



Republic of the Philippines
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City
Tel. Nos. (02) 8920-0689 / 8925-8275 / 0917-885-3367 / 0917-868-3367
Website: <http://www.denr.gov.ph> / E-mail: web@denr.gov.ph

MEMORANDUM

TO : **The Directors**
Climate Change Service
Environmental Management Bureau
Forest Management Bureau
Biodiversity Management Bureau
Land Management Bureau
Mines and Geosciences Bureau
Ecosystems Research and Development Bureau
Legal Affairs Service
Climate Change Service

FROM : **The OIC Director**
Policy and Planning Service

SUBJECT : **REQUEST OF COMMENTS ON THE PHILIPPINES' PRIORITIES FOR THE ASEAN FRAMEWORK ON ENVIRONMENTAL RIGHTS**

DATE : **29 AUG 2023**

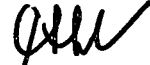
This has reference to the Stakeholder Meeting on the Philippines' Priorities for the ASEAN Framework on Environmental Rights held on 18 August 2023. The meeting discussed the Philippine's priorities and the initial draft documents/framework circulated by the ASEAN Intergovernmental Commission on Human Rights Philippines (AICHR). The draft documents are as follows: (1) ASEAN Environmental Rights Framework Outline of a Stakeholder Engagement Plan; (2) ASEAN Environmental Rights Framework Comparative Review of ASEAN Environmental Law Instruments; (3) Draft Discussion Document on ASEAN Environmental Rights Framework.

The ASEAN Environmental Rights Framework is drafted to promote, protect, respect and implement the right to a safe, clean and sustainable environment as set out in the ASEAN Human Rights Declaration. The framework also supports the realization of the human right to a clean, healthy and sustainable environment recognized by the United Nations General Assembly. The elements in the framework reflect existing environmental and human rights norms and practices. The Framework is designed to provide a compilation of the key principles to assist the ASEAN Members States in effectively discharging national obligations under international environmental law and human rights norms.

Relative thereto, may we request for your comments and concurrence on the said draft documents. Kindly send your comments to psddivision@gmail.com and/or policy@denr.gov.ph on or before **15 September 2023**, in order to facilitate the

submission of the Department's comments to the Department of Foreign Affairs.
Attached are the above-mentioned documents for your ready reference.

For your information and appropriate action, please.



CHERYL LOISE T. LEAL



Republic of the Philippines
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City
Tel. Nos. (02) 8920-0689 / 8925-8275 / 0917-885-3367 / 0917-868-3367
Website: <http://www.denr.gov.ph> / E-mail: web@denr.gov.ph

MAR 20 2023

MS. AILEEN S. MENDIOLA-RAU
Deputy Assistant Secretary
Office of the Philippine Representative to the
ASEAN Intergovernmental Commission on Human Rights
Department of Foreign Affairs
2330 Roxas Boulevard
Pasay City

Dear Deputy Assistant Secretary Mendiola-Rau:

This refers to your letter requesting for inputs on the sub-zero draft of the Regional Framework on Environmental Rights in ASEAN dated 25 January 2023. In line with this, may we refer you to our comments below:

1. As mentioned during the Stakeholders meeting held last 24 January 2023, the Philippines will assume as chair of the ASEAN Senior Officials on the Environment (ASOEN). This may aid in the passing of the said Regional Framework, should it be passed to the ASOEN for review.
2. With respect to structure, we leave this to the sound judgment of the DFA, which has more knowledge on the different types of international agreements. However, we would recommend a document that is not legally binding, such as but not limited to a declaration but which still carries some weight and provides an indication of the directions of the ASEAN as a Region. This may facilitate the acceptance of the document by more conservative ASEAN Member States.
3. It should be emphasized that member states should ensure access without discrimination, *inter alia*, to information and justice in environmental matters, participation in environmental decision-making and environmental education. Human rights should be taken into account at all stages of the environmental decision-making process.
4. Taking into consideration their vital role in the protection of the environment, member States should consult and cooperate in the implementation of this recommendation with subnational entities, civil society, national and regional human rights institutions, environmental human rights defenders, economic actors, indigenous peoples, and local communities, cities, and regions.
5. From the United Nations Guiding Principles on Business and Human Rights¹, it is a State's duty to protect human rights and ensure access to remedies for their violation, including the rights to non-discrimination, participation and inclusion. This necessarily includes their duty to ensure a safe, clean healthy and sustainable environment in order to respect, protect and fulfill human rights.
6. Under Knox Principle 4, States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence. Parallel to this, Knox Principle says that States should provide for access to

¹ United Nations Human Rights Council Resolution 17/4, 16 June 2011

"Part III, Rule 7, Sec. 1. Nature of the writ – The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces"

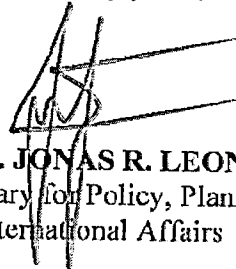
Albeit this particular remedy for protection of the environment, quite notably, since the implementation of the Rules in 2010, the Writ of Kalikasan has encountered challenges in application to protect the environment of the Philippines. More than a decade since it was first defined and used in court, the writ has been invoked for various cases, from closing open dumpsites and illegal landfills, to prompting the government to protect important bodies of water like the rehabilitation of Manila Bay. While many petitions have been approved this way, the rulings haven't always been implemented by local governments⁶.

10. The State should also promote and safeguard the well-being of environmental workers from harm, to which employees of the DENR are exposed (e.g. foresters, park rangers, wildlife enforcement officers, Protected Area Superintendents, ...etc). Environmental workers risk their lives, and safety to safeguard our environment from deforestation, climate change, air pollution, and species extinction, among others. Their work enables the State to provide their citizens with a safe, clean, healthy and sustainable environment. To realize the right to a healthy environment environmental workers they should be provided with adequate equipment, and safeguards such as basic health insurance, life insurance, commensurate salary, regularization, training, self-defense, and protection from harassment and violence. We believe this element should be added to highlight the importance of environmental workers in the protection and management of the environment.
11. The preambular statement could reaffirm that all human rights are universal, indivisible, interdependent, inter-related, inalienable and non-discriminatory. The State should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights.

In view of the above, we hope to have provided you with the necessary input for the zero draft of the ASEAN Regional Framework on Environmental Rights.

Thank you.

Very truly yours,



ATTY. JONAS R. LEONES
Undersecretary for Policy, Planning, and
International Affairs

⁶ Mongabay Website:

<https://news.mongabay.com/2021/04/hits-and-misses-for-a-legal-tool-to-protect-the-environment-in-philippines/>

Legal research for supporting background documents for environmental rights recognition in ASEAN

Draft Discussion Document on ASEAN Environmental Rights Framework.

Prepared by Matthew Baird, Director, and Roger Joseph (Rocky) Guzman, Deputy Director Asian Research Institute for Environmental Law (ARIEL)

Dated 11 August 2023

This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The authors' views expressed in this report do not necessarily reflect the views of the United States Agency for International Development, the United States government, or WWF.

Explanatory Note

Led by the ASEAN Intergovernmental Commission on Human Rights (AICHR), an objective of the Environmental Rights Framework Working Group (ERF WG) is to develop a regional framework on environmental rights for consideration by ASEAN. The form and content the framework may take will be determined through collaborative discussion by the ERF Working Group and other bodies within and outside the ASEAN and the UN to achieve a holistic approach and enhance the coherence of the regional framework. This draft discussion document draws on ASEAN and international experiences for the elements, principles, and framework structure.

The ERF brings together existing ASEAN commitments and international obligations to restate these obligations in a comprehensive manner and in a single document. It does not create new obligations or seek to introduce new norms. It brings international environmental and human rights norms into a new regional framework.

The footnotes and explanatory notes are designed to assist in reading the document. The footnotes provide sources for the stated article or obligation. The explanatory notes are also designed to assist in reading the articles by providing context or comments. Both the footnotes and the explanatory notes will be removed from the final draft of the Environmental Rights Framework.

In order to assist discussion of the document, the chapters are numbered, including the preamble. This numbering will change in the final version.

Chapters 1 - 10 deal with the objective, general provisions, definition and principles and the primary issues of access rights protection of environmental human rights defenders.

Chapters 11 - 22 deal with matters relating to impact assessment and specific elements of a safe, clean and sustainable environment. Chapters 11 – 14 deal with components of impact assessment. Chapters 15 – 22 deal with components of a safe, clean and sustainable environment in ASEAN.

There are then some concluding provisions in chapters 23-26.

The driver behind these chapters is the work of AICHR over many years to improve the rights-based approach to impact assessment in ASEAN as well as the substantive provision of the ASEAN Agreement on the Conservation of Nature and Natural Resources 1985. This Agreement never entered into effect, although it contains many provisions that are still relevant today. The UN Special Rapporteur on Human Rights and the Environment has also recognised a number of specific elements to be protected.¹

¹ Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59 (24 January 2018), available at <https://digitallibrary.un.org/record/1474985?ln=en>

Table of Contents

1. Preamble.....	4
2. Objective.....	9
3. Definitions.....	9
4. General Provisions.....	12
5. Principles	14
6. Enabling Environment for the Exercise of Environmental Rights.....	16
7. Access to Information in Environmental Matters	17
8. Public Participation in Environmental Matters	19
9. Access to Justice and Effective Remedies in Environmental Matters	21
10. Protection of Environmental Human Rights Defenders.....	23
11. Prior Impact Assessment.....	24
12. Strategic Environmental Assessment.....	25
13. Environmental Impact Assessment.....	26
14. Transboundary EIA	27
15. Clean Air and Transboundary Haze.....	28
16. Safe Climate.....	28
17. Healthy ecosystems and biodiversity.....	29
18. Non-toxic Environment	30
19. Soils and soil health.....	30
20. Water.....	31
21. Oceans and Marine	31
22. Coastal Zone	32
23. Scientific Research	32
24. Promotion of Transboundary Cooperation.....	33
25. Implementation and Plans of Action.....	33
26. Final Provisions.....	33

1. Preamble

Explanatory Note

The preamble references to the right-hand side of the columns below are to provide references for the preamble. These shall be removed in the final draft. They are for discussion purposes only.

The ASEAN Environmental Rights Framework (the Framework) is drafted to promote, protect, respect and implement the right to a safe, clean, and sustainable environment as set out in Article 28(f) of the ASEAN Human Rights Declaration. The framework also supports the realisation of the human right to a clean, healthy and sustainable environment recognised by the United Nations General Assembly in July 2022 (A/RES/76/300). The elements in the Framework reflect existing environmental and human rights norms and practices. The Framework is designed to provide a compilation of the key principles to assist the ASEAN Members States (AMS) in effectively discharging national obligations under international environmental law and human rights norms.

The Framework contains procedural and substantive elements, collectively called environmental rights. Both elements are necessary to protect the environment and support the right to a safe, clean and sustainable environment.

	References
Recalling the ASEAN Charter	Charter of the Associations of Southeast Asian Nations, Singapore 20 November 2007, p.179.
Reaffirming the commitment to Article 1 of the Charter	ASEAN Charter Article 1(9)
Reaffirming the ASEAN Declaration on Human Rights 2012	ASEAN Declaration on Human Rights 2012
Reaffirming also that all human rights are universal, indivisible, interdependent and interrelated,	Vienna Declaration and Programme of Action 1993 ² UN GA res 76/300
Recalling in particular Article 28(f) of the ASEAN Declaration on Human Rights 2012	ASEAN Declaration on Human Rights 2012

² <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>

Noting the obligations of the ASEAN Agreement on Transboundary Haze	https://environment.asean.org/fresources/detail/asean-agreement-on-transboundary-haze-pollution-reprint-2016
Recalling the Kuala Lumpur Accord on Environment and Development which was adopted by the ASEAN Ministers of Environment on 19 June 1990	Referred to in Agreement Agreement on Transboundary Haze
Reaffirming the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, and recalling the Declaration on the Right to Development, the Declaration of the United Nations Conference on the Human Environment, the Rio Declaration on Environment and Development, relevant international human rights treaties and other relevant regional human rights instruments	A/HRC/52/23 Human Rights Council, Fifty-second session ³ 27 February–4 April 2023, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
Recalling the Declaration of the Rights of Indigenous Peoples 2007 ⁴	
Welcoming the adoption of Human Rights Council resolution 48/13 on 8 October 2021 and General Assembly resolution 76/300 on 28 July 2022, recognizing the human right to a clean, healthy and sustainable environment	Human Rights Council resolution 48/13 on 8 October 2021 General Assembly resolution 76/300 on 28 July 2022 ⁵
Welcoming the passing, without objection, of Human Rights Council resolution A/HRC/52/L.7, calling on actions by States to support the human right to a clean, healthy and sustainable environment	Human Rights Council resolution April 2023 A/HRC/52/23
Recalling further the Paris Agreement, adopted on 12 December 2015 by the Parties to the United Nations Framework Convention on Climate Change, in which they acknowledged in the preamble that they should, when taking action to address climate change, respect, promote and consider their respective obligations with regard to human rights	A/HRC/52/23
Welcoming also the outcomes of the fifteenth session of the Conference of the Parties to the	A/HRC/52/23

³ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/076/98/PDF/G2307698.pdf?OpenElement>

⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

⁵ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/442/77/PDF/N2244277.pdf?OpenElement>

<p>Convention on Biological Diversity, held in Montreal, Canada, from 7 to 19 December 2022, and welcoming further that the implementation of the Kunming-Montreal Global Biodiversity Framework, adopted at that session, should follow a human rights-based approach, respecting, protecting, promoting and fulfilling human rights, and that the framework acknowledges the human right to a clean, healthy and sustainable environment</p>	
<p>Expressing deep concern about the consequences of climate change for ASEAN Member States as predicted in the Synthesis Report of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change</p>	
<p>Recalling all of the reports of the UN Special Rapporteur (formerly the Independent Expert) on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment</p>	<p>A/73/188, A/74/161, A/75/161, A/76/179, A/77/284, A/HRC/22/43, A/HRC/25/53, A/HRC/28/61, A/HRC/31/52, A/HRC/31/53, A/HRC/34/49, A/HRC/37/58, A/HRC/37/59, A/HRC/40/55, A/HRC/43/53, A/HRC/43/54, A/HRC/46/28, A/HRC/49/53, A/HRC/52/33 and A/HRC/52/44.</p>
<p>Recalling the Agreement on the Establishment of the ASEAN Centre for Biodiversity 2005</p>	
<p>Recalling the Convention on the Rights of the Child (1989)</p>	<p>Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region 2021</p>
<p>Reiterating the commitments in the 2019 Joint Statement on Reaffirmation of Commitment to Advancing the Rights of the Child in ASEAN</p>	<p>Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region 2021</p>
<p>Noting that the 2012 ASEAN Human Rights Declaration affirmed the general principle that the rights of children are an inalienable, integral and indivisible part of human rights and fundamental freedoms;</p>	<p>Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region 2021</p>
<p>Noting further that the 2012 ASEAN Human Rights Declaration affirmed that childhood is entitled to special care and assistance;</p>	<p>Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region 2021</p>

<p>Recalling the Guiding Principles for Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region</p>	<p>UNEP, UN Human Rights, UNICEF, February 2021</p>
<p>Welcoming the latest report on the issue of women, girls and the right to a clean, healthy and sustainable environment by the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment</p>	<p>A/HRC/52/33.</p>
<p>Recognizing also that the impacts of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in ecosystem services may interfere with the enjoyment of a safe, clean, healthy and sustainable environment, and that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of all human rights</p>	<p>A/HRC/52/23</p>
<p>Recalling that all people on Earth depend directly or indirectly on the ocean and cryosphere, and that communities living in close connection with polar, mountain or coastal environments are particularly exposed to the current and future hazards of ocean and cryosphere change, including sea level rise, ocean warming, acidification and deoxygenation, ice sheet and glacier mass loss, and permafrost degradation, as recognized by the Intergovernmental Panel on Climate Change in its Special Report on the Ocean and Cryosphere in a Changing Climate</p>	<p>A/HRC/52/23</p>
<p>Recognizing also that the exercise of human rights, including the freedom to seek, receive and impart information, to participate safely and effectively in the conduct of government and public affairs, to have access to justice and the right to an effective remedy, is vital to the respect, protection and promotion of the right to a clean, healthy and sustainable environment</p>	<p>A/HRC/52/23</p>

Reaffirming Human Rights Council resolution 40/11 of 21 March 2019, in which the Council recognized the contribution of human rights defenders working in environmental matters, referred to as environmental human rights defenders, to the enjoyment of human rights, environmental protection and sustainable development	A/HRC/RES/40/11
Noting the Working Paper on Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders ⁶	
Mindful that the growing risk of emerging infectious diseases of zoonotic origin may be caused by human actions that damage ecosystems and biodiversity	A/HRC/52/23
Recognizing the important role played by individuals and civil society organizations, including human rights defenders and environmental human right defenders, in the promotion and protection of human rights as they relate to the enjoyment of the human right to a clean, healthy and sustainable environment, including biodiversity and ecosystems	A/HRC/52/23
Also recognizing the important role of national human rights institutions to support and promote the enjoyment of the human right to a clean, healthy and sustainable environment	A/HRC/52/23
Acknowledging the need to provide greater protection for EHRDs in accordance with national laws	A/HRC/RES/40/11, A/HRC/52/23

Pursuant to the above, the following Environmental Rights Framework is adopted.

⁶ Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders, UNEP, 2023

2. Objective

Explanatory Note

There should be a clear objective for the Framework that reflects current principles. These are contained in the UN Framework Principles on Human Rights and the Environment developed by Professor John Knox, the former UN Special Rapporteur on Human Rights and the Environment. This Framework should be promoted at regional and international levels and seek to incorporate the principles and practices into the discussion on environmental rights.

The Objective of the Framework is to advance and implement the right to a safe, clean, and sustainable environment by:

1. Respecting, protecting, promoting and fulfilling the right to a safe, clean and sustainable environment
2. Protecting and preserving the environment for present and future generations
3. Guaranteeing the full and effective implementation of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice and effective remedies in environmental matters
4. Providing a safe and enabling environment for the exercise of the right to a safe, clean and sustainable environment
5. Protecting and supporting environmental and human rights defenders.⁷

The right to a safe, clean and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law and the participation of all the people of ASEAN.⁸

3. Definitions

Explanatory Note

This chapter contains a number of definitions from various international sources. Choices will need to be made on which definitions should be adopted for the Framework.

⁷ UN Framework Principles on Human Rights and the Environment, Principles 1, 2, 4, 12 and 16 (the Framework Principles)

⁸ UN General Assembly Resolution A/76/300 (July 28, 2022).

Access Rights	The right of access to environmental information, the right of public participation in environmental decision-making and the right of access to justice in environmental matters. ⁹
Environmental Human Rights Defender	Any individual, group, society or organisation who, in their personal or professional capacity and in a peaceful manner, strives to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. ¹⁰
Environmental Information	Means any information is written, visual, audio, and electronic or recorded in any other format regarding the environment and its elements and natural resources, including information related to environmental risk, and any possible adverse impact affecting or likely to affect the environment and health, as well as to environmental protection and management. ¹¹ This includes information on: <ul style="list-style-type: none"> (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making; (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.¹²
Free Prior and Informed Consent ¹³	
Human Rights Defender	Any person, group, society or organisation which, personally or professionally, individually or with others, acts peacefully to promote and work for the protection and realisation of human rights and fundamental freedoms at the national and international levels. ¹⁴

⁹ Escazu Agreement, Article 2

¹⁰ UNGA Report of the UN Special Rapporteur on the situation of human rights defenders A/71/281 (3 August 2016)

¹¹ Escazu Agreement Article 2 (c)

¹² Aarhus Convention Article 2(3)

¹³ Commission on Human Rights of the Philippines Submission

¹⁴ UN Special Rapporteurs on human rights defenders, About Human Rights Defenders

Human Rights Due Diligence ¹⁵	
Persons or groups in vulnerable situations	Those persons or groups that face particular difficulties in fully exercising the access rights recognized in the present Framework, because of circumstances or conditions identified within each State's national context and in accordance with its international obligations. ¹⁶
Public	This means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups. ¹⁷
The public concerned	This means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest. ¹⁸
Public Authority	Means (a) Government at national, regional and other level; (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above; (d) The institutions of a regional economic integration organization. ¹⁹ (e) private organizations that receive public funds or benefits (directly or indirectly) or that perform public functions and services, but only with respect to the public funds or benefits received or to the public functions and services performed. ²⁰
Transboundary haze pollution	This means haze pollution whose physical origin is situated wholly or in part within the area under the national jurisdiction of one Member State

¹⁵ Commission on Human Rights of the Philippines Submission

¹⁶ Aarhus Convention Article 2

¹⁷ Aarhus Convention Article 2(4)

¹⁸ Aarhus Convention Article 2(5)

¹⁹ Aarhus Convention Article 2(2)

²⁰ Escazu Agreement, Article 2

	and which is transported into the area under the jurisdiction of another Member State. ²¹
Strategic Litigation against Public Participation	SLAPPs are lawsuits filed or initiated by a State or private party with the intent to intimidate and harass individuals who are engaged in acts of public participation, including criticism or opposition concerning State or business activities. ²²

4. General Provisions

Explanatory Note

The general provisions are the fundamental rights and obligations to the right to a safe, clean and sustainable environment. This chapter is written to provide a clear statement on how the objective of the Framework can be achieved. Each of the rights and duties outlined below is also reflected in a variety of documents, including the ASEAN Human Rights Declaration and the UN Framework Principles. These rights and obligations must be implemented through national law, policies and regulations.

The rights and obligations will also be further clarified in later chapters. It is also important to include a provision that does not prevent States from having stronger procedural or environmental laws.

- 4.1. Every person has the right to an adequate standard of living for themselves and their family, including the right to a safe, clean and sustainable environment.²³
- 4.2. Every person has an obligation to protect the environment, contribute to its protection and improvement, prevent pollution, combat climate change, promote biodiversity and prevent damage to the environment.²⁴
- 4.3. Every person shall be guaranteed a safe and enabling environment to act free from threat, restriction or insecurity, to allow the exercise of rights under this Framework

²¹ ASEAN Agreement on Transboundary Haze Pollution

²² Recommendations from Defending Defenders: Challenging Malicious Lawsuits in Southeast Asia, Business and Human Rights Resource Centre, March 2020, p.5

²³ ASEAN Human Rights Declaration (AHRD) 2012 Article 28(f) and Article 35. See also UN General Assembly Resolution A/76/L.75 (July 28, 2022).

²⁴ Draft Global Pact for the Environment Article 2. Draft International Covenant on Human rights and the Environment Article 1. *Environmental Protection Law 2009* (Indonesia) Article 67.

- and international law and to implement the right to a safe, clean and sustainable environment.²⁵
- 4.4. Every person, without being required to state an interest, has the right of access to environmental information.²⁶
 - 4.5. Every person has the right to meaningful and inclusive participation in decision-making on environmental matters.
 - 4.6. Every person who may be affected directly or indirectly by a decision concerning the environment and natural resources shall be entitled to provide informed and timely inputs before the decision is made through a transparent, inclusive, and accountable process.
 - 4.7. Women have the right to gender equality, and the participation of women in decision-making concerning the environment and natural resources shall be promoted and encouraged.
 - 4.8. Young people and children shall be afforded the right of meaningful participation in decision-making on environmental matters.
 - 4.9. Indigenous, ethnic and local communities, in accordance with national laws and policies, have the right to free, prior and informed consent for activities likely to impact their communities.
 - 4.10. Guidance and assistance to the public — particularly those persons or groups in vulnerable situations— should be provided to facilitate the exercise of environmental rights.
 - 4.11. 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 into public and private sector decision-making.²⁷
 - 4.12. Every person shall have the right to access environmental education.²⁸
 - 4.13. Every person has the right to effective and affordable access to administrative and judicial procedures, including redress and remedies, to challenge acts or omissions of public authorities or private persons which contravene national environmental laws and policies or the provision of this Framework.²⁹

²⁵ ASEAN Human Rights Declaration Article 21, Article 23 and Article 24. Escazu Agreement Article 9. UN General Assembly (1998). Resolution 53/144. See <https://unece.org/environment-policy/public-participation/mandate-and-functions-special-rapporteur>

²⁶ AHRD Article 23. Draft Global Pact for the Environment Article 9. Framework Principle 7

²⁷ Policy Brief No 3, essential elements of effective and equitable human rights and environmental due diligence legislation, D. Boyd and S Keene, June 2022.

²⁸ Draft Global Pact for the Environment Article 12. ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 16.

²⁹ Framework Principle 10. Draft Global Pact Article 11.

- 4.14. Every person has the right to enforce environmental liability, under international and national legal obligations, against those who harm the environment, including compensation, damages, restoration and remediation.
- 4.15. Necessary measures of a legislative, regulatory, administrative or any other nature shall be adopted to implement the provisions of this Framework.³⁰
- 4.16. The obligations under this Framework should apply to the public sector and, to the extent possible under national laws, the private sector also.
- 4.17. No provision in this Framework shall 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 a State 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.³¹
- 4.18. The right to a safe, clean and sustainable includes clean air, a safe climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and non-toxic environments.

5. Principles

Explanatory Note

The Escazu Agreement in Article 3 provides a series of principles to be used in the implementation and interpretation of that Agreement. The principles are not defined in the Escazu Agreement. Principles, reflecting international norms, are useful in being about to provide an appropriate way to apply the general provisions and specific chapters of the Framework. These principles are not meant to be exhaustive and contain human rights and environmental law principles.

5.1 The following principles shall be used in implementing the Framework.

5.1.1 Principle of non-regression

States and their sub-national entities shall refrain from allowing activities or adopting norms that reduce the global level of environmental protection guaranteed by current law.³²

5.1.2 Prevention principle

³⁰ Escazu Agreement, Article 4.

³¹ Escazu Agreement, Article 4.

³² Draft Global Pact for the Environment Article 17

States and their sub-national entities will take measures to reduce or prevent environmental harm. Such measures shall be taken before such harm occurs rather than allowing potentially irreversible harm.³³

5.1.3 Precaution

Where there is a risk of serious or irreversible damage, a lack of scientific certainty shall not be used to postpone the adoption of effective and proportionate measures to prevent environmental degradation.³⁴

5.1.4 Principle of intergenerational equity;

Intergenerational equity shall guide decisions that may have an impact on the environment. The present generation shall ensure that their decision and actions do not compromise the ability of future generations to meet their own needs.³⁵

5.1.5 Principle of permanent sovereignty of States over their natural resources;

The right to development that may impact the environment and natural resources shall be equitably fulfilled to meet the needs of both present and future generations.

5.1.6 Polluter Pays Principle

States shall ensure that their originator fully bears the costs for prevention, mitigation and remediation for pollution and other environmental harm and degradation to the greatest extent possible.³⁶

5.1.7 Principle of Integration

States shall integrate environmental protection requirements into the planning and implementation of their policies and national and international activities, especially to promote the fight against climate change, the protection of the oceans, the prevention of pollution and the maintenance of biodiversity.³⁷

5.1.8 Principle of Resilience

States shall take necessary measures to maintain and restore the diversity and capacity of ecosystems and human communities to withstand environmental disruptions and degradation and to recover and adapt.³⁸

5.1.9 Principle of Progressive Realisation

³³ Draft Global Pact for the Environment Article 5

³⁴ Draft Global Pact for the Environment Article 6

³⁵ Draft Global Pact for the Environment Article 4

³⁶ Draft Global Pact for the Environment Article 8

³⁷ Draft Global Pact for the Environment Article 3

³⁸ Draft Global Pact for the Environment Article 16

States undertake to take steps, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized by all appropriate means, particularly the adoption of legislative measures.³⁹

5.1.10 Principle of Equality and Non-Discrimination

All persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled, without any discrimination to equal protection of the law.⁴⁰

5.1.11 Principle of Maximum Disclosure

All information held by public bodies should be subject to continuous disclosure, and this presumption may be overcome only in very limited and clearly defined circumstances.

5.1.12 Principle of Transparency and Accountability

To ensure accountability and enable public scrutiny, institutions are to be open and candid in the execution of their functions and promote access to information, subject only to the specific and limited exceptions as are provided by law.

5.1.13 Principle Good Faith

Parties shall fulfil the obligations they assume under the Framework in good faith.⁴¹

6. Enabling Environment for the Exercise of Environmental Rights

Explanatory Note

Within Asia-Pacific, the need to support the protection of environmental human rights defenders has been recognised.⁴² Fundamental to the rights recognised in the Framework is the ability to exercise these rights. This is recognised in SDG 16. There is also a recognition that the environmental rule of law provides a link between environmental protection, the human right to a healthy environment and the SDGs.⁴³ By ensuring that the State has obligations to provide for an enabling environment, States are also fulfilling obligations under the SDGs and international human rights norms. It is also necessary for these rights to be protected in times of conflict and civil strife.

6.1. Every person shall be guaranteed a safe and enabling environment to act free from threats, harassment, intimidation and violence, restriction or insecurity, to allow the

³⁹ International Covenant on Economic, Social and Cultural Rights Art 2.1

⁴⁰ Declaration of the High-Level Meeting of the Rule of Law Para. 2 A/Res/67/1

⁴¹ UN Charter, Principle 2

⁴² Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Human Rights Defenders, Working Paper, UNEP, 2023.

⁴³ Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Human Rights Defenders, Working Paper, UNEP, 2023, p.3

exercise of rights under this Framework and national law and to implement the right to a safe, clean and sustainable environment.⁴⁴

- 6.2. Legislation and policies should be developed, enacted and enforced to provide legal protection to individuals and groups who, in their personal and professional capacity, strive to protect and promote environmental and human rights.
- 6.3. States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.⁴⁵
- 6.4. States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.⁴⁶
- 6.5. States shall take all feasible measures, in accordance with obligations under international law, to protect the environment and EHRDs during and after armed conflict.⁴⁷ The duties and obligations identified in this Framework continue to operate during conflict or unrest.

7. Access to Information in Environmental Matters

Explanatory Note

Access to information is a procedural right that is enshrined in international law and reflected in multiple human rights instruments, including the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 2012 ASEAN Human Rights Declaration (AHRD).

The premise of the right to access information concerning the environment is that all environmental information held by public authorities is public and, therefore, accessible, except in cases where its disclosure may be withheld due to legitimate reasons. This leads to information being “pushed” or “pulled”. Public authorities disclose information that is “pushed” voluntarily (or in compliance with legal obligations). In addition to promoting a culture of environmental information disclosure, a “pushing” approach also reduces the administrative burden associated with requests for information concerning the environment. Environmental information that is not automatically published should still be available to be “pulled” through a request to access that information in accordance with access to information procedures.

The right of access to environmental information is recognised in articles 4 and 5 of the Aarhus Convention and articles 5 and 6 of the Escazu Agreement.

⁴⁴ ASEAN Human Rights Declaration Article 21, Article 23 and Article 24. Framework Principle 4. Escazu Agreement Article 9. UN General Assembly (1998). Resolution 53/144. See <https://unece.org/environment-policy/public-participation/mandate-and-functions-special-rapporteur>

⁴⁵ Framework Principle 3.

⁴⁶ Framework Principle 5.

⁴⁷ Draft Global Pact on the Environmental Article 19.

- 7.1. Every person, without being required to state an interest, has the right of access to environmental information under the principle of maximum and continuous disclosure of environmental information, including the right to request environmental information from public authorities.
- 7.2. To secure this right, information on environmental matters should be proactively collected, compiled, published and made available through electronic and other means on an ongoing and transparent basis.
- 7.3. States shall guarantee that environmental information systems are duly organised, accessible to all persons and made progressively available through online and other means as may be appropriate.⁴⁸
- 7.4. States and public authorities shall make provisions, under national laws and policies, to ensure that environmental information is reusable, processable and available in formats that are accessible and that no restrictions are placed on its reproduction or use.⁴⁹
- 7.5. To facilitate access by persons or groups in vulnerable situations to information that particularly affects them, States shall endeavour to ensure that the competent authorities disseminate environmental information in the various languages used in the country and prepare alternative formats that are comprehensible to those groups, using suitable communication channels.⁵⁰
- 7.6. States shall facilitate access to environmental information for persons or groups in vulnerable situations, establishing procedures for the provision of assistance, from the formulation of requests through to the delivery of the information, taking into account their conditions and specificities, for the purpose of promoting access and participation under equal conditions.⁵¹
- 7.7. In environmental impact assessment, policies shall provide clear details of documents that must be made public, including scoping reports, EIA reports and baseline data, environmental management plans, condition of approval and monitoring reports.
- 7.8. States shall take the necessary legislative, regulatory and other measures and appropriate enforcement measures to establish a Pollutant Release and Transfer Register (PRTR) accessible to the public.⁵²

⁴⁸ Escazu Agreement Article 6.3

⁴⁹ Escazu Agreement, Article 6.

⁵⁰ Escazu Agreement, Article 6.6

⁵¹ Escazu Agreement, Article 5.3

⁵² Aarhus Agreement and its Protocol on PRTRs and Escazu Agreement, Article 6.4

- 7.9. States shall cooperate on establishing national PRTR databases to ensure that the PRTR databases can be harmonised across the ASEAN region and achieve convergence among the PRTR system.
- 7.10. In the case of an imminent threat to public health or the environment, the relevant public authority shall immediately disclose and disseminate through the most effective means all pertinent information in its possession that could help the public take measures to prevent or limit potential damage. Each State shall develop and implement an early warning system using available mechanisms.⁵³
- 7.11. Measures should be taken, through legal or administrative frameworks, to promote access to environmental information in the possession of private entities, in particular information on their operations and the possible risks and effects on human health and the environment.⁵⁴
- 7.12. Public and private companies, particularly large ones, should be encouraged to prepare sustainability reports reflecting their social and environmental performance.⁵⁵
- 7.13. Environment, Social and Governance Reporting should be encouraged and promoted, including reporting of due diligence and risk assessment for human rights and environmental impacts.
- 7.14. Measures for independent auditing and verification of environmental claims, policies, and guidelines to prevent greenwashing should be adopted.

8. Public Participation in Environmental Matters

Explanatory Note

Principle 10 of the 1992 Rio Declaration enshrined the principle that: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level.”

Public participation needs to be effective, meaningful, and based on all information relevant to the decision-making. The right of the public to participate in environmental decision-making is recognised in the Aarhus Convention (Articles 6, 7 and 8) and the Escazu Agreement (Article 7).

- 8.1. Every person has the right to meaningful participation in decision-making in environmental matters. The right to participate should be at an appropriate 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,

⁵³ ASEAN Agreement on Transboundary Haze Pollution Article 4.2. Escazu Agreement, Article 6.5

⁵⁴ Escazu Agreement, Article 6.12

⁵⁵ Escazu Agreement, Article 6.13

activities, policies and normative instruments of public authorities that may have a significant effect on the environment.⁵⁶

- 8.2. Public participation procedures shall be developed nationally through legislation, regulations and policies. Public participation procedures shall be developed and shall promote public participation that is transparent, open, inclusive, meaningful and accountable.
- 8.3. Special measures and procedures shall be prepared for those in vulnerable situations or disadvantaged or marginalised to ensure meaningful participation from those groups.⁵⁷
- 8.4. Transparent, open, inclusive, meaningful and accountable public participation means that:
 - 8.4.1. Initial stakeholders are identified based on the principle of maximum transparency and interest,
 - 8.4.2. All stakeholders shall receive notification and a reasonable amount of time to meaningfully participate in the relevant decision-making process;
 - 8.4.3. Stakeholders shall receive all necessary information. This information shall be provided in a language that can be understood by all stakeholders and in a culturally appropriate format;
 - 8.4.4. Recognising and respecting the validity of local community and indigenous peoples' traditional knowledge and incorporating such inputs into the development of projects, planning processes, and decision-making shall be used as a basis for the development of projects and action plans and decision-making;
 - 8.4.5. Public participation processes shall pay attention to the needs and values of all stakeholders;
 - 8.4.6. Stakeholders shall receive a fair and reasonable amount of time to evaluate and respond to information relevant to any proposed projects, activities, plans, or decisions;
 - 8.4.7. Public participation processes shall be flexible and adaptive in keeping with the reasonable expectations of stakeholders;
 - 8.4.8. All comments from the public shall be duly taken into account in the decision-making process. The acceptance or rejection of the above comments shall be explained with appropriate reasons; and
 - 8.4.9. The stakeholders are informed, in a timely manner, once a decision has been made, about the content and the reasons for the decision.

⁵⁶ Draft Global Pact for the Environment Article 10

⁵⁷ Escazu Agreement Article 14.

8.5 Indigenous, ethnic and local communities, in accordance with national laws and policies, have the right of free, prior and informed consent (FPIC) for activities likely to impact their communities.

8.5.1. Under the provisions of FPIC there is the right to give or withhold consent to actions that will affect these communities, especially actions affecting their lands, territories and natural resources.

8.5.2. Information must be provided about the nature and scope of any proposed project or activity; areas that will be affected; the potential economic, social, cultural and environmental risks and benefits; and the timeframe of the proposed project.

8.5.3. Information should be in a language easily understood by the affected people, delivered in a culturally-appropriate way, and available from independent sources.

8.5.4. States should develop appropriate procedures, in consultation with stakeholders and in accordance with international norms and principles, to ensure the protection and implementation of paragraph 8.5.

9. Access to Justice and Effective Remedies in Environmental Matters

Explanatory Note

The third element of these procedural rights is the right to access to justice and effective remedies in environmental matters. Access to Justice is explicitly recognised in Article 9 of the Aarhus Convention and Article 8 of the Escazu Agreement. Access may be granted to either an administrative or judicial review procedure so long as that review procedure is impartial, fair, , timely, not prohibitively expensive and provides adequate and effective remedies.

9.1. Every person has the right to effective and affordable access to administrative and judicial procedures, including redress and remedies, to challenge acts or omissions of public authorities or private persons which contravene environmental law or the provision of this Framework.⁵⁸

9.2. National legislation should ensure access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure:

9.2.1. any decision, action or omission related to access to environmental information;

9.2.2. any decision, action or omission related to public participation in decision-making processes regarding environmental matters; and

⁵⁸ Framework Principle 10. Draft Global Pact Article 11.

9.2.3. any other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment.⁵⁹

The above mechanisms should be impartial, fair, timely, not prohibitively expensive and provide adequate and effective remedies, including injunctive relief as appropriate.⁶⁰

- 9.3 States should provide broad legal standing to access administrative and judicial procedures to remedy or rectify a breach of an obligation under national environmental law or to prevent threatened harm to the environment.
- 9.4 To facilitate access to justice in environmental matters for the public, each Party shall establish the following:
- 9.4.1. measures to minimise or eliminate barriers to the exercise of the right of access to justice;
 - 9.4.2. means to publicise the right of access to justice and the procedures to ensure its effectiveness;
 - 9.4.3. mechanisms to systematise and disseminate judicial and administrative decisions, as appropriate;
 - 9.4.4. the use of interpretation or translation of languages other than the official languages when necessary to exercise that right;
 - 9.4.5. the publication of decisions and legal reasons for decisions;
 - 9.4.6. rules of procedure in environmental matters; and
 - 9.4.7. the provision of free technical and legal assistance to those in vulnerable situations.⁶¹
- 9.5 Alternative dispute resolution mechanisms in environmental matters, such as mediation, conciliation, or other means that allow such disputes to be prevented or resolved, should also be supported and encouraged. These mechanisms should not be used to achieve an outcome that would further violate environmental rights.

⁵⁹ Aarhus Convention Article 9. Escazu Agreement Article 8.2

⁶⁰ Aarhus Convention Article 9(4). Escazu Agreement Article 8.3.

⁶¹ Escazu Agreement Article 8.4

10. Protection of Environmental Human Rights Defenders

Explanatory Note

The protection of EHRDs is a key element in ensuring environmental rights. The recent working paper *Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders*⁶² presented trends in the application of the environmental rule of law and human rights in Asia Pacific, with special emphasis on the protection of environmental human rights defenders (EHRDs). There has been a longstanding recognition of and concern for the plight of human rights defenders, including EHRDs, worldwide.⁶³

EHRDs are engaged in many activities to protect the environment. EHRDs can be those engaged directly on the ground to protect land or the environment and those CSOs who work with them, as well as CSOs, lawyers, journalists, scientists and other professionals who support or represent other EHRDs.

- 10.1 Any person who exercises their rights under this Framework should be protected from threat and retaliation in any form and shall not be subject to civil, administrative or criminal proceedings for exercising the rights set out in this Framework.
- 10.2 The right to protection from threat or retaliation shall not prevent any person who commits a criminal or administrative offence from being charged in accordance with relevant national laws and legal instruments.
- 10.3 Adequate and effective measures shall be taken to recognise, protect and promote all the rights of environmental human rights defenders, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise rights under this Framework.⁶⁴
- 10.4 Attacks, threats or intimidations that environmental human rights defenders may suffer while exercising the rights set out in this Framework shall be promptly investigated and punished according to national laws and regulations.
- 10.5 States shall also take appropriate, effective, timely measures to prevent, investigate, and deter threats or intimidations against environmental human rights defenders.

⁶² Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders, UNEP, 2023.

⁶³ UN General Assembly (1998). Resolution 53/144. For further discussion of human rights defenders and the Mandate for what is now the UN Special Rapporteur on Human Rights Defenders, see: OHCHR (2023a); OHCHR (2023b).

⁶⁴ Escazu Agreement Article 9.2

10.6 A special mechanism should be established at ASEAN or national levels to provide a rapid response to deal with threats, attacks or intimidation against environmental human rights defenders.⁶⁵

10.7 States should develop legislation to combat and prevent Strategic Litigation against Public Participation (SLAPP) and provide for 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

11. Prior Impact Assessment

Explanatory Note

International law recognises that the prior impact assessment of projects and activities that are likely to have a significant impact on the environment before decisions are taken is a norm of international environmental law. The importance of impact assessment was accepted in the ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 and the Rio Declaration. Impact assessment is also referenced in the Aarhus Convention, the Espoo Convention and the Escazu Agreement.⁶⁶ AICHR has also held five workshops since 2014 examining ways to strengthen the role of environmental impact assessment in ASEAN.

National EIA Guidelines should include a requirement for risk assessment and due diligence. All projects should include an Environmental Management Plan, and this EMP should consist of monitoring and managing impacts and opportunities for continuous engagement with project-affected people (PAP). States should also adopt Guidelines on Public Participation in Environmental Impact Assessment.⁶⁷ These Guidelines should be developed following the principles set out in this Agreement. Guidelines on EIA Procedures should also include using economic instruments, including bonds and financial guarantees to assist in compliance and enforcement of the conditions of approval, the EIA, and the environmental management plan.

Compliance and enforcement is also a necessary part of impact assessment. The International Association of Impact Assessment (IAIA) has recently developed guidance on compliance and enforcement for EIA.⁶⁸

11.1 Proposals for any activity, including policies or plans, that may significantly affect the natural environment or the public shall, as far as possible, be subjected to an assessment of their likely consequences before they are adopted [or approved], and

⁶⁵ See, for example, the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, <https://unece.org/env/pp/aarhus-convention/special-rapporteur>

⁶⁶ Escazu Agreement Article 6 and Article 7. Aarhus Convention Article 6.

⁶⁷ *Regional Guidelines on Public Participation in EIA*, Mekong Partnership for the Environment, PACT, 2017 <https://www.pactworld.org/library/guidelines-public-participation-eia-mekong-region>

⁶⁸ https://www.iaia.org/uploads/pdf/Fastips_25%20Compliance%20enforcement.pdf (viewed 1 August 2023)

they shall take into consideration the result of this assessment in their decision-making processes.⁶⁹

11.1.1 Any prior impact assessment of projects and policies should include an baseline evaluation of the environment, health, community, human rights and the economy.

11.1.2 Any impact assessment should ensure meaningful public participation based on the prior provision of appropriate information.⁷⁰

11.1.3 Any impact assessment should include measures that prioritise the avoidance and then of potential environmental impacts.

11.2 States should implement laws, regulations and guidelines on prior impact assessment of proposed projects, plans, programmes and policies relating to the environment, including the opportunities for the public to participate therein.⁷¹

11.3 States should require written approval of projects in accordance with national law prior to the commencement of such projects.

11.4 Impact assessment can include several components, including health, social, and human rights impact assessments.

11.5 Procedures and regulations should be developed to address the cumulative impacts of several projects or activities.

11.6 States should adopt mechanisms and policies to ensure effective compliance and enforcement with impact assessment procedures and approval conditions.

12. Strategic Environmental Assessment

Explanatory Note

Legislation, or regulatory instruments on Strategic Environmental Assessment (SEA), should be developed and include public participation and stakeholder engagement under this Framework.⁷² SEA is a tool developed to examine the role of prior assessment of policies, plans and programs. Some states in ASEAN have adopted SEA, and others have broader planning policies that also look at master or regional planning.

⁶⁹ Framework Principle 8. ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 14.

⁷⁰ Aarhus Convention Article 6.

⁷¹ Aarhus Convention Articles 6 and 7. Framework Principle 8.

⁷² Aarhus Convention Article 7. See also Espoo Convention and Kyiv Protocol on SEA.

There are also opportunities to examine new methods of impact assessment through landscape environmental assessment. This allows for a broader assessment of environmental and social impacts to be considered at an earlier stage in a project cycle.

- 12.1 The promotion of strategic level or landscape level environmental assessment of large-scale activities, plans and programmes shall be supported through the introduction of Strategic Environmental Assessment and Landscape Environmental Assessment.
- 12.2 SEA or Landscape Environmental Assessment procedures should be developed in accordance with the principles contained in this Framework and provide a transparent, participatory and inclusive process to ensure that environmental, health, social and human rights impacts are all assessed prior to any approval of the program, policy or plan.⁷³

13. Environmental Impact Assessment

Explanatory Note

All ASEAN member countries have adopted project-specific Environmental Impact Assessment (EIA) procedures that can be enhanced and modified to reflect the development of environmental rights.

- 13.1 EIA procedures should be conducted in accordance with the principles contained in this Framework and provide a transparent, participatory and inclusive process to ensure that environmental, health, social and human rights impacts are all assessed prior to any approval of the project.
- 13.2 EIA procedures should be developed to include relevant components of impact assessment, including health, social, and human rights impact assessment, using international best practices. The use of due diligence and risk assessment tools and nature-based solutions for environmental impacts should be encouraged.
- 13.3 Specific provisions can also be developed to ensure special attention is given to women, children and persons or groups in vulnerable situations. EIA procedures should ensure that the views and concerns of these groups are taken into consideration during the EIA process and in the decision-making process.⁷⁴

⁷³ Aarhus Convention Article 7.

⁷⁴ Aarhus Convention Article 6.

14. Transboundary EIA

Explanatory Note

There is no ASEAN-based agreement of transboundary EIA. Under international law, countries have an obligation to “undertake an environmental impact assessment where there is a risk that the proposed [project] may have a significant adverse impact in a transboundary context, in particular, on a shared resource.”⁷⁵ The Mekong States, through the Mekong River Commission, have adopted a framework for a transboundary impact assessment that could become a model for ASEAN.⁷⁶ The Espoo Convention 1997 covers EIA in a transboundary context.⁷⁷

- 14.1 States have in accordance with accepted principles of international law, the responsibility of ensuring that activities under their jurisdiction or control do not cause damage to the environment or the natural resources under the jurisdiction of other Contracting Parties of areas beyond the limits of national jurisdiction.⁷⁸
- 14.2 In order to fulfil this responsibility, States shall avoid to the maximum extent possible and reduce to the minimum possible adverse environmental effects of activities under their jurisdiction or control, including effects on natural resources, beyond the limits of their national jurisdiction.
- 14.3 The development of a system of transboundary environmental assessment, under international law norms and referring to existing practices in the region, will satisfy the obligation to conduct an environmental impact assessment of proposed projects or activities that may significantly impact areas beyond national jurisdiction.
- 14.4 A system of transboundary impact assessment will require procedures for the notification, prior consultation and agreement, regarding activities, and proposed changes to activities, that can reasonably be expected to have significant effects beyond the limits of national Jurisdiction.
- 14.5 Following notification, a consultation and stakeholder consultation process should occur following the Framework's principles.
- 14.6 The system of transboundary environmental assessment should provide meaningful opportunities for public participation and review before any decision is taken. Stakeholders should be notified of the decision and the reasons for the decision.
- 14.7 Procedures to inform neighbouring States of emergencies or sudden grave natural events which may have repercussions beyond national jurisdiction.

⁷⁵ Pulp Mills Case (Provisional Measures) (Argentina v. Uruguay) ICJ Reports 2006, p.204

⁷⁶ <https://www.mrcmekong.org/resource/aqrsbk> (viewed 1 August 2023)

⁷⁷ <https://unece.org/environment-policy/environmental-assessment> (viewed 1 August 2023)

⁷⁸ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 20.

- 14.8 States shall, in particular, endeavour to refrain from actions that might directly or indirectly adversely affect wildlife habitats situated beyond the limits of national Jurisdiction, marine or coastal biodiversity, or habitats included in protected areas.

15. Clean Air and Transboundary Haze

- 15.1 Given the role of clean air in the functioning of natural ecosystems, and the current levels of dangerous air pollution in ASEAN, all appropriate measures towards air quality management compatible with [human and environmental health] and sustainable development should be taken.⁷⁹
- 15.2 Precautionary measures should be taken to anticipate, prevent and monitor transboundary haze pollution due to land and/or forest fires, to minimise the adverse effects of transboundary haze.⁸⁰
- 15.3 All States should co-operate in developing and implementing measures to prevent and monitor transboundary haze pollution as a result of land and/or forest fires, and to control sources of fires, including by the identification of fires, development of monitoring, assessment and early warning systems, exchange of information and technology, and the provision of mutual assistance.⁸¹
- 15.4 Appropriate regional and national emissions standards for air pollution and ambient air quality should be adopted and implemented to promote better air quality and protect human health and the environment.
- 15.5 Air pollution from stationary sources should be controlled and licensed, in accordance with national standards.
- 15.6 All practical measures should be taken to ensure monitoring, compliance and enforcement of air pollution measures and emissions standards for air pollution and ambient air quality.

16. Safe Climate

- 16.1 All practical steps must be taken to implement international agreements to reduce the potential impact of climate change.
- 16.2 The preparation of Nationally Determined Contributions under the Paris Agreement shall be undertaken in accordance with the principles of this Framework.

⁷⁹ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 9

⁸⁰ ASEAN Agreement on Transboundary Haze Pollution Article 2 and Article 3.3

⁸¹ Haze Article 4

17. Healthy ecosystems and biodiversity

- 17.1 The conservation and protection of the environment, including biodiversity and healthy ecosystems, is recognised as a fundamental element of the right to a safe, clean and sustainable environment.
- 17.2 Environmental standards and environmental quality standards should be developed and adopted to protect the environment and human health. These standards can be developed at an ASEAN level, taking into account different needs in different countries.⁸²
- 17.3 To maintain the proper functioning of ecological processes, States shall prevent, reduce and control the degradation of the natural environment⁸³ and support and promote the protection of terrestrial and marine biodiversity.⁸⁴
- 17.4 Because of the role of vegetation and forest cover in the functioning of natural ecosystems, States should take all necessary measures to ensure the conservation of the vegetation cover and, in particular, of the forest cover on lands under their jurisdiction.⁸⁵
- 17.5 Action steps to be taken include:
 - 17.5.1. to promote environmentally sound agricultural practices by inter alia, controlling the application of pesticides, fertilizers and other chemical products for agricultural use, and by ensuring that agricultural development schemes, in particular for wetland drainage or forest clearance, pay due regard to the need to protect critical habitats as well as endangered and economically important species;
 - 17.5.2. to promote pollution control and the development of environmentally sound industrial processes and products;
 - 17.5.3. as far as possible to consider the originator of the activity which may lead to environmental degradation responsible for its prevention, reduction and control as well as, wherever possible, for rehabilitation and remedial measures required;
 - 17.5.4. to take into consideration, when authorising activities likely to affect the natural environment, the foreseeable interactions between the new activities proposed and those already taking place in the same area, and the result of such interactions on the air, waters and soils of the area;
 - 17.5.5. to pay particular attention to the regulation of activities that may have adverse effects on processes that are ecologically essential or on areas that are

⁸² Framework Principle 11. ASEAN Marine Water Quality Standards.

⁸³ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 10

⁸⁴ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Articles 3, 5, 6 and 13.

⁸⁵ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Articles 6

particularly important or sensitive from an ecological point of view, such as the breeding and feeding grounds of species.

- 17.6 For the protection of marine ecosystems protection of seagrasses, coral reefs, and mangroves should be given highest priority.

18. Non-toxic Environment

- 18.1 Recognising the adverse effect that polluting discharges or emissions may have on natural processes and the functioning of natural ecosystems as well as on each of the individual ecosystem components, especially animal and plants species, States shall endeavour to prevent, reduce and control such discharges, emissions or applications.⁸⁶

19. Soils and soil health

Explanatory Note

The importance of soil health and the role of soil in ensuring food security was recognised in the ASEAN Agreement on the Conservation of Nature and Natural Resources 1985.

States should establish land use policies aimed at avoiding losses of vegetation cover, substantial soil loss, and damages to the structure of the soil; take all necessary measures to control erosion, especially as it may affect coastal or freshwater ecosystems leading to the siltation of downstream areas such as lakes or vulnerable ecosystems such as coral reefs, or damage critical habitats, in particular, that of endangered or endemic species; and take appropriate measures to rehabilitate eroded or degraded soils, including rehabilitation of soil affected by mineral exploitation.

- 20.1 Recognising the role of healthy soil in the functioning of natural ecosystems, actions should be taken toward soil conservation, improvement and rehabilitation. Actions should be taken to prevent soil erosion and other forms of degradation and promote measures that safeguard the processes of organic decomposition and, thereby, its continuing fertility.⁸⁷

⁸⁶ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 11

⁸⁷ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 7.

- 20.2 Healthy soils contribute to producing sustainable and safe food, and measures should be taken to ensure freedom from hunger and access to safe and nutritious food in accordance with the principles in this Framework.⁸⁸

20. Water

Explanatory Note.

Clean water is a fundamental human right. Access to clean water is threatened by pollution and contamination as well as by poor management of water resources and climate change.

States should undertake and promote the necessary hydrological research, especially with a view to ascertaining the characteristics of each watershed; regulate and control water utilisation to achieve a sufficient and continuous supply of water for, inter alia, the maintenance of natural life-supporting systems and aquatic fauna and flora: when planning and carrying out water resource development projects, take fully into account the possible effects of such projects on natural processes or on other renewable natural resources and prevent or minimise such effects.

States should consider the ratification and adoption of the UN International Watercourses Convention, the UN Water Convention and its Protocol on Water and Health.

- 20.1 Every person has the right to safe drinking water and sanitation.⁸⁹
- 20.2 Recognising the role of water in the functioning of natural ecosystems, all appropriate measures should be taken towards conserving underground and surface water resources.
- 20.3 Water resources should be managed, taking all appropriate measures so as not to cause harm to the environmental and to communities.⁹⁰

21. Oceans and Marine

- 21.1 Activities likely to cause pollution of the marine environment shall be subject to assessment and control, taking into account the cumulative effects of pollution and other activities on the marine environment.⁹¹

⁸⁸ ASEAN Human Rights Declaration Article 28(a).

⁸⁹ ASEAN Human Rights Declaration Article 28(f).

⁹⁰ Mekong River Agreement 1995 Article 7. International Watercourses Convention (1997, entered into force 2014) Article 7.

⁹¹ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 11.

21.2 Marine protected areas shall be established and managed to safeguard the ecological and biological processes essential to the functioning of the ecosystems of ASEAN Member States.⁹²

21.3 States, together with other stakeholders, shall strengthen actions at the national level as well as through collaborative actions to prevent and significantly reduce marine debris, particularly from land-based activities, including environmentally sound management.⁹³

22. Coastal Zone

22.1 States shall ensure the implementation of integrated ocean and coastal management approaches and action programs to solve problems and challenges coastal zone governance.⁹⁴

22.2 Marine and plastic pollution from land-based sources should be controlled to ensure ocean health.

23. Scientific Research

23.1 States shall individually or jointly, including in cooperation with appropriate international organisations, promote and, whenever possible, support scientific and technical research programmes related to the root causes and consequences of transboundary haze pollution and the means, methods, techniques and equipment for land and/or forest fire management, including fire fighting.⁹⁵

23.2 States shall individually or jointly, including in cooperation with appropriate international organisations, promote and, whenever possible, support scientific and technical research programmes on environmental issues, including climate change, pollution and biodiversity protection.

⁹² ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 13.

⁹³ Bangkok Declaration on Combating Marine Debris in ASEAN Region 2019

⁹⁴ Putrajaya Declaration of Regional Cooperation for the Sustainable Development of the Seas of East Asia 2003

⁹⁵ ASEAN Agreement on Transboundary Haze 2002 Article 17.

24. Promotion of Transboundary Cooperation

- 24.1 States must 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.⁹⁶
- 24.2 States shall cooperate to establish, maintain and enforce effective international legal frameworks to prevent, reduce and remedy transboundary and global environmental harm.⁹⁷
- 24.3 States shall cooperate in good faith and in a spirit of global partnership to implement this Framework.⁹⁸
- 24.4 States shall cooperate with the competent international organizations to coordinate their activities in the conservation of nature and management of natural resources and assist each other in fulfilling their obligations under this Framework.⁹⁹

25. Implementation and Plans of Action

Explanatory Note

The development of national action plans can strengthen the framework's implementation. In addition, ASEAN can develop, through transboundary cooperation, ASEAN-wide action plans on any of the elements of the Framework.

- 25.1 A mechanism shall be established to assist the technical and administrative implementation and compliance with the provisions of the Framework.
- 25.2 States should prepare, following the principles in the Framework, National Plans of Action to implement this Framework in national law, regulations, policies and plans.

26. Final Provisions

Explanatory Note

⁹⁶ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 20. ASEAN Transboundary Haze Agreement Article 3.

⁹⁷ Framework Principle 13.

⁹⁸ Draft Global Pact for the Environment Article 18. ASEAN Transboundary Haze Pollution Agreement 2002 Article 3.

⁹⁹ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 Article 18.

The final provisions of the Framework can be developed to include adoption and procedures following adoption.

26.1 [To be developed]

Legal research for supporting background documents for environmental rights recognition in ASEAN

ASEAN Environmental Rights Framework

Outline of a Stakeholder Engagement Plan

Consultation Draft 11 August 2023

This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The authors' views expressed in this report do not necessarily reflect the views of the United States Agency for International Development or the United States government or WWF.

A. Background

Environmental rights are intertwined with empowerment and inclusion. Stakeholder engagement is essential in developing an ASEAN environmental rights framework and its decision-making processes. An inclusive framework ensures participation and voice, including young people, marginalised and vulnerable voices. An inclusive framework includes the ability of individuals and groups to represent themselves and be heard, the freedom to participate in political activity, access public resources, and contribute to decisions that impact an individual.

This report overviews stakeholder engagement frameworks and potential approaches towards an ASEAN environmental rights framework. It provides a number of recommendations and options.

B. Key Concepts for Stakeholder Engagement

- a. "Stakeholder" is generally used to identify parties with a legitimate interest¹ in a given project, entity or initiative. These are typically individuals and social groups relevant to effectively designing and implementing given objectives, mechanisms, policies and programmes. For the purposes of this report and plan, a broad definition of "legitimate interest" has been adopted.
 - i. When accredited to attend specific meetings for international instruments, these stakeholders can also be identified as "observers".
- b. Major groups and other stakeholder structures were formalized in Agenda 21. The nine major groups consist of: business and industry; farmers; indigenous people's organizations; local government and municipal authorities; women; the scientific and technological community; children and youth; trade union organizations; and NGOs².
- c. Public participation is a key pillar of Principle 10 of the Rio Declaration, in addition to access to information and access to justice. Public participation in environmental matters consists of the rights and opportunities for members of the public to engage in decision-making concerning the environment.
- d. Access to information is a pre-condition to meaningful public participation.
- e. Responding to concerns and issues raised through consultations is a key elements of meaningful stakeholder consultation.

C. Engagement Context and Stakeholders

a. Objectives for Engaging Stakeholders

Engaging stakeholders in ASEAN is critical to the success of an environmental rights framework. This recognizes that environmental rights concern all people living in ASEAN. Meaningful and effective stakeholder engagement is important during the development and drafting process and also for implementation. Stakeholder engagement is instrumental to:

1. Ensure that the framework responds to ASEAN context and challenges.
2. Ensure that the framework contributes to wider policy goals through cross-sectoral support.
3. Shape effective accountability measures for compliance.

¹ A legitimate interest is a real, continuing or genuine interest. There is no requirement for the interest to be financial or commercial.

² See <https://sustainabledevelopment.un.org/aboutmajorgroups.html>

4. Build enabling conditions for the public to promote rights.
5. Support national policy adoption/legislative processes.
6. Multiply information access and education opportunities.

b. Stakeholder Engagement Frameworks

As stakeholder engagement is essential to achieve success in the development and implementation of an ASEAN environmental rights framework, it is therefore important to look at the engagement strategy during the process of development of the framework. Continuous stakeholder engagement is also important in the framework, primarily through the operative and implementation components. Stakeholder engagement entails activities such as stakeholder mapping and analysis to tailor-fit the engagement strategy for each stakeholder group.³

i. During the development of the Framework

1. Stakeholder and Context Analysis

Stakeholders and their contexts are analysed, and the findings shape an engagement strategy and the choice of methods. The process for each identified stakeholder group is essential to elicit a diversity of perspectives. Appropriate methods would ensure equitable opportunities for sharing and considering diverse perspectives, including assenting and dissenting views.

Identification of stakeholders

- Stakeholders identified include all organisations, institutions, and personalities who are affected, those who may influence the process, and those who are interested in its outcome.
- These can be both organisations and people. For organisations, it is crucial to identify the key decisionmaker/ individual within.
- Identified stakeholders can be broadly categorised into the following:

Government (incl. intergovernmental organisations)	Civil Society Organizations (CSOs)	Other Key Stakeholders
International/ regional <ul style="list-style-type: none"> ● UN bodies ● ASEAN bodies 	<ul style="list-style-type: none"> ● Environmental and human rights defenders ● Indigenous people's groups ● Vulnerable groups/ persons ● NGOs ● Academic institutions ● People's organisations 	<ul style="list-style-type: none"> ● The public ● Key thought leaders ● Development partners and multilateral development banks ● Business and Industry ● Others (e.g. media, etc.)
National <ul style="list-style-type: none"> ● Ministers ● Judiciary ● Legislative bodies ● National Human Rights Institutions (NHRIs) 		

³ The process for stakeholder engagement are recognised in the Guiding Principles on Business and Human Rights, the Framework Principles on Human Rights and the Environment, and the OCEC Guidelines for Multinational Enterprises.

Local

- Local governments

In the identification of stakeholders, it is important to ensure effective participation and engagement from groups that have often been marginalized in decision-making process. In the context of environmental rights, this includes environmental and human rights defenders, indigenous people's groups and groups that are disproportionately impacted by environmental issues.

Stakeholder consultation meetings will benefit from the participation of the members of the working group, as follows:

- AICHR Representatives
- ASEAN Representatives
- ACWC Representatives
- ACW Representative
- ACMW Representative
- Representative from AEC
- Representative from ASEAN Centre for Biodiversity
- Representatives from ASEAN Secretariat
- Representative from ASEAN Youth Forum
- Representative from ASEAN Disability Forum
- Representatives from UN
- Regional experts
- Special advisors
- Observers, including UN Special Rapporteur on the Environment and NHRIs as appropriate

Stakeholder mapping and analysis

A stakeholder mapping and analysis will have to be undertaken at the outset of the framework development process to ensure appropriate strategies are adopted for each stakeholder group. Prioritisation of identified stakeholders is critical to focus efforts on organisations/ institutions/ people with high power and interest and ensuring that other stakeholders are not excluded based on an assessment of power or influence or interest in the subject matter under consideration).

It is acknowledged that there are constraints for both time and resources, so the stakeholder mapping exercise needs to initially identify the key high-power stakeholders. The mapping exercise will also identified those stakeholders with the ability to organise meetings and consultations at a national level. These stakeholders will be able to run some consultations in the ASEAN Members States (AMS). It is recommended that a process be set up for groups to apply to the Secretariat for approval to carry out consultations. This process will be a pro forma online application form. This process will also allow the Secretariat and the Working Group to keep track of those events and also to track recommendations and comments from consultation workshops.⁴

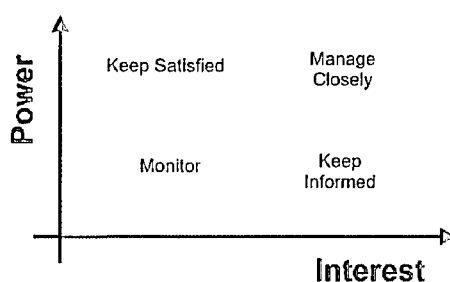
⁴ The pro forma application and process will be developed and presented prior to the next meeting of the Working Group.

AER WG/1M/7: Strategy for engagement of stakeholder groups and the general public

Concern has been expressed that this traditional approach may exclude organisations and groups that have a key interest in the ASEAN Environmental Rights Framework but are perceived as low in power or influence. In this initial stakeholder engagement plan, we have taken a broader interpretation of power and interest. The recommendations also recognize that there will need to be a constant reflection on consultation and, based on resources, more work to ensure that all interested stakeholders are provided with opportunities for comment and participation.

The power grid/ mapping may be described as follows:

- High power and interest - manage closely and thoroughly engage
- High power and low interest - keep satisfied and ensure they are engaged
- Low power and high interest - keep informed
- Low power and low interest – monitor



Source

In stakeholder mapping, it is important to identify challenges facing respective stakeholder groups. These may include the following:

Institutional	Cultural/ Capacity/ others
<ul style="list-style-type: none"> ▪ Lack of access to official processes ▪ Diminishing public trust ▪ Lack of safe space/ fear of reprisal ▪ Lack of confidence in the legal system and official information ▪ Limited access to legal and procedural support ▪ Public mistrust, perception of corruption ▪ Systems for collecting and providing info 	<ul style="list-style-type: none"> ▪ Professional training (environmental lawyers) ▪ Resources, mandates ▪ Attitudinal barriers ▪ Norms, standards and practices not available ▪ Elite and other capture ▪ Lack of awareness ▪ Cultural or social barriers including gender norms ▪ Interpretation of constitutional rights vis a vis environmental rights ▪ Lack of understanding of civic rights and how to exercise them

Tailor-fit engagement strategy for each stakeholder group

In the traditional approach to stakeholder mapping, once stakeholder groups are identified and prioritised in order of their power and interest (and challenges presented), strategies are developed to cater for their specific needs and achieve the strategic goals for the project. These include the following:

Stakeholder group	Strategic goal
Relevant ASEAN bodies	Empowered and inspired to provide political support at crucial decision-points
National governments	Capacitated with clear consistent direction and internal incentives and leadership support
National Human Rights Institutions	Provide an effective link between the ASEAN and national consultations and between AICHR and national ministries and CSOs
Judiciary & legal professionals	Able to advocate with consistent interpretation
Civil society organizations	Well resourced, accountable, and empowered to advocate and support public assertion of rights - with access to effective procedures
EHRDs	EHRDs need to be empowered to provide substantive recommendations and action plans to ensure the creation of an enabling environment for the exercise of environmental rights
Media	Capacitated to fully understand the full scope of substantive and procedural rights and serve as an effective “watchdog”

Reference: ESCAP, 2021

ii. In the Operative and Implementation Components

In the context of international environmental legal instruments, stakeholder engagement and participation frameworks are oftentimes established through agreements and intergovernmental platforms.

- Initiatives mandated by instruments to promote stakeholder engagement and informal initiatives are either mandated by a conference of the parties or exist outside their formal processes.
- Informal initiatives are typically voluntary, and membership is open to stakeholders from governments, intergovernmental organizations, NGOs, the private sector, academia and the scientific community, as well as individuals. There is often a steering committee or advisory group nominated by the members of the platform.
- Multi-stakeholder partnerships and platforms can have a network of national focal points to promote information-sharing, awareness-raising, capacity-building and mechanisms for cooperation and coordination.

c. Considerations for Stakeholder Engagement Mechanisms

Engaging vulnerable and marginalized groups needs special attention

AER WG/IM/7: Strategy for engagement of stakeholder groups and the general public

Reducing barriers to participation is essential for inclusive engagement. This includes identifying factors that prevent participation (e.g. language, literacy, accessibility, gender, technology, socio-cultural prejudice, age, etc.) by formulating strategies and steps to address them. In the process, vulnerable and marginalized groups are also identified, and their participation is enabled through the appropriate engagement methods.

Establishing safe spaces

This entails taking measures to ensure diversity of cultural and social perspectives. Appropriate engagement processes and methods must demonstrate cultural sensitivity and awareness of tradition through the provision of safe spaces for participation. The methods, facilitation and record of organizations leading engagement must ensure safe spaces for inclusive and meaningful engagement of stakeholders.

Utilizing technology

Technology is an enabler for inclusive participation, as it addresses many challenges to engage the public and other stakeholders. The publicly accessible mechanism can utilize online platforms to access information and ensure participation, input and continued engagement. Careful attention should be made to addressing barriers to accessing technology, especially for individuals and groups in vulnerable situations. Partnerships with organizations with expertise in representing and coordinating vulnerable and disadvantaged groups can be made to overcome these barriers. Existing members of the Working Group should be assisted in facilitating this engagement.

It is recommended that funding be sought for the development of simple online processes and procedures to maximise the use of technology to promote stakeholder engagement.

Keeping track of submissions and comments

During the consultations, comments and issues will be raised and recorded. It will be important to keep track of submission and to respond, at least in general to comments and submissions.

It is recommended that funding be allocated to keep track of submissions (though an excel form or equivalent) and that a simple submission form also be created to keep track of public submission on the draft documents. This would also require the preparation of summary reports from consultation meetings and preparations of reports to report back to those who have made submissions or joined forum. Consideration can be given also to private submissions to allow for safety and privacy concerns to be addressed.

D. Strategies for Stakeholder Engagement

The following strategies are recommended in the consultation process on the framework. The recommendations adopt the IAP2 pillars of increasing levels of public participation (see below). Under the Terms of Reference (ToR) of the Working Group, the final document will be submitted to AICHR for approval. The final Framework will be a collaborative approach, but the final decision will be for AICHR.

Lessons from the Escazu Agreement

With the support of ECLAC as technical secretariat, Latin American and Caribbean countries resolved to develop and implement a Plan of Action for 2014 to advance the implementation of a regional instrument for Principle 10 or the Rio Declaration. The process continued through regular meetings of focal points that led to a formulation of a Road Map and a common vision for a regional instrument. Through the “Lima vision for a regional instrument on access rights relating to the environment”, signatory countries agreed on equality, inclusion, transparency, proactivity, collaboration, progressive realization and non-regression as values and principles to guide the regional instrument and the modalities of participation of stakeholders were established.

The modalities **establish the right of the public** (defined as any natural or legal person or community organization) to participate in the meetings of the working groups and other preparatory meetings.

It was also agreed that at the meetings, the chair would **give the floor in the order in which it is requested**, regardless of whether the respective speakers were government representatives or a member of civil society.

At the request of participating countries, ECLAC **established a regional public mechanism** with the objectives of keeping all parties interested in the process informed and facilitating their involvement, coordinating public participation in international meetings and contributing to the transparency of the process. More than 2,000 individuals and organizations registered with the mechanism to receive periodic updates and to participate in the virtual and in-person meetings of the Negotiating Committee, allowing greater public participation and involvement.

In addition to in-person meetings, virtual consultations and intercessional meetings were also held.

Virtual meetings allowed signatory countries, observers and the public to discuss, in a cost-effective manner, issues of concern and contents to be agreed on at the meeting of the Focal Points.

The Working Group also encouraged international organizations to **support efforts at the national level and to promote regional capacity building**. ECLAC organized regional and national workshops jointly with UNEP, UNITAR, WRI, SPDA and CALCA, and governments of the region, among others.

a. In the Consultation on the Framework

i. Modes of engagement

The consultation should start with the provision of information to inform the stakeholders about the principles and elements of the Framework. Once information on the Framework and the consultation process has been provided in an open and transparent way (a process that will be ongoing and last throughout the development of the Framework), events, meetings and online mechanisms should allow stakeholders to be consulted and involved. This allows feedback and comments from stakeholders.

Following the process of feedback, there should be meetings planned to promote collaboration based on the principles of inclusion and openness. This collaboration will take place within the limitations imposed on the project by the time frame for delivering the final draft of the Framework (June 2024) and AICHR is the final approval authority.

AER WG/IM/7: Strategy for engagement of stakeholder groups and the general public

Which engagement level?	Why?	Who?	How?
Collaborate	High-quality draft produced by WG	Selected experts from stakeholder groups	Selected on specific criteria/expression of interest/nomination
Involve	Widen access to direct expert feedback on context and scope	Experts from stakeholder groups	Multistakeholder reference group
Consult	Strengthen institutionalization, cross-ASEAN connection and political support	Key ASEAN bodies and specific stakeholder groups	Consultation sessions
Inform	To promote effective participation in the process, shared understanding and support	All stakeholder groups (internal & external) and the public	Via website, knowledge products

Reference: ESCAP, 2021

ii. Engagement Processes

In developing the stakeholder engagement process, in-person and virtual meetings should be held. Regional meetings can be held through the Working Group process. Working Group members can also be requested to consult with their own institutions and organisations.

A series of proposed stakeholder meetings is provided in Section G. In addition to those meetings, it is recommended that a series of monthly online webinars be held to provide an opportunity to explain the Framework and obtain feedback and submissions (via online platforms and online polls). It is recommended that these regular monthly online meetings be supplemented by discussions and other webinars dealing with specific topics on the Framework.

Goal	Process	Persons involved
Build ownership and define path for a regional agreement	Early and frequent consultation	<ul style="list-style-type: none"> ▪ AER WG members ▪ ASEAN ministers and officials ▪ ASOEN ▪ Identified experts
Impactful, credible ASEAN framework	Inclusive drafting process	<ul style="list-style-type: none"> ▪ ASEAN core group ▪ Specific stakeholder experts ▪ Media ▪ Legal experts
Build awareness & momentum for change	Consultation and information	<ul style="list-style-type: none"> ▪ Civil society ▪ Environmental and Human Rights Defenders ▪ Vulnerable groups/ persons ▪ The public

AER WG/1M/7: Strategy for engagement of stakeholder groups and the general public

Strengthen institutionalization	Capacitate national systems	<ul style="list-style-type: none"> ▪ Public officials ▪ Judiciary ▪ Lawyers
Leadership	Provide platform for champions	<ul style="list-style-type: none"> ▪ National champions ▪ Key government officials ▪ Civil society representatives
Guidelines, tools and technology	Public engagement mechanisms	<ul style="list-style-type: none"> ▪ The public

Reference: ESCAP, 2021

iii. Potential Approaches

Stakeholder engagement modality	Traditional Approaches	Notes for the Working Group
Providing the right of the public to participate	<ul style="list-style-type: none"> ● Primarily through accreditation of stakeholders as observers ● Accreditation would be in accordance with the provisions of a specific instrument and the rules of procedure 	In line with the Escazú Agreement which guarantees minimum rights for the public to participate, the framework can create rules for public engagement (see Public Engagement Mechanisms below)
Funding for stakeholders to attend meetings and follow processes	Certain bodies provide funding for accredited stakeholders to attend meetings	Create a voluntary funding mechanism that facilitates the participation of stakeholders
Supporting initiatives for public awareness and access to information	Multilateral environmental agreements often include a reference to principle 10	Place special focus on vulnerable groups (e.g. EHRDs, indigenous peoples, women, youth, etc.)
Appointment of stakeholders to technical bodies as advisers	Working groups/ technical bodies include representatives from the stakeholder community who serve as advisers, or there is a provision for a consultation mechanism with stakeholders	May invite advisers drawn from relevant organisations, the private sector and civil society on specific issues as they arise
Multi-stakeholder partnerships and platforms	Membership is generally open to a broad range of stakeholders from governments, organisations, as well as individuals	<ul style="list-style-type: none"> ● Platform could be created within and outside the framework process ● Platforms supported could be a voluntary association of representatives, organisations and individuals. It could provide a mechanism for cooperation and coordination to enable knowledge and best practices to be shared

iv. Public Engagement Mechanisms

Mechanisms for public engagement	
Right of the public to be informed and to participate	<p>Modalities establish the right of the public to participate and its implementing rules.</p> <p>Establish a regional public mechanism with the objectives to contribute to the transparency of the process.</p> <p>Utilize virtual meetings to allow representatives, observers and the public to discuss in a cost-effective manner.</p>
Ensuring quality of participation	<p>Effective facilitation of meetings including giving the floor in the order in which it is requested.</p> <p>Implement measures to reduce barriers to participation especially for vulnerable and groups needs special attention.</p> <p>Adopt engagement methods to establishing safe spaces through appropriate methods, facilitation and track record of organizations leading engagement.</p>
Capacity building for stakeholders	<p>Organizations to support efforts at the national level and to promote regional capacity building.</p>

b. In the operative and implementation components

The texts of international legal instruments such as multilateral environmental agreements integrate stakeholder engagement considerations in different ways, but in general, references to stakeholders can be broadly clustered into the following:

References to participation/ specific groups in the preamble	Provisions relating to the functioning of the secretariat	Provisions relating to the governance structure e.g. Conference of Parties
References to vulnerable groups e.g. indigenous peoples, women, youth, etc.	References to public awareness	References to access to information
References to mobilizing funding e.g. from the private sector and NGOs	Provisions for consultation with stakeholders in the implementation	Broad provisions for consultation and cooperation

It is important to include these approaches in the text of the instrument. Further modalities are discussed as follows:

AER WG/IM/7: Strategy for engagement of stakeholder groups and the general public

Modalities	Traditional Approach	Notes for the Working Group
Encouragement and facilitation of open dialogue with civil society and other stakeholders through formal and informal mechanisms	Open dialogue with civil society and stakeholders through formal and informal processes and platforms	<ul style="list-style-type: none"> • The governing body of the instrument could establish stakeholder platforms that promote consultation. These could be general in nature or could address specific stakeholders • Open dialogue sessions can be conducted immediately prior to a governing body meeting. There could also be specific stakeholder days for updates on the activities • A civil-society panel could liaise with its constituencies, facilitating the coordination of policy positions and interventions among CSOs
Enhanced participation of stakeholders	Observers/ the public can only make oral interventions and circulate documents	<ul style="list-style-type: none"> • Place reference to “the public” in the instrument and rules of procedure • Provide right of the public to participate and establish rules and mechanisms for engagement
Role of high-level independent individuals, such as Special Rapporteurs and special procedures mechanisms	Multilateral environmental agreements do not often provide for the appointment of Special Rapporteurs or special procedures mechanisms	<ul style="list-style-type: none"> • Opportunity for the governing body of the instrument to appoint a Special Rapporteur to address a specific situation (e.g. EHRDs in ASEAN) • The governing body could also have a special procedures mechanism to monitor specific issues
Adoption of guidelines for partnerships	Guidelines for partnerships have been adopted for UN multilateral environmental agreements	The instrument could adopt principles for partnerships with a specific sector

Reference: UNEP, 2022

E. Tracks for Stakeholder Engagement

This stakeholder engagement plan recommends a four-track process. This can be expanded as required. These broad tracks are listed below. There should be an organisation tasked with being the focal point for the track and for being the coordinating or focal point for ongoing consultations.

Track	Objective	Stakeholders
Track 1: ASEAN bodies and government, including NHRIs	<ul style="list-style-type: none"> • For information and consultation 	ASEAN, ASEAN Sectoral Bodies, Thailand NHRCT, Philippines CHR, Malaysia SUHAKAM, Indonesia Komnas HAM etc.
Track 2: Legal groups, which could be national and international.	<ul style="list-style-type: none"> • For information and consultation 	LAWASIA, ABA, IBA, IPC, etc.

AER WG/IM/7: Strategy for engagement of stakeholder groups and the general public

		UN treaty bodies (to assist in the comments on the text)
Track 3: Civil society groups and EHRDs	<ul style="list-style-type: none"> • For information and consult to collaborate • To launch coordinated campaign regionally and nationally • To leverage online/social media and education/ awareness raising capabilities 	Individuals, civil society groups, non-government organizations, grassroots and people’s organizations who advocate and work on the issue of human rights and/ or environment. e.g. Asia Pacific Network of Environment Defenders, Earthrights International
Track 4: Private Sector	<ul style="list-style-type: none"> • For information and consultation 	Potentially be coordinated through the Business and Human Rights program of UNDP, and other BHR groups facilitated by CSOs. e.g WWF BHR working group.

The focal points for the tracks could be:

Track	Possible Focal Point	Supporting partner
Track 1: ASEAN bodies and government, including NHRIs	<ul style="list-style-type: none"> • AICHR 	UNESCAP, UNEP and NHRIs
Track 2: Legal groups, which could be national and international.	<ul style="list-style-type: none"> • ARIEL 	EarthRights International, Raoul Wallenberg Institute (RWI)
Track 3: Civil society	<ul style="list-style-type: none"> • UNOHCHR/APNED 	Other environmental and human rights CSOs UN

**groups and
EHRDs**

**Track 4:
Private
Sector**

- UNEP/UNESCAP
- UNDP BHR Group

F. Recommendations and Outputs

The following recommendations and outputs provide an overview of the elements needed for stakeholder engagement. For the engagement process to achieve its potential, there will need to be some flexibility in the process. The stakeholder engagement plan should be a living document. It will also be necessary to promote and support national-level consultations. National stakeholders, including NHRIs, CSO, and private sector groups, should be encouraged to hold consultations. Materials should be made available from the working group for distribution. There should be a central site to collect comments and submissions and a process to respond to those comments.

The materials prepared for the Framework and the consultation process will be in English. This is primarily to ensure that one authentic text is used for discussions and negotiations. Supporting materials can be translated to promote participation as resources are available. Explanatory documents and background materials can be prepared beforehand. For national consultations, interpretation should be available where possible. Funding for such activities thus be secured for the efficient roll out of stakeholder engagement initiatives.

It is also recommended that once the initial consultation materials are approved for distribution by the working group, these can be made into an online document referenced by sections. Submissions and comments can be collected using online systems, the easiest is google docs. Where submissions and comments can be made by references to specific sections. These comments can be compiled and a report can be prepared addressing the comments. This can be provided to the meetings of the working group, along with any recommendations or suggested amendments.

Recommendations	Outputs and Indicators
Conduct a stakeholder analysis and strategic planning session to review the Stakeholder Engagement Plan	Revised Stakeholder engagement plan
Develop a platform for the consultation process to support the ASEAN Environment Rights Working Group	Intersessional consultation meetings for stakeholders
Enhance cooperation between AICHR and relevant ASEAN sectoral bodies (ASBs) on rights-based approach to environmental decision-making	Plans and meetings on cooperation between AICHR and ASBs
Enhance cooperation between AICHR and CSOs/ EHRDs	Plans and meetings on cooperation between AICHR and ASBs

AER WG/IM/7: Strategy for engagement of stakeholder groups and the general public

Develop an online platform as repository of materials, including the zero draft, with a feedback mechanism	Website
Solicit written contributions from relevant stakeholders for input on the drafts	Google document and forms
Publish report on the outcomes of the meetings to the Working Group/ AICHR	Web reports, press releases
Publish bulletin or newsletter at a regular (possibly quarterly) basis	Online newsletter
Boost online/social media information and education campaign for awareness raising on the ongoing development	Social media plans, posts and content
Produce video animation boosted on social media	Videos, social media posts
Support in-person side event and exhibit in regional/ international multilateral fora	Side events, meetings
Support self-organizing networks and bodies for CSOs with focal representatives for collaboration.	CSO networks
Exchange information and best practices from Escazu/ Aarhus Conventions on stakeholder engagements and participation	Forums, meetings
Facilitate national consultations for ASEAN countries As appropriate, provide opportunity for virtual sessions following the criterion to be determined by the Working Group.	National consultation meetings Virtual sessions, livestreams
Invite resource persons to meetings to provide input or advice from international experiences.	Meetings with resource persons
Ensure interpretation in public consultations	Consultations with interpreters

G. Indicative Event Schedules

The table reflects regional activities that can be part of the consultation and engagement process. To these events will need to be added national events that can be organized by national stakeholders. Promotion of these activities and reports on the outcomes of these events are also important to provide access to information and enhance the opportunity for participation.

Events have been held in Thailand, the Philippines and Malaysia with NHRIs. Consideration should be given to supporting national consultations in other AMS, in consultation with AICHR Representatives and other representative groups.

Indicative Date/s	Milestone	Location
-------------------	-----------	----------

AER WG/IM/7: Strategy for engagement of stakeholder groups and the general public

28 April 2023	Thailand Consultation – NHRC Thailand	Bangkok
29-30 May 2023	Malaysia Consultation – AICHR Malaysia	Kuala Lumpur
15-18 August 2023 (17-18 August ERG Workshop)	3 rd ASEAN Environmental Law Conference (can be platform for intersessional stakeholder meeting)	Bangkok UN Conference Centre – organized by ARIEL, UNEP, WWF
21-22 August 2023	Environmental Rights Framework Working Group Meeting	Bangkok in person
September	Intersessional Civil Society Stakeholder Engagement Workshop (CSO intersessional meeting to coordinate CSO engagement)	Hybrid/Virtual
20-22 September 2023	Asia Pacific Environment and Human Rights Defenders Forum (can be platform for intersessional stakeholder meeting)	Bangkok (organised by UN)
20-22 November 2023	Environmental Rights Framework Working Group Meetings	Bangkok in person - TBC
February 2024 (TBD)	Environmental Rights Framework Working Group Meetings	In person
March 2024 (TBD)	Intersessional Stakeholder Meeting	Hybrid/Virtual
March 2024	ESCAP Events: APFSD	
April 2024 (TBD)	Intersessional Stakeholder Meeting	Hybrid/Virtual
May 2024 (TBD)	Environmental Rights Framework Working Group Meetings	In person
June 2024 (TBD)	AICHR Meeting	

Annexures

A. Points for Discussion

a. Stakeholder Mapping and Analysis

This stakeholder mapping exercise is for discussion purposes only. It excludes groups already represented in the working group. A national stakeholder mapping exercise can also be carried out by a national focal point.

Power	<ul style="list-style-type: none"> ASEAN Secretariat Asian Development Bank World Bank IFC ASEAN Recognized Business 	<ul style="list-style-type: none"> National HR Bodies Forum-Asia Asia Indigenous Peoples Pact Earthrights International Mekong River Commission (MRC)
	<ul style="list-style-type: none"> ASEAN Partnership Bodies and Cooperation Centres 	<ul style="list-style-type: none"> Asia-Pacific Forum National Bar Associations and Law Societies Environmental Law Alliance Worldwide (E-LAW) Raoul Wallenberg Institute Aarhus Convention Secretariat Escazu Agreement Secretariat IUCN World Commission for Environmental Law LAWASIA (Human Rights Law Network) Global Network for Human Rights and the Environment Diplomacy Training Programme (DTP) International Environmental and Human Rights NGOS National Environmental and Human Rights NGOs Stockholm Environment Institute
		Interest

B. Public Engagement Levels

		Increasing Level of Public Involvement			
		Inform	Involve	Collaborate	Empower
Public participation goal	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
Promise to the public	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.
Example techniques	<ul style="list-style-type: none"> • Fact sheets • Web sites • Open houses 	<ul style="list-style-type: none"> • Public comment • Focus groups • Surveys • Public meetings 	<ul style="list-style-type: none"> • Workshops • Deliberative polling 	<ul style="list-style-type: none"> • Citizen advisory committees • Consensus-building • Participatory decision-making 	<ul style="list-style-type: none"> • Citizen juries • Ballots • Delegated decision

Source: International Association for Public Participation (<https://www.iap2.org/page/pillars>)

References

- ESCAP, ADB, UNDP (2019). Accelerating progress: An empowered, inclusive and equal Asia and the Pacific (<https://sdgasiapacific.net/knowledge-products/0000005>)
- Lukensmeyer, C. (2012). Bringing Citizen Voices to the Table: A guide for public managers “Dot-poll” at the Asia-Pacific Forum for Sustainable Development 2016
- ESCAP, Rankine, H. (2021). Stakeholder engagement and mapping. Presentation for the AICHR-UN Joint Expert Meeting on Human Rights and the Environment/ AICHR Workshop on Human Rights, Environment and Climate Change, 8 June 2021.
- ESCAP, Rankine, H. (2021). Stakeholder engagement in a preparatory process for a declaration on environmental (access) rights, 16 June 2021.
- Torres, V. (2014). Access to information, participation and justice in environmental matters and the Post-2015 Development Agenda: Recent developments in Latin America and the Caribbean. 3rd UNITAR-Yale Conference on Environmental Governance and Democracy, 5-7 September 2014, New Haven, USA.
- UNEP (2022). Overview of stakeholder engagement frameworks under other instruments and of potential approaches. Intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution.
- UNEP (2022). Overview of stakeholder engagement frameworks. Presentation for the Briefing of the first session of the Intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment

Legal research for supporting background documents for environmental rights recognition in ASEAN

ASEAN Environmental Rights Framework

Comparative Review of ASEAN Environmental Law Instruments

**Prepared by Matthew Baird, Director, and Roger Joseph (Rocky) Guzman, Deputy Director
Asian Research Institute for Environmental Law (ARIEL)**

Dated 10 August 2023

This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The authors' views expressed in this report do not necessarily reflect the views of the United States Agency for International Development, the United States government, or WWF.

ASEAN Environmental Rights Framework

Comparative Review Document of ASEAN Environmental Law Instrument

ASEAN has been at the forefront of many environmental issues since its establishment. The ASEAN Charter, which came into effect on December 2008, commits the ASEAN community to “Ensure sustainable development for the benefits of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process.”¹

Article 1 of the Charter states:

*To promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples.*²

ASEAN’s goals include:

- To enhance good governance and the rule of law;
- To create a single market and production base;
- The promotion and protection of human rights and fundamental freedoms, and;
- To promote a people-oriented ASEAN.³

ASEAN cooperation on the environment is currently guided by the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025, which envisions “an ASEAN Community that engages and benefits the peoples and is inclusive, sustainable, resilient, and dynamic”. Guided by Vision 2025, the ASEAN cooperation on the environment mainly focuses on the following key result areas under the ‘Sustainable’ characteristic of the ASCC Blueprint 2025.

- Conservation and Sustainable Management of Biodiversity and Natural Resources
- Environmentally Sustainable Cities
- Sustainable Climate
- Sustainable Consumption and Production

The ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 was agreed seven years before the 1992 Rio Conference on Environment and Development. Although this Agreement has not entered into effect, it is a document highlighting ASEAN's regional environmental protection and management leadership. Likewise, the ASEAN Human Rights Declaration of 2012 and its recognition of the right to a safe, clean and sustainable environment (Art 28(f)) was a precursor to the resolutions at the UN Human

¹ Charter of the Associations of Southeast Asian Nations, Singapore 20 November 2007, Article 1(9) (Emphasis added)

² ASEAN Charter Article 1(9)

³ ASEAN Charter Article 1(5), Article 1(7) and Article 1(13)

Rights Council and the UN General Assembly on the recognition of the right to a clean, healthy and sustainable environment.⁴

In 2007 ASEAN Member States developed an ASEAN Declaration on Environmental Sustainability.⁵ Highly aspirational, the Declaration did not make any provision for reporting or measuring the actions under the Declaration.

ASEAN Member states have also participated internationally and shown a high degree of universality in support of Multilateral Environmental Agreements (MEA).

The Linear Infrastructure Safeguards in Asia project⁶ reviewed the application of MEAs relevant to environmental conservation in Asia.⁷ Together with the United Nations Framework Convention on Climate Change (UNFCCC), the seven key MEAs (the Convention on Biological Diversity (CBD), Convention on International Trade in Endangered Species (CITES), Convention on Migratory Species (CMS), World Heritage Convention (WHC), International Plant Protection Convention (IPPC) and International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Ramsar Convention on Wetlands of International Importance) have widespread application in ASEAN (see Table 1) except for the CMS.⁸

Table 1⁹

	UNFCCC	CBD	WHC	CITES	CMS	IPPC	ITPGRFA	Ramsar
Brunei	X	X	X	X				
Cambodia	X	X	X	X		X	X	X
Indonesia	X	X	X	X		X	X	X
Lao PDR	X	X	X	X		X	X	X
Malaysia	X	X	X	X		X	X	X
Myanmar	X	X	X	X		X	X	X
Philippines	X	X	X	X	X	X	X	X
Singapore	X	X	X	X		X		
Thailand	X	X	X	X		X	X	X
Vietnam	X	X	X	X		X		X

⁴ UN General Assembly Resolution A/76/L.75 (July 28, 2022).

⁵ <https://asean.org/asean-declaration-on-environmental-sustainability/>

⁶ Final Report: Building a foundation for linear infrastructure safeguards in Asia. Authors: Ament R, Stonecipher G, Butynski M, Creech T, Clevenger AP, Neelakantan A, Gangadharan A, Krishna C, Bell M, Vilela T, Bonine K, Monga M, Van Epp T, Laur A, Breuer A, Parashar S, Weinheimer CG, Hoff K. Prepared by Perez, APC for Contract no. AID-OAA-I-15-00051/AID/OAA-TO-16-00028, ESS WA#13. U.S. Agency for International Development (USAID), USAID (2021) Washington, DC. 54 pp

⁷ Adapted from USAID (2021) "Annex 3: Existing Capacity and Constraints to Undertake Wildlife-Friendly Linear Infrastructure in Asia", *Building a Foundation for Linear Infrastructure Safeguards in Asia*, pp17-18.

⁸ UN Convention on the Law of the Non-Navigational Uses of International Watercourses is another MEA that has been ratified by only one ASEAN Member, Viet Nam.

⁹ Mapping Pathways: Towards a Holistic Model for the Planning, Design, Approval & Construction of Inclusive and Resilient Linear Infrastructure Opportunities for transition in the ASEAN region, Asian Research Institute for Environmental Law and WWF, USAID, 2023, p.45 note 72.

All ASEAN Member States have disclosed their Nationally Determined Contributions concerning the Paris Agreement.¹⁰ ASEAN has also developed several statements on climate change. For COP 25 of the UNFCCC (2019), ASEAN developed a leaders' statement.¹¹ The ASEAN Joint Statement called upon developed country parties to fulfil commitments under the Paris Agreement in mitigation and financial support.

ASEAN has also worked with the MEAs related to pollution and transboundary trade in waste, chemicals and hazardous substances and persistent organic pollutants (POPs). Table 2 shows the level of accession to those MEAs.

Table 2: Pollution-Related MEA¹²

	Basel	Ban	Stockholm	Rotterdam	UNCLOS	MPOL	London	Ozone
Brunei	X	X	S		X	X		X
Cambodia	X		X	X	X	X		X
Indonesia	X	X	X	X	X	X		X
Lao PDR	X		X	X	X			X
Malaysia	X	X	S	X	X	X		X
Myanmar	X		X		X	X		X
Philippines	X		X	X	X	X	X	X
Singapore	X		X	X	X	X		X
Thailand	X	X	X	X	X	X		X
Vietnam	X		X	X	X	X		X

Basel Basel Convention on Transboundary Waste¹³

Ban Ban Amendment to Basel Convention¹⁴

Stockholm Persistent Organic Pollutants (POPs)¹⁵

Rotterdam International Trade in Chemicals and Pesticides¹⁶

UNCLOS UN Convention on the Law of the Sea

MPOL Convention for the Prevention of Pollution from Ships 1973

London London Convention on Dumping

Ozone Vienna Convention for the Protection of the Ozone Layer

It has been noted that whilst the ASEAN legal and policy frameworks express commitment to various environmental and human rights issues, "such frameworks have so far not been

¹⁰ See <https://th.boell.org/en/2021/11/01/ndc-southeast-asia> and <https://th.boell.org/en/2021/11/22/NDCs-Cambodia-Indonesia-Thailand>

¹¹ <https://asean.org/asean-joint-statement-on-climate-change-to-the-25th-session-of-the-conference-of-the-parties-to-the-united-nations-framework-convention-on-climate-change-unfccc-cop25/>

¹² See Table 3.1 Climate Change Coming soon to a Court near you, International Climate Change Legal Frameworks, ADB, 2022, p.52-53.

¹³ <https://www.basel.int/>

¹⁴ <https://www.basel.int/Countries/StatusofRatifications/BanAmendment/tabid/1344/Default.aspx>

¹⁵ <https://chm.pops.int/>

¹⁶ <https://www.pic.int/>

able to implement common environmental standards to systematically prevent and mitigate harm to human rights and health.”¹⁷

ASEAN Members States have all ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), but other human rights agreements remain less widely supported. The ASEAN Human Rights Declaration 2012 includes specific rights beyond those identified in the Universal Declaration of Human Rights.

Table 3:

	ICCPR	ICESCR	CEDAW	CRC	RC
Brunei			X	X	
Cambodia	X		X	X	X
Indonesia	X	X	X	X	
Lao PDR	X	X	X	X	
Malaysia			X	X	
Myanmar		X	X	X	
Philippines	X	X	X	X	X
Singapore			X	X	
Thailand	X	X	X	X	
Vietnam	X	X	X	X	

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CEDAW	Convention of the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
RC	Convention of the Status of Refugees

Sustainable development and sustainable finance in ASEAN

ASEAN’s Charter and Vision 2025 reiterated the importance of sustainable development as a feature of ASEAN. Significant work has been undertaken on integrating the ASEAN Economic Community to reduce trade barriers between the ASEAN Member States. These can have a significant impact on environmental protection and environmental rights and yet are often not considered.

The *Framework for Improving ASEAN Infrastructure Productivity*, prepared by the ASEAN Secretariat in October 2020 under the *Master Plan on ASEAN Connectivity 2025* (MPAC), implicitly acknowledges the need for improved strategic, landscape-level planning and decision-making processes for infrastructure. ASEAN Leaders adopted the MPAC 2025 in September 2016 with the vision “to achieve a seamlessly and comprehensively connected and integrated ASEAN that will promote competitiveness, inclusiveness, and a greater sense of Community.”¹⁸ The *Framework for Improving ASEAN Infrastructure Productivity* recognises that “new infrastructure projects are being delivered in fast-tracked programmes

¹⁷ Ituarte-Lima, C; Bernard, V; Paul, D; San, S; Aung, MM; Dany, C; Chavisschindha, T; Paramita, D; Aung, MT and Saenphit, N, Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia, Lund, Raoul Wallenberg Institute, 2020, p.77.

¹⁸ ASEAN Secretariat (2017) *Master Plan on ASEAN Connectivity 2025*, p7.

as governments focus on enhancing infrastructure development quickly.”¹⁹ In response to this, the Framework states that appropriate strategic planning is needed to identify projects that should be undertaken and prioritised and the trade-offs that are involved in those decisions.²⁰

ASEAN has also developed the Taxonomy for Sustainable Finance, which has four main environmental objectives and two essential criteria.²¹ The objectives are climate change mitigation, adaptation; protection of healthy ecosystems and biodiversity; and promoting resilience and transition to a circular economy. The essential criteria are – to do no significant harm and that avoidance of impacts should be considered at the outset. The Taxonomy provides a clear message for investment in ASEAN that it should be inclusive, resilient and sustainable.

No references are made to these ASEAN planning instruments in the statements on international environmental issues, including climate change, biodiversity loss and pollution. Likewise, environmental and social concerns, and obligations under MEAs, are not referenced in these finance and planning documents.

ASEAN Agreement of Transboundary Haze 2002 (ASEAN Haze Agreement)

The ASEAN Agreement on Transboundary Haze Pollution was signed by the ten ASEAN Member States governments on 10 June 2002 in Kuala Lumpur, Malaysia and entered into force in November 2003. The Agreement was the first regional arrangement in the world that binds a group of contiguous states to tackle transboundary haze pollution from land and forest fires.²²

The environmental, economic and social dimensions and impact of such fires in 1997-1998, and the associated transboundary haze pollution, were significant. The total financial losses in agriculture production, destruction of forest lands, health, transportation, tourism, and economic endeavours have been estimated at more than USD 9 billion.²³

The ASEAN Haze Agreement recognised that transboundary haze pollution resulting from land and forest fires should be mitigated through concerted national efforts and international cooperation.²⁴ The Agreement comprehensively addresses all aspects of fire and haze, including prevention, emphasising the underlying causes, monitoring, and mitigation. An ASEAN Transboundary Haze, Pollution Control Fund, was established to implement the Agreement.

As significant transboundary haze events have repeatedly shown over the past 20 years, transboundary air pollution from haze has yet to be contained. One of the significant deficiencies within the ASEAN Haze Agreement is that the parties have no obligations to

¹⁹ ASEAN Secretariat (2020) *Framework for Improving ASEAN Infrastructure Productivity*, p14.

²⁰ ASEAN Secretariat (2020) *Framework for Improving ASEAN Infrastructure Productivity*, p14.

²¹ <https://asean.org/book/asean-taxonomy-for-sustainable-finance/> (last accessed 10 August 2023)

²² <http://environment.asean.org/asean-cooperation-on-transboundary-haze-pollution/>

²³ <http://environment.asean.org/asean-cooperation-on-transboundary-haze-pollution/>

²⁴ ASEAN Agreement on Transboundary Haze Pollution, Article 3.

prevent or mitigate the causes of air pollution, only to “prevent and monitor transboundary haze pollution” (under Article 4.1). Whilst the ASEAN Haze Agreement recognises that existing international environmental law principles require a country to prevent transboundary damage²⁵, the main focus of the ASEAN Haze Agreement was to monitor and provide information to other parties in the event of haze pollution.²⁶

Although it has been suggested that the ASEAN Haze Agreement was unsuccessful in preventing further pollution from haze and burning, it provides a model for cooperation on transboundary issues. The ASEAN Haze Agreement established the ASEAN Coordinating Centre and created monitoring and assessment requirements. Part III of the ASEAN Haze Agreement also provides for technical cooperation and scientific research. It also made institutional arrangements and established a Secretariat.

Without clear reporting obligations, it is difficult to determine compliance with the agreement.

Bangkok Declaration on Combating Marine Debris in ASEAN Region 2019 (Bangkok Declaration)

This Declaration on 22 June 2019 updated the East Asia Summit Leaders’ Statement on Combating Marine Plastic Debris on 15 November 2018 to take concrete actions in combating marine plastic debris, in particular, to strengthen regional and international cooperation by exploring the possible development of a regional plan of action and guidelines and promoting efforts to support the development of national action plan to prevent, reduce and manage marine plastic debris.

The Declaration seeks to promote inter-sectoral coordination to effectively address impacts and stem the sources of marine debris pollution. ASEAN further adopted the Framework of Action on Marine Debris in the same year, which comprises four priority areas for collaboration to combat marine litter, particularly (1) policy support and planning; (2) research, innovation, and capacity building; (3) public awareness, education, and outreach; and (4) private sector engagement. Each of these priorities is accompanied with suggested actions and corresponding activities.

To further implement both the Declaration and Framework, the ASEAN Regional Action Plan for Combating Marine Debris (2021-2025) was adopted in May 2021. Through 14 regional actions, the Action Plan implements the Bangkok Declaration and Framework by enhancing coordination at the regional and international levels for achieving sustainable management of coastal and marine environments and responding to marine plastic pollution. Furthermore, the ASEAN Framework on Circular Economy adopted in 2021 provides a structured framework for ASEAN member states and stakeholders to adopt the circular economy approach in achieving the sustainable economic development objectives.

Other waste-related policies in ASEAN include a Joint Declaration on Hazardous Chemicals and Wastes Management in 2017 where ASEAN Member States (AMS) agreed to strengthen

²⁵ ASEAN Haze Agreement, Article 3.

²⁶ Article 4, General Obligations. Part II deals with Monitoring, Assessment, Prevention and Response.

cooperation and coordination towards the environmentally sound management of hazardous chemicals and wastes, particularly its recycling, recovery and treatment; and continue efforts to minimise adverse impacts of release of hazardous wastes, especially on human health and the environment. The Declaration also encouraged each ASEAN Member State not yet party to ratify the Basel Ban Amendment and Minamata Convention and to accelerate their implementation. This was followed in 2019 by the ASEAN Foreign Ministers' Statement on Illegal Transboundary Movement of Hazardous Waste and Other Wastes in Southeast Asia, reiterating similar goals.

ASEAN Sub-Regional Agreements

Mekong River Agreement 1995

The 1995 *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin* (the Mekong River Agreement) requires member countries to provide notification and have prior consultations to discuss transboundary impacts for water projects in the Mekong River Region that may have an impact on neighbouring countries before any commitment is made to proceed.²⁷

The Mekong River Agreement was signed in Chiang Mai, Thailand, on 5 April 1995. The UN established the Mekong Committee in 1959. Still, the Mekong Agreement reflected the decision by Cambodia, Lao PDR, Thailand and Viet Nam to establish a regional framework for cooperation along the Mekong Basin. From the outset, the Mekong River Agreement was focussed on sustainable development, utilisation, conservation and management of the Mekong Basin.²⁸

Heart of Borneo Declaration

One other model used in an ASEAN Regional context, though not an ASEAN agreement itself, is the Heart of Borneo (HoB) Declaration and the programmes attached to the Declaration. The Heart of Borneo initiative arose from a WWF programme to protect Borneo, the world's third largest island, with a population of 16 million, which accounts for just 1% of the world's land yet holds approximately 6% of global biodiversity in its rich, tropical forests.²⁹ The HoB covers approximately 200,000 square kilometres of ecologically inter-connected rainforest in Kalimantan (Indonesia), Sabah and Sarawak (Malaysia), and Brunei Darussalam. The total approximate area for the HoB is around 30% of the island's land area.³⁰

In February 2007, the three governments of Borneo - Brunei, Indonesia and Malaysia - demonstrated their commitment to securing a sustainable future for Borneo's highland rainforest by The Heart of Borneo Declaration.³¹ The Declaration commits the three countries to a shared conservation vision to ensure the effective management of forest resources and the creation of a network of protected areas, sustainably-managed forests

²⁷ Mekong River Commission, *Transboundary EIA*, <http://www.mrcmekong.org/about-mrc/programmes/environment-programme/transboundary-eia/>

²⁸ Preamble, Mekong Agreement.

²⁹ http://wwf.panda.org/what_we_do/where_we_work/borneo_forests/

³⁰ Heart of Borneo Strategic Plan of Action, 2008.

³¹ Koh, Volume II, p.195

and land-use zones across the 22 million hectares which constitute the Heart of Borneo - an area which covers almost one-third of the whole island.³²

However, the Heart of Borneo Declaration remains a voluntary agreement for transboundary cooperation to achieve sustainable development for the area.³³ There are no principles or definitions to assist in determining what sustainable development means or any specific action plans within the Declaration.

Following the Heart of Borneo Declaration, in 2008, the three governments adopted a Strategic Plan of Action that consisted of five main programs and 21 proposed actions. The programs were:

- Transboundary management;
- Protected Areas Management;
- Sustainable Natural Resources Management;
- Ecotourism Development;
- Capacity Building.

There is also no mention of EIA, Transboundary EIA or Strategic Environmental Assessment as tools to achieve any elements of the Strategic Plan of Action. Instead, the Strategic Plan of Action focuses on reviewing the HoB initiative to align with each country's Constitution and Legislation.

Coral Triangle Initiative

The Coral Triangle Initiative on Corals Reefs, Fisheries and Food Security (CTI) was launched in 2007 as a multilateral partnership among six countries – Indonesia, Malaysia, Papua New Guinea, Philippines, Solomon Islands and Timor Leste. ASEAN has endorsed the initiative.³⁴ The CTI is managed through a Secretariat based in Jakarta. On 15 May 2009, the CTI released its Regional Plan of Action (RPA). This RPA is a non-binding document aimed to conserve and sustainably manage coastal and marine resources within the Coral Triangle Region. It specifically takes into consideration the laws and policies of each member country.

The RPA recognised nine guiding principles under the CTI process. These include principles that the CTI should follow:

- support people-centred biodiversity conservation, sustainable development, poverty reduction and equitable benefit sharing;
- be based on solid science;
- use existing and future forums to promote implementation;
- be aligned with international and regional commitments;
- recognise the transboundary nature of some important marine natural resources; and
- be inclusive and engage multiple stakeholders.

³² wwf.panda.org/what_we_do/where_we_work/borneo_forests/about_borneo_forests/declaration.cfm

³³ Heart of Borneo Strategic Plan of Action, 2008, p.6.

³⁴ Koh, Vol II, p.569

The CTI provides an extensive series of programs and commitments. However, one deficiency is that the RPA does not refer to EIA or SEA. Significant work has been undertaken on the management of marine areas and the development of marine protected areas. However, a considerable gap is a lack of a program dealing with the integration of environmental assessment of land or sea-based activities on the sustainability of the ocean's resources. The increasing development of the coastal zone, not only for livelihoods but also for tourism and industry, is a growing problem. In addition, ship and sea-based activities, including offshore petroleum and gas explorations, have all threatened the marine environment.³⁵

Conclusions

From these international and regional conventions, it can be observed that the structure and formatting are based on a standard style with a Preamble, Definitions, Principles, General Provisions, Operational Provisions and Concluding Provisions. The concluding provisions will also include the requirements for adoption, ratification and implementation. The current discussion draft document (Document AEG WG 1M.10) adopts this standard format.

As the ASEAN Environmental Rights Framework is currently being prepared as a document for the AICHR, no provisions are included for adoption, ratification and implementation. The provisions contained in Parts IV and V (Articles 18 – 22) of the ASEAN Agreement on Transboundary Haze Pollution can be adopted should those provisions be required. Table 4 (below) outlines some of the final provisions of the Aarhus Convention and Escazu Agreement.

Table 4: Final Provisions: Aarhus Convention and Escazu Agreement

	Aarhus Convention October 30, 2001 (entry into force)	Escazu Agreement April 22, 2021 (entry into force)
Implementation Assistance	Non-confrontational, non-judicial and consultative compliance review	Consultative, transparent, nature, non-adversarial, non-judicial and non-punitive (compliance committee)
Settlement of disputes	Negotiation/ other means of acceptable dispute settlement	Negotiation, acceptable dispute settlement (i.e. arbitration, mediation)
Capacity building and cooperation	-	<ol style="list-style-type: none"> 1. Capacity building <ol style="list-style-type: none"> a. Strengthen national capacities 2. Cooperation <ol style="list-style-type: none"> a. Consideration of least developed countries b. Activities and mechanisms c. Partnerships d. Information-sharing
Others	<ol style="list-style-type: none"> 1. Right to vote 2. Secretariat 3. Amendments 4. Signature 5. Depositary 6. Ratification, acceptance, approval and accession 7. Entry into force 8. Withdrawal 	<ol style="list-style-type: none"> 1. Clearing-house 2. National implementation 3. Voluntary fund 4. Right to vote 5. Secretariat 6. Amendments 7. Signature, ratification, acceptance, approval and accession 8. Entry into force 9. Reservations 10. Withdrawal

³⁵ Fourth ASEAN State of the Environment Report, 2009, p.49.

		11. Depositary
--	--	----------------

It is also difficult to draw conclusions about the obligations in ASEAN agreements and the other MEAs referred to in this document. One conclusion is that the obligations under the MEAs in Tables 1 and 2 required implementation through national laws, regulations and policies. For example, the obligations under the Transboundary Haze Agreement and the Bangkok Declaration are primarily on cooperation, assistance and monitoring. There is considerable focus on technical cooperation to develop national action plans.

In relation to the development of the Environmental Rights Framework, the text can identify rights and obligations. Other matters, including those identified in Table 4, will need to be the subject of further discussion.

For further reference:

Center for International Environmental Law (CIEL) (2022). Overview of the typology of international legal instruments towards a new instrument addressing the entire life cycle of plastics.

ESCAP (2022). Technical Report and Recommendations to Strengthen Environmental Impact Assessment Procedures in ASEAN

UNEP (2021). An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision Making in the Asia Pacific. Technical Briefing Paper prepared for Expert Meeting on Human Rights and the Environment.

UNEP (2022). Overview of working documents presentation. A technical briefing for the plastics treaty on Nov. 3, 2022.