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## **The ACWC and the Adoption of the Human Rights-based Approach to the Social Development of Women and Children in Southeast Asia**

*Attilio Pisanò\**

### **Abstract**

The paper aims at analysing the new perspective offered by the human rights-based approach to vulnerable people's issues in the ASEAN, specifically concerning women and children. Defined the normative framework of the relationship between vulnerability and human rights, the paper primarily offers an in-depth study of the regional policies adopted in the ASEAN region since the institution of the ASEAN Sub-Committee on Women (1976) until the Vienna World Conference (1993). Furthermore, the pivotal role played by human rights in the process of ASEAN integration after the Vienna World Conference is explained, specifically describing the steps towards the creation of an ASEAN human rights mechanism and the full adoption of the human rights-based approach with the institution of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. Finally, the traditional, ASEAN's economic, developmental needs-based approach to vulnerable people's concerns will be compared with the new human rights-based approach.

**Keywords:** *ASEAN, Vulnerable People, Human Rights-based Approach, Social Policies, Women's Rights, Children's Rights, ASEAN Human Rights Mechanism.*

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## 1. Introduction

Ten years ago (2010), the Association of South-East Asian Nations (ASEAN) launched the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) with the specific aim to ‘promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children’ (Terms of Reference, ToR, 5.1). The ACWC must be placed within the wider ASEAN human rights mechanism, alongside the ASEAN Intergovernmental Commission on Human Rights (AICHR, 2009) and the ASEAN Commission on Migrant Workers (ACMW, 2007).

During its first ten years, the ACWC worked in a context marked by several human rights concerns. Despite the growing normative role of human rights over the past thirty years within ASEAN, the human rights standards still remain generally poor all over the region. Most of the ASEAN states can actually be regarded to as authoritarian or undemocratic or illiberally democratic (Peou, 2015, 41). Moreover, the recent 2015 Rohingya refugee crisis has demonstrated the weaknesses of the ASEAN human rights mechanism, unable to play a significant political role in the crisis as well as to condemn the human rights violations perpetrated by Myanmar.

As regards women and children, the situation in the ASEAN region appears to be quite difficult. According to the ASEAN Progress Report on Women Rights and Gender Equality (2016) and the joint report UNICEF-ASEAN, *Children in ASEAN. 30 Years of the Convention on the Rights of the Child* (2019), the ASEAN states have taken significant steps towards the recognition of human rights as a normative key principle (all the ASEAN member states have ratified the CEDAW and the CRC). Notwithstanding, the social progress in the whole region is very uneven, in that it is determined by a very strong developmental gap between the poorest states (the s.c. ‘CLMV Countries’, Cambodia, Lao PDR, Myanmar, Vietnam, some of which –Cambodia, Lao PDR and Myanmar– appear in the United Nations list of the Least Developed Countries) and the other ones.

Among other matters, domestic violence still represents a huge problem; child-trafficking and child sexual exploitation are egregious concerns; despite the tremendous economic growth in the region over the past 30 years, disparities in the enjoyment of rights and services persist between different groups of children; there are still strong obstacles to the advancement of women’s rights, ranging from discriminatory attitudes towards women to persistent gender inequities in literacy rates and education, in health care, in economic empowerment and in women’s burden of care and unpaid work (ASEAN 2016, UNICEF-ASEAN 2019).

Given the undoubtedly complex scenario, the paper intends to point out the political meaning of the launch of an intergovernmental Commission (the ACWC) as a consultative body within ASEAN, aimed at promoting common regional social policies for vulnerable people, specifically starting from the human rights framework.

For this reason, at the very beginning the paper briefly introduces the relationship between vulnerability and human rights. Further, the most significant steps in the definition of the ASEAN regional common policies concerning women's and children's issues will be described, moving from the creation of the ASEAN (1967) up to the present day.

Finally, the political significance of the launch of the ACWC (2010) will be analysed, showing the correlations with the more general transformations that have affected the ASEAN, also following the full adoption by ASEAN of the human rights-based approach to matters involving vulnerable people (both women and children) and policies aimed at improving their social condition.

## 2. Vulnerability and Human Rights

Generally speaking, the concept of vulnerability is strictly linked with a personal condition of social precariousness or weakness. Although the vulnerability has been described as a general human condition (Fineman 2008-2009), an element which 'defines our humanity' (Turner, 2006), the terms vulnerable and vulnerability are usually concerned with a specific human condition 'characterized by physical and psychological weakness, defencelessness, lack of power, disease and potential or immediate danger' (Nifosi-Sutton 2017).

*Vulnerable* and *vulnerability* are used to identify single people or specific groups of people who live in a 'structural' condition of precariousness, weakness, discrimination, marginalization, exclusion for economic, social, political, cultural, natural reasons. For example, according to the United Nations General Assembly Resolution n°70/01, 25<sup>th</sup> September 2015, Transforming our World: the 2030 Agenda for Sustainable Development, vulnerable people are children, young people, persons with disabilities, people living with HIV/AIDS, the elderly, indigenous people, refugees, internally displaced persons, migrants. But undoubtedly we must also add to this open list the poorest and women.

The vulnerable categories, worldwide, live in a condition which often is not a 'potential', but is an 'actual' condition of disadvantage, precariousness, weakness and discrimination. Since the approval of the United Nations

Universal Declaration of Human Rights (UDHR, 1948), the international human rights law has begun to recognize specific rights for specific people or groups of people (children, women, the elderly, the disabled). Not only the general, universal protection as individuals, but also a more specific one, guaranteed through economic, social and cultural rights, as well as through positive and affirmative political, economic, developmental actions. The greater the vulnerability, the more the rights. For this reason, it may be said that human rights 'represent one avenue for the protection of vulnerable groups' (Weissbrodt, 2011, xi).

Consequently, the recognition of specific groups' rights has evidently become ever more frequent. Many international legal conventions (hard law) or declarations (soft law) have been focused on the protection of children (the United Nations Convention on the Rights of the Child, CRC, 1989), women (the United Nations on the Elimination of every form of Discrimination Against Women, CEDAW, 1979), migrant workers (the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990), persons with disabilities (the United Nations Convention on the Rights of Persons with Disabilities, 2006) and so on.

Additionally, within the single regional organizations, an increasing number of charters, declarations and conventions particularly aimed at recognizing the rights of specific vulnerable groups has been adopted (e.g. the 1990 African Charter on the Rights and Welfare of the Child; the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; the 2004 Organization of the Islamic Conference's Covenant on the Rights of the Child in Islam).

All these documents aim at according a special protection to vulnerable people, through the recognition of a specific set of rights. The ultimate goal is promoting social policies with the purpose to facilitate the achievement of substantial equality.

At the same time, it should be remarked that human rights not only represent the mean through which reaching substantive equality. Firstly, assuming a human rights approach to social policies implies a kind of Copernican revolution concerning the role of the same vulnerable people. They cannot be considered as recipients of positive actions paternalistically defined by political decision-makers, but they have to be considered as political actors, playing a pivotal role in the decision-making process involving their concerns. The main difference between the human rights approach and what it could be defined a 'needs-based approach' to social policies specifically lies in the role (active/passive) played by the vulnerable people.

Furthermore, human rights approach is naturally anchored in a normative dimension which overcomes the States and it is structurally multilevel

(domestic, regional and international). In this scenario, the rights-based approach to social policies removes the charity dimension, by recognizing vulnerable people not only as beneficiaries, but as active rights holders of a process aimed at realizing the universally recognized principles of human rights: the equality of each individual as a human being, the inherent dignity of each person and the rights to self-determination, peace and security (Gatenio Gabel 2016, X).

A growing role of the civil society (NGOs and CSOs) in defining the social policies concerning vulnerable people, intended as active rights holders; a growing complexity in promoting social policies concerning vulnerable people in a normative scenario which structurally multilevel; a growing accountability of States towards the vulnerable people. These are the key-points of the human rights-approach to social policies concerning vulnerable people.

At the same time they all are key points of the ASEAN way to approach vulnerable people and their concerns, specifically after the lunch of the ACWC.

### **3. An Overall Look to ASEAN's Policies: from the Needs-based Approach to the Human rights-based Approach**

The ACWC is not the only human rights institution created by ASEAN in the last few years and the ASEAN regional policies concerning women and children do not date back to the creation of the ACWC.

As far as women and children are concerned, indeed, ASEAN policies have been implemented between 1967 and 2020 in three different periods, each marked by a different role played by human rights:

1967-1993. From the constitution of ASEAN (1967) up to the United Nations Vienna World Conference (1993);

1993-2010. From the United Nations Vienna World Conference on Human Rights up to the constitution of ACWC (2010);

2010-2020. From the constitution of ACWC up to the present day.

These three periods are characterized by different approaches to women's and children's matters, which rather focus on the human rights perspective.

#### **3.1 1967-1993. From the Constitution of the ASEAN till the United Nations Vienna World Conference**

Although it is only since the 1993 VWC that human rights have been constantly implemented, ASEAN has always been paid attention to the conditions of vulnerable groups, specifically women.

The original nature of ASEAN, as an organization dedicated to economic cooperation and development, was clearly compatible with some political actions aimed at improving the social empowerment of vulnerable groups. Consequently, the first political statements concerning women and children date back to the middle of the 1970s.

In the history of ASEAN's approach to women's fully societal inclusion, the year 1975 represents a turning point. It is of great importance pointing out that the United Nations named the decade 1975-1985 as the Decade for Women. So, in 1975 the United Nations organized the First World Conference of the International Women's Year in Mexico City (followed by the 1980 Copenhagen World Conference, the 1985 Nairobi World Conference and the 1995 Beijing World Conference).

It was within this framework that ASEAN organized in Jakarta (December 1975) the first ASEAN Women Leaders Conference (not without hostility of Singapore, Malaysia, Indonesia, Renshaw 2019, 114) which decided to create an ASEAN Sub-Committee on Women. Only a few months later, in February 1976, ASEAN members signed in Bali (Indonesia) the Declaration of the ASEAN Concord (the s.c. Bali Concord Declaration, ASEAN 1976) which aimed at deepening among the ASEAN states cooperation in economic and social development, with the purpose of eliminating poverty, hunger, disease, and illiteracy, as well as guaranteeing the involvement of women and young people in 'all sectors and levels of the ASEAN communities' (§ C. 2).

The follow-up was the formal creation (June 1976) of the ASEAN Sub-Committee on Women in Makati (Philippines). The Makati meeting discussed the ASEAN Strategy for the implementation of the United Nations World Plan of Action to reach the goals of the United Nations International Decade for Women (1975-1985) (The National Commission on role of Filipino Women 2005) and also made recommendations on several social matters affecting women's condition.

Despite the relevant political decisions taken in the years 1975-1976, it was not until 1981 that the ASEAN Sub-Committee on Women held its first meeting in Jakarta. It was decided to rename the Sub-Committee in ASEAN Women's Programme, under the ASEAN Committee of Social Development. It was later ratified and adopted the constitution of the ASEAN Confederation of Women's Organizations (ACWO), an accredited international network of CSOs which is the most relevant stakeholder collaborating with ASEAN in women's issues. The meeting went on to propose some projects to be implemented: the ASEAN Women's Programme on Art and Culture, a Clearing House and Information on Women in Development; Legal Literacy and Legal Aid, etc. (The National Commission on role of Filipino Women 2005, 10-11).

The meetings of the ASEAN Women's Programme (AWP) were held annually from 1983 to 1996.

Then, in 1983, the foreign Minister of the ASEAN Countries adopted the Bangkok Declaration of Principles to Strengthen ASEAN Collaboration on Youth (ASEAN 1983) followed in 1987 by the s.c. Manila Declaration approved by the ASEAN Heads of State and/or Government (ASEAN 1987).

Additionally, the Ministers for Foreign Affairs of the ASEAN Countries signed the Bangkok Declaration of the Advancement of Women in ASEAN (1988), which can be seen as a key document inspiring ASEAN's policies on women's conditions in the following years.

A few years later, in 1993, taking into consideration the World Declaration on the Survival, Protection and Development of Children, agreed to at the 1990 United Nations World Summit for Children, the ministers responsible for social welfare in ASEAN countries signed the Manila Resolution on the ASEAN Plan of Action for Children (ASEAN 1993b).

This first period is characterized by poor attention to human rights perspective, given the very original nature of ASEAN, a regional organization specifically acting in the field of economic cooperation.

Consequently, the language of the policies concerning vulnerable groups was simply the language of economic, cultural and social development based upon the evidence of the needs autonomously evaluated by the states, in an exclusive elitist way. There was no actual involvement of persons, civil society or groups of persons targets of the policies; the normative human rights framework had no space; state accountability in operationalizing social policies actually did not exist.

### **3.2 1993-2010. From the Vienna World Conference to the Constitution of the ACWC**

ASEAN developed a human rights-based approach to the issues regarding women and children only after the VWC.

It is well known that in the Asian context, the normative language of human rights has been often negatively marked as 'western language', strongly criticized by the s.c. 'Asian values' debate, launched at the end of the 1980s by two former Prime Ministers, Singapore's Lee Kuan Yew and Malaysia's Mohammed Mahathir (Chen 2008, De Bary 1998).

The 'Asian values' debate assumed a political form during the United Nations Vienna World Conference on Human Rights held in 1993 (VWC). The VWC was preceded by the s.c. 'Bangkok Declaration' which may be considered the 'manifesto' of the political Asian view on human rights.

The Bangkok Declaration (UN 1993a) recalled the vulnerable groups only in a few paragraphs: the 11<sup>th</sup> paragraph which emphasized the ‘importance of guaranteeing the human rights and fundamental freedoms of vulnerable groups such as ethnic, national, racial, religious and linguistic minorities, migrant workers, disabled persons, indigenous peoples, refugees and displaced persons’; the 22<sup>nd</sup> paragraph strengthened the ‘commitment to the promotion and protection of the rights of women through the guarantee of equal participation in the political, social, economic and cultural concerns of society, and the eradication of all forms of discrimination and of gender-based violence against women’.

In addition, the 23<sup>rd</sup> paragraph recalled ‘the rights of the child to enjoy special protection and to be afforded the opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity’.

Indeed, the Vienna Declaration (UN 1993c) mentioned the vulnerable groups in the 24<sup>th</sup> paragraph underlining the need to give great importance ‘to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments’. Furthermore, the same paragraph stated that ‘the States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems’.

Finally, paragraph 64 of the programme of action states that ‘special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable’.

The Vienna Declaration § 18 strongly recognized the rights of women as human rights, targeting as a primary purpose the full and equal participation of women in political, civil, economic, social and cultural development. In particular, the subject of discrimination against women becomes central, cited in paragraph 30 among the ‘gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights’. The whole third part (articles 36-44) of the Programme of Action was dedicated to the ‘equal status and human rights of women’.

Hence, from 1993 onwards something changed in the ASEAN way of defining social policies. Obviously the overall approach remained a needs-

based one. However, the ASEAN policies gradually began to use a legal narrative which was more focused on human rights, as a consequence of the structural changes which gradually involved ASEAN. We should bear in mind the fact that in the 1990s, Vietnam (1995), Laos and Myanmar (1997), Cambodia (1999) joined ASEAN, following the five 1967 founding states (Indonesia, Malaysia, the Philippines, Singapore, Thailand) and Brunei (1984).

In this renewed political scenario, the main follow-up of the 1993 Vienna World Conference (VWC) was the beginning of ASEAN's path towards a strong institutional change, with the goal of realizing a 'community of caring societies' (ASEAN 1997) and creating an ASEAN human rights mechanism (Pisanò 2014, Durbach, Renshaw, Byrnes 2009, Eldridge 2002). We should not forget that the relationship between human rights and development was strongly supported, during the 1990s, by Amartya Sen who won the 1998 Nobel Prize in Economic Sciences and in 1999 published his very successful contribution *Development as Freedom* (1999).

Consequently, ASEAN social policies concerning women and children were interwoven with the human rights discourse and the functional changes taking place in ASEAN. Human rights more and more played a pivotal role in the normative language used to empower women's and children's conditions, alongside the needs-based approach. The two perspectives began to follow increasingly convergent paths.

Several examples of this 'merging' can be identified. As for example the adoption on 30<sup>th</sup> June 2004, by the thirty-seventh ASEAN Foreign Ministers' annual meeting, held in Jakarta (Indonesia), of the Declaration on the Elimination of Violence against Women in the ASEAN Region (ASEAN 2004b). The principal source of this ASEAN Declaration was the 1993 United Nations Declaration on Violence Against Women (DEVAW), adopted as a specific goal by the 1993 VWC. Actually the DEVAW linked the fight against violence and the women's rights recognizing the 'urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings' (Preamble) (United Nations 1993b).

The implementation of the Declaration on the Elimination of Violence against Women in the ASEAN Region was guaranteed by the ASEAN Committee on Women (once ASEAN Sub-Committee on Women, created in 1976, then renamed ASEAN Committee on Women in 2001), according to the Work Plan to Operationalize the Declaration 2006-2010.

Additionally, the ACWC's Terms of Reference were commissioned at the ASEAN Committee on Women (ACW) and to the ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD) which set up a joint project of ToR at the 2009 Summit of Cha-am Hua Hin (ACW 2009).

#### **4. The Follow-up of the Vienna World Conference in the ASEAN**

The VWC represented a real turning point for women's issues and also for the empowerment of human rights in the ASEAN.

The VWC can actually be considered the source of discussion about the role of human rights within ASEAN and the beginning of a new strategy of ASEAN countries more centred on human rights.

Indeed, just one month after the conclusion of the VWC, the 26<sup>th</sup> ASEAN Foreign Ministers annual meeting held in Singapore (23<sup>rd</sup>-24<sup>th</sup> July 1993) 'welcomed the International Consensus Achieved During the World Conference on Human Rights in Vienna' (§ 16) and reaffirmed some ASEAN mainstays in the field of human rights as well as the interrelation and indivisibility of rights, the importance of economic growth and international cooperation and the establishment of an appropriate regional mechanism on human rights (ASEAN 1993a).

In the same year, 1993, the ASEAN debate on the creation of a sub-regional mechanism for the promotion and protection of human rights was enhanced by the Declaration on Human Rights, approved by the ASEAN Inter-parliamentary Parliament Organization (AIPO) during the 14<sup>th</sup> General Meeting held in Kuala Lumpur from 19<sup>th</sup> to 26<sup>th</sup> September (AIPO 1993).

Additionally, in 1995 the international NGO LAWASIA (The Law Association of Asia and Pacific) constituted the Working Group of an ASEAN Human Rights Mechanism, a supranational network of Civil Society Organizations (CSOs), Non-Governmental Organizations (NGOs), human rights scholars, practitioners, activists, institutional and governmental organizations working on human rights. LAWASIA gradually assumed an important role in the ASEAN debate, stimulating the supranational political discussion on the creation of a specific ASEAN human rights' mechanism.

On the eve of the 1995 Bangkok Summit Declaration (ASEAN 1995), during the fifteenth meeting of the AWP (1996), was made the proposal to transform the AWP in the ASEAN Sub-Committee on Women (ASW) (The National Commission on role of Filipino Women 2005, 34).

The following year, 1997, The ASW held its first meeting, specifically discussing the implementations of the 1995 United Nations Beijing Platform of Action and the status of realization of the 1988 Bangkok Declaration of the Advancement of Women. Consequently, the first ASW regional report entitled *The Advancement of Women in ASEAN* (The National Commission on role of Filipino Women 2005, 35) was discussed, followed by a second one in 2002 and a third one in 2007.

The same year, 1997, the Heads of State and/or Government of the ASEAN Countries, in Kuala Lumpur, adopted the so-called ASEAN Vision 2020 Programme (ASEAN 1997) whose main goal was to create the political conditions for the establishment of a new 'community of caring societies' (ASEAN Vision 2020).

The sixth summit of Heads of State and/or Government (15<sup>th</sup>-16<sup>th</sup> December 1998) adopted the s.c. Hanoi Declaration followed by a Plan of Action to support the political commitments set by the ASEAN Vision 2020 (ASEAN 1998a). Among other points, it brought to the forefront the need to 'strengthen ASEAN collaboration in combating the trafficking in, and crimes of violence against, women and children' (§ 4.5).

The possibility of setting up women's and children's rights was discussed, although merely referring to the opportunity to 'work towards the full implementation of the CRC and the CEDAW and other International Instruments Concerning women and children' (§ 4.9); furthermore it was decided to 'intensify the efforts of the ASEAN Network for Women in Skills Training to enhance the capacity of disadvantaged women to enter the work force' (§ 5.7) and to 'implement the 1993 ASEAN Plan of Action for Children which provides for the framework for ensuring the survival, protection and development of children' (§ 4.4).

The same year, the thirty-first meeting of ASEAN Foreign Ministers held in Manila (the Philippines), 24<sup>th</sup>-25<sup>th</sup> July 1998, assumed a clear human rights-based approach to women's and children's issues (ASEAN 1998b). The final joint statement of the meeting formally recognized the relevance of CRD and CEDAW in protecting women's and children's rights (§ 29) and condemned child labour (§ 54), expressing at the same time the need for the special protection of children 'against the proliferation of pornography and paedophilia on the Internet' (§ 57).

On 2<sup>nd</sup> August 2001 in Singapore, the ASEAN Social Welfare Ministers adopted the Declaration on the Commitments for Children in ASEAN which, 'guided by the Convention on the Rights of Child (CRC)' (Preamble), can be considered the first ASEAN statement adopting a rights-based approach to children's issues. Moreover the Declaration emphasized the need to 'protect, respect and recognize the rights of all children, including those of indigenous people' (§ 3) and 'encouraged respect for children's rights through mutual sharing of information on the rights of the child by ASEAN Members' (§ 4) (ASEAN 2001a).

In that same year (2001) in Jakarta, the Working Group of an ASEAN Human Rights Mechanism organized the first Workshop for an ASEAN Human Rights Mechanism which was open to governmental representatives, national human rights institutions and human rights NGOs. Here a proposal

towards the ‘establishment of an ASEAN Commission on Women and Children’s Rights’ was formally put forward and was then re-launched during the second Workshop (Manila, the Philippines, 2002) (Working Group of an ASEAN Human Rights Mechanism, Second Workshop for an ASEAN Human Rights Mechanism, 2002) where the commission was named as an ‘ASEAN Commission of the Promotion and Protection of the Rights of Children’ and where, in addition, specific working sessions were organized to discuss both the promotion of women’s and children’s rights, and the fight against transnational trafficking, especially where it concerned women and children.

Similar proposals were advanced with ever greater force in subsequent workshops held in Bangkok (2003, 2009), Jakarta (2004), Kuala Lumpur (2006), Manila (2007), Singapore (2008).

Furthermore, in October 2001 the decision was taken to elevate the ASEAN Sub-Committee on Women to the ASEAN Committee on Women (ACW) (The National Commission on role of Filipino Women 2005, 39). At the same time, the Asian Women Plan of Action for a Culture of Peace and Sustainable Development was adopted (ASEAN 2001b).

The ACW held its first meeting in 2002, in Luang Prabang (Lao PDR). The second report on the Advancement of Women in ASEAN was launched along with the idea of creating an ASEAN Ministerial Meeting on Women (AMMW, later realized in 2011). Meanwhile in 2003 the ACW agreed to discuss the ASEAN Work Plan on Women’s Advancement and Gender Equality (2005-2010).

On the eve of the 1993 United Nations Declaration on the Elimination of any form of Violence against Women (DEVAW), in June 2004, ASEAN then approved: a) the Declaration on the Elimination of Violence against Women in the ASEAN region); b) the ASEAN Declaration against Trafficking in Persons, particularly Women and Children.

Specifically concerning women, the Declaration on the Elimination of Violence against Women in the ASEAN region still represents the normative framework of the ACWC introducing, strengthening and adapting the CEDAW and the DEVAW to the ASEAN regional context.

## **5. Towards the New ASEAN: More Integration, More Rights**

The same year (2004), The Vientiane Action Program (VAP) 2004-2010 was launched on 29<sup>th</sup> November, in Vientiane (Laos) (ASEAN 2004a). The VAP represents a real turning point in the recent history of ASEAN. Its main goal

was to change the institutional nature of ASEAN, from a 'weak' economic cooperation supranational organization into a 'strong' community, based on 'comprehensive integration' aimed at realizing 'an open, dynamic and resilient ASEAN Community' (§ 1 VAP). Following the VAP, ASEAN began to pay increasing attention to human rights.

Consequently, in 2005, the Working Group of an ASEAN Human Rights Mechanism organized the first Roundtable Discussion on the ASEAN Human Rights Mechanism: a follow-up of the VAP of ASEAN from 2004 to 2010. The Roundtable was an important moment of reflection about the role of human rights in the new constitutional process of ASEAN, started with the VAP. Among other declarations, it was decided to develop common policies in the fields of women's and children's rights and migrant workers' rights as well as in the field of human rights education.

In 2007, the Declaration on the Blueprint of the ASEAN Charter was approved in Cebu (Philippines) by the ASEAN Heads of State and/or Government. At the same time in Cebu, was approved the Declaration on the Protection and Promotion of the Rights of Migrant Workers. Finally, in November 2007, the ASEAN Charter was signed by the summit of ASEAN Heads of State and/or Government during their Annual Meeting held in Singapore. The new ASEAN Community was devised around three great pillars, some of which were developed in a specific subsequent blueprint: a) the ASEAN Economic Community Blueprint (2007); the ASEAN Political-Security Community Blueprint (2008); the ASEAN Socio-Cultural Community Blueprint (2008).

Specifically the ASEAN Socio-Cultural Community Blueprint referred to gender equality and the promotion and protection of human rights as culturally-shared elements in ASEAN (§ 6). It was recalled the idea to establish 'an ASEAN Commission on the promotion and protection of the rights of women and children' (C1.1).

Furthermore, the third Report on the Advancement of Women in ASEAN was issued. The report specifically aimed at understanding the implications of globalization and regional integration and at increasing awareness of these implications on women's advancement and gender equality in ASEAN Member Countries (ASEAN 2007).

According to the ASEAN Charter Article 14, the 41<sup>st</sup> ASEAN Foreign Ministers' annual meeting (Singapore, 20<sup>th</sup>-21<sup>st</sup> July 2008) created a High Level Panel with the task of drafting the ToR of what would later become the ASEAN Intergovernmental Commission on Human Rights (AICHR) (Yung-Ming 2011).

## 6. The ASEAN Human Rights Mechanism

Preceded by the establishment in 2007 of the ACMW, the AICHR was created in 2009, as ‘a consultative body’ (§ 3). According to AICHR’s ToR (AICHR 2009) its aims were:

(a) To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

(b) To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

(c) To contribute to the realization of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN member states, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

(d) To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;

(e) To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights, and

(f) To uphold international human rights standards as prescribed by the UDHR, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN member states are parties.

The AICHR may be nearer to a ‘National Human Rights Institutions’ than an ‘International’ commission (Pisanò 2014). Its weak functions, ‘prima facie innocuous’ (Munro 2011), ‘politically inoffensive goals’ (Ciorciari 2012), are mentioned in the fourth paragraph of terms of reference. Consequently the AICHR, among other things, should ‘develop strategies for the promotion and protection of human rights and fundamental freedoms’ (4.1); ‘develop an ASEAN Human Rights Declaration’ (4.2), ‘promote capacity building for the effective implementation of international human rights treaty obligations undertaken by ASEAN member states’ (4.4); ‘encourage ASEAN member states to consider acceding to and ratifying international human rights instruments’ (4.5), ‘engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN including civil society Organizations and other stakeholders’ (4.8); ‘obtain information from ASEAN member states on the promotion and protection of human rights’ (4.10).

Since its establishment, the most important activity of AICHR has surely been the drafting of the ASEAN Human Rights Declaration (AHRD) adopted

by the 21<sup>st</sup> Summit of ASEAN Heads of State and/or Government (17<sup>th</sup>-18<sup>th</sup> November 2012) (Neo, 2017, Davies 2014, Renshaw 2013).

## **7. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children**

The ACWC was launched in April 2010, during the 16<sup>th</sup> summit of ASEAN Head of State and/or Government held in Hanoi (Vietnam) which, in October of the same year, also adopted the Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (ASEAN 2010) (Renshaw 2019, 118).

In the Hanoi Declaration the human rights-approach provides the juridical framework of the political commitments assumed. Consequently, the CEDAW and the CRC are recalled in the preamble; one of the principal aims of the Declaration is to ‘encourage closer regional cooperation in promoting and protecting the rights of women and children especially those living under disadvantaged and vulnerable conditions, including those in disaster and conflict affected areas’ (§ 1); the ASEAN States declare their will to ‘strengthen the ability of ASEAN Member States to fulfil their commitments to CEDAW, CRC, [...] mutually reinforcing processes by effectively utilizing national resources and prioritizing adequate national budget allocation for the enhancement of welfare, development and participation of women and children’.

Additionally, some political goals to be achieved were listed concerning gender equality, women’s empowerment, gender mainstreaming and a child-centred approach at all levels in the ASEAN region (§ 4), violence against women and children (§ 7), maternal and child mortality, poor reproductive health, safe contraception (§ 8), access to housing, drinkable water, education and other basic necessities (§ 9).

The ACWC is the main ASEAN institution promoting women’s and children’s rights, as specifically defined by the CEDAW and the CRC.

Consequently, the ACWC’s functions and mandate, as defined by the ToR adopted by the fourteenth ASEAN summit held in Cha-am Hua Hin in November 2009 (ACWC 2009), must be read taking into consideration the specific role that ACWC plays in the more general ASEAN human rights mechanism.

The normative background of the ACWC is the ratification by all the ASEAN member states of the CEDAW and the CRC (ToR § 1.1.). Meanwhile the political one is rooted in the 2004 VAP 2004-2010, whose main purpose was the ‘re-definition’ of the ASEAN nature, also through the establishment

of an ASEAN's human rights mechanism, and the creations of an ASEAN commission on the promotion and protection of the rights of women and children (§ 1.2).

The first purpose of the ACWC is 'to promote and protect the human rights and fundamental freedoms of women and children in ASEAN taking into consideration the different historical, political, socio-cultural, religious and economic context in the region and the balances between rights and responsibilities' (ToR § 2.1); meanwhile the promotion of 'well-being, development, empowerment and participation of women and children in the ASEAN Community building process' is the purpose expressed by § 2.3, also enhancing 'regional and international cooperation with a view to complementing national and international efforts on the promotion and protection of the rights of women and children' (§ 2.4).

The inspiring principles of the ACWC are in line with the ASEAN principle as embodied in Article 2 of the ASEAN Charter (§ 3.1) so it means that the 'primary responsibility to promote and protect the fundamental freedoms and rights of women and children rests with each Member State' (3.5) and above all that the ACWC has to 'pursue a constructive non-confrontational and cooperative approach to enhance the promotion and protection of rights of women and children' (§ 3.6).

Specifically in the field of human rights, the ACWC has to respect 'universality, indivisibility, interdependence and interrelatedness of all fundamental freedoms [principles embodied by § 5 of the 1993 Vienna Declaration and inspired by the 1993 Bangkok Declaration] and the rights of women and children, the guiding principles of CEDAW e CRC' as well as 'to complement, rather than duplicate, the function of CEDAW and CRC Committee' (§ 3.4).

ACWC's Mandate and functions, indeed, are defined by § 5 of ToR. ACWC should:

- a. 'Promote the implementation of international instruments, ASEAN instruments and other instruments related to the rights of women and children'(5.1);
- b. 'Develop policies, programs and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community' (5.2);
- c. 'Promote public awareness and education of the rights of women and children in ASEAN (5.3)';
- d. 'Assist, upon request by ASEAN Member States, in preparing for CEDAW and CRC Periodic Reports, the Human Rights Council's Universal Periodic Review (UPR) and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN' (5.6);

- e. 'Assist, upon request by ASEAN Member States, in implementing the concluding observations of CEDAW and CRC and other Treaty Bodies related to the rights of women and children' (5.7);
- f. 'Facilitate sharing of experiences and good practices, including thematic issues, between and among ASEAN Member States related to the situation and well-being of women and children and to enhance the effective implementation of CEDAW and CRC through, among others things, exchange of visits, seminars and conferences' (5.11);
- g. Propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims' (5.12);
- h. 'Encourage ASEAN Member States to consider acceding to, and ratifying, international human rights instruments related to women and children' (5.13).

Since its institution, specifically developing a human rights approach to women's and children's issues, the ACWC has complemented the ACW, ACWO and the ASEAN Ministerial Meeting on Women (AMMW, whose first meeting was held in 2012 and adopted the Vientiane Declaration on Enhancing Gender Perspective and ASEAN Women's Partnership for Environmental Sustainability) and has supported the AICHR to promote human rights.

Consequently, some relevant actions have been developed in the field of elimination of violence against women, which was one of the goals to be achieved both by the first ACWC's five-year 2012-2016 Work Plan and by the second five-year 2016-2020 Work Plan (ACW 2012, 2016).

On the eve of the 2012-2016 Plan of Action, the ASEAN Heads of State/Government, on the occasion of the 23<sup>rd</sup> ASEAN Summit held in October 2013 in Bandar Seri Begawan, Brunei Darussalam, adopted the Declaration on the Elimination of Violence against Women and the Elimination of Violence Against Children in the ASEAN Region (Renshaw 2019, 117) and the ASEAN Declaration on Strengthening Social Protection.

In the same year, the ACWC organized a Regional Workshop on Promoting the Right to a Nationality for Women and Children in the Implementation of CEDAW and CRC in ASEAN, and a Regional Workshop on Promoting the Rights of ASEAN Women and Children through Effective Implementation of the Common Issues in CEDAW and CERC Concluding Observations with Focus on Girl Child.

Meanwhile in 2014 the ACWC organized a Workshop on the Promotion of Access to Justice for Women Victims of VAW Trafficking case, and issued the publication by Malaysia of ASEAN Good Practices in Eliminating Violence

against Women as well as the Brunei's Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons.

In 2015 the ACWC, in collaboration with the ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD), adopted an ASEAN Regional Plan of Action on the Elimination of Violence against Women and an ASEAN Regional Plan of Action on the Elimination of Violence against Children. The two regional plans act as a specific follow-up of the 2012-2016 ACWC Plan of Action. But in the same year, during the 27<sup>th</sup> ASEAN Summit of Heads of State and/or Government held in Kuala Lumpur (18<sup>th</sup>-22<sup>nd</sup> November), the ASEAN Convention Against Trafficking in Persons especially Women and Children (ASEAN 2015a) was also adopted (specifically recalling the 2004 ASEAN Declaration against Trafficking in Persons, particularly Women and Children) and the important document called ASEAN Community Vision 2025 (ASEAN 2015b) was also issued.

Most recently, in 2017, an ASEAN Declaration on the Gender-responsive Implementation of ASEAN Community Vision 2025 and the Sustainable Development Goal (ASEAN 2017a) was adopted by ASEAN Heads of States or Governments during the 31<sup>st</sup> ASEAN Summit held in Manila. Finally, a report entitled Ending Violence against Children in ASEAN Member States has been issued (ASEAN 2017b).

## Conclusion

According to Audrey R. Chapman and Benjamin Carbonetti, 'inadequate social welfare programs, insufficient access to basic needs such as food and water, lack of access to healthcare, education, housing and legal services' are examples of human rights issues affecting vulnerable groups, brought up by the United Nations Committee on Economic, Social and Cultural Rights (Chapman, Carbonetti 2011, 709).

Since 1976 these have also been core issues in the ASEAN's debate concerning the empowerment of women's and children's social conditions. Over the years, the main goals of the ASEAN social policies have generally remained the same. The perspective has changed, however.

The progressive and gradual acceptance of the normative value of human rights has been accompanied by a gradual transformation of the very nature of the ASEAN policies towards women and children.

Since 1993 the main social concerns for women and children have been dealt with also as human rights concerns which needed to be contextualised in the normative framework of the CEDAW, the CRC, the international human rights regime; to be tackled by means of the institutional tools

offered by human rights (the creation of a promotional commission, the ACWC); to be faced also with the proactive contribution of the civil society.

It is not by chance that although the involvement of the non-governmental organizations in defining the social policies concerning women and youth was anticipated by the constitution (1981) of the ACWO and was reaffirmed by the 1986 Manila Declaration and by the 1988 Declaration of the Advancement of Women which defined the NGOs *active agents*, it is only since the institution of ACWC that the ASEAN has strongly institutionalized the participation of the NGOs and of the CSOs in the definition of the social policies concerning women and children (*contra* Beeson, Gerard 2015, 62).

Recently, the AICHR has organized a CSOs Symposium (13<sup>th</sup>-15<sup>th</sup> October 2018) with the participation of the representatives of the ACWC and the SOMSWD, representatives from 20 CSOs with Consultative Relationship with the AICHR, and representatives of the ASEAN members' National Human Rights Institutions, as well as representatives of the United Nations Development Programme (UNDO) and the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)

The institution of the ACWC (2010) has definitively overtaken the primary needs-based approach, according to which the single states autonomously defined the aims and the goals of their social policies. The growing centrality of human rights has better defined the state accountability (grounded on the fulfilment of the legally-binding obligations sourced from the Core Human Rights Treaties, particularly CEDAW and CRC) towards the rights-holder and the international community (Reichert 2011, Ife 2008, Wronka, 2008).

As a consequence, the states operate in a more complex normative network in which they are subject to the monitoring procedures of the human rights treaties bodies and human rights play a pivotal normative role intertwining domestic, regional (ASEAN, AMMSWD, ACW, AICHR) and international (UN) levels.

For instance, at a regional level, since the first meeting between their representatives (November 2011, during the Seventh Meeting of the AICHR), there has been increasingly intense collaboration between the ACWC and the AICHR, as demonstrated for example by the 2017 Forum on Women's Economic Empowerment jointly organized in Singapore by the AICHR and the ACWC. Besides, at an international level, the adoption of the human rights-based approach may promote the overall cooperation between ASEAN and United Nations, not only within the specific women's and children's rights regime, but also in the general field of human development, specifically enhancing the Sustainable Development Goals

(2016-2030) and the Millennium Development Goals (2000-2015) (Jolly 2018).

Obviously, if we consider the very difficult human rights situation in the ASEAN countries, the sole institutionalization and the full adoption of the human rights-approach in the field of social policies do not represent a *panacea*. The ASEAN human rights regime still remains so weak a regime, a promotional regime which is unable to determine domestic policies, too unstructured to (judicially) protect human rights, clearly conservative rather than transformative, because of the natural attitude of the ASEAN countries (the 'ASEAN way') towards a 'strong commitment to concepts of Westphalian sovereignty and the principle of non-interference in the internal affairs of neighbouring countries' (Petersen 2011, 174). Hence, it seems very near the truth what Alison Duxbury and Tan Hsien-Li affirm in their recent *Can Asean Take Human Rights Seriously*: 'the development of a human rights agenda in ASEAN has occurred at the same time as serious human rights violations in the region are being recorded' (2019, 16). All these elements should be taken into due consideration.

Conversely, we cannot even forget the length and the complexity of the journey (started in the mid-60s) faced by ASEAN. At the moment, the final landfall of this journey is this Copernican-style revolution in the way that social policies should be approached: this is a real revolution, if we consider the scepticism, the reluctance, the exclusive economic developmental perspective that distinguished the Asian way to safeguard human rights until the 1990s (Brems 2001, 33-90).

Undoubtedly, the launch of the ACWC and the progressive institutionalization of human rights in the ASEAN may contribute to totally replace the elitist top-down trajectory of what vulnerable people need, with a new participative and inclusive bottom-up trajectory grounded on what vulnerable people (rights holders and not duty bearers) may claim.

This landfall is very significant because it could be a new starting point of another (long and complex) journey towards a more concrete empowerment of women's and children's conditions, as well as of human rights in general terms.

Within ASEAN, the full realization of human rights is strongly related to the ability of the ACWC (and the AICHR too) to involve civil society to play a crucial role aimed at coordinating the single states and the other ASEAN institutions (ACW, AMMW, SOMSWD, ACWO) within the process of human rights integration and the resolution of the social women's and children's issues.

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