



# **Technical Report and Recommendations to Strengthen Environmental Impact Assessment Procedures in ASEAN**



"Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean, healthy and sustainable environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights."

- Professor John Knox



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## EXECUTIVE SUMMARY

This technical report examines the practical ways to strengthen environmental impact assessment (EIA) procedures in ASEAN to address critical environmental and human rights issues. Climate change, biodiversity loss, and the destruction and degradation of ecosystems significantly impact people's lives, affecting our ability to work, have leisure activities, and enjoy good health. Human rights and environmental protection are interdependent, and a healthy environment enables people to enjoy their human rights entirely. At the same time, the exercise of human rights helps promote environmental protection.

The first section of this technical report reviews the existing materials for EIA in ASEAN. Drawing on the previous work of AICHR and the UN, reference is made to the Compendium on Environmental Impact Assessment systems in the Association of Southeast Asian Nations (ASEAN) Member States. The Compendium was presented to the AICHR convened Regional Consultation on Commonalities of EIA in ASEAN Member States and Advancing a Harmonised and Right-Based Approach on 2-3 October 2019 in Yangon, Myanmar. The 2019 consultation was a continuation of previous efforts by AICHR since 2014 on human rights, climate change and the environment.

The vital work done by the Mekong Partnership for the Environment (MPE) between 2014 and 2017 is also acknowledged. MPE development of the 2017 Regional Guidelines on Public Participation in EIA<sup>15</sup> highlighted the commonalities of EIA systems in the Mekong countries. It introduced a discussion about the importance of public participation and access to information in the EIA process. During several events and conferences organised by MPE, the idea of an ASEAN regional framework for EIA was first raised and discussed.

The technical report reviewed the role of ASEAN in environmental matters and the work done by AICHR on including human rights consideration in the EIA system in ASEAN.

The second section of the report reviews many regional and international instruments that support and promote the role of EIA and Strategic Environmental Assessment (SEA). These include the Aarhus Convention, the Espoo Convention and SEA Protocol, and the EU EIA Directive on EIA. The final part of the section reviews the recent entry into force of the Escazu Agreement in Latin America and the Caribbean in 2021.

The final section of the technical paper examines the key elements included in an ASEAN Framework Agreement on EIA. These fundamental issues were identified by the AICHR in the regional consultation in 2019. The topics examined in this section are:

1. Access to information
2. Supporting Public Participation in EIA
3. Giving special attention to Women and Vulnerable Groups
4. Access to Remedies
5. Protection of the Rights of Environmental and Human Rights Defenders
6. Transboundary EIA
7. Strategic Environmental Assessment
8. ASEAN Environmental Quality Standards
9. Effective Monitoring and Enforcement

The technical report concludes with a recommendation on creating an ASEAN legal instrument on EIA. Any framework will rest on the foundations of domestic EIA legislation and procedures. As most ASEAN member States (AMS) have adopted EIA legislation or procedures that accord with international environmental law norms, some solid foundations exist. The commonalities identified in the report are proposed as the basis for exploring an ASEAN legal instrument on EIA.

The most significant existing gaps are in the enforcement of monitoring and compliance of EIA Approvals, Transboundary EIA and SEA. The common elements of EIA in the AMS form a solid basis for developing a framework agreement on EIA that would also assist in ASEAN responding to the challenges of large-scale infrastructure development, including the Belt and Road Initiative and current national infrastructure spending. An ASEAN legal framework on EIA may promote sustainable development through consistent policies that promote environment-friendly investment across the region, which is necessary for building back better in the post-pandemic context.



## Abbreviations

<b>ADB</b>	Asian Development Bank
<b>AEC</b>	ASEAN Economic Community
<b>AHRD</b>	ASEAN Human Rights Declaration
<b>AICHR</b>	ASEAN Intergovernmental Commission on Human Rights
<b>AMME</b>	ASEAN Ministerial Meeting on the Environment
<b>AMS</b>	ASEAN Member States
<b>ASEAN</b>	Association of South East Asian Nations
<b>ASOEN</b>	ASEAN Senior Officials on the Environment
<b>APSC</b>	ASEAN Political-Security Community
<b>ASCC</b>	ASEAN Socio-Cultural Community
<b>ASEP</b>	ASEAN Environment Programme
<b>CSO</b>	Civil Society Organisation
<b>EA</b>	Environmental Assessment
<b>EIA</b>	Environmental Impact Assessment
<b>EMMP</b>	Environmental Management and Monitoring Plan
<b>EMP</b>	Environmental Management Plan
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>GMS</b>	Greater Mekong Subregion
<b>HRC</b>	United Nations Human Rights Council
<b>IAIA</b>	International Association for Impact Assessment
<b>IFC</b>	International Finance Corporation
<b>MPE</b>	Mekong Partnership for the Environment
<b>MRC</b>	Mekong River Commission
<b>NGO</b>	Non-Government Organisation
<b>PAP</b>	Project Affected Persons
<b>PNPCA</b>	Prior Notification, Prior Consultation and Agreement
<b>SDG</b>	Sustainable Development Goals
<b>SEA</b>	Strategic Environmental Assessment
<b>Tb EIA</b>	Transboundary EIA
<b>UN</b>	United Nations
<b>UNCED</b>	United Nations Conference on Environment and Development
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNECLAC</b>	United Nations Economic Commission for Latin America and the Caribbean
<b>UNEP</b>	United Nations Environment Programme
<b>WB</b>	World Bank





# INTRODUCTION

## A. Background

Climate change, biodiversity loss, and the destruction and degradation of ecosystems have significant impacts on people's lives, affecting our ability to work, have leisure activities, and enjoy good health. Human rights and environmental protection are interdependent. A healthy environment enables people to fully enjoy their human rights. At the same time, the exercise of human rights helps promote environmental protection.<sup>1</sup>

Many countries—more than 80 percent of UN Member States—already recognise the right to a healthy environment in their constitutions, laws, and policies.<sup>2</sup> Regional instruments also recognise this right in various ways. The Association of Southeast Asian Nations (ASEAN) Human Rights Declaration affirms that everyone has the right to a safe, clean, and sustainable environment (Art. 28f). The substantive elements of the right to a healthy environment include: a safe climate; clean air; clean water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements of this right include: access to information, public participation in environmental decision making, and access to justice and effective remedies.<sup>3</sup>

Over the last 20 years, the international community has increasingly recognised human rights obligations

These developments mirror the significant work undertaken by the ASEAN Intergovernmental Commission on Human Rights (AICHR) over the past 8 years. Most recently this included the AICHR Workshop on Human Rights, Environment and Climate Change: Advancing rights-based approaches to environmental decision-making including through environmental impact assessment mechanism in June 2021.

On 8 October 2021, the United Nations Human Rights Council (HRC) approved a resolution (A/HRC/48/L.23/Rev.1) on the right to a safe, clean, healthy and sustainable environment. The resolution recognised the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of all other human rights, and noted that the right to a safe, clean, healthy and sustainable environment is related to other rights that are in accordance with existing international law.<sup>6</sup> The United Nations (UN) High Commissioner for Human Rights, Michelle Bachelet, highlighted that this resolution is about decisive action to protect people and planet, as well as the natural systems which are basic preconditions to the lives and livelihoods of all people.<sup>7</sup>

Many countries have recognised the mutually reinforcing relationship between human rights and the environmental rule of law.<sup>8</sup> In ASEAN, four ASEAN

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