

Draft

ASEAN declaration on environmental rights

Draft as of 7 March 2024

WE, the Heads of States/Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN"), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, hereinafter referred to as "the ASEAN Member States" (AMS);

REAFFIRMING the 2007 ASEAN Charter, guided by Article 1 and Article 2, the 2012 ASEAN Declaration on Human Rights, in particular, Article 28; the 1948 Universal Declaration of Human Rights and the International Covenants on Human Rights and other relevant human rights instruments to which ASEAN Members States are parties, in particular the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child, the 2006 Convention on the Rights of Persons with Disabilities, and the 2007 Declaration of the Rights of Indigenous Peoples;

WELCOMING the adoption of Human Rights Council resolution 48/13 and General Assembly resolution 76/300, recognizing the human right to a clean, healthy and sustainable environment;

RECALLING the 1972 Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, in particular, Principle 10; the 2015 Paris Agreement, adopted by the parties to the United Nations Framework Convention on Climate Change, which acknowledges that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights; and the 2022 Kunming-Montreal Global Biodiversity Framework adopted by the parties to the UN Convention on Biological Diversity, which acknowledges the human right to a clean, healthy and sustainable environment;

RECALLING ALSO commitments made within the 2019 Joint Statement on Reaffirmation of Commitment to Advancing the Rights of the Child in ASEAN; and the ASEAN Enabling Masterplan 2025 Mainstreaming the Rights of Person with Disabilities, the 2002 ASEAN Agreement on Transboundary Haze Pollution, the 2023 ASEAN Blue Economy Framework and the 2005 Agreement on the Establishment of the ASEAN Centre for Biodiversity, among other agreements that support the promotion and protection of such rights;

RECALLING FURTHER the 1993 Vienna Declaration and Programme of Action which affirms that all human rights are universal, indivisible, interdependent and interrelated, while recognizing that, environmental harm disproportionately impacts women and girls and those segments of the population already in vulnerable situations, including children and youth, older persons and persons with disabilities, among others;

NOTING the link between the right to a safe, clean, healthy and sustainable environment, regional peace and security, and sustainable development, and further that the effective promotion and protection of the right to a safe, clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements to which AMS are a party, adherence to the principles of international environmental law, the encouragement of cross-sectoral and cross-pillar cooperation and the participation of all the peoples of ASEAN;

CONVINCED that this Declaration will strengthen the framework for human rights in the region and promote sustainable development in the ASEAN community;

HEREBY DECLARE AS FOLLOWS:

OBJECTIVE

1. The Objective of the Declaration is to advance and implement the right to a safe, clean, healthy and sustainable environment to address environmental rights issues by:
 - (1) Respecting, protecting, promoting and fulfilling the right to a safe, clean, healthy and sustainable environment.
 - (2) Protecting, conserving and restoring the environment for present and future generations.
 - (3) Promoting the full and effective implementation of the rights of access to environmental information, public participation in environmental decision-making and access to justice based on the rule of law, and effective remedies in environmental matters for every person, particularly groups in vulnerable situations.
 - (4) Providing an enabling environment for the exercise of the right to a safe, clean, healthy and sustainable environment: and
 - (5) Protecting and supporting those who promote and strive for environmental rights.

[Alternative editorial formulation

1. *Respecting, protecting, promoting and fulfilling the right to a safe, clean, healthy and sustainable environment requires conserving and restoring the environment for present and future generations and an enabling environment for the exercise of these rights, through access to environmental information, public participation in environmental decision-making and access to justice based on the rule of law, and effective remedies in environmental matters for every person, particularly groups in vulnerable situations. The right to a safe, clean, healthy and sustainable environment is also enabled by protection and support for those who promote and strive for environmental rights.]*

GENERAL PROVISIONS

2. Every person has the right to a safe, clean, healthy and sustainable environment, which includes clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water and adequate sanitation, healthy and sustainably produced food, and non-toxic environments.
3. Every person has the right to protect the environment, contribute to its protection and improvement, prevent pollution, combat climate change, promote biodiversity and prevent damage to the environment.
4. The Declaration should be implemented in line with international and ASEAN standards, national circumstances and domestic law, and with the adoption of necessary legislative, regulatory, administrative, or other measures guided by principles recognized in international law.
5. To the extent possible, this Declaration should apply to the private sector.
6. No provision in this Declaration should limit or repeal other more favourable rights and guarantees set forth, at present or in the future, in the legislation of a Member State or in any other international agreement to which an AMS is party or prevent a State from granting broader access to environmental information, public participation in the environmental decision-making process and justice in environmental matters.
7. There is need for greater protection for those working to promote and protect the environment and human rights under national laws and recognizes the important role of national human rights institutions in supporting and promoting the enjoyment of the human right to a safe, clean, healthy, and sustainable environment.
8. Special measures are needed to ensure children, youth, people with disabilities, and other

vulnerable groups can exercise their environmental rights.

ENABLING ENVIRONMENT FOR THE EXERCISE OF ENVIRONMENTAL RIGHTS

9. Every person should be guaranteed a safe and enabling environment to ensure the exercise of environmental rights free from threats, harassment, intimidation, violence, restriction or insecurity.
10. Any person who exercises their right to a safe, clean, healthy, and sustainable environment should be protected from threat and retaliation in any form and should not be subject to civil, administrative or criminal proceedings.
11. The exercise of human rights, including the freedom of opinion and expression, including to hold opinions without interference, the freedom to seek, receive and impart information, to participate in the conduct of government and public affairs, and the right to an effective and enforceable remedy, is vital to the respect, protection and promotion of the right to a safe, clean, healthy and sustainable environment.
12. AMS should:
 - (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.
 - (2) prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
 - (3) provide legal protection for whistle-blowers who disclose environmental information in order to protect the environment and the community.
 - (4) respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

ACCESS TO INFORMATION IN ENVIRONMENTAL MATTERS

13. Every person has the right of access to environmental information, including the right to seek, impart and access environmental information request environmental information from public authorities.
14. AMS should:
 - (1) ensure that information on environmental matters to be proactively collected, compiled, published and made accessible, delivered in appropriate languages, and culturally appropriate format through electronic and other means on an ongoing and transparent basis.
 - (2) ensure that information is made available as soon as possible after a request has been submitted and disseminated in a systematic, proactive, timely, regular, accessible and comprehensible manner.
 - (3) guarantee that environmental information systems are duly organized, accessible to all persons and made progressively available online and by other means as may be appropriate and that no restrictions are placed on its reproduction or use [and by providing affordable, effective and timely access to information to any person upon request].
 - (4) endeavour to ensure, to the extent practicable, that procedures are developed for the dissemination of environmental information in the various languages used in the country and prepare alternative formats that are comprehensible and culturally appropriate, in particular to those persons or groups in vulnerable situations, using suitable communication channels.
 - (5) take measures through legal, regulatory or administrative measures to promote access to environmental information in possession of private sector entities, in particular, information on

their operations and the possible risks and effects on human health and the environment.

(6) [ensure public and private sector entities prepare sustainability reports reflecting their social and environmental performance, including due diligence reporting, risk assessment for human rights and environmental impacts, and environmental, social and governance reporting.]

PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

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.

16. AMS should:

(1) develop and implement public participation procedures through legislation, regulations and policies. Public participation procedures should be developed and should promote public participation that is transparent, open, inclusive, meaningful and accountable.

(2) prepare special measures and procedures for people in vulnerable situations to ensure meaningful participation from them.

(3) 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.

(4) develop legislation and judicial rules to combat and prevent Strategic Litigation against Public Participation (SLAPP) and provide training of the judiciary, prosecutors and the legal profession to ensure that SLAPP suits are not commenced or maintained by either State or private actors.

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.

18. [Human rights and environmental due diligence and risk assessment for decisions or activities that are likely to have a significant impact on the environment or human rights should be incorporated by AMS into both public and private sector decision-making.]

ACCESS TO JUSTICE AND EFFECTIVE REMEDIES IN ENVIRONMENTAL MATTERS

19. Every person has the right to an affordable, effective and enforceable remedy in environmental matters, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by national laws, as well as international laws applicable in AMS.

20. AMS should:

(1) promote and facilitate access to justice in environmental matters.

(2) promote 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) promote 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) consider 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.

(5) promote the use of alternative and additional dispute resolution mechanisms to resolve disputes involving environmental matters, such as mediation, arbitration conciliation, or other means that allow such disputes to be prevented or resolved. [These mechanisms should not be used to achieve an outcome that would further violate human or environmental rights].

RECOGNITION AND PROTECTION OF THOSE WHO PROMOTE AND DEFEND ENVIRONMENTAL RIGHTS

21. Every person and every group, including national human rights institutions, working to promote and protect the environment and human rights following national laws require further protection from threats and retaliation.

22. AMS should:

(1) take adequate and effective measures to recognize and protect those who promote and strive for environmental rights, as well as their ability to exercise their rights.

(2) ensure that those who promote and defend environmental rights are free from threat and retaliation in any form and should not be subject to civil, administrative or criminal proceedings for exercising such rights.

(3) take appropriate, effective, and timely measures to prevent, investigate, deter, and punish threats or intimidation against those who promote and strive for environmental rights.

(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.

SUBSTANTIVE ELEMENTS

23. Recognizing that the implementation of environmental law contributes to the achievement of the right to a safe, clean, healthy, and sustainable environment, the AMS should promote the enactment and implementation of non-discriminatory and non-retrogressive substantive legislation, rules, policies and standards that take into account all relevant international and applicable environmental, health and safety standards.

24. Such actions should assist the realization of the right to a safe, clean, healthy, and sustainable environment, with particular reference to the following substantive elements: clean air and reduction in transboundary haze; a safe and stable climate, including climate change mitigation, adaptation and resilience; healthy ecosystems and biodiversity; safe and sufficient water and adequate sanitation; healthy and sustainably produced food; non-toxic environments; land degradation, desertification and drought; and healthy oceans and marine environment and coasts.

25. AMS should promote effective enforcement of their environmental laws to prevent, reduce, and remedy environmental harm that interferes with the full enjoyment of human rights.

26. AMS should:

(1) commit to implementing multilateral environmental agreements ratified by ASEAN Members, including the Kunming-Montreal Global Biodiversity Framework, and include a human rights-based approach, respecting, in particular, the role of [indigenous peoples], and groups in vulnerable situations, local communities and ethnic groups in biodiversity conservation.

(2) cooperate to develop legislation, rules and policies to reduce transboundary haze, urban, indoor, and rural air pollution to promote public health and a healthy environment and to take all practicable measures to ensure monitoring, compliance, and enforcement of air pollution measures and emissions standards for air pollution and ambient air quality.

(3) endeavour to prevent, reduce and control such discharges or emissions and support the development of ASEAN environmental quality standards and emissions standards to control pollution and prevent the contamination of land and soil.

(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.

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

(6) protect and promote healthy soils and develop legislation, regulations and policies to conserve and promote healthy soils, including protecting soils from threats and degradation due to land use and land use change, and salination from climate change impacts.

(7) protect and promote the right to access to safe, affordable water and sanitation and take all appropriate measures towards the protection of the natural water cycle to ensure the conservation of underground and surface water resources.

(8) consider ocean equity in decisions impact marine and coastal communities in implementing the ASEAN Blue Economy Framework 2023 and in controlling activities likely to cause pollution of the marine environment, including marine debris and plastics pollution and illegal and unregulated use and extraction of marine resources.

(9) take all necessary steps to protect and preserve mangroves, coral reefs, seagrasses and breeding habitats.

(10) develop and implement integrated coastal zone management approaches and action programs to address problems and challenges in coastal zone governance.

ENVIRONMENTAL IMPACT ASSESSMENT

27. Recognizing that prior and effective Environmental Impact Assessment (EIA) is an essential tool to promote and protect the right to a safe, clean, healthy and sustainable environment, procedures should be developed to include relevant components of impact assessment, including health, social, and human rights impact assessment, using international best practices and evidence-based science.

28. AMS should:

(1) promote strategic or landscape-level environmental assessment of large-scale activities, plans and programmes.

(2) develop and implement a system of transboundary environmental impact assessment, following international law, norms and existing practices in the region, to require the environmental impact assessment of proposed projects or activities that may significantly impact areas beyond national jurisdiction.

(3) encourage the use of due diligence and risk assessment tools, including human rights and environmental due diligence, and nature-based solutions for environmental impacts.

RESEARCH AND EDUCATION

29. Every person, including children and youth, should have the right to free and comprehensive environmental education, including on environmental rights, relevant to their age and circumstances.

30. AMS should:

- (1) support research and education on environmental rights, including for vulnerable groups.
- (2) promote and, where practicable, support scientific and technical research programmes on environmental rights issues, including climate change, pollution and biodiversity protection, in partnership and cooperation with appropriate international organizations.
- (3) support the free exchange of information and research and development on the impacts of climate change, biodiversity loss and pollution on human rights and the environment in ASEAN.
- (4) support the exchange of information on environmental rights and promote environmental rights education in ASEAN.

PROMOTION OF TRANSBOUNDARY, CROSS PILLAR AND MULTI-STAKEHOLDER COOPERATION

31. AMS recognize the need to promote multi-sectoral cooperation to support the implementation of this Declaration, including through consultations with relevant stakeholders, sharing information on good practices and policies, knowledge management, cooperation, and coordination amongst the relevant ASEAN Sectoral Bodies and Entities with the support of the ASEAN Secretariat.

32. AMS should:

- (1) ensure that activities under their jurisdiction or control do not cause damage to the environment or other Parties or in areas beyond the limits of their national jurisdictions.
- (2) cooperate to establish, maintain and enforce effective international legal frameworks to prevent, reduce and remedy transboundary and global environmental harm.
- (3) cooperate with competent international organizations to coordinate their activities in the conservation of nature and management of natural resources and assist each other in the implementation of this Declaration.

IMPLEMENTATION AND PLAN OF ACTION

33. A non-binding Regional Implementation Plan will be developed to support AMS and the ASEAN Secretariat in implementing the Declaration and to provide a basis for sharing experience and assessment progress. AICHR will lead the development of the Regional Implementation Plan, which will be completed within one year from the date of this Declaration.

Adopted by the Heads of State/Government of ASEAN Member States at [CITY], [COUNTRY], this [DATE], in one single original copy in the English Language.