

Draft

ASEAN declaration on environmental rights

Submission made on 29 April 2024

WE, the Heads of States/Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN"), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, hereinafter referred to as "the ASEAN Member States" (AMS);

REAFFIRMING the 2007 ASEAN Charter, guided by Article 1 and Article 2, the 2012 ASEAN Declaration on Human Rights, in particular, Article 28; the 1948 Universal Declaration of Human Rights and the International Covenants on Human Rights and other relevant human rights instruments to which ASEAN Members States are parties, in particular the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, [General recommendation No.39 \(2022\) on the rights of Indigenous women and Girls](#), the 1989 Convention on the Rights of the Child, the 2006 Convention on the Rights of Persons with Disabilities, and the 2007 [United Nations Declaration on the Rights of Indigenous Peoples](#), [the 2011 United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#), [Organization for Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises 2011](#), and [Outcome document of the World Conference on Indigenous Peoples 2014](#);

WELCOMING the adoption of Human Rights Council resolution 48/13 and General Assembly resolution 76/300, recognizing the human right to a clean, healthy and sustainable environment;

RECALLING the 1972 Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, in particular, Principle 10; the 2015 Paris Agreement, adopted by the parties to the United Nations Framework Convention on Climate Change, which acknowledges that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [and rights of Indigenous Peoples](#); and the 2022 Kunming-Montreal Global Biodiversity Framework adopted by the parties to the UN Convention on Biological Diversity, which acknowledges the human right to a clean, healthy and sustainable environment, [and the whole of government and whole of society approach](#);

RECALLING ALSO commitments made within the 2019 Joint Statement on Reaffirmation of Commitment to Advancing the Rights of the Child in ASEAN; and the ASEAN Enabling Masterplan 2025 Mainstreaming the Rights of Person with Disabilities, the 2002 ASEAN Agreement on Transboundary Haze Pollution, [the 2022 ASEAN Guidelines on Recognition of Customary Tenure in Forested Landscapes](#), the 2023 ASEAN Blue Economy Framework and the 2005 Agreement on the Establishment of the ASEAN Centre for Biodiversity, among other agreements that support the promotion and protection of such rights;

RECALLING FURTHER the 1993 Vienna Declaration and Programme of Action which affirms that all human rights are universal, indivisible, interdependent and interrelated, while recognizing that, environmental harm disproportionately impacts women and girls and those segments of the population already in vulnerable situations, including [Indigenous Peoples](#), children and youth, older persons and persons with disabilities, among others;

NOTING the link between the right to a safe, clean, healthy and sustainable environment, regional peace and security, and sustainable development, and further that the effective promotion and protection of the right to a safe, clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements to which AMS are a party, adherence to the principles of international environmental law, the encouragement of cross-sectoral and

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cross-pillar cooperation and the participation of all the peoples of ASEAN;

CONVINCED that this Declaration will strengthen the framework for human rights in the region and promote sustainable development in the ASEAN community;

HEREBY DECLARE AS FOLLOWS:

OBJECTIVE

1. The Objective of the Declaration is to advance and implement the right to a safe, clean, healthy and sustainable environment to address environmental rights issues by:

(1) Respecting, protecting, promoting, defending and fulfilling the customary land tenure of Indigenous Peoples, right to a safe, clean, healthy and sustainable environment.

(2) Protecting, conserving and restoring the environment for present and future generations.

(3) Promoting the full and effective implementation of the rights of access to environmental information, public participation in environmental decision-making, the rights to free, prior, and informed consent (FPIC) of Indigenous Peoples in accordance to the International human rights laws and standards, and effective remedies in environmental matters for every person, particularly groups in vulnerable situations.

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(4) Providing an enabling environment for the exercise of the right to a safe, clean, healthy and sustainable environment: and

(5) Protecting and supporting those who promote, defend, and strive for environmental rights, including Indigenous Peoples, Indigenous Women, Indigenous Youth, Indigenous Persons with Disabilities, and environmental human rights defenders.

[Alternative editorial formulation

1. Respecting, protecting, promoting, defending and fulfilling the right to a safe, clean, healthy and sustainable environment requires, recognition and enforcement of customary land tenure of Indigenous Peoples, conserving, sustainably using and restoring the environment for present and future generations and an enabling environment for the exercise of these rights, through access to environmental information, public participation in environmental decision-making, the rights to free, prior, and informed consent (FPIC) of Indigenous Peoples and accordance to the International human rights laws and standards, and effective remedies in environmental matters for every person, particularly groups in vulnerable situations. The right to a safe, clean, healthy and sustainable environment is also enabled by the full protection and support for those who promote and strive for environmental rights including Indigenous Peoples, Indigenous Women, Indigenous Youth, Indigenous Persons with Disabilities, and environmental human rights defenders.

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GENERAL PROVISIONS

2. Every person has the right to a safe, clean, healthy and sustainable environment, which includes clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water, adequate sanitation, healthy and sustainably produced food, and non-toxic environments.

3. Every person has responsibility to protect the environment, contribute to its protection and improvement, prevent pollution, combat climate change, protect and sustainably use biodiversity and prevent damage to the environment.

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4. The Declaration should be implemented in line with international and ASEAN standards, national circumstances and domestic law, and with the adoption of necessary legislative, regulatory, administrative, or other measures guided by principles recognized in international law.

5. This Declaration should apply to the **business and** the private sector.
6. No provision in this Declaration should limit or repeal other more favourable rights and guarantees set forth, at present or in the future, in the legislation of a Member State or in any other international agreement to which an AMS is party. No provision in this Declaration should prevent a State from granting broader access to environmental information, public participation in the environmental decision-making process and justice in environmental matters, and **the right to FPIC of Indigenous Peoples.**
7. There is need for greater protection for individuals, peoples, groups and organizations working to promote, defend, and protect the environment and human rights under national laws and recognizes the important role of national human rights institutions in supporting, defending and promoting the enjoyment of the human right to a safe, clean, healthy, and sustainable environment.
8. Special measures are needed to ensure Indigenous Peoples, Indigenous Women, Indigenous Youth, Indigenous Persons with Disabilities, environmental human rights defenders, women, children, youth, people with disabilities, and other vulnerable groups can exercise their environmental rights

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ENABLING ENVIRONMENT FOR THE EXERCISE OF ENVIRONMENTAL RIGHTS

9. Every person should be guaranteed a safe and enabling environment to ensure the exercise of environmental rights free from all forms of human rights violations including threats, harassment, intimidation, violence, arbitrary arrests, detention, criminalization, killing, enforced disappearance, prosecution, manipulation, restriction or insecurity.
10. Any person who exercises their right to a safe, clean, healthy, and sustainable environment should be fully protected from threat and retaliation in any form and should not be subject to civil, administrative or criminal proceedings.
11. The exercise of human rights, including the freedom of opinion and expression, including to hold opinions without interference, the freedom to seek, receive and impart information, to participate in the conduct of government and public affairs, and the right to an effective and enforceable remedy, is vital to the respect, protection and promotion of the right to a safe, clean, healthy and sustainable environment.
12. AMS should:
 - (1) review, develop, enact and enforce legislation and policies with the full and effective participation of the Indigenous Peoples to provide full legal protection to individuals, groups and communities and Indigenous Peoples, who, in their personal and professional capacity, and in a peaceful manner, strive to protect, defends and promote environmental and human rights.
 - (2) prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
 - (3) provide legal protection for whistle-blowers who disclose environmental information in order to protect the environment and the community.
 - (4) respect and protect the Indigenous Peoples and their rights to freedom of expression, association, peaceful assembly, digital safety and security free from all forms of human rights violations in relation to environmental matters.
 - (5) develop capacity building and awareness raising programme for policy makers, national human rights institutions, private sectors, Indigenous Peoples, Indigenous Women, Indigenous Youth and Indigenous Persons with Disabilities on the 2007 United Nations Declaration on the Rights of Indigenous Peoples, the Universal Declaration of Human Rights, the 2015 Paris Agreement, the 2022 Kunming-Montreal Global Biodiversity Framework, the 2011 United Nations Guiding Principles on Business and Human Rights, and other International human rights laws and standards with sufficient budget allocated for the implementation
 - (6) develop and provide simplified versions of national and international laws and standards,

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in Indigenous languages and culturally appropriate formats

(7) establish and strengthen the independent national human rights institutions

(8) Recognize and protect Indigenous Peoples laws, traditions and customs and initiate process to strengthen the customary governance and land tenure, with sufficient budget allocated for the governance mechanism.

ACCESS TO INFORMATION IN ENVIRONMENTAL MATTERS

13. Every person has the right of access to environmental information, including the right to seek, receive, impart and access environmental information, and request environmental information from public and private authorities.

14. AMS should:

(1) ensure that information on environmental matters, including transboundary matters, to be proactively collected, compiled, verified and validated by an independent third party represented by Indigenous Peoples, published and made accessible, delivered in appropriate languages including Indigenous languages, and culturally appropriate format through traditional media, electronic, physical and other means on an ongoing and transparent basis.

(2) ensure that information is made available as soon as possible after a request has been submitted and disseminated in a systematic, proactive, timely, regular, accessible, free of cost and comprehensible manner.

(3) guarantee that environmental information systems are duly organized, accessible to all persons including Indigenous Peoples, Indigenous Women, Indigenous Youth and Indigenous Persons with Disabilities and made progressively available online and by other means as may be appropriate and that no restrictions are placed on its reproduction or use, and by providing free, effective and timely access to information to any person upon request,

(4) endeavour to ensure, to the extent practicable, that procedures are developed for the dissemination of environmental information in the various languages including Indigenous languages used in the country and communities and prepare alternative formats that are simplified, comprehensible and culturally appropriate, in particular to those persons or groups in vulnerable situations, using suitable communication channels.

(5) take measures through legal, regulatory or administrative measures to promote access to environmental information in possession of private sector entities, in particular, information on their operations and the possible risks and effects on human health, the environment, and culture.

(6) ensure public and private sector entities prepare sustainability reports reflecting their social and environmental performance, including due diligence reporting, risk assessment for human rights, social and environmental impacts, and environmental, social and governance reporting.

(7) Integrate environmental rights, environmental laws and policies and environmental information into the public education system and public information agencies' programs

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PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

15. Every person has the right to participate in policy-making and decision-making in environmental matters. The right to participate should be safe, meaningful, full and effective and at the earliest possible stage before decisions are taken, and while options are still open to the preparation of decisions on proposed activities, permits and other measures, plans, programmes, budgetary matters, activities, draft laws, regulations, and policies that may have a significant effect on the environment. This includes the right of Indigenous Peoples to participate fully, ensuring the right to FPIC, if they so choose, in environmental and other matters.

16. AMS should:

(1) develop amend, reform and implement public participation procedures through legislation, regulations and policies ensuring the right to FPIC to Indigenous Peoples. Public participation procedures should be developed and should promote public participation that is transparent, peaceful and safe, fair, independent, impartial, transparent, open, gender-responsive, inclusive, meaningful and accountable.

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(2) prepare special measures and procedures for people in vulnerable situations to ensure meaningful participation from them, giving due recognition to Indigenous Peoples' laws, traditions and customs and respect for Indigenous Peoples' knowledge, cultures and traditional practices.

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(3) promote and support the rights of Indigenous Peoples, including their right to maintain and develop their own Indigenous decision-making institutions, women, children, youth and people with disabilities to meaningful participation in policy- and decision-making on environmental matters and their elected advocates.

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(4) develop amend, reform and implement legislation and judicial rules to combat and prevent Strategic Litigation against Public Participation (SLAPP), as well as other forms of human rights violations, and provide training of the judiciary, prosecutors and the legal profession to ensure that SLAPP and other forms of suits intended to censor, intimidate, and silence critics are not commenced or maintained by either State or private actors.

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17. Indigenous Peoples in accordance with international standards, national laws and policies, have the right of FPIC for activities likely to impact their communities. The process ensuring FPIC should be done in a manner that is comprehensive, gender-responsive, just, genuinely participatory, free from intimidation and influence from the government and private agencies, outsiders or proponents of the project, and accordingly to their lives and cultural or traditional decision-making institutions.

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18. Human rights, social and environmental due diligence and risk assessment for decisions or activities that are likely to have a significant impact on the environment or human rights, should be incorporated by AMS into both public and private sector decision-making.

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19 (Proposed): Ensure that the rights-holders can submit complaints to the relevant governmental agencies and private sectors to improve their functioning and to draw attention to any aspect of their work that hinders or impedes the realization of environmental human rights.

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ACCESS TO JUSTICE AND EFFECTIVE REMEDIES IN ENVIRONMENTAL MATTERS

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19. Every person has the right to a free, effective and enforceable remedy in environmental matters, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by national laws, international laws, and customary laws, applicable in AMS.

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20. AMS should:

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(1), Promote and take effective measures to ensure to protect environmental rights.

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(2) Ensure that Indigenous Peoples can understand and be understood in political, legal and administrative proceedings where necessary through the provision of interpretation or by other appropriate means.

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(3) promote and protect a person's and collective right to a fair and prompt hearing by an independent and impartial tribunal in determining their rights, including with respect to environmental matters.

(4) promote and protect legal standing to access to justice and remedies by ensuring just, fair, equitable, and gender-responsive compensation that shall take the form of lands, territories, and resources equal in quality, size, and legal status or of monetary compensation or other appropriate redress, [including with respect to rectifications of breaches of an obligation under national and international laws or] to prevent threatened harm to the environment and to challenge acts of public authorities or private persons which contravene law.

(5) ~~Ensure effective~~ measures to eliminate barriers to the exercise of the right of access to justice, including judicial ~~and non judicial~~ rules of procedure, ~~fund, legal services~~ in environmental matters and [precautionary and interim judicial] remedies.

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(6) promote the use of alternative and additional dispute resolution mechanisms to resolve disputes involving environmental matters, such as mediation, arbitration conciliation, ~~litigation~~, or other means that allow such disputes to be prevented, resolved, ~~or settled through court decisions~~. ~~Such mechanisms must give due recognition to Indigenous Peoples' customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.~~ [These mechanisms should not be used to achieve an outcome that would further violate human or environmental rights]

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RECOGNITION AND FULL PROTECTION OF THOSE WHO PROMOTE AND DEFEND ENVIRONMENTAL RIGHTS (~~Environmental human rights defenders (EHRDs)~~)

21. Every person and every group, including national human rights institutions ~~and relevant departments~~, working to promote, defend and protect the environment, human rights, ~~and culture~~ following national laws ~~and international laws~~ require further protection from ~~all forms of human rights violations including~~ threats and retaliation.

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22. AMS should:

(1) take adequate and effective measures to recognize and protect ~~Environmental human rights defenders (EHRDs)~~, who promote, defend, and strive for the environment, human rights, ~~and culture~~, as well as their ability to exercise their rights ~~through establishing a registration and recognition system for EHRDs, Develop, reform and enforce legislation and judicial rules and non-judicial rules to promote and protect the rights of EHRDs including Indigenous Peoples EHRDs~~

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(2) ensure that ~~EHRDs~~, who promote and defend environmental rights are free from ~~all forms of human rights violations including~~ threat and retaliation and should not be subject to civil, administrative or criminal proceedings for exercising such rights.

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(3) take appropriate, effective, and timely measures to prevent, investigate, deter, and punish ~~all forms of human rights violation including~~ threats ~~and~~ intimidation against ~~EHRDs~~, who promote, defend, and strive for environmental rights.

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(4) ~~Establish, and strengthen the complaint mechanisms and~~ a rapid response mechanism or protocol at ASEAN or national levels to address ~~all forms of human rights violations including~~ threats, attacks, ~~and~~ intimidation ~~against EHRDs~~ who promote, defend, and strive for environmental rights.

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(5) ~~Consider providing incentives or assistance through policies and state programs for EHRD and EHRD organizations, such as through increasing access to government programs and funding and providing means for interfacing with existing government programs or implementation of existing national regulations and local ordinances~~

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SUBSTANTIVE ELEMENTS

23. Recognizing that ~~Indigenous Peoples' knowledge, cultures and traditional practices are fundamental to~~ the implementation of environmental law ~~and~~ contribute to the achievement of the right to a safe, clean, healthy, and sustainable environment, the AMS should promote the enactment and implementation of non-discriminatory and non-retrogressive substantive legislation, rules, policies and standards that take into account all relevant international and applicable environmental, health and safety standards.

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24. Such actions should assist the realization of the right to a safe, clean, healthy, and sustainable environment, with particular reference to the following substantive elements: clean air and reduction in transboundary haze; a safe and stable climate, including climate change

mitigation, adaptation and resilience; healthy ecosystems and biodiversity; safe and sufficient water and adequate sanitation; healthy and sustainably produced food; non-toxic environments; land degradation, desertification and drought; and healthy oceans and marine environment and coasts.

25. AMS should promote effective enforcement of their environmental laws to prevent, reduce, and remedy environmental harm that interferes with the full enjoyment of human rights.

26. AMS should:

(1) commit to implementing multilateral environmental agreements ratified by ASEAN Members, including the Kunming-Montreal Global Biodiversity Framework, and include a human rights-based approach, the whole of government and whole of society approach, respecting, in particular, the roles and contributions of Indigenous Peoples, Indigenous Women, Indigenous Youth and Indigenous Persons with Disabilities, and groups in vulnerable situations and local communities in biodiversity conservation.

(2) cooperate to develop legislation, rules and policies to reduce transboundary haze, urban, indoor, and rural air pollution to promote public health and a healthy environment and to take all practicable measures to ensure monitoring, compliance, and enforcement of air pollution measures and emissions standards for air pollution and ambient air quality.

(3) Endeavour to prevent, reduce and control such discharges or emissions and support the development of ASEAN environmental quality standards and emissions standards to control pollution and prevent the contamination of land and soil.

(4) take all necessary steps in accordance with the scientific evidence and a human rights approach to implement international agreements to reduce the impact of climate change, including addressing issues of loss and damage, supporting the just transition, addressing climate-induced mobility, disaster risk reduction, and supporting groups in vulnerable situations.

(5) prevent, reduce and control the degradation of the natural environment and support, including financial support, and promote Indigenous Peoples' stewardship in the protection of terrestrial, riverine, and marine biodiversity to maintain the proper functioning of ecological processes.

(6) protect and promote healthy soils and develop legislation, regulations and policies to conserve and promote healthy soils, including protecting soils from threats and degradation due to land use and land use change, and salination from climate change impacts.

(7) protect and promote the right to access to safe, affordable water and sanitation and take all appropriate measures towards the protection of the natural water cycle to ensure the conservation of underground and surface water resources.

(8) consider ocean equity in decisions impact marine and coastal communities, including Indigenous Peoples and their livelihoods and food and nutritional security, in implementing the ASEAN Blue Economy Framework 2023 and in controlling activities likely to cause pollution of the marine environment, including marine debris and plastics pollution and illegal and unregulated use and extraction of marine resources.

(9) take all necessary steps to include coastal Indigenous Peoples' knowledge, cultures and traditional practices to protect and preserve mangroves, coral reefs, seagrasses and breeding habitats.

(10) develop and implement integrated coastal zone management approaches and action programs to address problems and challenges in coastal zone governance.

ENVIRONMENTAL IMPACT ASSESSMENT

27. Recognizing that prior and effective Environmental Impact Assessment (EIA) is an essential tool to promote and protect the right to a safe, clean, healthy and sustainable environment, procedures should be developed to include relevant components of impact assessment, including health, social, and human rights impact assessment, using international best

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practices and evidence-based science, and to ensure a holistic EIA process that is transparent, timely, regular, participatory and led by Indigenous Peoples as rights-holders, Indigenous-led EIA process should be accompanied by sustained funding and administrative support by private and public authorities.

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28. AMS should:

(1) promote strategic or landscape-level environmental assessment of activities, plans and programmes that potentially affect people and the environment such as but not limited to agribusiness, infrastructure development, renewable energy, extractive activities, and carbon market initiatives. Ensure the rights of Indigenous Peoples to reject environmental impact assessment process following the principle of FPIC.

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(2) ensure the consensus by Indigenous Peoples that the Independent assessment agency is credible and trustworthy

(3) develop and implement a system of transboundary environmental impact assessment, following international law, norms and existing practices in the region, to require the environmental impact assessment of proposed projects or activities that may significantly impact areas beyond national jurisdiction.

(4) mandate bi-annual due diligence and risk assessment processes, including human rights, social and environmental due diligence, and nature-based solutions for environmental impacts.

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(5) Amend and reform laws and policies on human rights, social, and environmental impact assessment through consultations with Indigenous Peoples and ensure every step of EIA process to uphold the principle of FPIC and Indigenous Peoples' laws, traditions, and customs and respects Indigenous Peoples' knowledge, cultures and traditional practices.

RESEARCH AND EDUCATION

29. Every person, including children and youth, should have the right to free and comprehensive environmental education, including on environmental rights, relevant to their age and circumstances.

30. AMS should:

(1) support research and education on environmental rights, including for vulnerable groups, and recognize Indigenous Peoples' knowledge, culture and traditional practices, including through the establishment of Indigenous knowledge institutes to systematically document Indigenous Peoples' knowledge and practices that support environmental rights, such as ones related to environmental protection, ecological adaptation and climate change mitigation.

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(2) promote and, where practicable, support scientific, Indigenous and technical research programmes on environmental rights issues, including climate change, pollution and biodiversity protection, in partnership and cooperation with appropriate international and Indigenous Peoples' organizations.

(3) support the free exchange of information and research and development on the impacts of climate change, biodiversity loss and pollution on human rights, the environment, and culture in ASEAN.

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(4) support the exchange of information on environmental rights and promote environmental rights education in ASEAN.

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PROMOTION OF TRANSBOUNDARY, CROSS PILLAR AND MULTI-STAKEHOLDER COOPERATION

31. AMS recognize the need to promote multi-sectoral cooperation to support the implementation of this Declaration, including through consultations with relevant stakeholders and rights-holders, including Indigenous Peoples, Indigenous Women, Indigenous Youth, and Indigenous Persons with Disabilities, sharing information on good practices and policies, knowledge management, cooperation, and coordination amongst the relevant ASEAN Sectoral Bodies and Entities with the support of the ASEAN Secretariat.

32. AMS should:

(1) ensure that activities under their jurisdiction or control do not cause damage to the environment, human rights, and culture in areas within and beyond the limits of their national jurisdictions.

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(2) cooperate to establish, maintain and enforce effective international legal frameworks to prevent, reduce and remedy transboundary and global environmental harm.

(3) cooperate with competent international organizations to coordinate their activities in the conservation of nature and governance, of natural resources and assist each other in the implementation of this Declaration.

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IMPLEMENTATION AND PLAN OF ACTION

33. A Regional Implementation Plan will be developed to support AMS and the ASEAN Secretariat in implementing the Declaration and to provide a basis for sharing experience and assessment progress. AICHR will lead the development of the Regional Implementation Plan, which will be completed within one year from the date of this Declaration.

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34. AMS should ensure the full and effective participation of Indigenous Peoples in the development, implementation, and monitoring of the Regional Implementation Plan.

Adopted by the Heads of State/Government of ASEAN Member States at [CITY], [COUNTRY], this [DATE], in one single original copy in the English Language.