

Attn:

H.E. Amb. Yong Chanthalangsy, AICHR Representative of Laos PDR, Current Chair of AICHR

H.E. Prof. Dr. Amara Pongsapich, AICHR Representative of Thailand

H.E. Edmund Bon Tai Soon, AICHR Representative of Malaysia

H.E. Yuyun Wahyuningrum, AICHR Representative of Indonesia

H.E. Angelito A. Nayan, AICHR Representative of the Philippines

H.E. Dr. Shashi Jayakumar, AICHR Representative of Singapore

H.E. Amb. Prof. Dr. Nguyen Thai Yen Huong, AICHR Representative of Viet Nam

H.E. Datin Paduka Hajah Nor Hashimah Haji Mohammed Taib, AICHR Representative of Brunei Darussalam

H.E. Keo Remy, AICHR Representative of Cambodia

Cc:

Ms. Le Thi Nam Huong

Assistant Director, Human Rights Division, ASEAN Secretariat

9 July 2024

Dear Excellencies,

The Asian Forum for Human Rights and Development (FORUM-ASIA) expresses our alarm to the substantially weakened state of the ASEAN declaration on environmental rights. Following consultations with civil society members of the ASEAN Environmental Rights Working Group (Working Group), we are concerned to hear how discussions of the Working Group have only led to a watering down of the content of the declaration. In an effort to feed into the strengthening of the declaration, civil society groups have provided substantive inputs to the draft declaration ahead of the Working Group's fourth meeting in May. However, crucial elements such as the recognition of indigenous people's right to free, prior and informed consent and recognition and protection for environmental human rights defenders have either been removed or significantly weakened. We are also disheartened by the lack of transparency in the development of the draft declaration. Despite undergoing a period of public consultations, there is a lack of clarity on whether any inputs from civil society were taken into account.

This development within the regional policy-making sphere is particularly concerning given the ongoing struggle of indigenous peoples and environmental human rights defenders within ASEAN Member States. From 2021-2023, FORUM-ASIA has documented 299 cases of violations against land, indigenous, and environmental defenders in Asia. 80 per cent of which occurred in ASEAN with Cambodia, Indonesia and Vietnam placing as the top countries where most violations occurred. Some of the recent cases include the targeting of Awyu and Moi communities in West Papua as they fight eviction from their indigenous lands due to land seizures for palm oil plantations and the recent conviction of ten Cambodian human rights defenders from Mother Nature, following their documentation of waste run-off into Phnom Penh's Tonle Sap river.

Your Excellencies, we are aware that the purpose of AICHR under its Terms of Reference is to promote and protect human rights and fundamental freedoms of the peoples of ASEAN. Therefore, in alignment with AICHR's mandate under Articles 4.9 and 4.10 which read "to consult, as may be appropriate, with other national, regional and international institutions and entities concerned with the promotion and protection of human rights;" and "to develop common approaches and positions on human rights matters of interest to ASEAN," we humbly request AICHR to enhance meaningful civil society participation in the development process of the draft declaration prior to its adoption, to ensure that the draft comprehensively recognises and addresses the environmental rights issues in ASEAN countries.

Further, we wish to reiterate Article 1(7) of the ASEAN Charter, which states that the purpose of ASEAN is "*To strengthen democracy, enhance good governance and the rule of law and to promote and protect human rights and fundamental freedoms...*;" In order to meaningfully promote and protect the rights and fundamental freedoms of the people within ASEAN, it is vital for AICHR—as the overarching institution responsible for the promotion and protection of human rights in ASEAN—to not sideline the environmental rights concerns of the people in ASEAN merely for the sake of finalising the draft declaration. It must instead be at the forefront of championing the recognition and protection needed to fully address the regression of environmental rights in the region.

As we have noted that the Working Group has recently met in the first week of July to finalise the draft for AICHR's consideration, we would like to submit to you our Joint Statement with 14 organisations comprising our members and partners calling for AICHR to not dilute the draft declaration and give prime consideration to inputs from civil society both for the purpose of ensuring robust civil society participation in the process and in guaranteeing a relevant draft that aptly responds to the situation on the ground.

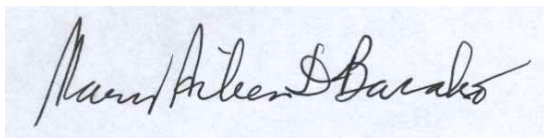
As for our immediate requests, we kindly ask the AICHR to:

- Reconsider the decision to exclude the references of indigenous peoples, environmental human rights defenders, anti-SLAPP provisions, and other crucial elements;
- Provide transparency on the current status of the draft declaration by publicly sharing the latest draft and providing information on how inputs from the public consultations in April-May have been considered; and
- Provide clarifications on the upcoming process, including next steps after the Working Group meeting in July and timeline for the draft to be adopted.

Should there be any further clarification needed, please do not hesitate to contact the East Asia and ASEAN Programme of FORUM-ASIA ([ea-asean@forum-asia.org](mailto:ea-asean@forum-asia.org)).

We look forward to hearing from you and thank you for your kind attention.

Sincerely yours,



MARY AILEEN DIEZ-BACALSO  
Executive Director, FORUM-ASIA

Annex 1. Joint Statement

## **[Joint Statement] ASEAN Declaration on environmental rights must uphold the highest human rights standards and ensure civil society participation**

The Asian Forum for Human Rights and Development (FORUM-ASIA) and the undersigned organisations are alarmed by the substantially weakened state of the ASEAN declaration on environmental rights despite rigorous efforts by various civil society organisations (CSOs) in calling for its improvement.

As the ASEAN Environmental Rights Working Group (AERWG) is set to meet on 1-3 July 2024 to potentially finalise the draft declaration, it is crucial for the AERWG to reconsider the inputs from civil society. Such inputs demand the declaration to adhere to the highest standards of human rights and to reflect the views of the ASEAN people.

Without the proper recognition of the rights of marginalised and vulnerable communities and a strong prescription of obligations for ASEAN member states, businesses, and all related parties, the implementation of the declaration would be substandard.

We also call on the ASEAN Intergovernmental Commission for Human Rights (AICHR) to refrain from further weakening the draft. Instead, the AICHR must adopt a stronger declaration as it would become the basis for any subsequent implementation plans of ASEAN member states and its sectoral bodies.

### **Watered down declaration**

Prior to the AERWG's [third meeting](#) in February 2024, earlier discussions on the declaration were based on an 18-page framework specifying the ASEAN member states' recognition and obligation to advance and implement a rights-based approach in fulfilling environmental rights.

While the framework was deemed to be below regional and international standards, it contained crucial elements such as:

- recognition of indigenous people's right to free, prior and informed consent on (FPIC) in public participation matters, particularly for activities that could impact their communities;
- recognition and protection for those who promote and defend environmental rights, which includes the ASEAN member states' obligation to develop anti-Strategic Litigation Against Public Participation (SLAPP) regulation and to safeguard civic space from threats and retaliation;
- recognition of people's right to participate in decision-making processes related to environmental matters, including the obligation of public and private sectors to factor in human rights as well as environmental due diligence and risk assessment

when deciding on activities that could significantly impact the environment or human rights.

However, after the AERWG's third meeting, the framework was significantly watered down into a seven-page [declaration](#). Many of the aforementioned substances have either been removed, proposed to be deleted, or are said to be included in the implementation plan instead.

As the declaration was then circulated for wider public consultation, various CSOs, including [FORUM-ASIA](#), submitted comprehensive inputs and produced [OpEd](#) calling for its strengthening ahead of the AERWG's fourth meeting in [May 2024](#). Nevertheless, none of these inputs was taken into consideration. (*See Annex for key updates and revisions based on civil society consultations*).

### **Deteriorating environmental rights**

Environmental human rights defenders—including indigenous peoples' communities—continue to face unjust criminalisation and arbitrary eviction due to a lack of regional protection of their rights.

In Thailand, Y Quynh Bdap, a Vietnamese ethnic minority rights defender—co-founder of [Montagnards Stand for Justice](#), who advocates for the rights of the Montagnard people against arbitrary land grabs—was [arrested](#) despite being granted refugee status by the United Nations High Commissioner for Refugees.

In Indonesia, the [Awyu and Moi communities](#) of West Papua are being ousted from their indigenous land due to state-sanctioned deforestation. Their lands are being seized for the benefit of palm oil plantation companies. Peaceful protests in support of indigenous communities have been met with [violence](#).

In the Philippines, women environmental defenders Jonila Castro and Jhed Tamano were [abducted](#) by the military for opposing reclamation projects along Manila Bay. Following their release, instead of receiving justice for their enforced disappearance, they are subjected to [judicial harassment](#).

In Vietnam, Dang Dinh Bach, a prominent environmental rights advocate who led an environmental rights organization, Law and Policy of Sustainable Development, was slapped with [tax evasion charges](#) and sentenced to five years in prison. Bach has reportedly been [mistreated](#) during his time in custody.

### **Call to action**

FORUM-ASIA and the undersigned organisations reiterate our call for a more robust civil society participation and increased transparency in the declaration's development process.

It is crucial for the ASEAN Declaration on environmental rights to include comprehensive mechanisms for protection and support specifically for environmental human rights defenders and indigenous peoples. ASEAN member states must address these significant gaps.

Further, we are also concerned by reports of unequal power dynamics between AERWG members, which have limited the space for thorough discussions on the declaration. The AICHR must ensure the meaningful participation of civil society within the AERWG. The development of the draft declaration must fully adhere to democratic principles.

Any attempts to further dilute the recognition of the rights and obligations of ASEAN member states—despite pushback from civil society—would be contrary to the ASEAN Charter and the Phnom Penh Statement on the adoption of the ASEAN Human Rights Declaration. Under Article 1(7) of the ASEAN Charter, the purpose of ASEAN is “to strengthen democracy, enhance good governance and the rule of law and to promote and protect human rights and fundamental freedoms...”

### **Signatories:**

1. Asian Forum for Human Rights and Development (FORUM-ASIA)
2. Community Resource Centre
3. Suara Rakyat Malaysia (SUARAM)
4. Think Centre Singapore
5. Greenpeace Southeast Asia
6. Bantay Kita Publish What You Pay Philippines
7. ASEAN SOGIE Caucus
8. Publish What You Pay Indonesia
9. Purple Action for Indigenous Women’s Rights (LILAK)
10. The Commission for Disappeared and Victims of Violence (KontraS)
11. Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA)
12. Indonesia Legal Aid and Human Right Association (PBHI)
13. Philippine Alliance of Human Rights Advocates (PAHRA)
14. Indonesian Legal Aid Foundation (YLBHI)
15. Karapatan Alliance Philippines

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### **About FORUM-ASIA:**

**The Asian Forum for Human Rights and Development (FORUM-ASIA)** is a network of 85 member organisations across 23 countries, mainly in Asia. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity development and solidarity actions in Asia and beyond. It has consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. The FORUM-ASIA Secretariat is based in Bangkok, with offices in Jakarta, Geneva and Kathmandu. [www.forum-asia.org](http://www.forum-asia.org)

### **For media inquiries, please contact:**

- Communication and Media Programme, FORUM-ASIA, [communication@forum-asia.org](mailto:communication@forum-asia.org)

- **Annex**

\*The following summary contains key updates on relevant provisions from the initial discussions to the most recent state of the declaration. This information is based on consultations between members of AERWG with its constituent networks and stakeholders.

<b>Provisions</b>	<b>Initial discussion</b>	<b>Latest update</b>
<b>Rights of Indigenous People to free, prior and informed consent on (FPIC)</b>	Recognized in general provision and public participation in the environmental matters section.	All mentions of indigenous people are suggested to be removed including recognition of the 2007 Declaration of the Rights of Indigenous Peoples in the preamble.
<b>Recognition and protection of those who promote and defend environmental rights</b>	AMS is obligated to develop anti-SLAPP regulations and to safeguard the civic space against threat and retaliation for those exercising such rights.	Anti-SLAPP obligation is removed and the overall obligation for AMS to ensure recognition and protection of environmental defenders is potentially removed.
<b>Right of access to information to environmental matters</b>	Public and private entities are obligated to provide their due diligence, risk assessment of human rights and environmental impacts.	The obligation is removed.
<b>Public participation in environmental matters</b>	The people's rights to participate in the decision-making process of environmental matters are recognized. Public and private sectors are obligated to factor human rights and environmental due diligence and risk assessment for their decision-making for activities that will significantly impact the environment or human rights.	The recognition of the right and the obligation for public and private sectors are potentially removed.
<b>Access to justice and effective remedies</b>	AMS are obligated to promote alternative dispute resolution mechanisms under the condition that such mechanisms would not be used	The condition is removed.

	to further violate human or environmental rights.	
<b>Environmental Impact Assessments (EIA)</b>	EIA is recognized as a preventative tool to avoid environmental and human rights violations including on vulnerable communities. AMS are prescribed obligations to ensure their application prior to project approval or granting permits and ensuring their processes are transparent, accessible to the public including mechanisms for the public to object.	The entirety of the provision is potentially removed.
<b>Research and education</b>	Research and education on environmental rights including the free exchange of information amongst AMS and the provision of environmental education and information to all including children and youth issues is recognized and supported by AMS.	The entirety of the provision is potentially removed.
<b>Language prescribing obligations on AMS</b>	Started with the phrase 'AMS shall'	Changed to 'AMS Should' or 'AMS recognizes the importance of' or 'AMS shall endeavor to'.