

## Submission from Regional CSO Consultation on ASEAN Environmental Rights Framework

30 April 2024

The Association of the Southeast Asian Nations has affirmed commitment to the environmental rights, particularly on the right to a safe, clean and sustainable environment and the right to development as guaranteed under the Article 28 and 35, of the ASEAN Human Rights Declaration, respectively. ASEAN's commitment to environmental protection has further been specified in the ASEAN-UN Plan of Action 2021-2025 and specifically in its linkages to human rights under the ASEAN Intergovernmental Commission on Human Rights (AICHR) Five-Year Work Plan 2021-2025. At the national level, 5 out of 10 ASEAN Member States (AMS) provide legal recognition of the right to a healthy environment through national constitutions.

The AICHR is currently leading the regional effort to develop a regional framework on environmental rights. It has established the ASEAN Environmental Rights Working Group (AERWG) which includes representatives from AICHR, ASEAN Commission on the Promotion and Protection of the Right of Women and Children (ACWC) and civil society representatives to lead in the multi stakeholder consultation process of the framework's development. AERWG has since met three times in August 2023, November 2023 and most recently in February 2024 to discuss the development of the working draft including suggestions from AMS and civil society. Following the third meeting, the working draft was released for public consultation. The consolidated inputs will then be the subject of discussion of the AERWG in its fourth meeting scheduled in May 2024.

With the view to ensure the regional environmental rights framework is adopted on the highest possible human rights standards, the Asian Forum for Human Rights and Development (FORUM-ASIA), in partnership with Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) and Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) organized a regional consultation for CSOs with human rights and environmental expertise to produce a joint consolidation of inputs to be presented for the next AERWG meeting. This submission is generated from the regional consultation which was conducted on 18-19 April 2024 in Jakarta. The event was held in hybrid mode and was attended by various civil society organizations working on environmental rights and its intersectionality.<sup>1</sup>

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<sup>1</sup> Commission for Disappeared and Victims of Violence (KontraS), Indonesian Legal Aid Foundation (YLBHI), Institute for Policy Research and Advocacy (ELSAM), ASEAN SOGIE Caucus (ASC), ASEAN Youth Forum (AYF), Asia Justice and Rights (AJAR), Indonesian Centre for Environmental Law (ICEL), Publish What You Pay ID-PH, Karapatan Alliance Philippines (KARAPATAN), Purple Action for Indigenous Women's Rights (LILAK), Suara Rakyat Malaysia (SUARAM), Pusat KOMAS, Indonesian Legal Aid and Human Rights Association (PBHI), Human Rights Working Group (HRWG), International Women's Rights Action Watch Asia Pacific (IWRAW AP), Business & Human Rights Resource Centre (BHRRC), Philippine Collective for Modern Heroism (Dakila), Task Force Detainees of the Philippines (TFDP) and Asia Indigenous Peoples Pact (AIPP)

During the two-day event, the groups discussed the current state of the working draft and provided general recommendations for its improvement as well as specific recommendations for each section. The groups also suggested possible revisions of specific sections for the consideration of AERWG.

From the two days consultation, the group have observed the following:

- Lack of compliance with the international human rights standard and principles

The groups agreed that the current draft does not meet the international standard, in comparison with existing regional environmental rights instruments such as the Aarhus Convention and Escazu Agreement. The draft also does not explicitly mention or indicate compliance of ASEAN Member States to the relevant international human rights treaties and other non-binding agreements related to the environmental rights, while only mentioning ASEAN regional standard, such as the ASEAN Human Rights Declaration – a document that has been criticized by civil society as also below the international standards. It also lacks affirmation to human rights principles such as the principles of equality and non-discrimination and principles of transparency and accountability that are crucial to guide any subsequent implementation documents.

- Lack of clarity and definition on terminology

The draft lacks clear definitions that can be used as a regional standard setting for environmental rights protection. For example, under Article 28 (1), the term “large-scale” was used in referring to activities that would require an environmental impact assessment. However, this term was prescribed without clear parameters for what constitutes “large”. Furthermore, Article 29 uses the term “relevant to their age and circumstance” in prescribing children and youths’ right to environmental rights education. This term is not only vague but is also ambiguous as it may be interpreted to exclude people of a certain age and circumstance from being provided with environmental education.

- Weak obligation from the AMS and corporation

The entire draft does not specifically provide recognition that AMS are increasingly becoming the perpetrators of environmental rights violations. Further, several articles related to obligations are followed by conditional clauses, such as “when appropriate” or “with appropriate standards”, which will open ambiguity and multi-interpretation, with potential to be misused by AMS under the current authoritarian regimes. There is also no sense of urgency in the document that reflects the AMS’ strong commitment to address the

issues of environmental rights in ASEAN. There should be contextual reflection on the need for AMS to prioritize this issue. Further, the draft does extend obligations for environmental rights protection to the private sector.

- No recognition to the EHRDs and Indigenous Peoples

The draft as of now does not recognize protection for environmental rights defenders, indigenous peoples and affected communities. For example, under Article 21 and 22, despite being specified to address recognition and protection of those who promote and defend environmental rights, the section has instead left out using the term 'environmental human rights defenders' or even 'human rights defenders. Furthermore, under Article 17 which addresses the right of free, prior and informed consent (FPIC) for activities that are likely to impact surrounding communities, it specifically excludes any reference of indigenous peoples' rights to FPIC despite them being the subject of the majority of land disputes due to arbitrary use of indigenous land by the public and private sector.

- Lack of clarity on the cooperation among AMS and ASEAN bodies on implementation

The draft at the moment does not include the plan on how AMS and relevant ASEAN bodies under three pillars, as well as ASEAN dialogue partners, will cooperate in implementing, monitoring, and reviewing the draft declaration and its subsequent action plans.

Overall, the groups agreed that the language which prescribes obligations for AMS needs to be strengthened to maximize its fulfillment. The groups believe that for the draft to achieve its goal to ensure maximum protection on environmental rights, it would benefit greatly from an extended consultation process with public and civil society organizations. It is also crucial for the consultations to be thoroughly inclusive to members of the public and civil society who have historically been negatively impacted by inadequate fulfillment of environmental rights, particularly indigenous peoples.

Noting the vulnerability of the Southeast Asian region to climate change and disasters, it is crucial for ASEAN to adopt a stronger regional environmental rights instrument that will be inclusive and participatory even to the most affected individuals and communities. It is important for the AICHR and AMS to thoroughly consider these suggestions from the public and civil society organizations and show that its commitment to fulfill the environmental rights is not merely on paper. This must start with a significantly more comprehensive framework/declaration.

## **Annex. Input from CSO Consultation on ASEAN Environmental Rights Declaration**

### **PREAMBLE**

#### **General Suggestions:**

1. Acknowledge the 1998 UN Declaration on Human Rights Defenders
2. Acknowledge the 2012 ASEAN Declaration on Environmental Sustainability
3. Acknowledge the 2015 ASEAN Post-2015 Environmental Sustainability and Climate Agenda
4. Acknowledge the 2018 United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas
5. Acknowledge the 2019 Human Rights Council Resolution on Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development
6. Add an acknowledgment of obligation to AMS to fulfill the right to a safe, clean, and sustainable environment.
7. States have wide-ranging obligations to respect, protect, and human rights in the environmental context. Considering existing obligations that AMS have set to themselves by becoming parties to various international human rights treaties, AMS should articulate their obligations under the Environmental Rights Declaration consistent with States' obligations under international human rights law including principles of international human rights law.
8. Just as principles of international environmental law are already mentioned in the preamble of the Draft Declaration, principles of international human rights law should also be mentioned. Human rights principles relevant to guide the implementation of the Declaration include the principles of equality and non-discrimination, intergenerational equity principle, preventive principle, and principles of non-regression and progressive realization.

## OBJECTIVE

### General suggestions:

1. There should be a DEFINITION section to clarify the terms used in the declaration. The DEFINITION section should be placed prior to the OBJECTIVE section or right after it.
2. Should add another point in the OBJECTIVE section perhaps in number (6) for a monitoring mechanism regarding the implementation of the objective to ensure its proper implementation. It can read as follows:
  - a. Ensuring the implementation and protection of environmental rights through building and developing effective monitoring mechanisms involving relevant stakeholders, including business, academics, NGOs and civil society organizations.

Articles	Comments	Suggested Revision
1. The Objective of the Declaration is to advance and implement the right to a safe, clean, healthy and sustainable environment to address environmental rights issues by:	Rationale for the suggested revision is prescribed under the Comments section of Article 1(2) below.	The Objective of the Declaration is to advance and implement the right to a safe, clean, healthy and sustainable environment <b>[of present and future generations]</b> and to address environmental rights issues by:
(1) Respecting, protecting, promoting and fulfilling the right to a safe, clean, healthy and sustainable environment.	What is the definition of “sustainable environment”? - we need a specific definitions section.	
(2) Protecting, conserving and restoring the environment for present and future generations.	A way to better embody the principle of intergenerational equity would be to recognize the right to a safe, clean, healthy and sustainable environment of present and of future generations. The objective of the Draft Declaration as it stands is to “advance and implement the right to a safe, clean, healthy and sustainable environment and addressing	

	<p>environmental rights issues by” and then five numerals are included including “Protecting, conserving and restoring the environment for present and future” generations (Article 1.2). Recognizing the rights of present and future generations to the right to a safe, clean, healthy and sustainable environment would help clarify that rights of future generations are as important as those of present generations in line with the principle of equality and non-discrimination.</p>	
<p>(3) Promoting the full and effective implementation of the rights of access to environmental information, public participation in environmental decision-making and access to justice based on the rule of law, and effective remedies in environmental matters for every person, particularly groups in vulnerable situations.</p>	<ul style="list-style-type: none"> <li>● The term “Rule of law” may pose issues when applied nationally. We are often seeing the law being weaponized to silence human rights defenders. The term must be extended to comply according to international human rights standards</li> <li>● The Draft Declaration refers to rule of law under Article 1.3. Rule of law and accountability is one of the principles of the human rights-based approach. Considering that the Draft Declaration is both a human rights and environmental declaration, reference to the principle of environmental rule of law instead of “rule of law” is more suitable. Reference to environmental rule of law would also be a way to better weave human rights principles with environmental principles.</li> </ul>	

	<ul style="list-style-type: none"> <li>• There should be a mention of businesses and multinational/foreign investment companies in regard to remedy/accountability as they are often the perpetrators of environmental rights violations.</li> </ul>	
(4) Providing an enabling environment for the exercise of the right to a safe, clean, healthy and sustainable environment: and		
(5) Protecting and supporting those who promote and strive for environmental rights.	<p>It is good to add the word “recognizing” to make sure they are recognized as defenders instead of being subjected to criminalization.</p> <p>It is better to use the terms “<b>environmental human rights defender</b>” or “<b>human rights defender</b>”</p>	<b>Recognizing</b> , protecting, and supporting those who work for the <b>promotion, advancement, and defense</b> of environmental rights, <b>in full recognition of the latter as basic human rights.</b>
<p><i>[Alternative editorial formulation</i></p> <p><i>1. Respecting, protecting, promoting and fulfilling the right to a safe, clean, healthy and sustainable environment requires conserving and restoring the environment for present and future generations and an enabling environment for the exercise of these rights, through access to environmental information, public participation in environmental decision-making and access to justice based on the rule of law, and effective remedies</i></p>	If the section will be synthesized under one article, it must encompass all the suggestions above.	

<p><i>in environmental matters for every person, particularly groups in vulnerable situations. The right to a safe, clean, healthy and sustainable environment is also enabled by protection and support for those who promote and strive for environmental rights.]</i></p>		
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## GENERAL PROVISIONS

### General comments:

1. This section is not inclusive yet. It should include terms relating to other minority groups such as women in extreme poverty, LGBTIQ, and persons with disabilities.
2. Ideally, AMS should be regarded as accountable to the provisions. E.g. "AMS recognizes the right of every person to a safe, clean, healthy and sustainable environment..." At present, most provisions are simply in statement form.

Articles	Comments	Suggested Revision
<p>2. Every person has the right to a safe, clean, healthy and sustainable environment, which includes clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water and adequate sanitation, healthy and sustainably produced food, and non-toxic environments</p>	<ul style="list-style-type: none"> <li>• There must be consideration of other business and human rights issues such as forced eviction, land issues. Especially on how it impacts people's livelihood. Currently, there's no mention of livelihood.</li> <li>• The provision can also reference the substantive and procedural elements covered in the declaration.</li> </ul>	<ul style="list-style-type: none"> <li>• Every person has the right to a safe, clean, healthy and sustainable environment, which includes clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water and adequate sanitation, healthy and sustainably produced food, [<b>an adequate and decent livelihood</b>], and non-toxic environments.</li> <li>• Every person has the right to a safe,</li> </ul>



		<p>clean, healthy and sustainable environment, which <b>[is composed of substantive and procedural interdependent elements. The substantive elements include:]</b> clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water and adequate sanitation, healthy and sustainably produced food, and non-toxic environments. <b>[The procedural elements include access to information, public participation and access to justice in environmental matters].</b></p>
<p>3. Every person has the right to protect the environment, contribute to its protection and improvement, prevent pollution, combat climate change, promote biodiversity and prevent damage to the environment.</p>	<ul style="list-style-type: none"> <li>● The duty to protect the environment is borne by the State. It forms part of the States' accountability.</li> <li>● Include/highlight contributions of and impacts on marginalized, affected communities– particularly indigenous peoples, environmental rights defenders, women. Perhaps a separate article on this specific provision is needed.</li> <li>● This article should also guarantee the people's exercise of this right through guaranteeing their freedom of opinion and expression.</li> <li>● Prioritize indigenous peoples – traditional knowledge/wisdom</li> </ul>	

<p>4. The Declaration should be implemented in line with international and ASEAN standards, national circumstances and domestic law, and with the adoption of necessary legislative, regulatory, administrative, or other measures guided by principles recognized in international law.</p>	<ul style="list-style-type: none"> <li>● The emphasis on ASEAN standards should not compromise the work towards full protection of environmental rights.</li> <li>● There should be an emphasis on international law standards particularly on matters relating to accountability.</li> <li>● The challenges at the local/community level should be addressed to ensure maximum implementation.</li> <li>● An additional provision to compliment this provision could also be adopted as follows:  <b>This Declaration stresses the obligation of state parties in the protection of the rights of those working to promote and protect the environment and human rights as stated under national and international laws, standards, and mechanisms.</b></li> </ul>	
<p>5. To the extent possible, this Declaration should apply to the private sector.</p>	<ul style="list-style-type: none"> <li>● There should be stronger emphasis on the role of the private sector <i>vis a vis</i> the realization of environmental rights.</li> <li>● The declaration should apply to both public and private sector</li> </ul>	
<p>6. No provision in this Declaration should limit or repeal other more favourable rights and guarantees set forth, at present or in the future, in the</p>	<ul style="list-style-type: none"> <li>● The term 'more favourable rights' is very vague. What does it mean?</li> <li>● Remove the word 'more'. Instead, it can be revised to 'other</li> </ul>	

<p>legislation of a Member State or in any other international agreement to which an AMS is party or prevent a State from granting broader access to environmental information, public participation in the environmental decision-making process and justice in environmental matters.</p>	<p>favourable rights'.</p> <ul style="list-style-type: none"> <li>• Localized information/wisdom must be promoted and strengthened including those that disseminated from indigenous languages.</li> <li>• Engagement/participation of indigenous communities must be secured to ensure their valuable inputs are thoroughly considered in these processes.</li> </ul>	
<p>7. There is need for greater protection for those working to promote and protect the environment and human rights under national laws and recognizes the important role of national human rights institutions in supporting and promoting the enjoyment of the human right to a safe, clean, healthy, and sustainable environment.</p>	<ul style="list-style-type: none"> <li>• This provision is potentially repetitive. This could be combined with number 4.</li> <li>• The language should be strengthened: It should be prescribed as “ASEAN Member States <u>should</u> guarantee greater protection.....”</li> <li>• International standards and mechanisms should be highlighted.</li> <li>• The role of civil society organizations must be highlighted here.</li> <li>• There should be inclusion of relevant government agencies as well for accountability.</li> <li>• The sentence following “recognizes” makes the sentence construction of this provision confusing. It is also unclear who “recognizes” here? This Declaration? The AMS?</li> </ul>	<p><b>[ASEAN Member States should guarantee greater protection and recognition]</b> for those working to promote and protect the environment and human rights <b>[free from threat, restriction and intimidation]</b>.</p> <p>An additional/alternative provision that compliment this provision could also be adopted as follows:</p> <p><b>This Declaration</b> recognizes the important role of national human rights institutions <b>and other relevant government agencies, including but not limited to agencies working on environment-related concerns</b>, in supporting and promoting the enjoyment of the human right to a safe, clean, healthy, and sustainable environment.</p>

<p>8. Special measures are needed to ensure children, youth, people with disabilities, and other vulnerable groups can exercise their environmental rights.</p>	<ul style="list-style-type: none"> <li>• The term “special measures” is vague, what does it mean?</li> <li>• The provision should specifically include indigenous people, women and LGBTQIA+ peoples</li> </ul>	
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## ENABLING ENVIRONMENT FOR THE EXERCISE OF ENVIRONMENTAL RIGHTS

### General Suggestions:

1. Add a new point under Article 12. Perhaps point (5) to combat judicial harassment and red tagging.
2. Add a new point under Article 12 on AMS’ responsibility to ensure accountability and access to remedies, e.g. “ensure accountability against environmental rights violations and access to remedies for impacted communities”.
3. Add another point under Article 12 on monitoring as follows:
  - Devise monitoring mechanisms to ensure that the aforementioned plans and actions are undertaken, and exercise due diligence in the performance of obligation to promote and protect environmental rights.

Articles	Comments	Suggested Revision
<p>9. Every person should be guaranteed a safe and enabling environment to ensure the exercise of environmental rights free from threats, harassment, intimidation, violence, restriction or insecurity.</p>	<ul style="list-style-type: none"> <li>• “Every person should be guaranteed” is a passive statement. This should be a positive obligation. Suggest changing into: “ASEAN Member State should guarantee....”</li> <li>• It should be specified that the threats, harassment, intimidation, violence, restriction or insecurity could come from both online/offline setting.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Suggest to also add acknowledgement to exercise the rights free from criminalization, killing and enforced disappearance,</li> <li>• "...restriction or insecurity." should be changed to "restrictions, insecurity and other forms of abuse." The use of "other forms of abuse" makes the list in this provision non-exhaustive.</li> </ul>	
10. Any person who exercises their right to a safe, clean, healthy, and sustainable environment should be protected from threat and retaliation in any form and should not be subject to civil, administrative or criminal proceedings.	<ul style="list-style-type: none"> <li>• This provision should be expanded to specify the potential perpetrators and the type of threat and retaliation that may be done by them.</li> </ul>	
11. The exercise of human rights, including the freedom of opinion and expression, including to hold opinions without interference, the freedom to seek, receive and impart information, to participate in the conduct of government and public affairs, and the right to an effective and enforceable remedy, is vital to the respect, protection and promotion of the right to a safe, clean, healthy and sustainable environment.	<ul style="list-style-type: none"> <li>• The language here is more of a statement. There should be corresponding duty or right/protection guaranteed for it to be a substantive provision.</li> <li>• The language of this article can be aligned with what has been followed in previous Declaration such as ASEAN Human Rights Declaration. There is also a need for consistency in framing each principle.</li> </ul>	
12. AMS should:	<ul style="list-style-type: none"> <li>• Within "legal protection to individuals," it should also include</li> </ul>	

<p>(1) develop, enact and enforce legislation and policies to provide legal protection to individuals, groups and communities who, in their personal and professional capacity, and in a peaceful manner, strive to protect and promote environmental and human rights.</p>	<p>adequate grievance mechanisms.</p> <ul style="list-style-type: none"> <li>• What qualifies as and as not "peaceful manner"?</li> </ul>	
<p>(2) prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.</p>	<ul style="list-style-type: none"> <li>• The prohibition should include "...against attacks, threats and intimidations" instead of just "discrimination".</li> </ul>	
<p>(3) provide legal protection for whistle-blowers who disclose environmental information in order to protect the environment and the community.</p>	<ul style="list-style-type: none"> <li>• There should be an expansion to "legal protection for whistle-blowers". This term of whistle-blowers indicates that they are only covering government employees who are sharing information to the public. However, in reality, it is usually HRD, CSO, communities in indigenous areas who are disclosing how harmful certain practices are to the environment.</li> <li>• Suggestion: change the term "whistle blowers" with "the people/community providing information". Considering the negative image and stigma of "whistle blowers" term.</li> </ul>	
<p>(4) respect and protect the rights to</p>	<ul style="list-style-type: none"> <li>• The language could be</li> </ul>	

<p>freedom of expression, association and peaceful assembly in relation to environmental matters.</p>	<p>strengthened to “Recognise, respect and protect...”</p> <ul style="list-style-type: none"> <li>• There should be recognition to protect the knowledge of indigenous peoples.</li> <li>• This provision needs to ensure that these rights (FoE, FoAA, RTP) are protected also complying with the international standards since these are fundamental rights and protection but its implementation varies in different national laws and context.</li> </ul>	
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## ACCESS TO INFORMATION IN ENVIRONMENTAL MATTERS

### General comments:

1. People who have the access (HRD, CSOs) can freely ask to access, while those in more vulnerable situations or in rural areas, are heavily projected by the National Program. They have to request for access. As such when talking about the term “access”, there needs to be additional information about how to access it.

Articles	Comments	Suggested Revision
<p>13. Every person has the right of access to environmental information, including the right to seek, impart and access environmental information request environmental information from public authorities.</p>	<ul style="list-style-type: none"> <li>• There should be an addition for the right to “receive” information.</li> <li>• Where possible, the right should extend to gain access to information from private authorities.</li> </ul>	<p>Every person has the right of access to environmental information, including the right to seek, <b>[receive]</b>, impart and access environmental information <b>[and]</b> request environmental information from public and private authorities.</p>
<p>14. AMS should: (1) ensure that information on</p>	<ul style="list-style-type: none"> <li>• The information should also be delivered in time. The time frame of delivery will depend on a case-</li> </ul>	<p>ensure that information on environmental matters <b>[is]</b> proactively collected, compiled, published and made accessible</p>

<p>environmental matters to be proactively collected, compiled, published and made accessible, delivered in appropriate languages, and culturally appropriate format through electronic and other means on an ongoing and transparent basis.</p>	<p>by-case basis but it should provide for ample time for the public to access it.</p> <ul style="list-style-type: none"> <li>• The use of the term “appropriate languages” can potentially be discriminatory and exclusive. Suggest to change to “various languages”</li> <li>• The information should be made accessible to persons with disabilities</li> </ul>	<p>including <b>[for persons with disabilities, delivered in various languages including indigenous languages used in the country as needed, and culturally appropriate and respectful]</b> format through electronic and other means on an ongoing and transparent basis.</p>
<p>(2) ensure that information is made available as soon as possible after a request has been submitted and disseminated in a systematic, proactive, timely, regular, accessible and comprehensible manner.</p>	<ul style="list-style-type: none"> <li>• There needs to be a specific timeframe instead of “as soon as possible”. This is so that the people can understand how long they should wait after making a request. This could follow the standard as per the set international norms. The existing framing in the provision states “as soon as possible” which could be vaguely interpreted.</li> </ul>	<p>ensure that information is <b>[updated and accessible within a specified timeframe]</b> after a request has been submitted and disseminated in a systematic, proactive, timely, regular, accessible and comprehensible manner.</p>
<p>(3) guarantee that environmental information systems are duly organized, accessible to all persons and made progressively available online and by other means as may be appropriate and that no restrictions are placed on its reproduction or use [and by providing affordable, effective and timely access to information to any person upon request].</p>	<ul style="list-style-type: none"> <li>• On the term “providing affordable”. It should be changed to free of charge. AMS should endeavor to provide free information. And there are many ways to do this, e.g. uploading environment information online, putting them in one system that's accessible to the public, facilitating affected persons access to environmental information if they can't do it online. Putting a fee on it would</li> </ul>	<p>guarantee that environmental information systems are duly organized, accessible to all persons and made progressively available online and by other means as may be appropriate and that no restrictions are placed on its reproduction or use [and by providing <b>[free]</b>, effective and timely access to information to any person upon request].</p>



	negate its accessibility to all persons.	
(4) endeavour to ensure, to the extent practicable, that procedures are developed for the dissemination of environmental information in the various languages used in the country and prepare alternative formats that are comprehensible and culturally appropriate, in particular to those persons or groups in vulnerable situations, using suitable communication channels.	<ul style="list-style-type: none"> <li>Following various languages should include indigenous language.</li> </ul>	
(5) take measures through legal, regulatory or administrative measures to promote access to environmental information in possession of private sector entities, in particular, information on their operations and the possible risks and effects on human health and the environment.	<ul style="list-style-type: none"> <li>This should also cover impact assessment information.</li> </ul>	take measures through legal, regulatory or administrative measures to promote access to environmental information in possession of private sector entities, in particular, information their operations, <b>[impact assessments]</b> and the possible risk and effects on human health and the environment
(6) [ensure public and private sector entities prepare sustainability reports reflecting their social and environmental performance, including due diligence reporting, risk assessment for human rights and environmental impacts, and environmental, social and governance reporting.]	<ul style="list-style-type: none"> <li>This needs to be made available publicly and be specified as to where general members of the public can access. It must also be made in various languages.</li> <li>This actually uses stronger language as compared to Escazú (Art 6 Sec 3): "In accordance with its capacities, each Party shall encourage public and private companies, particularly large companies, to prepare</li> </ul>	

	<p>sustainability reports that reflect their social and environmental performance." In the Escazú provision above, "encourage" is underwhelming but realistic, since capacity and resources are important elements to consider. But if we can qualify what are "large companies", also with the assumption that such companies have the resources, then they should allocate some towards preparing sustainability reports.</p> <ul style="list-style-type: none"> <li>• For the present provision, "ensure" is definitely stronger than "encourage", but the scope for "public and private sector entities" is just huge. There should be some set criteria on who should be asked to do the reports.</li> </ul>	
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## PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

### General comments:

1. There is a lack of CSO's recognition in this section.

Articles	Comments	Suggested Revision
<p>15. Every person has the right to participate in decision-making in environmental matters. The right to participate should be safe,</p>	<ul style="list-style-type: none"> <li>• Information dissemination is highly related to public participation. This will be the basis in which the public can participate.</li> </ul>	

<p>meaningful, effective and at the earliest possible stage before decisions are taken, and while options are still open to the preparation of decisions on proposed activities, permits and other measures, plans, programmes, budgetary matters, activities, draft laws, regulations, and policies that may have a significant effect on the environment.</p>	<ul style="list-style-type: none"> <li>● Furthermore, with potential language barriers, platforms for participation must accommodate local/indigenous languages.</li> <li>● Need to cover FPIC in the designing, implementation and monitoring process including a mechanism to provide feedback.</li> <li>● In Indonesia: Lots of criminalization happens to those people exercising the right to participate. Suggestion: adding the monitoring obligation in making sure there is meaningful participation in the process.</li> <li>● There should be a consideration for impacted communities. Suggest to add "...may have a significant effect on the environment and impacted communities."</li> </ul>	
<p>16. AMS should: (1) develop and implement public participation procedures through legislation, regulations and policies. Public participation procedures should be developed and should promote public participation that is transparent, open, inclusive, meaningful and accountable.</p>	<ul style="list-style-type: none"> <li>● This should also take into account accessibility in the procedures including to make it in various languages.</li> <li>● There should be a corresponding duty on State and also on private entities to ensure that the public can participate in the process in a timely and efficient manner and hence inform them with the necessary information to effectively make way for the public participation in the decision-making</li> </ul>	

	<p>processes.</p> <ul style="list-style-type: none"> <li>• The public participation should also be inclusive to consultation form.</li> </ul>	
<p>(2) prepare special measures and procedures for people in vulnerable situations to ensure meaningful participation from them.</p>	<ul style="list-style-type: none"> <li>• The language could be strengthened by adding the word “implement” following “prepare”. As such it will read as “prepare and implement...”</li> <li>• The term special measures and procedures are vague and unclear. Does it relate to translation of documents, procedures, accessibility? If so, specify.</li> <li>• Does this cover other measures to ensure participation of affected communities?</li> </ul>	
<p>(3) promote and support the rights of women, children, youth and people with disabilities to meaningful participation in decision-making on environmental matters and their elected advocates.</p>	<ul style="list-style-type: none"> <li>• Add language of ‘other vulnerable groups’ to accommodate those who are not being mentioned or use ‘every person’</li> </ul>	<p>Opt 1: promote and support the rights of women, children, youth, people with disabilities and <b>other vulnerable groups including indigenous peoples</b> to meaningful participation in decision-making on environmental matters and their elected advocates.</p> <p>Opt 2: promote and support the rights of <b>every person</b> to meaningful participation in decision-making on environmental matters and their elected advocates</p>

<p>(4) develop legislation and judicial rules to combat and prevent Strategic Litigation against Public Participation (SLAPP) and provide training of the judiciary, prosecutors and the legal profession to ensure that SLAPP suits are not commenced or maintained by either State or private actors.</p>	<ul style="list-style-type: none"> <li>As an alternative to “commenced and maintained”, can also consider the term “initiated or encouraged” in reference to the SLAPP suits</li> </ul>	
<p>17. [Ethnic communities] in accordance with international standards, national laws and policies, have the right of free, prior and informed consent (FPIC) for activities likely to impact their communities.</p>	<ul style="list-style-type: none"> <li>It is best to include indigenous people (instead of using term “ethnic communities”)</li> <li>Why is there a need for removal of indigenous peoples when it has been reaffirmed by AMS. Reference: "Reaffirming...the 2007 Declaration of the Rights of Indigenous Peoples" in the preamble section.</li> </ul>	<p><b>Indigenous people</b> in accordance with international standards, national laws and policies, have the right of free, prior and informed consent (FPIC) for activities likely to impact their communities.</p>
<p>18. [Human rights and environmental due diligence and risk assessment for decisions or activities that are likely to have a significant impact on the environment or human rights should be incorporated by AMS into both public and private sector decision-making.]</p>	<ul style="list-style-type: none"> <li>To include consideration of the impact to the indigenous community into the decision-making factor</li> </ul>	<p>[Human rights and environmental due diligence and risk assessment for decisions or activities that are likely to have a significant impact on the environment, human rights <b>and or indigenous community</b> should be incorporated by AMS into both public and private sector decision-making.]</p>

## ACCESS TO JUSTICE AND EFFECTIVE REMEDIES IN ENVIRONMENTAL MATTERS

### General comments:

1. The UN recognizes that strengthening justice should include legal aid. Perhaps this is something that can also be considered in the declaration. Legal aid context: add free technical and financial assistance to the recognition and protection part.
2. Limitation on existing transboundary documents: there is no mention about the rights of the victims. In relation to this, this section needs to also ensure access to justice for victims of transboundary environmental issues. This can be done by adding new provisions in this section such as below:
  - a. ASEAN member states must ensure that all individuals and communities impacted by transboundary environmental issues are granted the right to access justice and pursue remedies for any harm inflicted by such activities.
  - b. States shall cooperate at the regional and international levels to ensure effective mechanisms for addressing transboundary environmental issues and facilitating access to justice for victims across borders.
3. Can add another point on Article 20 perhaps as point 20 (6) to ensure speedy delivery of justice as follows:
  - a. Ensure the speedy resolution and delivery of justice to cases and legal hurdles faced by those who promote and strive for environmental rights.

Articles	Comments	Suggested Revision
<p>19. Every person has the right to an affordable, effective and enforceable remedy in environmental matters, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by national laws, as well as international laws applicable in AMS.</p>	<ul style="list-style-type: none"> <li>● Stress that the accountability to guarantee this right is on AMS</li> <li>● Take out the term “applicable in AMS” and focus on international standards.</li> <li>● Change the word “affordable” to “free.”</li> <li>● The remedy should also be “accessible”</li> <li>● There should also be right to “access to justice” in addition to remedy.</li> <li>● The state could become the violence actor as well as by doing nothing to prevent it,</li> </ul>	<p>Opt 1  <b>ASEAN Member States</b> should guarantee the rights to a <b>free, accessible</b>, effective and enforceable <b>access to justice</b> and remedy in environmental matters which comply with international standards</p> <p>Opt 2 – to safeguard against potential inaction from the State</p> <p>Every person has the right to an affordable, effective, and enforceable remedy in environmental matters, to be determined by a court or other competent authorities, for acts violating the rights</p>

	<p>including judgements from courts. There will also be huge barriers on the lack of legal standing due inadequate environmental law in AMS.</p>	<p>granted to that person by national laws, as well as international laws applicable in AMS. <b>The ASEAN member states bear the responsibility to take proactive measures to protect environmental rights, and their failure to do so may result in accountability for any resulting harm or inaction.</b></p>
<p>20. AMS should: (1) promote and facilitate access to justice in environmental matters.</p>	<ul style="list-style-type: none"> <li>• Change “promote and facilitate” to “guarantee, promote and facilitate”. Apply to article (2), (3) and (5) as well.</li> <li>• To further promote the access to justice by especially vulnerable and marginalized communities, the declaration can ensure that AMS provides for free technical and legal assistance to communities, particularly those in the need and/or who are disproportionately impacted for facilitating their right for access to justice.</li> <li>• The assessment for impact should also take into account direct and indirect impacts.</li> </ul>	
<p>(2) promote a person’s right to a fair and prompt hearing by an independent and impartial tribunal in determining their rights, including with respect to environmental matters.</p>	<ul style="list-style-type: none"> <li>• Add the obligation to establish an independent and impartial tribunal to cover instances where it does not yet exist in an AMS State</li> <li>• The adjudicative body needs to have expertise in environmental matters. This needs to be stressed somewhere in this provision as a lot of judgment and orders passed</li> </ul>	<p><b>Guarantee, promote, facilitate and protect a person's right to a fair judiciary system and access to justice by and through an independent and impartial tribunal composed of subject matter experts</b> in determining their rights with respect to environmental matters.</p>

	<p>by courts not holding expertise in the matter jeopardizes these rights of accessing fair and appropriate justice by the communities.</p> <ul style="list-style-type: none"> <li>● In order to make sure that the tribunals own an adequate understanding on the environmental matters, may consider adding here that AMS should provide for training in this sense, to educate the tribunals' personnel and ensure their expertise on environmental matters relevant to their jurisdiction. The training may include the concept and definition of who are environmental defenders, considering that many of those practically affected by this provision would be environmental defenders.</li> <li>● Add context about the competence of the judiciary system on environmental issues. Access to justice also includes the individuals running the mechanism. Need to add points regarding capacity building for those people.</li> </ul>	
<p>(3) promote legal standing to access to justice and remedies, [including with respect to rectifications of breaches of an obligation under national law or] to prevent threatened harm to the environment and to challenge acts of public authorities or</p>	<ul style="list-style-type: none"> <li>● Need stronger language. Add: “guarantee, promote and facilitate”</li> <li>● Add breach against international law violations</li> <li>● Add consideration for harm that have existed now and potentially in the future.</li> </ul>	<p><b>Guarantee, promote, facilitate and protect</b> everyone’s legal standing to fully access justice and remedies [including with respect to rectifications of breaches of an obligation under <b>international and national laws</b> or] to <b>prevent existing and</b></p>



<p>private persons which contravene law.</p>		<p><b>potential harm</b> to the environment and to challenge acts of public authorities or private persons which contravene law.</p> <p>An alternative provision that compliment this provision could also be adopted as follows:</p> <p>Promote legal standing to access to justice and remedies, <b>which includes the provision of necessary assistance to those who promote and strive for environmental rights, including, but not limited to, legal aid, protective remedies for their safety and security, among others.</b></p> <p><i>*if this does not go well with the brackets in no. 3, this should be included as a separate provision (may be no. 4)</i></p>
<p>(4) consider measures to eliminate or minimize barriers to the exercise of the right of access to justice, including judicial rules of procedure in environmental matters and [precautionary and interim judicial] remedies.</p>	<ul style="list-style-type: none"> <li>• Make the language stronger. Suggestion: change “consider” to “eliminate” or add “ensure measures to prevent and eliminate”. Minimize should be deleted</li> <li>• To further ensure this, the declaration can include provision on reversed burden of proof on powerful and resourceful businesses to prove that they did not cause harm rather than solely placing the burden on the</li> </ul>	<p>Option 1</p> <p><b>Eliminate</b> barriers to the exercise of the right of access to justice, including judicial rules of procedure in environmental matters and [precautionary and interim judicial] remedies.</p> <p>Option 2</p> <p><b>Ensure measures to prevent and eliminate barriers to the full enjoyment</b></p>

	<p>communities themselves.</p> <ul style="list-style-type: none"> <li>• There should be a line saying "Burden of proof should not be placed on the affected individuals, groups or communities" or something to this effect.</li> </ul>	<p>of the right of access to justice, including judicial rules of procedure in environmental matters and [precautionary and interim judicial] remedies.</p>
<p>(5) promote the use of alternative and additional dispute resolution mechanisms to resolve disputes involving environmental matters, such as mediation, arbitration conciliation, or other means that allow such disputes to be prevented or resolved. [These mechanisms should not be used to achieve an outcome that would further violate human or environmental rights].</p>	<ul style="list-style-type: none"> <li>• Strengthen the language. Change to: "guarantee, promote and facilitate" or establish.</li> <li>• Addition: the use of grievance mechanism"</li> <li>• The term "use of alternative and additional" may not be appropriate.</li> <li>• Consider the context of how the mediation would work where the corporation becomes the mediator.</li> <li>• To resolve disputes involving environmental matters, such as through mediation, arbitration conciliation, or other means that allow such disputes to be prevented or resolved." → This is problematic, because communities can be strongly armed into using these alternative dispute resolution mechanisms as a result of the inherent power imbalance, therefore preventing proper access to justice.</li> </ul>	

## RECOGNITION AND PROTECTION OF THOSE WHO PROMOTE AND DEFEND ENVIRONMENTAL RIGHTS

### General suggestions

1. There are essentially no ‘recognition’ words that are mentioned in any of the articles which can be very problematic for states who have no fundamental laws on the recognition and protection of HRDs and EHRDs, including the recognition of forms of criminalization and discrimination towards HRDs and EHRDs itself (doxing, etc)
2. If the declaration will not use the term HRD or EHRD specifically, it will be better to revise the section title to: “RECOGNITION AND PROTECTION OF **[THE RIGHTS OF]** THOSE WHO PROMOTE AND DEFEND ENVIRONMENTAL RIGHTS”
3. There is a need for an additional point regarding recognition and accountability, specifically from the private sector. If protection is guaranteed by AMS, then recognition should also be an obligation of the private sector operating within the State.
4. In the context of youth activism, there has been a lot of elaboration from the states, but the fact is, states are only hiding behind “safe words”, for example the term “recognition” and “protection”. In Mary’s report, CSOs and other EHRD are not completely protected, and the states are blinded by the diplomatic words. Need to see beyond this to understand what “safe words” have been used.

Articles	Comments	Suggested Revision
<p>21. Every person and every group, including national human rights institutions, working to promote and protect the environment and human rights following national laws require further protection from threats and retaliation.</p>	<ul style="list-style-type: none"> <li>● Strongly oppose putting a person, group, and government institution in one group. This article needs to focus on HRDs whether as individuals or as communities.</li> <li>● There can be additional articles on institutions and relevant departments, that they should be equipped with adequate resources and capacity to protect those who defend the environment.</li> <li>● Although it can be perceived as a good will to include NHRI, but we should also include all groups mentioned in the general</li> </ul>	

	<p>provisions (women, people living in extreme poverty, indigenous groups, LGBTQIA+, migrants, Indigenous Peoples, etc) to remind the proper definition of who are considered as HRDs and EHRDs</p> <ul style="list-style-type: none"> <li>• We can also include other relevant government agencies, including but not limited to agencies working on environment-related concerns.</li> <li>• Should also include ‘domestic’ after national laws since there are domestic laws hampering environmental rights.</li> <li>• “National laws” should also be in line with international/regional obligations</li> <li>• To reiterate inclusivity, is there a need to single out NHRIs?</li> </ul>	
<p>22. AMS should:</p> <p>(1) take adequate and effective measures to recognize and protect those who promote and strive for environmental rights, as well as their ability to exercise their rights.</p>	<ul style="list-style-type: none"> <li>• Should use the term environmental human rights defenders.</li> <li>• Can include broader protection to ensure capacity of EHRD to continue their work.</li> </ul>	<p>take adequate and effective measures to recognize, <b>[respect]</b>, protect <b>[and fulfill the rights of]</b> those who promote and strive for environmental rights, <b>[in way that enhances]</b> their ability to exercise their rights <b>[to advance the wellbeing of their communities and the broader society – in particular people in vulnerable situations as well as the stewardship of biocultural diversity and ecosystems].</b></p>
<p>(2) ensure that those who promote and defend environmental rights are free from threat and retaliation in any form and should not be subject to civil,</p>	<ul style="list-style-type: none"> <li>• There is a need for elaboration regarding the retaliation form, but it should not be exhaustive. It should also include any forms of human</li> </ul>	

<p>administrative or criminal proceedings for exercising such rights.</p>	<p>rights violation.</p>	
<p>(3) take appropriate, effective, and timely measures to prevent, investigate, deter, and punish threats or intimidation against those who promote and strive for environmental rights.</p>	<ul style="list-style-type: none"> <li>● Need to add safeguards against “attacks and any form of human rights violations</li> </ul>	
<p>(4) consider establishing a rapid response mechanism or protocol at ASEAN or national levels to address threats, attacks or intimidation against those who promote and strive for environmental rights.</p>	<ul style="list-style-type: none"> <li>● The word ' consider' has a weak connotation, because other points talking about State must 'ensure', 'take measure', etc. suggest making the point firmer.</li> <li>● Alternatively, if want to keep it broad, instead of rapid response, can use term 'holistic protection support mechanism.'</li> <li>● How to ensure the establishment of a rapid response mechanism (and/or existing laws) can be implemented by AMS?</li> <li>● On “rapid response mechanism”: There also needs to be mention of effective grievance redressal mechanisms.</li> <li>● This should be a completely independent mechanism, either hosted by NHRI or other independent institution.</li> </ul>	

## SUBSTANTIVE ELEMENTS

### General comments:

1. No sense of urgency in this document, shown by the term “to promote”. Need to add a sense of urgency to push the implementation.
2. Need to add protection for forests, can refer to the 2012 Declaration on Environmental Sustainability as a starting point which provided:
  - a. participate in and contribute to afforestation and reforestation, and to reduce deforestation, forest degradation, and forest fires, including by promoting sustainable forest management and development, and combating illegal logging.

Articles	Comments	Suggested Revision
<p>23. Recognizing that the implementation of environmental law contributes to the achievement of the right to a safe, clean, healthy, and sustainable environment, the AMS should promote the enactment and implementation of non-discriminatory and non-retrogressive substantive legislation, rules, policies and standards that take into account all relevant international and applicable environmental, health and safety standards.</p>	<ul style="list-style-type: none"> <li>● We need to emphasize the term “every person” to include vulnerable groups.</li> <li>● Need to include human rights standards</li> <li>● Recognition of the right to a healthy environment in the national constitution, can serve as the basis for the subsequent policies/regulations/initiatives.</li> </ul>	<p>Recognizing that the implementation of environmental law contributes to the achievement of <b>every person’s</b> right to a safe, clean, healthy, and sustainable environment, the AMS should promote the enactment and implementation of non-discriminatory and non-retrogressive substantive legislation, rules, policies and standards that take into account all relevant international and applicable environmental, <b>human rights</b>, health and safety standards.</p>
<p>24. Such actions should assist the realization of the right to a safe, clean, healthy, and sustainable environment, with particular reference to the following substantive elements: clean air and reduction in transboundary haze; a safe and stable climate, including climate change mitigation,</p>	<ul style="list-style-type: none"> <li>● Need to refer to the previous article</li> <li>● Need to cover environmental rights defenders; indigenous peoples</li> <li>● Emphasize the need of “protection of environmental rights defender and indigenous peoples; and recognition and protection of indigenous land and resources”</li> </ul>	<p><b>Referring to Art. 23</b>, such actions should assist the realization of <b>every person’s</b> right to a safe, clean, healthy, and sustainable environment, with particular reference to the following substantive elements: clean air and reduction in transboundary haze; a safe and stable climate, including climate change</p>

<p>adaptation and resilience; healthy ecosystems and biodiversity; safe and sufficient water and adequate sanitation; healthy and sustainably produced food; non-toxic environments; land degradation, desertification and drought; and healthy oceans and marine environment and coasts</p>	<ul style="list-style-type: none"> <li>● Include “... transboundary haze and pollution, ..”</li> <li>● On “substantive elements”: Economic and non-economic loss and damage also needs to be an element. Additionally, there needs to be mention of how investment agreements and development funding should integrate environmental protection standards into their policies and practices, and AMS should play a more active role in accepting/rejecting investments from governments/businesses who have poor human rights track records.</li> </ul>	<p>mitigation, adaptation and resilience; healthy ecosystems and biodiversity; safe and sufficient water and adequate sanitation; healthy and sustainably produced food; non-toxic environments; land degradation, desertification and drought; healthy oceans and marine environment and coasts; <b>protection of environmental rights defender and indigenous peoples; and recognition and protection of indigenous land and resources.</b></p>
<p>25. AMS should promote effective enforcement of their environmental laws to prevent, reduce, and remedy environmental harm that interferes with the full enjoyment of human rights.</p>	<ul style="list-style-type: none"> <li>● “Provide” is a stronger language; use both terms; also “implement” to ensure accountability and action.</li> <li>● Align with international standards, existing environmental laws.</li> <li>● Change the term “interfere” with “violates” is a more appropriate term.</li> <li>● Enforcement should not be limited to law enforcement but also monitoring processes.</li> </ul>	<p>AMS should <b>provide, promote, and implement</b> effective enforcement of environmental <b>laws and policies, in line with international standards</b>, to prevent, reduce, and remedy environmental harm that <b>directly and indirectly violates human rights.</b></p> <p>Alternatively, the starting sentence can be “AMS should <b>ensure</b> effective and <b>immediate</b> enforcement .....”</p>
<p>26. AMS should: (1) commit to implementing multilateral environmental agreements ratified by ASEAN Members, including the Kunming-Montreal Global Biodiversity Framework,</p>	<ul style="list-style-type: none"> <li>● Not only multilateral but also international law</li> <li>● Include vulnerable groups (historically marginalized); but also recognize groups in vulnerable situations</li> </ul>	<p>AMS should: (1) commit to implementing <b>international law, and</b> multilateral environmental agreements ratified by ASEAN Members, including the Kunming-Montreal Global</p>

<p>and include a human rights-based approach, respecting, in particular, the role of [indigenous peoples], and groups in vulnerable situations, local communities and ethnic groups in biodiversity conservation.</p>	<ul style="list-style-type: none"> <li>• Need to emphasize international legal standard</li> <li>• Change the term “ethnic group” to “indigenous” group</li> <li>• There is a lack of consideration on the protection of forest &amp; watershed.</li> </ul>	<p>Biodiversity Framework, and include a human rights-based approach, <b>promoting, fulfilling and protecting</b>, in particular, the role of <b>Indigenous Peoples, environmental rights defenders, vulnerable groups, groups in vulnerable situations</b>, local communities and <b>indigenous</b> groups in biodiversity conservation.</p> <p>Suggestion to add recognition of indigenous knowledge.</p> <p>“... respecting <b>and involving</b> ..... the role of <b>indigenous peoples and their traditional knowledge, affected communities</b>, and groups in vulnerable situations, local communities and ethnic groups in biodiversity conservation.</p>
<p>(2) cooperate to develop legislation, rules and policies to reduce transboundary haze, urban, indoor, and rural air pollution to promote public health and a healthy environment and to take all practicable measures to ensure monitoring, compliance, and enforcement of air pollution measures and emissions standards for air pollution and ambient air quality.</p>	<ul style="list-style-type: none"> <li>• Specify parties for cooperation.</li> <li>• Add alignment with international standards</li> <li>• Change the term “reduce” with “eliminate”</li> </ul>	<p>(2) cooperate with <b>relevant stakeholders at the international, regional, national and local levels</b>, to develop legislation, rules and policies, <b>aligned with international standards</b>, to <b>eliminate</b> transboundary haze, urban, indoor, and rural air pollution to promote public health and a healthy environment and to take all practicable measures to ensure monitoring, compliance, and enforcement of air pollution measures and emissions standards for air pollution and ambient air quality.</p>



		<p>Alternative to certain sections “... cooperate to develop <b>and implement</b> ...”</p> <p><b>Delete “practicable”</b></p>
<p>(3) endeavour to prevent, reduce and control such discharges or emissions and support the development of ASEAN environmental quality standards and emissions standards to control pollution and prevent the contamination of land and soil.</p>	<ul style="list-style-type: none"> <li>● Not only support, if the standards coming to force, then it has to be implemented</li> </ul>	<p>endeavour to prevent, reduce and control such discharges or emissions, <b>implement and</b> support the development of ASEAN environmental quality standards and emissions standards to control pollution and prevent the contamination of land and soil.</p>
<p>(4) take all necessary steps [in accordance with the scientific evidence and a human rights approach] to implement international agreements to reduce the potential impact of climate change, including addressing issues of loss and damage, supporting the just transition, addressing climate-induced mobility, disaster risk reduction, and supporting groups in vulnerable situations.</p>	<ul style="list-style-type: none"> <li>● Instead of “to reduce” we can use “to adapt and mitigate” align with international standards</li> <li>● Add “to prevent” and “to reduce” and “supporting the affected community”</li> <li>● Add consideration for economic and non-economic damage</li> <li>● Add climate-induced “migration” risks</li> <li>● Insist on [in accordance with the scientific evidence and a human rights approach]</li> <li>● On “groups in vulnerable situations”: This should also include individuals, groups and communities caught in between phaseouts (e.g. fossil fuels) and transitions (e.g. just energy).</li> </ul>	<p>take all necessary steps [in accordance with the scientific evidence and a human rights approach] to implement international agreements <b>to adapt and mitigate</b> the potential impact of climate change, including addressing <b>economic and non-economic</b> issues of loss and damage, supporting the just transition, addressing climate-induced mobility <b>and migration</b>, disaster risk reduction, and supporting groups in vulnerable situations.</p> <p>Alternative to certain sections: “International agreements to <b>prevent</b> and reduce <b>the existing</b> and potential ...”</p> <p>“... and supporting <b>affected communities and ....”</b></p>

<p>(5) prevent, reduce and control the degradation of the natural environment and support, including financial support, and promote the protection of terrestrial, riverine, and marine biodiversity to maintain the proper functioning of ecological processes.</p>	<ul style="list-style-type: none"> <li>• Can erase “support” after financial as it seems redundant</li> </ul>	
<p>(6) protect and promote healthy soils and develop legislation, regulations and policies to conserve and promote healthy soils, including protecting soils from threats and degradation due to land use and land use change, and salination from climate change impacts.</p>	<ul style="list-style-type: none"> <li>• Add “in line with international law”</li> <li>• Need to emphasize the “extractive use” of land by corporation</li> </ul>	<p>protect and promote healthy soil and develop legislation, regulations and policies <b>in line with international law</b> to conserve and promote healthy soil, including protecting soil from threats and degradation due to land use and land use change, <b>in particular the excessively used by corporations</b>, and salination from climate change impacts.</p> <p>Alternative for specific section:  “... land use, land use change, <b>and extractive activities due....”</b>”</p>
<p>(7) protect and promote the right to access to safe, affordable water and sanitation and take all appropriate measures towards the protection of the natural water cycle to ensure the conservation of underground and surface water resources.</p>	<ul style="list-style-type: none"> <li>- Water should be “free” not “affordable“</li> </ul>	
<p>(8) consider ocean equity in decisions impact marine and coastal communities in implementing the ASEAN Blue Economy</p>	<ul style="list-style-type: none"> <li>- Change “impact” to “impacting”</li> </ul>	

<p>Framework 2023 and in controlling activities likely to cause pollution of the marine environment, including marine debris and plastics pollution and illegal and unregulated use and extraction of marine resources.</p>		
<p>(9) take all necessary steps to protect and preserve mangroves, coral reefs, seagrasses and breeding habitats.</p>		
<p>(10) develop and implement integrated coastal zone management approaches and action programs to address problems and challenges in coastal zone governance.</p>		

## ENVIRONMENTAL IMPACT ASSESSMENT

### General comments:

1. This goes back to the accountability and transparency, as well as its linkage to access to information to civilians in the projected or targeted area.
2. Need to add about public access of information regarding transparency of environmental information. Access to information on this must be applicable to all
3. Supposed to be open for public participation and public access to information and transparency elements. Need to include those issues.
4. The dissemination and data generation should be tailored to the audience capacity so that they can support. Considering the report format is usually very technical.
5. Need to add key principles on EIA because the implementation plan will highly rely on the declaration.
6. Should also mention the AMS part of the EIA process.
7. Need to put everything based on the needs of all people related to this issue, regardless of whether those points will be passed or not.

8. ASEAN bodies: who will handle and implement the whole document? Should it be connected to a certain committee or related to a national body? Who should be accountable?

Articles	Comments	Suggested Revision
<p>27. Recognizing that prior and effective Environmental Impact Assessment (EIA) is an essential tool to promote and protect the right to a safe, clean, healthy and sustainable environment, procedures should be developed to include relevant components of impact assessment, including health, social, and human rights impact assessment, using international best practices and evidence-based science.</p>	<ul style="list-style-type: none"> <li>• The word 'effective' could be delivered as a quick progress of EIA, while EIA itself needed comprehensive steps such as stakeholder mapping, data generation, socialization (collect and distribute information) towards stakeholders, etc.</li> <li>• AMS should ensure the data generation as public dissemination as a form of transparency. The data generation will be used as a baseline data to increase participation for every related parties</li> <li>• Suggesting having an independent commission for the EIA. so that it is not only a check box, and the consultation becomes part of the decision making. Considering the previous EIA format as part of the government process.</li> </ul>	<p>Recognizing that prior and <i>effective</i> Environmental Impact Assessment (EIA) is an essential tool to promote and protect the right to a safe, clean, healthy and sustainable environment, procedures should be developed, <b>implemented, and monitored</b> to include relevant components of impact assessment, including health, social, and human rights impact assessment, using international best practices and evidence-based science <b>and be made publicly available and transparent throughout the whole period.</b></p> <p><b><u>Best to restore previous provision as a starting point.</u></b></p> <p>Recognizing that prior and effective Environmental Impact Assessment EIA_ is an essential tool to promote and protect the right to a safe, clean, healthy and sustainable environment, procedures should be developed to include relevant components of impact assessment, including health, social, and human rights impact assessment, using international best practices and evidence-based science. The use of due diligence and risk</p>

		<p>assessment tools and nature-based solutions for environmental impacts should be enforced.</p> <p>Environmental impact assessments and Strategic Environmental Assessments shall ensure meaningful public participation, including with groups in vulnerable situations, based on the prior provision of appropriate information. Environmental impact assessment and SEA should include measures prioritising avoiding potential environmental impacts.</p> <p>Every project assessment should implement the climate change impact assessment in order to assess the project risks or impacts on climate change to the people, vulnerable communities, economic activities, and broader ecosystems.]</p> <p>AMS shall; ensure that proposals, policies and plans that may significantly affect the natural environment or the public are subjected to an environmental impact assessment before they are approved and permits granted, ensure EIA procedures provide a transparent, participatory and inclusive process to ensure that all environmental, health, social, cultural and human rights</p>
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		<p>impacts are assessed prior to any approval of the project;</p> <p>making EIA reports, and approvals available to the public and for public comment;</p> <p>provide a mechanism for people, mainly the impacted communities, to submit objections to the EIA application and a mechanism to respond to and handle the objections.</p> <p>take into consideration the result of this assessment in their decision-making processes.</p> <p>ensure that projects with potential impacts that cannot be effectively mitigated should be discouraged</p> <p>adopt mechanisms and policies to ensure effective compliance and enforcement with impact assessment procedures and approval conditions;</p> <p>AMS shall;</p> <ul style="list-style-type: none"> <li>promote strategic level or landscape level environmental assessment of large-scale activities, plans and programmes through the introduction of Strategic Environmental Assessment and Landscape Environmental Assessment.</li> </ul> <p>develop and implement a system of transboundary environmental</p>
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		<p>impact assessment, in accordance with international law norms and existing practices in the region, to require the environmental impact assessment of proposed projects or activities that may significantly impact areas beyond national jurisdiction;</p>
<p>28. AMS should:</p> <p>(1) promote strategic or landscape-level environmental assessment of large-scale activities, plans and programmes.</p>	<ul style="list-style-type: none"> <li>• ‘Large-scale’? What’s the standardization? What are considered as large and small? The definition is not clear, there should be a further clarification especially in the implementation of action plan</li> </ul>	
<p>(2) develop and implement a system of transboundary environmental impact assessment, following international law, norms and existing practices in the region, to require the environmental impact assessment of proposed projects or activities that may significantly impact areas beyond national jurisdiction.</p>	<ul style="list-style-type: none"> <li>• ‘Monitoring’ should also be added in the article after developing and implementing the system.</li> </ul>	
<p>(3) encourage the use of due diligence and risk assessment tools, including human rights and environmental due diligence, and nature-based solutions for environmental impacts.</p>	<ul style="list-style-type: none"> <li>• The term encourage is too weak. It should be “Develop and encourage”</li> </ul>	

## RESEARCH AND EDUCATION

### General Comments

1. There can be a new point for article 30 (5): “empower and facilitate the environmental knowledge development including research, education, capacity building, and innovation through all forms of public participation.”
2. In line with the previous point, we can also add ‘protection’ to those who are disseminating or facilitating the research, education, capacity building, and innovation, since CSOs and Indigenous Peoples usually get discrimination through force and many other forms after their dissemination and facilitation.
3. Add concept of “two way communication” for engaging indigenous people and CSO’s to provide inputs for government and private sectors
4. Should include knowledge from the indigenous people. There needs to be consistency on this whether to use native knowledge, indigenous knowledge or local knowledge.
5. On Article 30: These "support" clauses are so vague. Should also cover capacity-building, so funding, provision of equipment, tools, etc., provision of learning exchanges, etc., could be helpful to add/enumerate here. This research and training need to be done for relevant AMS departments too.

Articles	Comments	Suggested Revision
<p>29. Every person, including children and youth, should have the right to free and comprehensive environmental education, including on environmental rights, relevant to their age and circumstances.</p>	<ul style="list-style-type: none"> <li>● Need stronger word instead of “should” suggest to change to “has”</li> <li>● “Every person” should include the whole vulnerable group in that category</li> <li>● “Relevant to their age and circumstances”, what does this mean? This is ambiguous. It’s not defined clearly. Either this can be more elaborated or deleted.</li> </ul>	<p>Every person, including children and youth, <b>has</b> the right to free and comprehensive environmental education, including on environmental rights.</p>
<p>30. AMS should: (1) support research and education on environmental rights, including for vulnerable groups.</p>	<ul style="list-style-type: none"> <li>● Not only “support” but “facilitate”</li> <li>● Include innovation (as result of research)</li> <li>● Include capacity building to strengthen education provision.</li> <li>● Not only “for” the vulnerable group,</li> </ul>	<p><b>Guarantee and facilitate national and regional</b> research, education, <b>capacity building and innovation</b> building on environmental rights, including for <b>and by</b> vulnerable groups.</p>



	but also “by [them]”	
(2) promote and, where practicable, support scientific and technical research programmes on environmental rights issues, including climate change, pollution and biodiversity protection, in partnership and cooperation with appropriate international organizations.	<ul style="list-style-type: none"> <li>• Add: national, regional organizations cooperation</li> <li>• Delete “appropriate”</li> <li>• Delete “where practicable”</li> <li>• Change: term “promote” to “guarantee”</li> </ul>	<b>Guarantee support for</b> scientific and technical research programmes on environmental rights issues, including climate change, pollution and biodiversity protection, in partnership and cooperation with <b>local and indigenous communities, national, regional and</b> international organizations.
(3) support the free exchange of information and research and development on the impacts of climate change, biodiversity loss and pollution on human rights and the environment in ASEAN.	<ul style="list-style-type: none"> <li>• Replace “information” with knowledge</li> <li>• Replace “support” with “foster”</li> </ul>	<b>Foster and facilitate</b> the free exchange of <b>knowledge</b> and research and development on the impacts of climate change, biodiversity loss and pollution on human rights and the environment in ASEAN.
(4) support the exchange of information on environmental rights and promote environmental rights education in ASEAN.	<ul style="list-style-type: none"> <li>• Replace “information” with knowledge</li> <li>• Replace “support” with “foster”</li> </ul>	<b>Foster and facilitate</b> the exchange of <b>knowledge</b> on environmental rights learning in all level of education in ASEAN

## PROMOTION OF TRANSBOUNDARY, CROSS PILLAR AND MULTI-STAKEHOLDER COOPERATION

### General comments:

1. On inclusion of multi stakeholders in a holistic approach, it should from the very beginning. And to thresh out who these stakeholders are, but also in a non-exhaustive way.
2. This cooperation section works hand in hand with the Research and Education section, so could be helpful is there is mention of these learning exchanges. + cooperation in terms of capacity building, technical support, other resources support. The Research and Education clauses seem to cover capacity-building, but explicit language should be integrated.

Articles	Comments	Suggested Revision
<p>31. AMS recognize the need to promote multi-sectoral cooperation to support the implementation of this Declaration, including through consultations with relevant stakeholders, sharing information on good practices and policies, knowledge management, cooperation, and coordination amongst the relevant ASEAN Sectoral Bodies and Entities with the support of the ASEAN Secretariat.</p>	<ul style="list-style-type: none"> <li>● Concern: “AMS recognize the needs” Soften: “AMS recognize the need to, and promote and ensure...” There needs to be an action point following the recognition of needs. AMS recognize the need to and shall promote? endeavour to ensure?</li> <li>● “Multisectoral cooperation” and “relevant stakeholders” are terms only mentioned here and not elsewhere. They need to be stressed out more</li> <li>● Need also to include other “relevant stakeholders” by mentioning all the related entities including business, academics, NGOs and civil society organizations to start.</li> <li>● On “relevant ASEAN Sectoral Bodies and Entities with the support of the ASEAN Secretariat” → Is this talking about cooperation among ASEAN regional bodies or AMS and what AMS should do on a national level?</li> </ul>	
<p>32. AMS should: (1) ensure that activities under their jurisdiction or control do not cause damage to the environment or other Parties or in areas beyond the limits of their national jurisdictions.</p>	<ul style="list-style-type: none"> <li>● Delete: the word “control” → “control” might be confusing, debatable and prone to be misinterpreted.</li> </ul>	

<p>(2) cooperate to establish, maintain and enforce effective international legal frameworks to prevent, reduce and remedy transboundary and global environmental harm.</p>	<ul style="list-style-type: none"> <li>• Should include regional frameworks.</li> <li>• “International and regional” → the caveat is that these sets of frameworks should be aligned.</li> </ul>	
<p>(3) cooperate with competent international organizations to coordinate their activities in the conservation of nature and management of natural resources and assist each other in the implementation of this Declaration.</p>	<ul style="list-style-type: none"> <li>• On “cooperate with competent international organizations”: Consider also including other stakeholders: non-ASEAN states, intergovernmental organisations, nongovernmental organisations, CSOs, the private sector, etc.</li> <li>• “competent”: what competent bodies? Committee? Are we gatekeeping?</li> <li>• “Coordinate”: what to coordinate? Should their work be aligned with the ASEAN body?</li> <li>• “international organizations to coordinate”. How to make sure that it will not be ended by the violation towards any indigenous group?</li> <li>• Who are we cooperating with? Are they doing it independently? Do they have the best interest of our country as well?</li> <li>• “Cooperation”: is there any other capacity building that is not only related to research context?</li> </ul>	

## IMPLEMENTATION AND PLAN OF ACTION

### General Suggestions:

1. There should be an additional article saying that the Regional Implementation and Plan of Action contains detailed and specific definitions to ensure precise clarity on the terms used in the document. This approach aids in establishing a clear understanding and preventing any ambiguity, thereby facilitating effective implementation of the plan. This can be adopted if the declaration opts out of having a specific definitions section.
2. Few things missing from draft are:
  - The reference of the committee to oversee implementation or anything related to the declaration.
  - Voluntary Fund which can help countries and particularly benefitting the most vulnerable communities disproportionately placed to bear the brunt of environmental degradation and climate change. This could also have provision for assistance during the times of climate crisis as well.
  - Provision on capacity building and raising awareness for the communities and the government officials and institutions that will be crucial in the implementation of this declaration. For example, the judiciaries.
  - Although this document is only foreseen as a non-binding declaration and may be shortened than the present form, raising these issues now will help to provide clarity for any future Action Plan or any subsequent implementing instrument following this declaration.
  - There is a lack of dispute resolution provisions.
3. There should be additional articles to ensure cooperation of all related ASEAN bodies for the implementation of the declaration/framework, referencing from the ASEAN Human Rights Declaration, it may be incorporated as Article 34 and 35 as follows:
  - a. ASEAN Member States share a common interest in and commitment to the promotion and protection of the right to environment, which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organizations, in accordance with the ASEAN Charter.
  - b. ASEAN Member States will encourage relevant ASEAN Sectoral Bodies in the three ASEAN Community Pillars to promote the implementation of this Declaration, and task the relevant ASEAN Ministerial Meeting and Senior Officials Meeting to cooperate with the AICHR and ACWC to review, coordinate, monitor and report its progress of the declaration and the regional action plan.

Articles	Comments	Suggested Revision
<p>33. A non-binding Regional Implementation Plan will be developed to support AMS and the ASEAN Secretariat in implementing the Declaration and to provide a basis for sharing experience and assessment progress. AICHR will lead the development of the Regional Implementation Plan, which will be completed within one year from the date of this Declaration.</p>	<ul style="list-style-type: none"> <li>● Delete “non-binding”</li> <li>● There should be public involvement during the implementation plan development (including CSO, indigenous group, academics, etc).</li> <li>● The implementation plan must contains a detailed and specific definitions on the terms in the draft that will be adopted.</li> <li>● Secretariat need to develop definitions, including for the term “public participation”</li> <li>● Regional Implementation Plan - to have National Action Plan</li> <li>● Include context of international standards after the term “regional implementation plan”</li> <li>● AICHR will lead the development, delivery and monitoring</li> </ul>	<p>A Regional Implementation Plan will be developed to support AMS and the ASEAN Secretariat in implementing the Declaration and to provide a basis for sharing experience, and assessment progress. AICHR will lead the development, <b>delivery and monitoring</b> of the Regional Implementation Plan <b>in accordance with international standards</b>, incorporating contributions <b>from the public such as but not limited to CSOs and vulnerable groups throughout the process</b>, which will be completed within one year from the date of this Declaration.</p>
<p>Adopted by the Heads of State/Government of ASEAN Member States at [CITY], [COUNTRY], this [DATE], in one single original copy in the English Language.</p>		