



Mapping the Implementation Gap: Baseline Study on the Recognition and Protection of Procedural Environmental Rights in ASEAN Member States



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Contents

Executive Summary.....	vii
LIST OF ABBREVIATIONS.....	ix
I. Introduction	xi
1. Background	xi
2. Research Methodology and Approach	12
a. Conceptual Framework: The Procedural-Substantive Nexus	12
b. Analytical Approach & Intersectionality	13
c.. Data Sources & Methodology	14
II. Legal and Policy Architecture of Environmental Procedural Rights in ASEAN Member States	16
1. Brunei Darussalam	16
1.1 Access to Information.....	16
1.2 Access to Meaningful Participation	17
1.3 Access to Justice	17
2. Cambodia	19
2.1 Access to Information	19
2.2 Access to Meaningful Participation	20
2.3 Access to Justice	21
3. Indonesia	24
3.1 Access to Information	24
3.2 Access to Meaningful Participation	26
3.3 Access to Justice	27
4. Lao People's Democratic Republic	31
4.1 Access to Information	31
4.2 Access to Meaningful Participation	32
4.3 Access to Justice	33
5. Malaysia	36
5.1 Access to Information	36
5.2 Access to Participation	38
5.3 Access to Justice	40

6. Myanmar	42
6.1 Access to Information	42
6.2 Access to Meaningful Participation	44
6.3 Access to Justice	45
7. Philippines	47
7.1 Access to Information	47
7.2 Access to Meaningful Participation	48
7.3 Access to Justice	50
8. Singapore	55
8.1 Access to Information	55
8.2 Access to Meaningful Participation	56
8.3 Access to Justice	57
9. Thailand	60
9.1 Access to Information	60
9.2 Access to Meaningful Participation	63
9.3 Access to Justice	65
10. Timor-Leste	69
10.1 Access to Information	69
10.2 Access to Meaningful Participation	71
10.3 Access to Justice	72
11. Vietnam	75
11.1 Access to Information	75
11.2 Access to Meaningful Participation	76
11.3 Access to Justice	78
III. Legal Architecture of Environmental Procedural Rights at the Regional ASEAN Level	84
1. The ASEAN Environmental Rights Declaration and Its Normative Foundations	84
2. Access to Information	89
3. Access to Meaningful Participation	91
4. Access to Justice	93
5. The Regional Plan of Action and Interoperability Across ASEAN-Level Instruments	95

IV. Key Findings Across ASEAN Member States.....	99
1. Access to Information: Legal Foundations Exist But Effective Access Remains Elusive.....	99
2. Access to Meaningful Participation: Formal Compliance Without Agency and Meaningful Influence	100
3. Access to Justice: Institutional Innovation Alongside Structural Barriers	101
4. Limits of the Current Normative Framework at ASEAN-level	103
V. Concluding Reflection	104
Bibliography	106
APPENDIX I	116
ANALYTICAL MATRIX USING FRAMEWORK FOR INTEGRATING RIGHTS AND EQUALITY (FIRE)	116

Executive Summary

This baseline study maps and examines the legal frameworks, policy instruments, and institutional arrangements governing environmental procedural rights across all eleven ASEAN Member States, organized around the three access pillars recognized in ADER: access to information, meaningful public participation, and access to justice in environmental matters. It is a diagnostic evidence base: it establishes what exists, identifies institutional strengths and implementation gaps, and surfaces the challenges and opportunities that characterize each Member State's landscape. The analysis and recommendations that build on these findings are developed in a companion policy document; this study deliberately stops at the diagnosis and key findings that must inform them.

The study applies a rights-based, comparative framework grounded in Principle 10 of the Rio Declaration, the Bali Guidelines, and RWI's foundational research on the procedural–substantive nexus, treating the three access rights as both enabling mechanisms for a healthy environment and standalone rights in their own right. Findings were developed through desk research across all eleven jurisdictions, a review of landmark case law and judicial procedure drawing on RWI's regional case repository, and semi-structured key informant interviews with government bodies, regional institutions, civil society organizations, National Human Rights Institutions, judicial actors, and affected communities. A uniform analytical tool built on RWI's Framework for Integrating Rights and Equality (FIRE) was applied across every Member State to ensure comparability, with an intersectional lens attentive to how gender, indigeneity, age, disability, and socioeconomic status shape the exercise of rights.

The overarching finding is that while ASEAN Member States have made meaningful, albeit uneven, progress in establishing legal frameworks for environmental procedural rights, a substantial gap persists between formal legal recognition and effective implementation. This gap is not uniform: it varies by pillar, by country, and by the specific communities seeking to exercise their rights.

On access to information, legal foundations exist but effective access remains elusive. Five Member States have general right-to-information legislation and Cambodia provides constitutional recognition, yet broadly drawn confidentiality and “state secret” exemptions, undefined categories of sensitive information, and the absence of clear request mechanisms operate as default barriers. Virtually no Member State guarantees environmental information in indigenous languages or through locally accessible channels - a gap doctrinally inconsistent with the requirements of Free, Prior and Informed Consent.

On public participation, formal compliance frequently substitutes for meaningful influence. Consultation is required in almost every Member State, most often through the Environmental Impact Assessment process, but across the region participation more often resembles tokenism than genuine engagement — through the narrowing of who is consulted, processes that are too technical or too late to shape outcomes, and the deficient operationalization of FPIC, which remains the single most consistent implementation gap documented in the study.

On access to justice, institutional innovation coexists with structural exclusion. The Philippines, Indonesia, and Thailand have developed notable models — from citizen-suit standing and specialized environmental courts to environmental judges' certification and landmark administrative jurisprudence — but outside these jurisdictions specialized adjudication is largely absent. Even where formal avenues exist, litigation cost, court centralization, limited legal aid, the expense of generating scientific evidence, and uneven institutional and enforcement capacity render environmental justice inaccessible for many communities.

On regional architecture, ADER's normative milestone coexists with realities that there are normative regression of environmental legal and policy framework in several member states. Despite the principle of non-regression, weakened public participation and access to information persist. In addition, the current architecture at ASEAN level on cross-border coordination remains similarly underdeveloped, especially on transboundary environmental impact. While the ASEAN Agreement on Transboundary Haze offer some basis for cooperation, ASEAN still lacks a rights-based mechanism granting everyone particularly the interested parties and affected parties proactive access to information on projects that have transboundary risks.

Two concerns cut across all three pillars. **The protection of environmental human rights defenders** is an urgent regional priority: criminalization through SLAPP suits, defamation, and broadly worded public-order legislation is widespread, and only Indonesia and the Philippines have dedicated anti-SLAPP provisions, unevenly enforced. **The recognition of Indigenous Peoples** remains fragmented, with divergent terminology across the region carrying sharply different legal consequences, and communities frequently positioned as stakeholders rather than rights-holders.

Taken together, these findings reveal that the protection of environmental procedural rights is fundamentally a question of equity and inclusion: Indigenous Peoples, environmental human rights defenders, and rural and low-income communities consistently face the most severe barriers. This baseline establishes the empirical reference point against which the RPA can be grounded and future progress assessed, and it points to domestic innovations within the region on which regional standards can draw.

LIST OF ABBREVIATIONS

AATHP	ASEAN Agreement on Transboundary Haze Pollution
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ADER	ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment
AEC	ASEAN Economic Community
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
ALA	ASEAN Law Association
ALAWMM	ASEAN Law Ministers Meeting
AMS	ASEAN Member States
APSC	ASEAN Political-Security Community
ASCC	ASEAN Socio-Cultural Community
ASEC	ASEAN Secretariat
ASOEN	ASEAN Senior Officials on Environment
BHEUU	Legal Affairs Division, Prime Minister's Department (Malaysia)
CACJ	Council of ASEAN Chief Justices
CHRP	Commission on Human Rights of the Philippines
CSOs	Civil Society Organizations
DENR	Department of Environment and Natural Resources (Philippines)
EHRDs	Environmental Human Rights Defenders
EIA	Environmental Impact Assessment
EPMA	Environmental Protection and Management Act (Indonesia, Law No. 32 of 2009)
EPMO	Environmental Protection and Management Order (Brunei Darussalam)
EQA	Environmental Quality Act 1974 (Malaysia)
FIRE	Framework for Integrating Rights and Equality

FOI	Freedom of Information
FPIC	Free, Prior, and Informed Consent
ICCPR	International Covenant on Civil and Political Rights
INIM	Inter-NHRIs Inquiry Mechanism
IPRA	Indigenous Peoples' Rights Act 1997 (Philippines)
LEP	Law on Environmental Protection (Vietnam)
MEAs	Multilateral Environmental Agreements
NCIP	National Commission on Indigenous Peoples (Philippines)
NEQA	Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992) (Thailand)
NGOs	Non-Governmental Organizations
NHRIs	National Human Rights Institutions
OIA	Official Information Act B.E. 2540 (1997) (Thailand)
ONEP	Office of Natural Resources and Environmental Policy and Planning (Thailand)
PSI	Pollutant Standards Index (Singapore)
RPA	Regional Plan of Action
RPEC	Rules of Procedure for Environmental Cases (Philippines, 2010)
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law
SEANF	Southeast Asia National Human Rights Institutions Forum
SLAPP	Strategic Lawsuit Against Public Participation
THPA	Transboundary Haze Pollution Act 2014 (Singapore)
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

I. Introduction

1. Background

In October 2025, the ASEAN Member States adopted the ASEAN Declaration on the Right to a Safe, Clean, Healthy, and Sustainable Environment (ADER). This landmark declaration represents a significant milestone in ASEAN, marking the first formal recognition of the critical intersection between human rights and environmental protection within the regional framework.

The ADER is designed to enhance the ASEAN Member States' capacity to fulfill their multilateral commitments across interconnected domains, encompassing not only environmental sustainability but also human rights, including freedom of expression and opinion, access to information, and access to justice. In line with the principle of non-regression and progressive realisation, the interpretation of this declaration should strategically align with and reinforces broader global and regional initiatives dedicated to the recognition, promotion, and protection of both procedural and substantive environmental rights. Notably, it complements the Human Rights Council Resolution 48/13 (2021) and UN General Assembly Resolution A/RES/76/300 (2022), both of which unequivocally recognize the human right to a clean, healthy, and sustainable environment as a universal entitlement. Furthermore, the ADER builds upon the foundational principles established in the ASEAN Human Rights Declaration.

The declaration possesses significant potential to catalyze and strengthen national environmental rights policies across ASEAN Member States. To ensure effective monitoring and implementation, it is essential to establish robust mechanisms that facilitate cross-pillar and cross-sectoral collaboration among relevant ASEAN organs, bodies, and entities engaged in environmental rights promotion. A comprehensive Regional Plan of Action (RPA) is currently under development, under the leadership of the ASEAN Intergovernmental Commission of Human Rights (AICHR), to operationalize the Declaration. The RPA will serve as a critical strategic instrument to guide the translation of regional commitments into coherent national policies while establishing appropriate institutional arrangements to ensure effective implementation of the Declaration's provisions. Furthermore, the RPA holds potential to serve as a normative and operational guide to align ASEAN's overarching strategic priorities – including the ASEAN Community Vision 2045 – and the multi-sectoral work plans of relevant ASEAN Sectoral Bodies with the rights and principles enshrined in the ADER.

This strategic document is critical given the region's urgent need to address multifaceted challenges, from severe environmental degradation and escalating climate change impacts¹ to a shrinking civic space. Currently, Environmental Human Rights Defenders (EHRDs) face increasing threats, including violence, abduction, and targeted persecution.²

Therefore, to effectively promote the implementation of the ADER, a comprehensive baseline study is essential to develop a nuanced understanding of the contextual landscape across each ASEAN Member State (AMS). Furthermore, without a baseline, it is not possible to monitor whether there is progress in the realization of the right to a healthy environment. This study aims to map and examine existing legal frameworks, policy instruments, and institutional arrangements across AMS. It will identify institutional strengths and implementation gaps, as well as the challenges and opportunities that characterize each member state's environmental rights landscape. The baseline study's findings intend to inform the drafting and development of the Regional Plan of Action (RPA), ensuring that this Plan is grounded in empirical evidence and responsive to actual conditions across the region.

This study is the first of two companion outputs. As a baseline, it performs a diagnostic function - mapping the legal and institutional architecture of environmental procedural rights across the region and establishing the findings against which implementation can be measured. The analysis of challenges and opportunities and the resulting recommendations for the RPA are developed separately in an accompanying policy document, which builds directly on the evidence set out here.

2. Research Methodology and Approach

a. Conceptual Framework: The Procedural-Substantive Nexus

The study adopts a rights-based, comparative framework centered on the three pillars of environmental procedural rights recognized in the ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (ADER): access to information, meaningful public participation, and access to justice in environmental matters. Anchoring on Principle 10 of the Rio Declaration, Bali

Guidelines (2010) and RWI's foundational research³ (*Iuarte-Lima et al., 2022*), these

1 ASEAN Secretariat, *Sixth ASEAN State of the Environment Report* (ASEAN Secretariat 2024), p. xxiii – xxv. See also: Indra Overland and others, 'The ASEAN Climate and Energy Paradox' (2021) 2 *Energy and Climate Change* 100019, DOI: 10.1016/j.egycc.2020.100019, p. 1-2

2 Global Witness, *Missing Voices: The Violent Erasure of Land and Environmental Defenders* (September, 2024), p. 16-18

3 Iuarte-Lima, C, et.al. Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia, Raoul Wallenberg Institute of Human Rights and Humanitarian Law., Sweden (2020),

procedural elements of the right to a healthy environment and also stand-alone rights are treated as “enabling mechanisms” essential for achieving substantive elements of the right to a healthy environment (clean air, healthy ecosystems, safe climate, healthy food, non-toxic environment, and safe water).

To ensure a robust “implementation-focused” analysis, four reinforcing lenses will be applied:

- **Procedural & Recognitional Justice:** Evaluating not just the fairness of processes, but whether marginalized groups—specifically **Indigenous Peoples and environmental human rights defenders (EHRDs)**—are recognized as legitimate actors.
- **Environmental Rule of Law:** Assessing if environmental laws that include provisions on environmental rights protection are widely understood, respected, and enforced to ensure that the benefits of environmental protection are enjoyed by people and the planet.⁴ This will be benchmarked from Bali Guidelines and UNEP’s Rule of Law Report.
- **Human Rights-Based Approach (HRBA):** Connecting all dimensions to international and regional obligations to ensure duty-bearer accountability while safeguarding and enabling the entitlements of rights-holders.
- **Regional-National Interplay :** Analyzing the interplay between national authorities and ASEAN regional mechanisms (e.g., AICHR).

b. Analytical Approach & Intersectionality

The study applies an **intersectional lens** to identify how gender, disability, age, indigeneity and socioeconomic status impact the exercise of rights. The analysis will result in:

- A mapping of legal/institutional variations across all 11 ASEAN Member States.
- The identification of regional clusters, barriers, and good practices for potential replication.
- A baseline of national alignment with ADER to inform the Regional Plan of Action (RPA).

⁴ UNEP, *Environmental Rule of Law: The First Report* (January, 2019), p. 1. UNEP defines rule of law as having three related components, namely: 1) law should be consistent with fundamental rights, 2) law should be inclusively developed and fairly effectuated, and 3) law should bring forth accountability in practice. See: UNEP, *Environmental Rule of Law: The First Report*, p. 8-10

c. Data Sources & Methodology

1. Desk Research

The baseline study was mainly based on data gathered through desk research. A deep-dive desk review was conducted to examine the existing legal frameworks, policies, and information explaining and analysing the implementation of environmental rights protection in each of the AMS and at the regional level. The analysis of various laws, regulations, policies, and relevant literature provided the analytical foundation for the study and helped identify key gaps, trends, and best practices.

2. Review of Case Law and Jurisprudence

A review and analysis of selected landmark judicial decisions from ASEAN Member States was conducted to assess judicial approaches, interpretations, and trends. The selection prioritized decisions that have significantly shaped environmental procedural rights and SLAPP jurisprudence in the region, drawing primarily upon the RWI Case Repository on Advancing Legal Responses to Climate Change and Transboundary Environmental Harm in Southeast Asia. The review was done to draw and understand how legal and policy framework protecting procedural environmental rights is understood and implemented.

Beyond case law, the analysis also included to the procedural rules and standing orders of the courts involved. This allowed the study to assess the extent to which existing procedural frameworks facilitate or hinder access to justice for EHRDs. This analysis was further informed by the RWI-International Commission of Jurists draft regional guidebook on rules of procedure for environmental cases. Where relevant, this will include an examination of whether courts have developed or applied specific procedural guidelines pertaining to environmental or SLAPP cases.

3. Key Informant Interviews

Semi-structured online interviews were conducted with governmental bodies, regional institutions, CSOs (including environmental public interest lawyers), National Human Rights Institutions (NHRIs), AICHR, judicial bodies, and vulnerable groups. The interviews helped to verify and confirm our initial findings gathered through desk research and analysis on court cases. Additionally, the interview also complemented our findings by shaping and grounding our recommendations to real-life implementation gaps observed and/or experienced by our interviewees.

To gather diverse perspectives, consultations focused on two distinct contexts: countries with established environmental procedural rights frameworks and notable implementation cases, and those where frameworks protecting environmental human rights defenders (EHRDs) and Indigenous Peoples remain limited. This dual approach aimed to understand implementation challenges and explore how the Regional Plan of Action (RPA) can provide meaningful national support.

A uniform analytical tool developed using RWI's Framework for Integrating Rights and Equality (FIRE), as found in Appendix I, is applied across all 11 ASEAN Member States to ensure data comparability and high-quality regional synthesis for the RPA.

II. Legal and Policy Architecture of Environmental Procedural Rights in ASEAN Member States

This chapter examines how environmental procedural rights are protected both within individual ASEAN Member States. It maps the existing legal and policy frameworks across all eleven ASEAN Member States, including constitutional provisions, national legislation, institutional arrangements, and the recognition of Indigenous Peoples and local communities. It then draws the country findings together into a consolidated regional synthesis. The chapter concludes by identifying and discussing the key challenges that arise in both the law itself and its practical implementation across each of the issues examined.

1. Brunei Darussalam

1.1 Access to Information

Brunei Darussalam does not have a freedom of information law, and its 1959 Constitution does not guarantee the right to access government-held information. While the Environmental Protection and Management Order (EPMO) 2016 establishes the primary framework for environmental governance, it does not contain explicit provisions mandating the proactive publication of environmental data, pollution monitoring results, or environmental quality standards to the general public.⁵ Environmental information in Brunei Darussalam is largely disseminated through government initiatives and the discretion of the Department of Environment, Parks and Recreation (JASTRe) and its website, which publishes environmental guidelines, including the EIA Guidelines for Brunei Darussalam, as well as general environmental education materials.⁶

In terms of open data, the government operates data.gov.bn, an online data platform that encourages government agencies and the public to access and reuse government data.⁷ However, the scope and depth of environmental datasets available on this platform remain limited, and data publication is at the discretion of the respective government agencies, with no definitive mechanism for accessing unpublished data.

5 Environmental Protection and Management Order (EPMO) 2016 (S 69/2016), Laws of Brunei.

6 Department of Environment, Parks and Recreation (JASTRe), Environmental Acts and Guidelines, available at <http://www.env.gov.bn>. See also JASTRe, EIA Guidelines for Brunei Darussalam v2.0

7 Data.gov.bn, "About": "Data.gov.bn is an online data platform for Brunei Darussalam open data. The main purpose of data.gov.bn is to encourage government agencies and public to access and reuse the government data."

Despite acknowledging a system of ‘Bumiputera’ or native people, which recognizes most of the seven Indigenous Malay groups residing in Brunei, there is no provision requiring the disclosure of environmental information to Indigenous Peoples or a requirement for the information to be made available in indigenous languages.

1.2 Access to Meaningful Participation

Meaningful public participation in environmental decision-making has not yet formalized as a general statutory right and remains largely administrative or project-based in Brunei’s broader legal and policy framework. The 1959 Constitution of Brunei Darussalam does not mention or guarantee the right to public participation in environmental decision-making, and there are no clear provisions for freedom of association or assembly that could serve as the basis for participatory rights. Formal groups are required to register with the Registrar of Societies, and the government may suspend the activities of registered organizations if it deems this to be in the public interest.⁸ The Environmental Protection and Management Order (EPMO) 2012 provides the primary framework for environmental governance, and the Department of Environment, Parks and Recreation (JASTRe) has published EIA Guidelines that require project proponents to conduct environmental impact studies for 19 specific categories of projects.⁹ Although these EIA requirements are detailed in matters related to the technicals and potential impacts of the project, public participation in the EIA process remains extremely limited in practice. Public involvement is typically limited to social impact questionnaires and occasional communication with residents near a project.¹⁰ There is no statutory requirement for public hearings, public comment periods, or community consent in the EIA process. Indigenous Peoples in Brunei Darussalam are largely classified under the broad “Malay” ethnic category in official censuses.¹¹ There is no recognition of the right to free, prior, informed consent (FPIC) or a similar mechanism for indigenous peoples to participate in environmental decision-making processes. Similarly, there are no specific protections or formal recognition for environmental human rights defenders. As of now, no registered civil society organizations in Brunei deal directly with human rights.

1.3 Access to Justice

Access to justice in Brunei Darussalam operates within an absolute monarchy governance with a dual legal system comprising secular common law courts and Sharia courts. Secular law provides for the right to a fair, timely, and public trial, and the judiciary generally enforces this right in matters that are not related to politics.

⁸ U.S Department of State, 2023 Country Reports on Human Rights Practices: Brunei”: p. 15

⁹ Department of Environment, Parks and Recreation (JASTRe), Environmental Acts and Guidelines, available at <http://www.env.gov.bn>. See also JASTRe, EIA Guidelines for Brunei Darussalam v2.0

¹⁰ Pangfoo Pimonkorn, “Environmental Impact Assessment as Customary International Law in ASEAN Region: Some Legal Issues”, *Environmental Policy and Law* Vol. 55(1) 2025, p. 35

¹¹ Minority Rights Group International, “Brunei Darussalam” (2024)

However, the broader context significantly limited access to justice. In addition, administrative and constitutional review is generally limited, which may affect available channel for environmental challenges.¹²

In environmental matters, the EPMO provides for offenses and penalties related to environmental pollution and management, but enforcement is carried out by the Department of Environment, Parks and Recreation, with no provision for citizen-initiated environmental litigation. There are no specialized environmental courts or tribunals, and there is no legal framework for public-interest litigation in environmental matters. Access to legal representation for indigent defendants is limited with no provision for pro bono legal counsel except in capital offenses.¹³

In noncapital cases, indigent defendants may have to represent themselves, although some NGOs provide pro bono legal services.¹⁴ With respect to Indigenous Peoples, the absence of legal recognition of their collective rights, the lack of demarcation of indigenous lands, and the absence of designated institutional representatives mean that Indigenous Peoples have no effective avenue to seek justice in matters affecting their lands and natural resources.¹⁵ There are no anti-SLAPP provisions, no protections for EHRDs, and no mechanism for communities to challenge environmental decisions affecting them.

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	- Environmental Protection and Management Order (EPMO) 2016 (primary environmental governance framework) - JASTRe website (environmental guidelines, EIA Guidelines v2.0) - data.gov.bn (open data platform for government data)	- No freedom of information law; 1959 Constitution does not yet guarantee access to government-held information - EPMO does not mandate proactive publication of environmental data, pollution monitoring, or quality standards - Limited environmental datasets on data.gov.bn; publication at government discretion; no provision requiring disclosure in indigenous languages despite Bumiputera recognition	- No freedom of information law and no constitutional guarantee of access to government-held information - The law does not contain explicit types of information that are mandatory to be disclosed - No provision requiring the disclosure of environmental information in indigenous languages or community-accessible formats, despite the acknowledged Bumiputera system

12 Ann Black, "Exporting A Constitutional Court to Brunei? Benefits and Prospects", *Constitutional Review* Vol. 8 No. 2 (2022), p. 372 - 375

13 U.S Department of State, 2023 Country Reports on Human Rights Practices: Brunei": p. 5

14 Ibid

15 Ibid, p.28

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Meaningful Participation	• EPMO 2012 (environmental governance framework) • JASTRe EIA Guidelines (EIA required for 19 project categories)	• No constitutional guarantee of public participation, freedom of association, or assembly; groups must register and may be suspended • No statutory requirement for public hearings, comment periods, or community consent in EIA; participation limited to social impact questionnaires • No recognition of FPIC or indigenous participation rights; no registered CSOs dealing with human rights	• No constitutional or legislative guarantee of public participation in environmental or other decision-making • No statutory requirement for public hearings, comment periods, or community consent within the EIA process; public involvement remains limited to social impact questionnaires • No recognition of FPIC or indigenous participation mechanisms
Access to Justice	• Dual legal system (secular common law and Sharia courts) • EPMO (environmental offences and penalties; enforcement by JASTRe)	• Judicial review formally abolished in 2004; courts cannot review executive actions • No citizen-initiated environmental litigation; no specialised environmental courts or public interest litigation framework • Legal aid limited to capital offences; no anti-SLAPP provisions, no EHRD protections; indigenous peoples have no effective avenue for justice regarding lands and resources	• No direct and clear access to challenge environmental decision or policy • Very limited legal standing rule beyond traditional civil standing to sue with legal aid only available for capital offenses • No direct and clear access to challenge environmental decision or policy • No anti-SLAPP provisions, no EHRD protections, and no legal recognition of indigenous collective rights

2. Cambodia

2.1 Access to Information

Cambodia's constitutional framework provides a foundational basis for access to environmental information. Article 41 of the 1993 Constitution, as amended, guarantees that *"Khmer citizens shall have freedom of expression... freedom of information, freedom of publication,"*¹⁶ This constitutional guarantee has been further

¹⁶ Constitution of the Kingdom of Cambodia 1993, art 41.

translated into environmental law through the Code on Environment and Natural Resources 2023. The Code covers a wide range of environmental information that should be opened to public including information for awareness-raising, management, protection, conservation, and development of natural protected areas, all information about the environment and natural resources, information for public interest, data on threatened wild plants and ecosystem crimes, risk assessment activities and reports, full and initial environmental impact assessment reports and relevant documents, and Environmental Monitoring Reports.¹⁷ However, the Code does not specify procedures for the public to request environmental information, leaving these details to be determined by legal instruments of the responsible ministry, competent ministries or institutions, or subnational administration. As a result, the public has limited access to environmental information due to data availability and management issues across Cambodia's ministries, including the Ministry of Environment. Not to mention, according to report by Westminster Foundation for Democracy (2025), existing mechanisms for access to environmental information in Cambodia are still ineffective and inaccessible¹⁸

2.2 Access to Meaningful Participation

Article 35 of Cambodia's Constitution states that all citizens *"have the right to participate actively in the political, economic, social and cultural life of the nation."* Specifically in environmental issues, Cambodia's Environment and Natural Resources Code 2023 and the Law on Environmental Protection and Management of Natural Resources frame participation as a central instrument for environmental stewardship and democratic governance. The 2023 Code enshrines public participation as a core principle, mandating that environmental information be freely and publicly accessible to maximize engagement in environmental and societal decision-making.¹⁹ The Code specifically requires public involvement in key areas, including biodiversity protection, environmental land use, sustainable cities, natural protected areas, and strategic environmental assessments, and affirms that environmental impact assessment procedures are only effective when public participation norms are observed.

The Code enables public participants to report to competent authorities, raise questions, and object to decisions.²⁰ However, the Code falls short in several respects, including the lack of detailed procedures for public participation, which are left to be determined by ministerial legal instruments rather than specified within the Code itself, and the framework does not adequately address potential disparities in participation among different communities.

17 Abdul Gaffar Karim and others, 'ASEAN Environmental Democracy Observatory: Regional Baseline Report' (Westminster Foundation for Democracy, August 2025) 6.

18 *Ibid.*

19 Art. 11 and 12 Cambodia Environment and Natural Resources Code 2023.

20 Art.s 61, 645, 655 and 687, Cambodia Environment and Natural Resources Code 2023.

Further, sectoral policies concerning Indigenous Peoples in Cambodia are inconsistent and inadequate. For example, the Environment and Natural Resources Code of 2023, as it fails to recognize Indigenous Peoples and instead uses the terminology of “local community”. In contrast, the 2001 Land Law and other national regulations recognize “Indigenous Peoples”. This condition shows Indigenous Peoples’ rights and matters remain to be a sensitive issue for policymakers,²¹ and thus the Indigenous Peoples are being denied their specific rights, including access to non-timber forest products, traditional practices and rotational farming. Recognition as “Indigenous Peoples” matters because it triggers distinct legal protections under international law, including FPIC, self-determination, and collective land rights, that “local community” status does not guarantee.

2.3 Access to Justice

In terms of access to justice, The Cambodian Constitution provides full rights to all citizens to exercise their rights to complain against the administration, as stipulated under Article 39: *“Khmer citizens have the right to denounce, make complaints, or claim compensation for damages caused by any breach of the law by institutions of the state, social organizations, or by members of such organizations”*. Aside from this constitutional provision, sectoral laws grant citizens the right to file complaints; for example, Article 7(6) of the Law on Electricity authorizes the Electricity Authority of Cambodia to handle complaints related to industry, mining, and energy issues.

While these provisions provide a basic legal pathway for environmental redress, the lack of dedicated environmental courts or a specialized environmental procedural code raises concerns about the quality and consistency of environmental cases handled in practice. To date, Cambodia does not have specialized environmental courts. All environmental disputes are handled by general courts at the provincial and municipal levels, with appeals processed through the Supreme Court. In terms of legal standing, Cambodia extends broad legal standing to a diverse range of parties in environmental and natural resource matters. Eligible claimants include affected individuals, the Ministry of Environment, sub-national administrations, and legally registered organizations such as NGOs. Those affected by environmental harm may seek legal recourse under Cambodia’s Criminal Law and the Code on Environment and Natural Resources 2023, both of which provide for administrative and criminal penalties for environmental violations.²² Further, Cambodia has a human rights committee (CHRC) that conducts activities, including mechanisms for receiving and resolving complaints regarding human rights violations.

21 Minh Tran, *et. al.*, “Advancing Indigenous People’s Rights for Inclusive and Sustainable Environmental Governance in ASEAN” <https://www.sei.org/wp-content/uploads/pdfs/186705/indigenous-peoples-rights-environmental-governance.pdf>, p.. 9

22 Abdul Gaffar Karim, Amalinda Savirani and Indah Surya Wardhani, *ASEAN Environmental Democracy Observatory: Regional Baseline Report* (Westminster Foundation for Democracy, August 2025) 8

Having a specialized environmental courts, chambers or judges, is particularly important given that environmental cases are often technically complex, requiring expertise that general courts may not possess. Not to mention, inadequate legal aid or free legal assistance makes it significantly harder for vulnerable and marginalized groups to access justice in environmental matters.²³

Lastly, reports have also raised concerns regarding judicial independence, legal aid, and criminal proceedings affecting EHRDs. A notable example is the case of activists from Mother Nature Cambodia, who were convicted of plotting against the government and insulting the King, charges widely seen as disproportionate given that their actions amounted to peaceful environmental advocacy. This is particularly concerning given that Mother Nature Cambodia has spent over a decade exposing corruption in the country's natural resource management.²⁴ Yet Cambodia still has no Anti-SLAPP regulations to date.

23 Cambodian Center for Human Rights (CCHR) and others, *Shadow Report for the 74th Session of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW): 6th Periodic Review of the Royal Government of Cambodia — Access to Justice* (Joint NGO Submission, 2019), p. 8

24 Human Rights Watch, 'Cambodia: Mother Nature Activists in Prison One Year' (*Human Rights Watch*, 2 July 2025) <https://www.hrw.org/news/2025/07/02/cambodia-mother-nature-activists-in-prison-one-year> accessed 16 June 2026.

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	• Constitution Art. 41 (freedom of expression and information) • Code on Environment and Natural Resources 2023 (broad categories of environmental information for public access, including EIA reports, monitoring reports, risk assessments)	• Code does not specify procedures for the public to request information, • Limited data availability and management across ministries, including the Ministry of Environment	• The law does not specify procedures for the public to request environmental information, deferring these details to future ministerial instruments that have yet to be developed • No dedicated access to information legislation establishing a comprehensive statutory mechanism for requesting government-held information • Data management infrastructure across relevant ministries remains limited, impeding systematic collection, organisation, and public dissemination of environmental information
Access to Meaningful Participation	• Constitution Art. 35 (right to participate in political, economic, social, cultural life) • Environment and Natural Resources Code 2023 (public participation as core principle, Art. 11–12) • 2001 Land Law (recognition of indigenous peoples and communal land); Law on Forestry 2002 (forest use provisions for indigenous peoples)	• Environment and Natural Resources Code 2023 replaced “Indigenous Peoples” with “local community,” regressing from 2001 Land Law recognition • Inadequate FPIC, forced eviction, and livelihood loss from large projects	• Detailed participation procedures are not governed in primary legislation • The Code’s replacement of “Indigenous Peoples” with “local community” represents a terminological departure from the recognition established in the 2001 Land Law and Law on Forestry 2002, potentially narrowing the scope of rights previously accorded • No FPIC requirements codified in binding legislation; no specific provisions addressing the intersectional vulnerabilities faced by indigenous women in environmental decision-making

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Justice	• General courts at provincial and municipal levels (no specialised environmental courts) • Constitution Art. 39 (right to denounce state breaches); Code 2023 and Criminal Law (admin and criminal penalties) • Cambodian Human Rights Committee; broad legal standing for individuals, MOE, sub-national admin, NGOs/CSOs	• General courts may lack technical capacity for complex environmental cases • Inadequate legal aid or free legal assistance for environmental matters. • No anti-SLAPP provisions; authorities weaponise legislation to suppress defenders (e.g., Mother Nature Cambodia activists convicted on disproportionate charges for peaceful advocacy)	• No specialized environmental courts; general courts often lack technical capacity for complex cases. • Broad legal standing is undermined by the near-absence of legal aid for environmental claimants. • No anti-SLAPP protections; law is weaponized against defenders

3. Indonesia

At the constitutional level, Article 28H(1) of the 1945 Constitution guarantees every citizen the right to a healthy and good environment, while Article 28F enshrines the right to communicate and obtain information. These provisions establish the constitutional foundation upon which environmental procedural rights are grounded, framing them simultaneously as standalone rights and as enabling rights that support the realization of substantive environmental entitlements.

3.1 Access to Information

Article 65 of the 2009 Environmental Protection and Management Act (EPMA) provides that everyone shall have the right to environmental education, access to information, access to participation, and access to justice in the fulfillment of the right to a good and healthy environment. The Elucidation to Article 65 further specifies the categories of environmental data and information that must be made publicly available, including environmental impact analysis documents, reports and documents resulting from environmental monitoring evaluations, encompassing both compliance monitoring and monitoring of changes in environmental quality, as well as spatial planning documents. The primary responsibility for providing this information rests with both national and sub-national government authorities, while the EPMA also grants every person the right to convey information or submit reports as part of their participation in environmental management.

Beyond the EPMA, Indonesia has a dedicated legal framework on information access through Law No. 14 of 2008 on Public Information Openness (*Undang-Undang Keterbukaan Informasi Publik*). This law is built on the fundamental principle that all public information is open and accessible by default, with confidentiality treated as a strictly limited exception rather than the norm. It defines public bodies broadly, covering executive, legislative, and judicial institutions, state-funded agencies, and non-governmental organisations receiving public or foreign funding, and requires them to proactively disclose certain categories of information without waiting for public requests. Any exemptions are subject to a consequential harm test and a public interest balancing test, ensuring that no exemption is absolute or permanent. The law also establishes a structured dispute resolution system, from internal objection mechanisms within public bodies, to mediation and adjudication before the Information Commission, and ultimately to judicial review before the courts, backed by criminal sanctions against those who deliberately destroy, falsify, or obstruct access to public information.

Despite this seemingly robust legal framework, access to environmental information remains a significant challenge in practice, especially for affected communities and broader public. They must often file formal disputes before the Information Commission just to obtain basic environmental data. Even then, a process meant to conclude within months can stretch on for years. CSOs are often compelled to initiate formal dispute proceedings before the Information Commission simply to obtain basic environmental data.

Case in Point: The “Nusantara Information Gap”

The Case: *East Kalimantan Mining Advocacy Network (Jatam Kaltim) v. Ministry of Public Works & Housing (2023 – 2025)*

The Request: Environmental Impact Assessments (AMDAL) documents and supporting materials for infrastructure projects in the Nusantara New Capital City (IKN).

Outcome: The Central Information Commission partially granted the request, ordering disclosure of five categories of documents, including the AMDAL, dam construction permits, and water resource utilization permits, a decision subsequently upheld by the Jakarta Administrative Court and ultimately affirmed by the Supreme Court at the cassation level.

Strategic Takeaway: This case illustrates the challenges on the ground. Despite robust legal frameworks and even when the law mandates disclosure, CSOs must spend years in court to obtain basic environmental data.

Sources: Central Information Commission Decision No. 011/II/KIP-PSI-A/2023, Jakarta Administrative Court Decision No. 31/G/KI/2024/PTUN.JKT, and Supreme Court Decision No. 806 K/TUN/KI/2025

3.2 Access to Meaningful Participation

Beyond the general right to participation recognized under Article 65, the EPMA 2009 originally established a relatively strong public participation mechanism within the environmental impact assessment (EIA) process. Under Article 30 of the EPMA 2009 not only were affected communities entitled to be consulted, but community representatives and environmental organizations were also granted a seat on the EIA assessment committee, giving the public a meaningful role in the appraisal process itself.

However, the Omnibus Law on Job Creation, enacted in 2020, significantly weakened these participatory safeguards. Most notably, it narrowed the definition of “public” entitled to be consulted during the EIA process to only “directly-impacted communities” — a concept that lacks statutory clarity. This ambiguity leaves wide administrative discretion for arbitrary scoping decisions, as clear criteria for determining who qualifies as “directly impacted” remain absent. Furthermore, the Job Creation Law stripped communities of their statutory right to file formal objections to an EIA. While subsequent implementing regulations may provide further guidance, they cannot exceed the boundaries set by the parent statute, making it unlikely that the robust participation standards of the original EPMA can be restored through secondary legislation alone.

The weakening of public participation extends beyond the drafting stage to the decision-making process. The Omnibus Law replaced the EIA assessment committee with an Environmental Due Diligence Team formed exclusively by the central government and composed of government institutions and certified experts, removing community representatives and environmental organizations entirely. This not only eliminates meaningful public scrutiny from the appraisal process but also signals a shift in which communities are no longer positioned as equal stakeholders in environmental decision-making.

Further, indigenous peoples remain excluded from the decision-making process, despite Indonesia’s legal framework recognizing indigenous peoples through the constitution and at least five separate acts, all of which use the term *masyarakat hukum adat* (customary law community) rather than the internationally recognized term “indigenous peoples”. Article 18B(2) 1945 Constitution provides that the state recognizes and respects units of customary law communities and their traditional rights so long as they remain in existence and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, and Article 28I(3), which recognizes the cultural identity and rights of traditional communities as an integral part of human rights.

Further, for over fifteen years, Indonesian CSOs have been advocating for a dedicated Indigenous Peoples Bill, on the grounds that the existing regulatory framework is

insufficient to adequately protect indigenous peoples' rights and territories. The scale of the resulting harm is significant: the 2024 Year-End Report of the Indigenous Peoples' Alliance of the Archipelago (*Aliansi Masyarakat Adat Nusantara*) documented at least 121 cases involving the loss of 2,824,118 hectares of indigenous territories across 140 communities.²⁵ Further complicating the situation is the lack of comprehensive recognition of indigenous identity. At the institutional level, the management of indigenous peoples' affairs is dispersed across at least 13 government bodies, with no relevant mandate above the third-echelon level, making the development of a coherent and rights-based policy approach extremely difficult.²⁶ It is this combination of legal gaps, territorial loss, selective recognition, and institutional fragmentation that Indonesian CSOs are seeking to address through the proposed Indigenous Peoples Bill.

3.3 Access to Justice

In terms of access to justice, the EPMA provides several legal avenues and establishes legal standing for individuals and organisations to bring environmental claims. These include the right of individuals to sue independently or collectively through class actions under Article 91, as well as the legal standing of environmental organisations to bring representative claims under Article 92. Additionally, Supreme Court Regulation No. 1 of 2023 recognises citizen lawsuits as a further form of legal standing available to members of the public in environmental matters.

Beyond formal litigation, several government institutions have established complaint mechanisms through which members of the public may submit environmental grievances. These include the Ministry of Environment and Forestry, the Ministry of Forestry, and the Ministry of Administrative and Bureaucratic Reform through the LAPOR! Mechanism, an integrated complaint handling platform, and the Ministry of Energy and Mineral Resources. Environmental agencies at the sub-national level have also established complaint-handling mechanisms, broadening access to redress for communities across Indonesia.

Furthermore, Indonesia has already developed its green bench system. It is reflected through the Environmental Judges Certification System that governs the judicial capacity for environmental matters, which includes the selection and certification of environmental judges, the design and delivery of specialized training, and the monitoring and evaluation of judicial performance. These are operationalized through Supreme Court Decree No. 26/KMA/SK/II/2013 on selection and appointment, and Supreme Court Decree No. 37/KMA/SK/III/2015 on monitoring and evaluation.

25 Koalisi Kawal RUU Masyarakat Adat, *Merajut Kekuatan Negara-Bangsa Indonesia Menuju Hadirnya UU Masyarakat Adat* (Policy Brief, 28 April 2025) 8

26 *Ibid.*, p. 10

Despite this regulatory framework, in practice, access to environmental justice remains deeply challenging for many communities in Indonesia. Key barriers include limited access to legal aid despite the existence of Law No. 16 of 2011 on Legal Aid, the difficulty of securing environmental expert testimony for grassroots communities, and the centralization of permitting authority following the enactment of the Job Creation Law in 2020. This centralization has meant that many environmental lawsuits must be filed before central courts located in major cities, creating significant financial and logistical obstacles for communities in remote areas seeking to assert and enforce their environmental rights.

Further, Indonesia has developed a relatively comprehensive set of protections for EHRDs. Article 66 of the Environmental Protection and Management Act provides that individuals fighting for the right to a good and healthy environment cannot be subject to criminal prosecution or civil suits, serving as the foundational anti-SLAPP provision in Indonesian environmental law. Building on this, several institutions have further developed regulations addressing EHRD protection from SLAPP, including: (a) Ministry of Environment and Forestry Regulation No. 10 of 2024; (b) Supreme Court Regulation No. 1 of 2023 on Environmental Case Handling; and (c) Attorney General Guideline No. 1 of 2022 on Environmental Criminal Case Handling.

These instruments provide guidance on who qualifies as an EHRD, the forms of public participation that are protected, and the legal protections available — including specific directions for judges and prosecutors in handling SLAPP cases.

GOOD PRACTICE: Indonesia's Multi-layered Anti-SLAPP Architecture

Indonesia has developed the region's most comprehensive EHRD protection framework. Article 66 EPMA provides the foundational anti-SLAPP provision, now expanded by Constitutional Court Decision No. 119/PUU-XXIII/2025 to cover victims, whistleblowers, witnesses, experts, and activists across all forms of participation.

Supporting instruments include: MoEF Regulation No. 10/2024, Supreme Court Regulation No. 1/2023, and Attorney General Guideline No. 1/2022.

RPA Relevance: Provides a tested multi-institutional model for anti-SLAPP implementation that other Member States can adapt.

There are signs the courts can apply these protections. In 2025, the Cibinong District Court dismissed, at an interlocutory stage, a plantation company's civil suit against two academic experts, holding that their expert testimony was protected public-interest participation under Article 66.²⁷ But the harder problem lies on the criminal

²⁷ Fia Hamid-Walker, 'Anti-SLAPP Ruling a Win for Environmental Activism in Indonesia' (Indonesia at

side, where most criminalization happens at the police stage, before a case ever reaches a judge who could apply Article 66.

Despite this seemingly comprehensive framework, significant implementation challenges remain. Between 2014 and 2024, Friends of the Earth Indonesia recorded 1,131 cases of criminalization against environmentalists across the country.²⁸ One of the key obstacles is the persistent lack of awareness and understanding among law enforcement officers regarding these protections. Critically, the police, as the institution with the authority to halt the criminalization of EHRDs at the earliest possible stage, have yet to develop their own internal regulation on this matter, representing a significant gap in the overall protection architecture.

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	- Constitution Art. 28F (right to information) and Art. 28H(1) (right to healthy environment) - EPMA 2009, Art. 65 (right to environmental information) - Law No. 14/2008 on Public Information Openness (presumptive openness; dispute resolution via Information Commission)	- CSOs must pursue formal Information Commission disputes to obtain basic environmental data - Legally mandated information often inaccessible without protracted litigation (e.g., JATAM Kaltim v. Ministry of Public Works re IKN/ Nusantara AMDAL) - No guarantee that environmental information is accessible to indigenous peoples in local languages	- Broadly drawn confidentiality exemptions (national security, commercial interest) under Law 14/2008 lack clear criteria for public interest balancing, enabling routine rejection of environmental information requests - No mandatory proactive disclosure mechanism for final approved EIA documents; access depends on formal requests and litigation rather than automatic publication - No legal requirement for environmental information to be provided in indigenous languages or through community-accessible channels

Melbourne, 29 October 2025) <https://indonesiaatmelbourne.unimelb.edu.au/anti-slapp-ruling-a-win-for-environmental-activism-in-indonesia/> accessed 2 July 2026.

28 Diana Gloria Wamafma and others, 'Analysis of Criminalization of Environmental Activists from the Perspective of Friedman's Theory (Case Study of Daniel Frits Tangkilisan in Karimunjawa)' (2025) 8(12) International Journal of Social Science and Human Research 9662.

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Meaningful Participation	• EPMA 2009, Art. 65 (right to participation); Art. 30 (original: community seats on EIA committee) • Omnibus Job Creation Law 2020 (narrowed EIA participation framework) • Constitution Art. 18B(2) and Art. 28I(3) (customary law communities); at least five acts with distinct indigenous definitions	• Job Creation Law narrowed consultable “public” to undefined “directly impacted communities” and removed community objection rights • EIA committee replaced by government-only Environmental Due Diligence Team, eliminating public scrutiny • Fragmented recognition of indigenous peoples (masyarakat hukum adat) across more than five laws, no dedicated Indigenous Peoples legislation despite 15 years of advocacy	• No clear legal definition of “directly-impacted communities” to guide consistent identification during EIA scoping, leaving determination to administrative discretion • No legal safeguard against regression of participation standards; secondary legislation cannot exceed the parent law, meaning the stronger protections of the original EPMA cannot be fully restored • Inconsistent indigenous definitions across at least five acts with no overarching harmonising framework; FPIC not codified in binding national legislation; indigenous affairs dispersed across 13+ government bodies with no mandate above third-echelon level
Access to Justice	• EPMA Art. 91 (class actions), Art. 92 (org standing); SC Reg No. 1/2023 (citizen lawsuits); Environmental Judges Certification System • EPMA Art. 66 (anti-SLAPP); Constitutional Court Decision No. 119/PUU-XXIII/2025 (expanded EHRD protection) • MoEF Reg No. 10/2024; AG Guideline No. 1/2022; complaint mechanisms (LAPOR!, sub-national agencies) • Law No. 16 year 2011 on Legal Aid	• Post-2020 centralisation of permits forces most lawsuits to central courts, creating financial barriers for remote communities • Limited legal aid and difficulty securing expert testimony; expert witnesses face retaliatory SLAPP suits (e.g., Prof. Bambang Hero Saharjo) • 1,131 criminalisation cases against environmentalists (2014–2024); police lack internal regulation on EHRD protection; Art. 162 Mining Law misused to criminalise protest	• No provision for decentralised or mobile environmental courts to serve remote and rural communities; centralised permitting post-2020 structurally concentrates litigation in Jakarta where the court is far from where the harm occurs • No dedicated legal aid framework for environmental cases; no mechanism to support community access to expert testimony or to protect expert witnesses from retaliatory suits • Police institution have yet to develop internal regulation operationalising existing anti-SLAPP protections; Contradictory Law (e.g., Art. 162 Mineral and Coal Mining Law) still enables attack on EHRDs

4. Lao People's Democratic Republic

Main regulation pertaining to environmental procedural rights is governed under Environment Protection Law No. 53/NA (2024) and several decrees, as explained below:

4.1 Access to Information

Lao PDR provides a legal basis for access to environmental information through several instruments. Article 4 of the Environmental Protection Law mandates that the state promotes the protection, restoration, and conservation of the social and natural environment by disseminating laws and environmental information, raising awareness, and providing education. Article 61 further mandates that the natural resources and environment sector must establish a management system and environmental information services to ensure that information is provided to the public in accordance with regulations. At the implementation level, the Decree on Environmental Impact Assessment (No. 389/GOL, 2022) institutionalizes a disclosure system that ensures environmental information remains current and accessible throughout the EIA process. The Decree establishes a multi-directional information-sharing obligation: government agencies must provide relevant data to project owners; project owners must submit sufficient project and environmental information to the natural resources and environment sector for review and approval; affected communities must provide local environmental data to project owners and relevant authorities; and project owners must maintain regularly updated databases and periodically disclose environmental management and monitoring information to all relevant parties.

With respect to public disclosure specifically, Article 64 of the Decree sets out the categories of information that must be disclosed to affected communities and other stakeholders, including information on the project owner, environmental impacts, mitigation measures, preliminary and comprehensive EIA reports, and environmental management and monitoring plans, including monitoring outcomes. Disclosure must be made in both Lao and English through a range of channels, including newspapers, television, radio, websites, and other printed and digital materials. Where a project owner seeks to withhold certain information, a formal request must be submitted to the natural resources and environment sector, which has twenty-five working days to determine whether the information qualifies as confidential, with any confidentiality period agreed upon jointly by the two parties. For complex projects, project owners are additionally required to establish dedicated database centers within the project area and nearby districts.

However, to date, Lao PDR faces significant challenges in accessing environmental information, driven by limited transparency, weak institutional capacity, and restrictions on CSOs. Government

agencies often classify environmental data as sensitive. There is also limited information about what is classified as environmental information open to the public, for example, whether emission and other pollution data shall be made public. In terms of the project cycle, communities affected by dams, mining projects, or logging concessions frequently report not receiving sufficient information about project impacts. Weak infrastructure and technical capacity further constrain information-sharing.

4.2 Access to Meaningful Participation

Article 62 of Lao PDR Environmental law said mandates that the state must ensure the participation of the masses, especially the people who are affected directly or indirectly, to participate in the many forms of decision-making, including the creation of land allocation plans, comprehensive management of natural resources and the environment, strategic environmental assessment, evaluation affecting the environment, creating a management plan and monitoring the environment, controlling and monitoring pollution. Even the Law stated that societal participation is a condition for issuing environmental certificates.²⁹ Further, the Decree on Environmental Impact Assessment (No. 389/GOL, 2022) also specifies public participation in environmental protection. Article 10 divides participation into two levels: pre-approval and post-approval.

Although some policies allow for public involvement, the “top-down” nature of legal and project implementation leaves little room for effective participation. Public consultation processes in EIAs are often conducted superficially, with limited timeframes and without full involvement of vulnerable groups such as women, ethnic minorities, and rural communities. Language barriers, lack of trust, and centralized decision-making hinder meaningful participation.³⁰

29 Art. 39 and 40 Lao’s Environmental Protection Act 2024.

30 Thip Nouansyvyong, ‘Environmental Rights in ASEAN: The Experiences from Laos’ in Gerhard Mangara and Antonius Aditanyo Nugroho (eds), *Proceeding of the Fifth ASEAN Environmental Law Conference 2025* (ICEL, ELAW and ARIEL, August 2025) 156.

LAOS'S LEGAL FRAMEWORK ON ETHNIC GROUPS AND FPIC

- **Constitutional recognition** — Articles 1 & 8 of the 2025 Lao Constitution recognize “ethnic groups.”
- **Guidelines on Ethnic Group Consultation** — issued but not yet embedded in the national regulatory framework.
- **FPIC made standard procedure** — via approval of Promoting the Right of Lao Peoples’ FPIC in Land-Use Rights in Forest Areas, jointly issued by the Director General of the Department of Forestry and the Head of the Department of Ethnicity (Lao Front for National Development), binding on all government departments and projects.
- **Decree on Ethnic Group Affairs 2020 (Decree No. 207/GoL)** — provides the legal basis for ethnic group affairs; defines “ethnic group” as a people sharing distinct language, history, name, customs, traditions, and culture, bound together as part of the Lao national entity.

Despite this framework, significant concerns remain regarding the protection of ethnic groups in practice. Beyond the persistently inadequate implementation of FPIC, certain legislative instruments themselves raise serious concerns. A notable example is the Law on Resettlement and Vocation (2018), which raises serious concerns for indigenous and ethnic communities across Lao PDR. Most critically, this law effectively grants the government broad authority to resettle or expropriate indigenous peoples’ lands. It goes further by implying that the government is better placed than communities themselves to determine their needs, providing a legal basis for relocating populations to areas where the government considers employment prospects to be more favorable or where labor is required, with little regard for community consent or cultural attachment to ancestral lands.³¹

4.3 Access to Justice

To date, Lao PDR does not have a specialized environmental court. With only around 800 lawyers in the country and strict licensing requirements, few legal practitioners are able to litigate environmental rights violations. Citizens face high barriers in bringing claims against corporations or state actors. Procedural requirements, fear of reprisals, and lack of legal aid further discourage environmental litigation.³² Lao PDR also lacks an independent national human rights institution but maintains a government-led “National Committee on Human Rights” under the Ministry of Foreign Affairs.

31 International Fund for Agricultural Development, *Country Technical Note on Indigenous Peoples' Issues: Lao People's Democratic Republic* (last updated March 2022) 31 https://www.ifad.org/documents/d/new-ifad.org/laos_ctn-pdf accessed 15 June 2026.

32 *Ibid.*

Access to justice in environmental matters is further complicated by the fragmentation of legal mandates across multiple laws and government agencies, creating significant gaps and inconsistencies in enforcement. A key example is the disconnect between the Environmental Protection Law’s requirement for EIA and the practical reality that enforcement authority often rests with sectoral ministries whose primary mandates prioritize development objectives over environmental safeguards. This fragmented legal landscape creates regulatory blind spots where environmental harms go unaddressed due to overlapping or unclear jurisdictions. Meaningful coordination among the Ministry of Natural Resources and Environment, sectoral ministries, and local authorities remains structurally weak, further undermining the effectiveness of environmental justice mechanisms in practice.

To date, Lao PDR does not recognize terminology of EHRDs and does not have specific regulation on Anti-SLAPP and other EHRD protection. However, more concerns rising as EHRDs in Laos face arbitrary arrest, summary trials and lengthy imprisonments.³³ One of the example is arbitrary arrest towards Lao PDR human rights defender and environmental activist Houayheuung Xayabouly, because of her criticism towards hydropower project. The United Nations Working Group on Arbitrary Detention (UNWGAD) has determined that this arrest was arbitrary and in violation of international law.³⁴

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	- Environmental Protection Law No. 53/NA (2024), Art. 4 (state duty to disseminate), Art. 61 (information management system) - Decree on EIA No. 389/GOL (2022), Art. 64 (disclosure categories including EIA reports, mitigation measures, monitoring outcomes)	- Government agencies often classify environmental data as sensitive; limited clarity on what is open to the public - Communities affected by dams, mining, and logging report not receiving sufficient project impact information - Weak infrastructure and technical capacity constrain information-sharing	- No clear delineation between environmental information that is open to the public and information that may be classified as sensitive, including whether emission and pollution data shall be publicly available - Institutional capacity and infrastructure for systematic environmental data management and dissemination remain underdeveloped - No specific provisions ensuring environmental information reaches affected ethnic communities in linguistically and culturally accessible formats

33 Manushya Foundation, *Profits Over People, Repression Over Rights: The State of Economic, Social, and Cultural Rights in Laos*, Joint Civil Society Shadow CESCR Report to be considered by the Committee on Economic, Social, and Cultural Rights, during its 78th Session (8-26 September 2025), (2025), p. 1

34 See, A/HRC/WGAD/2021/6, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-th session, 3–12 May 2021 Opinion No. 6/2021 concerning Houayheuung Xayabouly (Lao People’s Democratic Republic)

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Meaningful Participation	- Environmental Protection Law Art. 62 (state duty to ensure participation), Art. 39–40 (participation as condition for environmental certificates) - EIA Decree No. 389/GOL (2022), Art. 10 (pre- and post-approval participation) - FPIC guidelines (approved by Dept. of Forestry and LFND) but not embedded in binding legislation; Decree on Ethnic Group Affairs 2020 (No. 207/GoL)	“Top-down” implementation leaves limited room for effective participation; EIA consultations often superficial - Insufficient involvement of women, ethnic minorities, and rural communities; language barriers and lack of trust - FPIC not embedded in binding national law; Law on Resettlement and Vocation (2018) grants government broad resettlement authority with limited regard for consent	- FPIC guidelines have been adopted at the administrative level but are not embedded in binding national legislation, limiting their enforceability - No framework ensuring meaningful involvement of women, ethnic minorities, and rural communities in EIA consultations, including adequate timeframes and accessible language - The Law on Resettlement and Vocation (2018) effectively provides legal basis for relocating populations to areas deemed more favourable by the government, with limited regard for community consent or cultural attachment to ancestral lands
Access to Justice	- No specialized environmental court - National Committee on Human Rights under Ministry of Foreign Affairs, which is not independent	- Only approximately 800 lawyers nationwide with strict licensing, with few able to litigate environmental rights - High barriers to claims against corporations or state, fear of reprisals, lack of legal aid - EHRDs face arbitrary arrest, summary trials, and imprisonment, yet no anti-SLAPP provisions or dedicated EHRD protections	- No specialised environmental court or tribunal; approximately 800 lawyers nationwide, creating a structural deficit in environmental legal capacity - No independent national human rights institution; the existing body operates under the Ministry of Foreign Affairs, raising questions about institutional independence - No legal recognition of environmental defenders and no anti-SLAPP provisions or other dedicated protections; fragmented legal mandates across agencies create regulatory gaps in enforcement

5. Malaysia

Malaysia does not generally recognize the right to a safe and healthy environment under its Constitution. However, recognition of environmental procedural rights can be found across several statutes, including the Environmental Quality Act 1974. The details are set out below:

5.1 Access to Information

Malaysia's framework for access to information operates across two distinct levels: national environmental mandates and state-level freedom of information (FOI) enactments.

- Federal Level: Mandatory Environmental Reporting

Under Malaysia's Environmental Quality Act (1974), the federal government mandates a systematic cycle of public environmental disclosure:

- The Mandate (Section 3(1)(i)): the Director General of the Department of Environment is required to publish an annual Environmental Quality Report.
- Current practice: the Department confirms that it publishes the Annual Report and Environmental Quality Report periodically each year, indicating a sustained cycle of updated disclosure.

Recently, Malaysia is pushing for the enactment of a standalone Freedom of Information Act that is currently being brought to discuss in the parliament. However, the development of the bill has struggled to gain political support.

- State Level: Freedom of Information (FOI) Enactments

While Malaysia lacks a federal FOI law, the states of Selangor and Penang have established localized legal frameworks to guarantee public access to state government documents.

The legal basis for access to information in Malaysia lies in the Freedom of Information (State of Penang) Enactment 2010 (Enactment 16 of 2010). This law grants every individual the right of "access to official documents" held by the departments of the State Government of Penang (s.5(1)). Additionally, the Freedom of Information (State of Selangor) Enactment 2011 declares as its objective the provision of opportunities for "every individual" to access information held by the departments of the State Government (Preamble). Further,

Additionally, some states in Malaysia also enacted state-level Freedom of Information Frameworks, as reflected in Selangor and Pulau Pinang. Under Section 6(4)(2) of Selangor's Freedom of Information Enactment 2011 and Section 6(2) of Pulau Pinang's Freedom of Information Enactment 2010, individuals who are unable to submit a written request due to illiteracy or disability are allowed to make their

applications orally. Furthermore, Section 10(4) of Selangor's Enactment allows requested information to be provided in an alternative form accessible to the applicant.

However, there are several obstacles to accessing environmental information. Often, only EIA reports that are published during the public display period are accessible. The public has no access to the final EIA report that was finally approved by the Department of Environment. Indigenous peoples affected by projects are often the worst impacted because they lack access to critical information, and FPIC principles are rarely applied in practice.

Case in Point: Holding Governments and Companies Accountable for Violations of Indigenous Land Rights

The Case: Wak Ngah Pili A/P Bah Adim and 35 other individuals v Perak Hydro Renewable Energy Corporation, Conso Hydro RE, the Perak State Government, the Perak Land and Mines Office, the Federal Government, and Jabatan Kemajuan Orang Asli (JAKOA), Malaysia's Orang Asli Development Department.

The Request: The Semai villagers sought to stop a hydroelectric dam project build on their ancestral land in the village of Ulu Geruntum without their free, prior, and informed consent. They argued the project violated their customary land rights and caused environmental and cultural harm.

Outcome: In September 2024, the Ipoh High Court ruled in the villagers' favor. The presiding judge, found that the developers had failed to properly consult or obtain consent from the Semai before construction, and ordered the companies to immediately halt operations, vacate the site, and remove all equipment within 30 days. The court also found the state government, federal government, and JAKOA had breached their fiduciary duty to protect Indigenous land.

Strategic Takeaway: This is one of few cases where courts held both private developers *and* government agencies (state, federal, and the Indigenous affairs department itself) jointly liable for failing to protect Orang Asli customary land, rather than treating it as solely a developer-consent issue.

Sources: Suit No. AA-22NCvC-52-04/2018

5.2 Access to Participation

Public participation in Malaysia's EIA process is governed by three key instruments:

- Section 34A of the Environmental Quality Act 1974
- the Environmental Quality (Prescribed Activities) Environmental Impact Assessment Order 2015, and
- the EIA Guidelines 2016.

While the EQA 1974 does not explicitly mandate public participation, Section 34A(2) requires that EIA reports be prepared in accordance with guidelines issued by the Director General of Environment, thereby giving legal force to any public participation requirements embedded in the EIA Guidelines 2016. The EIA Order 2015 goes further by making public participation a formal requirement for prescribed activities under the Second Schedule, while activities under the First Schedule are generally exempt unless the Director General issues a specific written instruction to the contrary. The Order also requires that completed EIA reports be publicly displayed to allow for community comment. In practice, opportunities for public engagement arise at two stages of the EIA process for Second Schedule activities. At the pre-submission stage, a Term of Reference Adequacy Check meeting is held, though public representation is limited to a small number of selected individuals known as Appointed Individuals. At the submission stage, the completed EIA report must be made available for public viewing and comment before it is reviewed by the EIA Technical Review Committee.³⁵

In practice, opportunities for public engagement arise at two stages of the EIA process for Second Schedule activities. At the pre-submission stage, a Term of Reference Adequacy Check meeting is held, though public representation at this stage is limited to a small number of selected individuals known as Appointed Individuals. At the submission stage, the completed EIA report must be made available for public viewing and comment before it is reviewed by the EIA Technical Review Committee.³⁶

EIA Guideline provides a more detailed explanation of the consultation process. It is stated that the consultation shall be conducted during the scoping phase, as this occurs early in the project cycle. The scoping shall consider issues of concern identified and expressed by the stakeholders and the public (especially the local community), the professional and scientific community, government departments, and NGOs.³⁷ Further, the public could also provide reviews and comments on the EIA

35 Maisarah Makmor, Hafez Saleh, Nikmatul Adha Nordin, "Public Participation Assessment for Environmental Impact Assessment in Malaysia, Canada and New Zealand", *Journal of Architecture, Planning and Construction Management* (10:1) 2020, p. 19

36 Maisarah Makmor, Hafez Saleh, Nikmatul Adha Nordin, "Public Participation Assessment for Environmental Impact Assessment in Malaysia, Canada and New Zealand", *Journal of Architecture, Planning and Construction Management* (10:1) 2020, p. 19

37 Department of Environment, Ministry of Natural Resources and Environment (Malaysia), *Environmental Impact Assessment Guideline in Malaysia* (2016) 23 <https://www.doe.gov.my/wp-content/uploads/2021/08/>

reports during the review process. The entire review process will be completed within 60 working days. The public is notified through the mass media and the Department of Environment's homepage as to when and where the EIA Reports are available for review and comment.

While this framework provides a structured basis for public involvement, the restricted scope of participation, particularly at the pre-submission stage, raises genuine questions about whether the process is sufficiently inclusive and meaningful in practice. Further, consultations are typically limited to village heads rather than entire communities, an issue particularly visible in Malaysia, where village heads, despite being elected by their communities, are also endorsed and paid monthly allowances by the government, and at times make decisions or agree to projects without consulting villagers or despite their objections.³⁸ This narrow form of consultation, compounded by restricted access to information, creates opportunities for corruption and leaves village heads vulnerable to being influenced by project proponents and consultants. Inconsistent legislative frameworks continue to marginalize the Orang Asli, with key laws frequently drafted without regard for Indigenous rights.

CHALLENGE: Gap in the Protection of Indigenous Peoples

The Progress: Malaysia has established several legal frameworks relevant to indigenous peoples, including the Aboriginal Peoples Act 1954, constitutional protections under Articles 153 and 8(5)(c), and partial acknowledgement of indigenous interests under the National Land Code, the National Forestry Act 1984, and the Wildlife Conservation Act 2010.

Barrier: No statutory provision expressly recognizes Orang Asli communal land rights, and existing laws have not been consistently applied in practice. Legislative processes have also proceeded with limited consideration of Orang Asli rights, as illustrated by the proposed Seed Bill, which raised concerns over its potential to restrict traditional seed-saving and cultivation practices central to indigenous livelihoods.

RPA Priority: Incorporate meaningful FPIC with indigenous peoples in all future legislative processes and any environmental-decision making process, as well as recognizing indigenous peoples communal land rights

[FA-EIA-GUIDELINE-IN-MALAYSIA-1.pdf](#) accessed 15 June 2026.

38 Sahabat Alam Malaysia – Friends of the Earth Malaysia, *Inputs from Sahabat Alam Malaysia – Friends of the Earth Malaysia to the Special Rapporteur on the Human Right to a Healthy Environment to the United Nations: The Overview and Challenges within Malaysian Jurisdiction on Environmental Impact Assessments (EIA), Strategic Environmental Assessments (SEA) and the Human Right to a Clean, Healthy and Sustainable Environment* (submission, 15 April 2025) para 3.6 https://foe-malaysia.org/wp-content/uploads/2025/05/250413-Call-for-Input_UN-Special-Rapporteur_Input-by-SAM_F_For-Submission.docx.pdf accessed 15 June 2026

5.3 Access to Justice

Malaysia has established specialized environmental courts, which in principle represent a positive step toward dedicated environmental adjudication. However, a significant challenge lies in the limited jurisdiction of these courts.

Environmental courts in Malaysia are only empowered to hear cases involving specific environmental offences falling within the scope of 38 Acts and 17 Regulations. These include:

- Environmental Quality (Clean Air) Regulation 1978
- the Environmental Quality (Prescribed Premises) (Raw Natural Rubber) Regulations 1978
- the Environmental Quality (Motor Vehicle Noise) Regulations 1987
- the Environmental Quality (Control of Emission from Diesel Engines) Regulations 1996 and
- the Environmental Quality (Refrigerant Management) Regulations 1999.

Additionally, the court also has jurisdiction over sectoral law, such as the International Trade in Endangered Species Act 2008, Atomic Energy Licensing Act 1984, Sewerage Services Act 1993, Fisheries Act 1985, and Wildlife Conservation Act 2010.³⁹

Further, Malaysia has an active National Human Rights Commission, established under the Human Rights Commission of Malaysia Act 1999. Other than that, Malaysia is deliberating the Ombudsman Malaysia Bill to establish an independent body to replace the Public Complaints Bureau. The Ombudsman will act as a one-stop service for public complaints regarding government maladministration and misconduct.

In terms of EHRDs' protection, to date Malaysia does not recognize the term "EHRDs" and does not have a specific regulatory framework for them. However, there is a mandate to enact an Anti-SLAPP mechanism under the National Action on Business and Human Rights 2025-2030. This became the responsibility of the Legal Affairs Division (BHEUU), in which there are three mandates to strengthen the Anti-SLAPP Mechanism, including:

- a. Enactment of Anti-SLAPP legislation that underscores the rights of affected communities and establishes robust discovery mechanisms.

³⁹ Dahlan, N. K. (2019). Environmental Issues In Malaysia: A Perspective Of Alternative Dispute Resolution With The Aid Of Video Conference Technology. In H. Kamaruddin, S. Tan, & R. X. Thambusamy (Eds.), *Law, Environment and Society*, vol 70. European Proceedings of Social and Behavioural Sciences (pp. 64-70).

- b. The specific experience of Indigenous Peoples is recognized in SLAPP-related legislation, pertaining to the use and ownership of native ancestral lands.

The legal framework is extended to include all communities affected by corporate harms, including farmers and small-scale fishers.

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	- Freedom of Information Enactments: Penang (2010) and Selangor (2011) (state-level only) - Environmental Quality Act 1974: annual Environmental Quality Report mandate (s.3(1)(i)) - Selangor and Penang enactments allow oral applications for persons with illiteracy or disability	- No federal-level Freedom of Information law - Only EIA reports published during the public display period are accessible; final approved EIA reports are not publicly available - Indigenous (Orang Asli) communities lack access to critical information; FPIC principles rarely applied in practice	- Access to information legislation exists only at state level (Penang, Selangor), with no federal-level framework applicable across all states - No legal obligation to publish final approved EIA reports beyond the public display period, limiting ongoing public access to decision-making records - No statutory requirement to provide environmental information in formats accessible to indigenous communities or to apply FPIC in the information disclosure process
Access to Meaningful Participation	- EQA 1974 s.34A; EIA Order 2015 (Second Schedule); EIA Guidelines 2016 - Pre-submission participation via ToR Adequacy Check; post-submission public display and comment - Aboriginal Peoples Act 1954 (Orang Asli affairs); Constitution Art. 153 and Art. 8(5)(c)	- Pre-submission participation restricted to selected "Appointed Individuals" rather than full communities - Consultations often limited to village heads who receive government allowances, creating potential conflicts of interest - Orang Asli lacks formal statutory recognition of communal land rights.	- EIA framework limits pre-submission participation to a small number of selected individuals, with no provision for broader community access at the scoping stage - No statutory safeguards to ensure village heads consult their communities before representing them, or to mitigate conflicts of interest arising from government-paid allowances - No clear statutory provision expressly recognising Orang Asli legal right to ancestral lands; Aboriginal Peoples Act 1954 provides for land reservation but does not grant formal communal land rights recognition

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Justice	- Specialised environmental courts (jurisdiction under 38 Acts and 17 Regulations) - National Human Rights Commission (NHRC, Act 1999); pending Ombudsman Malaysia Bill - NAP on Business and Human Rights 2025–2030 (anti-SLAPP mandate for BHEUU)	- Environmental courts' jurisdiction limited to prescribed instruments; wide range of disputes fall outside their competence - No legal recognition of "EHRDs"; no specific regulatory framework for EHRD protection - No clear statutory provision recognising Orang Asli legal right to ancestral lands	- Environmental courts' competence is confined to offences under prescribed instruments, leaving a wide range of environmental disputes without a specialised judicial forum - No legal recognition of the term "environmental defenders" and no dedicated regulatory framework for their protection; anti-SLAPP legislation mandated under the NAP-BHR 2025–2030 has yet to be enacted - No provision providing clear statutory recognition of indigenous peoples land rights

6. Myanmar

6.1 Access to Information

Myanmar's 2008 constitution enshrines the right to freedom of expression under Section 354(a), but it does not explicitly mention the right to information.⁴⁰ Many scholars have suggested that the constitutional protection for the freedom of expression should be interpreted in line with international law to encompass the right to information, but this interpretation has not been adopted by Myanmar courts.⁴¹ In addition, Myanmar has yet to have a comprehensive freedom of information legislation. The Environmental Conservation Law 2012 mandated several disclosure-related provisions, including the requirement to declare the current environmental situation.⁴² The Environmental Conservation Rules 2014 further require disclosure of information by implementing the dissemination of environmental information and enhancement of environmental awareness.⁴³ However, neither law regulates any mechanism for the public to access information held by public bodies nor imposes any proactive disclosure requirement regarding environmental data and information.

40 Constitution of the Republic of the Union of Myanmar (2008), Section 354(a). See Article 19, "The Right to Information and Natural Resources in Myanmar" (July 2019), p. 21.

41 Art. 19, "The Right to Information and Natural Resources in Myanmar" (July 2019), p.21

42 Environmental Conservation Law 2012, Chapter V, Art. 9(a)

43 Environmental Conservation Rules 2014 (Notification No. 50/2014), Chapter III, Art. 26(c), (d)

Arguably, provisions related to access to environmental-related information can be found sporadically through other laws. The Environmental Impact Assessment Procedure 2015, for instance, requires the Project Proponent to provide timely disclosure of all relevant information about the project through their website and local media; however, in practice, the scope of this public access remains limited.⁴⁴

Several other laws contain narrow disclosure and limited access to information requirements, for instance:

- The Companies Law and the Investments Law require businesses to report and publish information about their activities and finances. Furthermore, investors are also granted the right to obtain relevant information on any measures or decisions that significantly impact their investment, yet the law does not provide a parallel right to the public or those impacted by the investment⁴⁵;
- Laws governing land acquisition impose notice requirements and periods for public comment⁴⁶; and
- Government policies including the National Environmental Policy 2019 and the National Land Use Policy contain commitments to promoting transparency and access to information.⁴⁷

CHALLENGE: Asymmetric Transparency & Investor Privilege

The Barrier: Existing legal frameworks grant **investors** an explicit right to access information regarding measures affecting their assets, yet they fail to provide a **parallel right** for the public or communities impacted by those same investments.

The Impact: This creates a “transparency deficit” where those bearing the environmental and social risks of a project are legally disadvantaged compared to those seeking profit, undermining the principle of **Recognitional Justice**.

44 Environmental Impact Assessment Procedure 2015, Sections 57 and 61.

45 Article 19, “The Right to Information and Natural Resources in Myanmar” (July 2019), p.14

46 Land Acquisition Act (1894), Section 4(1)

47 Ibid.

Regarding access to information for Indigenous Peoples, the Myanmar Constitution recognizes what is referred to as ‘national races’ (*Taingyintha*), which include 135 ethnic groups recognized by the Union Government.⁴⁸ On paper, Article 5 of the 2015 Protection of the Rights of National Races Law grants these specific groups an explicit right to receive complete and precise information regarding extractive industries and development projects in their areas prior to implementation, allowing them to negotiate.⁴⁹

6.2 Access to Meaningful Participation

Myanmar’s 2008 Constitution establishes a foundational commitment to environmental protection under Article 45, which provides that “the Union shall protect and conserve the natural environment.”⁵⁰ Article 390(b) further imposes a duty on every citizen to assist the Union in environmental conservation.⁵¹ These constitutional provisions, however, do not explicitly guarantee the right to public participation in environmental decision-making.

As the primary legal framework for environmental governance, the Environmental Conservation Law 2012 explicitly mandates the fostering of public awareness and community cooperation in environmental conservation.⁵² Under this framework, the Environmental Impact Assessment Procedure 2015 establishes requirements for public consultation during the EIA process with local communities, local authorities, community-based organizations, and civil society.⁵³ Section 50 of the EIA Procedure requires that during EIA investigations, the Project Proponent shall hold public meetings, and Section 67 mandates that the Department shall arrange public consultation meetings at national, regional, state, and local levels, at which the Project Proponent shall present the EIA Report.⁵⁴ The Department is also required to collect and review all comments and recommendations received.⁵⁵ In addition to the EIA regulation, the new Rules implementing the amended Mining Law also require companies to provide evidence of consultation with, and agreement from, local communities on proposed mining projects, although there is no clear guidelines on FPIC mechanisms.⁵⁶

48 Art. 19, “The Right to Information and Natural Resources in Myanmar” (July 2019), p.24

49 Protection of the Rights of National Races Law (2015), Art.5

50 Constitution of the Republic of the Union of Myanmar (2008), Art. 45

51 Ibid., Art. 390(b)

52 Environmental Conservation Law 2012 (Pyidaungsu Hluttaw Law No. 9/2012), Art. 3(f)

53 Environmental Impact Assessment Procedure 2015, Notification No. 616/2015

54 Ibid., Section 50 and 67(d). See also ELAW, “Myanmar: EIA Law”, accessed through <https://elaw.org/elm/myanmar>.

55 Ibid., Section 67(e)

56 *Myanmar Mines Law* (1994); *Myanmar Mines Rules* (1996), Sections 51(c), 67(c) and 85(c). See, Myanmar Centre for Responsible Business, ‘Main Laws Applicable to the Mining Sector in Myanmar’, 23 May 2018,

As for Indigenous Peoples' participation in environmental decision-making, the Protection of the Rights of National Races Law, as discussed above, provides room for negotiation between the government and Indigenous Peoples whose land is affected by extractive or business activities. However, the lack of recognition of several other indigenous peoples compromises their collective rights over land and resources when there's conflict against project developments. Furthermore, Myanmar law contains no dedicated protection mechanisms for Environmental Human Rights Defenders (EHRDs). This creates a severe protection gap for frontline communities and individuals defending their environment, a vulnerability that is most acute in highly militarized or contested ethnic minority regions.

6.3 Access to Justice

Access to justice in environmental matters in Myanmar is nominally provided through both constitutional and statutory provisions. The 2008 Constitution provides for judicial review through writ to the Supreme Court under Article 296, and the High Court has jurisdiction over matters prescribed by law under Article 306(d).⁵⁷ However, as in Singapore, there are no clear provisions on environmental legal standing in Myanmar. The Environmental Conservation Law does not contain a citizen suit provision that would allow individuals or communities to bring environmental claims directly against polluters or negligent government agencies.⁵⁸

There is no specialized environmental court or tribunal, and the general courts have limited technical capacity to adjudicate complex environmental disputes.⁵⁹ The EIA Procedure requires that all costs of public consultation shall be borne by the Project Proponent, but there is no mechanism to ensure that affected communities can independently access legal representation or technical expertise to challenge EIA findings.⁶⁰ The framework does not include anti-SLAPP protections for EHRDs, and communities that oppose projects in ethnic states have faced intimidation and violence. However, laws such as the Forest Law and Forest Rules allow grievances to be filed within 90 days of the declaration for those whose lands are to be declared part of reserved or protected forest.⁶¹

https://www.myanmar-responsiblebusiness.org/pdf/SWIA/Mining/Main-Myanmar-E_and_S-Laws-Mining Sector.pdf, p. 2.

57 Constitution of the Republic of the Union of Myanmar (2008), Art. 296 and 306(d)

58 Environmental Conservation Law 2012 (Pyidaungsu Hluttaw Law No. 9/2012)

59 UNESCAP and UNEP, Environmental Governance in Asia and the Pacific (2022).

60 Environmental Impact Assessment Procedure 2015, Notification No. 616/2015, Section 69.

61 Ministry of Environmental Conservation and Forestry, The Forest Rules (1995), Section 13(b).

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	• Constitution 2008 s.354(a) (freedom of expression; does not explicitly mention right to information) • Environmental Conservation Law 2012, Ch. V (environmental situation disclosure); Environmental Conservation Rules 2014 • EIA Procedure 2015 (project proponent website/media disclosure); Protection of Rights of National Races Law 2015 Art. 5 (indigenous peoples' right to extractive project information)	• No comprehensive right to information legislation; no mechanism for public to access information held by public bodies • Investors granted explicit right to access project information, but no parallel right for the public or affected communities ("asymmetric transparency") • Sharing information deemed confidential may result in criminal offence	• No comprehensive right to information legislation and no statutory mechanism enabling the public to request information held by government bodies • Existing legal frameworks provide investors an explicit right to information on measures affecting their investments, but do not extend a parallel right to the public or communities bearing environmental and social risks • No public interest exception to provisions criminalising disclosure of information deemed confidential, creating legal risk for those sharing environmental information
Access to Meaningful Participation	• Constitution Art. 45 (state duty to protect natural environment), Art. 390(b) (citizen duty to assist) • Environmental Conservation Law 2012; EIA Procedure 2015 s.50, s.67 (public meetings and consultation) • Mining Law Rules (evidence of community consultation required); Protection of Rights of National Races Law 2015 (negotiation rights for affected indigenous peoples)	• Constitution does not explicitly guarantee public participation in environmental decision-making • Mining law requires consultation evidence but provides no clear FPIC guidelines or mechanisms • Some indigenous peoples not recognised among the 135 official "national races"; no specific legal protections for EHRDs	• No explicit constitutional or statutory guarantee of public participation in environmental decision-making; existing provisions focus on state duties and citizen obligations rather than participatory rights • Sporadic regulation on public participation (e.g., Mining law requires evidence of community consultation) but does not prescribe clear FPIC guidelines, standards, or procedures • Indigenous recognition is limited to the 135 officially designated "national races," potentially excluding other groups; no specific legal protections for environmental human rights defenders

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Justice	• Constitution Art. 296 (judicial review via Supreme Court), Art. 306(d) (High Court jurisdiction) • Forest Law and Forest Rules (grievance procedure for reserved forest declarations within 90 days) • No specialised environmental courts; no citizen-suit provision	• No citizen-suit provision in Environmental Conservation Law; general courts have limited technical capacity • No mechanism for affected communities to independently access legal representation or challenge EIA findings • No anti-SLAPP protections; communities opposing projects in ethnic states face intimidation and violence; judicial corruption combined with ethnic bias	• Environmental Conservation Law does not contain a citizen-suit provision enabling individuals or communities to bring claims directly against polluters or negligent agencies • No specialised environmental court or tribunal; no mechanism ensuring affected communities can independently access legal representation or technical expertise to challenge EIA findings • No anti-SLAPP protections for environmental defenders; structural concerns regarding judicial independence and impartiality, particularly in cases involving ethnic minorities

7. Philippines

7.1 Access to Information

The legal basis for access to Information in the Philippines lies under the 1987 Constitution, in particular Article III, Section 7, which recognizes the right of the people to information on matters of public concern. This constitutional guarantee is further implemented through Executive Order No. 2 (2016), Section 3, which provides that *“every Filipino shall have access to information, official records, Public records, and to official acts, transactions, or decisions, as well as to government research data used as basis for policy development”*.

Although the Philippines has not yet enacted the Freedom of Information Act, as it is currently proposed and pending as House Bill No. 2897, or the People’s Freedom of Information Act 2025, several sectoral laws contain key provisions on access to environmental information. For example, the provision under the Climate Change Act, in particular section 9, mandates the Philippines’ Climate Change Commission to oversee the dissemination of information on climate change. Not to mention,

the Department of Environment and Natural Resources was given the authority to oversee the establishment and maintenance of a climate change information management system and network, which includes climate change risks, activities, and investments.⁶²

However, having the Executive Order as the legal basis is not sufficient. Since it applies only to the executive branch, it does not necessarily extend to other branches of government or to companies, nor is it binding on the public. Furthermore, it includes no penalty clauses for failing to disclose information, as it merely serves as a guideline.

7.2 Access to Meaningful Participation

Fundamentally, the 1987 Constitution of the Philippines guarantees public participation and the existence of organizations that advocate for the people. Article XIII, Section 16 provides *“The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.”* Although the term “environmental” is not mentioned, social, political, and economic decision-making is understood to cover decisions concerning the environment.

With respect to public participation in the Environmental Impact Assessment process, the Environmental Impact Statement System under DENR Administrative Order 2003-30 requires that the outcomes of public scoping and consultation be formally documented, annexed to the EIA report, and considered when determining whether to issue an Environmental Compliance Certificate. This establishes a direct and traceable link between community participation and decision-making outcomes. Where authorities fail to provide adequate opportunities for participation or to disclose how public input was considered, both procedural and substantive legal consequences may follow.

The opportunity for participation lie in three stages, including scoping, the EIA review stage after the completion of EIA report, and monitoring stage after the issuing of the environmental permit. The stakeholders that shall be included in the process are quite varied, which may include:

1. persons living or working within the identified impact (direct and secondary) areas;
2. persons with properties in the impact areas;
3. persons living or working within the boundaries of the impact areas;

62 Climate Change Act 2009 (Republic Act No. 9729) (Philippines), s 15.

4. organized interest groups operating in the impact areas;
5. industry representatives in the impact areas;
6. local government units;
7. indigenous cultural communities (ICCs) in the impact areas;
8. local institutions in the areas; and
9. concerned national agencies.

Additionally, the Philippine legal landscape is notably progressive regarding gender-inclusive participation. The Philippine Magna Carta of Women Section 25 provides that “[t]he State shall ensure women’s participation in policy-making or decision-making bodies in the regional, national, and international levels. It shall also ensure the participation of grassroots women leaders in decision and policy-making bodies in their respective sectors...”.

While the country appears to have a strong institutional design for public participation, there are still challenges on the implementation level. Inclusive decision-making has become a challenge, with obstacles including participation that is not sustained throughout the project cycle. There is limited community influence on priority setting; the consultations are also too technical, which may constrain participation; and participation during monitoring and evaluation is often administratively driven, positioning communities as respondents providing feedback rather than as actors shaping evaluative criteria or interpreting results.⁶³

Further, the right to FPIC of indigenous peoples also remains a persistent problem, with reported violations committed by both the National Commission on Indigenous Peoples itself and private corporations, even though the Philippines is one of the countries that has a specific act on indigenous people, the Indigenous Peoples Rights Act 1997 (IPRA Law). Although The Law has quite strong mandates on FPIC and acknowledges several rights to ancestral domains that shall be recognized and protected,⁶⁴ and specific concern to Children and Youth as under Section 27, Indigenous peoples in the Philippines are still facing several threats. Thus, there is a major role for the NCIP as the primary government agency through which indigenous peoples may seek and receive government assistance to protect and promote the rights and well-being of Indigenous Peoples,

63 Vermudo, V., Pereña, R. P., N. Cabanos, J., & Nitura VII, J. Y. (2026). Examining Community Participation across the Project Cycle in Philippine Environmental Initiatives. *Asian Research Journal of Arts & Social Sciences*, 24(3), 182–191. <https://doi.org/10.9734/arjass/2026/v24i3891>

64 See, section 25, IPRA Law.

7.3 Access to Justice

The Philippines has become one of the countries with the most progressive legal standing in environmental matters. The Philippines has rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC), which govern civil, criminal, and special civil actions involving enforcement or violation of environmental rules and other related laws, rules, and regulations. The procedure also provides citizen suit standing for Filipino citizens, and one of the most interesting things is the rule provides legal standing to minors or generations yet unborn to file an action to enforce their rights or obligations under environmental law.⁶⁵

The RPEC also provides legal standing to minors or generations yet unborn to file an action to enforce their rights or obligations under environmental law.⁶⁶ The annotation to RPEC states that NGOs and “people’s organizations” are required to submit proof of their juridical personality, meaning accreditation, recognition or registration.⁶⁷ In *Resident Marine Mammals v. Reyes*,⁶⁸ standing was recognized in an action filed by stewards representing the resident marine mammals and subsistence fisherfolk who sought to enjoin the Department of Energy, the Department of Environment and Natural Resources, and other government agencies from implementing a compliance certificate and service contract to Japan Petroleum Exploration Co. for the exploration, development, and exploitation of petroleum resources in and around the Tañon Strait.⁶⁹ The Supreme Court held that there was no need to give the resident marine mammals themselves legal standing, as RPEC allows any Filipino citizen, as a **steward of nature**, to bring a suit to enforce relevant environmental laws.⁷⁰ Hence, the stewards were declared to possess the legal standing to file the petition as their petition showed that there may be possible violations of laws concerning the habitat of the resident marine mammals.⁷¹

65 See, section 5 A.M. No. 09-6-8-SC

66 See, section 5 A.M. No. 09-6-8-SC

67 RPEC Annotation, p 111.

68 *Resident Marine Mammals v. Reyes*, G.R. No. 180771, April 21, 2015.

69 Grizelda Mayo Anda, “Environmental Courts and Tribunals in the Philippines: Opportunities and Challenges in Environmental Litigation” in Linda Y. Sulistiwati and Sroyon Mukherjee (eds), *Environmental Courts and Tribunals in Asia-Pacific: Best Practices, Challenges and the Way Forward* (Brill Nijhoff 2025) p 71; “Climate Change, Coming Soon to a Court Near You: Climate Litigation in Asia and the Pacific and Beyond” (*Asian Development Bank*, December 2020) pp 22 – 23, available at: <https://www.adb.org/sites/default/files/publication/659631/climate-litigation-asia-pacific.pdf>

70 *Ibid.*

71 *Ibid.*

Case in Point: Providing Legal Standing for Unborn Generation

The Case: *Oposa vs. Factoran* (G.R. No. 10183, 1993)

The Request: Cancellation and non-renewal of all existing Timber License Agreements and the cessation of the issuance of the TLAs by the Department of Environment and Natural Resources. One of the legal grounds is intergenerational equity, as the TLAs violated their right to a balanced and healthful ecology, not only for the present generation but also for generations yet unborn.

Outcome: The Supreme Court ruled in favor of the petitioners in terms of legal standing, recognizing that the right to a balanced and healthful ecology is a fundamental legal right, making this one of the most cited cases in the context of environmental rights and intergenerational justice

Strategic Takeaway: This case illustrates the recognition of the standing to sue on behalf of future generations, establishing intergenerational equity as a justiciable principle. It is noted that succeeding generations have valid legal standing, as current environmental decision-making may affect the unborn generations' right to a healthful ecology

Furthermore, the RPEC introduced groundbreaking judicial remedies, most notably the *Writ of Kalikasan* and the *Writ of Continuing Mandamus*. The *Writ of Kalikasan* provides a legal remedy when an individual's constitutional right to a balanced and healthful ecology is violated or threatened. It is specifically invoked in cases where environmental damage is of such magnitude that it transcends local boundaries, threatening the life, health, or property of inhabitants across two or more cities or provinces. Complementing these procedural remedies, statutory frameworks like the Philippine Clean Air Act of 1999, the Ecological Solid Waste Management Act of 2000, and the Indigenous Peoples' Rights Act (IPRA) of 1997 explicitly institutionalize access to justice through robust citizen suit provisions.

Beyond legal standing, the Philippines has developed a well-established system of specialised environmental courts with a relatively long institutional history. In 1998, the country enacted Republic Act 8557, which established the Philippine Judicial Academy as a training institution for justices, judges, court personnel, lawyers, and judicial aspirants. Discussions about the creation of dedicated environmental, or "green," benches began to emerge around 2006, culminating in the issuance of Resolution A.M. No. 07-11-12-SC, which designated 117 environmental courts, comprising both first- and second-level courts, to hear and decide all types of environmental cases arising from at least 14 environmental laws. These designated courts function as specialised tribunals with exclusive jurisdiction over environmental matters, representing a significant institutional commitment to strengthening access to environmental justice.

The Commission on Human Rights of the Philippines (CHRP) is an independent body with a broad mandate to investigate allegations of human rights violations. The CHRP has emerged as one of the most prominent NHRIs for its active engagement in climate change-related cases. A landmark example is the National Inquiry on Climate Change, concluded in 2022. Launched in 2015, this first-of-its-kind inquiry investigated the responsibility of the “Carbon Majors” or—the world’s largest carbon-producing corporations—for the human rights impacts of climate change in the Philippines.⁷² By bridging the gap between climate science, corporate accountability, and human rights law, the inquiry set a major global precedent for how human rights frameworks can be leveraged to hold corporate polluters accountable and provide redress for frontline communities. Building on this successful precedent, the CHRP initiated the establishment of a regional Inter-NHRI mechanism to help Southeast Asian human rights institutions jointly address transboundary issues, including environmental and climate crises.

Despite these macroscopic frameworks, systemic barriers continue to hinder access to justice for poor and disadvantaged communities. Research and interviews identify three critical gaps:

- Financial gap: the high cost of competent legal representation remains prohibitive. Furthermore, protracted case delays and inadequate protections leave minorities—including women and children—highly vulnerable.
- Geographical gap: the uneven distribution of specialized environmental courts across the Philippines restricts public access to environmental justice. As an illustration, in 2008, the Philippines Supreme Court designated 117 municipal and regional trial courts across the Philippines to serve as environmental courts.⁷³ Although other courts are able to decide on environmental cases when there’s no environmental court presents, this highlights the need for better justice infrastructure and reach to ensure that communities in the last, unconnected mile where environmental impact often happens can access the court.
- Capacity gap: online interview revealed both judges and the NHRI require specialized training on environmental cases, particularly regarding environmental human rights defenders (EHRDs), a group whose distinct legal challenges are often poorly understood by the judiciary.

⁷² National Inquiry on Climate Change Report, Commission on Human Rights of the Philippines 2022.

⁷³ Grizelda Mayo Anda, “Environmental Courts and Tribunals in the Philippines: Opportunities and Challenges in Environmental Litigation” in Linda Y. Sulistiwati and Sroyon Mukherjee (eds), *Environmental Courts and Tribunals in Asia-Pacific: Best Practices, Challenges and the Way Forward* (Brill Nijhoff 2025) p 67.

To protect advocates from being weaponized against by corporations or powerful interests amid these systemic gaps, the Philippines has integrated progressive legal defenses into its procedural law. Specifically, Rule 1 Section 4(g) of the RPEC defines a SLAPP as:

“an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights”.⁷⁴

Rule 6 of RPEC authorizes courts to dismiss SLAPPs in a summary hearing before proceeding to a full trial. The defendant may raise “SLAPP as a defence”, triggering a time-bound process where the defendant must prove “by substantial evidence that his act for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment”.⁷⁵ The party that has filed the legal action must prove by preponderance of evidence that the action is not a SLAPP and is a valid claim. The defence of SLAPP must be resolved within thirty (30) days after the summary hearing. If the Court dismisses the action, the Court may award damages, attorney’s fees, and costs of suit under a counterclaim if one has been filed. This defence also applies in criminal cases – before arraignment of the accused, they may file a motion to dismiss on the ground that the criminal action is a SLAPP (Rule 19).

While this framework reflects a progressive recognition that litigation can be used to silence environmental advocacy, its practical effectiveness has been limited. International monitoring bodies have repeatedly identified serious risks faced by land and EHRDs in the Philippines, who the UN defines as individuals or groups who take peaceful action—whether in a personal or professional capacity—to protect environmental or land rights.⁷⁶

Recognizing these limitations in court-level protections, grassroots and legislative movements are shifting toward proactive protective frameworks for advocates. Locally, various municipalities are enacting protective laws, such as the Human Rights Defenders’ Protection Ordinance passed by Baguio City. On the national scale, legislative momentum is building around Senate Bill No. 2447. This pending bill

74 Available at: https://lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html.

75 RPEC, Rule 6.

76 Ramos, A., Le Billon, P., Seagle, C., Madzwamuse, M., Walker Painemilla, K., Petriv, I. and Jauregui, L. (eds.) (2021). Policy Matters, Special Issue 22, Volume I. Gland, Switzerland: IUCN, p. 1

seeks to legally define the rights of advocates, institutionalize state responsibilities, and establish explicit enforcement mechanisms to protect human rights defenders from state and corporate reprisals.⁷⁷

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	• 1987 Constitution Art. III, s.7 (right to information on public concerns) • Executive Order No. 2 (2016), s.3 (access to official records and government research data) • Climate Change Act s.9 (information dissemination mandate for Climate Change Commission)	• EO No. 2 applies only to the executive branch; does not bind other branches of government or private companies • No penalty clauses for failure to disclose; serves merely as a guideline • No enacted Freedom of Information Act (pending House Bill No. 2897)	• Reliance on an Executive Order rather than legislation means the right to information lacks binding force beyond the executive branch and carries no enforcement mechanism • Absence of penalty clauses for non-disclosure reduces incentives for compliance across government agencies • Comprehensive Freedom of Information Act remains pending (House Bill No. 2897), leaving the current framework without full legislative backing
Access to Meaningful Participation	• 1987 Constitution Art. XIII, s.16 (right to participation in decision-making) • DENR Administrative Order 2003-30 (EIS System: public scoping, EIA review, monitoring stages) • IPRA Law 1997 (FPIC, ancestral domain rights, NCIP); Magna Carta of Women s.25 (gender participation)	• Consultations at planning stage often too technical for meaningful community participation • Monitoring and evaluation are administratively driven; communities positioned as respondents rather than decision-shapers • FPIC violations persist by both NCIP and private corporations	• No requirement that EIA consultations be conducted in non-technical, locally accessible language, limiting meaningful engagement at the planning stage • Monitoring and evaluation frameworks do not position communities as actors shaping evaluative criteria, resulting in administratively driven processes • NCIP institutional capacity has not kept pace with its mandate, as reflected in the 33% achievement rate for ancestral title issuance (2023); no effective enforcement mechanism to address FPIC violations by NCIP and private corporations

⁷⁷ https://legacy.senate.gov.ph/press_release/2023/SB%202447%20-%20Human%20Rights%20Defenders%20Protection%20Act.pdf

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Justice	- Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC): citizen suit, intergenerational standing, Writ of Kalikasan, Writ of Continuing Mandamus, anti-SLAPP 117 designated environmental courts (Res. A.M. No. 07-11-12-SC); CHRP National Inquiry on Climate Change (2022) - Local HRD ordinances (e.g., Baguio City 2025); pending S.B. No. 2447 on HRD protection	- High cost of competent legal counsel; long delays in proceedings - Environmental courts not available in all geographic areas; judges lack specific knowledge on EHRD issues - Philippines remains among the most dangerous countries for EHRDs; SLAPP remedy occasionally misused by corporations (though rejected by courts, e.g., FCF Minerals v. Lunag)	- Environmental courts have not yet been established in all geographic areas, creating uneven access across the country - No structured judicial training specifically on EHRD-related issues; judges are generally considered to lack specific knowledge in this area - Despite the anti-SLAPP framework under the Rules of Procedure, no standalone legislation dedicated to the protection of human rights defenders has been enacted (S.B. No. 2447 remains pending)

8. Singapore

8.1 Access to Information

The Singapore's Constitution does not explicitly guarantee environmental rights, which consequently created a gap in the protection of environmental procedural rights to information. Singapore's approach to government information takes a significantly different path from that of most ASEAN nations.⁷⁸

Singapore currently does not have a Freedom of Information Act and statutory citizen rights to government-held information. Rather, public data is proactively provided by the government through platforms such as the Singapore Open Data Portal⁷⁹ or through the Department of Statistics⁸⁰. Alternatively, public information can also partly

78 Many ASEAN Member States have Freedom of Information laws or other access to information policies such as Indonesia, The Philippines, Vietnam, Thailand, and to certain extent in some states in Malaysia. See: Stockholm Environment Institute, "Advancing The Right to a Healthy Environment in Southeast Asia: Addressing Implementation Gaps and Opportunities" (2025), p. 3

79 See data.gov.sg

80 See singstat.gov.sg

be found in part on the websites of the respective public bodies or agencies. This aligns with various sectoral statutes mandating disclosure of certain types of information by public bodies. For example, the Environmental Protection and Management Act 1999 and related regulations require the National Environment Agency to publish information on pollution monitoring, the Pollutant Standards Index (PSI), air quality, and dengue cluster information.⁸¹ In addition, the Planning Act 1998 also mandated that competent authorities publish and make available copies of the guidelines for the conservation of buildings or land for free inspection and for sale at a reasonable cost to the public.⁸² The Environmental Public Health Act 1987 also requires the publication of information related to licensed public waste collectors.⁸³ As access to information in Singapore is primarily initiated by the government, these provisions provide grounds for access by mandating that public bodies disclose information. Although currently, there are no clear provisions on how to obtain information that is not included in the disclosure as mentioned above.

8.2 Access to Meaningful Participation

Similar to the access-to-information as explained above, Singapore's constitution does not explicitly provide for the right to public participation in environmental decision-making.⁸⁴ Article 14 of the Constitution guarantees freedom of speech, assembly, and association. In practice, however, those protections come with significant caveats; Both Parliament and the government may impose restriction on these freedom in the interests of security, public order, and morality.⁸⁵ As most environmental regulations in Singapore remain heavily technocratic, there are no mandatory statutory requirements for public consultation or review, for example, during the development of an Environmental Impact Assessment (EIA). Singapore does not have a standalone EIA statute; instead, the EIA process is administratively integrated into the planning approval framework under the Planning Act 1998.⁸⁶ In addition, Singapore's legal framework does not contain specific provisions recognizing Indigenous Peoples or their right to participate in environmental decision-making, as the state does not formally recognize any Indigenous peoples. Similarly, there are no dedicated legal protections for environmental human rights defenders (EHRDs).

81 National Environment Agency Act 2002, Art. 12

82 The Planning Act 1998, Art. 11(2)

83 Singapore, Environmental Public Health Act 1987, Section 31A subsection (4).

84 Joseph Chun and Lye Lin Heng, *Environmental Law in Singapore*, (Singapore Academy of Law, 2019), reviewed in *Chinese Journal of Environmental Law*, Vol. 4, Issue 1 (2020), p. 111

85 Constitution of the Republic of Singapore, Art. 14(1)(a)-(c), and Art. 14(2)

86 Planning Act 1998 (Cap. 232, 1998 Rev. Ed). See also: Hesp, P., "The Environmental Impact Assessment Process in Singapore with Particular Respect to Coastal Environments and The Role of NGOs", *Journal of Coastal Conservation*, vol. 1 (1995), pp. 135-144.

8.3 Access to Justice

Access to justice in environmental matters in Singapore is governed by the general framework of administrative and tort law rather than by any specific environmental statutes that govern legal standing or procedural rules for handling environmental cases. Unlike some ASEAN Member States, Singapore courts do not yet recognize legal standing for environmental organizations or public interest groups. Representative actions for environmental-related civil claims are theoretically possible but rarely pursued in practice.⁸⁷ However, similar to access to participation, Article 9(3) of the Constitution safeguards access to justice by recognizing the right to legal counsel and the judiciary's role in exercising oversight over the executive through judicial review in constitutional and administrative law.⁸⁸

In tort law, claims related to environmental contamination or damage caused by the breach of environmental obligations may be brought under private nuisance, public nuisance, or negligence, but each carries tangible standing requirements. For instance, a private nuisance claim requires the claimant to hold a proprietary interest in the affected land, whereas a public nuisance claim requires proof of special and particular injury beyond the harm done to the public.⁸⁹ Environmental offenses regulated by the laws are generally enforced by regulators rather than through citizen-initiated proceedings.

For both civil and criminal cases, legal aid is available through government-funded schemes governed under the Legal Aid and Advice Act 2018. For example, through the Legal Aid Bureau⁹⁰ and non-government partners such as the Law Society Pro Bono Services and the Community Justice Centre. Singapore's legal framework contains no anti-SLAPP provisions to protect EHRD from retaliatory lawsuits, nor does it include dedicated provisions to ensure access to justice for Indigenous Peoples in environmental matters. While the Protection from Harassment Act 2014 offers remedies that could protect and provide remedies human rights defenders against harassment—such as Protection Orders, Expedited Protection Orders, and criminal sanctions⁹¹, it does not specifically address the unique risks faced by EHRDs.

Consequently, access to justice in environmental matters remains largely confined to conventional administrative and civil law remedies. A notable exception is Section 6

87 Joseph Chun in Chambers and Partners, “Environmental Law 2025: Singapore”, accessed through <https://practiceguides.chambers.com/practice-guides/environmental-law-2025/singapore>

88 Constitution of the Republic of Singapore, Art. 9(3) *jo.* Art. 93.

89 Chan Ying Ling, “Judicial Review in Singapore”, *Singapore Law Review* (2015).

90 <https://lab.mlaw.gov.sg/>

91 Protection from Harassment Act 2014. For example, clauses in Section 3 can be utilized to protect from the use of threatening, abusive, or insulting words, behavior, or communication with intent to cause harassment, alarm, or distress. Furthermore, Section 5 also provides protection against provocation or facilitation of violence, including the act of doxxing (publication of a person's identity information with intent to cause harm).

of the Transboundary Haze Pollution Act 2014 (THPA), which establishes a statutory civil liability regime allowing individuals in Singapore to sue entities responsible for haze pollution. The Act imposes a duty on entities not to engage in conduct, whether inside or outside of Singapore, that causes, contributes to, or condones haze pollution in Singapore. This duty even applies to entities that participate in the management of another entity that owns or occupies a working area outside Singapore, effectively requiring them to ensure their subsidiaries do not contribute to haze pollution.⁹² If breached, any person in Singapore who sustains a) personal injury, disease, or mental or physical incapacity in Singapore, or even death resulting from the haze; b) physical damage to property in Singapore; or c) economic loss, including loss of profits, in Singapore is given the right to sue.⁹³ The section also guarantees extraterritorial reach, meaning Singaporean courts can hear claims for damages arising from transboundary haze in Singapore even if the polluting activity took place outside of Singapore.⁹⁴

While Singapore's 2014 THPA is a progressive legal tool, translating its statutory provisions into real-world enforcement presents steep hurdles. These range from the technical challenges of gathering cross-border evidence to navigating the complex sociopolitical landscape of the source countries. Academic critics point out that while the Act relies heavily on statutory legal presumptions—such as using satellite imagery, wind data, and concession maps to automatically link a fire on a specific plot of land to a parent company—, obtaining and verifying this corporate data is difficult⁹⁵. Without state-to-state data sharing and localized corporate transparency, the civil remedies promised by the THPA remain structurally out of reach for everyday citizens seeking environmental justice. Thus, this also highlights the needs for a robust data-sharing infrastructure for activities which potentially have transboundary impacts in ASEAN.

92 The Transboundary Haze Pollution Act 2014, Section 6(1)-(2)

93 Ibid, Section 6(3)

94 Ibid, Section 6(4)

95 <https://law.nus.edu.sg/publications/the-haze-crisis-in-southeast-asia-assessing-singapores-transboundary-haze-pollution-act-2014/> (Accessed on 2 July 2026)

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	- Environmental Protection and Management Act 1999 (pollution monitoring, PSI, air quality disclosure) - Planning Act 1998 (publication of conservation guidelines); Environmental Public Health Act 1987 (waste collector information) - Singapore Open Data Portal (data.gov.sg); Department of Statistics (singstat.gov.sg)	- Singapore relies primarily on proactive government disclosure rather than a request-based FOI regime - Access to information is government-initiated through proactive disclosure; no clear mechanism to obtain non-disclosed information - No recognition of indigenous peoples or specific provisions for their information access	- No Freedom of Information Act or statutory right enabling citizens to request government-held information; access depends entirely on government-initiated disclosure - No mechanism for the public to obtain environmental information not already included in mandated disclosures under sectoral statutes - No legal recognition of indigenous peoples within Singapore's territory and consequently no specific information provisions for such communities
Access to Meaningful Participation	- Constitution Art. 14 (freedom of speech, assembly, association — subject to broad conditions on security, public order, morality) - EIA process administratively integrated into Planning Act 1998 (no standalone EIA statute)	- Constitution does not explicitly provide for public participation in environmental decision-making - No mandatory statutory requirements for public consultation or review in the EIA process - Environmental regulations remain heavily technocratic; no recognition of indigenous peoples or EHRDs in law	- No constitutional or statutory provision explicitly guaranteeing public participation in environmental decision-making - No standalone EIA legislation; the EIA process is administratively integrated into the Planning Act without mandatory public consultation requirements - No legal framework recognising indigenous peoples or environmental human rights defenders; constitutional freedoms (Art. 14) are subject to broad conditions that may limit participatory space

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Justice	• General administrative and tort law (private/public nuisance, negligence); Constitution Art. 9(3) (right to legal counsel) • Legal Aid and Advice Act 2018; Legal Aid Bureau; Law Society Pro Bono Services • Transboundary Haze Pollution Act 2014 s.6 (statutory civil liability for haze with extraterritorial reach)	• No recognition of environmental organisation standing or public interest standing in environmental cases • No specialised environmental courts; no citizen-initiated environmental proceedings • No anti-SLAPP provisions; Protection from Harassment Act 2014 does not address EHRD-specific risks	• No recognition of environmental organisation standing or public interest standing; standing in nuisance law requires proprietary interest (private) or proof of special injury (public), structurally limiting access • No specialised environmental courts or tribunals; no provision for citizen-initiated environmental proceedings outside general tort and administrative frameworks • No anti-SLAPP provisions; the Protection from Harassment Act 2014, while providing remedies against harassment, does not specifically address the nature of risks faced by environmental advocates

9. Thailand

9.1 Access to Information

Thailand's 2017 Constitution provides a strong textual foundation for access to environmental information.

- Section 41(1) guarantees individuals and communities the right to be informed and access public data or information in the possession of a State agency as provided by law.⁹⁶
- Section 58 of the 2017 Constitution provides that the State has a duty to carry out impact studies on any activity that may severely affect natural resources, environmental quality, health, sanitation, quality of life, or any other essential interest of the people, and that individuals and communities have the right to receive information, explanations, and reasons from the State prior to permission being granted for such activities.⁹⁷

⁹⁶ Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 41(1).

⁹⁷ Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 58.

- Section 59 further stipulates that the State shall disclose any public data or information in its possession which is not related to the security of the State or government confidentiality as provided by law, and shall ensure that the public can conveniently access such data or information.⁹⁸

Thailand was the first country in Southeast Asia to enact a freedom of information law, the Official Information Act B.E. 2540 (1997), which provides a statutory framework for information access.⁹⁹ The Act guarantees citizens the right to inspect and request copies of official information (Section 9), and to ask the State to correct or change personal information (Section 25).¹⁰⁰ State agencies are obligated to proactively publish information relating to their functions and powers (Section 7) and to make available additional listed categories of information for public inspection (Section 9).¹⁰¹ Any information not subject to a proactive publication requirement may be requested by the public (Section 11).¹⁰² In the specific context of environmental information, the Information Commission Decree on Environmental and Health Information requires all relevant bodies to make environmental information available to the public, pursuant to Section 9(8) of the Official Information Act.¹⁰³

The Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (NEQA) (1992) further allows people to request disclosure of information related to the environment from relevant government units and enables members of the public to obtain information concerning environmental quality from a state agency.¹⁰⁴

Despite these comprehensive legal guarantees, a stark enforcement gap leaves communities structurally disempowered and severely restricts actual access to environmental justice. This breakdown occurs across four major systemic bottlenecks:

- **Vague and Exploitable Exemptions.** The Official Information Act (OIA) provides qualified exemptions that allow State agencies to withhold information on grounds of national security, international relations, or public safety, and

98 Ibid., Section 59. See also Bangkok Post, “Fix Thailand’s data confusion” (19 February 2026): “Thailand’s constitution guarantees the right to access public information, and the Official Information Act famously declares that ‘disclosure is the rule, secrecy the exception.’”

99 Official Information Act B.E. 2540 (1997)

100 Ibid., Sections 9, and 25.

101 Ibid., Section 7 and Section 9.

102 Ibid., Section 11

103 Article 19, “Access to Informain in Thailand”, accessed through <https://www.article19.org/resources/the-right-to-information-in-thailand/#edn24>

104 Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (NEQA) (1992), Section 6. See also Thailand Environment Institute, *Handbook for Public Participation in Environmental Impact Assessment*, p. 12.

the Act does not define a precise timeframe for responses, merely stating that a State agency must reply “within a reasonable period of time”, which in practice has been interpreted liberally by State officials.¹⁰⁵

- **Restrictive Legal Reforms.** Rather than resolving these gaps, a revised version of the OIA currently being vetted by the Cabinet has been criticized by the media, civil society, and human rights activists as an attempt to restrict the disclosure of public information by granting each agency broad, arbitrary powers to decide information disclosure.¹⁰⁶
- **Institutional Conflict.** The Rules on Official Secrets allow agencies to withhold information under broadly defined categories, creating tension with the transparency principles of the Official Information Act.¹⁰⁷
- **Tokenization of Public Participation.** In practice, public consultation is frequently reduced to a token, ‘check-the-box’ exercise conducted *after* major project choices have already been locked in¹⁰⁸.
- **Structural Gaps for Indigenous Populations.** There are no specific provisions under the OIA or environmental legislation that specifically address access to environmental information by Indigenous Peoples or in indigenous languages. This linguistic and administrative barrier persists despite the significant presence of minority populations and the landmark passage of the Protection and Promotion of the Way of Life of Ethnic Groups Act (2025). While the 2025 Act represents an important milestone for cultural rights, it has not yet resolved the practical barriers to marginalized groups seeking environmental data.

105 Article 19, “The Right to Information in Thailand”, accessed through <https://www.article19.org/resources/the-right-to-information-in-thailand/#edn24>

106 Bangkok Post, “Thailand tightens information law” (25 May 2021), accessed through <https://www.bangkokpost.com/opinion/opinion/2121091/thailand-tightens-information-law>

107 Bangkok Post, “Fix Thailand’s data confusion”, accessed through <https://www.bangkokpost.com/opinion/opinion/3201105/fix-thailands-data-confusion>

108 <https://pubmed.ncbi.nlm.nih.gov/38027918/> (Access on 2 July 2026)

GOOD PRACTICE: Thailand's Official Information Act — Southeast Asia's First FOI Law

Thailand's Official Information Act B.E. 2540 (1997) was ***the first freedom of information law in Southeast Asia***. It establishes proactive publication duties (s.7), public inspection rights (s.9), request-based access (s.11), and a dedicated Information Commission Decree on Environmental and Health Information.

The Act operates on the principle that “disclosure is the rule, secrecy the exception.”

RPA Relevance: Provides a regional precedent for FOI legislation, including specific provisions for environmental and health information disclosure.

9.2 Access to Meaningful Participation

Thailand's constitutional and legislative framework provides relatively robust textual guarantees for public participation in environmental decision-making. The 2017 Constitution enshrines both individual and community rights to participate in environmental governance.

- Section 43(2) recognizes the right of communities to manage, maintain, preserve, and exploit natural resources, the environment, and biodiversity in a balanced and sustainable manner.¹⁰⁹
- Section 57 provides that the State shall conserve, protect, and utilize natural resources and the environment in an efficient and sustainable manner
- Section 58 requires that an environmental and health impact assessment be conducted, and that public hearings be held, before any project or activity that may severely affect the community's environmental quality is undertaken.¹¹⁰

These constitutional rights are operationalized through several key statutes. The Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (NEQA) (1992) provides for public participation in the EIA process, with Sections 46 to 51 establishing the EIA framework.¹¹¹ The NEQA mandates that stakeholders, including local communities, must be consulted during the EIA process and allows registered non-governmental organizations (NGOs) engaged in environmental protection to participate in legal proceedings on behalf of affected persons.¹¹²

109 Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 43(2).

110 Ibid., Sections 57 and 58.

111 The Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992), Sections 46–51. See also IGES, “Assessing Environmental Impact Assessment (EIA) in Thailand” (2015), p. 3.

112 The Enhancement and Conservation of National Environmental Quality Act (1992), Section 7 (registered NGOs). See also Lasse Schuldt and Supakorn Wilatratsami, “Environmental Cases at the Supreme Administrative Court 2021–24,” *Thai Legal Studies*, Vol. 5, No. 1 (2025), p. 82.

Following the 2017 Constitution, the EIA system was further revised by the NEQA (2018), which introduced Environmental and Health Impact Assessments (EHIAs) for projects that may cause severely adverse impacts on the community, requiring more extensive public participation including public hearings.¹¹³

With respect to Indigenous Peoples, Thailand's 2017 Constitution contains a notable provision in Section 70 requiring the State to protect and promote the rights of ethnic groups to live peacefully in society according to their traditional culture and customs, provided these do not violate public order or good morals.¹¹⁴ However, indigenous highland communities, including the Karen, Hmong, Lahu, Akha, Lisu, and Mien, continue to face challenges in participating meaningfully in environmental decision-making processes affecting their ancestral lands, particularly regarding forestry management, national park designations, and mining concessions.¹¹⁵

Regarding environmental human rights defenders, Thailand's First National Action Plan on Business and Human Rights (2019–2022) identified “land, environment and natural resources” and “human rights defenders” as two of its four key priority areas, and set out action points including studying guidelines for the development of laws to prevent Strategic Lawsuits Against Public Participation (SLAPPs).¹¹⁶ Despite this, EHRDs in Thailand have faced documented risks, including harassment, intimidation, and legal proceedings in some project-related disputes.

In 2019, Articles 161/1 and 165/2 of the Criminal Procedure Code were introduced as anti-SLAPP measures. However, both provisions are structurally limited as they only apply to criminal cases initiated by private complainants; they offer no protection against civil lawsuits or criminal prosecutions pursued by public prosecutors, which frequently serve as channels for SLAPP litigation. Furthermore, to strike out a malicious lawsuit under Article 161/1, a judge must find that the case was filed in “bad faith.” Because the statutory text does not define what “bad faith” means, the burden effectively falls on the defendant to prove the unprovable—the internal, malicious intent of the person suing them. Consequently, in practice, Article 161/1 is rarely used to strike out SLAPP litigation.

113 The Enhancement and Conservation of National Environmental Quality Act B.E. 2561 (2018). See also The Office of Natural Resources and Environmental Policy and Planning (ONEP), “Environmental Impact Assessment in Thailand” (2018), noting revised EIA procedures under the 2017 Constitution.

114 Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 70.

115 See IPRI (Indigenous Peoples Rights International), “Silencing Voices: The Case of 11 Indigenous Rights and Forest Peoples’ Defenders Charged in Thailand” (October 2025).

116 Thailand’s First National Action Plan on Business and Human Rights (2019–2022), approved by Cabinet Resolution on 29 October 2019. See ICJ, “Thailand: ICJ submits recommendations to strengthen Thailand’s Anti-SLAPP Law” (May 2024).

Further, civil society argued that Articles 161/1 and 165/2 are inadequate to prevent harassment through the legal process and has called for a comprehensive stand-alone anti-SLAPP law.¹¹⁷ A draft standalone anti-SLAPP bill which was—co-developed by the Ministry of Justice and Thammasat University’s Faculty of Law since 2024 has—completed its public consultation phase in 2025. Following standard legislative procedures, the draft is now slated for submission to the Ministry’s internal committee, the Cabinet, the Council of State, and ultimately to Parliament for formal deliberation¹¹⁸.

9.3 Access to Justice

Thailand’s legal framework provides comparatively broad avenues for access to justice in environmental matters. The 2017 Constitution provides explicit provisions for the right of access to justice in environmental cases, including the right to compensation and remedies for loss, injury, or damage caused by pollution or environmental harm.¹¹⁹ The administrative court system, established by the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), has become a significant forum for environmental litigation.¹²⁰ The Supreme Administrative Court has handed down landmark environmental decisions, including orders suspending industrial projects for non-compliance with constitutional environmental protections.¹²¹

Standing in environmental cases has been interpreted broadly. Members of a community can file cases to defend the rights and interests of the community, and the NEQA permits registered NGOs to serve as legal representatives for victims in environmental court litigation, with eligibility for government support in exercising this function.¹²² This broad standing was confirmed in recent Supreme Administrative Court decisions, including cases related to the Map Ta Phut industrial estate and wind farm noise pollution in Chaiyaphum province.¹²³ In addition, the NEQA provides

117 Criminal Procedure Code, Art.161/1 and Art. 165/2 (entered into force February - March 2019).

118 <https://www.icj.org/thailand-icj-co-hosts-parliamentary-seminar-on-anti-slapp-reform/> (Accessed on 2 July 2026)

119 Written Reply of Thailand to the International Court of Justice, para. 17: providing for “access to justice, including the right to compensation and remedies for loss, injury, or damage suffered by pollution or environmental damage.” See also Constitution of the Kingdom of Thailand B.E. 2560 (2017), Section 41.

120 Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999). See also Munger, Thoviriyavej, and Rabiablock, “An Alternative Path to Rule of Law? Thailand’s Twenty-First Century Administrative Courts,” *Indiana Journal of Global Legal Studies*, Vol. 26, No. 1 (2019), pp. 133ff.

121 See *Anti-Global Warming Association v National Environment Board*, Supreme Administrative Court, ordering the suspension of 76 projects held in violation of the constitutional environmental protection provisions. See also: Children Rights International Network, *Children’s Access To Justice for Environmental Rights: Thailand*

122 Lasse Schuldt and Supakorn Wilatratsami, “Environmental Cases at the Supreme Administrative Court 2021–24, p. 82. See also NEQA (1992), Section 7.

123 *Ibid.*, referring to the Map Ta Phut industrial estate case and the Thep Sathit wind farm case (judgment

those who suffer damage from pollution caused by a point of source to bring an action for compensation in the Courts of Justice.¹²⁴ The Recommendation of the President of the Supreme Administrative Court on Administrative Court Procedure Relating to Environmental Issues further strengthens procedural support for environmental claims.¹²⁵

However, practical challenges persist. Thailand's environmental laws do not explicitly regulate public-interest litigation or provide basis for a private cause of action for citizens to enforce environmental laws, as Section 55 of the Thai Civil Procedure Code stipulates only "the injured party" is entitled to bring proceedings before courts. The same goes with Administrative Court, where only "any person who is aggrieved or injured or who may inevitably be aggrieved or injured" is entitled to file a case. In practice, courts have strictly and narrowly interpreted the meaning of 'injured person', by requiring that they must demonstrate the existence of present injury or injury in fact, excluding indirect injury. Therefore, the varied interpretation of what constitutes as injury might become a challenge against project development as damages or harms are often manifested only after a long period of time.

These challenges also include the inherent complexities of environmental litigation, difficulties in preparing evidence and expert witnesses, and concerns about courts' discretionary decisions on remedies.¹²⁶ Thai environmental laws do not include a citizen-suit provision allowing citizens to compel governmental enforcement action¹²⁷, and projects required to complete EIAs cannot be penalized if their owners refuse to do so because the NEQA does not grant the authorizing agency, ONEP, actual enforcement authority.¹²⁸

Aor.Sor. 27/2564 and order Kor.Sor. 14/2564), in which a registered legal person, the Environmental Lawyer Association, was permitted to join the plaintiffs.

124 NEQA (1992), Sections 96 and 97. See also U.S. EPA, "Environmental Compliance and Enforcement in Thailand: Rapid Assessment," p. 15–16.

125 Recommendation of the President of the Supreme Administrative Court on Administrative Court Procedure Relating to Environmental Issues, Government Gazette, Vol. 128, Part 54a, p. 18, 4 July B.E. 2554 (2011).

126 ICJ, "Thailand: The ICJ engages with justice sector authorities", accessed through <https://www.icj.org/thailand-the-icj-engages-with-justice-sector-authorities-in-dialogues-to-advance-a-human-rights-compliant-justice-system/>. Panelists "highlighted various challenges faced by individuals and communities pursuing justice and remedies for environmental issues. These challenges include the inherent complexities of environmental litigation, preparing evidence and expert witnesses, and contesting courts' discretionary decisions on remedies."

127 U.S. EPA, "Environmental Compliance and Enforcement in Thailand: Rapid Assessment", p. 13.

128 Ibid.

CASE IN POINT: The “Omkoï” Indigenous Participation Precedent

The Reality: Even when legal standing is granted, Indigenous peoples often face EIAs conducted without their “meaningful” participation, necessitating high-level judicial intervention to halt industrial projects.

The Case: *Residents of Omkoï v. Expert Committee on EIA Consideration* (2022)

The Request: Members of the **Indigenous Karen community** filed a lawsuit to revoke the Environmental Impact Assessment (EIA) for the Omkoï coal mine project.

The Barrier: The community argued that the original EIA process was fundamentally flawed due to the **absence of meaningful participation** and consultation with ancestral rights-holders.

The Outcome: In September 2022, the Chiang Mai Administrative Court issued an **order for temporary protection**, suspending the coal mining project until a final judgment is reached.

Strategic Takeaway: This case sets a regional benchmark for **Procedural Justice**; it affirms that an EIA is legally deficient if it bypasses the specific participation rights of Indigenous Peoples, providing a clear “hook” for the RPA to define what constitutes “meaningful” engagement.

In a separate case involving indigenous defenders, eleven Indigenous leaders and human rights defenders were prosecuted for their advocacy in defense of ancestral territories, highlighting what observers have described as the fragility of government commitments and the systematic repression faced by indigenous movements in Thailand.¹²⁹ EHRDs continue to face SLAPP suits, as illustrated by the case of the Khon Rak Ban Kerd Dan Khun Thot Group, where four women and two human rights defenders were sued for defamation by a local mayor for opposing potash mining, though the Sikhio Provincial Court dismissed all charges in February 2025.¹³⁰ As mentioned above, Thailand has yet to adopt a comprehensive stand-alone anti-SLAPP law, which also contributes to the SLAPP Suits targeting EHRDs.

¹²⁹ Indigenous Peoples Rights International, “Silencing Voices: The Case of 11 Indigenous Rights and Forest Peoples’ Defenders Charged in Thailand”, accessed through <https://iprights.org/2025/10/20/silencing-voices-the-case-of-11-indigenous-rights-and-forest-peoples-defenders-charged-in-thailand/>.

¹³⁰ Protection International, “Justice Prevails! Thai Court Dismisses SLAPP Case Against Six Women and Human Rights Defenders from Khon Rak Ban Kerd Dan Khun Thot Group” (27 February 2025), accessed through <https://www.protectioninternational.org/news/justice-prevails-thai-court-dismisses-slapp-case-against-six-women-and-human-rights-defenders-from-khon-rak-ban-kerd-dan-khun-thot-group/>

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	• 2017 Constitution s.41(1) (right to access public data), s.58 (right to information before project permission), s.59 (state duty to disclose non-security data) • Official Information Act (OIA) B.E. 2540 (1997) which was the first FOI law in Southeast Asia (s.7, 9, 11, 25) • NEQA 1992 s.6 (public access to environmental quality data); Information Commission Decree on Environmental and Health Information	• OIA allows qualified exemptions (national security, international relations, public safety) with no precise response timeframe (“reasonable period”) • Proposed revised OIA criticised as restricting disclosure; Rules on Official Secrets allow broadly defined withholding • No provisions for access to environmental information by indigenous peoples or in indigenous languages, despite the Protection of Ethnic Groups Act (2025)	• Official Information Act does not define a precise response timeframe, stating only “reasonable period of time,” which has been interpreted liberally in practice • Rules on Official Secrets allow agencies to withhold information under broadly defined categories, creating tension with the transparency principles of the OIA • No provisions under the OIA or principal environmental statutes specifically addressing access to environmental information by indigenous peoples or in indigenous languages, despite the country’s significant indigenous populations
Access to Meaningful Participation	• 2017 Constitution s.43(2) (community resource management), s.57–58 (EIA and public hearings required for severe-impact projects), s.70 (ethnic groups’ rights) • NEQA 1992 s.46–51 (EIA framework); NEQA 2018 (Environmental and Health Impact Assessments with public hearings) • First NAP on Business and Human Rights 2019–2022 (SLAPP study commitment); Criminal Procedure Code Art. 161/1 and 165/2 (anti-SLAPP measures, 2019)	• Indigenous highland communities (Karen, Hmong, Lahu, Akha, Lisu, Mien) face challenges participating in decisions on ancestral lands (forestry, national parks, mining) • Anti-SLAPP provisions (Art. 161/1, 165/2) assessed as inadequate; no comprehensive standalone anti-SLAPP law • EHRDs face SLAPP suits (e.g., Khon Rak Ban Kerd group — dismissed Feb 2025); 11 indigenous leaders and HRDs prosecuted for advocacy	• No specific framework ensuring meaningful participation of indigenous highland communities in decisions affecting ancestral lands in forestry, national park, and mining contexts • No comprehensive standalone anti-SLAPP law; existing provisions under Criminal Procedure Code Art. 161/1 and 165/2 have been assessed by civil society as insufficient to prevent harassment through the legal process • Broadly worded laws may be applied in ways that restrict the space for environmental advocacy, though these instruments were not originally designed for that purpose

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Justice	- Administrative Courts (Act B.E. 2542/1999); NEQA s.96 (strict liability for polluters), s.97 (compensation claims) - Broad standing: community members and registered NGOs may litigate; landmark cases (Map Ta Phut, Chaiyaphum wind farm, Omkoi coal mine) - Recommendation of President of Supreme Administrative Court on environmental procedure	- No citizen-suit provision to compel government enforcement action; ONEP lacks actual enforcement authority to penalise EIA non-compliance - Complexities in evidence preparation and expert witnesses; courts' discretionary decisions on remedies - FPIC not formally codified in domestic legislation; indigenous defenders continue to face prosecution	- No citizen-suit provision enabling citizens to compel government enforcement of environmental laws against violators - The primary environmental agency, lacks actual enforcement authority to penalise project owners who refuse to complete mandated EIAs, creating a structural gap between legal rights and enforcement capacity - FPIC has not been formally codified in domestic legislation, limiting the legal basis for indigenous communities to challenge development decisions affecting their ancestral lands

10. Timor-Leste

10.1 Access to Information

Timor-Leste's 2002 Constitution establishes one of the most progressive frameworks for access to information in the region. Sections 40 and 41 guarantee freedom of speech and information, including the right to inform and to be informed, alongside protecting freedom of the press.¹³¹ This Constitutional mandate is brought to life by the Environmental Basic Law (Decree-Law No. 26/2012), which operationalizes access to environmental information. Under Article 6, all citizens have a guaranteed right to access state-held environmental information, including information on the quality of the environment, environmental risks, and environmental impact assessments.¹³² The law also obliges public authorities to disseminate environmental information and to ensure its availability to the public in a timely and accessible manner.¹³³ To support this, the Environmental Licensing Decree-Law (Decree-Law No. 5/2011, as amended by Decree-Law No. 39/2022) establishes procedures for the submission

¹³¹ Constitution of the Democratic Republic of Timor-Leste (2002), Sections 40 and 41.

¹³² Decree-Law No. 26/2012, Establishing the Environmental Basic Legislation, Art. 6. See also Moore, P.W., Pereira, E.S. et al., "Developing Environmental Law for All Citizens," *St. Mary's Law Faculty Art.s* (2015).

¹³³ Ibid.

and publication of environmental impact assessments and environmental licensing decisions, creating a further mechanism through which environmental information enters the public domain.¹³⁴

Despite these strong sector-specific protections, a major legal gap exists: Timor-Leste does not yet have a standalone Freedom of Information Act that would provide a comprehensive statutory mechanism for requesting and obtaining government-held information beyond the environmental sector. This absence makes the Provedoria de Direitos Humanos e Justiça (Office of the Provedor for Human Rights and Justice), Timor-Leste's independent national human rights institution and ombudsman established under the Constitution, becomes one of the means from where public may be able to obtain information by filing complaints on the withholding of information by public bodies.¹³⁵

In practice, however, accessing environmental data remains a significant challenge, especially when state economic interests are involved. Timor-Leste's Strategic Development Plan 2011–2030 envisions a development model prioritizing large infrastructure projects, including the Tasi Mane petroleum project on the south coast. In these development zones, civil society organizations have documented instances where environmental information related to major development projects was not adequately disclosed to affected communities.¹³⁶

This top-down, opaque approach directly clashes with the country's local governance traditions, which favor community-centered knowledge sharing. For instance, Article 7 of the Environmental Basic Law actually recognizes *Tara Bandu*, an integral custom of Timor-Leste culture and a traditional mechanism for regulating the relationship between humans and their environment, which functions as an indigenous knowledge-based system through which local communities generate, share, and apply environmental information.¹³⁷ Yet, the state fails to bridge the gap between these local networks and formal processes. There are no specific statutory provisions requiring government-held environmental information to be made available in indigenous languages beyond the two official languages of Tetum and Portuguese, despite the country's significant linguistic diversity.

134 Decree-Law No. 5/2011, on Environmental Licensing, as amended by Decree-Law No. 39/2022 of 8 June 2022.

135 Constitution of Timor-Leste (2002), Section 27 (Provedor for Human Rights and Justice). See also: PDHJ Timor-Leste, Vision, Mission, and Values, accessed through <https://www.pdhj.tl/en/about/vision-mission-and-values/>.

136 Da Costa Junior, A., "Environmental Justice in Timor-Leste: Legal Practices and Challenges," in Khoo, Y.H. et al. (eds), *Rethinking Human Rights and Peace in Post-Independence Timor-Leste Through Local Perspectives*, (Palgrave Macmillan, 2022).

137 Decree-Law No. 26/2012, Art. 7: "The State recognises the importance of Tara Bandu as an integral custom of Timor-Leste culture and as a traditional mechanism for regulating the relationship between man and his environment." See also ADB Law and Policy Reform (n 38).

10.2 Access to Meaningful Participation

Timor-Leste's constitutional and legislative framework provides a comparatively strong basis for public participation in environmental decision-making. Structurally, the 2002 Constitution establishes the objective of "political democracy and participation of the people in the resolution of national problems" in its Preamble, while Section 6(f) formally commits the State to the protection of the environment and the preservation of natural resources.¹³⁸ This mandate is operationalized through the Environmental Basic Law (Decree-Law No. 26/2012), which enshrines the participatory principle as one of its core guiding principles. Article 5 of the Environmental Basic Law establishes the "participatory principle," providing that different social groups shall be engaged in the environmental decision-making processes and in the formulation and implementation of environmental policies, and that all citizens are obliged to participate in environmental decision-making mechanisms and processes.¹³⁹

Under the Environmental Licensing Decree-Law (Decree-Law No. 5/2011, as amended), public consultation is required as part of the environmental impact assessment process for projects that may have significant environmental impacts.¹⁴⁰ The law establishes categories of projects subject to environmental licensing and mandates that affected communities and the public be consulted during the EIA process.

GOOD PRACTICE: Timor-Leste's Recognition of Tara Bandu

Timor-Leste's Environmental Basic Law formally recognises Tara Bandu as "an integral custom of Timor-Leste culture and as a traditional mechanism for regulating the relationship between man and his environment" (Art. 7).

The UN Special Rapporteur described it as providing "an effective, participatory and community-driven approach to sustainable environmental protection."

RPA Relevance: Demonstrates how customary governance mechanisms can be formally integrated into statutory environmental frameworks, offering a model for indigenous participation.

However, despite these positive features, practical challenges remain. The Special Rapporteur noted that the principle of free, prior, and informed consent (FPIC) is not yet formally codified in Timor-Leste's domestic legislation, and recommended that the Government adopt legislation recognizing the right of indigenous peoples

¹³⁸ Constitution of Timor-Leste (2002), Preamble and Section 6(f).

¹³⁹ Ibid., Art. 5(e) (participatory principle) and Art. 5(2) (citizen duty to participate).

¹⁴⁰ Decree-Law No. 5/2011, as amended by Decree-Law No. 39/2022.

to FPIC in relation to development projects affecting their lands and resources.¹⁴¹ Civil society organizations have documented instances where public consultation in EIA processes for major infrastructure projects, particularly in the petroleum sector, has been inadequate or merely pro forma.¹⁴² Currently, there is also no anti-SLAPP provision in Timor-Leste's legal framework, and while the general protections for freedom of expression under the Constitution apply to EHRDs, there are no dedicated statutory protections for environmental human rights defenders.¹⁴³

10.3 Access to Justice

Access to justice in Timor-Leste operates within a dual system comprising formal State courts and customary justice mechanisms. At the statutory level, the 2002 Constitution provides for an independent judiciary and guarantees the right to a fair trial (Section 26) and the right of access to courts (Section 26(1)).¹⁴⁴ The Environmental Basic Law (Decree-Law No. 26/2012) establishes liability for environmental damage and provides that any person who causes environmental harm shall be liable for compensation, regardless of whether the activity causing the damage was lawful or unlawful.¹⁴⁵ Article 5(2) imposes an obligation on citizens to conserve, protect, and improve the quality of the air, water, sea, soil, and subsoil and biodiversity, while Article 5(4) provides that all citizens who have knowledge of activities, actions, or omissions that constitute a threat to the environment have a duty to report such activities to the competent authorities.¹⁴⁶ This citizen reporting duty functions as a form of community-based enforcement mechanism.

On the rule of standing, Article 6(5) of the 2012 Basic Environmental Law grants any citizen the right to bring a petition to the courts "irrespective of having suffered or eventually suffering any damages or having a personal interest in the matter".¹⁴⁷ The use of the word "citizen" rather than "any person" means that broad legal standing only applies to Timor-Leste nationals.

However, these progressive statutory rights stand in stark contrast to severe physical and institutional barriers on the ground. The formal justice system remains nascent,

141 UN Special Rapporteur, "Report on visit to Timor-Leste", para.. 60–64. The Special Rapporteur recommended the Government "adopt legislation recognising the right of indigenous peoples to free, prior, and informed consent."

142 Da Costa, "'Environmental Justice in Timor-Leste: Legal Practices and Challenges", noting inadequacies in EIA and public consultation processes for major petroleum and infrastructure projects, particularly the Tasi Mane project.

143 Constitution of Timor-Leste (2002), Sections 40 (freedom of expression) and 43 (freedom of association). No specific anti-SLAPP or environmental human rights defender protection statute has been enacted.

144 Constitution of Timor-Leste (2002), Section 26.

145 Decree-Law No. 26/2012, Art.s 8 - 10.

146 Decree-Law No. 26/2012, Art. 5(2) and Art. 5(4).

147 Decree Law No 26/2012 of 4 July 2012: Environment Basic Law. Available at: https://www.wto.org/english/thewto_e/acc_e/tls_e/wtaccts5_leg_87.pdf.

with a limited number of judges, prosecutors, and public defenders operating across the country, and geographic remoteness means that many communities, particularly in rural areas, have limited access to courts.¹⁴⁸ Because there are no specialized environmental courts or tribunals, judges lack the technical expertise required for complex ecological litigation. The Public Defender's Office provides legal assistance to those who cannot afford representation, but its capacity remains constrained.

Because the formal state apparatus is unreachable for most of the population, customary justice mechanisms step in to fill this institutional vacuum. Far from being a mere "alternative dispute resolution" side-channel, the UN Special Rapporteur on the rights of indigenous peoples observed that for the majority of the population, customary justice is preferred over the formal justice system. These measures are integrated into the indigenous worldview and social structure.¹⁴⁹ Customary justice safeguards harmony with nature by regulating the use of natural resources to ensure their sustainability and by addressing underlying potential causes of conflict at an early stage, contributing to conflict prevention.¹⁵⁰

Yet, the relationship between customary and formal justice remains complex. When it comes to Indigenous Peoples actually securing legal remedies, a stark institutional divide persists. While Tara Bandu provides a community-level mechanism for resolving environmental disputes, it lacks a formal bridge to the state apparatus. Specifically, Timor-Leste's statutory framework contains no specific provisions that grant indigenous peoples preferential access to the formal justice system, legal aid for environmental claims, or mechanisms for collective claims regarding environmental damage to ancestral lands. This leaves communities legally vulnerable, a reality compounded by the fact that the principle of FPIC – which could otherwise serve as a basis for indigenous peoples to challenge development decisions – has not yet been codified in domestic legislation.

148 UN Special Rapporteur, "Report on visit to Timor-Leste", para. 26-27.

149 UN Special Rapporteur, "Report on visit to Timor-Leste", para. 29.

150 Ibid., para. 28: "Customary justice thus takes into account spiritual beliefs but also the importance of community harmony and equilibrium with the environment. It safeguards harmony with nature by regulating the use of natural resources to ensure their sustainability."

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	• 2002 Constitution s.40 (freedom of speech and information), s.41 (press freedom) • Environmental Basic Law (DL 26/2012), Art. 6 (right to environmental information; public authority duty to disseminate) • Environmental Licensing DL 5/2011 (amended by DL 39/2022); Provedoria de Direitos Humanos e Justiça (NHRI, monitors transparency)	• No standalone Freedom of Information Act beyond the environmental sector • Environmental information related to major projects (e.g., Tasi Mane petroleum project) not adequately disclosed to affected communities • No provision requiring information in indigenous languages beyond Tetum and Portuguese despite significant linguistic diversity	• No standalone Freedom of Information Act providing a comprehensive statutory mechanism for requesting and obtaining government-held information beyond the environmental sector • No specific statutory procedures ensuring environmental information related to major development projects is adequately and proactively disclosed to affected communities • No provision requiring environmental information to be made available in indigenous languages beyond the two official languages (Tetum, Portuguese), despite significant linguistic diversity
Access to Meaningful Participation	• 2002 Constitution (political democracy and popular participation), s.6(f) (state duty to protect environment) • Environmental Basic Law Art. 5 (participatory principle); Environmental Licensing DL 5/2011 (EIA public consultation) • Environmental Basic Law Art. 7 (recognition of Tara Bandu as traditional environmental governance mechanism)	• FPIC not formally codified in domestic legislation despite UN Special Rapporteur recommendation • Public consultation in EIA for major infrastructure (particularly petroleum sector) documented as inadequate or pro forma • No anti-SLAPP provisions; no dedicated statutory protections for EHRDs	• FPIC has not been formally codified in domestic legislation, despite the recommendation of the UN Special Rapporteur on the rights of indigenous peoples following the 2019 visit • No statutory standards defining what constitutes adequate and meaningful public consultation in EIA processes, allowing compliance to remain procedural rather than substantive • No anti-SLAPP provisions and no dedicated statutory protections for environmental human rights defenders; general constitutional protections for freedom of expression (s.40) apply but are not tailored to the specific risks defenders face

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Justice	• 2002 Constitution s.26 (right to fair trial and access to courts) • Environmental Basic Law Art. 8–10 (liability for environmental damage regardless of lawfulness), Art. 5(2) and 5(4) (citizen duty to conserve and report) • Tara Bandu as customary justice mechanism; Public Defender's Office	• Nascent formal justice system with limited judges, prosecutors, and public defenders • Geographic remoteness limits court access for rural communities; no specialised environmental courts • No specific provisions for indigenous access to justice, legal aid for environmental claims, or collective claims for ancestral land damage; FPIC not codified	• Formal justice system remains nascent, with a limited number of judges, prosecutors, and public defenders; Public Defender's Office capacity is constrained • No specialised environmental courts or tribunals; geographic remoteness structurally limits court access for rural and remote communities • No specific statutory provisions providing indigenous communities with access to justice in environmental matters, including legal aid for environmental claims or mechanisms for collective redress regarding ancestral land damage; the relationship between Tara Bandu (customary justice) and the formal justice system remains to be fully defined in law

11. Vietnam

11.1 Access to Information

At the constitutional level, Article 25 of the Vietnam's 2013 Constitution guarantees citizens the right to freedom of speech, freedom of the press, and access to information, though it explicitly mandates that these rights be exercised as prescribed by law. . This constitutional commitment was subsequently operationalized through the Law on Access to Information No. 104/2016/QH13. This statute establishes mechanisms for proactive disclosure, publication, and request-based access to official information.

The law specifies categories of information that must be disclosed as a matter of obligation. This includes legislative documents and information on state budget-funded investment activities, to information concerning goods and services that may adversely affect public health and the environment, as well as inspection findings in the fields of environmental protection, community health, food safety,

and occupational safety. While this framework represents an important foundation for environmental transparency, its practical effectiveness depends significantly on consistent implementation and meaningful public access.¹⁵¹

The LEP 2020 integrates both project-level Environmental Impact Assessments (EIAs) and macro-level Strategic Environmental Assessments (SEAs) within a unified legal framework that prioritizes accuracy, scientific rigor, and public accountability. The methodological core of this framework is anchored in Article 32, which dictates that every EIA report must comprehensively include the project's origin and legal bases, the specific assessment methodologies used, and verifiable baseline data on local environmental components. Furthermore, it mandates a thorough assessment of ecological impacts, detailed environmental management and monitoring plans, and the formal inclusion of stakeholder and community opinions.

By demanding both qualitative and quantitative analyses rooted in rigorous data, Article 32 ensures that environmental assessments are scientifically grounded. This empirical precision is reinforced by Article 114(2), which imposes a general statutory duty that all environmental information be collected in an “accurate, adequate, and timely manner,” extending a strict quality standard of reliability and validity to all data generated through the EIA and SEA processes.

The critical structural paradox, however, lies in the legal loopholes built into these modern disclosure mechanisms, drawing sharp criticism from legal scholars. Academic analysis highlights that while the LEP 2020 contains nearly twice the volume of specific disclosure provisions compared to the previous Law on Environmental Protection 2014, it simultaneously introduces severe systemic regressions¹⁵². While the 2014 framework strictly restricted non-disclosure to narrow matters of state security and national defense, the LEP 2020 scattered a series of broad exclusions across Articles 43, 47, and 48. These clauses allow public authorities and project owners to withhold vital environmental documentation if it is classified as either a “state secret” or an “enterprise secret.” Scholars caution that this blanket language is highly susceptible to administrative abuse, as the vague term “enterprise secret” lacks any coherent definition within Vietnam’s broader commercial statutory landscape. Neither the *Enterprise Law* nor the *Intellectual Property Law* recognizes such a sweeping category, regulating only precisely defined trade and business secrets.

11.2 Access to Meaningful Participation

The right of access to participation is enshrined in Vietnam’s Constitution of 2013, in which Article 28 states that “*The citizen has the right to participate in the*

151 Law on Access to Information No. 104/2016/QH13, Art.15

152 Luu Quoc Thai, ‘Right to Access to Information and the Issue of Ensuring Environmental Security in Vietnam’ (2021) 1(4) European Journal of Humanities and Social Sciences 43, 48 <https://eu-opensci.org/index.php/ejsocial/article/view/18113/4402> accessed 3 July 2026.

administration of the State and management of society... the receipt and response to citizens' opinion and recommendation shall be public and transparent". Specific to the environmental sector, public participation is explicitly driven by Article 5(1) of the Law on Environmental Protection (2020), which mandates the state to facilitate the involvement of civil society, residential communities, and households in executing, inspecting, and supervising ecological protection activities.

To enforce these participatory principles during project development, the Law on Environmental Protection (2020) explicitly mandates public consultation throughout the Environmental Impact Assessment (EIA) drafting process. Under Article 33, project developers are legally required to consult two distinct categories of stakeholders: the residential communities and individuals who will face direct impact from the investment project, alongside agencies and organizations with a direct relationship to the investment project.

The scope of this consultation is defined by the Law. Consultations shall consist of the location of the investment project, its projected environmental impacts, proposed measures to reduce the adverse environmental impacts and an environmental management and supervision program - including an environmental emergency prevention and response scheme. Detailed process on public participation during the EIA process is regulated under Decree No. 8/2022/ND-CP on the Elaboration of Several Articles of the Law on Environmental Protection.

While public involvement in the EIA process remains a statutory requirement, its practical efficacy is severely compromised by several structural bottlenecks on the ground. Chief among these is the prohibitive timing of public engagement; consultations routinely occur long after the core EIA has already been drafted and approved, effectively preventing communities from exerting any meaningful influence over project outcomes. This late-stage box-checking exercise is compounded by systemic information barriers, as rural and marginalized populations face extreme difficulties in physically or digitally accessing dense EIA documentation. Ultimately, this transparency vacuum is worsened by a complete absence of standardized guidelines and targeted administrative mechanisms explicitly designed to incentivize and facilitate the participation of interested civil society groups¹⁵³.

Despite these sweeping regulatory mandates, actual public access to actionable environmental information remains profoundly restricted. In practice, access to EIA reports of development projects appears restricted to government agencies. Data on environmental quality is only available in aggregated forms in the annual state of the environment reports. This creates a severe temporal gap, making it impossible for affected communities to secure the real-time, localized data necessary to challenge ongoing ecological threats.

153 BD Clarke, 'EIA Effectiveness in Vietnam: Key Stakeholder Perceptions' (2011) 7 Heliyon 8

Another area of concern relates to the limited exchange of information between government agencies. Under existing regulations, Provincial People's Committees and relevant ministries are required to submit annual environmental performance reports to the Ministry of Natural Resources and Environment, which then consolidates and reports to the Government and the National Assembly. However, compliance with this requirement has been notably poor. In 2017, only one out of sixteen ministries and 35 out of 63 provinces actually submitted the required reports to the Ministry.¹⁵⁴

Further, Ethnic minorities in Vietnam face significant challenges, including deep-rooted poverty, limited access to education and healthcare, and persistent disparities in infrastructure, particularly in remote areas. Crucially, because the state's legal framework does not recognize the international legal concept of "Indigenous Peoples," using the non-normative term "ethnic minorities" instead, these populations are systematically locked out of foundational international rights—most notably, Free, Prior, and Informed Consent (FPIC).

While the Constitution of Vietnam recognizes the rights of ethnic minorities "to use their own language and writing, to preserve their ethnic identity and to nurture their fine customs, traditions and cultures", Vietnam lacks a specific law on ethnic minorities. Instead, governance relies on a mosaic of programs and policies in different aspects. This domestic absence of a binding FPIC mechanism is a root cause of displacement in some cases, where individuals and communities that have lived off the land for generations have been displaced without adequate compensation or resettlement.¹⁵⁵ One example is Bien La commune in northwestern Vietnam, home to residents from ethnic minority groups. The development of multiple small hydropower projects (defined in Vietnam as projects under 30 megawatts) has had both economic and cultural impacts on these communities, resulting in the loss of farmland and jobs, as well as a decline in traditional practices and communal harmony.¹⁵⁶

11.3 Access to Justice

In Vietnam, there is no specific procedure for environmental cases and specialized environmental courts. Consequently, trials of environmental disputes are mainly conducted through civil proceedings in civil courts. Despite the absence of a specialized forum, Article 162 of the Law on Environmental Protection (LEP) 2020 explicitly provides private actors to bring legal action for environmental harm. Further, Article 163 allows organizations and individuals to file complaints about violations

¹⁵⁴ <https://iced.su.se/files/GC%20Working%20Paper-Thang-cover-combined.pdf>, p. 8.

¹⁵⁵ Surya Deva, *Preliminary Observations and Recommendations of the United Nations Special Rapporteur on the Right to Development, Mr Surya Deva, at the End of His Visit to Vietnam* (OHCHR, 15 November 2023) <https://www.ohchr.org/sites/default/files/documents/issues/development/sr/20231115-eom-statement-viet-nam-sr-dev-en.pdf> accessed 16 June 2026.

¹⁵⁶ Nga Dao (2025), "Small Hydropower, Slow Violence and Gendered Struggles in Northwest Vietnam" *Politics and Space* 2025, Vol. 43(6) 1158–1176

of the law on environmental protection committed by state agencies. Under this administrative architecture, the Ministry of Natural Resources and Environment holds the authority to handle the complaints and denunciations.

Despite the existence of legal avenues for environmental redress, access to justice in environmental matters remains a significant challenge in practice. A key barrier is the limited legal awareness and understanding of environmental rights among affected communities, compounded by restricted access to legal representation and other essential resources. Access to legal aid remains similarly constrained, exacerbating a growing structural barrier within the judiciary: Vietnam's restrictive court fee and fine architecture. Under the current framework, these financial prerequisites impose disproportionate upfront costs on low-income litigants, functioning as a de facto economic deterrent that effectively bars marginalized and rural communities from pursuing legitimate environmental claims or seeking remedies against well-capitalized polluters.¹⁵⁷

Further, Vietnam lacks dedicated legislation safeguarding EHRDs or anti-SLAPP mechanisms. A Joint Allegation Letter from the UN (2025) stated that during 2021-2025 period, the Vietnamese government has reportedly targeted EHRDs and climate justice leaders through, among others, intimidation, surveillance, and/or harassment, including judicial harassment under charges of tax evasion, while increasing restrictions on independent organizations working on environmental and energy issues.¹⁵⁸ The most used SLAPP instruments in Vietnam are the criminal and civil defamation claims. Criminal defamation charges are typically brought under Article 155 of the Criminal Code, which prohibits insulting conduct, and Article 156, which prohibits the fabrication and dissemination of false information that damages a person's reputation or infringes upon their lawful rights and interests.¹⁵⁹

SLAPP suits may also take the form of civil defamation claims under Article 34 of the Civil Code 2015, which grants any individual whose honor, dignity, or reputation has been adversely affected by published information the right to demand its retraction,

157 Cong Thiet Tran, "Analysis of the Right to Live in a Clean and Healthy Environment under Vietnamese Law and Suggestions on How it Could be Improved", *Studia Prawnicze Kul* 4 (100) 2024, p. 128.

158 UN Human Rights Council, Joint Communication from the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, the Working Group on Arbitrary Detention, the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, the Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, and the Special Rapporteur on the Situation of Human Rights Defenders, AL VNM 2/2025 (2025) <https://spcommreports.ohchr.org/> accessed 15 June 2026

159 United Nations Development Programme, *Routes2Remedy: Strategic Lawsuits Against Public Participation (SLAPPs) in Viet Nam* (Routes2Remedy Toolkit, Global Rights Compliance) <https://www.routes2remedy.com/remedies/viet-nam/business/slapp?l=en#about-this-violation> accessed 15 June 2026

a public apology, and compensation from the person responsible for its publication. In the absence of dedicated protective frameworks, these broadly worded provisions heighten institutional and legal vulnerabilities for individuals exercising public participation on environmental matters, effectively subjecting defenders to retaliatory litigation with negligible avenues for statutory recourse.

Lastly, while Vietnam’s human rights record remains subject to intense international monitoring—particularly regarding systemic restrictions on freedom of expression and the targeting of civil society actors—The state also lacks an independent National Human Rights Institution (NHRI) aligned with the international Paris Principles. Instead, human rights portfolios are institutionalized within the executive branch, managed by state bodies such as the Ministry of Foreign Affairs (MOFA) and the Ministry of Justice (MOJ).

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Information	• 2013 Constitution Art. 25 (right to access information) • Law on Access to Information No. 104/2016/QH13 (proactive disclosure and request-based access) • Law on Environmental Protection 2020, Art. 43 (public disclosure of environmental licence contents), Art. 48 (data integration)	• EIA reports accessible only to government agencies; environmental quality data available only in aggregated annual reports • Poor compliance with reporting: in 2017, only 1 of 16 ministries and 35 of 63 provinces submitted reports • “State secrets” and “enterprise secrets” exemptions undefined, creating overbroad exclusions	• No statutory provision granting the public direct access to EIA reports, which remain restricted to government agencies; environmental quality data are published only in aggregated annual form • No effective enforcement mechanism to ensure compliance with mandatory environmental reporting obligations across ministries and provinces • Confidentiality exemptions under Art. 43 (“state secrets” and “enterprise secrets”) lack precise definitions, creating scope for overbroad application

ADER Pillar	National Legal Instrument	Operational Reality / Barriers	Gaps in Environmental Procedural Rights Protection
Access to Meaningful Participation	• 2013 Constitution Art. 28 (right to participate in state administration) • Law on Environmental Protection 2020, Art. 5(1) (facilitating public involvement), Art. 33 (EIA consultation requirements) • Decree No. 8/2022/ND-CP (EIA public participation process); Vietnam as FPIC pioneer under UN-REDD Programme	• Public involvement often occurs after the EIS is approved, limiting ability to influence outcomes • Difficulty accessing EIA documents; absence of guidelines encouraging participation by interested groups • “Ethnic minorities” terminology used instead of “indigenous peoples,” limiting access to self-determination and FPIC rights; displacement without adequate compensation (e.g., Bien La commune hydropower)	• No requirement that public consultation occurs before the Environmental Impact Statement is approved; the timing of involvement limits the public’s ability to influence decision-making outcomes • No guidelines or mechanisms in place to encourage and facilitate participation by interested groups beyond directly affected communities • The government does not recognise the concept of “indigenous peoples,” using “ethnic minorities” instead, which limits access to self-determination and FPIC rights; no adequate compensation or resettlement framework for displaced ethnic communities
Access to Justice	• Law on Environmental Protection Art. 162 (legal standing for environmental harm), Art. 163 (complaints to Ministry of Natural Resources and Environment) • No specialised environmental courts; disputes handled through civil proceedings • No independent human rights commission; human rights handled by Ministry of Foreign Affairs and Ministry of Justice	• Limited legal awareness and access to legal representation among affected communities • Disproportionate court fees and fines deter marginalised communities from pursuing claims • No dedicated EHRD protections; increasing criminalisation of defenders; criminal defamation (Criminal Code Art. 155, 156) and civil defamation (Civil Code Art. 34) used as SLAPP instruments	• No specialised environmental courts or environmental procedural rules; court fee and fine structures are not differentiated for environmental public interest cases • No independent national human rights institution; human rights oversight remains within government ministries (Ministry of Foreign Affairs, Ministry of Justice) • No dedicated EHRD protection legislation or anti-SLAPP mechanisms; broadly worded criminal and civil defamation provisions lack safeguards to prevent their use as instruments of retaliatory litigation against environmental advocates

Regional Synthesis: Assessing the Three Pillars of ADER Across Member States

Based on the mapping of the legal and policy framework above, the table below provides a consolidated overview of the legal and institutional landscape for environmental procedural rights across all eleven ASEAN Member States. It assesses each country against ten key indicators spanning the three pillars of ADER (access to information, public participation, and access to justice) as well as cross-cutting protections for environmental human rights defenders and indigenous peoples.

As the dashboard illustrates, the region presents a deeply uneven picture. Only the Philippines has established frameworks across a majority of the indicators, while Indonesia and Thailand show significant but uneven progress. At the other end of the spectrum, Brunei Darussalam and Singapore lack dedicated legal frameworks for most of the indicators assessed. Crucially, even where statutory frameworks exist, widespread legal loopholes—such as overly broad “enterprise secret” exemptions and a lack of independent oversight—severely compromise substantive enforcement on the ground. Across the region, FPIC in binding legislation remains the most consistent gap, with only the Philippines having embedded it in law, and independent anti-SLAPP provisions exist in only two Member States. This unevenness underscores the need for a Regional Plan of Action that establishes a normative floor while accommodating the diversity of national legal traditions documented throughout this chapter.

Beyond domestic unevenness, ASEAN lacks a binding framework for Transboundary Environmental Impact Assessments (TEIAs) and cross-border public consultation. Singapore’s Transboundary Haze Pollution Act (THPA) 2014 is a notable exception. However, while the THPA is a powerful tool, it highlights the region’s broader systemic gap: there is still no cooperative, rights-based mechanism that grants cross-border communities proactive access to information or legal standing regarding neighboring state-backed projects. To operationalize ADER, a Regional Plan of Action must move beyond unilateral enforcement toward mandated regional notification protocols and cross-border public participation. Critically, this regional approach must also foster greater cooperation between national judiciaries, enabling courts to share jurisprudence, harmonize environmental remedies, and ensure cross-border victims can access real legal remedy across jurisdictions.

Indicator	BRN	KHM	IDN	LAO	MYS	MMR	PHL	SGP	THA	TLS	VNM
Constitutional right to a healthy environment	X	●	✓	●	X	●	✓	X	✓	✓	✓
Freedom of Information law	X	X	✓	X	●	X	●	X	✓	X	✓
EIA framework with disclosure provisions	✓	✓	✓	✓	✓	✓	✓	●	✓	✓	✓
Mandatory public consultation in EIA	X	✓	●	●	●	●	✓	X	✓	✓	●
FPIC in binding legislation	X	X	●	X	X	●	✓	X	X	X	X
Specialized environmental courts/benches	X	X	●	X	●	X	✓	X	●	X	X
Anti-SLAPP provisions	X	X	✓	X	X	X	✓	X	●	X	X
Legal protection for EHRDs	X	X	✓	X	X	X	●	X	●	X	X
Independent NHRI (Paris Principles)	X	●	✓	X	✓	●	✓	X	✓	✓	X
Recognition of Indigenous Peoples in law	●	●	●	●	●	●	✓	X	●	●	X

✓ = Established

● = Partial / developing

X = Absent

III. Legal Architecture of Environmental Procedural Rights at the Regional ASEAN Level

The adoption of the ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (ADER) at the 47th ASEAN Summit in Kuala Lumpur on 26 October 2025 represents a milestone in ASEAN's engagement with environmental rights.¹⁶⁰ ADER is the first dedicated regional framework to articulate environmental protection as a human rights issue within the ASEAN human rights system, building on Article 28(f) of the 2012 ASEAN Human Rights Declaration and affirming procedural guarantees including access to information, public participation, and access to justice.¹⁶¹

However, the strategic implementation of ADER cannot occur in isolation. Its operational efficacy depends on its alignment with a broader constellation of ASEAN-level instruments that collectively form the normative and institutional architecture for environmental procedural rights. This section examines the provisions of ADER and its interoperability with other regional instruments, statutes and policies, identifying the linkages that underpin implementation across the region.

1. The ASEAN Environmental Rights Declaration and Its Normative Foundations

The ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (ADER) does not exist in a vacuum; it is the culmination of a direct “normative chain” that transforms broad regional values into specific, actionable rights.

The ASEAN Charter (2007): The Constitutional Foundation

The ASEAN Charter (2007) is the foundational legal instrument of the Association of Southeast Asian Nations (ASEAN) and provides the overarching normative basis upon which all subsequent ASEAN instruments, including ADER, are built.¹⁶² The Preamble to the Charter expresses the Member States' adherence to “the principles

160 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (ADER), adopted at the 47th ASEAN Summit, Kuala Lumpur, 26 October 2025. Full text available at <https://asean.org>.

161 Albajili, C.M., “ASEAN Has Recognised Environmental Rights. Now Comes the Harder Part,” Human Rights Centre Blog, University of Essex (18 March 2026).

162 ASEAN Charter, signed on 20 November 2007, entered into force 15 December 2008. Full text available at <https://asean.org>.

of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms.”¹⁶³ The Charter set forth several key human rights commitment which underscores the urgency of its interoperability:

- The Charter states ASEAN as a community that aims to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN.”¹⁶⁴
- ASEAN strives to act in accordance with the principle of “adherence to the rule of law, good governance, the principles of democracy and constitutional government
- ASEAN commits to respect fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.”¹⁶⁵
- ASEAN also commits to enhancing the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice.”¹⁶⁶

The Charter’s provisions on democracy, good governance, the rule of law, and human rights thus establish the normative pillars upon which the three access rights (access to information, access to participation, and access to justice) are grounded at the ASEAN level.

Critically, the ASEAN Charter mandated the establishment of a regional human rights body, leading to the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 as the overarching consultative institution for human rights within the bloc. Operating under the ASEAN Political-Security Community (APSC) pillar, AICHR consists of government-appointed representatives from each Member State and functions primarily through consensus-based decision-making.

Under the ADER, AICHR is mandated to develop a Regional Plan of Action to operationalize the Declaration.¹⁶⁷ Crucially, this mandate requires AICHR and ASEAN at large to break out of their traditional sectoral silo and engage in close cross-sectoral consultation with the ASEAN Senior Officials on Environment (ASOEN) and other relevant sectoral bodies. This collaborative mechanism bridges AICHR’s human rights mandate with regional environmental governance, positioning the Commission

163 Ibid., Preamble.

164 Ibid., Art. 1(7).

165 Ibid., Art. 2(2)(h)–(i).

166 Ibid., Art. 1(11).

167 Ibid., Art. 14.

to translate the political commitments of ADER into a structured, rights-based RPA. The Charter's provisions on democracy, good governance, the rule of law, and human rights thus establish the normative pillars upon which the three access rights (access to information, access to participation, and access to justice) are grounded at the ASEAN level.

The ASEAN Human Rights Declaration (2012): The Substantive Link

Building directly upon the Charter's normative foundations, ASEAN adopted the 2012 ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement.¹⁶⁸ Article 28(f) of the AHRD explicitly recognizes "the right to a safe, clean and sustainable environment," establishing for the first time an ASEAN-level normative basis for environmental rights.¹⁶⁹ Articles 35 and 36 collectively embed ecological sustainability into the regional growth model. While Article 35 mandates that the right to development be fulfilled to equitably meet the environmental needs of present and future generations, Article 36 explicitly binds the progressive realization of human rights to the active protection and sustainability of the environment.¹⁷⁰

Further, the AHRD also contains provisions relevant to procedural environmental rights. For example:

- Article 23 provides for the right to a fair and public trial by a competent, independent, and impartial tribunal, underpinning access to justice.¹⁷¹
- Article 25 provides for the right to take part in cultural life and enjoy the benefits of scientific progress, which can be read to support access to information.¹⁷²

However, Articles 7 and 8 of the AHRD introduce significant qualifications. Article 7 mandates that the realization of human rights must be considered in the regional and national context, while Article 8 explicitly subjects the exercise of fundamental freedoms to limitations determined by domestic law.¹⁷³ By permitting restrictions on broad grounds—including national security, public order, public health, public safety, public morality, and general welfare—, Article 8 vests Member States with immense sovereign discretion.

ADER does not escape this contested landscape either; rather, it reflects a continuation of this institutional tension. By explicitly reaffirming Articles 28, 35, and 36 of the AHRD in its Preamble, ADER establishes a direct, visible normative chain from the Charter

168 ASEAN Human Rights Declaration (AHRD), adopted at the 21st ASEAN Summit, Phnom Penh, 18 November 2012.

169 Ibid., Art. 28(f).

170 Ibid., Art. 35 and 36.

171 Ibid., Art. 23.

172 Ibid., Art. 25.

173 Ibid., Art. 7 and Art. 8.

through the AHRD to its own text.¹⁷⁴ It consolidates ASEAN's scattered environmental principles into a single, dedicated framework. Yet, because it is anchored directly to the AHRD, ADER's operative procedural rights remain inherently subject to the same sovereign qualifications and domestic limitations that have historically governed documented to hinder realization of environmental procedural rights.

ADER: The Operational Catalyst

ADER builds upon this normative foundation by operationalizing the AHRD's environmental right into a framework that encompasses both substantive and procedural dimensions. In its operative provisions, ADER commits ASEAN Member States to "promote and foster...access to information, meaningful public participation and access to justice, in the implementation of the right to a safe, clean, healthy and sustainable environment, including for people in vulnerable situations."¹⁷⁵

Paragraph 2.3 of ADER is the central bridge; it transforms the environment from an abstract "right" into a set of procedural obligations specifically designed to protect people in vulnerable situations. By explicitly enumerating these components, Paragraph 2.3 serves as the primary legal and operational link tying ADER directly to the realization of the three access rights across the region.

Despite operating within ASEAN's traditional constraints of state sovereignty and consensus-based decision-making, ADER holds potential to act as a powerful, dual-directional catalyst across two main axes:

- **Outwardly**, ADER translates high-level state commitments into concrete operational baselines for civil society, vulnerable communities, and judicial actors.
 - The Preamble explicitly acknowledges "the need for sufficient and effective protection for all, including persons working to promote and protect" these rights. For the first time in an ASEAN text, this formally recognizes the role of EHRDs – albeit using an alternative term. Through the forthcoming RPA, AICHR and the ASEAN Member States can translate this into actionable guidelines to protect grassroots actors from domestic criminalization and strategic litigation.
 - Paragraph 2.3 binds Member States to promote and foster "access to information, meaningful public participation and access to justice." This provides a vital baseline for cross-border infrastructure and extractive projects, giving communities the legal hooks to demand transparency and public environmental impact assessments (EIAs, as encouraged under Paragraph 4.2).

174 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, Preamble.

175 Ibid., para. 2.3.

- The text specifically acknowledges that environmental and climate consequences are felt most acutely by “women and girls and those segments of the population already in vulnerable situations,” explicitly naming children, youth, older persons, persons with disabilities, ethnic groups, and indigenous and local communities. Paragraph 3.2 commits states to ensure “equal and effective protection against discrimination” for these groups, giving AICHR an operational mandate to promote rights-based safeguards into regional climate adaptation policies.
- By formalizing “access to justice” (Para 2.3) and committing to a “safe and enabling environment” (Para 3.3), the ADER provides a normative baseline for trans governmental networks like the Council of ASEAN Chief Justices (CACJ) to synchronize rules of procedure and collaborate on environmental adjudication standards.
- **Inwardly**, the ADER provides AICHR with the leverage needed to support ASEAN’s future trajectory and ambition enshrined in the ASEAN Community Vision 2045.
 - ASEAN has long experienced rigid compartmentalization between the Political-Security, Economic, and Socio-Cultural pillars. Paragraph 6 explicitly promotes breaking this silo by tasking AICHR to develop the RPA “in consultation with relevant ASEAN Sectoral Bodies, including ASEAN Senior Officials on Environment (ASOEN).” This promotes a historic horizontal integration between human rights bodies and technical environmental ministries.
 - Paragraph 4.1 “strongly encourages non-State actors, businesses and the private sector to respect and promote” environmental rights. This provides AICHR with the internal legal hook to act as a bridge builder—integrating mandatory environmental and human rights due diligence directly into ASEAN’s supply chain frameworks, especially as global trade increasingly requires alignment with international sustainability directives.
 - While the ADER remains a non-binding declaration operating under ASEAN’s respect for sovereignty and non-interference, its emphasis on information exchange (Para 5.1) and multistakeholder cooperation (Para 8) allows AICHR to build adaptive regional protection through regularized consultation and information sharing.

- By anchoring rights-based language into the core of environmental cooperation, the AER shapes the realization of a “Resilient, Innovative, Dynamic, and People-Centred ASEAN.” It ensures that the region’s long-term integration explicitly addresses the human rights dimensions of the triple planetary crisis—climate change, biodiversity loss, and environmental pollution.

Reflecting on the external dimension of the Declaration, it is evident that the mandate for external engagement under Paragraph 5.2 and Paragraph 8 transcends traditional requests for donor funding. By explicitly focusing on technical support, knowledge exchange, and the mitigation of “existing, emerging, and future environmental issues,” the ADER provides the bloc with a powerful, ASEAN-led and ASEAN-owned normative framework to govern its external relationships.

To operationalize this, an ASEAN-led strategy could be deployed by tying external cooperation (Paras 5.2 and 8) directly to private sector expectations (Para 4.1). This approach would encourage Dialogue Partners to ensure that multinational corporations headquartered in their jurisdictions respect regional environmental and human rights baselines when operating within Southeast Asia.

Ultimately, this shifts the geopolitical dynamic from a traditional donor-recipient dependency into an ASEAN-led, ASEAN-owned peer collaboration. It ensures that external partnerships strictly serve to strengthen regional technology transfers, share data on transboundary pollution, and build localized capacity, keeping the future trajectory of the region firmly in ASEAN hands.

2. Access to Information

ADER’s operative paragraph 2.3 commits ASEAN Member States to promote access to information in the implementation of the right to a safe, clean, healthy, and sustainable environment, including for people in vulnerable situations.¹⁷⁶ This consolidated provision addresses all three access rights in a single operative clause, reflecting both the interconnectedness of the three pillars and the Declaration’s approach of setting a broad normative direction rather than prescribing specific mechanisms.¹⁷⁷

176 *ibid.*

177 *ibid.*

The Preamble further acknowledges the importance of engaging:
“all stakeholders and the public, including people in vulnerable situations such as children and youth, women, and people with disabilities, and local communities,” as well as “the importance of traditional knowledge, techniques and technologies in sustaining the climate resiliency of communities.”¹⁷⁸

This signals a commitment to inclusive information dissemination.¹⁷⁹ Further, ADER’s operative paragraph 5.1 then commits Member States to “enhance collaboration among ASEAN Member States to share and exchange information and knowledge on the impacts of climate change, biodiversity loss, and pollution,” reinforcing the informational dimension of regional cooperation.¹⁸⁰

Beyond ADER, the ASEAN Agreement on Transboundary Haze Pollution (AATHP) (2002) provides a significant sectoral precedent for access to environmental information at the regional level.¹⁸¹ The AATHP establishes obligations on parties to share information relating to land and forest fires and haze pollution, including through the establishment of “an information referral system for the exchange of relevant information, expertise, technology, techniques.”¹⁸² Article 7 mandates monitoring, assessment, and prevention measures, while Article 9 establishes the ASEAN Coordinating Centre for Transboundary Haze Pollution Control as a centralized mechanism for the collection and dissemination of haze-related environmental information.¹⁸³ ADER explicitly reaffirms ASEAN’s commitments under this Agreement in its Preamble, creating a direct normative linkage.¹⁸⁴

In addition, access to information aligns with the ASEAN Community Vision 2045, reinforcing transparency in regional governance. The Vision articulates an aspiration for a “green ASEAN” that embraces the green and blue economies, while the ASCC Strategic Plan (Strategic Goal 12) commits to environmental stewardship, including addressing transboundary pollution, biodiversity conservation, and climate change mitigation and adaptation—all of which presuppose the availability of robust environmental data and information.¹⁸⁵

178 Ibid.

179 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, Preamble, ninth and tenth recitals (ACKNOWLEDGING provisions).

180 Ibid., para. 5.1.

181 ASEAN Agreement on Transboundary Haze Pollution, signed at Kuala Lumpur, 10 June 2002, entered into force 25 November 2003.

182 Ibid., Art. 4.

183 Ibid., Art. 7 and Art. 9.

184 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, Preamble.

185 ASEAN Community Vision 2045 (ASEAN 2045: Our Shared Future), adopted through the Kuala Lumpur Declaration on 26 May 2025, para. 28. See also ASEAN Socio-Cultural Community (ASCC) Strategic Plan, Strategic Goal 12 (Green ASEAN).

Strategic Goal 1 of the ASCC Strategic Plan further emphasizes the development of an inclusive and sustainable digital society with universal access to information and communication technology, promoting digital literacy and protecting vulnerable populations.¹⁸⁶ The Community Vision's overarching commitment to "uphold the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms" and its emphasis on "meaningful and inclusive participation of all stakeholders" further establish the governance culture within which access to information is situated as one of precondition for meaningful and inclusive participation.¹⁸⁷

3. Access to Meaningful Participation

ADER's commitment to "meaningful public participation" in operative paragraph 2.3 is central to the Declaration's procedural framework, though the adopted text does not elaborate on what constitutes "meaningful" participation or specify the mechanisms through which it should be achieved.¹⁸⁸ ADER also strongly encourages "the use and adoption of risk assessment tools including but not limited to environmental impact assessments to assess, prevent, reduce, mitigate and address environmental impacts and harm," implicitly linking public participation to EIA processes without mandating specific consultation procedures.¹⁸⁹ Whilst this clause does go some way towards facilitating public participation, this clause indirectly may position the EIA merely as a tool, the standard procedures for which are determined at the discretion of member states. On the other side, it also risks treating risk assessment tools as the only effective and meaningful mechanism for public participation, rather than systematically promoting the provision of continuous opportunities and rooms for public participation and the importance of free, prior and informed consent as a form of public participation.

Specific attention was given to the provision that enabled participation, including by protecting the space of the people defending their environmental rights. ADER's Preamble acknowledges "the need for sufficient and effective protection for all, including persons working to promote and protect the right to a safe, clean, healthy and sustainable environment, where appropriate."¹⁹⁰ This language, while falling short of explicitly naming environmental human rights defenders (EHRDs), constitutes the first ASEAN-level acknowledgment of the need to protect those engaged in environmental advocacy. Operative paragraph 3.3 commits Member States to "provide for a safe

186 ASCC Strategic Plan, Strategic Goals 1 and 12. See also ASEAN Community Vision 2045, paras. 3–4.

187 ASEAN Community Vision 2045, para. 4: "We shall uphold the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms." See also para. 3 on "meaningful and inclusive participation of all stakeholders."

188 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, para. 2.3.

189 Ibid., para. 4.2.

190 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, Preamble.

and enabling environment to ensure the exercise of the right to a safe, clean, healthy and sustainable environment,” which can be interpreted to encompass both access to justice and protections for EHRDs.¹⁹¹

CHALLENGE: The Protection Gap for EHRDs

The threat of Strategic Litigation Against Public Participation (SLAPPs) remains the primary barrier to environmental justice in the region. Since 2021, the vast majority of documented violations against EHRDs in Asia have occurred within ASEAN member states, totaling hundreds of cases.¹⁹²

The Barrier: While ADER recognizes environmental rights, it does not yet address the “drivers of repression,” such as criminal defamation and expansive public order laws, which are frequently used as SLAPP mechanisms against defenders.

The Impact: Without clear defensive and anti-retaliatory clause in the law on EHRDs, judicial victories remain fragile, as defenders can be cleared of environmental charges only to face retaliatory criminal or civil litigation.

RPA Priority: Developing Regional Standards that encourage Member States to provide clear procedural protections for EHRDs, ensuring that domestic security and defamation laws are applied in a manner consistent with ASEAN’s human rights commitments.

Beyond ADER, several other ASEAN-level instruments provide a broader framework for participatory environmental governance. The ASEAN Declaration on Environmental Sustainability (2007) commits Member States to intensifying efforts to address global environmental challenges through regional cooperation and stakeholder engagement, establishing an early normative commitment to participatory approaches in environmental governance.¹⁹³

The ASEAN Community Vision 2045 and its accompanying APSC Strategic Plan provide the most explicit institutional commitment to democratic participation at the ASEAN level. The Community Vision affirms ASEAN’s determination to remain “a primary driving force in shaping the regional architecture” and to contribute towards “a rules-based international order amidst geopolitical tensions and rivalries,” situating participatory governance within ASEAN’s broader strategic ambitions.¹⁹⁴ Specifically:

191 Ibid., para. 3.3.

192 Global Witness, “Missing Voices: The Violent Erasure of Land and Environmental Defenders” (September, 2024), p. 17

193 ASEAN Declaration on Environmental Sustainability, adopted at the 13th ASEAN Summit, Singapore, 20 November 2007.

194 ASEAN Community Vision 2045, para. 14: “An ASEAN that remains a primary driving force in shaping the

- The APSC Strategic Plan, under Strategic Goal 9, places a strong emphasis on human rights, democracy, the rule of law, and good governance, explicitly referencing the need to strengthen the promotion and protection of human rights and fundamental freedoms.
- Strategic Measure 9.2 calls for upholding “principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation, and avoidance of double standards and politicization, with due regard to people’s participation, inclusivity, and the need for accountability.”¹⁹⁵
- The ASCC Strategic Plan complements this through Strategic Goal 5, which emphasizes the role of people in shaping a resilient and sustainable ASEAN through enhanced participation, disability-inclusive development, and strengthening local institutions. While Objective 1.2 calls for enhancing the meaningful engagement of vulnerable groups—including women, children, indigenous peoples, persons with disabilities, migrant workers, and those in climate-affected areas—in ASEAN policymaking.¹⁹⁶

4. Access to Justice

The ASEAN Human Rights Declaration provides normative support for access to justice through its civil and political rights provisions. Articles 11 through 25 of the AHRD also include the right to an effective remedy, the right to a fair trial, and the presumption of innocence, which are important elements of access to justice.^{197 198} At the regional level, AICHR’s Operational Guidelines to External Communications Received (adopted 13 November 2025) formalise for the first time how individuals and communities can bring grievances, including environmental ones, to the regional human rights body, though its reach is limited by discretionary follow-up, confidential record.¹⁹⁹

regional architecture and contributes towards a rules-based international order amidst geopolitical tensions and rivalries.” See also APSC Strategic Plan, Strategic Goal 9.

195 APSC Strategic Plan, Strategic Measure 9.2, providing for the upholding of “principles of impartiality, objectivity, non-selectivity, non-discrimination, non-confrontation, and avoidance of double standards and politicisation, with due regard to people’s participation, inclusivity, and the need for accountability, in the promotion and protection of human rights and fundamental freedoms.”

196 ASCC Strategic Plan, Strategic Goal 5 (Participatory Community) and Objective 1.2 (Participatory Integration). See also ASEAN Community Vision 2045, para. 3.

197 ASEAN Human Rights Declaration, Art. 11-25.

198 ASEAN Agreement on Transboundary Haze Pollution, Art. 27.

199 AICHR, “AICHR Operational Guidelines to External Communications Received”, adopted 13 November 2025.

The ASEAN Community Vision 2045 and the APSC Strategic Plan provide a strengthened institutional framework that could support access to justice in environmental matters. The APSC Strategic Plan, under its Strategic Goal 1, commits to upholding international law and strengthening the rule of law, judiciary systems, and legal infrastructure, including through cooperation with ASEAN bodies such as the ASEAN Law Ministers Meeting (ALAWMM), the ASEAN Law Association (ALA), and the Council of ASEAN Chief Justices (CACJ).²⁰⁰

The ASEAN Charter's foundational commitment to the rule of law (Article 2(2)(h)) and equitable access to justice (Article 1(11)) further underpins these provisions, establishing the normative expectation that ASEAN Member States will provide effective judicial remedies for rights violations, including those arising from environmental harm.²⁰¹

Ultimately, this dense matrix of high-level instruments—stretching from the foundational mandates of the ASEAN Charter to the strategic targets of Vision 2045 establishes the essential normative-to-operational pipeline required to realize true environmental justice. Historically, abstract rights to a remedy have failed to translate into local courtrooms due to structural judicial barriers unique to environmental litigation, such as restrictive legal standing, an asymmetrical burden of proof, and the constant threat of retaliatory SLAPP suits.

By anchoring these rights within the APSC Strategic Plan and explicitly directing cooperation through dedicated legal bodies, such as CACJ, the region creates an institutional pathway to break traditional silos. This cross-pillar institutionalization between AICHR and the CACJ to operationalize the ADER will follow existing precedent²⁰² of dialogues. Through its Working Group on Climate Justice and its Working Group on Judicial Education and Training (WG-JET),—both of which have been actively driving capacity building and peer-to-peer exchanges on environmental and climate change issues with the technical backing of various regional and international organizations—the judiciary has already laid the necessary groundwork.

To be sure, the constitutional relationship between these bodies warrants careful navigation; the CACJ stands as a grouping of judges and justices with a clear mandate of judicial independence from the political and executive arms of government, including AICHR. This intersection between judicial independence and executive-led declarations requires further discussion. At the very least, however, the CACJ, in coordination with AICHR and supported by expert resource mappings like the RWI-ICJ

200 ASEAN Community Vision 2045, para. 14. See also APSC Strategic Plan, Strategic Goal 1, committing to uphold international law and strengthen the rule of law, judiciary systems, and legal infrastructure; and Strategic Measure 1 on strengthening cooperation with ASEAN bodies such as the ASEAN Law Ministers Meeting (ALAWMM), the ASEAN Law Association (ALA), and the Council of ASEAN Chief Justices (CACJ).

201 ASEAN Charter, Art. 2(2)(h) and Art. 1(11).

202 <https://asean.org/aichr-and-cacj-hold-asean-human-rights-dialogue-on-the-rights-of-accused-persons-in-criminal-cases/> (Accessed on 3 July 2026)

guidebook on RPEC, can independently unpack the ADER's procedural mandates and figure out how to best support its implementation within national judiciaries. This means that embedding ADER into actual court rules and judicial toolkits is a matter of scaling up existing channels, rather than overcoming institutional resistance.

5. The Regional Plan of Action and Interoperability Across ASEAN-Level Instruments

ADER's most significant institutional provision is operative paragraph 6, which tasks the ASEAN Intergovernmental Commission on Human Rights (AICHR), in consultation with relevant ASEAN Sectoral Bodies including ASEAN Senior Officials on Environment (ASOEN), to develop "an ASEAN-owned and ASEAN-led Regional Plan of Action" (RPA) to follow up on the Declaration.²⁰³ This marks the first time AICHR has been tasked with advancing a dedicated regional framework on environmental rights, creating a cross-sectoral and cross-pillar mechanism that bridges the human rights and environmental governance streams within ASEAN. Some of the key elements that have been raised for inclusion in the RPA are supporting procedural rights such as access to information, public participation, and access to justice; protecting Indigenous Peoples and EHRDs; and addressing critical substantive issues including air pollution and biodiversity loss.²⁰⁴

ADER's operative paragraphs 7 and 8 commit Member States to assure "continuous support and provision of adequate resources" for AICHR and relevant ASEAN Bodies, and invite "relevant stakeholders at the local, national, regional, and international levels to contribute to fostering knowledge exchange and multistakeholder cooperation as well as providing financial and technical support."²⁰⁵ However, unlike the Escazú Agreement, which provides for a "voluntary fund" to finance implementation, ADER lacks a comparable financing mechanism, raising concerns that Member States may evade implementation commitments by citing resource constraints.²⁰⁶

203 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, para. 6.

204 Heinrich Böll Foundation, "ASEAN Set to Adopt Environmental Rights Declaration in October 2025" (22 August 2025), accessed through <https://th.boell.org/en/2025/08/22/asean-set-adopt-environmental-rights-declaration>.

205 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, paras. 7 and 8.

206 FORUM-ASIA, "ASEAN's Environment of Denial: New Declaration, Same Old Story." See also Escazú Agreement (2018), Art. 9, providing for a "voluntary fund" to finance implementation. No equivalent provision currently exists in ADER.

Aligning RPA Development for Environmental Procedural Rights with ASEAN’s Strategic Priorities

The Chair’s Statement of the 48th ASEAN Summit, issued in Cebu on 8 May 2026, provides a timely opportunity to assess the interoperability of ADER with ASEAN’s highest-level political commitments.²⁰⁷ A mapping of the Statement’s key provisions against ADER’s three procedural pillars reveals both strong alignments and critical gaps that the forthcoming Regional Plan of Action should address.

ADER Pillar	Chair’s Statement Alignment	RPA Implications
Access to Information	Paras. 97–100: Progress on Post-2025 Environmental Strategic Plan; AATHP implementation and operationalization of ACC THPC; development of joint statements on climate change and biodiversity for COP31 and CBD COP17. Para. 73: Cybersecurity cooperation and information sharing mechanisms.	The RPA should establish standardized environmental information disclosure protocols, utilizing the haze pollution monitoring model and expanding it to cover biodiversity, pollution, and climate data. Integration with emerging digital governance frameworks is essential.
Public Participation	Para. 36: AICHR Five-Year Work Plan 2026–2030 and continuing discussions on ADER and Declarations on Right to Development and Right to Peace. Para. 91: Declaration on Youth Empowerment in Climate Action and Disaster Resilience. Para. 14: People-centered, people-oriented ASEAN with four ASCC priorities.	The RPA should define minimum standards for “meaningful participation” in environmental decision-making, drawing on the FPIC framework and the Summit’s emphasis on youth empowerment and inclusivity. Cross-pillar coordination between AICHR and environmental sectoral bodies is critical.

²⁰⁷ Chair’s Statement of the 48th ASEAN Summit, 8 May 2026, Cebu, Philippines, paras. 36, 97–100.

Access to Justice	Para. 38: ALAWMM efforts to strengthen the rule of law; signing of the ASEAN Treaty on Extradition. Para. 36: AICHR cross-sectoral and cross-pillar collaboration; enhanced institutional capacity. Para. 4: Commitment to peaceful settlement of disputes and full respect for legal processes.	The RPA should leverage the strengthened legal cooperation architecture to establish judicial capacity-building programs on environmental adjudication. Anti-SLAPP protections and harmonized standards for EHRD protection should be a priority.
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The Chair's Statement reveals that while ASEAN's high-level commitments on environmental governance, human rights, and the rule of law are broadly aligned with ADER's procedural framework, there remain significant gaps in operationalizing these commitments. The Statement's emphasis on the AICHR Five-Year Work Plan 2026–2030 and the continuing discussions on ADER signal strong institutional momentum.²⁰⁸ The strengthening of legal cooperation through the ALAWMM and the ASEAN Treaty on Extradition demonstrates growing capacity in the justice sector that could be channeled towards environmental adjudication.²⁰⁹ However, the Statement does not directly reference ADER's procedural rights, EHRDs, or access to environmental justice, underscoring the importance of the RPA in bridging the gap between high-level political commitments and concrete procedural rights.

Critically, the AEC Strategic Plan 2026–2030 offers additional and largely underexplored entry points for the implementation of ADER's procedural rights. Strategic Measure 1.3.5 calls for the mainstreaming of corporate accountability instruments in ASEAN, which, if read alongside ADER, could support the integration of environmental due diligence, meaningful community consultation, and access to remedies within regional investment frameworks.²¹⁰ Strategic Goal 2 embeds climate and sustainability at the core of economic integration, with objectives promoting a just and inclusive energy transition and the adoption of ESG standards and decarbonization finance—that creates potential alignment with international business and human rights norms such as the UN Guiding Principles and OECD Guidelines.²¹¹

208 Ibid., paras. 36 and 99 (AICHR Five-Year Work Plan 2026–2030 and continuing discussions on ADER; biodiversity conservation and CBD COP17).

209 Ibid., paras. 38 and 36 (ALAWMM and ASEAN Treaty on Extradition; AICHR cross-sectoral and cross-pillar collaboration).

210 AEC Strategic Plan 2026–2030, Strategic Measure 1.3.5 (promoting mainstreaming of corporate accountability instruments in ASEAN). See also Objective 2.3 (sustainable development of extractive industries) and Strategic Goal 6 (narrowing development gaps).

211 Ibid., Strategic Goal 2, Objectives 2.1–2.2 (just and inclusive energy transition), Strategic Measures 2.6.4–2.6.5 (ESG standards and decarbonisation finance). See also Objective 2.4 (sustainable agriculture and forest management).

Objective 2.3 on the sustainable development of extractive industries is particularly significant, given that extraction projects frequently occur in indigenous and rural areas - directly threatening land rights, livelihoods, and cultural heritage. Without strong safeguards, meaningful consultation, and equitable benefit-sharing, ASEAN's economic integration agenda risks undermining the very rights that ADER seeks to protect. Strategic Goal 6, which emphasizes narrowing development gaps and enhancing the participation of vulnerable and marginalized communities, further reinforces the case for cross-pillar coordination between ASEAN's economic and environmental rights agendas.²¹²

While ADER itself is a non-binding declaration, its potential to shape judicial interpretation, inform domestic policy reform, and support advocacy within international human rights processes should not be underestimated. The Declaration reflects the principle of non-regression and progressive realization by committing to "progressive realization" of the right to a safe, clean, healthy, and sustainable environment "to the maximum of ASEAN Member States' available resources," signaling an aspirational but incremental approach to implementation.²¹³ This part is of particular importance as the current geopolitical tensions have brought many countries watering down on environmental and human rights protection.

Whether ADER becomes a transformative instrument or remains largely symbolic will depend on the robustness of the forthcoming Regional Plan of Action, the political will of individual Member States, and the continued efforts of civil society, indigenous peoples, and environmental human rights defenders to hold their governments accountable. The mapping of the 48th ASEAN Summit Chair's Statement against ADER's procedural elements demonstrates that the normative infrastructure and high-level political will exist and the task ahead is to translate these commitments into concrete, enforceable, and adequately resourced procedural safeguards.

212 ASEAN Community Vision 2045, para. 20. See also AEC Strategic Plan 2026–2030, Strategic Goal 6, Objective 6.1.

213 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, Preamble.

IV. Key Findings Across ASEAN Member States

This chapter draws together the country-by-country mapping in Chapter II and the regional-level analysis in Chapter III into a set of cross-cutting findings. It reads the eleven national profiles along the three access pillars that structure this study — access to information, meaningful public participation, and access to justice — and then turns to the limits of the current normative framework at the ASEAN level. Two concerns cut across all four: the protection of environmental human rights defenders, and the recognition of Indigenous Peoples. These are addressed where they bite hardest rather than in isolation — defender protection under access to justice, since the harm runs through the courts and the remedies are procedural; and Indigenous recognition under participation, since it conditions the operation of Free, Prior and Informed Consent.

The purpose here is diagnostic rather than prescriptive, providing an analytical basis for both regional and national level intervention against which the forthcoming Regional Plan of Action - and the accompanying policy recommendations developed in a separate document - can be framed and, in time, measured.

The overarching finding is that while ASEAN Member States have made meaningful, albeit uneven, progress in establishing legal frameworks for environmental procedural rights, a substantial gap persists between formal legal recognition and effective implementation. This gap is not uniform: it varies by pillar, by country, and by the specific communities seeking to exercise their rights. Indigenous Peoples, environmental human rights defenders, and rural and low-income communities consistently face the most severe barriers, revealing that the protection of environmental procedural rights is fundamentally a question of equity and inclusion. However, there are recurring patterns that suggest systemic features of how environmental governance operates across the region and where the RPA can be well-positioned to close the gap. Based on our finding, there are four key findings that capture the state of environmental procedural rights protection among ASEAN Member States:

1. Access to Information: Legal Foundations Exist But Effective Access Remains Elusive

The study reveals a profoundly uneven landscape for access to environmental information across ASEAN. Five Member States have enacted general right-to-information legislation (Indonesia, Thailand, Vietnam, the Philippines through Executive Order, and Malaysia at the state level), while Cambodia provides

constitutional recognition without a dedicated statute, and the remaining Member States rely on government-initiated disclosure or sectoral instruments. However, the practical architecture for accessing environmental information remains deficient, driven by at least three structural challenges:

First, broadly drawn confidentiality exemptions operate as default barriers. Many countries in ASEAN had utilised undefined categories of “sensitive” or “secret” information as well as introducing both “state secret” and “enterprise secret” exemptions without coherent definitions to limit or withhold environmental information. Clear determination of what constitutes as sensitive or secret information should be established to limit overboard withholding of environmental data.

Second, the absence of clear access mechanisms have made legally mandated or at the very least important information frequently does not reach the communities. The study documents a recurring pattern in which civil society organizations must pursue protracted formal proceedings simply to obtain basic environmental data that public authorities are legally obliged to disclose, as illustrated by the multi-year litigation in Indonesia to obtain Environmental Impact Assessment documents for the Nusantara capital project.

Third, proactive disclosure remains the exception. While Singapore and, to some extent, Thailand have adopted government-initiated disclosure models, these operate on terms set by the disclosing authority. In several Member States such as Brunei Darussalam, Myanmar, and Singapore, the absence of request-based access mechanisms means that environmental transparency is a grant of administrative discretion rather than a justiciable right.

2. Access to Meaningful Participation: Formal Compliance Without Agency and Meaningful Influence

Public participation in environmental decision-making is formally required in almost every ASEAN Member State, most commonly within the Environmental Impact Assessment process. However, the study’s most consistent finding is a substantial gap between procedural compliance and meaningful participation.

First, participation in environmental-decision making conforms to regulatory compliance rather than a genuine co-producing process. Across the region, participation more frequently resembles tokenism than genuine citizen engagement. This manifests in three principal ways: 1) the limitation of parties who are consulted (as in Malaysia’s restriction to “Appointed Individuals” and Indonesia’s narrowing to undefined “directly impacted communities” under the Job Creation Law); 2) consultation processes that are too technical or too late to foster meaningful input; and

3) the deficient channel for rights-holders to influence the outcome of the decision. As participation mainly channeled through EIA process, the tokenism also risks making EIA as risk-screening tools. It is also important to mention that there should be various ways where meaningful participation can be achieved beyond EIA processes.

Second, the operationalisation of FPIC is also shown to be the single most consistent implementation gap within this pillar. Only the Philippines has embedded FPIC in binding legislation through the Indigenous Peoples Rights Act 1997, and even there, violations persist. In other Member States, FPIC is either absent from binding legislation, implemented through non-binding guidelines, or undermined by laws that grant governments broad authority over decision making processes. It must be ensured that FPIC is guaranteed for everyone, particularly those affected by an activity, especially for indigenous peoples.

One factor that also hinders the implementation of FPIC is the recognition of indigenous peoples themselves. Member States employ a wide variety of terminology, from “Indigenous Peoples” (Philippines) to “masyarakat hukum adat” (Indonesia), “national races” (Myanmar), “ethnic groups” (Vietnam, Laos), and “local community” (Cambodia). Each carrying different legal consequences for the scope of rights afforded. This terminological diversity, while sometimes reflecting distinct constitutional traditions, frequently results in indigenous and ethnic communities being unable to avail themselves of the full range of rights recognized under the UN Declaration on the Rights of Indigenous Peoples, to which all ASEAN Member States are signatories. The study finds that where indigenous communities are recognized merely as stakeholders rather than rights-holders, their communal land rights, participation rights, and access to justice remain structurally inadequate.

These vulnerabilities are not experienced uniformly within Indigenous communities. Indigenous women, in particular, can face compounded barriers - to information, to participation, and to remedy - that reflect the intersection of gender, indigeneity, and, frequently, rural and low-income status.

3. Access to Justice: Institutional Innovation Alongside Structural Barriers

Access to justice presents a picture of institutional innovation coexisting with persistent structural exclusion. The Philippines, Indonesia, and Thailand have developed notable judicial models such as citizen-suit standing, the Writ of Kalikasan, environmental judges’ certification, and landmark administrative jurisprudence. However, outside these jurisdictions specialized environmental adjudication is largely absent, and even within them, justice remains functionally inaccessible for many communities.

First, limited numbers of judges, lawyers, and specialised court handling environmental cases present a structural access barrier. For example, in Lao PDR, only approximately 800 lawyers serve the entire country. There is also the challenge posed by the distribution of lawyers, who are largely concentrated in major cities, far from the sites where environmental damage occurs. Numbers of courts accepting hearing of environmental cases is also lacking when compared to the geographical scale and/or volume of environmental cases entering the court. In the Philippines, 117 designated environmental courts remain vastly inadequate for an archipelago of over 7,000 islands. In other member states where there is absence of a specialised environmental courts means that environmental disputes are adjudicated by general courts that might receive very high volume of cases compared to number of judges available.

Second, the cost and complexity of environmental litigation remain prohibitive. In every Member State assessed, affected communities face significant financial barriers to bringing environmental claims, including court fees, legal representation costs, and the expense of generating scientific evidence. In Vietnam, restrictive court fee structures function as a de facto economic deterrent for marginalized communities. The cost of litigation, the centralization of courts in major cities, the limited availability of legal aid, and the prohibitive expense of generating scientific evidence create a systemic power asymmetry between affected communities and the government or corporate entities they seek to challenge. The study documents that environmental litigation uniquely requires communities to generate primary technical evidence that does not exist until commissioned - from soil and water sampling to satellite imagery - at costs that frequently exceed community litigation budgets, while the very data communities need is often already held by the defendants.

The absence of a specialised court also means the lack of judges having expertise to examine technically complex environmental cases, so that even relatively favorable legal frameworks translate unevenly into enforced outcomes. Other influencing factor is also the finding where legal aid for environmental cases is systematically underprovided. While several Member States maintain general legal aid frameworks, none has developed a dedicated legal aid framework for environmental cases.

Third, narrow legal standing rules frequently operate as gatekeeping mechanisms. Narrow legal standing requirement such as where a plaintiff is required to provide proof of special injury for public nuisance or injury in fact (excluding indirect or future harm) have been structurally limiting who can bring environmental claims. Several member states also do not recognize a citizen-suit provision, leaving no legal pathway for individuals or communities to bring environmental claims directly against government or in some cases, private actors.\

Lastly, The protection of environmental human rights defenders (EHRDs) is inseparable from access to justice and constitutes an urgent regional priority.

Currently, only Indonesia and the Philippines have dedicated anti-SLAPP provisions and even both remain unevenly enforced with cases of legal attacks against EHRDs is still documented. The instruments of repression are remarkably consistent across jurisdictions: criminal defamation, arbitrary arrest, intimidation and violence, and retaliatory SLAPP suits. Anti-SLAPP regulations are not widely established and adopted by all law enforcers, including the police. The absence of clear legal definitions of who qualifies as an environmental defender, which activities are protected, and what remedies are available creates dangerous ambiguity throughout the region.

4. Limits of the Current Normative Framework at ASEAN-level

The adoption of ADER in October 2025 represents a genuine normative milestone. However, the architecture within which ADER operates carries structural features that may, if unaddressed, reproduce at the regional level the same implementation gaps documented at the national level.

First, absence of safeguards against normative regression. A particularly concerning pattern documented in this study is several member states are seeing regressing environmental law that threatens the protection of environmental procedural rights and consequently, the realisation of the substantive elements of the rights. For example, Indonesia's Omnibus Law 2020 represents the most extensive documented regression that includes significant limitative clauses related to public participation. These instances of regression are particularly consequential given the principle of non-regression, which holds that environmental and human rights protections, once established, should not be weakened. The RPA operates in an environment where the risk of further regression is real, and its normative framework must be designed to counteract, rather than accommodate, this dynamic.

Second, limited cross ASEAN-bodies coordination on environmental matters, particularly related to transboundary pollution. Despite the ASEAN Agreement on Transboundary Haze Pollution (AATHP) and Singapore's Transboundary Haze Pollution Act where both provides opportunities to enhance coordination across member states to prevent and tackle risks of transboundary environmental impact, the region lacks a cooperative, rights-based mechanism that grants cross-border communities proactive access to information regarding projects in neighbouring states that may have potential transboundary impact such as large-scale extraction or cross-border infrastructure projects. In an integrated ecosystem such as the Mekong Area, activities taking place upstream may have impacts to other areas.

V. Concluding Reflection

The adoption of ADER at the 47th ASEAN Summit represents a defining moment in the region's engagement with the intersection of human rights and environmental protection. The Declaration establishes, for the first time, a comprehensive regional framework that recognizes both the substantive right to a safe, clean, healthy and sustainable environment and the procedural rights essential for its realization. The forthcoming Regional Plan of Action carries the weight of translating these commitments into lived reality for the communities across ASEAN who are most affected by environmental degradation and most excluded from the decisions that drive it.

This study has sought to provide the analytical foundation for that translation. Its findings underscore that procedural rights are not ancillary to environmental protection but rather a precondition. The right to know what is happening to one's environment, the right to participate in decisions that shape it, and the right to seek justice when it is harmed are the mechanisms through which the substantive promise of a healthy environment is given force. Where these rights are hollow, environmental outcomes suffer; where they are strong, communities are empowered to protect both their rights and their ecosystems.

The challenges documented in this study are substantial, but they are not insurmountable. Several Member States have already demonstrated that meaningful progress is possible through domestic innovation and institutional commitment. The RPA provides the framework through which these innovations can be shared, adapted, and scaled across the region. Its success will be measured not by the ambition of its language, but by whether the communities who need environmental procedural rights the most - Indigenous Peoples defending their ancestral territories, environmental defenders facing criminalisation, and rural communities confronting industrial pollution - can actually exercise them.

Drawing on the findings and analysis presented throughout this study, the following key messages are addressed to the drafters and stakeholders involved in developing the Regional Plan of Action:

1. **Establish a regional normative floor.** The RPA should define the minimum operational content of each access right—information, participation, and justice—against which national implementation can be benchmarked and periodically reviewed.
2. **Centre the RPA on the most vulnerable.** The RPA should embed explicit operational commitments to Indigenous Peoples, environmental human rights defenders, women, and other communities in vulnerable situations, treating

their ability to access information, participate meaningfully, and obtain justice as the diagnostic indicator of the system's performance.

3. **Safeguard against normative regression.** The RPA should embed the principle of non-regression, committing Member States to maintaining or strengthening the level of protection afforded by existing environmental law and policy.
4. **Build implementation infrastructure and cross-pillar coordination.** The RPA should establish a periodic review under AICHR through which Member States regularly assess progress on environmental procedural rights, including through civil society and indigenous parallel reporting. Cross-pillar coordination is essential because the most consequential environmental decisions in the region are taken not by AICHR or Environment Ministers alone, but by sectoral bodies responsible for investment, trade, forestry, energy, and infrastructure. Without structured coordination mechanisms and the incorporation of ADER implementation indicators into existing ASEAN strategic plan reporting frameworks, the RPA's commitments risk being made in one pillar and undermined in another.
5. **Leverage existing regional good practices.** The study identifies several emerging practices within the region that the RPA can leverage as benchmarks: the Philippines' comprehensive environmental adjudication system and the National Inquiry on Climate Change by the Commission on Human Rights; Indonesia's Environmental Judges Certification System and expanding anti-SLAPP architecture; Thailand's pioneering Official Information Act and landmark administrative court jurisprudence; Timor-Leste's recognition of Tara Bandu as a customary mechanism for environmental governance; and Malaysia's emerging National Action Plan commitments on anti-SLAPP. These demonstrate that the region already possesses institutional models that can be adapted and replicated, and that the RPA need not build entirely from external templates.

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APPENDIX I

ANALYTICAL MATRIX USING FRAMEWORK FOR INTEGRATING RIGHTS AND EQUALITY (FIRE)

This analytical matrix is adapted from the Framework for Integrating Rights and Equality (FIRE) developed by the Raoul Wallenberg Institute (RWI)²¹⁴ and tailored specifically for the baseline study on environmental procedural rights across ASEAN Member States. It provides a standardized tool to assess how the three pillars of environmental procedural rights (access to information, meaningful public participation, and access to justice) are recognized and implemented in each country, within the normative context of the ASEAN Declaration on Environmental Rights (ADER).

The matrix organizes the analysis across four FIRE dimensions, with each dimension examining a distinct layer of the rights framework: formal legal recognition, non-discrimination and the protection of marginalized groups, participatory mechanisms and information access, and institutional accountability.

214 <https://rwi.lu.se/fire/>

Analytical Matrix

FIRE Dimension	Procedural Rights Focus	Key Analytical Questions	Possible Indicators / Evidence
FUNDAMENTAL RIGHTS & EQUALITY Normative recognition of procedural environmental rights	Recognition of the three procedural environmental rights in regional, constitutional, legislation, and policy frameworks, and alignment with ADER commitments	• Are environmental procedural rights as established under ADER (access to information, participation, and access to justice) explicitly recognized in the constitution or national legislation? • Are these rights framed as standalone rights and/or as enabling rights that support the realization of substantive environmental rights (e.g., right to a healthy environment)? • Are individuals, communities, and organizations granted legal standing to bring environmental claims? • Are there effective remedies available to individuals whose procedural rights have been violated? • How does the national framework align with international obligations under international human rights treaties and multilateral environmental agreements (e.g., Rio Declaration Principle 10, UNDRIP)?	• Constitutional provisions on the environment, access to information, public participation, and access to justice • Environmental framework laws and FOI laws • Rules of Procedure, roadmap/strategic plan, guidelines related to environment • Judicial decisions affirming procedural environmental rights • UPR, treaty body, and Special Rapporteur reports assessing legal recognition • UNEP Environmental Rule of Law national profiles

FIRE Dimension	Procedural Rights Focus	Key Analytical Questions	Possible Indicators / Evidence
NON-DISCRIMINATION & INCLUSION Recognition and protection of marginalized groups, IPs, and EHRDs	Legal and institutional recognition of the rights of Indigenous Peoples and EHRDs, and the extent to which overlapping vulnerabilities (gender, indigeneity, disability, age, geography, socioeconomic status) shape access to and exercise procedural rights	• Are Indigenous Peoples recognized in the constitution, national laws, or environmental governance frameworks as distinct rights-holders with specific procedural entitlements (e.g., FPIC)? • Do environmental laws or policies contain specific provisions addressing the participation and access to justice rights of Indigenous Peoples? • Are Environmental Human Rights Defenders (EHRDs) recognized in law or policy, and are there dedicated legal protections against threats, harassment, and criminalization? • Do national laws contain anti-SLAPP provisions or equivalent measures to protect EHRDs from vexatious litigation? • Are there mechanisms that specifically address the intersectional barriers faced by women, persons with disabilities, youth, and geographically remote communities in accessing procedural rights?	• Indigenous peoples' rights laws, customary rights recognition, or equivalent • EHRD protection frameworks, including legislation and policy related to environment that has protection clause on EHRDs or equivalent • Judicial decisions on SLAPP, Indigenous Peoples, and other marginalized groups • Reports and interview insights on conditions and barriers faced by IPs, EHRDs, and other marginalized groups in exercising their environmental procedural rights • Cases of intimidation, arrest, or judicial harassment of EHRDs (e.g., Global Witness, Front Line Defenders data)

FIRE Dimension	Procedural Rights Focus	Key Analytical Questions	Possible Indicators / Evidence
ACCESS TO INFORMATION AND PARTICIPATION Procedural mechanisms for transparency, meaningful participation	Implementation of access to environmental information and meaningful public participation mechanisms in environmental decision-making, including EIA processes, licensing, and resource governance, with a focus on accessibility and quality	• Are freedom of information laws applicable to environmental data and decisions? What categories of environmental information may be withheld as confidential? • Are proactive disclosure obligations established for government agencies and businesses in relation to environmental matters (e.g., EIA documents, permits, monitoring data)? • Are public participation requirements embedded in environmental impact assessment (EIA) procedures and permitting processes? • Are there any provisions or mechanisms to ensure that participation processes are designed to be meaningful (i.e., conducted prior to final decisions, with adequate time, accessible language, and genuine influence on outcomes), particularly for IPs and other marginalized groups? • Is Free, Prior and Informed Consent (FPIC) required for projects affecting Indigenous Peoples' lands, territories, and resources? How is it conducted according to law and/or policy? • Are digital or e-government tools being used to expand access to environmental information, and are they equitably accessible?	• FOI laws and environmental disclosure obligations • EIA and permitting regulations specifying participation requirements • FPIC procedures in national laws or policy • Government environmental information portals and their accessibility • Insight from semi-structured interviews • Documented and judicial cases of communities excluded from or inadequately consulted in environmental decisions • Environmental laws

FIRE Dimension	Procedural Rights Focus	Key Analytical Questions	Possible Indicators / Evidence
GOVERNANCE SYSTEMS & ACCOUNTABILITY Institutional capacity, enforcement, and access to remedies	Availability, accessibility, and effectiveness of judicial, quasi-judicial, and administrative mechanisms for enforcing procedural environmental rights, providing remedies, and ensuring state accountability	• Are specialized environmental courts, green benches, or dedicated chambers established? How accessible are they to affected individuals and communities? • Are there administrative or quasi-judicial mechanisms (e.g., NHRIs, environmental complaint bodies, ombudsman offices) that offer accessible remedies for procedural rights violations? • Are there any procedural rules to ensure access to remedies from environmental violations? Who is eligible to raise a case against violations? • What procedural rules govern environmental litigation including standing, burden of proof, costs, and time limits and what are the challenges? • What grievance mechanisms and dispute resolution options are available to seek redress from rights violations? What kind of remedies are provided? • How is the responsibility to ensure the fulfillment of environmental procedural rights constructed among duty-bearers? • How effectively are environmental laws enforced, and are accountability mechanisms free from corruption and undue influence? • Are ASEAN regional mechanisms (e.g., AICHR) engaged in monitoring or responding to violations of environmental procedural rights, particularly transboundary harms? • Are there capacity gaps in the judiciary, administrative bodies, or NHRIs that limit the effective protection of procedural rights?	• Existence and mandates of environmental courts, green benches, and specialized environmental divisions • NHRI mandates, complaint procedures, and case outcomes related to environmental rights • Administrative review systems, ombudsman offices, and environmental complaint mechanisms • Landmark domestic court decisions on procedural environmental rights • Documented barriers to litigation (cost, language, geographic access, standing rules) • AICHR, ASEAN Intergovernmental Commission reports on environmental rights • Interview insights from judiciary, quasi-judicial bodies, and public interest lawyers • Civil society reports on enforcement gaps and impunity for environmental violations

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