

Advancing the right to a healthy environment in Southeast Asia: addressing implementation gaps and opportunities

SEI brief, April 2025

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Key messages

- Advancing the right to a safe, clean, healthy and sustainable environment (RtHE) in Southeast Asia requires improving the implementation of procedural rights to access environmental information, public participation in environmental decision-making, and access to justice for environmental harms.
- Unclear requirements and broad exemptions for public disclosure limit access to accurate and comprehensive environmental information. Efforts in Indonesia and Thailand promoting public information and data sharing aim to address these challenges.
- Public participation processes for environmental impact assessments could enhance meaningful participation by adopting community-driven approaches. These approaches, emerging in Lao PDR, the Philippines and Thailand, ensure that social and environmental impacts are assessed from the perspective of local needs and values.
- Specialized judicial bodies for environmental cases exist in some Southeast Asian countries but face challenges such as slow processes, limited resources and lack of expertise. Strengthening judicial capacity and independent grievance mechanisms can better address environmental harms affecting communities.
- Future policy and research efforts should focus on improving the implementation of RtHE's procedural rights, linking sustainability and environmental justice. The ongoing development of a regional instrument for RtHE implementation provides a critical entry point for Southeast Asia.



Promoting the right to a safe, clean, healthy and sustainable environment (RtHE) is essential for sustainability and in enabling individuals, people and communities to combat the triple planetary crisis of pollution, climate crisis and biodiversity loss (UNEP, 2021b). RtHE is a universal human right recognized by the



United Nations General Assembly's Decision 76/300 of 2022, and encompasses the right of all people to clean air, safe climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and a non-toxic environment (Boyd, 2022). The Decision noted that advancing RtHE relies on peoples' exercise of procedural rights, namely access to information, public participation in decision-making, and access to justice and remedies (The Human Right to a Clean, Healthy and Sustainable Environment: Resolution/Adopted by the General Assembly, 2022). In addition, the Decision affirmed that governments have obligations to take necessary and additional measures to protect these rights and people in vulnerable situations who are more severely affected by environmental degradation due to their gender, indigeneity, age and disability (The Human Right to a Clean, Healthy and Sustainable Environment: Resolution/Adopted by the General Assembly, 2022).

In Southeast Asia, several instruments and policies guide the governmental and intergovernmental implementation of RtHE and procedural rights. These include special provisions for environmental cases, guidelines on public participation in environmental impact assessments (EIA), recognition of new tools such as Strategic Environmental Assessment (SEA) and its procedural elements, and policies for greater protection of environmental human rights defenders (UNEP & UNESCAP, 2021). In addition, the Association of Southeast Asian Nations (ASEAN) is developing a regional instrument on RtHE and its implementation plan as of December 2024 – the ASEAN Declaration on the Right to a Safe, Clean, Healthy, and Sustainable Environment – which provides an entry point for countries' greater action in advancing RtHE (AER WG, 2024).

These measures are overlaid on the backdrop of Southeast Asian countries transitioning their economies rapidly with large-scale investments in extractive industrial and resource management projects (Rigg, 2015). Governments, intergovernmental organizations and international institutions have established RtHE-related mechanisms, such as EIA, for projects and policies to assess their environmental impacts and ensure consultations with project-affected people. Yet without participatory and transparent project and policy developments, those who have customary access to resources are placed under the precarity of coercive livelihood transitions, pollution, loss of community bonds, and evictions (Huang & Ge, 2024; Kenney-Lazar & Ishikawa, 2019; Neef & Singer, 2015).

Previous research shed light on the protection of procedural rights linked to RtHE by emphasizing best policy practices of government actors, national human rights institutions, and judicial bodies (RWI, 2020; UNEP, 2023b, 2023a; UNEP & UNESCAP, 2021). However, there is a knowledge gap in further advancing procedural rights through effective implementation. This brief contributes to addressing this gap by sharing insights into the current state of relevant procedural rights in the region and highlighting emerging mechanisms and strategies of legal and human rights advocates and civil society actors to advance these. It does so with a particular eye to the implications of these rights for vulnerable groups who are particularly at risk of environmental degradation, including Indigenous Peoples, in Southeast Asia.

The next three sections focus on access to information, public participation in decision-making, and access to justice and remedies respectively. We highlight the current state of these procedural rights in the region and identify key leverage points for advancing

implementation. We conclude with an emphasis in building on opportunities to effectively advance RtHE and procedural rights in Southeast Asia.

This brief is based on a literature and policy review, as well as 19 semi-structured key informant interviews (KIIs) conducted from April to September 2024 with key informants, experts and practitioners from Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines and Thailand.

Environmental transparency and information disclosure

Accurate, accessible, current and complete information in environmental matters is both a right and a requirement for achieving transparent environmental governance (Gavouneli, 2000; UNECE, 1998). Many Southeast Asian countries have Freedom of Information (FOI) laws or other access to information-related policies, including provisions within EIA and SEA so that affected people and relevant stakeholders are informed and consulted (UNEP & UNESCAP, 2021; UNESCAP & UNEP, 2022). FOI laws stipulate governments' responsibilities for public disclosure of information and the procedures for information requests. The principle of maximum disclosure appears in FOI laws and regulations of Thailand and Indonesia, and in the draft FOI law of Cambodia (Article19, 2019; Zafarullah & Siddiquee, 2021).

However, the ambiguity of requirements for disclosure poses a key implementation challenge to ensuring the right to information. According to access to information regulations, information may not be shared publicly if the disclosure can cause substantial harm to national security, commercial interests or privacy (Article19, 2019; Zafarullah & Siddiquee, 2021). However, legal advocates in the region have highlighted that it is unclear how authorities evaluate these exclusions (KII 12, personal communication, August 29, 2024; KII 18, personal communication, September 12, 2024). Commercial and business interests tend to outweigh public interests in cases of disclosing information on environmental matters (KII 13, personal communication, August 30, 2024; KII 14, personal communication, August 30, 2024). In Indonesia, for example, one in three information requests to the Central Information Commission between 2010 and 2016 was rejected under different exclusion categories (Jannah & Sipahutar, 2017). Many of these rejections were specific to environmental matters, such as details on plantation data and maps (known as data on the license on the right to cultivate, *Hak Guna Usaha*) and compensation schemes for land acquisition, requested in the interest of affected Indigenous Peoples and local communities (Nanggara, Apriani, and Setiawan 2019; Siddiquee 2023).

In addition, in the case of EIA, there is a lack of clarity around what information, in which format, and when project information should be provided (UNESCAP & UNEP, 2022). As such, information may be made available but not accessible; for example, information may be shared with Indigenous Peoples in non-Indigenous languages or posted to sub-district offices without notifying project-affected people (KII 7, personal communication, August 23, 2024; KII 12, personal communication, August 29, 2024). The

access to information policies thus operates with varied standards that lack meaningful protection of the right to information (KII 12, personal communication, August 29, 2024; KII 18, personal communication, September 12, 2024; Leos, 2009; Jongruck, 2023).

Our study found that expanding grounds for disclosure and proactive information sharing is important for ensuring meaningful access to information on environmental matters. A group of lawyers in Indonesia is currently working with the Commission to develop sub-national public information decrees, including information on environmental matters, with strict and clear grounds for exceptions (KII 18, personal communication, September 12, 2024). Notable efforts for proactive information sharing have also emerged in Thailand. For example, Thai environmental NGOs and citizens have submitted a Pollutant Release and Transfer Register (PRTR) Bill to establish regulatory measures that promote proactive sharing of pollution information by public agencies and private businesses, ensuring the right to information in environmental matters (KII 12, personal communication, August 29, 2024).

Meaningful public participation in regulatory mechanisms and growth of community-led assessments

Public participation in decision-making is a growing feature in environmental regulatory systems and development planning in Southeast Asia (Gera, 2016; Kabiri, 2016; Lin-Heng, 2002). It is a key component of national EIA legislations and regional instruments such as the Guidelines on Public Participation in EIA in the Mekong Region (MPE, 2017).

Despite such regulations, a lack of enforcement measures for meaningful public participation throughout the EIA process is a critical implementation gap. EIA regulations in 7 out of 10 Southeast Asian countries only partially require or do not require project proponents to comply with the results of public participation, undermining the processes to consider and reflect inputs and concerns raised (Kantamaturapoj et al., 2023; Swangjang, 2018). In Thailand, there are mandatory guidelines for public participation in EIA that require early, responsive, and appropriate public participation processes with broad stakeholders, including a special focus on vulnerable groups (ONEP Thailand, 2021). However, legal and human rights advocates in the country have highlighted that EIA public consultations prior to projects have taken place away from or at inconvenient times for affected people, such as in district centers far from affected people's houses, during severe floods when people could not leave home, or with false signatures of participation (KII 8, personal communication, August 23, 2024; KII 12, personal communication, August 29, 2024). Even this public participation often ends when the EIA is approved and the environmental compliance certificate is granted (UNESCAP & UNEP, 2022). This means that beyond the EIA, there is a critical policy gap in the limited involvement of affected people in the monitoring of approved projects (UNESCAP and UNEP 2022).

Community-driven approaches to undertake EIA have emerged to fulfill meaningful public participation at the local level. These include Community Health Impact Assessment (CHIA), counter-EIA, and community-led natural resource mapping. These approaches are directly or indirectly linked to formal EIA, and have been used by communities to evaluate small community projects, advise on larger development

projects, and participate in joint decision-making with project proponents (Walker & Sanz, 2024). CHIA analyzes the health impacts of a policy, project or activity by centering community values and participatory research and learning (Pengkam, 2017). In Thailand, CHIA was established and supported by the National Health Commission Office (Pengkam, 2017). In the Philippines, counter-EIA has been utilized as a locally-driven, coproduced assessment by communities, non-governmental organizations and academic partners of the environmental conditions of project proposed areas, in contrast to the EIA done by consulting firms (KII 14, personal communication, August 30, 2024; Lagos et al., 2023). Last but not least, community-led mapping facilitates communities mapping their land, territories, resources, biodiversity, and traditional socio-ecological management practices (Bo, 2017; KESAN, 2017).

These approaches allow project-affected communities to self-assess social and environmental impacts according to their own needs and values, resulting in a more meaningful form of public participation (KII 9, personal communication, August 23, 2024; Pengkam et al., n.d.; Conlu et al., 2022). In Lao PDR, for example, local communities in a fish conservation zone in the Sekong Basin evaluated a sand mining proposal with community-led mapping exercises, leading to the dismissal of the proposal (KII 19, personal communication, September 16, 2024). If sustained with resources, these approaches could ensure community perspectives – including community leadership and ownership – are better integrated into EIA’s public participation processes. Such community-led approaches should also include critical reflections on gender inequalities and social inequities within communities to ensure meaningful participation in decision-making (Li, 2002).

Environmental adjudication capacity building and independent grievance mechanisms

Access to justice is central to improving the ability of governments to ensure RtHE, and many Southeast Asian countries have made efforts to enforce environmental laws and settle disputes by creating specialized judicial bodies for environmental cases (UNEP, 2021a, 2022). Malaysia and the Philippines have designated environmental courts, Thailand has a Green Bench in the Supreme Court, and Indonesia has a certification program for environmental judges (ADB, 2018; Ruangsri, 2011). These efforts reflect a growing recognition of the urgency of environmental challenges and the need for improved rule of law to protect RtHE in the region.

However, specialized mechanisms like environmental courts can sometimes create new barriers to justice. These courts were not established as statutory bodies to expedite cases, but are instead administrative designations within existing courts. Consequently, they face the same challenges as traditional courts, such as limited resources and capacity, which hinder fair and swift trials (KII 11, personal communication, August 27, 2024; KII 13, personal communication, August 30, 2024; KII 14, personal communication, August 30, 2024; Aminudin et al., 2020). The justice system can also be weaponized to criminalize those exposing environmental injustices, such as environmental defenders, as seen in Strategic Lawsuits Against Public Participation (SLAPPs) (Kaewjullakarn & Homket, 2023; UNEP, 2023a, 2023b).

Seeking legal remedies for environmental issues is often expensive and slow and requires strict proof of rights violations. Adjudication for environmental litigations commonly takes several years, burdening plaintiffs and discouraging engagement, especially those lacking resources (KII 12, personal communication, August 29, 2024; KII 14, personal communication, August 30, 2024). Additionally, a legal advocate noted that in the Philippines, where the rules of procedure for environmental cases have been established, some judges have raised the burden of proof to prevent an influx of such cases (KII 13, personal communication, August 30, 2024).

Our study showed that legal advocates are mobilizing capacity-building and knowledge-sharing opportunities to strengthen the judiciary to swiftly handle environmental cases. Lawyer and judge networks in Southeast and broader Asia have organized themselves through forums, visits, trainings and judicial working groups, providing technical capacity building and knowledge sharing in good practices of environmental adjudication (KII 12, personal communication, August 29, 2024; KII 14, personal communication, August 30, 2024; KII 17, personal communication, September 12, 2024; KII 18, personal communication, September 12, 2024; UNEP, n.d.; ADB, 2018). Lawyers in Indonesia developed a guideline for the attorney general in handling SLAPP cases to protect SLAPP victims (Wongkar et al. 2021). Legal advocates have increased financial and human resource support for those seeking remedies in environmental cases, particularly vulnerable groups, by providing court fee waivers and volunteer attorneys (KII 12, personal communication, August 29, 2024; KII 14, personal communication, August 30, 2024). However, the region has few public interest lawyers specializing in environmental matters, and they could face threats when engaging in litigation (SEAPIL, 2023).

We also found strengthening independent grievance mechanisms as a supplementary mechanism to environmental litigation is a key lever for addressing environmental harms affecting communities. In addition to courts, other actors like major international financial institutions such as World Bank and Asian Development Bank have instituted measures to enhance the independent grievance mechanisms of private sector actors (ADB, 2023; CAO, 2021). Several NGOs in Australia, Japan and South Korea provide complaint contact points for affected communities to report grievances and seek remedies for environmental harm done by companies, and to engage with relevant international instruments (GongGam, HRLC, JaCER). Community-driven grievance mechanisms have been used by communities in Myanmar to negotiate with project implementors on remedies, with the potential to expand to other Mekong countries like Cambodia and Thailand (KII 15, personal communication, September 3, 2024).

Addressing gaps to advance implementation

Effectively operationalizing RtHE is centrally important for Southeast Asia to meet national and regional policy goals and adhere to commitments on environment and health and wellbeing. As we have highlighted in this brief, procedural rights are building blocks for enabling this success.

Despite existing legal and policy frameworks, significant gaps remain in access to information on environmental matters, public participation in environmental decision-making, and access to justice. However, there are key opportunities to address these

gaps that drive momentum for actions around environmental justice in the region. These centre around developments in legal and regulatory frameworks on transparent and proactive information sharing in environmental matters; community-driven approaches for impact assessment for meaningful public participation; and judicial capacity building and alternative grievance mechanisms to address environmental harms on affected communities.

It is imperative for governments and international communities to integrate insights from these efforts and further explore effective and equitable implementation of procedural rights linked to RtHE. Governments in Southeast Asia, through current opportunities such as ASEAN's regional instrument and its implementation plan, could further commit to greater action in protecting RtHE of people in the region, especially vulnerable groups.

Acknowledgements

The authors of the brief would like to thank all informants for this study from the Asian Research Institute for Environmental Law, EarthRights International, ENLAWTHAI Foundation, Indonesia Centre for Environmental Law, Kiu & Co., and the anonymous informants. We also extend our gratitude to Ben Boer, Georgina Lloyd, Jeremie Gilbert, Klaus Bosselmann, Rahul Ranjan and Shristee Bajpai for their contributions during the scoping phase. The authors would also like to thank Cynthia McDougall for her inputs and an anonymous reviewer of the SEI peer review system for their suggestions for the brief.

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Published by

Stockholm Environment Institute
Linnégatan 87D 115 23 Stockholm,
Sweden
Tel: +46 8 30 80 44
www.sei.org

DOI:

<https://doi.org/10.51414/sei2025.015>

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