW Concepts

In this session, participants were briefed by Ms. Shanthi Dairiam, Expert on CEDAW from Malaysia on the concepts of equality and non-discrimination.

Substantive Equality: Ms. Dairiam stressed that in order to have comprehensive equality, the equal value of women and men must be established in the law (*de jure* equality), and the law must facilitate and provide enabling conditions for women to exercise and enjoy equality (*de facto* equality). She stressed that such comprehensive equality cannot be attained through a “formal” model of equality that treats men and women the same, and noted the importance of recognizing that women have biological, social and historical differences that must be accounted for.

Ms. Dairiam explained that CEDAW prescribes the “substantive equality” approach, which shifts the paradigm from “equal treatment,” or provision of opportunities alone, to “equality of outcome.” This approach requires that the actual conditions experienced by groups and individuals be examined, and discriminatory structural barriers to the enjoyment of equality be eliminated. Often a substantive equality approach uses affirmative action or temporary special measures to accelerate social change.

An example of ensuring substantive (or *de facto*) equality can be found in the experience of post-war Liberia. During reconstruction 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 girls and giving them six months of intense education so that they could qualify – thus facilitating *de facto* equality.

Bangladesh provides another example. The government 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 of the government – thus increasing the number of women who qualified for senior posts.

Non-discrimination: Ms. Dairiam also discussed the concept of discrimination in the context of CEDAW, noting that the Convention goes beyond the international and domestic norm of eliminating discrimination on the basis of sex, and rather than prohibiting discrimination on the ground of sex (a norm which applies to both men and women), it requires States Parties to eliminate discrimination against *women*.

CEDAW emphasises that discrimination leads to denial of rights, is socially constructed and must be actively eliminated. Discrimination can also be direct or indirect, intended or unintended. Direct discrimination occurs when different treatment of women prevents them from exercising their human rights. For example, direct discrimination occurred in a case where, through an administrative ruling, only women in a particular country were prohibited from going abroad to work because of the risk of exploitation of foreign workers in many countries. Indirect discrimination can occur where identical treatment prevents women from exercising their human rights. For example, indirect discrimination may occur if, in a particular institution, playing golf is given a certain number of points for promotion. However, if it is primarily men who play golf, this seemingly neutral policy gives men an advantage, and has a discriminatory effect of women.

The important point to remember is that, as long as any right is denied, whether there was an intention to do so or not, the situation constitutes discrimination. The state is obligated to ensure that those corrective measures are implemented to help women overcome the effect of past or socially constructed discrimination that leaves women disadvantaged vis-a-vis the men. Failing to do so constitutes discrimination.

State Obligation: Regarding state obligations with respect to CEDAW, Ms. Dairiam noted that treaty law imposes obligations that are legally binding on the State. The State has a duty to implement its commitments and responsibilities in good faith and with due diligence, which means doing the most for the achievement of human rights with the resources that the State has and can possibly mobilize towards this end. The state can also be held accountable for its failure to act with due diligence to prevent, investigate, punish and remedy acts of discrimination perpetrated by non-state actors. For example, in the context of violence against women, the CEDAW Committee has invoked the principle of due diligence in relation to State responsibility for private actors. In its General Recommendation 19, the Committee has stated: “The States are responsible for violence perpetrated by private persons as well, if state institutions have not implemented the due diligence for preventing violence or for prosecuting and punishing such acts, or not provided mechanisms for compensation of the victim”.

Under CEDAW the principle of due diligence obligates states to: prohibit discrimination; identify discrimination and provide redress; impose sanctions against

discriminatory acts; promote women's rights and equality through proactive measures; and accelerate de facto equality. With respect to positive obligation under CEDAW, states must:

- Enact a policy of non-discrimination as well as to prohibit discrimination that is results and outcome oriented and establishes bench mark indicators and goals.
- Enact laws that give effect to the constitutional guarantee of equality to comply with obligations under the Convention.
- Repeal discriminatory laws and abolish all discriminatory customs and practices
- Set up effective mechanisms through which women can obtain redress if their rights are violated, including ensuring adequate remedies for violations of women's rights; sensitizing law enforcement; training the judiciary; providing adequate budgets; providing legal aid and developing the capacity of women to claim rights.
- Have an integrated plan to advance women's rights with bench marks and indicators for the implementation of the Convention and monitoring for effectiveness, including collection of sex-disaggregated data to monitor *de facto* progress of women.
- Put in place temporary special measures (affirmative action) to cater for women's disadvantage in order to accelerate *de facto* equality of women.
- Remove impediments to women's equality based on negative cultural and traditional attitudes and practices.

This was followed by a discussion that focussed on whether CEDAW General Recommendations (GR) is binding. General Recommendations provide an authoritative view of the treaty body and are to be used as interpretive tools, but they are not necessarily binding. However, if States decide not to follow a particular GR they must explain to the Committee how they will implement the relevant provision of the Convention. There are, however, some general recommendations that effectively operationalise certain articles, which the Committee does consider to be binding (for example, GR 27 which details the rights of elderly women).

4. Compliance with CEDAW in ASEAN

In this session, three presentations were made the laws: Vietnam's Law on Gender Equality; Legislative Compliance with CEDAW in Thailand; and the Lao Law on the Development and Protection of Women.

The first presentation on "Vietnam's Law on Gender Equality" was made by Mr. Nguyen Duy Hung, the Representative of Vietnam to AICHR. He spoke about Vietnam's 2007 Law on Gender Equality, which created a legal foundation to ensure gender equality in all political and economic sectors, as well as in labor, employment,

education and training, science and technology, culture, information, sports and family matters. The law stipulates that efforts to attain “gender equality” must include the elimination of gender discrimination, the generation of equal opportunities for men and women in socio-economic development and human resources; and enhanced cooperation and mutual support among men and women in all aspects of social and family life. The law also emphasises that exercising gender equality is the responsibility of agencies, organizations, families and individuals.

Mr. Hung also pointed out that, in addition to enacting the Gender Equality Law, principles of gender equality are being mainstreamed into many other normative acts including: the Civil Code; Labour Code, and Penal Code, as well as laws dealing with employment, marriage, land, the elderly, and disabled. The Strategic Guidelines for Sustainable Development in Vietnam also affirm that women represent one of the seven priority groups in the promotion of sustainable development in the country.

As a result of this focus on gender equality, gender gaps in most political, economic and social areas have been narrowed and gender inequality in all education levels has decreased. Also, women now enjoy increased freedom, and the role and status of women in family and society has improved. For example, women make up 49% of the workforce, and a growing number of women hold managerial positions. Women’s participation in the National Assembly and the People’s Council has also increased. Challenges such as gender stereotypes, and a preference for male children over females are still prevalent however. Also crimes against women, including trafficking, sexual abuse, exploitation and family violence remain issues that must be addressed before comprehensive gender equality can be achieved in Vietnam.

In the discussion that followed, Ambassador Manalo noted that in 2008, the Philippines enacted the Magna Carta of Women, a law designed to ensure the substantive equality of women, which is essentially a nationalization of CEDAW. The Philippines also has undertaken amendments of the penal code that have led to progress for women, but inequality remains. For example, some crimes still carry different penalties for men and women (e.g. if a husband catches his wife with a lover and kills her the punishment is different than if a wife catches her husband with a lover and kills her).

The second presentation in this session was made by Professor Virada Somswasdi, member of the Law Reform Commission of Thailand, on the “Legislative Compliance with CEDAW in Thailand”. Professor Somswasdi spoke about the steps Thailand has taken, since the last CEDAW review in 2006, towards increasing gender equality and improving women’s human rights. After the 2006 coup d’etat, a new Constitution was drafted in 2007 that includes a gender equality clause. Significantly, Article 30 of the Constitution affirms that “substantive equality” cannot be deemed as unjust discrimination against other persons. The Constitution also gives specific rights to women who are victims of sexual or domestic violence, including the right to appropriate treatment in the judicial process, state protection, and legal aid.

In 2007, Thailand also enacted the Domestic Violence Victim Protection Act. Unfortunately, the Act's broad definition of domestic violence leaves much open to interpretation and thus does not fully conform to CEDAW. Despite this, the legal protection provided by the Act is comprehensive, extending to spouses, former spouses, people who currently or formerly cohabitated as unregistered spouses, legitimate children, adopted children, family members, and any persons who live as dependants in the home. Additionally, under the law, victims and witnesses have a legal obligation to report it to the police, however all complaints must be filed within three months. Penalties include imprisonment for up to six months or a fine of 5,000 baht. Critics note that such minimal penalties are evidence that domestic violence is still considered a private matter and not as an issue of public concern.

In 2007, the penal code was revised to criminalize marital rape. The revised law also provides for a broader definition of rape (any form of forced sex) and a broader definition of victim, to include men and women. Penalties include imprisonment for up to 20 years, yet the fine is only 40,000 baht (approximately \$1,300).

In 2008, Thailand's Constitutional Court ruled that, pursuant to the Married Woman's Name Act, upon marriage women could opt to keep their maiden names or take the last name of their spouse. Shortly thereafter, Thailand also passed the Prefix to Married Woman's Name Act, allowing married women to choose either to keep the prefix Nang Sao (equivalent to Miss) or Nang (equivalent to Mrs.).

The Prevention and Suppression of Human Trafficking Act was also passed in 2008 which provides for jail terms between four and fifteen years and a fine of 80,000-1 million Thai Baht. The Act also provides for assistance for trafficked victims, including food, shelter, medical treatment, rehabilitation, education and training, legal aid, and return to country of origin.

A gender equality bill is also being considered. A draft of the bill was prepared in 2004, and in 2007 the cabinet passed a resolution agreeing to it in principle. However, since then some amendments have been made, including granting exceptions when religion, academic matters and public interest dictate. These amendments have been scrutinized by UN Women and a coalition of women's groups including the Ministry of Social Development and Human Security, which has partnered with civil society to promote the people's version of the bill.

During the discussion following this presentation, participants shared that some states are debating whether to enact "gender equality laws" or "equality laws". In Thailand, women's rights advocates argued strongly for a separate gender equality law, noting that Thailand's Constitution has a separate clause on gender equality, CEDAW is a separate treaty specific to women, and most other significant human rights treaties and development agreements (such as the MDGs) have separate clauses on gender equality. A comment was made, however, that having a gender equality law does not necessarily mean that we have achieved equality for women - we must also change

the mindset of the people and attitudes of society. Regional and international initiatives including AICHR's, must work to raise awareness of women's human rights in the community and improve the conditions and situation of women so they can be truly equal with men in all areas. The Myanmar delegation highlighted some of the measures taking place with respect to women's rights in Myanmar including the election of forty-five women to parliament, some as ministers. Women also hold other high positions in government ministries and NGOs. According to statistics released in 2006-7, 33.7 % of higher posts are held by women, and in education 75.2% of lecturers and 77 % of township education officers are women. Additionally, in 2010, women's rights education was part of the curriculum designed for civil servants.

The third presenter Mr. Phonedalom Bounkham, Assistant to the Lao Representative to AICHR, spoke in his presentation on the "Lao Law on the Development and Protection of Women in Lao PDR". He presented developments in Lao PDR related to gender equality. He noted that in 2003 Lao amended its Constitution to provide for a guarantee of gender equality. Subsequently, in 2004, Lao PDR adopted the Law on the Development and Protection of Women which aims to: eradicate all forms of discrimination against women; combat trafficking in women and domestic violence; and create conditions for women to be a powerful force in the nation's defense and development. The Law also requires that the State promote international cooperation with regard to women by: implementing treaties concerning women, preventing trafficking of women, and exchanging experiences and cooperating with other countries regarding gender issues.

In Lao PDR, the promotion and protection of women's rights is largely carried out by the Lao Women's Union and the National Commission for the Advancement of Women (NCAW). These entities serve as centers for solidarity and education of women. They also are charged with conducting studies and formulating policy, plans, projects and regulations that are related to the development and protection of women.

Mr. Bounkham pointed out that the implementation of the Law on the Promotion and Protection of Women reflects the strong commitment of the Lao PDR in the implementation of CEDAW and other related regional and international instruments.

The CEDAW Committee noted that Laos' Constitution does not define equality, and legal frameworks to ensure substantive equality for women are weak. Participants asked what measures the government is taking to strengthen legislation and what Laos is doing to measure the actual impact of the Law on the Development and Protection of Women on women's lives. Mr. Bounkham noted that Laos organized a series of workshops and consultations to determine how to best implement the CEDAW Committee recommendations. Additionally, the Lao Women's Union and NCAW are reviewing the effects of the Law on Development and Protection of Women.

Many participants, during the discussion noted that the process of reviewing the Law should include efforts to raise awareness among stakeholders to better understand the CEDAW standards. There is a broad consensus in Laos on the need to strengthen the legal framework, and a new law on domestic violence will be the next legal development in the country. It is crucial however, that mechanisms are in place to measure the actual effect of laws that promote the rights of women.

Trafficking in Laos was also discussed. The Law on Protection of Women imposes a penalty of 5-15 years in prison and confiscation of property for trafficking crimes. The government has also set up a committee to register its workers in Thailand, and there are efforts to provide more education and income generating opportunities to people in Laos to stop them from falling prey to traffickers.

5. Gender equality in regional human rights instruments

A case study from the Inter-American Human Rights System was presented by Ms. Rosa Celorio, Sr. Attorney for the Inter-American Commission on Human Rights (IACHR) in this session. She provided an overview of legal instruments of the IACHR, which include: a Commission and Court that investigate and hear cases regarding allegations of human rights; a Rapporteurship on the rights of women; on-site visits to monitor states' compliance with legal obligations; an individual petition system; and thematic hearings and country regional thematic reports.

The Inter-American System of Human Rights has several legal instruments related to gender equality including the American Declaration on the Rights and Duties of Man, The American Convention on Human Rights, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (otherwise known as the Convention of Belem do Para). All of these instruments obligate parties to respect rights without discrimination on the basis of gender. The Convention of Belem do Para expressly recognizes the relationship between gender violence and discrimination, as well as the need to adopt comprehensive strategies to prevent, punish and eradicate it.

Ms. Celorio provided several examples of case rulings by the Commission and Court related to gender equality that generated legal standards related to: the rights of women to live free from all forms of discrimination and violence; states' due diligence obligations; and states obligation to ensure women victims of discrimination and violence have adequate access to justice.

Recently the Commission has also addressed some groundbreaking issues such as: intersectional and multiple forms of structural discrimination; barriers to adequate access to adequate health services and the reproductive rights of women; discrimination on the basis of sexual orientation; gender equality in the family and

custodial settings; the rights to privacy and to protection from family; and the economic, social and cultural rights of women.

Participants during the discussion questioned whether a state can invoke double-jeopardy when the Inter-American Commission and CEDAW both are called upon to investigate the same facts. As long as the Commission is addressing a point of inquiry different from the one CEDAW addressed, there will be no double jeopardy.

6. Judgments Reflecting Substantive Equality and Non-Discrimination at National Level

To illustrate judgments reflecting Substantive Equality and State Obligation under CEDAW, a case study from Malaysia regarding discrimination based on pregnancy was made by Ms. Honey Tan, an Advocate and Solicitor of the High Court of Malaya.

The petitioner in the case, Ms. Norfadilla, was a female applicant for a temporary teacher position in a government school. After interviewing for the position, she received a text message stating she was selected for the job. She subsequently signed a placement memo, was told the name of school where she would teach, and attended the final briefing. Those present at the briefing were informed that no pregnant women would be hired. The petitioner revealed that she was three months pregnant and thus had her placement memo revoked.

Ms. Norfadilla brought her case to court arguing that the revocation of her job violated the Federal Constitution, which prohibits discrimination based on gender. Ms. Norfadilla also argued that the state was bound by Article 11 of CEDAW, obligating states to take all appropriate measures to eliminate discrimination against women in employment. Ms. Norfadilla also used the circular advertising the position as evidence, noting that it did not list pregnancy as a disqualifying factor, but did indicate that no maternity benefits would be paid – thus the employer must have contemplated that some of its staff would become pregnant.

The government argued that the purpose of temporary teachers to deal with shortage of teachers and employing pregnant temporary teachers would compound problem. The government also argued that it was protecting pregnant women from doing difficult work.

The Court held in favor of Norfadilla. In its decision the Court noted that CEDAW has the force of law and is binding on Malaysia. It reminded the government that it had repeatedly emphasized its commitments to implementing CEDAW and had amended the Constitution to add gender as a prohibited ground of discrimination. The Court rejected the government's policy arguments, finding the circular's mention of maternity benefits to be evidence that it must have contemplated employing pregnant women. The judgment was the first time a court in Malaysia used CEDAW to interpret a constitutional provision. The Court's adoption of the definition of

“discrimination against women” in Article 1 of CEDAW means that both direct and indirect discrimination are legally recognized in Malaysia. The lawyers from the case plan to file a new action in Court using CEDAW principles to argue that the state is not fulfilling its obligations to protect transgendered Muslims from violence and harassment.

Another case study from Thailand was presented by Professor Virada Somswardi on Thailand’s Name Act of 1962. This act states that: “A married woman is to use her husband’s surname”. The law stipulated that any woman who did not officially register her new name in response to marriage was subject to a fine. This principle contradicts CEDAW Article 16(f), which requires States Parties to ensure the same personal rights to husbands and wives, including the right to choose a family name.

In subsequent years several proposals to amend the Act, and give women the right to choose to use their own surname upon marriage, were met with opposition. For example, in 1999 the Thai Council of State opposed amendment on the basis that it was against the custom and morals of Thai society. Others said that if women didn’t take their husbands’ surname it would cause disunity in the family and confuse children. Some even worried it may result in children having different last names from their father, leading to the possibility that children of men with multiple wives could mistakenly marry each other.

In response, women’s rights activists took action challenging these arguments. They highlighted the CEDAW principle that requires states to take measures to change norms, values and traditions that discriminate against women. They argued that the Name Act of 1962 attaches more importance to boys than girls by not allowing women to continue the descendant line of their family. Additionally, they argued that women who are successful in their work, and become well known by their family surname, lose their earned reputation upon marriage and require extra effort to regain recognition by the public as compared to men. Activists emphasized that amending the law would allow children born in a family to *choose* to use their father or mother’s surname and, in the case of women who still adhere to custom, to *choose* to use their husband’s surname.

Eventually, in 2001 the Ombudsman on Human Rights asked the Constitutional Court to decide whether the 1962 Name Act violated the Constitution, which provides that “men and women have equal rights”. The Court accepted the case, and upon review of all Thai laws related to the family found that previously, during the reign of King Rama XI (1910-1925), women were allowed to choose their own surname, thus proving that the pro-choice argument was not against Thai tradition. The Court also found that the majority of countries in the world take an equal choice approach to the issue. It also took notice of CEDAW principles on gender equality, non-discrimination and state obligation, as well as Article 30 of the Thai Constitution requiring equal treatment for men and women. Having considered all of the above, the Court ruled that the 1962 Name Act was unconstitutional. Consequently, the Act

was amended in 2005, abolishing the provision that forced married women to use their husband's surname.

During the discussion, some participants questioned whether the law has had much effect in practice. Studies have shown however, that since the law was passed, a many women have chosen not to take their husband's surname, and some married women changed back to their maiden names. Participants made note of practical reasons to keep one's maiden name. For example, as a married person, many banks require a spouse's signature to obtain a loan. When a woman who has taken her husband's name applies for a loan, the bank knows she is married and requires her husband's signature. But when men apply for a loan the bank does not know he is married and does not always ask, allowing men to take out loans without their wife's consent. Another example has to do with property rights. Under Thai land law foreigners cannot own land. When Thai women married to foreigners were forced to change their name, their foreign name made it difficult to buy land.

The next case study was from Nepal. Ms. Sapana Pradhan Malla, Member of the Constituent Assembly of Nepal presented a case study on marital rape. Previously Nepal had a law against rape that specifically exempted wives from protection. This law was based on traditional Hindu principles holding that a woman's duty is to make her husband happy, and marriage implies consent for sex. Women's advocates wanted to challenge the law but could not find any marital rape victims willing to bring their case to court. Therefore advocates filed a case using a constitutional provision allowing anyone to petition the Supreme Court on issues related to the public interest.

In arguments for amending the law, Nepal's changing political and cultural climate that has increasingly emphasized democracy and secularism was noted. It was argued that exempting married women from Anti-rape laws violated Article 1 of CEDAW (ratified by Nepal without reservation in 1991), which prohibits discrimination against women based on marital status. The CEDAW's General Recommendation 19 and the Beijing Platform for Action that calls for States to enact laws against domestic violence and marital rape were also highlighted. It was acknowledged that the State is allowed to create reasonable classifications in applying the law; however, treating married and unmarried women differently in rape cases was unreasonable. The government took the position that tradition and religion dictate different treatment of married and unmarried women.

The Supreme Court ruled in favor of the plaintiffs, holding that if a woman is forced or coerced into having sex without her consent it is a crime and husbands do not get an exemption. In its ruling the Court relied on treaty jurisprudence that states: "In cases of inconsistency between convention and law, convention prevails". The Court also noted that marital rape constitutes violence against women, violates their right to privacy and self-determination, and contributes to slavery like practices by treating women like objects. The Court found that the State had no reasonable basis for

classifying and treating wives differently in the context of rape and directed the state to introduce a new law criminalizing marital rape.

This led to the enactment of the Gender Equality Amendment Bill in 2006, making it a crime to have sexual intercourse with *any* woman, without her consent. However, the 3-6 month penalty for raping one's wife, and liberal bail provisions, were substantially less than the penalties for committing rape outside of marriage. Therefore, a new case was filed challenging the discriminatory punishment provisions of the Amendment. Subsequently in 2007, the Supreme Court ruled there could be no discrimination in punishment on the basis of the marital relationship. The new criminal code now accords the same punishment to perpetrators of rape whether or not the perpetrator and victim were married, making it a non-bailable crime with up to five-year prison sentences.

Work is now being done to train judges on the new law and monitor its implementation. Follow-up cases have also been filed to improve the confidentiality of the justice process and increase the statute of limitations for filing rape cases.

After the presentation, participants discussed how proving rape is difficult because some jurisdictions still require corroboration and the character of the victim can be used against her. Another problem women face is the gap between women's reality and the law. For example, women may wait more than a month before reporting a rape to authorities, however many jurisdictions require rape charges to be filed in seven days - this time limit does not reflect women's realities. In addressing rape we also must fight against harmful cultural mindsets – for example some cultures still believe that if a man rapes a woman he can make amends by marrying her. We also need mechanisms to monitor the success of rape cases, make the state accountable and give more power to victims.

Whether CEDAW covers trans-gendered individuals was also discussed. Courts have provided conflicting answers to “What it means to be a woman?” For example, one person's application to change their gender was rejected based on a conclusion that sex is biological. But in another case a judge placed more importance on the psychological aspects of gender. CEDAW's General Recommendation 28 on Core Obligation of States Parties under the Convention provides fresh thinking on this issue and basically states that, tolerating violence based on the gender attributes of an individual, or denying benefits on the basis of the gender identity or sexual orientation of a person, constitutes discrimination under CEDAW. The application and adherence to this international human rights standard must be promoted at the domestic level. Such application and progress needs to be incremental and continually moving forward – it can't remain stagnant.

7. Jurisprudence from the Regional Level

An example to illustrate jurisprudence from the regional level by was made by Ms. Rosa Celorio, Senior Attorney from the Inter-American Commission on Human Rights who spoke on the key decisions from the Inter-American Human Rights Court related to gender rights.

The Court's first comprehensive ruling on women's rights issues was in the case of *Gonzalez et al. ("Cotton Field") vs. Mexico*, 2009. In that case the Commission presented a complaint before the Court alleging that the State of Mexico was responsible for irregularities and delays in investigating the disappearances and subsequent death of three women. The Court found that the State had failed in its duty to guarantee the human rights of the three victims by failing to act with the due diligence in investigating the cases, and discussed in detail the State's duty to provide adequate access to justice for victims and their family members when they seek to obtain a remedy. The Court confirmed that these obligations have a "wider scope" in cases of violence against women, and noted that judicial inefficacy sends a social message of tolerance to violence against women, which promotes its repetition.

In 2010 the Court decided *Ines Fernandez Ortega et al. and Valentina Rosendo Cantu vs. Mexico*, a case alleging rape of indigenous women by members of the Mexican military. The Court found the State responsible for violations to the right to personal integrity; dignity and privacy; judicial protection and guarantees; and access to justice without discrimination under the American Convention and held that the rape the women suffered at the hands of military officials amounted to torture under the Inter-American Convention to Prevent and Punish Torture.

In *Dos Erres Massacre vs. Guatemala* (2009), the Court held the State responsible for allegations of sexual violence perpetrated during the armed conflict in Guatemala. The Court stated that the rapes were a State practice "directed at destroying the dignity of women at a cultural, social, family, and individual level" and the lack of investigation of such grave violations constitutes a breach of the State's obligations.

In the judgment of *Kakmok Kasek v. Paraguay* (2010), the Court highlighted the lack of adequate care for pregnant women and high mortality rates within the Kakmok Kasek indigenous community in Paraguay. The Court held that by not adopting healthcare policies to prevent maternal mortality the State had violated the right to life established in Article 4(1) of the American Convention on Human Rights.

The Court is currently considering several cases regarding groundbreaking issues including: child custody rights of lesbians in Chile; and reproductive rights and the prohibition of in vitro fertilization in Costa Rica.

While the Inter-American Human Rights Court rulings are binding, participants later queried how the Inter-American Commission ensures compliance with its

recommendations. Participants shared that the biggest challenge faced by any human rights system is state compliance. In response, it was explained that Commission has some mechanisms to ensure compliance, such as the ability to request information from states, state hearings, and on-site visits, but it is hard to gauge what compliance really looks like unless you give it time. Compliance is a process and these cases are ingredients of a strategy that we pursue in order to assist the state in complying with human rights law.

8. The Optional Protocol to CEDAW

An Introduction to the Optional Protocol was provided by Ms Amarsanaa Darisuren, Human Rights Specialist, UN Women. She explained that the Optional Protocol to CEDAW was adopted in 1999. It is a separate human rights treaty that compliments CEDAW and has been ratified by 102 countries including three ASEAN member states (Cambodia, the Philippines, Thailand) and Timor-Leste. The Optional Protocol is an optional undertaking that doesn't establish new rights but is a mechanism for creating access to justice at an international level when it is denied at a national level.

Following this, Ambassador Rosario Manalo, Philippines representative to AICHR made a presentation on the Philippines first case filed under CEDAW's Optional Protocol. In April 1996, Karen Tayag Vertido was raped by her boss and subsequently filed a complaint with the Philippine's Department of Justice. The case remained unresolved at the trial level for eight years, during which time the accused filed several appeals, and three judges recused themselves. In 2002, the case was referred to a female judge who did not consider the country's new rape law adopted in 1997, but instead relied on Supreme Court case law that was decided under the country's old penal code, which was more favorable to the accused. The Court acquitted the accused stating that: the sex must have been consensual because the two people involved knew each other; it was impossible for a 60 year-old man to rape a woman; and Karen could have escaped if she really tried. In 2007, Karen brought the case to the CEDAW Committee under the Optional Protocol, stating that the trial court verdict was rendered in bad faith. Karen argued that the State had violated various provisions of CEDAW, including the failure to protect against discrimination by public authorities; by not addressing gender based stereotypes; and the failure to exercise due diligence in punishing acts of violence against women.

In 2010, the CEDAW Committee rendered a decision stating that the State had failed to fulfill its obligations under Articles 2 (c), (d) and (f) and Article 5(a) read in conjunction with Article 1 of the Convention and its General Recommendation No. 19. The Committee required the State to: provide appropriate compensation to Karen commensurate with the gravity of the violations of her rights; take effective measures to ensure that court proceedings involving rape allegations are pursued without undue delay; Ensure that all legal procedures in cases involving crimes of rape are impartial

and fair and not effected by prejudices or stereotypical gender notions; improve judicial handling of rape cases; provide training and education to familiarize legal professionals with CEDAW's requirements; place lack of consent at the center of any definition of rape; amend rape laws to remove requirements of proof of force and violence as well as penetration in order to prove sexual assault.

The government responded by articulating its commitment to fair and impartial trials, to training the judiciary, and placing consent at the heart of any definition of rape. However, the government refused to compensate Karen arguing that CEDAW does not explicitly provide for the right to a remedy, and in addition, Karen did not comply with Philippine law requiring victims to file for compensation within six months of the injury.

During the discussion participants asked whether the plaintiff exhausted her domestic remedies, and whether the judge in the case was ever investigated. In response it was explained that the Plaintiff did not exhaust the writ of certiorari because the writ only applies to particular cases that meet four conditions, which were not met by the plaintiff's case. Therefore, the CEDAW Committee agreed that it would have been pointless for her to raise the issue with the Supreme Court. The Committee addressed the manner in which trials are conducted in rape cases and the fact that they often take too long. The Committee stated that for a remedy to be effective, a case must be dealt with in a timely and judicious manner. The Committee also pointed to serious bias, including gender-based myths and stereotypes that were reflected throughout the Philippines' court ruling. The Committee recognized that traumatized victims cannot always talk easily about the trauma they have experienced. It stated that there is no such thing as an "ideal victim" who responds in the way we think she should respond. In its ruling however, the Committee did not require the government to investigate the judge. The Executive branch of government told the Committee that they couldn't interfere with judiciary in this case. The Philippines government also argued that the Convention doesn't provide for a remedy. However, the CEDAW committee said the right to a remedy is implicit in Article 2c of the Convention, requiring states to ensure the effective protection of women – which is interpreted by the Committee as including a remedy. Going beyond a textual reading and looking at how the Committee has interpreted the Convention, makes it clear that a right to a remedy is firmly established.

9. Human Rights of Women Migrant Workers and CEDAW General Recommendation No. 26.

To introduce this, Ambassador Rosario Manalo, Philippine representative to AICHR presented on "Migration and women's human rights in the ASEAN region". Intra-Asean migration is not always linear – several countries in the region are both labor sending and labor receiving countries. It is estimated that 50-60 % of intra-ASEAN

migration flows consist of women migrant workers, many of whom are undocumented. These women are most often employed in domestic work, low-skilled jobs and in the informal economy, making them vulnerable to abuse, exploitation, violence and trafficking. Some groups are also de-skilled such as Filipino domestic helpers who hold college degrees and are teachers.

By 2015, the ASEAN will become a single market. This development will most certainly result in increased migration. As a result, the ASEAN Declaration on the Promotion and the Protection of the Rights of Migrant Workers was adopted in 2007 to set the direction of protecting migrant workers. Unfortunately, the Declaration lacks a gender perspective and does not include families of migrant workers, undocumented workers or the nearly five million stateless people in ASEAN.

The CEDAW General Recommendation 26 (GR 26) enumerates guidelines on how states can cooperate to protect women migrant workers, and thus should be used to make ASEAN's protection mechanisms for migrant workers more gender-sensitive. GR 26 defines 'migrant women' as: women migrant workers who migrate independently; women migrant workers who join their spouses or other members of their families who are also workers; and undocumented workers who may fall into any of the above categories. It acknowledges that women can face discrimination not only because of their migrant status, but they also face gender-based discrimination that arises from violence.

GR 26 notes that discrimination against women migrant workers can occur before departure and upon return, in transit countries, as well as in destination countries; and can be in the form of formal restrictions, gender stereotypes, lack of legal protection for work in contracting and wages, stereotyping, in accessing health services, harassment and abuse and limitations on access to justice.

In developing a human rights framework on migration, protection mechanisms should include all types of migrant women, including stateless people, economic workers, asylum seekers, refugees, victims of trafficking, expatriate female workers and professional women workers. Additionally, undocumented workers should have legal rights as documented migrant workers and national governments should capacitate undocumented workers so they can acquire skills.

ASEAN should be accountable for this capacity-building with the assistance of individual governments. Additionally, countries must develop data on migration and should study the extent of de-skilling trends among migrant workers and address the issue via Mutual Recognition Agreements

During the development of the GR 26, there was a lot of debate within the CEDAW Committee about whether issues of migration fall under the Convention, given that migration affects both men and women. However, migration issues have a different impact on women, and women migrant workers are more vulnerable to abuse.

General Recommendation 26 details how these issues are interpreted by CEDAW Convention. There was also debate as to whether the GR 26 should address issues of trafficking. A footnote to GR 26 acknowledges that much of it applies to trafficking issues, but while there are connections and overlaps between migrant work and trafficking, they are two different phenomena and objectives of state are different. For example, State Parties aim to completely abolish trafficking, however the obligation of states regarding migration is to make it safe and to manage it well so that the state and the migrant benefit. Where migration and migrant work is safe and easy (i.e. not too many procedures and rules, and low financial costs) then trafficking does not take place so easily. If the process is too difficult the worker becomes more vulnerable and can fall prey to traffickers who promise them an “easy way in”, and then cheat them. Governments must recognize that there will always be movement for labor so it is in their interest to make it profitable for everyone and facilitate the flow of labor so that desperate people in search of a livelihood won’t be so vulnerable.

AICHR is developing a programme related to migration, under the leadership of Indonesia, in which it treats separately the issues of migrant workers from trafficking. There are also plans to tackle issues regarding the rights of stateless people in the region of ASEAN. There is the ASEAN Declaration on migration but there must be more emphasis on protecting female migrant workers. For example, there is often no remedy available to women migrant workers who have suffered violence at the hands of their employers. Another problem is the fact that work permits given to migrant workers only allowing them to work for a particular employer. In the case of a violation at work, the migrant worker can bring the issue to Court, but once she does, she is not allowed to work for that employer any longer and thus her work permit is revoked. In most cases she will have no income since she lost her job, so it becomes difficult to pursue the case. Thus the remedy is too complex and difficult to access. There should be a common ASEAN approach to these kinds of issues. We also need regional programmes to rehabilitate trafficking victims. Perhaps ASEAN can collaborate with the OSCE which faces similar issues of migrant workers and trafficking.

The connection between AICHR and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was also asked. The first step is to get data on these issues. ASEAN makes no discrimination for skilled and unskilled workers (the charter doesn’t allow it) however in reality some member states only want skilled labor. As a region ASEAN should have a programme to provide workers with skills. Additionally, ASEAN shouldn’t discriminate against those without documents, but there must be political will from the ten member states to address these issues.

10. Closing Remarks

Ambassador Rosario Manalo closed the seminar by promising to report back to AICHR on the discussions held at the seminar and expressed hope that most if not all of the recommendations will be taken up by AICHR.

This was followed by Ms. Shoko Ishikawa thanking participants and offering support from UN Women to facilitate these types of discussions at the country level and also mentioned that UN Women is interested in going much deeper into some of these issues with ASEAN members and AICHR. She requested participants to let UN Women know what more are needed and how they can help.

C. RECOMMENDATIONS

1. Recommendations for AICHR Workplan

i. At the Regional Level

(1) Capacity building on Substantive Equality and Non-Discrimination (according to the standards of CEDAW) for AICHR and ASEAN Sectoral bodies, ASEAN Inter-Parliamentary Assembly (AIPA), and presentations on Substantive Equality and Non-Discrimination at the ASEAN Law Ministers Meeting.

(2) Capacity building on modalities for a coordinated implementation of concluding observations from several treaty bodies in order to create cohesion on equality and enabling a common approach in addressing obligations under several treaties.

(3) Capacity building on incorporating international human rights standards into domestic legal systems impacting on laws such as penal, labor, health, education, etc.

(4) Mainstream gender-equality in then AICHR's work plan

(5) AICHR to promote a human rights based approach in the implementation of ASEAN MDG roadmap.

(6) AICHR to promote mainstreaming of gender equality in the ASEAN three pillars and their blueprints.

(7) AICHR to issue recommendations on gender equality to ASEAN sectoral bodies.

(8) Study the ten recommendations of the UN Women *Progress of the World's Women 2010-2011: In Pursuit of Justice* report and propose a common approach in the region for implementation through a working group.

(9) AICHR to promote exchange on best-practices on elimination of discrimination against women, including violence against women and girls.

(10) AICHR to develop ASEAN guidelines on handling issues pertaining to discrimination against women for law enforcement agencies and the legal sector.

(11) AICHR to recommend the strengthening of the ASEAN Secretariat as well as the national secretariats in each Member State to effectively support the mandate of AICHR to promote and protect fundamental freedoms and human rights in ASEAN.

ii. At the National Level

(12) Capacity building on substantive equality and non-discrimination (based on standards set out of CEDAW and treaty obligations), particularly for, but not limited to:

- National women's machinery
- Justice ministries (MOJ)
- Judiciary
- Parliament/legislature and
- Executive law review/drafting agencies

(13) Promote public awareness on substantive equality and non-discrimination.

(14) Capacity building on modalities for a coordinated implementation of concluding observations from several treaty bodies in order to create cohesion on equality and enabling a common approach in addressing obligations under several treaties.

iii. Issues related to women migrants

(15) Develop a human rights framework based on international standards protecting migrant workers – particularly skilled and unskilled women migrant workers.

- Study ILO convention on the protection of domestic workers
- Review ASEAN Declaration on migrant workers of 2007 to include families of migrant workers who may join them at a later stage.
- Study the possibility of a declaration or convention based on CEDAW General Recommendation 26, as it applies to women migrant workers in the region.

(16) AICHR to recommend that States parties have an obligation to protect the basic human rights of undocumented workers including access to legal remedies and justice in cases of risk to life and of cruel and degrading treatment, and deprivation of basic human needs.

(17) Encourage ASEAN bodies and member states to provide capacity building and support for migrant workers, particularly women.

(18) AICHR should study trends in migration including de-skilling (for example doctors migrating to become nurses) and should work on establishing mutually recognized professional accreditation of skills among ASEAN member states.

(19) Encourage Member States to collect sex-disaggregated data on documented and undocumented migrant workers.

2. Recommendation for the ASEAN Human Rights Declaration

(20) Non-discrimination - There should be a wide range of prohibited grounds for non-discrimination including sexual orientation and gender identity. The list should not be exhaustive but be open-ended to accommodate inclusion of future/additional forms of discrimination.

(21) Follow the example of the Canadian Charter on the Rights and Freedom, and refer to equal benefits and protection of women under the law.

(22) Review the Inter-American legal instruments on equality including the American Convention on Human Rights and Convention on Prevention, Punishment and Eradication of Violence Against Women or the Convention of Belem do Para, as well as other Regional Instruments (e.g. Africa)

(23) Explore options for various formats of the text:

- Should it include explanatory comments or commentaries?
- Should it use general language open to interpretation or should the text be specific?

(24) Include a provision that the Declaration shall be incorporated into the national laws; or at a minimum promote the incorporation/consideration of the spirit of the Declaration in the policy process and practices of ASEAN member states.

(25) Both non-discrimination and equality should be clearly incorporated into the AHRD. AICHR and the drafting group should discuss whether the Declaration should mention non-discrimination and equality separately or be under the general title equality.

(26) The declaration should set out ASEAN's minimum standards, which should not be less than the international standards set out in human rights instruments that ASEAN members have ratified. The minimum should be based in human rights law not based on political opinion.

(27) Include a provision for periodic review on the progress of implementation of the Declaration.

Annex I

Programme Agenda

ASEAN Intergovernmental Commission on Human Rights (AICHR)

in cooperation with

UN Entity for Gender Equality and the Empowerment of Women (UN Women)

Seminar: Towards Achieving Substantive Gender Equality

5-6 September 2011, Jakarta, Indonesia

Objectives of the Seminar

The Seminar aims to provide a platform for discussion and update on the latest developments in the international normative frameworks on gender equality and women's human rights. More specifically, based on the AICHR priorities, the Seminar will contribute to the following objectives:

1. To gain better understanding of principles of non-discrimination and substantive equality and state obligation as prescribed in CEDAW
2. To share international good practices on compliance with CEDAW in selected areas of women's human rights
3. To make recommendations to AICHR on its possible actions on gender equality in ASEAN

Monday, 5 September 2011	
Opening Session Chair: Amb. Rosario Manalo, AICHR Representative, Philippines	
09:30 - 10:00	Opening remarks Dato' Misran Karman, Deputy Secretary-General, ASEAN Ms. Moni Pizani, Regional Programme Director, on behalf of Ms. Michelle Bachelet, Under Secretary-General of United Nations and Executive Director of UN Women Mr. Rafendi Djamin, Chairperson, AICHR
10:00 - 10:15	Introduction of AICHR , its Principles, Procedure, Programmes and Projects

	Ms. Leena Ghosh, ASEAN Secretariat
10:15 - 10:25	Introduction of participants
10:25 - 10:30	Introduction to the Programme of the Seminar
10:30 - 10:50	Photo session and Coffee Break
Topic 1: The CEDAW Concepts	
Chair: Dato' Sri Dr Muhammad Shafee Bin Md Abdullah, AICHR Representative, Malaysia	
10:50 - 11:30	Substantive Equality and Non-Discrimination Ms. Shanthi Dairiam, Expert on CEDAW Discussion of experts and participants
11:30-12:30	Core Obligation of the State Ms. Shanthi Dairiam, Expert on CEDAW Discussion of participants
12:30 – 13:30	Lunch
Topic 2: Case Studies on Legal Compliance with CEDAW in ASEAN	
Chair: Ambassador Kyaw Tint Swe, AICHR Representative, Myanmar	
13:30 -14:45	Gender Equality Law of Viet Nam Ambassador Nguyen Duy Hung, AICHR Representative, Viet Nam Legislative compliance with CEDAW in Thailand Dr. Virada Somswasdi, Law Reform Commission of Thailand Discussion of participants
14:45 – 15:00	Coffee Break
Topic 3: Case Study on Gender Equality in regional human rights instruments	
Chair: Ambassador Kyaw Tint Swe, AICHR Representative, Myanmar	
15:00 - 16:00	Legal Instruments in the Inter-American Human Rights System

	Ms. Rosa Celorio, Senior Attorney, Inter-American Commission on Human Rights Discussion of participants
Summary of the Day	
16:00-17:00	Group work to summarize points of relevance to AICHR
Tuesday, 6 September 2011	
8:30 – 9:00	Law on Development and Protection of Women in Lao PDR Mr. Phonedalom Bounkham, Assistant to Lao Representative to AICHR
Topic 3: Judgments Reflecting Substantive Equality and State Obligation under CEDAW at national level Chair: Ms. Shanthi Dairiam, Expert on CEDAW	
9:00 - 10:45	Case study from Malaysia Ms. Honey Tan, Advocate & Solicitor, Tan Law Practice Case Study from Thailand Dr. Virada Somswasdi, Legal Reform Commission of Thailand Good practice judicial response of Nepal Ms. Sapana Pradhan Malla, Member of Constituent Assembly, Nepal Discussion of participants
10:45 – 11:00	Coffee Break
Topic 4: Jurisprudence from the Regional level Chair: Amb. Rosario Manalo, AICHR Representative, Philippines	
11:00 - 11:40	Good practice judicial responses on gender equality from Inter-American Human Rights Court Ms. Rosa Celorio, Senior Attorney, Inter-American Commission on Human Rights

	Discussion of participants
Topic 5: Optional Protocol to CEDAW	
Chair: Ms. Shanthi Dairiam, Expert on CEDAW	
11:40- 12:40	Karen Tayag Vertido vs. Government of the Philippines Amb. Rosario Manalo, AICHR Representative, Philippines Discussion of participants
12:40 – 13:40	Lunch
Topic 6: Human Rights of Women Migrant Workers	
Chair: Ambassador Nguyen Duy Hung, AICHR Representative, Viet Nam	
	Human Rights of Women Migrant Workers and CEDAW General Recommendation 26 Amb. Rosario Manalo, AICHR Representative, Philippines Discussion of participants
Topic 7: Conclusions and Recommendations of the seminar to AICHR on possible actions on gender equality in ASEAN	
Chair : Shanthi Dairiam	
	Group work to summarize points of relevance to AICHR
	Discussion of recommendations
Closing Session	
15:45 - 16:00	Closing Statement Ambassador Manalo, Philippine Representative to the AICHR Ms. Shoko Ishikawa, Regional Programme Manager, UN Women East and Southeast Asia Regional Office

Participants List

Country	Participants	Title / Organization
Brunei Darussalam	Ms. Izzati Baharuddin (On Behalf of Mr. Pehin Dato Hamid Bakal)	Second Secretary, Ministry of Foreign Affairs and Trade
Cambodia	Ms. Kheang Ratana (On Behalf of Mr. Om Yentieng)	Assistant to Cambodian Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
	Ms. Than Boravodey	Cambodia National AICHR Supporting Official Cambodian Human (CHRC) Rights Committee
	Mr. Orn Panhha	Member of the Drafting Group on ASEAN Human Rights Declaration (AHRD), Cambodia
Indonesia		Chair, ASEAN Intergovernmental Commission on Human Rights (AICHR)
	Mr. Rafendi Djamin	Indonesia Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
	Mr. Widya Rahmanto	Deputy Director, Directorate General of ASEAN Cooperation-Ministry of Foreign Affairs of the Republic of Indonesia
	Ambassador Hazairin Pohan (On Behalf of Prof. Harkristuti Harkrisnowo)	Director-General of Human Rights, Ministry of Law & Human Rights
Lao PDR	Mr. Phonedalom Bounkham (On Behalf of Mr. Bounkeut Sangsomsak)	Desk Officer, ASEAN Department, Ministry of Foreign Affairs
	Mr. Sengpraarthid Snookphone	Human Rights Officer, Assistant Project Manager of the International Law Project, Department of Treaties and Law, Ministry of Foreign Affairs
	Mr. Phongsavanh Sisoulath	Member of the Drafting Group on ASEAN Human Rights Declaration (AHRD), Lao PDR

		Deputy Director-General, Member of the Drafting Group, ASEAN Department
Malaysia	Dato' Sri Dr. Muhammad Shafee Bin Md Abdullah	Malaysia Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
	Mr. Lum Wan Liang	Assistant Director of ASEAN-Malaysia National Secretariat
	Ms. Siti Fatma Binti Omar (On Behalf of Y.M. Raja Dato' Nazrin Aznam)	Assistant Secretary, Human Rights & Social Division, Ministry of Foreign Affairs, Malaysia
Myanmar	Ambassador Kyaw Tint Swe	Myanmar Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
	Ms. Mya Yamin Khin	Head of Branch II, ASEAN Department, Ministry of Foreign Affairs, Republic of the Union of Myanmar
	Mr. Nyunt Swe	Member of the Drafting Group on ASEAN Human Rights Declaration (AHRD), Myanmar
		Advisor of the Ministry of Foreign Affairs, Myanmar
Philippines	Ambassador Rosario Gonzalez Manalo	Philippines Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
	Ms. Kathleen Nuestro Marges	Assistant, Department of Foreign Affairs
	Ms. Irene Susan Barreiro Natividad	Member of the Drafting Group on ASEAN Human Rights Declaration (AHRD), Philippines
		Executive Director, Office of Legal Affairs, Department of Foreign Affairs
Singapore	Mr. Winston Goh	First Secretary, Permanent Mission of the Republic of Singapore to ASEAN
	(On Behalf of Mr. Richard R. Magnus)	

	Ms. S. Radha	Second Secretary, Permanent Mission of the Republic of Singapore to ASEAN
Thailand	Ms. Sunsanee Sutthusunsanee	Assistant to Dr. Sriprapha Petcharamesree, Thai Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
	(On Behalf of Dr. Sriprapha Petcharamesree)	
	Mr. Panote Preechyanud	Desk Officer, Ministry of Foreign Affairs
	Dr. Seree Nonthasoot	Member of the Drafting Group on ASEAN Human Rights Declaration (AHRD), Thailand
		Legal Counsel of the State Enterprise Policy Office, Ministry of Finance, Thailand
Vietnam	Ambassador Nguyen Duy Hung	Vietnam Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)
	Mr. Tran Vinh Tien	Official, ASEAN Department, Ministry of Foreign Affairs of Vietnam
	Mr. Nguyen Anh Tu (On Behalf of Mr. Vu Ho)	Official, Department of International Organizations, Ministry of Foreign Affairs of Vietnam
Expert	Name	Title / Organization
Malaysia	Ms. Shanthi Dairiam	Member of the board of directors for the International Women's rights Action Watch (IWRAW) Asia Pacific and Former CEDAW Committee Expert
Malaysia	Ms. Honey Tan Lay Ean	Advocate & Solicitor, Tan Law Practice
United States of America	Ms. Rosa Margarita Celorio	Senior Attorney, Inter-American Commission on Human Rights, Special Rapporteurship on the Rights of Women
Nepal	Ms. Sapana Pradhan Malla	Member of Constituent Assembly of Nepal

Thailand	Dr. Virada Somswasdi	Law Reform Commission of Thailand and Professor, Women's Studies Centre and Law faculty, Chiangmai University, Thailand
Vietnam	Mr. Vu Ngoc Binh	Human Rights Expert
ASEAN Secretariat	Name	Title
ASEAN Secretariat	Dato' Misran Karmain	Deputy Secretary-General
ASEAN Secretariat	Mr. Larry Victor Reza Maramis	Director
ASEAN Secretariat	Ms. Leena Ghosh	Assistant Director
ASEAN Secretariat	Ms. Kartika Budhi Wijayanti	Technical Assistant
Observer	Name	Title
Embassy of Canada in Jakarta, Indonesia	Mr. Charles Parker	Counsellor, Development, Head of AID Canadian International Development Agency (CIDA)
Embassy of Canada in Jakarta, Indonesia	Ms. Carol Mundle	First Secretary, Canadian International Development Agency (CIDA)
Embassy of Canada in Jakarta, Indonesia	Ms. Francisca Indarsiani	Programme Officer Development Canadian International Development Agency (CIDA)
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