Cross-border safeguards for children in conflict with the law: the ASEAN Human Rights perspective

APCJJ Subcommittee for ASEAN member states

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Article 37 (Detention and punishment): No one is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release.

Article 40 (Juvenile justice): Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.
15. A comprehensive policy for juvenile justice must deal with the following core elements:

• the prevention of juvenile delinquency;
• interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings;
• the minimum age of criminal responsibility and the upper age-limits for juvenile justice;
• the guarantees for a fair trial; and
• deprivation of liberty including pretrial detention and post-trial incarceration.
### Convention on the Rights of the Child: An ASEAN Commonality?

<table>
<thead>
<tr>
<th>Country</th>
<th>Ratification/Accession</th>
<th>Reservations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td>CRC: 15/10/1992, OP1: 16/07/2004, OP2: 30/05/2002</td>
<td>NO</td>
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<tr>
<td>Indonesia</td>
<td>CRC: 05/09/1990, OP1: 24/09/2012, OP2: 24/09/2012</td>
<td>NO</td>
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<tr>
<td>Malaysia</td>
<td>CRC: 17/02/1995, OP1: 12/04/2012, OP2: 12/04/2012</td>
<td>Art. 2,7,15,28,37</td>
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<tr>
<td>Singapore</td>
<td>CRC: 05/10/1995, OP1: 11/12/2008, OP2: Not signed</td>
<td>Declarations on Art. 12-17, 19&amp;39/Reservations to Art. 7,9,10,12,22,28 and 32</td>
</tr>
</tbody>
</table>

Source: Child Rights Situation Analysis within the ASEAN Region, Mahidol University (2016)
## Status of Ratification: ILO Conventions

<table>
<thead>
<tr>
<th>ASEAN Member States</th>
<th>Freedom of association</th>
<th>Forced labour</th>
<th>Discrimination</th>
<th>Child labour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei Darussalam</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2011</td>
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<tr>
<td>Cambodia</td>
<td>1999</td>
<td>1969</td>
<td>1999</td>
<td>1999</td>
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<td>1950</td>
<td>1958</td>
<td>1999</td>
</tr>
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<td>Lao PDR</td>
<td>-</td>
<td>1964</td>
<td>2008</td>
<td>2005</td>
</tr>
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<td>Malaysia</td>
<td>-</td>
<td>1961</td>
<td>(1958)</td>
<td>1997</td>
</tr>
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<td>Myanmar</td>
<td>1955</td>
<td>1955</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Singapore</td>
<td>-</td>
<td>1965</td>
<td>(1965)</td>
<td>2002</td>
</tr>
<tr>
<td>Thailand</td>
<td>-</td>
<td>1969</td>
<td>1999</td>
<td>2004</td>
</tr>
</tbody>
</table>

Source: Child Rights Situation Analysis within the ASEAN Region, Mahidol University (2016)
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
The ASEAN Community: A Duty-Bearer toward Children?

- In 2013, ASEAN population below 19 years of age account for 38.1% of total population
- ASEAN Integration a contributing factor to greater (political/ economic/ social & cultural) opportunities for children ... or more risks for children?
- ASEAN Charter
- ASEAN Human Rights Declaration 2012

Article 27 para.3 specially mentions that ‘no child or any young person shall be subjected to economic and social exploitation. Those who employ children and young people in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development, including their education should be punished by law. ASEAN Member States should also set age limits below which the paid employment of child labor should be prohibited and punished by law.
The ASEAN Community: Soft-law instruments on children

- Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children
- Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN
- Bandar Seri Begawan Declaration on Youth Entrepreneurship and Employment)

... 

ASEAN Guidelines on Cross-Border Safeguards for Children?
The ASEAN Community: Children-related Regional Conventions

- ASEAN Convention against Trafficking in Persons, especially Women and Children (2015) [Not yet in force]
- ASEAN Convention on Migrant Workers [2017?]

... 

- ASEAN Convention on Elimination of Violence against Children?
- ASEAN Convention on Juvenile Justice??
The ASEAN Community: A Duty-Bearers toward Children?

APSC
- RULES-BASED, PEOPLE-ORIENTED, PEOPLE-CENTRED COMMUNITY
- PEACEFUL, SECURE AND STABLE REGION
- ASEAN CENTRALITY IN A DYNAMIC AND OUTWARD-LOOKING REGION
- STRENGTHENED ASEAN INSTITUTIONAL CAPACITY AND PRESENCE

ASEAN Community (Vision 2025)
- AEC
  - A HIGHLY INTEGRATED AND COHESIVE ECONOMY
  - A COMPETITIVE, INNOVATIVE AND DYNAMIC ASEAN
  - ENHANCED CONNECTIVITY AND SECTORAL COOPERATION
  - A RESILIENT, INCLUSIVE, PEOPLE-ORIENTED AND PEOPLE-CENTRED ASEAN
  - A GLOBAL ASEAN

ASCC
- ENGAGES AND BENEFITS THE PEOPLE
- INCLUSIVE
- SUSTAINABLE
- RESILIENT
- DYNAMIC

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ASEAN Human Rights Mechanism: AICHR (2016-2018)
4.1. To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;  
4.2. To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;  
4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information;
AICHR Mandate: Terms of Reference

4.4. To promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;
4.5. To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;
4.6. To promote the full implementation of ASEAN instruments related to human rights;
4.7. To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;
4.8. To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;
AICHR Mandate: Terms of Reference

4.9. To consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;
4.10. To obtain information from ASEAN Member States on the promotion and protection of human rights;
4.11. To develop common approaches and positions on human rights matters of interest to ASEAN;
4.12. To prepare studies on thematic issues of human rights in ASEAN;
4.13. To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and
4.14. To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.
1. Background to the Roundtable

Throughout the Southeast Asian region, detention as a response to the irregular entry or stay of refugees, asylum seekers, stateless people and trafficked people, including children, is the norm rather than the exception. The negative and long-lasting physical and psychological impacts of immigration detention on children have been widely documented. ‘Alternatives to Detention’ (ATD) on the other hand, have proven to be effective in meeting states’ migration management objectives including upholding national security and achieving timely case resolution, whilst also removing the negative impacts of detention on children. Yet, little progress has been made in Southeast Asia in developing sustainable and comprehensive ATD for children and other vulnerable populations, including those seeking asylum.
BKK Human Rights Dialogue: Impacts on Children

Bangkok Human Rights Dialogue: Impacts from ASEAN Integration on Children
4 December 2015
Organised by: Representative of Thailand to the AICHR with the support of UNICEF East Asia and the Pacific
BKK Human Rights Dialogue: Impact on Children
**Child Survival and Development**

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

Source: Mahidol University (2016)
**Child protection**

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

Source: Mahidol University (2016)
Points for Consideration

• Database system
• Concerns for vulnerable groups (children who are indigenous/ LGBT/ disabled/ refugee/ asylum seekers/ migrants)
• Gender mainstreaming (vulnerability of girl children)
• Integrated approach/ complementarity among agencies/ avoidance of overlap & duplication
• Concrete action lines
• Designation of ‘duty-bearers’/ agencies (mainstreaming) [law enforcement/ immigration officers/ judiciary/ parliamentarians/ policy-makers]
• Engagement with other stakeholders [CSOs/ human rights defenders]
Thank you for your attention