

Mandates of the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Ref.: OL OTH 111/2024
(Please use this reference in your reply)

27 June 2024

Dear Ambassador Chanthalangsy,

We have the honour to address you in our capacities as Special Rapporteur on the human right to a clean, healthy and sustainable environment; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of human rights in the context of climate change; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 55/2, 53/3, 48/14, 52/4, 51/16 and 54/10.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the Special Procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

We were informed that the ASEAN Intergovernmental Commission on Human Rights (AICHR) established a Working Group on Environmental Rights and tasked this Working Group to develop a regional framework on environmental rights for Association of Southeast Asian Nations (ASEAN).

ASEAN Intergovernmental Commission on Human Rights (AICHR)

We were also informed that the result of the Working Group's deliberations is a draft Declaration on the right to a safe, clean and sustainable environment, which restates existing ASEAN commitments and international obligations and strengthens the framework for human rights in the ASEAN region.

We welcome the potential of the Declaration to significantly advance the protection of the right to a clean, healthy and sustainable environment in Southeast Asia, evidencing also the important leadership of the region. This Declaration will also contribute to the protection of other rights, including the right to development, in a sustainable way, for the benefit of everyone in the ASEAN region. To help maximize this potential, we are writing to offer suggestions with a view to rendering the content of this Declaration aligned with international human rights norms and standards.

Regarding the legal framework that the Declaration incorporates, references to the 2015 Paris Agreement and the 2022 Kunming-Montreal Global Biodiversity Framework are very positive. In addition, we would suggest the incorporation of the 2023 Bonn Declaration for a Planet Free of Harm from Chemicals and Waste and other relevant international environmental instruments, to have a more comprehensive and updated scope. The Declaration should also call for compliance, by all relevant actors, with the United Nations Guiding Principles on Business and Human Rights, considering how sustainability challenges in the region are often connected to business activities. The Guiding Principles were endorsed in 2011 by the Human Rights Council in its resolution 17/4 after years of consultations with governments, civil society and the business community. They are the authoritative global standard for all States and businesses to prevent and address the adverse impacts of business on human rights. Accordingly, they are an important means for States to comply with their international obligations.

The ASEAN Declaration is a unique opportunity to reinforce the human right of all people to a clean, healthy, and sustainable environment, now and in the future. In our view, the Declaration would highly benefit from using and welcoming the adoption of the UN General Assembly resolution 76/300 (July 2022) and the Human Rights Council resolution 48/13 (October 2021) recognizing that everyone has the human right to a clean, healthy, and sustainable environment. These resolutions were supported by a vast majority of States, including from most of the ASEAN region, and making reference to them would enrich the Declaration.

Another useful reference that we suggest is the Committee on the Rights of the Child's General Comment 26 on children's rights and the environment, stating that the Convention on the Rights of the Child protects the right of all children to a healthy environment.

In addition, a reference to the right to science, which is recognized in article 27 of the Universal Declaration of Human Rights and codified in the International Covenant on Economic, Social and Cultural Rights, and which requires alignment of environmental policies and the best available scientific evidence, would further reinforce the right to a healthy environment.

These references also contribute to ensuring the fundamental elements necessary to secure the right to a healthy environment for everyone. This includes safe,

meaningful, effective, informed participation, access to information, and access to justice with effective remedies. In regard to the right of access to information in particular, the ASEAN declaration could also explicitly call for the establishment of robust pollution information portals, such as pollutant emission and transfer registries.

It should seek to guarantee an equitable and just transition to sustainable economies, ensuring support for the people and communities most affected by environmental harms and the efforts to address them.

At the same time and recognizing that this will be a non-legally binding instrument, we would like to strongly recommend that a clear process for monitoring, follow-up and review of the Declaration is included.

Under international human rights law, States have legally binding obligations to respect, protect and fulfill the human right to a healthy environment. Efforts to develop a new ASEAN instrument on the environment should, therefore, recognize the legally binding character of the obligations being described, enhancing clarity and mechanisms for their implementation. By clearly reflecting relevant human rights norms, standards, and principles and including clear, actionable plans for implementation, monitoring, and follow-up the Declaration will be a better instrument to help the ASEAN region. This is, therefore, a unique opportunity to give further consideration to integrating equality and non-discrimination, solidarity, transparency, and accountability and remedy within the Declaration.

It is also important that the Declaration articulate specific protection for the rights of persons, groups, and peoples in vulnerable situations, including environmental human rights defenders and Indigenous Peoples. The use of the term “Indigenous Peoples” is not just semantic; it is essential to ensure respect for their self-identification and rights according to existing human rights standards on the rights of Indigenous Peoples, including the UN Declaration on the Rights of Indigenous Peoples. We urge the draft ASEAN Declaration on the right to a safe, clean and sustainable environment to recognize the rights of Indigenous Peoples to their lands, territories and resources and knowledge and their entitlement to give or withhold their free, prior, and informed consent with respect to decisions that affect them.

We further note the importance of addressing the situation of environmental human rights defenders and ensuring, at a minimum, to do so in a manner consistent with other regional environmental agreements on human rights and the environment and Human Rights Council resolution 40/11, which addresses the particular roles, risks, and needs of environmental human rights defenders.

States also have an obligation to cooperate internationally to realize human rights. The Declaration should incorporate commitments to enhance international cooperation to address transboundary environmental issues, strengthen capacity-building, and share good practices.

We would also like to take this opportunity to urge that the remainder of the process comply with the fundamental human rights principles of transparency, inclusivity, and participation to include also effective and meaningful participation of

civil society, environmental human rights defenders, Indigenous Peoples and other interested rights holders in participating in the process, ensuring that all can contribute to this process without fear of intimidation or reprisal. Short timeframes for consultation and the unavailability of the draft in local languages are not conducive to inclusive and participatory processes.

Finally, we also wish to draw your attention to the inputs of civil society organizations, Indigenous Peoples organizations, and the Office of the UN High Commissioner for Human Rights, which offer valuable suggestions that we would invite you to reflect on and consider including in the development of this Declaration.

The ASEAN Declaration on the right to a safe, clean, and sustainable environment should be a landmark document that significantly advances human rights in the region, consistent with or improving on international standards.

We further stand ready to provide technical support if we can be of any other assistance in your critical task and we look forward to its successful and timely completion.

Please be informed that this communication, as a comment on pending or recently adopted legislation, regulations, or policies, and any response received will be made public via the communications reporting [website](#) within 48 hours. It will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a copy of this letter has been sent to Brunei Darussalam, Cambodia, Indonesia, Lao DPR, Malaysia, Myanmar, Philippines, Singapore Thailand and Viet Nam.

Please accept, Ambassador Chanthalangsy, the expression of our most distinguished consideration.

Astrid Puentes Riaño
Special Rapporteur on the human right to a clean, healthy and sustainable environment

Robert McCorquodale
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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