

Office of the High Commissioner for Human Rights (OHCHR)
Submission of comments on Draft ASEAN declaration on environmental rights
ASEAN Working Group on Environmental Rights

30 April 2024

1. INTRODUCTION

The Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes the opportunity to submit comments on the Draft ASEAN declaration on environmental rights.

General Assembly resolution 76/300 (July 2022) and Human Rights Council resolution 48/13 (October 2021) recognize the human right to a clean, healthy and sustainable environment. The resolutions also call upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all. OHCHR welcomes the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR) to advance and implement the human right to a safe, clean, healthy and sustainable environment through a new Declaration.

OHCHR calls on ASEAN to adopt a strong, ambitious Declaration in line with its international obligations and commitments. In this submission, OHCHR sets out fundamental human rights obligations and principles that should guide and inform the development of the Draft ASEAN declaration on environmental rights.

2. PREAMBLE

OHCHR welcomes the efforts of the AER Working Group to ensure that the ASEAN Environmental Rights Framework recognizes States' obligations and commitments under multilateral environmental instruments and agreements, including on climate change and biodiversity by referring to the 2015 Paris Agreement, adopted by the parties to the United Nations Framework Convention on Climate Change, and the 2022 Kunming-Montreal Global Biodiversity Framework adopted by the parties to the UN Convention on Biological Diversity.

However, as recognized by the General Assembly in its resolution 76/300, the pollution of air, land and water and the unsound management of chemicals and waste also interfere with the enjoyment of a clean, healthy and sustainable environment. In this regard, the Office suggests that the Working Group should also reference the 2023 Bonn Declaration for a Planet Free of Harm from Chemicals and Waste which notes General Assembly resolution 76/300 on the human right to a clean, healthy, and sustainable environment, and its importance for the promotion of

human well-being and the full enjoyment of all human rights for the benefit of present and future Generations.

3. OBJECTIVE

Recognition of the right to a healthy environment by the General Assembly followed many years of normative development with respect to human rights and the environment. More than 100 States have adopted the right to a healthy environment in their national law; many more have recognized the right through their ratification of regional agreements which do so or through judicial process; and tribunals and expert bodies have “greened” many other human rights by recognizing their links to the environment. Of particular relevance in this context, the ASEAN Human Rights Declaration adopted in 2012 includes the “right to a safe, clean and sustainable environment.”

It is clearer now than ever before that a safe, clean, healthy, and sustainable environment is a human right necessary for the full enjoyment of all human rights, and that the exercise of human rights, including rights to freedom of expression and association, rights of information and public participation, and rights of access to justice and remedy, is critical for the protection of the environment.

OHCHR welcomes that “The Objective of the Framework is to advance and implement the right to a safe, clean, and sustainable environment,” including by “respecting, protecting, promoting and fulfilling the right to a safe, clean, and sustainable environment,” “providing a safe and enabling environment for the exercise of the right to a safe, clean and sustainable environment” and “protecting and supporting those who promote and strive for environmental rights.”

4. GENERAL PROVISIONS

Paragraph 5: To the extent possible, this Declaration should apply to the private sector.

The current draft in its article 5 states that “*to the extent possible, this Declaration should apply to the private sector.*” OHCHR would recommend the Working Group include language explicitly calling for compliance with the [United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#) which outlines State obligations to protect against human rights harms caused by businesses, business responsibilities to respect human rights and the obligations and responsibilities of Governments and businesses relative to access to justice and effective remedies for harms caused by businesses. The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011 after years of multi-stakeholder consultations, research, and workshops and are now recognized as the global authority on preventing and addressing the risk of adverse impacts on human rights involving business activity.

As noted by the Special Rapporteur on human rights and the environment, all businesses, regardless of size or sector, have a responsibility to respect all internationally recognized human rights, including the right to a clean, healthy and sustainable environment, throughout their value chains ([A/HRC/55/43](#)). In accordance with the Guiding Principles on Business and Human Rights,

the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute. ([A/HRC/37/59](#), para. 35.)

5. ENABLING ENVIRONMENT FOR THE EXERCISE OF ENVIRONMENTAL RIGHTS

The Human Rights Council in its resolution 40/11 on recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection, and sustainable development calls upon States to promote a safe and enabling environment in which individuals, groups and organs of society, including those working on human rights and environmental issues, including biodiversity, can operate free from violence, threats, hindrance and insecurity. OHCHR urges the Working Group to retain this section and to consider the Human Rights Council's recommendations outlined in its resolution 40/11.

With respect to **paragraph 12 (1) “develop, enact and enforce legislation and policies to provide legal protection to individuals, groups and communities who, in their personal and professional capacity, and in a peaceful manner, strive to protect and promote environmental and human rights.”** OHCHR would like to propose the following alternative text: “develop, enact and enforce legislation and policies to provide legal protection to individuals, groups and communities who, in their personal and professional capacity, and in a peaceful manner, strive to protect and promote **human rights including the right to a clean, healthy and sustainable environment.**”

6. ACCESS TO INFORMATION IN ENVIRONMENTAL MATTERS

The human right of all persons to seek, receive and impart information guaranteed by Universal Declaration of Human Rights (art. 19), International Covenant on Civil and Political Rights (art. 19) and ASEAN Human Rights declaration (article 23) includes information on environmental matters.

In addition to the current text, OHCHR invites the Working Group to consider Committee on the Rights of the Child's General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, in particular, paragraph 34 where the Committee states that States have an obligation to make environmental information available. Dissemination methods should be appropriate to children's ages and capacities and aimed at overcoming obstacles, such as illiteracy, disability, language barriers, distance and limited access to information and communications technology. ([CRC/C/GC/26](#), para 34)

7. PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

7.1 Paragraph 15. Every person has the right to participate in decision-making in environmental matters. The right to participate should be safe, meaningful, effective and at the earliest possible stage before decisions are taken, and while options are still open to the preparation of decisions on proposed activities, permits and other measures, plans, programmes, budgetary matters, activities, draft laws, regulations, and policies that may have a significant effect on the environment.

OHCHR would like to propose the following alternative text: Every person has the right to participate in decision-making in environmental matters. The right to participate should be safe, meaningful, effective **and informed** at the earliest possible stage before decisions are taken, and while options are still open to the preparation of decisions on proposed activities, permits and other measures, plans, programmes, budgetary matters, activities, draft laws, regulations, and policies that may have a significant effect on the environment.

7.2 Paragraph 16. promote and support the rights of women, children, youth and people with disabilities to meaningful participation in decision-making on environmental matters and their elected advocates.

OHCHR would like to propose the following alternative text: **Respect, protect, promote and fulfil the human right to participation of all people in decision-making on environmental matters, including, in particular, women, youth, Indigenous Peoples, people with disabilities, local communities, and others disproportionately affected by environmental crises.**

7.3 Paragraph 17. [Ethnic communities] in accordance with international standards, national laws and policies, have the right of free, prior and informed consent (FPIC) for activities likely to impact their communities.

OHCHR would like to propose the following alternative text: **Indigenous Peoples** in accordance with international standards, national laws and policies, have the right of free, prior and informed consent (FPIC) for activities likely to impact their communities.

Rationale:

The entitlement to give or withhold Free, Prior and Informed Consent (FPIC) is specifically accorded to Indigenous Peoples in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It is inextricably linked with their universal right to self-determination. UNDRIP, ratified by all ASEAN member states, serves as a guiding framework in this regard, emphasizing the importance of respecting and protecting the unique cultural, social, and legal circumstances of Indigenous Peoples. This adjustment aligns with calls for ASEAN Members States to affirm UNDRIP, as referenced in the draft Declaration on page 1.

It's important to acknowledge that across various regions in Asia, the terminology used to refer to Indigenous Peoples often varies, with terms like "ethnic groups" or "ethnic minorities" being common. However, many of these communities self-identify as "Indigenous Peoples," a designation that carries significant cultural and political implications. Recognizing and using the term "Indigenous Peoples" in official documents is not just a semantic choice but a reflection of respect for their self-identification and rights.

Indigenous Peoples also has been used in this ASEAN document: <https://asean.org/wp-content/uploads/2022/11/12.-ASEAN-Guidelines-on-Recognition-of-Customary-Tenure-in-Forested-Landscape.pdf>

8. ACCESS TO JUSTICE AND EFFECTIVE REMEDIES IN ENVIRONMENTAL MATTERS

Paragraph 20 AMS should: (1) promote and facilitate access to justice in environmental matters.

OHCHR would like to propose the following text: **AMS Should: (1) guarantee the right of all people to access justice and effective remedies for human rights violations and abuses, including those relating to the enjoyment of a safe, clean, healthy and sustainable environment, in accordance with their international obligations and commitments.**

(20) AMS should:

(1) **Ensure** access to justice in environmental matters.

(2) **Ensure** a person's right to a fair and prompt hearing by an independent and impartial tribunal in determining their rights, including with respect to environmental matters.

(3) **Ensure** legal standing to access to justice and remedies, [including with respect to rectifications of breaches of an obligation under national law or] to prevent threatened harm to the environment and to challenge acts of public authorities or private persons which contravene law.

(4) **Take** measures to eliminate or minimize barriers to the exercise of the right of access to justice, including judicial rules of procedure in environmental matters and [precautionary and interim judicial] remedies.

9. RECOGNITION AND PROTECTION OF THOSE WHO PROMOTE AND DEFEND ENVIRONMENTAL RIGHTS

OHCHR calls for Working Group to retain this section. The Office and the UN Special Procedures monitor the situation of environmental human rights defenders in South-East Asia and around the world. As stressed by the UN Human Rights Council in its resolution 40/11, the killing of and all other human rights violations or abuses against environmental human rights defenders, including women and Indigenous human rights defenders, by State and non-State actors violates international law and undermines sustainable development at the local, national, regional and international levels.

Paragraph 22 (4) consider establishing a rapid response mechanism or protocol at ASEAN or national levels to address threats, attacks or intimidation against those who promote and strive for environmental rights.

OHCHR would like to propose the following text: AMS Should: (4) **consider** establishing a rapid response mechanism or protocol at ASEAN or national levels to address threats, attacks or

intimidation against those who promote and strive for environmental rights. In addition to the text of the current draft, OHCHR would invite the Working Group to consider the recommendations suggested by the Human Rights Council ([A/HRC/RES/40/11](#)), including

- to acknowledge, through public statements, policies, programmes or laws, the important and legitimate role of those who promote and defend environmental rights in the promotion of all human rights, democracy and the rule of law as essential components of ensuring their protection, including by respecting the independence of their organizations and by avoiding the stigmatization of their work, including with regard to the environment.
- to ensure that all legal provisions and their application affecting those who promote and defend environmental rights are clearly defined, determinable and non-retroactive in order to avoid potential abuse, to the detriment of fundamental freedoms and human rights, and specifically to ensure that the promotion and the protection of human rights are not criminalized.
- to develop and appropriately resource protection initiatives for those who promote and defend environmental rights, to ensure that human rights defenders are meaningfully consulted in the provision and implementation of protection measures, and also to ensure that the measures are holistic, including both individual and collective protection aspects, and that these measures also function as early warning and rapid response mechanisms that enable human rights defenders.

10. SUBSTANTIVE ELEMENTS

Paragraph 26

(4) take all necessary steps [in accordance with the scientific evidence and a human rights approach] to implement international agreements to reduce the potential impact of climate change, including addressing issues of loss and damage, supporting the just transition, addressing climate induced mobility, disaster risk reduction, and supporting groups in vulnerable situations.

OHCHR would like to propose the following text: (4) take all necessary steps [in accordance with the scientific evidence and a **human rights-based approach** to implement international agreements to reduce the potential impact of climate change, including addressing issues of loss and damage, supporting the just transition, addressing climate induced mobility, disaster risk reduction, and supporting groups in vulnerable situations.

(5) prevent, reduce and control the degradation of the natural environment and support, including support, and promote the protection of terrestrial, riverine, and marine biodiversity to maintain the proper functioning of ecological processes

OHCHR would like to propose the following text: (5) prevent, reduce. control **and remedy** the degradation of the natural environment and support, including support, and promote the protection of terrestrial, riverine, and marine biodiversity to maintain the proper functioning of ecological processes.

11. IMPLEMENTATION AND PLAN OF ACTION

OHCHR welcomes the decision to develop a Regional Plan for implementation of the Framework. Reflecting a practical approach to these issues, the draft ASEAN Declaration on Environmental Rights has detailed provisions on appropriate tools and mechanisms, including on environmental

human rights defenders, environmental impact assessment, strategic environmental assessment, and transboundary environmental impact assessment, and on means of implementation, including scientific research and the promotion of transboundary cooperation. The draft would also commit States to prepare, following the principles in the Framework, National Plans of Action to implement the declaration in their national laws, regulations, policies, and plans. OHCHR believes that a combination of high ambition and practical, step-by-step measures are needed to work towards effective implementation of environmental rights throughout the region.

12. **Other aspects**

From the beginning of discussions of the Environmental Rights Framework, the ASEAN Intergovernmental Commission on Human Rights and the AER WG have pursued a holistic approach that recognizes the importance of inclusive representation by relevant ASEAN sectoral bodies and entities and engages and consults with multi-stakeholders and integrates gender representation throughout the process. OHCHR welcomes this approach, which is consistent and builds on the best practices in other regions, including the approach taken in the development of the Escazú Agreement in Latin America and the Caribbean. OHCHR calls the Working Group and the ASEAN Intergovernmental Commission on Human Rights to ensure such inclusive representation including consider inviting additional stakeholders in particular, Indigenous Peoples and ensure the safe, meaningful, and informed participation and consultation throughout the development and implementation of the ASEAN Declaration on Environmental Rights and its plan of action.
