



Bridging the Implementation Gap: Strategic Policy Recommendations for Procedural Environmental Rights in ASEAN



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Bridging the Implementation Gap: Strategic Policy Recommendations for Procedural Environmental Rights in ASEAN

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For Raoul Wallenberg Institute for Human Rights and Humanitarian Law



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LIST OF ABBREVIATIONS

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
CACJ	Council of ASEAN Chief Justices
CSOs	Civil Society Organizations
EHRDs	Environmental Human Rights Defenders
EIA	Environmental Impact Assessment
EPMA	Environmental Protection and Management Act (referring to Indonesia's Article 66 architecture)
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 (Philippines)
IWGIA	International Work Group for Indigenous Affairs
MEAs	Multilateral Environmental Agreements
NHRIs	National Human Rights Institutions
PERMA	Supreme Court Regulation (<i>Peraturan Mahkamah Agung</i> - Indonesia)
RPA	Regional Plan of Action

RPEC	Rules of Procedure for Environmental Cases (specifically referring to the Philippines' 2010 precedent)
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law
SEANF	Southeast Asia National Human Rights Institutions Forum
SLAPP	Strategic Lawsuit Against Public Participation
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
WEHRDs	Women Environmental Human Rights Defenders
WG-JET	Working Group on Judicial Education and Training (under CACJ)

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Designed to directly support the drafting of the forthcoming Regional Plan of Action (RPA) for the ASEAN Declaration on the Right to a Safe, Clean, Healthy, and Sustainable Environment (ADER), these recommendations represent a collective vision for rights-based environmental governance. As a policy document, this text focuses on macro-level regional and domestic pathways; RWI welcomes further policy analysis and localized research to complement these frameworks as ASEAN moves toward implementation.

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Executive Summary

This policy recommendation document accompanies and builds on RWI’s **“Baseline Study on the Recognition and Protection of Procedural Environmental Rights in ASEAN Member States,”** which maps the legal and policy architecture for environmental procedural rights across all eleven ASEAN Member States. The full research questions, scope, and methodology are set out in the baseline study.

This Executive Summary sets out the strategic priorities that this policy recommendation document develops in full. Drawn from the baseline study findings, they are addressed directly to the RPA drafters and regional stakeholders tasked with shaping the Regional Plan of Action:

1. **Translating Regional Aspiration into Lived Reality:** The adoption of the ASEAN Declaration on the Right to a Safe, Clean, Healthy, and Sustainable Environment (ADER) is a historic milestone. The forthcoming RPA carries the critical institutional weight of translating these high-level political commitments into actionable, concrete frameworks that protect vulnerable ecosystems and communities across Southeast Asia.
2. **A Holistic Framework Grounded in Hard-Law Baselines:** The right to a healthy environment encompasses both substantive dimensions (clean air, safe water, stable climates) and procedural dimensions (the three access rights). The RPA must not treat these standards as isolated regional ideals; rather, it must anchor its evaluation baselines firmly in the international human rights instruments and Multilateral Environmental Agreements (MEAs) to which ASEAN Member States (AMS) are already parties.
3. **Protecting those on the Frontlines (EHRDs and Indigenous Peoples):** The ultimate measure of the RPA’s success lies in its ability to protect those most exposed to environmental degradation. It is vital that the regional framework explicitly safeguards Environmental Human Rights Defenders (EHRDs), local communities, and Indigenous Peoples by addressing legal protection gaps and removing structural barriers to formal justice systems. This includes developing a dedicated FPIC Implementation Guideline that applies to all affected populations with particular attention to Indigenous Peoples and ensuring that environmental information is made available in indigenous and local languages through accessible channels.
4. **Establish a Cooperative Regional Normative Reference:** The RPA should outline clear, baseline operational parameters for the three access rights—information, participation, and justice. This framework will serve as a shared regional reference against which domestic implementation can be voluntarily benchmarked and periodically reviewed, ensuring a harmonized approach to environmental governance.

5. **Prioritize the Protection of EHRDs:** The RPA should encourage Member States to strengthen legal protections for individuals promoting environmental rights, notably through robust Anti-SLAPP frameworks that build on existing models in Indonesia and the Philippines. Concurrently, the RPA should support states in reviewing domestic provisions that can inadvertently facilitate retaliatory litigation. Cross-cutting capacity-building for judiciaries, prosecutors, and law enforcement agencies in identifying and handling SLAPP cases should be prioritized.
6. **Invest in Specialized Adjudication Infrastructure and Environmental Rules:** The RPA should facilitate technical assistance to strengthen national environmental adjudication frameworks, including **the development of specialized green benches** tailored to each Member State's legal ecosystem. This infrastructure should be reinforced by dedicated environmental rules of procedure addressing critical access-to-justice barriers, such as standing, burden of proof, costs, expert evidence, and early Anti-SLAPP screening.
7. **Safeguard Against Normative Regression:** To maintain regional momentum, the RPA should embed the principle of non-regression, encouraging Member States to uphold or enhance the protections afforded by existing environmental laws. Defining an inclusive regional understanding of the "public concerned" will safeguard against the narrowing of public participation pathways through domestic legislation.
8. **Build Joint Implementation Infrastructure and Institutional Review:** The RPA should formalize a periodic, voluntary review mechanism under AICHR to regularly assess regional progress on environmental procedural rights, enriched by parallel inputs from civil society, NHRIs, and Indigenous Peoples. Because the region's most consequential environmental decisions are driven by sectoral bodies responsible for trade, investment, forestry, energy, and infrastructure, the RPA must institute structured cross-pillar coordination. Incorporating ADER implementation indicators into existing ASEAN strategic reporting frameworks ensures that commitments made under the human rights pillar are not undermined by economic or sectoral planning.
9. **Leverage and Scale Existing Regional Precedents:** The RPA does not need to rely on external templates; Southeast Asia already possesses pioneering institutional models. The RPA should actively leverage and scale these domestic successes, including the Philippines' specialized environmental adjudication system and the landmark National Inquiry on Climate Change; Indonesia's Environmental Judges Certification System and expanding Anti-

SLAPP regulations; Thailand's robust Official Information Act frameworks; Timor-Leste's integration of *Tara Bandu* as a customary environmental governance mechanism; and Malaysia's emerging policy commitments to protect public interest litigants.

- 10. Mainstreaming Standards Across the ASEAN Sectoral work:** Environmental rights cannot be siloed within human rights bodies alone. To prevent regional policy fragmentation, the RPA must actively empower and technically resource the ASEAN Secretariat (ASEC) Human Rights Division to develop voluntary screening tools, together with AICHR. This will enable key economic and environmental sectoral bodies—specifically including energy, forestry, agriculture, transboundary haze, and disaster management—to mainstream ADER standards into their regional master plans.

Implementing Environmental Procedural Rights in ASEAN Member States: Salient Themes, Challenges, and Opportunities

The forthcoming Regional Plan of Action (RPA) under ADER, to be developed by the ASEAN Intergovernmental Commission on Human Rights (AICHR) in consultation with relevant ASEAN sectoral bodies,¹ will be the principal vehicle for translating the Declaration's procedural commitments into operational standards: the concrete measures, benchmarks, and institutional arrangements through which Member States give practical effect to those guarantees. The value of the RPA, however, depends on how the drafting can reflect its capacity to address the concrete implementation challenges that recur across the region.

Building on the baseline study's mapping of legal and policy architecture across all eleven AMS and drawing on desk research and structured key informant interviews, this chapter distils the salient themes that shape the implementation of environmental procedural rights in the region. Rather than cataloguing shortcomings alone, it reads each theme in two registers: the recurring challenges that the baseline findings expose, and the opportunities that sit alongside them, the existing legal foundations, institutional innovations, and good practices on which the RPA can build. Six cross-cutting themes emerge from the baseline findings:

- The clarity of the legal framework on public information and access mechanisms;
- Procedural compliance and the quality of participation in environmental decision-making;
- Structural, financial and geographic barriers to access to justice.
- Institutional and enforcement capacity;
- Protection gaps for Environmental Human Rights Defenders (EHRDs); and
- Recognition and protection of Indigenous Rights.

The analysis does not seek to rank or grade Member States. It identifies patterns that the RPA should anticipate and, where possible, points to emerging practices within the region that could be replicated or adapted. Throughout, the chapter is guided by the recognition that procedural rights are enabling rights: their effective implementation is a precondition for the realization of substantive environmental

¹ ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (ADER), operative para 6 (mandating an ASEAN-owned and ASEAN-led Regional Plan of Action).

and human rights, and an indispensable safeguard against the disproportionate burdens that environmental harm imposes on Indigenous Peoples, EHRDs, and other communities in vulnerable situations.

Procedural rights are enabling rights: their effective implementation is a precondition for the realization of substantive environmental and human rights, and an indispensable safeguard against the disproportionate burdens that environmental harm imposes on Indigenous Peoples, EHRDs, and other communities in vulnerable situations.

The Clarity of Legal Framework on Public Information and Access Mechanisms

Across ASEAN, the legal foundations for access to environmental information are profoundly uneven. Five Member States have enacted general right-to-information legislation: Indonesia², Thailand³, Vietnam⁴, the Philippines (through Executive Order No. 2 of 2016⁵, and Malaysia selectively in some states.⁶ Cambodia recognizes freedom of information in Article 41 of the 1993 Constitution and has begun to operationalize it through the Code on Environment and Natural Resources 2023.⁷ But a dedicated access-to-information law remains absent. The remaining Member States do not have a general right-to-information statute, though several rely on sectoral instruments and government-led open data initiatives, although often without clear provisions regarding the mechanisms available for the general public to request additional environmental information.⁸

Even where access-to-information legislation exists, a recurring pattern across the region is the existence of broadly drawn confidentiality clauses or undefined categories of ‘sensitive’ information, such as potentially causing harm to national security,

2 Law No 14 of 2008 on Public Information Disclosure (Keterbukaan Informasi Publik) (Indonesia).

3 Official Information Act BE 2540 (1997) (Thailand).

4 Law on Access to Information No 104/2016/QH13 (Vietnam).

5 Executive Order No 2 of 2016 (Philippines) s 3. The Order applies only to the executive branch; see L Limpin, ‘The Limits of Executive Order 2 on FOI’ (Philippine Center for Investigative Journalism, 2018).

6 Freedom of Information (State of Selangor) Enactment 2011; Freedom of Information (State of Penang) Enactment 2010 (Malaysia).

7 Code on Environment and Natural Resources 2023 (Cambodia) arts 11 and 12.

8 Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Baseline Study on the Recognition and Protection of Procedural Environmental Rights in ASEAN Member States (RWI, 2026) 45 (Singapore), 32 (Myanmar).

commercial interest, or privacy, that operate as default barriers.⁹ In Indonesia, one in three information requests related to environmental matters to the Central Information Commission between 2010 and 2016 was rejected under those exclusion categories. However, it is unclear how the assessment for these exclusionary rules was conducted to determine that national security, commercial, and business interests outweigh the public interest in these cases.¹⁰ In Vietnam,

Article 43 of the Law on Environmental Protection 2020 obliges licensing authorities to publicly disclose the contents of environmental license applications, but exempts information classified as ‘state secrets or enterprise secrets’ without defining those categories with precision.¹¹

Challenges to the right of information also arise from the risk of restrictions on the production and dissemination of information deemed to be state secrets or potentially threatening national security, which are formally regulated. In the absence of clear criteria for what is considered such, these regulations restrict access to environmental information, particularly for affected communities. It is also not uncommon for such regulations to contain criminal provisions that may increase the risk of criminalization for the dissemination of ‘sensitive’ environmental information, such as maps of natural resources, concession licenses, natural resource contracts, or the results of environmental compliance monitoring. In Singapore, producing or sharing information that is prejudicial to the safety or interests of the state can be considered an offence by law.¹² Similarly, in Myanmar, those considered seeking, receiving, and imparting information deemed to be confidential might also result in criminal offence.¹³

The challenge of access to information is qualitatively distinct for Indigenous Peoples, who require information that is not merely available but timely, intelligible, and locally accessible. However, the research findings indicate that there are virtually no regulations in ASEAN Member States that explicitly guarantee the fulfillment of Indigenous Peoples’ right to information, including by having such information published in local languages understood by the local communities.

Some regulations, such as the Indonesian Environmental Law (Law No. 32 of 2009), stipulate that information must be easily accessible; however, in practice, the clause does not guarantee that the environmental information provided would be easily understood by interested/affected parties. In Brunei Darussalam, there is no statutory requirement that environmental information be made available in indigenous

9 Stockholm Environment Institute, *Advancing the Right to a Healthy Environment in Southeast Asia: Addressing Implementation Gaps and Opportunities* (SEI Brief, April 2025) 3.

10 *ibid.*

11 Socialist Republic of Viet Nam, Law on Environmental Protection 2020, Art. 43.

12 Article 19, *Freedom of Expression and the Media in Singapore* (Article 19 2005) 61–63.

13 Article 19, *The Right to Information and Natural Resources in Myanmar* (Article 19 2019) 3.

languages, despite recognition of the Bumiputera system. In Thailand, neither the Official Information Act (B.E. 2540 / 1997) nor the principal environmental statutes address access to information by indigenous peoples or in indigenous languages.

These gaps are doctrinally inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁴ While all ASEAN Member States endorsed its adoption at the UN General Assembly in 2007¹⁵, the translation of these international minimum standards into domestic recognition remains uneven across the region.

These gaps notwithstanding, the region is not starting from a blank slate. Five Member States already have general right-to-information legislation, and in several jurisdictions, the courts and information commissions have progressively clarified its scope. In Indonesia, the Central Information Commission and the courts have adjudicated environmental information disputes in ways that sharpen the boundary between legitimate confidentiality and unlawful withholding, building an interpretive foundation that the RPA can consolidate into a regional standard on access to information.

Good practice — Indonesia's public information framework

Law No. 14 of 2008 on Public Information Disclosure establishes a general right of access, backed by an independent Central Information Commission with quasi-judicial powers to hear and resolve information disputes.

Its accumulating body of decisions, together with subsequent court rulings, has begun to define the limits of the 'confidentiality' and 'state secret' exemptions in practice. This institutional model offers a tested reference point for the access-to-information standard proposed in the recommendations.

Procedural Compliance and Quality of Participation in the Decision-Making Process

Public participation in environmental decision-making is formally required in almost every ASEAN Member State, most commonly within the EIA process. The recurring pattern across the region, however, is a substantial gap between procedural compliance and meaningful participation. Compliance is measured by whether a consultation occurred, while the quality of the participation is measured by whether the

¹⁴ UNGA Res 61/295 (13 September 2007) (UNDRIP) arts 19 and 32(2).

¹⁵ For the UNDRIP voting record see UN Digital Library <https://digitallibrary.un.org/record/609197> accessed 3 July 2026.

consultation could have changed an outcome. If extrapolated into Arnstein's ladder of participation¹⁶, the baseline study's mapping suggests that, across the region, participation more often resembles the degree of tokenism to non-participation than the upper ones where citizens actively engage and participate in decision-making processes. This highlight is signaled by three prominent findings:

1. The limitation of parties who are consulted;
2. Process of consultation which often becomes too technical to foster a meaningful participation; and
3. Deficient operationalization of free, prior, and informed consent (FPIC) of the affected communities, particularly of Indigenous Peoples.

In Malaysia, the Environmental Quality Act 1974 and the EIA Order 2015 require public consultation for Second Schedule activities, but participation at the pre-submission Term of Reference Adequacy Check stage is limited to 'Appointed Individuals' rather than affected communities at large.¹⁷ While in Indonesia, the Job Creation Law 2020 limits consulted parties in EIA approval to only the 'directly affected' community.

In the Philippines, the EIA system under DENR Administrative Order 2003-30 provides for consultation at three stages (scoping, review, and monitoring).¹⁸ But recent academic analysis identifies that consultations at the planning stage are too technical to enable meaningful participation, and monitoring and evaluation processes in which communities are positioned as respondents rather than as actors shaping evaluative criteria.¹⁹ In Vietnam, although the Law on Environmental Protection 2020 mandates public consultation in the EIA process, civil society and academic assessments find that consultations occur late in the process — sometimes after the Environmental Impact Statement is approved — and that access to EIA documentation by the public is difficult to obtain.²⁰

The single most consistent finding across the region is the **deficient operationalization of FPIC**. In Lao PDR, FPIC is recognized in joint guidance issued by the Department of Forestry and the Lao PDR Front for National Development but is not embedded in binding national legislation; meanwhile, the Law on Resettlement and Vocation 2018

16 SR Arnstein, 'A Ladder of Citizen Participation' (1969) 35(4) *Journal of the American Institute of Planners* 216, 217, as applied to environmental governance in S Stec and S Casey-Lefkowitz, *The Aarhus Convention: An Implementation Guide* (2nd edn, UNECE 2014).

17 M Makmor and others, 'Public Participation Assessment for Environmental Impact Assessment in Malaysia, Canada and New Zealand' (2020) 10(1) *Journal of Architecture, Planning and Construction Management* 19.

18 Department of Environment and Natural Resources (Philippines), Administrative Order No 2003-30: Implementing Rules and Regulations for the Philippine Environmental Impact Statement System.

19 V Vermudo and others, 'Examining Community Participation across the Project Cycle in Philippine Environmental Initiatives' (2026) 24(3) *Asian Research Journal of Arts and Social Sciences* 182.

20 BD Clarke, 'EIA Effectiveness in Viet Nam: Key Stakeholder Perceptions' (2021) 7 *Heliyon* 8.

effectively grants the government broad authority to resettle indigenous communities with limited regard for consent.²¹ In Cambodia, the Code on Environment and Natural Resources 2023 replaced the terminology of ‘Indigenous Peoples’ with ‘local community’, a regression from earlier recognition under the 2001 Land Law that has been interpreted as reflecting policy ambivalence rather than mere drafting choice.²² Our study findings correlate that the challenge in implementing FPIC, especially in regard to Indigenous Peoples, is due to a lack of formal recognition of their identity, rights, and territory. Further analysis of this can be found in the subsequent chapter below.

At the same time, the baseline mapping surfaces footholds for stronger participation. Every Member State that operates an EIA system already has a statutory entry point for public consultation, and a growing number embeds FPIC in sectoral instruments. Indonesia’s Government Regulation No. 22 of 2021 expressly mandates indigenous participation in

EIA consultations, and the Minister of Forestry Regulation set out below writes FPIC into a binding carbon-trading framework. These provisions remain uneven and under-enforced, but they give the RPA concrete domestic models to draw on when developing an FPIC Implementation Guideline and a regional standard on meaningful participation.

21 Law on Resettlement and Vocation 2018 (Lao PDR); see International Fund for Agricultural Development, *Country Technical Note on Indigenous Peoples’ Issues — Lao PDR* (IFAD 2019) 31.

22 Tran Minh and others, *Advancing Indigenous People’s Rights for Inclusive and Sustainable Environmental Governance in ASEAN* (Stockholm Environment Institute 2024) 9.

Examples of FPIC provision in National Regulation

Regulation: Indonesia's Minister of Forestry Regulation No. 6 year 2026 on Carbon Trading Mechanism Through Greenhouse Gas Emission Offsetting in the Forestry Sector.

Provision:

- The law requires that the project planning document must include a plan and achievement of FPIC as mandatory data (Article 12 point 2)
- The law requires business actors to uphold social, environmental and governance protection principles, explicitly including the rights of indigenous and local communities (Article 28)
- The law mandates the Minister to facilitate communities, including indigenous communities, in improving knowledge and skills in carbon trading implementation

Structural Financial and Geographic Barriers to Access to Justice

ASEAN Member States exhibit considerable variation in the institutional infrastructure for environmental justice. The Philippines stands out for the breadth of its access to justice regime, including citizen-suit standing for any Filipino citizen and standing for minors and generations yet unborn under the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC), the Writ of Kalikasan and the Writ of Continuing Mandamus,²³ and the designation of 117 environmental courts under Resolution A.M. No. 07-11-12-SC.²⁴

Indonesia has also developed its own green bench system through Supreme Court Decrees Nos. 26/KMA/SK/II/2013 and 37/KMA/SK/III/2015, governing the selection, certification and monitoring of environmental judges, and more recently by Supreme Court Regulation (PERMA) No. 1 of 2023 on Guidelines for Adjudicating Environmental Cases, which consolidates procedures on legal standing, scientific evidence, and citizen suits.²⁵ Similarly, Thailand operates a system of administrative

²³ Supreme Court of the Philippines, Rules of Procedure for Environmental Cases (AM No 09-6-8-SC) rr 7 (Writ of Kalikasan) and 8 (Writ of Continuing Mandamus).

²⁴ Supreme Court of the Philippines, Resolution A.M. No. 07-11-12-SC (Designation of Environmental Courts).

²⁵ Supreme Court of the Republic of Indonesia, Decree No 26/KMA/SK/II/2013 on the Selection and Appointment of Environmental Judges; Decree No 37/KMA/SK/III/2015 on Monitoring and Evaluation.

courts with broad standing in environmental matters,²⁶ and has developed a body of jurisprudence including the Map Ta Phut industrial estate and Chaiyaphum wind farm decisions. Malaysia has established specialized environmental courts, though their jurisdiction is limited to offences under thirty-eight Acts and seventeen Regulations.

Outside these jurisdictions, access to justice is more constrained. Lao PDR has no specialized environmental court and fewer than 400 licensed lawyers nationally, making environmental litigation against state or corporate actors structurally difficult.²⁷ Cambodia and Vietnam do not have specialized environmental courts; environmental disputes are handled by general courts that may lack the technical capacity to adjudicate complex environmental claims.

In Singapore, environmental claims must be brought through general administrative, tort or nuisance frameworks, with no recognition of public interest or standing for environmental organizations.²⁸ In Myanmar, the Environmental Conservation Law does not contain a citizen-suit provision and there are no specialized environmental forums. Oftentimes, lawyers are concentrated only in major cities across the country. Indonesia, for example, has documented many strong NGOs with legal expertise and high numbers of lawyers to support public-interest environmental cases, yet in other areas they are under-represented.²⁹

Even where standing exists, the **centralization of courts** can render litigation prohibitively expensive for affected communities. In Indonesia, the post-2020 centralization of permitting authority means that the majority of environmental lawsuits related to permitting must be filed before the central court located in Jakarta, creating significant financial and logistical obstacles for remote communities.³⁰ In the Philippines, while the country has invested heavily in environmental courts and judicial training through the Philippine Judicial Academy, environmental courts do not exist in all geographic areas, and access remains uneven.³¹ In Timor-Leste, the formal

26 Act on Establishment of Administrative Courts and Administrative Court Procedure BE 2542 (1999) (Thailand); see the Supreme Administrative Court decisions in the Map Ta Phut and Chaiyaphum wind farm cases.

27 UNDP Lao PDR, 'Lawyer Project Launched to Strengthen the Role of Lawyers in Advancing Rule of Law and Access to Justice of Lao PDR' (Press Release, 3 April 2023) <https://www.undp.org/Laopdr> accessed 3 July 2026; see also UNDP Lao PDR, 'Nationwide Consultation for First Ever Action Plan on Legal Aid in Lao PDR' (Press Release, 2022), noting the government target under the 9th National Socio-Economic Development Plan to increase legal professionals to 500 by 2025.

28 Chambers and Partners, *Environmental Law 2025 — Singapore* (Chambers and Partners Practice Guide, 2025), on the restrictive locus standi requirements applicable to environmental claims.

29 EarthRights International, *Enhancing the Role of Environmental Public Interest Litigation to Advance Environmental Rights in Southeast Asia* (EarthRights International) 25.

30 Indonesian Center for Environmental Law, *Analysis of Public Participation under the Job Creation Law* (ICEL 2023) 18–23.

31 Sheila Gatdula-Cuevas, 'Environmental Courts and Tribunals in the Philippines' in Yang Guo and Anna Korsak (eds.), *Environmental Courts and Tribunals in Asia-Pacific* (Brill, 2024).

justice system has a limited number of judges, prosecutors and public defenders, and geographic remoteness restricts access for many rural communities.³²

Across the region, the **cost of environmental litigation** interacts with the **absence or limited coverage of legal aid**, exacerbating structural barriers that disproportionately affect low-income and rural justice seekers. In Vietnam, observers have argued that the country's court fee and fine structures impose disproportionate financial burdens on low-income individuals and effectively deter marginalized communities from pursuing legitimate environmental claims.³³ In Indonesia, key barriers include limited access to legal aid and the difficulty of securing environmental expert testimony for grassroots communities.

In the Philippines, although legal aid exists, observers report that the high cost of competent counsel, long delays, and limited protection for minorities present serious obstacles. The general pattern is documented in comparative work by the International Bar Association, which finds that legal aid in environmental matters is unevenly available across Asia and rarely covers the costs of expert evidence, which is often the most expensive element of environmental litigation.³⁴

These costs are compounded by the inherent costliness of generating scientific evidence on which environmental cases' causation depends. Unlike most civil or criminal proceedings, environmental litigation often requires the production of primary technical evidence that does not exist until commissioned. This requires financing primary data collection – such as water sampling and laboratory testing for pollutants – alongside high-resolution satellite imagery, acquisition of corporate registry and beneficial ownership data. These would also require the engagement of specialist scientists (e.g., hydrologists, toxicologists) to analyze findings and give opinions.

The standalone and combined cost of generating this data is frequently prohibitive for grassroots communities. This economic barrier is directly linked to the regional gaps in proactive disclosure documented earlier, because authorities and project proponents withhold existing data, affected communities are forced to independently finance its replication.³⁵ Especially in the case where access to certain environmental

32 UNDP, *Analysis and Recommendations for Improving the Justice System in Timor-Leste* (UNDP, December 2024); see also UNDP, *Roadmap Towards Better Justice in Timor-Leste* (UNDP, December 2024).

33 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' (2024) 4(100) *Studia Prawnicze KUL* 128.

34 International Bar Association, *Access to Justice in Environmental Matters: A Comparative Study of Legal Aid in Asia* (IBA Legal Policy and Research Unit 2022) 22–28.

35 United Nations Environment Programme, *Environmental Rule of Law: First Global Report* (UNEP 2019) ch 5; see also George Pring and Catherine Pring, *Environmental Courts and Tribunals: A Guide for Policy Makers* (UNEP 2016) 13–15.

information is hard to obtain, plaintiffs and their legal team often have to go through an initial freedom of information request, where this was allowed, to obtain information to be used as evidence, which in itself is a lengthy process.

This power asymmetry creates a structural financial barrier for litigants facing either the government or a corporation, where both defendants typically maintain in-house legal and technical departments, financial resources, and even possess the information critical to the case. Commercial satellite imagery presents a similar barrier. High-resolution data needed to prove deforestation or boundary violations is sold by private operators at prices that routinely exceed the entire litigation budgets of community legal support organizations.

The Evidence Cost Barrier: Structural Power Asymmetry in Environmental Litigation

The resource gap between communities and defendants in environmental cases

Affected Community (Plaintiff)	Government / Corporation (Defendant)
No dedicated litigation budget	In-house legal and technical departments
Must generate own primary evidence (soil sampling, water testing, lab analysis)	Already holds environmental data, monitoring results, and compliance records
Must purchase commercial satellite imagery to document land-cover change	Financial resources for extended litigation
Limited access to environmental expert witnesses	Can commission expert testimony at scale
Must first pursue FOI requests to obtain data authorities already hold	Controls the information critical to the case
Legal aid rarely covers environmental cases; geographic remoteness from courts	Located near centralised courts; no cost barriers

This structural asymmetry is compounded by the fact that access to certain environmental information is hard to obtain, forcing plaintiffs to first pursue freedom of information requests — a lengthy process in itself — before litigation can even begin.

These barriers coexist with some of the region’s most advanced access-to-justice architecture, which the RPA can hold up as a benchmark rather than an exception. The Philippines has built the widest standing regime in ASEAN, Indonesia has institutionalized environmental expertise on the bench, and Thailand’s administrative courts have produced a substantive body of environmental

jurisprudence. The task for the RPA is less to invent new remedies than to help other Member States adapt these existing models to their own legal ecosystems.

Good practice — the Philippines' environmental adjudication regime

The Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) grant citizen-suit standing to any Filipino, including on behalf of future generations, and create the Writ of Kalikasan and the Writ of Continuing Mandamus as dedicated environmental remedies.

These are supported by 117 designated environmental courts and sustained judicial training through the Philippine Judicial Academy. The regime shows how procedural design can lower the threshold to environmental justice and offers a template for the access-to-justice standard recommended for the RPA.

The Challenge of Institutional and Enforcement Capacity

Access to justice plays a central role in upholding environmental rights, and many ASEAN Member States have taken steps to strengthen this area by establishing various forms of specialized judicial bodies to handle environmental cases, as mentioned above. However, effective access to justice extends beyond institutional structures alone. It also requires strong and independent institutions that can uphold environmental rights principles, as well as qualified actors capable of representing the interests of both communities and the environment. This is especially important given that environmental issues are inherently complex, as they are often transboundary, frequently intersect with other areas such as human rights, and commonly involve scientific and technical evidence that demands specialized knowledge.

For these reasons, ensuring meaningful access to justice requires not only a comprehensive institutional framework but also a well-developed enforcement capacity among those responsible for handling environmental cases. In terms of judicial institutionalization, ASEAN Member States have adopted varying approaches. Malaysia and the Philippines have established designated environmental courts, Thailand has created a specialized environmental division within its court system, and Indonesia has introduced an environmental judge's certification program. Despite these developments, significant challenges persist.

First, many judges handling environmental cases still lack sufficient knowledge in key areas, including scientific evidence, SLAPP cases, and the complex web of environmental regulations. As revealed through interviews, structured education and capacity-building programs for judges on environmental matters remain a necessity across the region.

Second, the presence of clear procedural rules for environmental cases is equally important yet frequently overlooked. In countries where such rules are absent, courts lack guidance on critical procedural matters such as legal standing, burden of proof, handling scientific evidence, and even handling SLAPP cases. Even in the Philippines, where rules of procedure for environmental cases have been established since 2010, some judges have reportedly raised the burden of proof as a means of limiting the volume of environmental cases brought before the courts, an approach that effectively undermines access to justice rather than strengthening it.³⁶

Third, the role of National Human Rights Institutions (NHRIs) is one of the central pillars in upholding environmental rights. As independent bodies, NHRIs play a pivotal role in monitoring and reporting the fulfillment of environmental and climate-related rights within their respective countries. Beyond this, NHRIs can provide policy advice, support individuals adversely affected by climate change or mitigation measures in accessing effective remedies, undertake investigations, and advocate for the protection of environmental human rights defenders.³⁷

Given these functions, the existence of a genuinely independent NHRI is of considerable importance. However, this remains absent in several ASEAN countries. Lao PDR, for instance, does not have an independent NHRI, maintaining instead a government-led National Committee on Human Rights under the Ministry of Foreign Affairs, an arrangement that raises questions about its independence and impartiality. Singapore and Vietnam similarly lack standalone national human rights institutions. These gaps pose a significant obstacle to the advancement of a human rights-based approach to environmental protection across the region.

Fourth, ensuring a fair trial mechanism also presents a significant challenge. Cambodia, for instance, suffers from widespread corruption, particularly within its court system, which makes it exceedingly difficult for poor and marginalized groups — including indigenous peoples and ethnic minorities — to access fair and competent legal representation³⁸ Myanmar faces a similar problem, where

judicial corruption combined with ethnic bias has created substantial obstacles for underprivileged and minority populations seeking justice.

The same mapping that exposes these capacity gaps also identifies the instruments to close them. Indonesia's environmental judge certification program, now reinforced by PERMA No. 1 of 2023, shows that specialized judicial competence can be built systematically rather than left to chance. Equally, NHRIs with strong mandates

36 SEI, *Advancing the Right to a Healthy Environment in Southeast Asia* (n 9) 6.

37 Center for International Environmental Law and German Institute for Human Rights, *Climate Change and Human Rights: The Contributions of National Human Rights Institutions* (CIEL and German Institute for Human Rights 2020) 27.

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

demonstrate what proactive environmental engagement looks like, most notably the Commission on Human Rights of the Philippines and its National Inquiry on Climate Change. Regional peer-learning and technical-assistance architecture, as proposed in the recommendations, can help disseminate these models to jurisdictions that currently lack them.

Protection Gaps for Environmental Human Rights Defenders

The protection of the rights of environmental human rights defenders remains a fundamental challenge for ASEAN, owing largely to the inadequate regulatory frameworks in place across the region. Member states have adopted markedly varied approaches to legislation on environmental defenders and anti-SLAPP protections. Indonesia offers perhaps the most developed framework, recognizing the right of environmental defenders to be free from prosecution and criminalization under its Environmental Protection and Management Act.³⁹ Further guidance is translated through regulations and directives issued by the Supreme Court, the Attorney General, and the Ministry of Environment.

The Philippines, meanwhile, has established an anti-SLAPP mechanism under its Rules of Procedure for Environmental Cases, and several local governments have enacted measures to protect human rights defenders more broadly. Thailand and Malaysia have also signaled their commitment to anti-SLAPP legislation by incorporating it into their respective National Action Plans on Business and Human Rights. Nevertheless, the remaining ASEAN member states have yet to adopt any comparable regulations on anti-SLAPP protections or the safeguarding of environmental defenders.

The absence of clear and comprehensive protection for environmental defenders is one of the underlying factors contributing to the alarming rate of attacks and criminalization against EHRDs in ASEAN. This is reflected in data from Global Witness, which recorded 1,733 land and environmental defender killings between

2012 and 2021, of whom 318, or approximately 18%, were from Southeast Asia⁴⁰. Further, the rise of judicial harassment, including SLAPP, towards environmental defenders is increasing. This policy deficit creates systemic ambiguity across the justice sector. It leaves law enforcement and judicial actors without clear criteria to define environmental defenders, determine their protective remedies, or effectively handle cases suspected of constituting SLAPP suits.

39 Law No 32 of 2009 on Environmental Protection and Management (Indonesia) art 66.

40 Global Witness, *Decade of Defiance: Ten years of reporting land and environmental activism worldwide* (Report, 2022) 10 https://gw.cdn.ngo/media/documents/Decade_of_defiance_EN_-_September_2022.pdf accessed 16 July 2026 accessed 3 July 2026.

Aside from inadequate legal protection, the vulnerability of EHRDs is further worsened by the “failure of many governments to comply with the rule of law themselves or to enforce it against others”.⁴¹ This is further reflected across ASEAN, where states have employed various forms of law to restrict freedom of expression and association. Laws originally intended to counter terrorism and safeguard national security have notably been repurposed to this end, including the Computer Crime Act in Thailand and the Official Secrets and Telecommunications Law in Myanmar. These have been characterized as laws “framed so broadly that they enable almost anything to be interpreted as an offence.” Taken together, this pattern constitutes what has been widely referred to as the criminalization of dissent.⁴²

States must undertake a comprehensive review of legislation that may expose environmental defenders to legal risk. One of the examples is Article 162 of Indonesia’s Mineral and Coal Mining Law⁴³, which criminalizes the act of “disrupting legitimate mining activities.” This provision has been invoked in several cases to prosecute communities engaged in peaceful protests against mining operations. This includes the criminal case brought against Sahrudin Awat and ten indigenous Maba Sangaji residents in North Maluku, who were charged under Article 162 after opposing PT Position’s nickel mining activities that had caused significant damage to forests and rivers within their customary territory.⁴⁴

Lastly, another pressing challenge lies in the need for targeted legal education on anti-SLAPP mechanisms for law enforcement actors, particularly judges. Interview findings reveal that even in states such as Indonesia and the Philippines, where procedural guidelines for handling SLAPP cases exist, the practical understanding among judges and prosecutors of how to identify and address such cases remains limited. Legal education of this kind must connect anti-SLAPP procedure to its human-rights foundation, so that judicial actors recognize a SLAPP suit not as a mere procedural irregularity but as an attack on protected environmental and expression rights. This is compounded by the fact that not all ASEAN Member States have specialized judges or judicial training in environmental law. At this juncture, ensuring robust legal education for law enforcement actors on anti-SLAPP protections and the safeguarding of EHRDs is therefore of critical importance.

41 John Knox, *Environmental Human Rights Defenders: A Global Crisis* (Policy Brief, Universal Rights Group 2017) 10 <https://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf> accessed 3 July 2026.

42 United Nations Environment Programme, *Promoting Greater Protection for Environmental Defenders* (UNEP 2018) 14 <https://wedocs.unep.org/rest/api/core/bitstreams/e0990f53-059b-40fa-ad38-bba81172116b/content> accessed 3 July 2026.

43 Law of the Republic of Indonesia Number 3 of 2020 on the Amendment to Law Number 4 of 2009 on Mineral and Coal Mining (Indonesia), art 162.

44 Indonesian Center for Environmental Law, *Amicus Curiae in Sahrudin Awat and Indigenous People Maba Sangaji* (ICEL 2025) <https://icel.or.id/id-id/author/v/amici-curiae-brief-pendapat-hukum-sahabat-pengadilan-dalam-perkara-pidana-sahrudin-awat-dan-sepuluh-warga-adat-maba-sangaji> accessed 3 July 2026.

When Testifying Becomes a Risk: The Targeting of Environmental Witnesses in Indonesia

Environmental litigation depends heavily on expert scientific testimony, yet those who provide it are increasingly exposed to legal retaliation. In Indonesia, Professors Bambang Hero Saharjo and Basuki Wasis, leading environmental scientists and key government expert witnesses in wildfire and environmental damage cases, were sued multiple times between 2018 and 2025 by palm oil companies whose liability their testimony helped establish. PT Jatim Jaya Perkasa sued Professor Bambang Hero Saharjo for IDR 500 billion (approx. USD 32 million), while PT Kalimantan Lestari Mandiri sued both scientists in 2025 for IDR 364.5 billion (approx. USD 22 million).

Although the 2025 case was dismissed, the pattern reveals a structural vulnerability that dismissal alone cannot resolve. The chilling effect extends beyond individual witnesses to entire communities, deterring future participation in environmental proceedings and compounding existing access-to-justice barriers.

Source:

- Rendy Tisna, 'In Indonesia's Courts, Truth Can Be a Lonely Witness' (Mongabay, 25 November 2025) <https://news.mongabay.com/short-article/2025/11/in-indonesias-courts-truth-can-be-a-lonely-witness/> accessed 9 July 2026.
- Hans Nicholas Jong, 'Indonesian Palm Oil Company Sues Experts Who Helped Secure \$18m Pollution Ruling' (Mongabay, 24 July 2025) <https://news.mongabay.com/2025/07/indonesian-palm-oil-company-sues-experts-who-helped-secure-18m-pollution-ruling/> accessed 9 July 2026.

These deficits sit alongside some of the most developed defender-protection architecture in the region, which gives the RPA a concrete foundation to build on. Indonesia and the Philippines have each translated the protection of environmental defenders into operative legal mechanisms, and Thailand and Malaysia have committed to anti-SLAPP reform through their National Action Plans on Business and Human Rights. Consolidating and levelling up these approaches, rather than starting from first principles, is the opportunity the recommendations pursue.

Good practice — anti-SLAPP architecture in Indonesia and the Philippines

Indonesia's Environmental Protection and Management Act (Article 66) shields those advocating for the environment from criminal and civil action, reinforced by implementing guidance from the Supreme Court, the Attorney General, and the Ministry of Environment.

The Philippines' Rules of Procedure for Environmental Cases embed a dedicated anti-SLAPP mechanism allowing courts to dismiss retaliatory suits at an early stage. Together, they offer two tested models, one substantive and one procedural, that the RPA can draw on in recommending region-wide anti-SLAPP protection.

Recognition and Protection of Indigenous Rights

Across ASEAN Member States, the recognition of Indigenous Peoples' rights in environmental governance remains fragmented and, in many cases, absent altogether. Only the constitutions of the Philippines and Malaysia (in Sabah and Sarawak) recognize Indigenous Peoples as "Indigenous." Indonesia, Malaysia, and the Philippines do have laws and legislation that provide some autonomy to Indigenous Peoples over lands, territories, waters, and resources.

Several countries, including Vietnam and Lao PDR, do not formally use the term "indigenous peoples," opting instead for concepts such as "ethnic groups" or "ethnic minorities." The new Environment and Natural Resources Code in Cambodia even excludes the indigenous communities by replacing the term Indigenous Peoples with local community. Even where the Philippines stands out with its dedicated Indigenous Peoples Rights Act, implementation gaps persist, particularly regarding the issuance of ancestral domain titles and continued violations of FPIC.

"The absence of Indigenous Peoples terminology, although it has been recognised under UNDRIP, in many countries may result in these groups unable to avail important rights to self-determination and FPIC. This leaves indigenous and ethnic communities vulnerable to displacement, land dispossession, and inadequate compensation from development projects." -
Surya Deva, the United Nations Special Rapporteur on the Right to Development.

The absence of Indigenous Peoples terminology, although it has been recognized under UNDRIP, in many countries may result in these "minorities" groups unable to

avail important rights to self-determination and FPIC.⁴⁵ This leaves indigenous and ethnic communities vulnerable to displacement, land dispossession, and inadequate compensation when development projects.

An example from Vietnam, where the development of bauxite mining in the Central Highlands proceeded, as documented by the UN Special Rapporteur on the Right to Development, despite notable opposition from Montagnard communities and members of the National Assembly.⁴⁶ The project, encompassing 25 mines across 20,000 km² primarily in Dak Nong and Lam Dong provinces, reportedly resulted in the resettlement of tens of thousands of Montagnards from their ancestral lands with compensation widely considered inadequate.⁴⁷ In Cambodia, the replacement of the term “indigenous peoples” with “local community” in the Code on Environment and Natural Resources (2023) has resulted in the omission of indigenous peoples’ rights to the traditional management of forests and landscapes, rights that had previously been recognized under both the Land Law and the Forest Law. This regression raises serious concern, as it risks effectively displacing indigenous peoples from their lands, forests, and territories.

Beyond FPIC, the meaningful involvement of Indigenous Peoples in EIA processes remains similarly inadequate across the region. In Indonesia, while the law explicitly mandates indigenous participation in EIA public consultations,⁴⁸ implementation in practice often amounts to little more than a tick-box exercise. The situation is even more pronounced in other member states; in Brunei Darussalam, for instance, there is no statutory requirement for public hearings, comment periods, or community consent within the EIA process. This leaves Indigenous Peoples with no formal avenue for engagement. This deficit in meaningful participation and consent during environmental decision-making has, in turn, given rise to conflicts, as indigenous communities frequently learn of projects affecting their territories only after key decisions have already been made.

The absence of genuine involvement is further compounded by the prevailing tendency to recognize indigenous peoples merely as stakeholders rather than rights-holders, leading to uncertainty about their communal land rights’ recognition. An example is the Forest Carbon Initiative in Pahang, Malaysia, managed by *Enggang (Pekan) Sdn Bhd*, a private company operating under an agreement with the Pahang State Government. According to the IWGIA Report (2026), the failure to recognize

45 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 (2023) 9 <https://www.ohchr.org/sites/default/files/documents/issues/development/sr/20231115-eom-state-ment-viet-nam-sr-dev-en.pdf> accessed 3 July 2026.

46 Ibid.

47 Jason Moris, “The Vietnamese Bauxite Mining Controversy: The Emergence of a New Oppositional Politics” 2013

48 Government Regulation No. 22 year 2021 on Environmental Protection and Management, art. 32.

Orang Asli communities as rights-holders, coupled with a consent process that fell short of genuine FPIC standards, has contributed to heightened uncertainty among *Orang Asli* communities regarding their rights over their own ancestral lands.⁴⁹

Further, ensuring the meaningful participation of Indigenous Peoples also requires adequate access to information and a genuine understanding of the environmental and social implications of proposed projects. In practice, however, this presents a considerable challenge, as EIA documents are often dense with scientific terminology and complex data that may not be readily accessible or comprehensible to indigenous communities without appropriate translation, both linguistically and conceptually.

Additionally, indigenous peoples in ASEAN continue to lack effective remedies in environmental matters. While some community-level alternative dispute resolution mechanisms exist, such as the Tara Bandu practices in Timor-practices in Timor-Leste,⁵⁰ ASEAN member states have yet to establish specific statutory provisions granting indigenous communities' preferential access to the formal justice system. Such provisions would ideally encompass legal aid for environmental claims and mechanisms for collective redress regarding damage to ancestral lands. Compounding this gap, the findings of this paper highlight that high legal costs, insufficient access to competent legal counsel, inadequate awareness among law enforcers, and limited access to environmental courts further obstruct access to justice, particularly for those facing compounded vulnerabilities, such as indigenous women and children.

Beyond the implementation challenges discussed above, a more fundamental concern lies in the nature of certain policy instruments themselves, which raise serious questions regarding the protection of indigenous peoples' rights. Malaysia's Carbon Capture, Utilization and Storage Act and Sabah's Climate Change and Carbon Governance Enactment, for instance, lack explicit safeguards for indigenous land rights despite their significant potential implications for forests and customary territories. Similarly, Lao PDR's 2018 Law on Resettlement and Vocation⁵¹ poses serious concerns for indigenous and ethnic communities, as it effectively grants the government broad authority to resettle populations and expropriate indigenous lands with little regard for community consent or cultural attachment to ancestral territories.

In Indonesia, the government's policy of relaxing regulatory oversight for National Strategic Projects presents a growing threat to indigenous communities. This is most acutely illustrated by the Food Estate project in Merauke, which UN Special

49 International Work Group for Indigenous Affairs, *The Indigenous World 2026* (IWGIA 2026) 265. [50 UN Special Rapporteur, "Report on visit to Timor-Leste", para. 128.](https://iwgia.org/doclink/iwgia-the-indigenous-world-2026-eng-online-final/eyJ0eX-AiOiJlKV1QilLCJhbGciOiJIUzI1NiJ9.eYlzdWliOiJpd2dpYS10aGUtaW5kaWdlbm91cy13b3JsZCOyMDI2L-WVuZy1vbmxpbmUtZmluYWwiiLCJpYXQiOiJlE3NzY4Nzg2ODcslmV4cCI6MTc3Njk2NTA4N30.ZDqlGSV_aUsb7RjD_9ZjN-3bOGHUHqLlxPOLUnsgWT4, accessed 3 July 2026</p></div><div data-bbox=)

51 Law on Resettlement and Vocation No 086/NA 2018 (Lao PDR), art 26.

Rapporteurs addressed in a 2023 communication to the Government of Indonesia, expressing concern at the reported involvement of military personnel in forest-clearance operations and at the intimidation and criminalization of indigenous communities.⁵² It is estimated that more than 50,000 indigenous people across 40 villages within and surrounding the project area will be directly affected by its implementation.⁵³

Indigenous Peoples: Terminology and Recognition Across ASEAN

How Member States refer to and recognize indigenous communities — with direct legal consequences

Country	Term Used	Key Legislation	Constitutional Status / Notes
Philippines	Indigenous Peoples	IPRA 1997	Art. XII s.5; Art. XIV s.17 — Most comprehensive recognition
Indonesia	Masyarakat Hukum Adat	5+ separate acts; no dedicated IP Bill	Art. 18B(2), Art. 28I(3) — Conditional recognition
Malaysia	Orang Asli / Orang Asal	Aboriginal Peoples Act 1954	Art. 153, Art. 8(5)(c) — No communal land rights statute
Myanmar	National Races	Protection of Rights of National Races Law 2015	135 officially recognized groups only
Thailand	Ethnic Groups	Ethnic Groups Act 2025	Section 70 (2017 Constitution) — No explicit IP term
Cambodia	Local Community	Code on ENR 2023 (regressed from 2001 Land Law)	Replaced “Indigenous Peoples” — Rights regression
Lao PDR	Ethnic Groups	Decree No. 207/GoL (2020)	Art. 1, 8 (2025 Constitution) — FPIC not in binding law
Vietnam	Ethnic Minorities	No specific IP law; 100s of policy docs	Art. 5 — No recognition of self-determination
Timor-Leste	Maubere (collective)	Environmental Basic Law (Tara Bandu)	Customary governance recognized — FPIC not codified
Brunei Darussalam	Part of Malay (Bumiputera)	No specific IP legislation	No specific constitutional recognition
Singapore	Not recognized	No IP legislation	No IP recognition in law

Note: All ASEAN Member States are signatories to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The terminological diversity shown above often determines whether communities can avail themselves of key rights including self-determination and FPIC.

⁵² Communication from UN Special Rapporteurs to the Government of Indonesia (2023) 2 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=29741> accessed 3 July 2026.

⁵³ Ibid.

Even amid this fragmentation, the region offers foundations that the RPA can build on rather than having to construct recognition from nothing. The Philippines' Indigenous Peoples' Rights Act remains the most comprehensive statutory recognition in ASEAN; Timor-Leste's customary Tara Bandu practice shows how community-based environmental governance can be given legal standing; and Indonesia's EIA regulations formally require indigenous participation. These footholds are uneven and imperfectly implemented, but they are the raw material for the FPIC guideline and the culturally appropriate remedies proposed in the recommendations.

Good practice — Tara Bandu: customary environmental governance in Timor-Leste

Tara Bandu is a customary practice through which communities set and enforce rules on the use of land, forests, and water, often through collective ceremony. Recognized within Timor-Leste's environmental framework, it functions as a locally legitimate mechanism for both regulating environmental harm and resolving disputes.

It illustrates how the RPA can accommodate customary and community-level institutions as valid channels for participation and remedy, rather than treating formal courts as the only route to justice.

The six challenges examined in this chapter are not isolated problems. They are interconnected and represent fundamental and structural barriers in the protection of environmental procedural rights. For the RPA to be more than a restatement of ADER's normative architecture, it should be designed around three cross-cutting imperatives.

First, a normative floor: a regional baseline that defines the minimum content of each access right in operational terms, against which national implementation can be benchmarked and reported. The Bali Guidelines, the Aarhus Convention's Implementation Guide, and the Escazú Agreement provide tested normative materials.

Second, an intersectional and rights-holder focus: explicit operational commitments to the access of information, the participation, and access to justice, particularly for vulnerable communities, by treating their experience as a diagnostic indicator of system performance.

Third, an implementation infrastructure: institutional arrangements within AICHR and other ASEAN sectoral bodies for monitoring, peer learning, and technical assistance, including a financing mechanism that does not leave implementation contingent on Member States' fiscal capacity.

Several member states already have systems and best practices in place that can

help formulate the benchmarks on the protection of environmental procedural rights, where the RPA can use them as leverage to promote a more ambitious practice.

Taken together, these imperatives provide the analytical bridge to the recommendations that follow. The next chapter translates them into concrete proposals for the RPA, organized around the principles of non-regression and progressive realization, alignment with international standards and authoritative interpretations, and grounding in ASEAN's own challenges and opportunities. Each recommendation is anchored in the themes set out above, so that what the baseline reveals as a gap in one chapter becomes an actionable commitment in the next.

Recommendations for the ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment: Regional Plan of Action

1. Strategic Framing for the RPA

The baseline study indicates that while all ASEAN Member States recognize environmental procedural rights to varying degrees, regional implementation remains asymmetrical. Primary institutional challenges include fragmented regulatory frameworks, execution gaps, constrained institutional capacity, structural barriers to public consultation, and varying levels of domestic protection for specialized groups, including indigenous communities and environmental human rights defenders (EHRDs). Consequently, systemic obstacles persist regarding effective access to environmental justice.

Conversely, the study also highlights significant advancements and promising domestic and regional practices already operationalized by various Member States and ASEAN as a regional grouping. These existing regional successes provide a functional blueprint from which the Regional Plan of Action (RPA) can scale up interventions. To systematically operationalize the commitments established under the ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (ADER), the RPA must focus on regulatory reform, execution mechanisms, institutional capacity building, and structured regional cooperation designed to achieve the progressive realization of environmental rights across the region.

Crucially, these identified promising practices serve as the legal and operational floor for the region. The operational framework of the RPA requires a mechanism that prevents institutional regression, encourages Member States to maintain these existing environmental standards and progressive regulatory baselines. Non-regression is recognized as a foundational standard in international environmental law and in the work of the UN Special Rapporteur on the right to a healthy environment,⁵⁴ and is consistent with the ASEAN 2045 Vision commitment to ‘meaningful and inclusive participation of all stakeholders’.⁵⁵

⁵⁴ David R Boyd, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Good Practices (UN Doc A/HRC/43/53, 30 December 2019); on the principle of non-regression in environmental law, see also IUCN World Declaration on the Environmental Rule of Law (2016) principle 12.

1.1. The Principles of Non-Regression and Progressive Realization

Relevant ADER Provision:

Preamble

FURTHERING steps taken by ASEAN Member States individually, through regional and international assistance and cooperation to the maximum of ASEAN Member States' available resources with a view to achieving progressively the full realisation of the right to a safe, clean, healthy and sustainable environment;⁵⁶

Environmental procedural rights within the region have experienced notable shifts following recent legislative amendments. For instance, Indonesia's Job Creation Law (2020)⁵⁷ reframed the scope of public consultation by focusing on 'directly impacted communities' rather than the broader public, while adjusting previous community objection mechanisms. Similarly, Cambodia's 2023 Environment and Natural Resources Code⁵⁸ replaced the phrase 'Indigenous Peoples' with 'local community,' which is a regression from 2001 Land Law recognition.

The RPA should commit Member States to the principle of non-regression in environmental procedural rights - the principle that the level of protection afforded by existing environmental law and policy should not be diminished, and that any reform should result in equivalent or stronger protection. Non-regression is recognized as a foundational standard in international environmental law and in the work of the UN Special Rapporteur on the right to a healthy environment,⁵⁹ and is consistent with the ASEAN 2045 Vision commitment to 'meaningful and inclusive participation of all stakeholders'.⁶⁰

Integrating a non-regression safeguard ensures that the RPA consistently maintains and reinforces current levels of environmental protection against future legislative or policy adjustments. When paired with the principle of progressive realization,

55 ASEAN Community Vision 2045: Resilient, Innovative, Dynamic and People-Centred ASEAN (adopted 26 May 2025) para 3.

56 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (adopted 26 October 2025) preamble para 15 <https://asean.org/wp-content/uploads/2025/10/5.-ASE-AN-Declaration-on-the-Right-to-a-Clean-Safe-Healthy-and-Suitable-Environment.pdf> accessed 10 July 2026.

57 Law No 11 of 2020 concerning Job Creation (Indonesia) art 22.

58 Environment and Natural Resources Code 2023 (Cambodia).

59 David R Boyd (n 54).

60 ASEAN Community Vision 2045 (n 55) para 3.

the RPA establishes a robust normative floor, providing a shared framework from which Member States can continuously elevate their environmental standards.

Possible actions for consideration:

- a. Embed the principles of progressive realization and non-regression into the foundational framework of the RPA, providing a strategic benchmark to ensure that national and regional policy developments maintain or enhance existing environmental protection standards.
- b. Utilize comprehensive regional research, including existing baseline studies on environmental procedural rights, to develop further research and a regional tracking framework. This framework will serve as a reference point for monitoring progress, sharing promising practices, and preventing policy regression across Member States.

1.2. Alignment with International Standards and Authoritative Interpretations

Relevant ADER Provisions:

Preamble

MINDFUL OF the United Nations General Assembly resolution 76/300 on 28 July 2022⁶¹.

...

FURTHERING steps taken by ASEAN Member States individually, through regional and international assistance and cooperation to the maximum of ASEAN Member States' available resources with a view to achieving progressively the full realisation of the right to a safe, clean, healthy and sustainable environment;⁶²

All AMS endorsed the adoption of the UN General Assembly in 2007 on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁶³. However, national laws often remain doctrinally inconsistent with UNDRIP's requirements, particularly regarding Free, Prior and Informed Consent (FPIC) and information access in indigenous languages.

The Preamble of ADER explicitly references the global human rights consensus, acknowledging UN General Assembly Resolution 76/300, which recognizes the

61 ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment (adopted 26 October 2025) preamble para 5; see also UNGA Res 76/300 (28 July 2022).

62 ASEAN Declaration (n 56) preamble para 15.

63 UN Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (13 September 2007); voting record at UN Digital Library <https://digitallibrary.un.org/record/609197> accessed 3 July 2026.

right to a clean, healthy, and sustainable environment as a universal entitlement. It further commits to the progressive realization of rights to the maximum of available resources, a principle rooted in international human rights law.

Regional frameworks are most effective when they build upon the existing international legal commitments of Member States. Because all ASEAN Member States have ratified several core international human rights instruments, aligning the RPA with global standards directly reinforces the universal obligations already undertaken by individual governments.

Far from developing regional standards in isolation, embedding international human rights benchmarks within the RPA acknowledges and builds upon this existing foundation of state ratification. This alignment ensures that ASEAN's environmental rights framework remains globally credible, doctrinally consistent, and mutually reinforcing—transforming universal treaty commitments into practical, harmonized regional actions.

Possible actions for consideration:

- a. Ensure that regional standards for the three access rights are grounded in the UNEP Bali Guidelines, Rio Declaration Principle 10, and utilize the Aarhus Convention's Implementation Guide and the Escazú Agreement as normative basis for technical content.
- b. Recommend that drafters and national implementing agencies formally consult the findings of UN Treaty Human Rights Bodies and UN Human Rights Special Procedures (such as the Special Rapporteur on the right to a healthy environment) to guide the operational definitions within the RPA.

1.3. Grounding in ASEAN-Specific Challenges and Opportunities

Relevant RPA provisions:

Paragraph 6. Task 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 to follow-up on this Declaration⁶⁴.

The baseline study identifies six cross-cutting challenges that consistently hinder environmental rights across the region: 1) unclear legal frameworks for information access, 2) gaps in the quality of participation versus formal compliance, 3) structural financial and geographic barriers to justice, 4) limited

⁶⁴ ASEAN Declaration (n 56) para 6.

institutional enforcement capacity, 5) protection gaps for Environmental Human Rights Defenders (EHRDs), and 6) inadequate recognition of Indigenous rights.

Despite these hurdles, the region possesses regional good practices that serve as anchors for replication: the Philippines' recognition of intergenerational standing (*Oposa vs. Factoran*)⁶⁵, and Timor-Leste's use of *Tara Bandu* as a traditional mechanism for regulating the relationship between humans and the environment⁶⁶.

To be effective, the RPA must transcend high-level political declarations and external templates by grounding its strategies in the empirical evidence of specific barriers identified across the 11 ASEAN Member States. The current baseline study demonstrates that while legal frameworks may exist on paper, a substantial gap persists between formal legal recognition and effective implementation of access rights on the ground. This foundational research could inform the development of an RPA that is responsive to actual conditions rather than theoretical ideals, addressing regional realities such as the geographic remoteness and structural financial hurdles that prevent rural and low-income communities from accessing justice.

The RPA should treat the lived experiences of vulnerable groups as a diagnostic indicator of system performance, ensuring that procedural rights function as the necessary enabling mechanisms for achieving substantive outcomes like clean air and a safe climate.

Possible actions for consideration:

- a. Incorporate the regional key messages from the baseline study into the draft RPA to ensure it addresses the most urgent priorities, such as protecting EHRDs and operationalizing FPIC.
- b. Leverage existing regional institutional models (like Indonesia's Environmental Judges Certification or the Philippines' green benches).

⁶⁵ *Oposa v Factoran* GR No 101083, 224 SCRA 792 (Supreme Court of the Philippines, 30 July 1993).

⁶⁶ Decree-Law No 26/2012 on the Environmental Basic Law (Timor-Leste) art 7 ('The State recognizes 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').

2. Regulatory Reforms

2.1. Adopt a Regional Standards Framework on Access to Information and Participation, including a Free, Prior, and Informed Consent Implementation Guideline

Relevant ADER provisions:

Preamble: ACKNOWLEDGING 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 to overcome climate change; including the importance of traditional knowledge, techniques and technologies in sustaining the climate resiliency of communities;

Paragraph 2.3, 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.

The RPA should develop or mandate the development of a regional standards framework that defines, in operational terms, the regional floor for access to information and participation. For **access to information**, Member States should align national policy and law with international standards, such as the UNEP Bali Guidelines, which establish three operational principles:⁶⁷

- **Unrestricted access** - any person should have affordable, timely and effective access to environmental data held by public authorities without needing to prove a specific legal interest;
- **Proactive transparency** - governments are expected to regularly collect, update and proactively disseminate information about environmental quality, environmental legislation, potential health hazards, and imminent threats; and
- **Defined exceptions** - while authorities may deny requests for sensitive information (e.g., national security or commercial confidentiality), these exemptions must be clearly defined by law, limited in scope, and subject to a public-interest test.

The Framework should initially promote the adoption of a national freedom of information act that formalizes these principles, as well as establish a clear

⁶⁷ UNEP Bali Guidelines, guidelines 1–7 (articulating standards for access to environmental information, including unrestricted access, proactive transparency, and clearly defined and limited exceptions subject to public-interest tests).

access mechanism. In developing such regulation, Member States should be encouraged to adopt a broad definition of environmental information. This should comprehensively cover:

- **Ambient quality data and legal literacy:** Direct access to environmental quality data must be paired with clear, accessible information regarding citizens' rights, as well as the relevant environment- and development-related laws and policies that can affect their enjoyment of the right to a healthy environment.
- **Public sector disclosures:** Final approved versions of Environmental Impact Assessment (EIA) reports, licenses, compliance and monitoring data, pollutant release inventories, and state-of-the-environment reports.
- **Private sector transparency:** Clear obligations for information disclosure by private actors, ensuring that corporate entities transparently report on their environmental footprints, supply chain impacts, and compliance histories.
- **Inclusive decision-making:** Transparent documentation regarding public and private decision-making processes that affect the environment.
- **Citizen-generated data:** Formal recognition and integration of data generated and disseminated by right-holders themselves (such as community-led citizen science, localized pollution monitoring, and indigenous knowledge systems), validating their role as active contributors to the environmental data ecosystem.

This information should also be made available in the local language through an easily accessible local channel.

For **participation**, the Framework should require participation at the formative stage of decision-making, an obligation on decision-makers to demonstrate how public input was considered, and a broad definition of the 'public concerned'. For access to justice, the Framework should commit to broad legal standing, accessible administrative review, the availability of provisional remedies, and reasonable cost rules.⁶⁸

The Framework should also be supported by a dedicated FPIC Implementation Guideline. This guideline should affirm that FPIC mechanisms apply to all affected populations, with particular attention given to vulnerable groups such as Indigenous Peoples. In addition, the guideline should also inform the states of the elements of FPIC. The Nagoya Protocol on Access and Benefit-Sharing⁶⁹ and

68 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447, arts 4 and 5.

69 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (adopted 29 October 2010,

the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal⁷⁰ offer useful precedents in this regard, illustrating how FPIC can be applied beyond indigenous contexts. The Nagoya Protocol, for instance, requires that access to genetic resources be subject to prior informed consent or approval. Similarly, the Basel Convention extends the principle of prior informed consent to ensure that even non-party states are notified and asked to provide consent when hazardous waste transits through their territories.

The Four Elements of FPIC	
In UN discussions, elements of a common understanding of FPIC have been identified. States should seek FPIC from indigenous and resource-dependent communities prior to activities that may impact their lands or natural resources.	
• Free Decision-making and information-gathering must not be limited by coercion, threat, manipulation, or unequal bargaining power. Consent must be entirely voluntary.	• Prior Informed consent must be sought sufficiently in advance of any decisions by the State or third parties, or any commencement of activities affecting communities' lands, territories, and resources.
• Informed Disclosure of information on the nature, purpose, expected impacts, risks, and benefits of the proposed development must be made fully and accurately, in an accessible and understandable form. Communities must be informed of their own rights and the governing legal processes.	• Consent Consent does not require every member to agree; it is determined pursuant to customary law and practice. Communities specify which person or entity will represent them, and project proponents must respect those chosen representatives.

entered into force 12 October 2014) UN Reg No A-30619.

70 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57.

2.2. Adopt Regional Standards on Access to Justice and Fair Trial

Relevant ADER provisions:

Preamble: ACKNOWLEDGING 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;⁷¹

Paragraph 2.3, 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.⁷²

The efficacy of environmental procedural rights is intrinsically linked to the robust application of fair trial and due process guarantees across all judicial domains—including

civil, criminal, administrative, and constitutional proceedings. This institutional safeguarding is especially critical in matters involving the criminal prosecution of environmental human rights defenders (EHRDs) and indigenous land defenders, as well as administrative and civil proceedings affecting Indigenous Peoples and local communities. Ultimately, fair trial guarantees serve as the essential operational mechanism through which substantive environmental protections are vindicated. Without these foundational legal safeguards, specialized measures—such as anti-SLAPP frameworks and citizen suits—cannot effectively function or deliver their intended protections in practice.

To operationalize access to justice and a fair trial, **the RPA should explicitly call upon ASEAN Member States (AMS) to adopt specialized, dedicated national Rules of Procedure for Environmental Cases**, drawing on the precedent of the Philippines and its pioneering 2010 Rules of Procedure for Environmental Cases (RPEC)⁷³. Rather than relying on general civil, criminal, or administrative codes—which often lack the flexibility required for complex environmental issues—these specific rules of procedure should integrate explicit protections for Indigenous Peoples, Environmental Human Rights Defenders (EHRDs), and persons in vulnerable situations, such as:

- a. **Broad Legal Standing:** Expanding standing to include citizen-suit access for any natural person, as well as organizational standing for civil society organizations (CSOs) dedicated to environmental protection.

71 ASEAN Declaration (n 56) preamble.

72 *ibid* para 2.3.

73 Rules of Procedure for Environmental Cases (AM No 09-6-8-SC) 2010 (Philippines).

- b. Provisional Remedies:** Empowering judicial and administrative bodies to grant interim relief or injunctions to suspend activities posing a risk of irreversible environmental harm.
- c. Dynamic and Reversed Burden of Proof:** Calibrating evidentiary requirements in civil and administrative litigation to counter inherent information asymmetries and promote equality between the parties. In line with Article 8.3.e of the Escazú Agreement, this includes adopting measures to facilitate the production of evidence of environmental damage.
- d. Equitable Cost Structures:** Implementing reasonable cost rules, such as cost-protection orders, the “polluter pays” principle regarding litigation expenses, and the waiver of court fees in public-interest environmental cases to prevent financial barriers from blocking access to justice.
- e. Pluralistic Justice and Indigenous Knowledge:** Formally recognizing customary justice mechanisms and ensuring the admissibility and equitable weighting of Indigenous knowledge systems, traditional ecological knowledge, and expert testimony provided by Indigenous Peoples and local communities within formal legal proceedings.

The specific environmental rules of procedure adopted by AMS must fully integrate and give effect to the fair trial guarantees set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 20 of the ASEAN Human Rights Declaration. Because general procedural codes often fail to protect vulnerable litigants in environmental disputes, these specialized rules must be explicitly secure:

● Independent and impartial tribunals established by law;	● Reasonable time to prepare and present a defense;
● Equality before the law and the presumption of innocence;	● Protection against arbitrary or politically motivated pretrial detention and prolonged remand of EHRDs, consistent with Article 9 of the ICCPR;
● The right to qualified legal representation, including specialized environmental legal aid where required;	● The right to confront adverse witnesses and to challenge state or corporate expert evidence;
● The right to interpretation in a language the party understands, including indigenous languages;	● The right to a reasoned, timely, and publicly accessible decision; and
● Equality of arms in proceedings against State and corporate parties;	● The right to appeal before a competent higher tribunal.

To advance this agenda, **a regional comparative study on existing environmental rules of procedure, policies, and laws should be commissioned as part of the RPA.** This comparative study would serve as a baseline to inform the drafting of these national frameworks or to develop a model regional rule of procedure for environmental cases.

2.3. Provide Clear Legal Protection for Environmental Human Rights Defenders

Relevant ADER provision:

Preamble: ACKNOWLEDGING 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;⁷⁴

Paragraph 2.3, 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.⁷⁵

The RPA should explicitly recognize that establishing **a secure and enabling environment** for EHRDs is structural to the implementation of the right to a safe, clean, healthy, and sustainable environment. In the absence of such an environment, procedural guarantees—access to information, public participation, and access to justice—lack the necessary operational infrastructure, thereby undermining the vindication of substantive environmental protections. Given the documented regional risk highlighted in the baseline study, operationalizing this acknowledged need for protection is foundational to the institutional efficacy and credibility of the RPA framework.

The RPA should commit Member States to taking concrete legislative and regulatory actions to protect EHRDs and guarantee an enabling environment for their work. Specifically, the RPA should require the Member States to:

- a. **Establish clear, binding legal protection for EHRDs and all persons working to promote and protect environmental rights.** This must be operationalized through dedicated standalone legislation, specialized rules of procedure for environmental cases, or other binding domestic legal instruments. This national framework must incorporate robust Strategic Lawsuit Against Public Participation (Anti-SLAPP) provisions designed to dismiss retaliatory suits at an early, interlocutory stage of proceedings.

⁷⁴ ASEAN Declaration (n 56) preamble.

⁷⁵ Ibid, para 2.3.

Regional inspiration can be drawn from Indonesia's Article 66 EPMA architecture and the Constitutional Court's expansion under Decision No. 119/PUU-XXIII/2025,⁷⁶ and on the Philippines' Rules of Procedure for Environmental Cases;⁷⁷

- b. Review, amend, or repeal national regulatory frameworks and penal codes that narrow civic space or are weaponized to criminalize the legitimate activities of EHRDs.** Member States must fulfill their existing international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) and the ASEAN Human Rights Declaration (AHRD) by securing the civil rights and civic spaces that serve as the indispensable structural foundation for realizing environmental procedural rights. Specifically, within the context of EHRDs, Member States must target and eliminate the misuse of broadly worded criminal laws (such as defamation, public order, and counterterrorism) alongside restrictive administrative actions (including travel bans, arbitrary CSO de-registrations, and groundless terrorist designations) deployed against environmental defenders and organizations to function as state-backed SLAPP instruments that suppress advocacy and limit civic space.
- c. Develop and embed a thorough gender perspective within both national and regional environmental protection responses.** This requires formal recognition by Member States that Women Environmental Human Rights Defenders (WEHRDs) face distinct, intersectional, and heightened risks of rights violations. Legal frameworks and physical protection mechanisms must deliver gender-specific safety responses tailored to combat⁷⁸:
 - (i) Sexualized threats and gender-based harassment or violence;
 - (ii) Reputational, smear, and targeted family-focused attacks designed to exploit traditional social vulnerabilities;
 - (iii) Reproductive reprisals, domestic marginalization, and exclusion from community-level environmental decision-making.

⁷⁶ Constitutional Court of the Republic of Indonesia, Decision No 119/PUU-XXIII/2025 (expanding the scope of anti-SLAPP protection under art 66 of Law No 32 of 2009).

⁷⁷ Rules of Procedure for Environmental Cases (AM No 09-6-8-SC) 2010 (Philippines).

⁷⁸ Mary Lawlor, *Report on Women Human Rights Defenders* (UN Doc A/HRC/40/60, 2019); see also *Annual Report on Killings of Human Rights Defenders* (UN Doc A/HRC/55/53, 2024).

2.4. Embed a Broad Definition of the ‘Public Concerned’ and Safeguard Against Legislative Rollback

Relevant ADER provision:

Paragraph 2.3, 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.⁷⁹

Definitional choices about who counts as the ‘public concerned’ have proven decisive across the region. The Indonesian experience, where the Job Creation Law of 2020 narrowed the definition of ‘public’ entitled to consultation in the EIA process to undefined ‘directly-impacted communities’ and removed community representatives from the EIA assessment committee, illustrates how participation rights can be eroded through legislative amendment rather than through outright non-compliance.⁸⁰

To prevent this form of operational rollback, the RPA should establish a uniform regional definition of the “public concerned.” In line with the UNEP Bali Guidelines⁸¹, this definition must be broad enough to encompass all natural and legal persons potentially affected by or having an interest in an environmental decision, explicitly including downstream populations, ecologically and culturally affected communities, civil society organizations, and indigenous institutions.

⁷⁹ ASEAN Declaration (n 56) para 2.3.

⁸⁰ Law No 6 of 2023 ratifying Government Regulation in Lieu of Law No 2 of 2022 on Job Creation (Indonesia); see Indonesian Center for Environmental Law, *Analysis of Public Participation under the Job Creation Law* (ICEL 2023).

⁸¹ United Nations Environment Programme, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters* (Bali Guidelines) (UNEP Governing Council Decision SS.XI/5, 26 February 2010).

3. Strengthening Capacities

3.1. Deepen Institutional Judicial Capacity and Regional Legal Cooperation

Relevant ADER provisions:

Paragraph 2.3, 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;⁸²

Paragraph 7, Assure the continuous support and provision of adequate resources for AICHR and the relevant ASEAN Bodies, Entities and centres to follow-up on this Declaration and related activities and programmes.⁸³

Strengthening judicial capacity is the central operational task for access to environmental justice. The RPA should:

- a. Encourage Member States to ensure that **structured environmental-related training is available for judges at the national level**, sufficient to produce a cohort of judges qualified to adjudicate environmental cases with explicit attention to the technical, evidentiary, and rights-based dimensions of such cases. Indonesia's Environmental Judges Certification System,⁸⁴ the Philippine Judicial Academy's environmental training programme,⁸⁵ and the technical training cooperation between Thai administrative courts and academic institutions provides regional anchors that can inform national approaches without requiring uniformity.
- b. **Leverage the existing CACJ Working Group on Judicial Education and Training (WG-JET) and the Working Group on Climate Justice** to develop a standardized curriculum on procedural environmental rights and EHRDs' protections. This capacity-building track should focus on operationalizing the procedural guarantees of the ADER, **specifically training judiciaries on identifying SLAPP** indicators at case intake, executing early dismissal

⁸² ASEAN Declaration (n 56) para 2.3.

⁸³ Ibid para. 7.

⁸⁴ Supreme Court of the Republic of Indonesia, Decree No 26/KMA/SK/II/2013 on the Selection and Appointment of Environmental Judges; Decree No 37/KMA/SK/III/2015 on Monitoring and Evaluation of Environmental Judges.

⁸⁵ Supreme Court of the Philippines, Resolution AM No 07-11-12-SC (designating 117 environmental courts of first and second instance).

mechanisms, and applying protective measures for EHRDs and community witnesses. To respect judicial independence while fostering cross-pillar dialogue, AICHR should maintain a structured, periodic consultation platform with these CACJ working groups to share regional trend analysis on environmental human rights risks without intersecting with core judicial adjudication mechanics.

- c. **Establish cooperation** with the ASEAN Law Association (ALA) and the ASEAN Law Ministers Meeting (ALAWMM), would extend the reach of the Network to the broader legal profession and to law ministries.

3.2. Build Capacity for Public Officials, Prosecutors, and Law Enforcement on Environmental Procedural Rights, with Specific Emphasis on Indigenous Peoples and EHRDs

Relevant ADER provision:

Paragraph 2.3, 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.⁸⁶

Capacity gaps at the implementation level among EIA officers, licensing authorities, prosecutors, police, and immigration authorities are among the most consequential implementation barriers documented in the baseline study. In Indonesia, despite the Article 66 framework and supporting regulations,⁸⁷ the police, as the institution authorized to halt criminalization at the earliest stage, have yet to develop their own internal regulation on the matter. To create a holistic enabling environment for the protection of environmental procedural rights, the RPA should:

- a. **Encourage Member States to develop and enhance national training programs for public officials, prosecutors, and law enforcement on environmental procedural rights**, with specific modules on the operational requirements of meaningful participation, FPIC operationalization, information disclosure standards, and the identification and handling of SLAPP cases. Training packages should be co-developed with NHRIs and delivered through existing law-enforcement and prosecutorial training institutions to ensure long-term institutionalization.

⁸⁶ ASEAN Declaration (n 56) para 2.3.

⁸⁷ Law No 32 of 2009 (Indonesia) art 66 and implementing regulations.

- b. **Develop a Regional Curriculum on Environmental Procedural Rights.** The curriculum should foreground modules on the rights and procedural protections of Indigenous Peoples and EHRDs - covering FPIC operationalization and alignment with requirements of meaningful participation, information disclosure standards according to the regional standard as discussed in subsection 1.1, information disclosure standards, and Anti-SLAPP.

3.3. **Strengthen the Capacity of CSOs, Indigenous Institutions, and Affected Communities for Participation, Documentation, and Grievance**

Relevant ADER provisions:

Paragraph 2.3, 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.⁸⁸

Paragraph 8, 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 to complement ASEAN efforts to implement this Declaration.⁸⁹

The most crucial implementation gaps documented in the baseline study occur at the provincial, district, or village level, where access to information is often structurally limited, and consultations are reduced to engagement with a limited number of the community. The RPA should support **capacity-building programs for CSOs, indigenous institutions, and affected communities, with particular attention to subnational contexts.** Programs should focus on: (i) the use of access-to-information mechanisms; (ii) effective engagement in EIA and licensing processes; (iii) documentation of community impacts and customary tenure for FPIC and litigation purposes; (iv) strategic environmental litigation; and (v) grievance and complaint handling, including through NHRIs, the AICHR communications channel, and other international protection mechanisms.

⁸⁸ ASEAN Declaration (n 56) para 2.3.

⁸⁹ Ibid para. 8.

4. Technical Assistance and Collaboration

Technical assistance recommendations focus on building the operational infrastructure that Member States, national institutions, and ASEAN-level bodies need to implement their regulatory and capacity-building commitments. The strategic objective is to ensure that implementation is not gated by financial, technical, informational, or geographic constraints, and that emerging good practices within the region are developed into standard operating procedures and transferable regional tools.

4.1. Establish a Periodic Review, Stocktaking, and Independent Evaluation Mechanism

Relevant ADER provision:

Preamble

FURTHERING steps taken by ASEAN Member States individually, through regional and international assistance and cooperation to the maximum of ASEAN Member States' available resources with a view to achieving progressively the full realisation of the right to a safe, clean, healthy and sustainable environment;⁹⁰

The RPA should establish a Periodic Review and Stocktaking Mechanism under the auspices of AICHR to regularly assess regional progress in implementing environmental procedural rights. This assessment must be anchored in the international and regional standards, human rights instruments, and Multilateral Environmental Agreements (MEAs) to which AMS are parties as the baseline for evaluation. Designed as both a cooperative peer-learning process and a compliance procedure, the Mechanism will operate on two parallel tracks to ensure comprehensive alignment:

- a. **National Progress Track:** Member States are encouraged to periodically share national progress updates, ensuring progressive development across the ADER principles, including on the three access rights, while avoiding regression in policy and law. To enrich this dialogue and mitigate potential conflicts of interest, the establishment of an independent panel of technical experts is encouraged. This panel will review submissions, and civil society, indigenous organizations, NHRIs, and other relevant stakeholders should be formally invited to contribute parallel reports.
- b. **The ASEAN Regional-Level Integration Track:** The Mechanism will also guide regional initiatives led by ASEAN and its sectoral bodies/centers/institutions, ensuring that regional-level master plans, cooperation frameworks, and

⁹⁰ ASEAN Declaration (n 56) preamble.

transboundary programs reflect ADER and broader international standards. To operationalize this, the **ASEAN Secretariat (ASEC) Human Rights Division** should be formally empowered and technically strengthened to serve as a supportive analytical resource. The AICHR and the Division could develop voluntary screening tools to help ASEAN sectoral bodies/centers/institutions—including those governing energy, economic cooperation, forestry, agriculture, haze pollution, and disaster management—mainstream environmental rights into their regional portfolios.

To maximize the institutional impact of these reviews, the results from these monitoring processes could serve as a substantive input for the regular ASEAN Human Rights Dialogue, thereby fostering constructive, peer-driven regional exchange.

4.2. Foster a Knowledge Exchange Platform on Rights-Based Environmental Adjudication

Relevant ADER provisions:

Paragraph 2.3, 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.⁹¹

Paragraph 8, 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 to complement ASEAN efforts to implement this Declaration.⁹²

To operationalize the access to justice element of the ADER, AICHR should foster strategic collaboration with the CACJ. This can be achieved by promoting structured dialogues on the challenges and opportunities identified in the baseline study.

The baseline study highlights key national practices and gaps to guide this collaboration, including:

- A widespread lack of specialized environmental adjudication frameworks across several Member States.
- Geographical and financial barriers (travel costs, legal fees, lost income) that systematically prevent remote, border, and climate-vulnerable communities—such as Indigenous Peoples and fisherfolk—from seeking legal remedies.

⁹¹ ASEAN Declaration (n 56) para 2.3.

⁹² Ibid para. 8.

- A critical need for Anti-SLAPP (Strategic Lawsuits Against Public Participation) safeguards to protect Environmental Human Rights Defenders (EHRDs) and Women EHRDs (WEHRDs).

Based on these findings, AIHR and CACJ are encouraged to:

- Establish a knowledge-sharing platform under the CACJ Working Group on Climate Justice** to assist Member States in strengthening domestic environmental adjudication frameworks.
- Formulate comparative regional reference materials** detailing the operational models of specialized environmental courts and green benches versus specialized divisions within general or administrative court structures, allowing states to explore the establishment of green benches in line with their national practice.
- Document regional best practices on specialized capacity building**, drawing on established frameworks such as Indonesia's Environmental Judges Certification System⁹³ and existing procedural anti-SLAPP safeguards.
- Conduct a regional thematic study on geographical barriers to environmental justice** led by CACJ in consultation with AIHR, this study would map remediation barriers, highlight positive intersections with indigenous customary mechanisms (e.g., Timor-Leste's *Tara Bandu*), and offer policy guidance on mobile adjudication and digital court equity.
- Support the continuous development and dissemination of regional resources** to assist judiciaries in unpacking complex environmental and climate disputes from a rights-based perspective. For example, the Raoul Wallenberg Institute has established a Case Repository,⁹⁴ as practical reference materials for judges adjudicating environmental cases from a rights-based perspective.

4.3. Enhance Legal Aid Support and Evidence Building

Relevant ADER provisions:

Paragraph 2.3, 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.⁹⁵

⁹³ Supreme Court of Indonesia, Decrees No 26/KMA/SK/II/2013 and No 37/KMA/SK/III/2015.

⁹⁴ Raoul Wallenberg Institute of Human Rights and Humanitarian Law, *Case Repository on Advancing Legal Responses to Climate Change and Transboundary Environmental Harm in South-east Asia*.

⁹⁵ ASEAN Declaration (n 56) para 2.3.

Across the region, the cost of environmental litigation, combined with the limited availability of legal aid and the prohibitive cost of generating scientific and expert

evidence, functions as a structural barrier that disproportionately excludes Indigenous Peoples, EHRDs, and impacted communities from access to justice. Thus, the RPA should:

- a. **Promote and enhance legal aid support and means to address power asymmetry in evidence.** The Facility should promote: (i) financial and technical support to legal-aid foundations particularly in remote or rural areas encouraged by formal policy; (ii) establish mandatory legal clinics and/or legal-aid support in law schools; (iii) encourage research related to state-of-environment and foster open-data ecosystems; and (iv) provide support or promote pro-bono support for access to labs and means necessary to verify environmental information pursuant to public interest;
- b. **Ensure that provisions on the importance of legal aid are explicitly embedded within national policy and environmental rules of procedure** - not treated as discretionary practice or relegated to general legal aid frameworks that do not contemplate the technical and resource-intensive nature of environmental cases.

4.4. Leverage the Technical Capacity and Localized Mandates of National Human Rights Institutions (NHRIs)

Relevant ADER provisions:

Paragraph 2.3, 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.⁹⁶

Paragraph 8, 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 to complement ASEAN efforts to implement this Declaration.⁹⁷

National Human Rights Institutions (NHRIs) play decisive roles in environmental rights implementation where they exist and operate independently. The Philippine Commission on Human Rights' National Inquiry on Climate Change demonstrates

⁹⁶ ASEAN Declaration (n 56) para 2.3.

⁹⁷ Ibid para. 8.

how an NHRI can serve as a vehicle for accountability in transboundary climate harm;⁹⁸ the National Commission on Human Rights (*Komisi Nasional Hak Asasi*

Manusia or Komnas HAM) in Indonesia and the Human Rights Commission of Malaysia (*Suruhanjaya Hak Asasi Manusia Malaysia* or SUHAKAM) have similarly engaged in environmental and indigenous-rights cases.

Because NHRIs possess unique localized monitoring capacity and community trust, the RPA should establish formal, reciprocal pathways that leverage their expertise while fully respecting their independent mandates. RWI's observations during its 2026 Blended Learning Course for NHRIs complement the recommendations offered in this specific issue. To achieve this, the RPA should:

- a. **Position NHRIs as technical partners to AICHR**, bridging the gap between regional standard-setting and domestic implementation by committing to:
 - (i) Establish structured dialogue platforms under the umbrella of the Southeast Asia National Human Rights Institutions Forum (SEANF). This allows NHRIs to contribute vital baseline data, share domestic findings, and feed directly into AICHR's regional monitoring and assessments.
 - (ii) Support NHRIs in hosting multi-stakeholder roundtables that bridge critical knowledge gaps among state actors, civil society, specialized youth-and-children councils, private enterprises, and academia.
- b. **Support targeted capacity development to help NHRIs fully utilize their domestic mandates to protect environmental procedural rights** by committing to:
 - (i) Back a SEANF-anchored, AICHR-supported capacity-building forum focused on human rights-based approaches to environmental monitoring.
 - (ii) Prioritize training to equip NHRI officers to translate complex scientific data—such as air quality indices, chemical toxicity, and environmental impact assessments (EIAs)—into legally actionable human rights evidence.
- c. **Encourage NHRIs to coordinate independent, transboundary research and information-sharing on cross-border environmental degradation** (such as haze pollution and plastic waste dumping), including leveraging emerging platforms like the **Inter-NHRIs Inquiry Mechanism (INIM)**.
- d. **Support the development of credible ombudsperson, complaints-handling, or grievance institutions with explicit environmental mandates**, particularly in Member States currently lacking an “A-status”

98 Commission on Human Rights of the Philippines, *National Inquiry on Climate Change Report* (CHRP 2022).

accredited NHRI (such as Brunei Darussalam, Lao PDR, Singapore, and Vietnam). The RPA should encourage regional cooperation to learn from active initiatives, such as Malaysia's pending Ombudsman Bill to replace its Public Complaints Bureau.

4.5. Strengthen Cross-Pillar Coordination to Make ADER Interoperable across ASEAN Bodies

Relevant ADER provisions:

Paragraph 6, Task 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 to follow-up on this Declaration.⁹⁹

Paragraph 7, Assure the continuous support and provision of adequate resources for AICHR and the relevant ASEAN Bodies, Entities and centres to follow-up on this Declaration and related activities and programmes.¹⁰⁰

Paragraph 8, 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 to complement ASEAN efforts to implement this Declaration.¹⁰¹

The RPA should commit to a structured architecture that makes ADER operationally interoperable across the three ASEAN Community pillars, comprising four interlocking elements:

- a. Designation of ADER focal points in each relevant sectoral body - AICHR, ACWC, ASOEN, the ASEAN Senior Officials Meeting on Social Welfare and Development, the ASEAN Working Group on Social Forestry, ALAWMM, CACJ, and the AEC sectoral bodies handling investment and corporate accountability - with clear terms of reference for their role in ADER implementation.
- b. Establishment of a Joint Cross-Pillar Coordination Mechanism convened at least annually under AICHR's leadership, producing a joint implementation report and serving as the coordinating forum for the technical instruments envisaged in this chapter.

99 ASEAN Declaration (n 56) para 6.

100 *ibid* para 7.

101 *ibid* para 8.

- c. Incorporation of ADER implementation indicators into the monitoring and reporting frameworks of the APSC, AEC, and ASCC Strategic Plans 2026-2030, so that ADER does not stand outside the existing ASEAN reporting architecture.
- d. Encourage AICHR to be formally consulted in other bodies' decisions in relation to ADER's implementation. The interoperability requirement matters because the most consequential environmental decisions in the region are not taken by AICHR or the Environment Ministers' Meeting alone; they are taken by sectoral bodies whose mandates might not focus on human rights: investment, trade, forestry, energy, and infrastructure. Without a binding-in-practice coordination obligation, the RPA's commitments will be made in one pillar and undermined in another. The Vision 2045 commitment to mainstreaming human rights across the three ASEAN pillars provides the political authority for this approach.

However, implementing this recommendation also requires strengthening AICHR's operational role in ADER implementation. Strengthening AICHR's mandate is a long-term project that requires revisions to the AICHR Terms of Reference.¹⁰² However, the RPA can take meaningful operational steps within the current TOR through clearer task allocation, dedicated environmental rights capacity, and structured stakeholder engagement. The absence of these operational arrangements has been a consistently identified gap in the implementation of the ASEAN Human Rights Declaration since 2012,¹⁰³ and the Vision 2045 commitment to upholding human rights and the rule of law provides the political authority for closing it.¹⁰⁴

102 AICHR Terms of Reference (2009) paras 4.1, 4.5, 4.7 and 4.10; ASEAN Charter (2007) art 14.

103 ASEAN Human Rights Declaration (2012) art 28(f); ASEAN Charter (2007) arts 1(7), 2(2)(h)–(i) and 14.

104 ASEAN Community Vision 2045 (n 55) para 4.

Conclusion

This policy review and recommendations build directly upon the baseline study that examined the legal and institutional architecture of environmental procedural rights across all eleven Southeast Asian states. That baseline mapped the recognition and operationalization of access to information, public participation, and access to justice in environmental matters.

The overarching finding demonstrates that while meaningful, albeit uneven, progress has been made in establishing domestic frameworks for environmental procedural rights, a substantial gap persists between formal legal recognition and effective enforcement. This implementation gap is not uniform; it varies significantly by procedural pillar, by jurisdiction, and by the specific populations seeking to exercise their rights. Indigenous Peoples, Environmental Human Rights Defenders (EHRDs), and rural or low-income communities consistently face the most severe structural barriers, revealing that the realization of environmental procedural rights across the region remains fundamentally a question of equity, safety, and institutional inclusion.

To bridge these gaps and provide a practical roadmap for the operationalization of the ASEAN Declaration on the Right to a Safe, Clean, Healthy, and Sustainable Environment (ADER), this document presents a series of targeted, action-oriented recommendations designed to inform the drafting of the forthcoming regional frameworks.

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 the right to a safe, clean, healthy, and sustainable environment. Grounded in international human rights developments, this framework understands the right to a healthy environment as a holistic concept comprising both substantive elements—such as clean air, safe water, and stable climates—and procedural elements. Crucially, it affirms that the core access rights—information, participation, and justice—are not only essential vehicles for achieving these substantive environmental outcomes but are also recognized internationally as independent, standalone human rights in their own right. The forthcoming Regional Plan of Action carries the weight of translating these interconnected commitments into lived reality for the communities across ASEAN, including those who are most affected by environmental degradation and most excluded from the decisions that drive it.

The baseline study sought to provide the foundation for that translation and encourage further empirical study. Its findings underscore that procedural rights are not ancillary to environmental protection but rather a structural 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 primary mechanisms through which the substantive promise of a healthy environment is given institutional force. Where these access rights are hollow, environmental outcomes suffer; where they are strong, communities are empowered to protect both their human rights and their ecosystems.

The challenges documented in the baseline 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 recommendations offered in this policy recommendation document aim to translate those insights into actionable legal, technical, and institutional pathways for ASEAN and its Member States.

By providing a structured roadmap to operationalize the Declaration, these recommendations seek to lay the groundwork for the forthcoming RPA. The RPA provides the framework through which domestic innovations can be shared, adapted, and scaled across the region. Ultimately, the success of these policy interventions will be measured not by the ambition of their language, but by whether the communities who need environmental procedural rights the most—Indigenous Peoples defending their ancestral territories, environmental defenders facing criminalization, and rural communities confronting industrial pollution—can actually exercise them.

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