



ENVIRONMENTAL RIGHTS BRIEF :
**CLIMATE JUSTICE
IN SOUTHEAST ASIA**

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The status of climate justice in Southeast Asia countries

Southeast Asia is one of the most vulnerable sub-regions to climate change impacts.¹ Its population of 640 million people faces risks such as extreme weather events and rising sea levels. With heavily populated coastal regions the consequences include uninhabitable lands and vast displacements and migrations.

Climate change threatens the effective enjoyment of a broad range of human rights of individuals, peoples and communities across the sub-region. Climate change threatens fundamental rights: to life, to health, to shelter, and to food and water, among others.² States' implementation of procedural rights obligations, including obligations to assess and provide information about the effects of climate change, to ensure that climate decisions are made with the informed participation of the public and to provide for effective remedies for climate-related violations of human rights, also remain the key challenges of climate justice in the sub-region as climate action is determined through governance processes that may

not include the voices or address the rights and needs of all groups of society.³

In addition, the effects of climate change often have disproportionate effects on groups of populations, for example, women, children and youth, Indigenous peoples and local communities, small scale farmers and fisherfolks, who contribute the least greenhouse gas (GHG) emissions. This situation raises questions concerning climate justice in the sub-region. Climate justice includes issues of distributive justice and the disproportionate impacts of climate change on children, youth and future generations. There are issues of both inter-generational and intra-generational equity.

Climate justice acknowledges that certain groups are disproportionately affected by the impacts of climate change and it seeks to address these inequalities within all climate action⁴, including mitigation and adaptation strategies. Climate justice requires climate solutions grounded in human rights, equality and non-discrimination and the participation of those most affected. This must include accountability for polluters, redress for victims, and protection of the vulnerable in all prevention, response, mitigation and remedial measures.

¹ IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S. L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M. I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J. B. R. Matthews, T. K. Maycock, T. Waterfield, O. Yelekçi, R. Yu and B. Zhou (eds.)]. Cambridge University Press.
<https://www.ipcc.ch/report/ar6/wg1/>

² UNEP (2015) Climate Change and Human Rights
<https://www.unep.org/resources/report/climate-change-and-human-rights>

³ UN Women (2020). Climate change, gender equality and human rights in Asia - Regional review and promising practices.
<https://www.empowerforclimate.org/en/resources/c/i/i/climate-change-gender-equality-and-human-rights-in-asia>.

⁴ https://www.un.org/sustainabledevelopment/wp-content/uploads/2016/08/13_Why_it_Matters_Climate_Action_letter_size_1p.pdf

Climate justice challenges, as with all elements of environmental justice, are linked to issues of effective environmental rule of law and governance in the sub-region⁵. Environmental rule of law integrates environmental needs with the essential elements of the rule of law, and provides the basis for improving environmental governance. Environmental rule of law provides a foundation for environmental rights and obligations to be exercised. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be discretionary, subjective, and unpredictable.⁶ The Asian Development Bank (ADB) found that “weak environmental governance is common in Asia and the Pacific, creating cascading effects in this era of climate change”.⁷ Judges in the sub-region are being asked to play an increasing role in addressing climate injustice. There is an increasing trend of rights-based climate litigation and adjudication seeking to require governments to fulfil their climate commitments and protect the rights of citizens impacted by climate change.⁸ UNEP has found that globally there are “increasing numbers of cases relying on fundamental and human rights enshrined in international law and national

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<https://www.unep.org/resources/factsheet/human-rights-and-environmental-rule-law>

⁶<https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>

⁷ ADB, ‘Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond’ (2020) p. XXVI.

<https://www.ajne.org/resource/climate-litigation-asia-and-pacific-and-beyond>

⁸ UNEP, ‘Global Climate Litigation Report: 2020 Status Review’, p. 3,

<https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review>

⁹ UNEP, ‘Global Climate Litigation Report: 2020 Status Review’, p. 4

constitutions to compel climate action”.⁹ Similarly, recent research by ADB has found that one-third of all climate litigation outside the United States hinges on fundamental, human and constitutional rights.¹⁰

Implementing climate justice in Southeast Asia

Compared to regions such as Europe and, recently, Latin America, Southeast Asia does not have a binding treaty that guarantees procedural rights of access to information, public participation and access to effective remedy in environmental decision making. As such, climate change legislation, policies or climate actions which impact individuals and communities are often developed without the input of such groups.¹¹

Furthermore, the region continues to face attacks against environmental human rights defenders (EHRDs). The UN defines EHRDs as ‘individuals and groups who, in their personal and professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna’.¹² UNEP considers an

¹⁰ ADB, ‘Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond’ (2020).

¹¹ UN Women (2020). Climate change, gender equality and human rights in Asia - Regional review and promising practices.

https://www2.unwomen.org/-/media/images/unwomen/emp/resources/ap-hrcc-report_online-compressed.pdf

¹² Who are Environmental Human Rights Defenders?, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/who>

environmental human right defender to be anyone (including groups of people and women human rights defenders) who is defending environmental rights, including constitutional rights to clean and healthy environment, when the exercise of those rights is being threatened.¹³

EHRDs can be a broad range of individuals or groups, they can be local communities, lawyers, NHRI staff, Indigenous people, children and youth. Their work is linked to trends in environmental justice - evidence has shown that environmental harm disproportionately impacts individuals, groups and peoples already living in vulnerable situations – including women, children, the poor, ethnic, sexual and gender minorities, migrants, Indigenous people, older persons, and persons with disabilities. EHRDs often represent these communities.

EHRDs play an important and legitimate role in upholding, implementing, and advancing environmental rule of law. There has been increasing violence facing EHRDs. Frontline Defenders reported that there were 54 human rights defenders killed in 2020, with 18% working on environmental or land rights issues.¹⁴ These attacks disproportionately affect women EHRDs, who face unique challenges and threats to their protection work.

The issue of Indigenous peoples' and local communities' rights being violated continues. Respect for Indigenous peoples' rights is enshrined in various international treaties, instruments, standards and norms such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, in many instances, the core principles of respect for Indigenous lands, culture, and the requirement to obtain Free, Prior and Informed Consent (FPIC) before any project development, are not upheld.

Looking at gender equality inclusion and countries' implementation of the Paris Agreement through the Nationally Determined Contributions (NDCs), a recent study conducted by UNEP and UN Women found that only 34%¹⁵ of countries in Asia Pacific included gender equality in climate change laws and policies.

Finally, while citizens of other regions have been able to widely take the fight for climate justice to the courts, the number of cases in Asia and the Pacific has been growing at a slower pace. However, ADB reports that "climate cases in Asia, especially South Asia, often raise claims based on international and domestic human rights, often secured through national constitutions."¹⁶ Stakeholders in the sub-region are using human rights claims to protect the environment and their communities from the impacts of climate change. Jurisprudence indicates that

¹³ UNEP, 'Promoting Greater Protection for Environmental Defenders: Policy' (2018), [https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN Environment Policy on Environmental Defenders_08.02.18Clean.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf)

¹⁴ Frontline Defenders: Global Analysis 2020, https://www.frontlinedefenders.org/sites/default/files/flid_global_analysis_2020.pdf

¹⁵ UN Women, Overview of gender inclusion in Asia Pacific NDCs (2021), www.empowerforclimate.org

¹⁶ ADB, 'Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond' (2020) p. 3.

courts in the region are increasingly recognising that climate change threatens human rights, lives and dignity and that climate injustices need to be addressed.

Obstacles to climate justice in Southeast Asia

Access to justice is a core element of sustainable development goal (SDG) 16 and Principle 10 of the Rio Declaration on Environment and Development. SDG 16.3 seeks to promote the rule of law at the national and international levels and ensure equal access to justice for all. The realisation of the rights of freedom of expression, freedom of peaceful assembly and association are not always ensured. Procedural rights, for example participation in decision-making processes relating to the environment and access to effective remedies for violations of rights remains an important challenge for the sub-region.¹⁷

Despite the worsening effects of climate change and environmental degradation on livelihoods, many people still find themselves unable to seek remedies these environmental harms through political or legal means. This can result in a lack of accountability for decision-makers. Access to justice includes having access to competent legal professionals able to address the complexity of climate cases. To support access to justice through climate litigation in this sub-region, lawyers and judges still need better access to resources and networks that enhance their knowledge

¹⁷ Human rights and the environmental rule of law <https://www.unep.org/resources/factsheet/human-rights-and-environmental-rule-law>

and skills in climate law and climate science.

Access to justice in the region can be hampered as those who call upon duty bearers to uphold human rights, enable communities and individuals to seek remedy and defend human rights linked to the climate impacts and environmental degradation are increasingly subject to harassment, criminalization and violence. EHRDs and CSOs play a vital role in ensuring the protection of local communities' and marginalised groups' rights to a safe, clean, healthy, and sustainable environment. The space for human rights advocacy by EHRDs and civil society organisations (CSOs) remains limited across the region. Ongoing criminalization, judicial and physical harassment against EHRDs and CSOs as well as increased surveillance and restricting legislation has further decreased the already-limited space for CSOs to advocate on Climate justice.¹⁸ The lack of protection and reprisals against EHRDs is a significant issue as it results in grave violations against their fundamental rights to life, health, security and freedom of expression and association.

In addition, there are also challenges regarding unequal/discriminatory laws and policies, resulting in discrimination against vulnerable groups such as Indigenous peoples, ethnic and racial minorities, LGBTI+ and non-binary persons, women, children, persons with disabilities and the elderly, rural small-scale farmers and fisherfolk, migrants and internally-displaced persons.

¹⁸ Asia Pacific Network of Environmental Defenders (APNED). 2021. Reclaiming the Narrative. <https://apned.net/report-reclaiming-the-narrative/>

Addressing obstacles to access justice

To ensure climate justice, it is critical to apply a human rights-based approach to guide global, regional and domestic policies and measures designed to address climate change, both mitigation and adaptation action, one that analyses obligations, inequalities and vulnerabilities, and seeks to redress discriminatory practices and unjust distributions of power, is taken when addressing climate change.

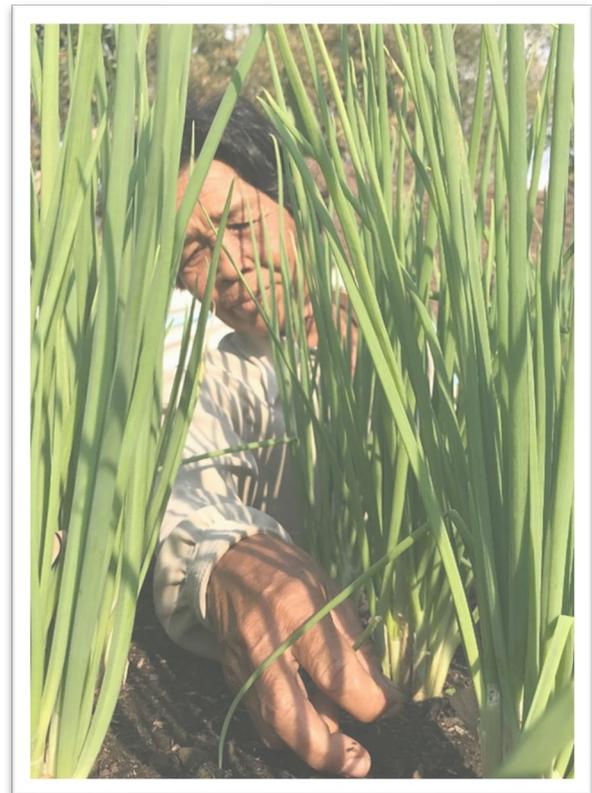
EHRDs and CSOs play a vital role in ensuring the protection of local communities' and marginalised groups' rights to a safe, clean, healthy and sustainable environment. Therefore, it is important to have explicit protection for these defenders within domestic and regional legal and policy frameworks.

Legal protection of EHRDs requires urgent attention throughout the Asia Pacific. States should enact legislation to recognize and support the contribution of EHRDs to the enjoyment of human rights, environmental protection and sustainable development, including guaranteeing access to justice and to remedies when they are threatened or harmed. It is also suggested that Member States may work towards Escazú-style regional agreements for sub-regions of the Asia Pacific that include robust human rights grievance mechanisms, and specific provisions concerning EHRDs.

It is important to continue to provide technical support and training for the work of human rights defenders and civil society actors who work on issues of climate justice. Similarly providing training, information and peer-to-peer exchange for

legal stakeholders is necessary to increase understanding of climate change law and science.

To fully understand the scope of issues of climate justice it is necessary to improve the collection and quality of data with respect to environmental harms and human rights breaches, particularly disaggregated data on gender, age and disability.



OHCHR and UNEP upholding climate justice

OHCHR and UNEP aim, in line with the 2030 Agenda and the Paris Agreement on climate change, to ensure a human rights-based approach to all climate action.

In addition, OHCHR's Office Management Plan aims at ensuring that international and national environmental and climate policies and plans increasingly are implemented in accordance with international human rights standards.

Effective environmental governance and advancing environmental rule of law underpins the pillars of UNEP's Medium Term Strategy 2022-2025 including the climate action pillar. UNEP also supports environmental rule of law through the Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V) pursuant to UNEA Resolution 4/20.

With due regard to these strategic documents, UNEP and OHCHR uphold climate justice:

- Through collaboration with partners to integrate human rights into environmental laws and policies;
- Through the support for the inclusion of civil society in environmental decision-making processes, access to information and effective remedies for environmental harms; including supporting women's CSOs to engage in climate change decision-making processes and policy influence, for example through capacity building and organising venues for discussion and formal policy review;
- Through assisting UN human rights mechanisms to address environmental issues, including climate change;
- Through advocacy on behalf of environmental human rights defenders and support to efforts by the UN system to protect them;
- Through research and advocacy to address human rights harms caused by environmental degradation, particularly to groups in vulnerable situations.
- Through strengthening institutions - building strong, transparent institutions through capacity building support including strengthening capacities of judges and legal professional in the sub-region to effectively support access to justice and adjudication of cases related to climate and human right and supporting the cross-sectoral and institutional coordination between Women's Affairs (or equivalent) and environmental Ministries.
- Through capacity building on gender equality, climate change and specific sectors such as renewable energy;
- Through the generation of sex-disaggregated data and evidence in relation to climate change impacts;

Examples

OHCHR Regional Office for South-East Asia and UNEP Regional Office for Asia and the Pacific have organised a number of virtual conferences relating to climate justice, including a 3-day workshop for the ASEAN Intergovernmental Commission on Human Rights (AICHR) on environment, climate change and the right to a healthy environment.

OHCHR and UNEP are developing a series of Situation Reports for priority countries within Asia Pacific to assist UN Country Teams (UNCTs) and other UN actors to integrate the nexus of human rights and the environment, including issues of environmental justice, into their programming and advocacy work. These evidence-based documents will support UN programming processes including common country analysis (CCA) and the sustainable development cooperation frameworks (UN SDCF) to include a holistic and detailed analysis of the intersection between climate change, the environment, and human rights. The reports also provide suggestions for interventions that the UNCTs can implement to address these issues.

UNEP and OHCHR are also developing a training course to supplement the Situation Reports for UN Country Teams and other UN actors. This course aims to develop UNCT's capacity on the intersection between climate change, environment and human rights and provide more detailed support on examining these intersections.

OHCHR and UNEP have developed learning materials and training modules related to these issues, including the following:

- UNFCCC and OHCHR's course "An Introduction to Climate change and Human Rights" on UN:CC e-Learn¹⁹
- UNEP's course on InforMEA " National Human Rights Institutions (NHRIs) and Environmental Rights"²⁰
- UNEP's course on InforMEA "Introduction to Human Rights and the Environment"²¹
- UNEP's introductory course on climate and environmental law for judges and other legal stakeholders in the Pacific²²
- UNEP's forthcoming course on climate change litigation and human rights.²³

¹⁹<https://unccelearn.org/course/view.php?id=48&page=overview>

²⁰ <https://elearning.informea.org/>

²¹ <https://elearning.informea.org/>

²² Due to be released on InforMEA elearning in late 2021

²³ Due to be released on InforMEA elearning in late 2021

Ongoing Priorities

It will be critical to monitor the commitment to human rights and gender equality that has been agreed by countries in climate change policies, such as the NDCs under the Paris Agreement.

UNEP and OHCHR will continue supporting member states with science, data and evidence on the importance of gender responsive and human rights inclusive climate change action and provide technical inputs to improve policies and legal frameworks.

We will continue to support the achievement of all SDGs, including SDG 13 and 16, through advancing environmental rule of law and climate action that upholds substantive and procedural human rights.

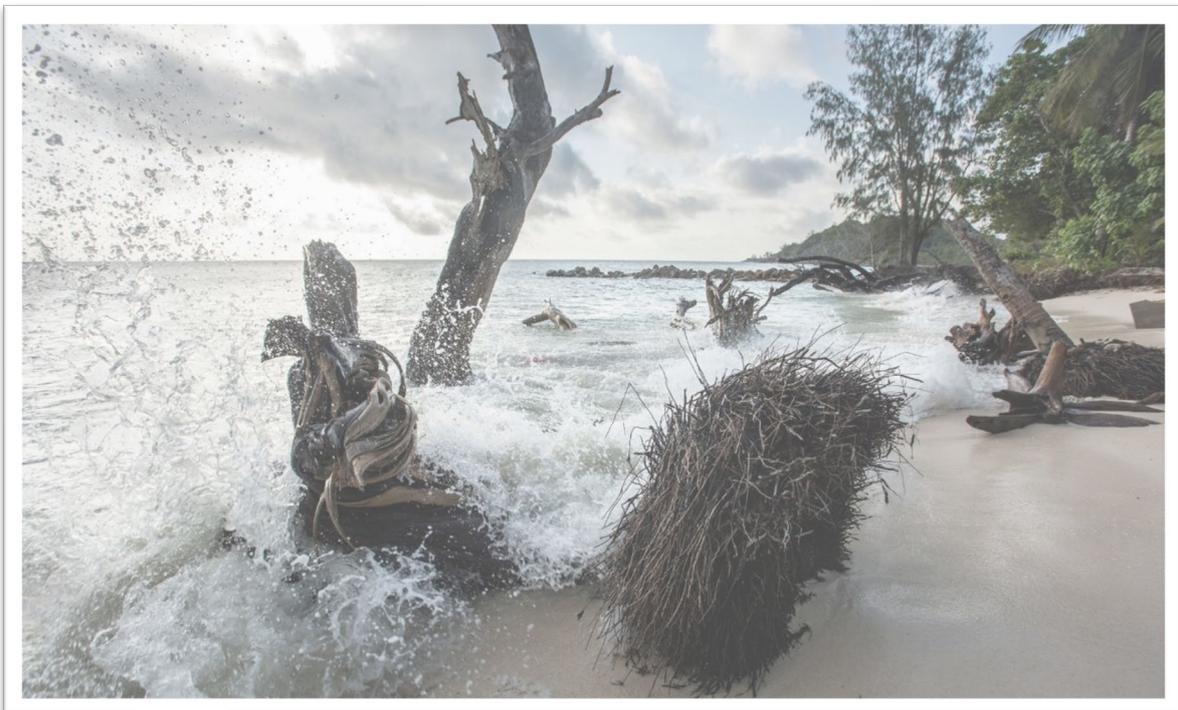
We will continue to build strong, transparent institutions at the national level by providing capacity building support. UNEP and OHCHR will continue to work closely with all stakeholders including civil society and local communities to protect and promote civic space, support access to information, access to justice, and participation of all in climate governance.

In addition, the sub-region will benefit from UNEP and OHCHR's actions at the global level such as the continuous work in supporting Member States efforts towards the global recognition of the right to a safe, clean, healthy and sustainable environment. This is one of the key global priorities in the coming years for UNEP and OHCHR as they work closely with other UN Entities included in the UN Inter-agency working group set up in 2020 by the UN Secretary General's Call to Action on the rights of future generations including climate justice.²⁴ The global recognition of the right to a safe, clean, healthy and sustainable environment is the first pledge included in the recent "Step up!" joint commitment by Heads of United Nations Entities to promote the right of children, youth and future generations to a healthy environment and their meaningful participation in decision-making at all levels, in relation to climate action and climate justice.

²⁴ Secretary-General's Call to Action for Human Rights <https://www.un.org/en/content/action-for-human-rights/index.shtml>. <https://www.un.org/en/content/action-for-human-rights/assets/pdf/info sheet - future generations.pdf>

The UN is also engaged to:

- Take necessary steps to support the scaling up of the meaningful participation of children and young people in all stages of the definition, implementation and review of UN policies, and inform and encourage a cross-cutting focus on children and youth in climate action;
- Enable and support the leadership and empowerment of children and young people in environmental action, with a particular emphasis on the most marginalized in an effort to leave no one behind;
- Uphold, respect, protect and fulfill all human rights, including the rights of children and youth with respect to the environment and climate justice;
- Promote relevant child- and youth-inclusive and child- and youth-led research, data collection, analysis and accountability, to nurture decisions that truly respond to addressing the impacts of the environmental crisis on children, youth and future generations, and that explore frontier issues related to human rights, climate and environmental justice and child and youth empowerment, more broadly.
- Other areas of work under the Secretary-General's Call to Action for Human Rights action area on rights of future generations and climate justice include promoting and protecting the rights of environmental human rights defenders and building capacity of National Human Rights Institutions to report on and monitor climate change and human rights.



Collaborations and Partnerships for climate justice

As part of the UN System, OHCHR and UNEP, are working for rights-based climate action within the context of the Secretary-General’s Call to Action for Human Rights, including implementing initiatives jointly with UNDP, DCO and the Secretary-General’s Climate Action Team. OHCHR and UNEP are also continuously collaborating with partners across the globe and the region including Member States, International Organizations, National human rights institutions (NHRIs), academia, CSOs, private sector organisations, and individual stakeholders across the region who work on or are impacted by climate justice and environmental issues.

We implement cooperation through:

- Awareness raising and advocacy on State’s obligations and Business responsibilities on human rights in the context of climate change and environment;
- Advocacy with Governments/NHRIs, Regional mechanisms;
- Expert contributions in relevant regional and national climate change and environment events;
- Strengthening the cooperation with Partners including UN Agencies, Academia, CSOs and NHRIs;
- Support and strengthen capacity of EHRDs and populations in vulnerable situations.
- Joint capacity-building efforts with national training institutes for the judiciary and other relevant national authorities.

For example, UNEP is working together with UN Women in Asia Pacific to strengthen the capacity among policymakers and duty bearers on the importance linkages between gender equality, human rights and climate change. For example by holding various trainings at country level for climate change sectors such as renewable energy, water management, agriculture, etc., the development of an e-learning course that will be available through the global platform UN CC:learn, by providing technical inputs on gender and human rights to the climate change policies, which resulted in a gender responsive NDCs in the latest submission in Viet Nam and Cambodia, and through supporting women’s access to financing for climate resilient livelihoods.

In addition, UNEP is working with financial institutes, governments, research organisations, NGOs, and regional intergovernmental organisations for a stronger gender perspective in climate change actions and climate financing initiatives, especially making the sector of renewable energy more gender inclusive while supporting women’s leadership and entrepreneurship.

The role of donors in addressing these issues

Donors should continue supporting this sub-region with financial and technical assistance to pursue climate-resilient, low-carbon development, integrating adaptation and disaster risk reduction measures. Donors can provide funding opportunities that allow human rights, environmental and civil society organizations to continue their work, including with respect to protection of environmental human rights defenders. International Financial Institutions should also establish grievance mechanisms and include a requirement to reflect human rights and environmental considerations in programmes and projects.

This issue brief has been prepared as a background document for the Roundtable on “Ensuring access to environmental justice for all: challenges and opportunities in Southeast Asia” which forms part of the Conference on Southeast Asia’s Challenges to Sustainable and Inclusive Development organised by Agence Française de Développement (AFD) that will be held between 30th September – 01 October 2021.