

Advancing Indigenous Peoples' rights for inclusive and sustainable environmental governance in ASEAN

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Minh Tran
Dayoon Kim
Pirawan Wongnithisathaporn
Stefano Zenobi
Albert Salamanca
Sushmita Mandal



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Linnégatan 87D 115 23 Stockholm, Sweden
Tel: +46 8 30 80 44
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Author contact: Minh Tran, minh.tran@sei.org

Media contact: Charmaine Caparas, charmaine.caparas@sei.org

Editing and layout: Trevor Grizzell

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Key messages

- ASEAN is developing a regional policy instrument on environmental rights to advance and implement the human right to a safe, clean, healthy and sustainable environment. Environmental rights are important for social and environmental justice to address environmental harm, protect vulnerable groups, and protect the environment for future generations. However, the current policy draft does not recognize Indigenous Peoples and their rights.
- ASEAN countries largely lack comprehensive legal recognition for Indigenous Peoples, leading to the violations of rights enshrined in the UN Declaration on the Rights of Indigenous Peoples and other global frameworks, especially for Indigenous women and marginalized groups.
- Indigenous Peoples, especially Indigenous women, act as vital stewards of lands, waters and resources and play a crucial role in environmental and biodiversity protection. At the same time, Indigenous Peoples' knowledge, a vital resource for sustainable environmental governance, is marginalized and misrepresented.
- Failures to recognize Indigenous Peoples' rights have negative implications for environmental governance in the region, including exacerbated conflicts, rights violations, inequality, and missed opportunity for Indigenous Peoples' knowledge.
- Recognizing and defending Indigenous Peoples' rights in ASEAN is essential to ensure national governments recognize the vital role of Indigenous Peoples in protecting the environment and ensuring a clean, safe, healthy and sustainable environment for all.

1. Introduction

Indigenous Peoples, especially Indigenous women, act as stewards of the environment and play critical roles in managing lands, territories, waters and coastal seas and other resources while nurturing and transferring Indigenous Peoples' knowledge to future generations. As such, advancing Indigenous Peoples' rights contributes not only to Indigenous Peoples' well-being but also to environmental protection (UNPFII, 2018). At the global level, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention No. 169 are instrumental in delineating a universal framework for Indigenous Peoples' rights, including collective rights and individual human rights. International environmental treaties and frameworks, including the Paris Agreement and the Kunming-Montreal Global Biodiversity Framework, emphasize these rights in relation to the environment.

Yet the ASEAN declaration on environmental rights¹ does not address the rights of Indigenous Peoples, including their rights to their ancestral lands, territories, waters and coastal seas and other resources, and the role of Indigenous Peoples' knowledge.² This policy is the first-ever regional instrument that brings together human rights and the environment, building on existing human rights and environmental frameworks at the regional and international levels. It aims to advance and implement the right to a clean, safe, healthy and sustainable environment, recognizing that sustainable environmental governance is intertwined with human rights. In a region that is home to an estimated 100 million people who identify as Indigenous (IWGIA, 2020), the omission of Indigenous Peoples is particularly concerning given that Indigenous Peoples are key actors in environmental protection and sustainable resource management, and excluding their rights could undermine the effectiveness of environmental governance in the region.

This policy brief underscores that defending environmental rights for ASEAN citizens requires ASEAN Member States to respect, promote, protect and fulfill Indigenous Peoples' rights in order to ensure sustainable environmental governance. First, we highlight the importance of Indigenous Peoples to the environment in ASEAN, arguing that their management of lands, territories, waters and coastal seas and other resources as well as their Indigenous Peoples' knowledge are vital to sustainable environmental governance. Then, we outline the costs of not recognizing Indigenous Peoples for human rights and the environment in ASEAN, arguing that the lack of legal recognition of Indigenous Peoples' rights results in environmental interventions that exacerbate inequality, increase conflicts, and miss out on valuable knowledge. Lastly, we provide recommendations to ASEAN, its Member States and its sectoral bodies regarding the role of Indigenous Peoples and their rights in achieving environmental rights for all in the region.

2. Why Indigenous Peoples' rights are important to sustainable environmental governance in Southeast Asia

Many Indigenous Peoples see humans and nature as interconnected, with obligations to protect lands, waters and other resources as part of their cultures and lives (Fa et al.,

2020). In Southeast Asia and elsewhere, an intimate relationship with nature and the obligation to protect the environment are embedded in Indigenous cosmologies and values. Recognizing Indigenous Peoples' rights to lands, territories, waters and coastal seas and other resources, as well as establishing clear benefit-sharing and institutional mechanisms that recognize the rights and roles of Indigenous Peoples in resource governance, can contribute to better biodiversity, conservation, and climate mitigation and adaptation outcomes (Ceddia et al., 2015; Fa et al., 2020; Vierros et al., 2020).

2.1 Indigenous People's management of lands, territories, waters and coastal seas and other resources

Indigenous Peoples play an important role in conservation and climate action through conserving their lands, territories, waters and coastal seas and other resources. Despite making up less than five percent of the global population, Indigenous Peoples' lands overlap with 40 percent of the global protected area (Garnett et al., 2018). It has been estimated that globally, Indigenous Peoples and local communities invest between USD 3–5 billion in conservation, or a quarter of total conservation spending by public and private actors (Tauli-Corpuz et al., 2018).

Indigenous Peoples' forest management practices can be equally or more effective than traditional protected areas (IPBES, 2019; Rights and Resources Initiative et al., 2016; Schleicher et al., 2017). In Southeast Asia, the deforestation rates on Indigenous Peoples' land are half those on other lands (Conlu et al., 2022). They manage over 24 percent of the carbon stored aboveground in tropical forests (Rights and Resources Initiative et al., 2016), and over one-third of intact forest landscapes are within Indigenous Peoples' lands (Fa et al., 2020).

In addition, the Sea Nomads of Southeast Asia, such as the Bajaus, Moken, Moklen, Urak Lawoi and Orang Laut, represent the Indigenous Peoples of this region's marine environment. They inhabit archipelagic Southeast Asia, particularly the Coral Triangle, a globally significant area of marine biodiversity that encompasses Malaysia, Indonesia, the Philippines and Timor Leste. This region is home to 76% of coral reef species and more than 2,000 species of fish (Veron et al., 2009). Customary practices of Indigenous Peoples and local communities such as *Petuanan-Sasi* or *Awik-awik*, while vastly underdocumented, are critical to marine and coastal resource management (see Ariando and Arunotai 2022).

2.2 Indigenous Peoples' knowledge as a vital resource for environmental management

Not only are Indigenous Peoples effective protectors of the environment, but Indigenous Peoples' knowledge can strengthen environmental management and governance. Indigenous Peoples' knowledge, practices, technologies and innovations are vital to sustainable resource management, climate change adaptation, climate-resilient development, and biodiversity (CBD, 2022; IPCC, 2022, 2023; UNFCCC, 2015).

Centralized and technocratic approaches to environmental protection often fail to suit local conditions, environments and community well-being. In contrast, the knowledge of

Indigenous Peoples and local communities is often rooted in an intimate understanding of the complex ecosystems in their territories (IPBES, 2019). Indigenous Peoples' Food Systems are linked to positive agroecological outcomes, efficient use of natural resources and synergies with ecosystems (TIP, 2024). Indigenous Peoples' knowledge is a rich source of wisdom on how to cope with environmental change and adopt nature-based solutions, which Indigenous Peoples have practiced for generations. Such situated knowledge can be critical in developing locally relevant solutions and effective policies. International policies, such as the Paris Agreement and the Kunming-Montreal Global Biodiversity Framework, have increasingly recognized the need to promote and integrate Indigenous Peoples' knowledge in climate and biodiversity actions.

In Southeast Asia, Indigenous Peoples' knowledge, practices and technologies, particularly through the role of women as knowledge keepers, contribute to better management and protection of biodiversity, understanding and mitigation of risks, and holistic development of climate change solutions (IWGIA, 2022a). For instance, in Sabah, Malaysia, the state has adopted the Indigenous Dusun's Tagal system, a traditional natural resource management practice, for river co-management (Forest Peoples Programme et al., 2020). In Thailand, Indigenous women's leadership in passing down traditional ecological knowledge through initiatives like the Ker Nue Mue "Women's Forest" strengthens biodiversity management and climate adaptation (AIPP, n.d.). Indigenous sea nomads in the Andaman Sea, through their intimate understanding of the marine environment, effectively contributed to community safety and disaster response during the 2004 Indian Ocean earthquake and tsunami (Arunotai, 2008).

3. The cost of failure to recognize Indigenous Peoples for sustainable environmental governance in Southeast Asia

Despite their contributions, Indigenous Peoples lack legal recognition in many ASEAN countries. Only the constitutions of the Philippines and Malaysia (in Sabah and Sarawak) recognize Indigenous Peoples as "Indigenous." Cambodia, Indonesia, Malaysia and the Philippines do have laws and legislations that provide some autonomy to Indigenous People over lands, territories, waters and resources (UNGA, 2020). Other ASEAN Member States fall short in legal recognition of Indigenous Peoples' rights in line with UNDRIP, despite the fact that Indigenous Peoples were present in these areas before the States were even founded.

Rejecting the term 'Indigenous Peoples', some governments use "ethnic minorities", "hilltribes", "sea gypsies" or other terms that connote backwardness (AIPP, IWGIA, and FORUM-ASIA, 2010; Arunotai, 2017). They argue that either everyone is equally Indigenous or that no Indigenous Peoples exist in their countries, refusing to recognize those who were least assimilated by colonial regimes as Indigenous (Inguanzo, 2024; Tauli-Corpuz, 2008). This stance rejects the applicability of UNDRIP, promotes assimilation, and denies Indigenous Peoples the legal protections they are entitled to under international laws (AIPP, IWGIA, and FORUM-ASIA, 2010). For example, in September 2024, Thailand's Parliament rejected using "Indigenous Peoples" in the Indigenous Peoples Bill, reflecting ongoing resistance to recognition (Wachpanich, 2024).

Furthermore, sectoral policies concerning Indigenous Peoples are inconsistent and inadequate. For example, in Cambodia, the Environment and Natural Resources Code of 2023 marked a setback as it failed to recognize Indigenous Peoples, despite provisions in the 2001 Land Law and other national regulations that recognize them (IPMSDL, 2024; IPSVoice, 2023), suggesting Indigenous Peoples' rights and matters remain to be a 'sensitive' issue for policymakers. In Myanmar, despite the 2016 land use policy recognizing customary land tenure, the 2018 amendment to the Vacant, Fallow, and Virgin Lands Management Law threatens Indigenous Peoples' land rights, risking dispossession without due process (UNGA, 2020). In Vietnam, the classification of Indigenous lands as forestland under the Forest Protection Law limits customary practices and undermines collective land rights (AIPP, 2019a).

3.1 Development and environmental projects causing conflicts, human rights violations and inequality

The lack of recognition of Indigenous Peoples has led to increasing human rights violations in the region. The creation of protected areas by the state has, in many cases, resulted in criminalization, displacement, and dispossession of Indigenous Peoples from their own lands, territories, waters, and coastal seas (Arunotai et al., 2007; Tauli-Corpuz et al., 2018). In the Philippines, in 2023, over 70 000 hectares of projects posed risks within and near Indigenous territories (Dekdeken, 2024; LRC, 2023). In 2021, the Sabah state government of Malaysia signed a 100-year Nature Conservation Agreement with a Singapore-registered company to set up a carbon trading deal for over 2 million hectares of forests and lands, including those of Indigenous Peoples, without their Free, Prior and Informed Consent (Cannon, 2023; IWGIA, 2022b). Nomadic and semi-nomadic Indigenous Peoples in coastal Thailand and Indonesia, whose customary rights to coastal and marine areas are underrecognized, face severe land and resource insecurity, poverty and erosion of cultural identity in the face of development aggression and conservation measures (Ariando & Arunotai, 2022; Arunotai, 2017).

These projects, implemented in the name of environmental protection and sustainability, are often implemented without Free, Prior and Informed Consent, meaningful and transparent impact assessment, and effective mechanisms for accessing justice and remedies for affected people (AIPP, 2011; Tauli-Corpuz et al., 2018). In response, Indigenous Environmental Human Rights Defenders who advocate for justice and access to lands, territories, waters and coastal seas and other resources, especially women, are subject to human rights violations including criminalization, killing, and enforced disappearance (Global Witness, 2024). From 2012 to 2023, Global Witness documented that 468 defenders were murdered in Asia, including 298 in the Philippines, 20 in Indonesia and 13 in Thailand (Global Witness, 2024).

Furthermore, the impacts of development aggression and environmental degradation do not impact all Indigenous Peoples equally. Indigenous women in Southeast Asia play a crucial role in ensuring food security for their families by maintaining natural resources and biodiversity (Luithui-Erni, 2018). Resource scarcity and the loss of access to lands, territories, waters and coastal seas and other resources significantly impact this role (AIPP, 2019b). Forced to rely more on men economically and/or seek alternative livelihoods away from their communities, Indigenous women also become more vulnerable to conflict and gender-based violence (AIPP, 2015). Without full rights to

manage, control and own their lands, territories and resources, Indigenous women continue to be accused of degradation and criminalized for encroachment, facing sanctions, land confiscation and imprisonment (AIPP, 2021; Luithui-Erni, 2018).

The risks and threats that such development and conservation efforts bring to Indigenous Peoples are not just a matter of injustice but also prevent them from maintaining their sustainable practices, further hindering positive environmental management outcomes. When degradation does occur on Indigenous Peoples' lands and territories, it is often due to practices carried out without their consent and failure to recognize Indigenous Peoples' rights to land (IPBS 2019; Rights and Resources Initiative et al., 2016).

3.2 Indigenous Peoples' knowledge as a missed opportunity

The failure to recognize Indigenous Peoples and their rights also leads to Indigenous Peoples' knowledge being under-documented, overlooked and under-utilized. Despite the recognition by global scientific and policy communities of the role and importance of Indigenous Peoples' knowledge, challenges remain in Southeast Asia. Indigenous Peoples' knowledge is considered inferior to Western, scientific knowledge in the region, as seen in uneven and sometimes non-existent recognition and inclusion of Indigenous Peoples' knowledge in climate mitigation policies among ASEAN Member States (Bijoy et al., 2022; IWGIA, 2022a). Environmental impact assessments of large-scale development and conservation projects also often fail to account for cultural impacts and intangible losses, such as the loss of Indigenous Peoples' knowledge resulting from the displacement or disruption in Indigenous Peoples' lives and livelihoods.

Furthermore, Indigenous Peoples' knowledge faces misrepresentation. For instance, rotational farming, a sustainable agricultural practice among Indigenous Peoples, has been historically misunderstood as an environmentally harmful practice, despite established evidence of its ecological benefits (AIPP & IWGIA, 2012; Dressler et al., 2018; FAO et al., 2015; IWGIA et al., 2009). Laws and policies in Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Thailand and Vietnam criminalize or eliminate this traditional practice, resulting in the erosion of Indigenous Peoples' knowledge systems and affecting the well-being of millions of Indigenous Peoples (AIPP & IWGIA, 2012).

Third, the transmission of knowledge linked to resource management has been compromised due to the loss and diminishing control over Indigenous lands, territories, waters and coastal seas and other resources caused by the expansion of development activities. In the face of economic marginalization and development aggression, Indigenous youth experience increasing displacement and disconnection from their lands and livelihoods, threatening the continuity of Indigenous Peoples' knowledge systems (EMRIP, 2019). Increasing commercialization of Indigenous seeds without benefit-sharing mechanisms with Indigenous Peoples further poses a challenge, especially for Indigenous women and girls (CEDAW, 2022).

Finally, the inherent terrestrial bias further overlooks the rights and knowledge of marine-based Indigenous Peoples in Southeast Asia. These communities possess

valuable traditions and practices crucial for responding to emerging challenges, such as the impacts of the Blue Economy, deep-sea mining, marine pollution, and the establishment of marine protected areas, as well as issues related to resource grabbing (Lyons et al., 2023). As the region faces critical challenges such as rising sea levels, ocean acidification, and the need to protect vital carbon sinks like mangroves and seagrasses, the roles, knowledge and practices of marine-based Indigenous Peoples become crucial.

4. Moving forward: The ASEAN declaration and Indigenous Peoples' rights

The development of an ASEAN declaration on environmental rights marks important progress. Building on the ASEAN Human Rights Declaration of 2012, General Assembly resolution 76/300 (July 2022), and Human Rights Council resolution 48/13 (October 2021), which recognize the human right to a clean, safe, healthy and sustainable environment, it will set the course of human rights and the environment in ASEAN and its member states for years to come.

It is imperative that the declaration explicitly acknowledges the rights and contributions of Indigenous Peoples, including Indigenous women, youth, persons with disabilities and LGBTQIA+ people. This is crucial to end injustices and facilitate access to justice for the human rights violations facing Indigenous Peoples. It is also key to ensuring a clean, safe, healthy and sustainable environment. More importantly, this ensures that any policy development will leave no one behind and aligns with the fundamental principles of the ASEAN Charter to respect fundamental freedoms, promote and protect human rights, and promote social justice (Article 2.1.i, ASEAN Charter). This is reiterated in political statements of Indigenous Peoples across Asia in 2019³, 2023⁴ and 2024⁵ and Indigenous Peoples in the ASEAN region on the declaration⁶.

To meet these goals, we put forth the following recommendations for the ASEAN Declaration:

- Explicitly use the term “Indigenous Peoples”, which respects their right to self-determination and other rights in line with the UN Declaration on the Rights of Indigenous Peoples.
- Recognize Indigenous Peoples' rights to lands, territories, waters and coastal seas and other resources, including recognizing and protecting Indigenous Peoples' laws, traditions, and customs as part of their governance and management of their lands, territories, waters and coastal seas and other resources.
 - ASEAN Member States should adopt and implement laws that recognize Indigenous Peoples' collective rights to their lands, territories, waters and coastal seas and other resources as well as develop and deploy mechanisms to ensure land tenure security for Indigenous Peoples.
 - ASEAN Member States should revise and reform contradictory legal frameworks that hinder Indigenous Peoples' rights to their lands, territories, waters and coastal seas and other resources.
- **Regarding Research and Education:**⁷ Recognize Indigenous Peoples' rights to maintain, control, protect and develop intangible heritage including culture and

traditional knowledge.

- Include Indigenous Peoples' knowledge into formal education systems to stem the loss of knowledge. Documentation of such knowledge led by or in equitable partnership with Indigenous Peoples is also critical as evidence to ensure the fair and equitable sharing of benefits that arise from the utilization of genetic resources and from digital sequence information on genetic resources, as well as traditional knowledge associated with genetic resources as enshrined in Target 13 of the Kunming Montreal Global Biodiversity Framework.
- **Regarding Public Participation in Environment Matters:** Recognize Indigenous Peoples' rights to Free, Prior and Informed Consent (FPIC). 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 tailored accordingly to their lives and cultural or traditional decision-making institutions.
- **Regarding Access to Justice and Effective Remedies in Environmental Matters:** Ensure Indigenous Peoples have access to 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 as part of access to justice and effective remedies in environmental matters.
- **Regarding those who Promote and Defend Environmental Rights:** Ensure full protection of Indigenous Environmental Human Rights Defenders and Indigenous Women Environmental Human Rights Defenders and eliminate all forms of human rights violations of defenders.
- **Regarding Environmental Impact Assessment:** Ensure Environmental Impact Assessment that is holistic, transparent, timely, regular and participatory. Assessment should be led by Indigenous Peoples as rights-holders where appropriate and inform decision-making regarding 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.

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Notes

- 1 <https://www.unescap.org/projects/asia-pacific-environmental-rights-observatory/sub-regions/southeast-asia>
- 2 A draft policy dated March 2024 is the only version currently available to the public, and it is unclear what the current stage of policy formulation is at the time this brief is written.
- 3 https://regional-forum.samdhana.org/wp-content/uploads/Yogyakarta-Declaration_191108-1.pdf
- 4 <https://aippnet.org/e-sak-ka-ou-declaration/>
- 5 <https://aippnet.org/tohmle-statement/>
- 6 <https://aippnet.org/inclusion-indigenous-peoples-asean-environmental-rights-working-group-aer-wg-our-non-negotiables-asean-declaration-environmental-rights-ader/>
- 7 Text in bold relates to specific headings used within the ASEAN Declaration policy draft.

Visit us

SEI Headquarters

Linnégatan 87D
Box 24218
104 51 Stockholm Sweden
Tel: +46 8 30 80 44
info@sei.org

Måns Nilsson
Executive Director

SEI Tallinn

Arsenal Centre
Erika 14
10416 Tallinn Estonia
Tel: +372 6276 100
info-Tallinn@sei.org

Lauri Tammiste
Centre Director

SEI Africa

World Agroforestry Centre
United Nations Avenue Gigiri
P.O. Box 30677 Nairobi 00100 Kenya
Tel: +254 20 722 4886
info-Africa@sei.org

Philip Osano
Centre Director

SEI York

University of York
Heslington
York YO10 5NG UK
Tel: +44 1904 32 2897
info-York@sei.org

Sarah West
Centre Director

SEI Asia

Chulalongkorn University
Henri Dunant Road Pathumwan
Bangkok 10330 Thailand
Tel: +66 2 251 4415
info-Asia@sei.org

Niall O'Connor
Centre Director

SEI US Main Office

11 Curtiss Avenue
Somerville MA 02144-1224 USA
Tel: +1 617 627 3786
info-US@sei.org

Michael Lazarus
Centre Director

SEI Latin America

Calle 71 # 11-10
Oficina 801
Bogotá Colombia
Tel: +57 1 6355319
info-LatinAmerica@sei.org

David Purkey
Centre Director

SEI US Davis Office

501 Second Street
Davis CA 95616 USA
Tel: +1 530 753 3035

SEI Oxford

Oxford Eco Centre
Roger House Osney Mead
Oxford OX2 0ES UK
Tel: +44 1865 42 6316
info-Oxford@sei.org

Ruth Butterfield
Centre Director

SEI US Seattle Office

1402 Third Avenue Suite 925
Seattle WA 98101 USA
Tel: +1 206 547 4000