

mandate and functions include, among others, promoting and protecting human rights and fundamental freedoms within the ASEAN. It also created an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. It has adopted a Declaration of the Advancement of Women in the ASEAN Region (1988), a Declaration on the Elimination of Violence against Women in the ASEAN Region (2004), and several programs of action related to women's human rights. Recently, in November 2012, it adopted the ASEAN Human Rights Declaration, in which it reaffirms its commitment to the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and other international human rights instruments to which ASEAN members are parties. The ASEAN Human Rights Declaration states that it is intended to "help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process."

5. All these developments could result in increased engagement among governments and peoples within the ASEAN community, and could lead to progressive protection and promotion of human rights for peoples and women within Southeast Asia. On the other hand, the further opening up of markets as part of the ASEAN economic integration could result in more changes in production patterns, disruptions in socio-cultural life, and dislocations that could exacerbate poverty and social injustice among disadvantaged groups and communities, especially poor women and children. It could also worsen women's lack of access to justice.

### C. Global legal framework on access to justice

1. Access to justice is a human right.<sup>13</sup> It is "an essential component of the system of protection and enforcement of human rights". However, access to justice has different meanings. It may be defined narrowly, to signify an individual's right to bring a claim to a court or tribunal and to have that court or tribunal decide the claim. It could also refer to the right to be given legal aid when the individual does not have the resources required to avail of legal remedies. In a broad sense, access to justice also includes, as a critical element, the individual's right to have her claim decided according to substantive standards of fairness and justice.<sup>14</sup>
2. In international human rights instruments, *access to justice* as a term of art is not used. Nonetheless, the right of access to justice is clearly guaranteed. The 1948 Universal Declaration of Human Rights (UDHR) guarantees the *right to an effective remedy* before *competent national tribunals* for violations of human rights.<sup>15</sup> It declares further that "everyone is entitled in full equality to a *fair and public hearing* by an *independent and impartial tribunal*, in the determination of his rights and obligations and of any criminal

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13. Francioni 2007.

14. Ibid.

15. Art. 8.