



Establishing an Enabling Framework for Environmental Rights in Southeast Asia

THE CASE TOWARDS A REGIONAL FRAMEWORK ON ENVIRONMENTAL RIGHTS IN ASEAN
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INTRODUCTION

Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean, healthy and sustainable environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights. Environmental rights are composed of substantive rights (fundamental rights) and procedural rights (necessary to achieve substantive rights).

Procedural rights find their legal foundation in Article 10 of the Rio Declaration on Environment and Development 1992 (the Rio Declaration). Principle 10 sets out three fundamental procedural rights: *access to information, access to public participation and access to justice*, as key pillars of sound environmental governance. The Special Rapporteur on human rights and the environment has identified six substantive elements within the right to a healthy environment: clean air; a safe climate; access to safe drinking water and sanitation; healthy biodiversity and ecosystems; toxic free environments; and healthy and sustainably produced food.

In October 2021, the United Nations Human Rights Council (HRC) approved a resolution on the right to a clean, healthy, and sustainable environment (A/HRC/RES/48/13). The resolution recognized the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of all other human rights.

In July 2022, the UN General Assembly (GA) adopted a historic resolution declaring access to a clean, healthy and sustainable environment a universal human right (A/RES/76/300). The resolution calls upon States, international organizations, and business enterprises to scale up efforts to ensure a healthy environment for all.

Substantive Environmental Rights

- Safe, clean, healthy and sustainable environment including clean air, safe climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food and a non-toxic environment.
- Supporting Indigenous communities.
- Implementing recognised environmental law principles.
- Enhancing Environmental Impact Assessments (EIA) and Strategic Environmental Assessments (SEA).
- Supporting standards on environmental quality e.g., air, water, noise.
- Protecting the environment, including biodiversity, terrestrial ecosystems, oceans and fisheries.

Procedural Environmental Rights

- Access to justice, redress and remedies.
- Access to environmental information.
- Right to public participation in decision-making.
- Promoting free, prior and informed consent for indigenous and local communities.
- Providing special attention to women, children and vulnerable groups.
- Supporting rights for environmental human rights defenders (EHRDs).

ASEAN INITIATIVES ON ENVIRONMENTAL RIGHTS

Since 2014, the ASEAN Intergovernmental Commission on Human Rights (AICHR) has been leading work on human rights and the environment. Previous workshops and consultations with experts have examined the feasibility of establishing a regional framework instrument on environmental impact assessment (EIA) and rights based approaches to environmental decision making. In 2021 the AICHR identified the need to develop a regional framework on environmental rights, including access to information, public participation, access to justice in environmental matters and the protection of environmental human rights defenders (EHRDs).

Global and regional advances in the recognition, promotion and protection of procedural and substantive environmental rights, including the adoption of the UN GA and UN HRC resolutions recognizing the human right to a clean, healthy and sustainable environment, have created an opportunity for ASEAN to build upon and enhance relevant provisions of the ASEAN Charter and ASEAN Human Rights Declaration (AHRD) on human rights and environment, that reflects ASEAN's unique identity and values.

The prospective instrument - a regional framework on environmental rights - would support ASEAN Member States to meet globally agreed environmental commitments and on the delivery of existing AHRD commitments pertaining to substantive and procedural environmental rights including "a safe, clean and sustainable environment", "freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information" and "rights to an effective and enforceable remedy for acts violating the rights granted to that person by the constitution or by law", among other relevant provisions.

The ASEAN Human Rights Declaration (AHRD), an established framework for ASEAN human rights cooperation, prescribes the right to a safe, clean and sustainable environment explicitly within Article 28. 2022 marks the 10th anniversary of the ASEAN Human Rights Declaration.

Sustainable Development Goals (SDGs) and Environmental Rights

The obligations of states to respect, protect, and fulfill human rights apply when States pursue sustainable development and implement measures to address environmental challenges. SDGs linked to environmental rights include:



RELEVANT LEGAL AND POLICY FRAMEWORKS

The Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention)

is one of the pioneering legal instruments which aims to link environmental and human rights by granting rights to the public and enforcing obligations on State Parties to implement environmental legal principles. Parties to the Convention are obliged to take the necessary legislative, regulatory and other measures to implement the provisions and set the framework for enforcement. It entered into force on 30 October 2001. There are 47 Parties to the Convention, and it is currently open for global ratification. Key elements of the Convention include:

- The rights of the public to access information about the environment and development;
- The requirement for public participation in environmental assessment of specific development projects; and
- The rights for the public's access to courts and tribunals for justice in environmental matters.

The Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazu Agreement)

is a regional instrument on access to information, public participation and justice, and is focused on many emerging environmental and human rights issues in Latin America and the Caribbean. It entered into force on 22 April 2021. In addition to the three core access rights derived from the Rio Declaration, the Agreement provides the obligation for Member States to guarantee a safe and enabling environment for persons, groups and organisations that promote and defend human rights in environmental matters so that they are able to act free from threat, restriction and insecurity.

The Framework Principles on Human Rights and the Environment

focus on the obligations of States to ensure that human rights obligations, in the context of the environment, are protected and enhanced. The Framework Principles identify some of the procedural rights that underpin the relationship between environment and sustainable development such as access to environmental information, public participation, access to effective remedies, special measures for vulnerable groups, compliance with obligations for Indigenous peoples, protection of environmental defenders, and provisions to allow for the exercise of these rights.

KEY AREAS FOR DEVELOPMENT IN THE ASEAN REGIONAL FRAMEWORK ON HUMAN RIGHTS

Access to Information

- Define environmental information broadly.
- Secure Free, Prior, Informed Consent.
- Establish a clearing house of environmental information.
- Disseminate environmental information clearly.
- Restrict reasons for denial.

Public Participation in Decision-making

- Conduct environmental and social impact assessments.
- Promote broad stakeholder identification as early as possible.
- Create effective platforms for decision-making.
- Require meaningful public participation.

Access to Remedies

- Establish green courts or tribunals.
- Strengthen judicial systems to ensure accountability.
- Adopt procedural rules for environmental cases.
- Ensure access to the justice system.
- Establishing rights and procedures for compensation for environmental damage.
- Support access to remedies for vulnerable communities and those most at risk of environmental harm, including children and Indigenous and ethnic communities.

Enabling a Safe and Healthy Environment

- Introduce regulations protecting the rights of environmental defenders and recognizing their vital role in environmental protection.
- Amend existing laws, such as defamation laws and trespass laws that are used against environmental defenders.
- Prevent and investigate promptly and impartially all extrajudicial killings and attacks against environmental human rights defenders.
- Provide support to Indigenous environmental defenders.
- Expand the role of national human rights institutions in the environmental matters.

Rights to a Healthy Environment

- Adopt constitutional rights to a healthy environment.
- Support the ASEAN HRD reference to the right to a safe, clean, and sustainable environment.
- Implement agreed environmental commitments under Multilateral Environmental Agreements (MEAs)

Elements for Consideration in a Regional Framework

- Environmental Law Principles
- Substantive and Procedural Environmental Rights
- Environmental Human Rights Defenders
- Thematic Issues:
 - Covering terrestrial, coastal and marine environments.
- Groups disproportionately impacted by environmental harm, including women, Indigenous peoples, etc.
- Stakeholders and Civil Society
- Regional Cooperation
- Environmental Safeguard Tools and Mechanisms
- Environmental Impact Assessment
- Strategic Environmental Assessment
- Transboundary EIA
- Environmental Standards

WAYS FORWARD TOWARDS A REGIONAL FRAMEWORK ON ENVIRONMENTAL RIGHTS

ASEAN countries still face challenges in achieving globally agreed environmental goals and implementing principles on environmental rights at the national level. A regional instrument would help ensure consideration to the specific regional dynamics and national attributes in ASEAN and support the achievement of sustainable development. This would benefit both the process and the outcome by providing a sense of ownership of the regional initiative, which is tailored to member countries' needs and realities on the ground. Drawing from the experience in the EU and Latin America and the Caribbean, a regional framework would strengthen the national legal regimes for the protection of environmental rights by facilitating compliance of countries through appropriate implementing mechanisms. A regional approach provides the impetus for developing a stronger enabling environment that would necessitate reforms in policy, regulation and judicial procedure to ensure environmental rights are protected at the national level. A regional approach also allows ASEAN Member States to develop an appropriate framework in accordance with international principles and ASEAN characteristics. The ASEAN Human Rights Declaration provides a secure base on which to develop an ASEAN environmental rights framework to advance the ASEAN Vision 2025 in accordance with ASEAN principles.

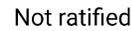


Member State ratification of key Multilateral Environmental Agreements and Regional and Constitutional recognition of Procedural and Substantive Environmental Rights

	UN Framework Convention on Climate Change (UNFCCC)	Convention on Biological Diversity (CBD)	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	Ramsar Convention	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	UN Convention on Law of the Sea (UNCLOS)	UN Declaration on Rights of Indigenous People (UNDRIP)	ASEAN Human Rights Declaration - right to a safe, clean and sustainable environment	Constitution State Obligation to Healthy Environment	Constitution Recognition of Right or principle to Healthy Environment	Freedom of Expression	Freedom of Assembly	Freedom of Association
Brunei Darussalam													
Cambodia													
Indonesia													
Lao PDR													
Malaysia													
Myanmar													
Philippines													
Singapore													
Thailand													
Viet Nam													

 Ratified

 Signed but not ratified

 Not ratified