

SUMMARY REPORT

AICHR Regional Consultation on Business and Human Rights, Environment and Climate Change in ASEAN

Organised by AICHR Malaysia

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(Hybrid Format)

Introduction

The issue of climate change is a major concern to ASEAN, as Southeast Asia is one of the most at-risk regions in the world to the impacts on climate change. ASEAN Member States (AMS) have proactively taken measures to address the issue at national, regional, and global level, as reflected in AMS' national reports, ASEAN Community Vision 2025, and active participation in the United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement. The impact of climate change on the human condition includes effects on the enjoyment of human rights including the right to life, health, housing, water and sanitation, food security, adequate standard of living and development of both present and future generations. The need to work in a more convergent approach in mainstreaming human rights through strategic programmes among ASEAN bodies and organs in the three Communities is one of the key messages to be delivered by this program. In addition to cross-pillar and cross-sectoral principle, complementarity and partnership between national and regional initiatives are necessary. Hence, ministerial agencies, National Human Rights Institutions (NHRIs), civil society organisations (CSOs) which are in consultative status with AICHR and other relevant stakeholders are included.

The ASEAN Human Rights Declaration 2012 (AHRD) prescribes the right to a safe, clean and sustainable environment explicitly in Article 28(f). In the second adopted ASEAN-UN Plan of Action (2021-2025), reference is made to collaboration on human rights and the environment. These opportunities for collaboration are further elaborated within the AICHR Five-Year Work Plan 2021-2025, including within Priority Areas 2.1, 2.5, 2.6, and 3.2, which provide for promoting mechanisms for coordinating to undertake consultations on linkages between human rights and the environment generally and to explore initiatives to further integrate human rights-based approaches to environmental policymaking and protection.

The Regional consultation was conducted to raise awareness on the implementation of United Nations Guiding Principles on Business and Human Rights (UNGPs), to prevent and address negative human rights impact related to business which include business related rights impact from environment and climate change. The two-day Regional Consultation deliberated on two focused areas. Day 1 provides opportunity for stocktaking of recent progress among AMS on initiatives on Business and Human rights (BHR), environment and climate change and the role of AICHR as a regional human rights mechanism in promoting this agenda. Day 1 also explore lessons learnt on the proposed EU Corporate Sustainability Due Diligence Directive namely the Environmental and Human Rights Due Diligence (EHRDD) and its impact on

businesses and AMS, transboundary and extraterritorial issues and access to remedies in environmental and climate change cases. Day 2 programme is a stakeholder consultation process for the ASEAN Regional Framework on Environmental rights.

At the activity level, the AICHR Regional Consultation on Business and Human Rights, Environment, and Climate Change in ASEAN seek to achieve the following outcomes:

- (i) To support ASEAN's efforts to strengthen its human-rights based approach (HRBA) to environmental protection, specifically through the implementation of UNGPs.
- (ii) To review the regional/national progress of the UNGPs implementation, share best practices, and identify the opportunities to strengthen policy, actions and collaboration.
- (iii) To promote the responsibility of business enterprises to respect human rights through the exchange of knowledge and best practices related to human rights due diligence (HRDD) as both EU and ASEAN work to enhance their HRDD frameworks.
- (iv) To assist ASEAN's aim to enhance state's protection against business-related human rights abuse through access to effective remedy.

DAY 1: THE STATE OF BHR, ENVIRONMENT AND CLIMATE CHANGE IN ASEAN

OPENING SESSION

Welcoming Remarks

H.E. Professor Dato' Dr Aishah Bidin FASc, Representative of Malaysia to the AICHR

1. The Representative of Malaysia to the AICHR, in her welcome remarks, emphasised on the responsibility of business enterprises to respect human rights and applies to all enterprises regardless of the business' size, sector, operational context, ownership and structure. The scale and complexity of the means through which enterprises meet that responsibility may, however, vary according to these factors and with the severity of the enterprise adverse human rights impact.
2. The issue of climate change has been a major concern to ASEAN, as Southeast Asia is one of the most at-risk regions in the world to the impacts on climate change. As reflected in the AMS' national reports, the member states have proactively taken measures to address the issue at all levels – national, regional and global level. The impact of climate change on the human condition affects the enjoyment of human rights, including the right to life, health, housing, water, food and development of both present and future generations.
3. As environmental issues are multi-disciplinary and cross-sectional in nature, the Representative underscored the cruciality of a strong coordination, collaboration and communication amongst ASEAN member states, both within the environmental sector and among relevant ASEAN sectoral bodies as well as through dialogues with development partners.

4. The AICHR Regional Consultation on Business and Human Rights, Environment and Climate Change (“Regional Consultation”) aims to promote the awareness on environmental rights and climate change among AMS. Other objectives are as follows:
 - (i) To create a network support and sharing networks between business, the state and other stakeholders in tackling climate change;
 - (ii) To clarify the broad outlines of the EU-proposed directives on human rights and environment due diligence and how it may shape emerging practice in ASEAN;
 - (iii) To provide a venue of consultation for the regional framework on environmental rights in ASEAN among AICHR, ASEAN sectoral bodies, NHRI, as well as other stakeholders.

Opening Remarks

H.E. Yuyun Wahyuningrum, Chair and Representative of Indonesia to the AICHR

5. The Chair and Representative of Indonesia to the AICHR iterated the direct and indirect interference of climate change with the enjoyment of all human rights. The impacts of climate change exacerbate the inequalities disproportionately affecting persons, groups and people who are already in vulnerable situations.
6. She added that the AICHR welcomes the UN’ resolution on the human rights to a clean and healthy and sustainable environment as it reaffirms that a clean, healthy, sustainable environment is a human right, for all and not merely a privilege for some. The resolution further called upon the responsibility of states to step up its efforts to ensure everyone has access to this right.
7. In the region, the ASEAN Human Rights Declaration 2012 (AHRD) explicitly provides a notion of the same right under Article 28(f). These modalities paved way for the AICHR to develop the ASEAN framework on environmental rights, which is currently in progress. This Regional Consultation would contribute substantively to the work of developing such a framework. In the 36th meeting of the AICHR, an agreement was achieved to form a working group and adopt the Terms of Reference (TOR) for the working group to commence the drafting of the framework.
8. Effective responses to prevent, mitigate and adapt to climate change must be in accordance with international human rights, environmental standards and principles such as solidarity, cooperation, transparency, access to information, participation, equality, equity and accountability.
9. Much of the carbon emissions that contributes to climate change are driven from business-driven economic activities. In this connection, business enterprises should contribute to innovation and solution to prevent, mitigate and adapt to climate change including its adverse impacts on the planet and its people. The Representative reiterated that business enterprises must be part of the solution in this matter.

10. The UNGP is the authoritative global framework to prevent and address negative human rights impact related to business, which includes impacts from climate change.
 - a. Pillar 1 of the UNGP suggests that all states have a duty to protect against human rights abuse by business within their territory or jurisdiction including with respect to climate change. States are to explore and adopt different combination of measures to ensure businesses respect human rights in the context of climate change. A mix of measures would refer to the mix of laws, regulations and policies that encourage or oblige businesses to reduce emissions and to consider other measures to prevent adverse human rights impact resulting from climate change.
 - b. Pillar 2 of UNGP suggest that business enterprises respect all internationally recognised human rights including in context of climate change. This can be done through, among others, avoiding infringing human rights by providing active steps to identify, prevent, mitigate and address adverse impacts in which they are involved. Business enterprises can continuously assess ways their environmental and climate impacts may lead to human right harms. For this to be effective, the processes should include meaningful consultations with potentially affected stakeholders, including indigenous people and local communities. It is important for business enterprises to regularly communicate with the public on ways they address their human rights impacts.
 - c. When human right harms relating to climate change occur, all those affected must have access to effective remedies, which is relevant to Pillar 3 of the UNGP.

Ms. Karen Gomez-Dumpit, Representative from Asia Pacific Forum (APF)

11. The Representative from APF shared the commitment of the AICHR for the convergent approach in mainstreaming human rights through programmes among the ASEAN bodies and communities. The partnership between national and regional initiatives is key to assist in the common shared goal to focus on accountability, access to justice and public participation in a united effort to protect the marginalised, disadvantaged and vulnerable groups from the effects of climate change and creating and enabling sustainable environment for the enjoyment of the right to a healthy environment.
12. APF launched a project to engage inter-governmental mechanisms in the right to a healthy environment and climate change. It is aimed to support NHRIs to engage the AICHR in sharing, exchanging expertise in developing strategies that will help improve their mandates, to improve people's lives, and build strong resilient communities.
13. An important component of the said project is to strengthen the capacity of participating NHRIs to collaborate with their state representatives in inter-governmental mechanisms. APF has implemented two national projects in the Philippines and Thailand on climate change to bring deeper conversations on how to address the impacts of climate change and bring about stronger protection for the enjoyment of a healthy environment.
14. Discussions framed around the UNGP is a common entry point to bring accountability to business-related impacts on people and the environment. She further iterated and concluded that the NHRIs are key domestic mechanisms for

the promotion and protection of human rights, in accordance with the Paris Principles.

H.E. Igor Driesmans, Ambassador of the European Union (EU) to ASEAN

15. The Ambassador pointed that majority of the carbon emissions can be traced back to business activities with air pollution as one of the clearest examples. Approximately 92% of the world's population are exposed to unsafe levels of air pollution and nearly 90% of the air pollution occur in low- and middle-income countries. As a growing number of states, the private sector and other stakeholders worldwide are developing policies and plans for net zero emissions, these efforts must go hand-in-hand with addressing adverse impacts on the environment and human rights.
16. International initiatives such as the UNGP seeks to address these impacts, particularly on human rights. However, nearly 12 years after the adoption of the UNGP, it has become clear that voluntary measures are not sufficient. The EU and its member states are strongly committed to improving the protection of human rights and environment. At the regional (EU) level, several initiatives such as the financial reporting directive, timber regulation and mineral regulations have been implemented to address the negative impact of business activities. Building on those, other legislative initiatives are being negotiated with similar goals such as, among others, the aforementioned corporate sustainability reporting directive, proposal for regulation on deforestation-free products, and the proposal for a regulation on prohibiting products made with forced labour in the union market.
17. In February 2022, the European Commission adopted its proposal for a directive on corporate sustainability due diligence (CSDDD) which is at the stage of negotiations among the European Parliament and the Council. He viewed the proposal as a game-changer as the CSDDD aims to ensure that the EU and non-EU companies within the scope of application perform in a way that fully respects the environment and internationally recognised human rights. It could therefore improve livelihood, working conditions and respect for human rights and environment involving EU and countries along the value chain. He cautioned that the due diligence obligations alone would not be sufficient to achieve the desired results. The CSDDD must be achieved through company measures, support and guidance to incentivise and to facilitate a meaningful engagement of EU companies with suppliers and producers around the world. A collaborative approach with strategic partners such as ASEAN is required to ensure effective implementation of the CSDDD.

Ms. Sharon Ho, Undersecretary of the Human Rights Division (HRD) at the Ministry of Foreign Affairs, Malaysia

18. The Undersecretary of the Human Rights Division opened with the reiteration that climate change is the most pervasive threat to humankind and its impact on the basic needs for human life is undeniable. The right to food, development, water and sanitation, clean and healthy environment, adequate housing, health, including the supporting eco-system and that vulnerable groups including women, children, older people, people with disabilities, low-income people are disproportionately affected with the adverse impacts of climate change. She

- expressed that it was unfortunate for small islands and developing states to continue carry the burden, although they contribute little to the historical emissions of greenhouse gases.
19. She further reiterated that it is crucial for governments and all stakeholders to recognise the inter-connectedness of human rights and business practice in order to pursue collective actions towards combatting climate change. A clear and decisive collective action would facilitate global efforts in shaping timely and targeted policy responses. To this end, the convening of the regional consultations on business and human rights, environment and climate change is indeed timely and befitting.
 20. The overwhelming support towards the UNGP and the recent UN General Assembly's recognition of the right to a clean, healthy and sustainable development are important driving forces for the international community to place human right principles at the forefront of climate change. As a member of the Human Rights Council, she added that Malaysia welcomes continued exchanges and constructive cooperations to promote and pursue human rights base objectives on business and climate change. Such engagement is in line with Malaysia's pledges to develop a National Action Plan on Business and Human Rights (NAP BHR) as well as to improve understanding on the effects of climate change on the enjoyment of human rights. This further complements ASEAN on-going endeavours to strengthen its approaches to environmental protection and sustainable development while promoting respect for, and protection of, human rights and fundamental freedoms.
 21. On this note, Wisma Putra commends AICHR's commitments to the promotion and protection of human rights in the ASEAN region. The Ministry recognises AICHR's instrumental and complemented role in leading the work on linking human rights and the environment since 2014, and welcomes AICHR's continued engagement on this important issue as it reinforces the inter-connectedness between human rights, climate actions and business practices. AICHR's engagements also marks the importance of cross-pillar and cross-sectoral collaborations within the three ASEAN communities as embraced by the ASEAN Community Vision 2025. She strongly believed that the whole-of-society approach in engaging all stakeholders is essential to build partnership, common strategies and targeted policy measures. Therefore, increased awareness and mutual understanding on the nexus between human rights and environment is vital to further strengthen the promotion and protection of human rights within ASEAN and beyond.

Keynote Address 1: Advancing a Human Rights Based Approach in the Context of Climate Change

Dr Ian Fry, UN Special Rapporteur on Human Rights and Climate Change

22. In his Keynote Address, the UN Special Rapporteur on Human Rights and Climate Change stated that human rights have been negatively impacted and violated as a consequence of climate change, globally. For many millions, climate change constitutes a serious threat to the ability of present and future generations to enjoy the right to life. Other violations would indicate that there are other issues including the right to health, food, development, self-determination, water and sanitation, and many other basic human rights.

Human-induced climate change is the largest, most pervasive threat to human society the world has ever experienced. A staggering 774 million children faced dual threat of poverty and climate change. He shared that in his visit to Bangladesh last year, he witnessed first-hand the impacts of climate change related to storm-surges and floods. Rural communities are severely affected by the floods and storm-surges. It was further evident that women and girls are disproportionately affected by the consequences of climate change, affecting their exercise of a wide-range of their rights, including their right to sexual reproductive health, water and sanitation and education. He urged the need to address climate change. The response to climate change, thus far, has been wholly inadequate. The International Energy Agencies in 2021 cited that if the world is to limit global warming to 1.5 degree Celsius, there should then be no investment in new fossil fuels.

23. Business has a crucial role to play, ensuring that their operations do not violate the basic human rights of citizens. This can be done with the following few steps:
- a) There must be a rapid transition away from the reliance on fossil fuels. Business must find energy alternatives that are fossil fuel free. Furthermore, businesses particularly the finance sector should divest their interest in fossil fuels. Inevitably, investment in fossil fuels will become stranded assets and the products derived from fossil fuels will become undesirable and subject to trade levies and restrictions.
 - b) As businesses move away towards renewable energy and energy efficiency technologies, they must ensure that these new technologies do not contribute to human rights violations. This is exhibited in large hydroelectric dam projects where the rights and access to water are being denied to downstream communities. New electricity storage technologies need to ensure that the human rights are not violated in mining these important minerals.
 - c) Women and girls must be engaged in all aspects of decision-making as they are the most affected by climate change. Focused training programmes must be developed to allow women and girls to engage in and with businesses for sustainable future.
 - d) There is a need to question the value of carbon markets as he was in the view that the benefits are significantly overstated. Having been involved in negotiations on Article 6 of the Paris Agreement, he was in view that only a few understand the mechanism of carbon markets. So-called net zero emission targets appear to be the new game in town. Businesses are making pledges of Net Zero without understanding what they are committing to. Recent revelations about false accounting on forestry offsets are a testimony to the fact that the carbon market is rife with unsound accounting practices. Further, off-setting in biological carbon is likely to lead to human rights violations as carbon is valued higher than people. This is particularly the case for indigenous peoples and their right to land.
 - e) As business moves away from their reliance on fossil fuels, workers and their families that had been traditionally involved in the fossil fuel industry must be given the opportunity to a just transition to alternative means of employment. Just transition programmes must be developed to protect the rights of workers, their families and their communities. They should be a part of the change and be afforded to the right to work in the renewable energy economy.

- f) The rights of environmental rights defenders must be properly protected. He witnessed that many countries in the ASEAN region are applying stricter rules to peaceful protests with harsher penalties being delivered. Communities want a safe and healthy environment for their families and for their future families; they are not terrorists or subversives. While a crackdown of peaceful protests is primarily being inflicted governments, much of the impedance is coming from business. Short-terms profits must not override the right of a safe, clean, healthy and sustainable environment and the right to freedom of speech.

24. The nexus between climate change and human rights will become a prominent pre-condition for trade in many regions of the world; this is evident with the new EU directives associated with corporate due diligence and the OECD Due Diligence Guidelines for Responsible Business Conduct. These will inevitably be linked to carbon-border adjustment mechanisms.

Session 1: Environment and Climate Change and the Business and Human Rights Agenda in ASEAN

25. The session was moderated by Mr Sean Lees, Business and Human Rights Specialist, UNDP. He briefed that climate change has different impact to different countries. Across ASEAN, a lack of systematized data collection process and sharing of protocol have slowed the pace of progress towards solutions. Resources and capacities are not leveraged to enforce environmental laws and regulations. Compliance with norms and standards on environmental protection is vital. Based on advancing a human -rights based approach (HRBA) to environment protection, this session aims to bring together experts as well as representatives from relevant bodies to share information on current issues, progress, priorities and development of environment and climate change in ASEAN including the emerging challenges related to the COVID-19 pandemic.

Ms. Le Thi Nam Huong, Head of the Human Rights Division at the ASEAN Secretariat.

26. The Head of the Human Rights Division first iterated the ASEAN is strongly committed to work collectively in combatting threats regarding the economic and climate change that is facing the region. The bloc has been active in taking steps and actions at the regional level in pursuance to its commitment on climate change. This includes promoting the UNGP, despite the fact that the UNGP is a non-legally binding instrument, which is then interpreted and translated into the AMS' work at the national and regional level. She shares the view that there is a need to advance rights-based approach when it concerns due diligence in business operations, and further extends its view that there is need to advance and ensure the implementation of the right to clean, safe and sustainable environment as provided in the AHRD.
27. The ASEAN Good Regulatory Practice is an existing framework with six (6) core principles that promote effective governance in the ASEAN Economic Community pillar. Though it is deemed to be as inadequate or fulfilling as the UNGP, the Practice acts as a good starting point to assess if there are other elements that the need to be included to strengthen the UNGP agenda in the region. The next step that follows would be to enhance the Practices by incorporating the human

rights lens; focusing on the vulnerable groups and the marginalised communities.

28. In addition to this, Ms Nam Huong shared the results of a 2022 survey on the Southeast Asia climate outlook. In essence, the results showed that a substantial number of respondents (36.7%) were in view that while their government is aware of the issue concerning climate change, there are no sufficient resources allocated to address the matter. This was followed by 23.4% of respondents holding the view that their government(s) are not putting enough attention on the issue of climate change.
29. Concerning the different actors responsible in addressing climate change, 28% of the respondents were in the view that national governments are responsible for tackling climate change at the national level while 23.3% thinks that businesses and industries are responsible in tackling the issue. On the steps or actions government could take to reduce carbon emissions in the respective AMS, 33.8% were in view of encouraging businesses to adopt green practices while enacting national climate laws saw only 18.7% in response. Private sectors are encouraged to adopt green supply chain practices (24.7%) and to invest in research, development, and technology (19.7%).

Dr. Pheakkdey Nguon, Forest Governance Expert at the European Forest Institute (EFI)

30. Prior to his presentation, Dr. Nguon shared that EFI has made global commitments to protect and restore the world's forests, address the impact of climate change and meet the Sustainable Development Goals (SDGs). The adoption of the Glasgow Leaders' Declaration on Forests and Land Use at COP26 is one of the landmark agreements made by 145 countries, in which makes up 90% of the world's forests. The pledge was to halt and reverse forest loss and land degradation, and at the same time to deliver sustainable development and promoting an inclusive transformation.
31. He shared that the CSDDD and the EU Deforestation Regulations are two of the main European instruments that will have an impact on ASEAN and the ASEAN+3 economies. In addition to that, ASEAN – at the regional level – has the ASEAN Strategic Plan of Action for ASEAN Cooperation on Forestry as well as the ASEAN Forest Law Enforcement and Governance Action Plan. Each AMS too has its own regulatory measures.
32. Dr. Nguon also emphasised that there is a need to look into the requirements from the market size and also to put more focus on the requirements set out by ASEAN+3 as markets for timber and timber products are bigger. The CSDDD and the EU Deforestation Regulations are two of the main European instruments that would have an impact on ASEAN and ASEAN+3 economies. In addition to that, ASEAN has its own set of related instruments: (i) ASEAN Strategic Plan of Action for ASEAN Cooperation on Forestry and (ii) ASEAN Forest Law Enforcement and Governance Action Plan. He added there are different themes of commitments and measures at the national, regional (ASEAN) and EU level:
 - (i) Legality and sustainability;
 - (ii) Deforestation and degradation;

- (iii) Smallholders/livelihoods, jobs that will be impacted by these directives;
 - (iv) Human/workers' rights, indigenous people as how are they featured in all of the global commitments; and,
 - (v) Overall measures to address climate change, biodiversity, and food security.
33. He iterated that traceability and transparency are important components in the process of due diligence. The Timber Legality Assurance System (TLAS) is one of ASEAN's efforts in attempting to meet all regional, global and market requirements. It is a national system that describes the different roles of stakeholders in defining 'legal timber'. A number of AMS (e.g., Indonesia, Malaysia, Laos and Vietnam) have chosen to develop the system with the EU, while other AMS are developing the national system by learning from the processes in other AMS. It is an iterative, participatory approach that is necessary to come up with a national system that would "speak" to everybody, not solely for businesses to operationalise the system.
34. One of the key annexes of the TLAS is *public disclosure information*. The development of this annex has led to discussions around transparency, accountability and access to information, all of which can be carried forward to try to meet the new upcoming requirements. The issues are not mono vision; it is connected. He shared of the three key works of EFI over the last 15 years with AMS:
- a. Working with government and stakeholders in countries that are engaged in the bilateral trade agreements in the EU on matters relating to timber and timber products, e.g., Indonesia, Thailand, Vietnam, Laos and Malaysia.
 - b. Improving information, dialogue, coordination and exchanges between AMS, EU, and ASEAN+3 that focuses on legal timber trade. EFI organises a regional workshop on timber legality assurance yearly where governments, civil societies, businesses from ASEAN, ASEAN+3 and the EU come together to exchange information on the requirements of businesses, governments and civil societies to make the system work. Further, EFI is working closely with the Technical Working Groups under ASEAN, e.g., ASEAN Technical Working Group on Forest Product Development and ASEAN Technical Working Group on Forest Management.
 - c. Looking into best practices from all its works supporting ASEAN and learning from lessons that can similarly be applied in timber and other agricultural sectors.
35. Scientific data evidently shows that 90% of deforestation is in fact caused by the conversion to agriculture. Hence, the main difference between the EU timber regulation and the EU deforestation regulation is: (1) it is more than just legality; it also concerns traceability and (2) it's no longer just focusing on timber but includes six other commodities too. The timber regulations seek to address the legality of timber trade. Legality is defined by applicable law in the countries of production, though it does not mean that legal timber does not contribute to deforestation. The changing context in the European market where the consumer is asking not only for legality but also sustainability and deforestation free.

Recommendations

The recommendations that were drawn out from this session were:

1. To look into the data and opinion of the people, including gauging the visibility of ASEAN's work on the environment and climate change in the region. The Southeast Asia climate outlook would serve as a good reference point for policymakers to look into as this would provide them the opportunity to take into consideration of the peoples' views of the situation. Clarity, however, must be emphasised in the regional policy or framework to ensure that the costs would justify the benefit.
2. To clarify the legal frameworks and the duties of the different institutions involved throughout the supply chain. Institutional and legal clarity are pivotal as in a large number of sectors, the responsibilities are often unclear and, in most instances, overlap with one another.
3. To go deeper to understand the nuance of issues in the business and human rights (BHR) context and in advancing the implementation of the UNGPs. The term "human rights" needs to be explained to people especially in the conversation on human rights mainstreaming. There is a need of clarity on the term used as this would provide a clearer picture for policymakers at the regional level. The term "human rights" indubitably refers to viewing the issues from the human rights lens and ensuring that *no one is left behind*. This includes communities that are marginalised and underprivileged. Policies need to reflect inclusivity to address the issues these communities are facing.
4. To consider ways forward in terms of ensuring there is effective coordination and collaboration. The government is the respective AMS must ensure that the public are informed of the issues that occur within the region, actions that have been undertaken thus far, and the need to collectively address the issue of climate change. This includes more proactive engagements with the public on the efforts made in both the region and national. Capacities of both the governments and non-governmental stakeholders need to be strengthened.
5. Tying to the point above, one of the lessons learned from the TLAS is that there is a need for local leadership. As ASEAN is composed of 10 member states with various contextual issues, there is a need to look into the operationalisation of local leadership and to develop a national system that would work.
6. To continue conversations on, and in the context of, the CSDDD. A suggestion was made to look into the governance-reforming countries that need to happen; the demand-and-supply; inclusive, participatory multistakeholder engagements; and putting into place the science-based approach to ensure that the commitments are pushed forth. The scope of the CSDDD application needs to be clear with regards to the subject of the regulation, the extent of applying and addressing the directive as well as if the directive would in fact, "clean" sustainability issues.

Session 2: ASEAN Approached to Environmental Protection and Sustainable Development: Cooperating Across Borders, Sectors and Pillars of Regional Community

H.E. Professor Eugene Tan, Alternate Representative of Singapore to the AICHR

36. The Alternate Representative of Singapore to the AICHR opened the session by reiterating Article 1, paragraph 9 of the ASEAN Charter that states “to promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage and its high quality of life of its people”. Based on Article 28 of the AHRD, “every person has the right to an adequate standard of living for him or himself and family”. Paragraphs e and f refer to clean water and sanitation and safe, clean and sustainable environment respectively. ASEAN, therefore, recognises the importance of a sustainable way of living and clean environment and in the context of climate change, these demands have become even more urgent and important. It is also important to recognise the significant role of corporate power and, if not properly used and regulated has the potential to cause extensive damage to the environment and undermine human rights. Over the years, various instruments – hard law and soft law – instil various responsibilities in different stakeholders such as the UN General Principles, UN Sustainable Development Goals (SDG), EU’s CSDDD and countries with the suite of domestic laws and/or NAPs.

Professor Dato’ Ir. Dr. A. Bakar Jaafar FASc, Vice President of the Academy of Science Malaysia

37. Some of the challenges highlighted by Professor A. Bakar, with regard to the issues and responses for Malaysia concerning local and transboundary haze, were as follows:
- a. Peat combustion
 - b. Land-use changes
 - c. Burning of plantation
 - d. Local anthropogenic activities
38. The Academy of Sciences Malaysia (ASM) set up the Haze Task Force with a mission to help action towards zero emission and a strategy of conducting assessment, prerequisite to effective management and “prevention is better than cure”. The haze issue in Malaysia began in 1982, with the worst haze episodes in 1997, 2013 and 2014.
39. He assessed that climate change is generally attributed to either natural cycle such as the El Nino; the build-up of one of green-house gasses in the atmosphere; or to both, which is no longer the controlling factor in explaining the increase in the frequency of haze episodes in the south-western part of the Southeast Asia. Since 1982, the frequency of episodes has been reduced from once in nine years to every other year. Other factors that compound the worsening of environmental conditions are: (i) the loss in the capacity of the natural forest ecosystem to recover itself after one dry season to another, and during wet seasons, and (ii) not only the traditional slash-and-burn, but also the increase in, and the extent of, open burning of both forested and peat areas during the dry periods, particularly during the inter-monsoon period over the months of August to September.

Dr. Subrata Sinha, Regional Environmental Affairs Officer at the United Nations Environment Program (UNEP)

40. Dr. Subrata opened his presentation by remarking the urgency to address the triple planetary crisis. In the ASEAN context, it is especially important because of its vulnerability towards climate change due to its abundance of natural resources that supports livelihoods and economies. At the 12th ASEAN-UN summit on 11 November 2022 in Cambodia, AMS underlined the significance of the ASEAN-UN Comprehensive Partnership in collective efforts in addressing global and regional concerns, pursuing shared goals and complementary initiatives, as well as promoting peace, prosperity, human rights, and sustainable development for the benefit of the peoples of ASEAN. AMS noted with satisfaction that significant progress has been made in second year of the implementation of Plan of Action (2021-2025).
41. On decarbonisation, UNEP currently supports six AMS, focusing on the implementation of Nationally Determined Contributions (NDC), energy efficiency, district cooling, renewable energy and renewable energy for women empowerment (Cambodia, Indonesia, Malaysia, Myanmar, Thailand, Vietnam). On adaptation and resilience building, UNEP currently supports 5 AMS, focusing on National Adaptation Plans (NAP) and Ecosystem-based Adaptation (EbA) interventions (Cambodia, Laos, PDR, Myanmar, Thailand, Vietnam).
42. He further shared that the Cool Coalition is a UNEP-led joint effort of 130 partners, including governments, collaborating on knowledge exchange on science, data policy, joint action, and advocacy to accelerate sustainable cooling. Energy Efficiency of Appliances (AC, refrigerator, light, motor, and transforms) contributes to approximately 60% of electricity consumption in residential and commercial buildings.
43. Some of the works by UNEP on nature action are as follows:
 - *Sustainable Blue Economy*: UNEP has provided technical support to ASEAN on blue economy policy and planning, including targeted technical support to Indonesia (Blue Economy Roadmap led by BAPPENAS) and Vietnam (criteria for Sustainable Blue Economy led by ISPONRE and Rapid Readiness Assessment led by VASI), and support to the preparation and operationalization of the ASEAN leaders Declaration on Blue Economy (adopted in 2021).
 - *One Health*: UNEP in collaboration with other partners of the Asia-Pacific Quadripartite Alliance on One Health (FAO, WHO and WOH) contributed to the development of the ASEAN Leaders' Declaration on One Health Joint Plan of Action developed by the Quadripartite Alliance on One Health. The final version was adopted at the 42nd ASEAN Summit, held in Labuan Bajo, Indonesia on 10-11 May 2023.
 - *Global Biodiversity Framework*: Strengthening regional cooperation to support the ASEAN member states.
44. He provided several recommendations on pollution action including the following:
 - *Coordinating Body on the Seas of East Asia (COBSEA)*: Protecting coastal and marine environment for a sustainable future. UNEP administers this programme, based in Thailand.

- *Air and Plastic Pollution:* UNEP is collaborating with ESCAP on the implementation of the Asia Pacific Regional Action Programme for Air Pollution adopted in 2022. UNEP hosts the secretariat for the Acid Deposition Monitoring Network in East Asia (EANET) which includes as participating countries all the developing member countries in ASEAN. Supporting regional cooperation and knowledge sharing through the Asia Pacific Clean Air Partnership (APCAP). UNEP is promoting soot-free-heavy-duty vehicles for the ASEAN region with CCAC support to develop a roadmap for 6/IV equivalent vehicle emissions and fuel standards for heavy duty vehicles in ASEAN. ASEAN member states are participants in international efforts to end coal utilization in the power sector. Brunei, Indonesia, Philippines, Singapore and Vietnam signed on to the Global Coal to Clean Power Transition statement during COP26. The SEA Circular Project is aiming for less plastics wasted in the Southeast Asian region; this project considers the human rights and gender dimensions of the plastic marine problem.
- On Environmental Rights and Youth Engagement, UNEP is supporting the ASEAN Intergovernmental Commission on Human Rights (AICHR) in collaboration with UN ESCAP and OHCHR, to prepare an ASEAN Environmental Rights Framework. This will be the first regional instrument in Asia Pacific to ensure the promotion and protection of the right to a healthy environment. Furthermore, as a direct recommendation from the Regional Dialogue on Climate Justice convened in May 2022, a Thematic Working Group on Climate and Environment was formed under the UN Asia Pacific Interagency Network on Youth (APINY) in 2023.

Dr. Linda Yanti Sulistiawati, Senior Research Fellow at the Asia Pacific Centre for Environment Law (APCEL), National University of Singapore (NUS)

45. Dr. Linda Yanti shared that the Singapore Transboundary Haze Pollution Act 2014 (THPA) is a statute of the Parliament of Singapore. It criminalises conduct which causes or contributes to haze pollution in Singapore, and to provide for related matters such as deterrence. The root of the problem is misaligned commercial interests which lead companies to burn forests and otherwise engage in unsustainable degradation of land in order to maximise short-term profits. Forest burning in this manner and the resulting air pollution is a grave problem because of its far-reaching implications on human health and safety, forest resources wetlands, biological diversity and global warming.
46. From the point of human health and safety view, the immediate victims and those who have suffered the most are the local and indigenous people living in, and directly adjacent to, forests that are being burnt. Transboundary haze pollution (THP) also poses a real and significant problem to the health and economies of other neighbouring populations, including Singapore. The THPA was enacted to regulate behaviour directly. This is an application of the principle of *sic utere tuo ut alienum non laedas*, which is to use your own property as not to injure that of another.
47. Given the strong economic incentives for companies to adopt the cheapest methods of clearing land for plantations, the Act is intended to tilt the playing field in favour of companies that adopt environmentally sustainable land-clearing practices that do not result in a degradation of the atmosphere. The THPA further seeks to deter companies by holding them accountable for their

environmental and health impacts of their actions. She added that Singapore recognises there is no single pathway to resolving what is clearly a multifaceted problem but it is essential to strengthen the cooperation of countries involved.

- 48.** The objective of the THPA is to criminalise conduct or activities that cause or contribute to haze pollution in Singapore. The penalty for the offence is a fine not exceeding \$100,000 every day or part thereof that there is haze pollution in Singapore resulting from that entity's conduct. The maximum aggregate fine that can be imposed under this provision is capped at \$2 million. Furthermore, it is to establish statutory duties in relation to conduct or activities that cause or contribute to haze pollution in Singapore and to establish a liability regime, under which responsible companies or their officers can be made liable to pay compensation for harm to any person, property or the environment in Singapore. The Act is designed to apply to conduct that causes or contributes to THP in Singapore, even when done by entities with no geographical or other connection to Singapore.
- 49.** Operationally, the clearing of land for commercial use is often done by subsidiary entities or other persons under the control of a primary actor. Taking account of these realities and in addition to the actual conduct, the following activities potentially attract criminal responsibility if they cause or contribute to haze pollution in Singapore:
 - a.** Condoning i.e., failing to prevent or mitigate any conduct by another entity or individual which causes or contributes to any haze pollution in Singapore.
 - b.** Participating in the management of a second entity, which owns or occupies any land situated outside Singapore, and which has engaged in conduct or the condoning that causes or contributes to haze pollution in Singapore.
- 50.** The THPA empowers the Singapore Government to issue a preventive measure notice to any entity that is directly or indirectly involved in any conduct which is contributing to, or is likely to cause or contribute to, any haze pollution in Singapore. A preventive measures notice is a request in writing to an entity requiring it to do or refrain from doing anything specified in the notice for the purpose of preventing, reducing, or controlling any haze pollution in Singapore. Failure to comply with the preventive measures notice attracts an additional fine for every day that the entity failed to comply with the preventive measures notice.
- 51.** In addition to this, extra territorial legislation against individuals or companies engaged in transboundary pollution is rare. The legislation typically targets companies of the legislating state that operate outside the jurisdiction, rather than non-citizens.
 - The *Nationality Principle* allows for citizens of the legislating state to be subject to the legislation even if the conduct occurs entirely abroad.
 - The *Passive Personality* is when a state claims jurisdiction over the conduct of non-citizens occurring abroad and the victim of the harm caused is a citizen.
 - The *Proactive Principle* is when national security or other state interests are threatened.
 - The *Effects Doctrine* allows US courts to claim jurisdiction over conduct outside the US that has consequences within its borders, such as anti-trust / competition cases.

- The Act claims jurisdiction over Non-Singaporean Entities, including Indonesian and Malaysian companies operating in Indonesia, based on the harm caused by haze pollution felt in Singapore.

52. The defence under the THPA is as follows:

- a. Section 7 Art (1) – 4: The company must prove the “grave natural disaster or phenomenon” and “act of war” defence on a balance of probabilities. However, the company must show that the haze pollution was caused solely by these events and that it had no contributory role. For instance, in the case of lightning strike on the company’s peat-rich land, the company must show that the lightning was the sole cause, and that no other human factors contributed to it.

Ms. Grita Anindarini, Program Director at Indonesia Centre for Environmental Law (ICEL)

53. Ms. Grita shared that the haze and air pollution is a major problem within Indonesia. One of the most targeted stakeholders being children (an estimated 2.4 million children under 5 are directly affected by haze and air pollution). Indonesia has the following fire ban regulations in place:

- Forestry Law No.43 Year 1999
- Plantation Law No.18 Year 2004
- EPMA Law No.32 Year 2009

54. The challenges concerning this issue include: (i) no available and specific regulations or policy on haze, (ii) no specific extraterritorial legislation to target slash and burn activities that result in the haze. She shared that the Law Enforcement Approach in Controlling Forest Fire is to firstly, identify if there is whether slash and burn activities that need law enforcement as the response. If required, there three responses are as follows:

- (i) Criminal sanction towards a person or entity deliberately in breach of law regulations.
- (ii) Administrative sanction through i.e., written warning, permit suspension or revoke.
- (iii) Environmental dispute resolution (civil law)

55. She further shared of the roles of environmental human rights defenders (EHRDs), which are to provide information and data, monitoring, environmental inspection, advancing legal action and engaging with communities. Some of the enabling condition to enable more effective participation of EHRDs are to provide clear information stream and data availability, clear participation platform, strong collaboration and willingness between government, law enforcers and civil society, and no repressive legislation and criminalisation.

Recommendations

The following recommendations were made from Session 2:

1. To convert peat areas to plantations, compaction is required. Compaction is to introduce the capillary rise and moisture from the ground so peat areas remain wet / tight and moist. Proven to be a very effective method.

2. Convert unwanted materials to resource, primarily conversion to ethanol and biofuel. However, these strategies come with challenges: (i) there needs to be investment to encourage the public-private investments, (ii) technological or technical challenges, (iii) transportation and logistics.
3. Conversion of slashed materials into biofuels or energy: (i) ascertain supply of slashed materials, (ii) plan areas to be land-cleared.
4. Proposed responses include promotion of, and facilitating, public-private investments and mitigating the transboundary haze through peatland and water management.
5. Better assessment and background checks for permit holders.
6. Strengthen institutional capacity and coordination.
7. Provide protection for EHRDs.

Session 3: Emerging Practices – Environmental and Human Rights Due Diligence in Europe and ASEAN

H.E. Professor Dato’ Dr. Aishah Bidin FASc, Representative of Malaysia to the AICHR

56. Her Excellency started the session by providing an overview of the session, which would look into emerging practices; environmental and human rights due diligence in Europe and ASEAN. The crux of the session is on due diligence, where speakers will share the practices by their companies; how companies in the region are responding to climate and environmental change issues. On that context, HRDD originates from Pillar 2 of the UNGP, now emerging as the dominant paradigm for doing business with respect to human rights. It is central to the concept of the UNGP and describes the steps companies must take to prevent and address adverse human rights impacts in order to discharge a responsibility to respect.
57. AMS have attempted to accommodate themselves in the emerging issues as required by the EU and other countries. Thus, the change of policies and frameworks. There is a growing number of states particularly in Europe actively considering mandatory measures; it started off with voluntary due diligence and it is going into the phase of mandatory due diligence. Countries such as France, the Netherlands and Finland are exploring mandatory measures as part of a smart mix of policy tools to intensify business to respect human rights. The question that remains then becomes: what are the implications to the companies, in particular ASEAN companies that are trading partners of the EU?
58. The ASEAN region is a dynamic market, with over 640 million consumers and ranked the 8th economy in the world. ASEAN is the EU’s 3rd largest trading partner outside Europe, after the US and China. Malaysia is the 3rd largest economy in the region in terms of Gross Domestic Product (GDP) (12%). The session, she added, would focus on the impacts of the directives towards ASEAN businesses.

Mr. Antoine Ripoll, Director of the European Parliament in ASEAN at the Directorate-General for Parliamentary Democracy Partnerships, European Parliament

59. EU Companies rely on complex global value chains. They may encounter difficulties in identifying and mitigating risks in their value chains in the areas

of human rights and the environment. According to a 2020 European Commission study, only 37% of business respondents conduct environmental and human rights due diligence and only 16% cover the entire supply chain often relying on voluntary international standards. Several EU member states have introduced (or will) national rules on due diligence. Yet, their differences pose challenges to companies operating in the EU single market.

60. Mr. Ripoll shared that the European Parliament has long been advocating a stronger legal framework to oblige EU Companies to shoulder their responsibility towards human rights and environmental norms in international supply chains. In February 2022, the European Commission presented its proposal for the CSDDD. Before embarking on its current proposal, the Commission had attempted to establish a framework for sustainable corporate governance.
61. The benefits of the new EU regulations include 1. Better protection of human rights (including labour rights) 2. Healthier environment for present and future generations 3. Increased trust in businesses 4. More transparency to enable informed choices and 5. Better access to justice for victims. It also confers some benefit to businesses which include 1. Harmonise legal framework in the EU by providing legal certainty and level playing field 2. Greater customer trust and employees' commitment 3. Better awareness of companies' negative environmental and human rights impacts 4. Better risk management and adaptability 5. Increased attractiveness for talent, sustainability-oriented investors and public procurers 6. Higher attention to innovation and 7. Better access to finance. Finally for third countries, the benefits include 1. Better protection of human rights and the environment 2. Increased stakeholder awareness on key sustainability issues 3. Sustainable investment 4. Improved sustainability-related practices 5. Increased take-up of international standards and 6. Improve living conditions of the people
62. The future directive establishes a corporate due diligence duty, i.e., identifying, bringing to an end, preventing, mitigating and accounting for negative human rights and environmental impacts in the companies' own operations, subsidiaries and value chains. The directive also introduces duties for the directors of the EU companies covered. The proposed rules will apply to: (i) large EU limited liability companies and (ii) non-EU companies. Micro-companies and SMEs are not concerned by the proposed rules. However, the proposal provides supporting measures for the SMEs which could be indirectly affected.
63. The estimated costs of the new regulation include: (i) the costs of establishing and operating the due diligence procedures and (ii) transition costs including the expenditure and investments to change a company's operations and value chains to comply with the due diligence obligation, if needed. The new rules will be enforced through:
 - *Administrative supervision* where member states would designate an authority to supervise and impose sanctions. At EU level, the Commission would set up a European network of supervisory authority to ensure a coordinated approach.
 - *Civil liability* where member states would ensure that victims get compensation for damages resulting from the failure to comply with the obligations of the new proposals.
 - The rules of directors' duties are enforced through existing member states laws.
64. The EU needs to foster sustainable corporate behaviour because:

- (i) a broad range of stakeholder groups have been calling for mandatory due diligence rules. 70% of the businesses sent a clear message: EU action on corporate sustainability due diligence is needed, and,
- (ii) businesses play a key role in creating a sustainable and fair economy and society. A third of companies recognise the need to act and take measures to address adverse effects of their actions on human rights or the environment, but progress is slow and uneven.

65. The timeline is as follows:

- The European Commission proposal was sent to the Council of the EU and to the European Parliament for amendments and approval.
- The European Parliament Committee on Legal Affairs (JURI) is responsible for the file, while eight Parliament Committees provided opinions. JURI adopted its report on the proposal on 25 April 2023, and demanded key amendments. The vote in plenary is scheduled this week [of the Regional Consultation] in Parliament.
- If adopted (as widely expected), inter-institutional negotiations can start immediately afterwards, as the Council reached political agreement in December 2022.
- Once adopted, EU member states will have two years to transpose the directive into national law and communicate the relevant text to the Commission.

66. While the EU and non-EU which will be subjected to the new requirements, SMEs would not be subjected to the requirement. The issue is – in the conversation on supply chains in the context of BHR, the supplier plays a prominent role with the principal company. As suppliers there will be some impacts. The aim is to elevate the standards of human rights and implementation of environmental laws.

Mr. Bart Devos, Vice President of Public Policy at the Responsible Business Alliance

67. Mr. Devos provided that the Responsible Business Alliance (RBA) is an industry supply chain initiative that was created by a group of leading companies from the electronic industry. Its membership consists of almost all electronics and ICT companies, globally leading ICT companies, big brands across Asia, US, Europe. The membership has now grown to a hundred of companies from other sectors such as retail and automotive that has connections to electronics and supply chain. For such sectors, a collective sectoral code of conducts are set up, which is the standard that the supply chain sustainability effort of this sector is based on. This standard is revised every three years. RBA's standards are unique as it is endorsed by almost the entire industry sector. It is also ambitious as it is updated every three years.
68. RBA has developed a third-party validation, auditing, methodology and framework to have a third-party auditing mechanism to verify those standards and supply chain. He believes it to be one of the most robust standards available because of the procedural elements included and weeks-long audits on site by several auditors at the same time. He acknowledged that audits are not due diligence; audits are to inspect conditions retroactively, at a certain point in time, they may miss things so very early on.
69. With the audit mechanism, risk assistant platform and stakeholder engagement with non-governmental organisations (NGOs), the diversity of the toolbox enables

RBA members to conduct due diligence in line with international standards. It is gradually explained from a focus on social issues and mainly tackle issues such as forced labour. RBA now looks at environmental issues such as geometric reporting and data collecting. Therefore, there is a need to take a holistic approach from a thematic point of view and holistically across the supply chain. The electronic and automotive supply chain consumes minerals that are often mined or sourced from regions that feature high risk profiles. Therefore, when a sector like this comes together and collectively approaches a due diligence, they would go first to where the higher risks are.

70. Since the beginning of this EU legislation debate, RBA's approach is to not come in as a lobbying organisation that focuses on the political aspects such as the applicability scope, liabilities or the director's duties. Instead, the focus over the past two decades has been on how due diligence works in practice to serve as an expert advisor to the EU institution. He added that there is an ongoing engagement with members of the European Parliament and European Commission. There was a meeting at the very highest level between the EU Commissioner for Justice between the commissioner and the key executives at RBA's member companies to help the commissioner advance his thinking around what is going to be the impact on non-EU companies of this directive and how to optimise that. He believed that it was necessary to introduce a level playing field and set a minimum bar for responsible business conduct. It cannot be denied that there have been shortcomings in the current industry supply chains sustainability practices despite decades of efforts. The best companies in the field still continue to see human rights challenges while companies that have lagged behind do not have sufficient incentives to conduct supply chain due diligence.
71. Some of the largest companies are utilising RBA's tools to implement due diligence as legislation is becoming the main driver of how they conduct due diligence. The focus of RBA is to ensure that the standards and tools will enable companies to meet these new laws. Further, it is to ensure that RBA's code of conduct thematically aligns with those emerging requirements and ensuring that the tools are up to date. For companies to implement their activities, they are required to look at EU directive which will be the most prominent and impactful law. There are existing sector specific laws such as the EU Battery regulation or National laws such as the German Supply Chain Due Diligence Act that legislates this space. It is clear that auditing alone will not be sufficient.

Mr. Livio Sarandrea, Global Policy Advisor on Business and Human Rights at the United Nations Development Programme (UNDP)

72. Regionally, at the EU and most recently, in Asia, there have been a focus on NAP on BHR. Now, there is a need to ensure that those NAPs include environmental considerations. There have been several initiatives taking place in within the region, such as the work of UNDP in Thailand and the Stock Exchange of Thailand to ensuring that human rights and environment standards are actually set for reporting for companies.
73. On CSDDD, in terms of proposal, is very much encouraging. The measures promoted by the UNGP is very much welcomed. UNDP encourages all governments to strongly consider norms around HRDD and environmental due diligence (EDD) beyond slavery laws to a broader human rights and environmental due diligence.

74. The discourse around responsible businesses is traditionally more advanced in Europe and Asia. The trend of adopting NAPs began in Europe. Asia has the tendency to follow these footsteps; taking good inspiration from the EU. He hopes that the CSDDD would inspire more countries in the region to look at corporate respect for human rights and the environment, and that countries in the region that are currently working on their NAP BHR do not see voluntary and mandatory policy work as challenging or opposing to each other. Instead to see the two instruments as complementary to one another. He concluded his views by stating that Europe has NAPs and mandatory norms. At least three countries in Asia have benefitted from the inspirations of the EU, also with UNDP's support. He concluded that the CSDDD will impact thousands of ASEAN companies.

Ms. Cynthia Peterson, Custodian of Social Performance at Petroliam Nasional Berhad (PETRONAS)

75. One of the steps Petronas has undertaken since 2011 and the launching of the UNGP is to ensure that the suites of due diligence tools meet the UNGP. Ms. Cynthia shared that there are now new forms of energy being invested in; renewables, hydrogen and other forms of renewable energy that are on the horizon. Petronas is focusing on ensuring it could fulfil the UNGP. The UNGP is robust enough to now accommodate the environmental aspect, it is seen as a helpful driver to triangulate the environment, human rights and climate action because there is a growth of court actions using human rights lens on environmental issues.
76. The human rights and environment due diligence are conducted separately as different skillsets are required for human rights as well as for the environment, which she sees as a challenge. The industry is able to build on its focus on the UNGP with some harmonising involved in terms of how companies are going to fulfil those requirements. It is also quite a monumental job to convey that down to the supply chain. She is of the that the legislation from the EU, may or may not impact the value chains in terms of Petronas' suppliers, though she mentioned that the company is preparing itself for it as they have companies located in the EU. Petronas is advocating down the value chain in terms of providing training and updates, focusing on skilling, to ensure its suppliers are well prepared.
77. It is really important to focus on why companies are doing this and that is to ensure that impacted stakeholders have their issues addressed. She shared that while it is sometimes difficult for companies to understand why all those requirements are enforced on them, it is indeed a long journey that cannot be resolved very quickly.

Mr. Edmund Bon, Former Representative of Malaysia to the AICHR (2016-2018) & Head of Chambers (Civil) at AmerBON Advocates

78. Mr. Edmund Bon shared of Malaysia's effort to developing a national baseline assessment (NBA) for the NAP BHR. The key learning that stood out from the engagements and consultations with businesses, he said, is that plenty of companies initiate and adopt green initiatives at a certain level because of the sustainability indicators that are put in place e.g., by the Malaysian stock exchange Bursa Malaysia. However, companies do not go further than that. Some companies do not look sufficiently at whether there is real impact on the indigenous people or whether there is sufficient support and protection for the vulnerable groups; i.e., women and children. They do it in terms of whether it is sufficient to meet a sustainability indicator.

79. The sustainability rules in Malaysia such as by the Bursa Malaysia are good. The stock exchange has just launched an enhanced sustainability framework but the conversation stops at that point. This is because a number of the listed companies do in fact comply with the rules but the compliance may not be sufficient as the indicators are not robust enough.
80. Speaking of non-listed companies or users, especially the SMEs, they are actually completely out of the conversation, which is unfortunately the case in Malaysia. He added that it is nice that listed companies have glossy sustainability reports as he had conducted trainings with over a hundred listed companies on sustainability. However, when one looks further into some of the companies, they would find that the companies are unsure of the things that are going on within their operations and supply chains; they would merely share data with consultants to write up a nice report.

Ms. Nurul Hasanah Ahamed, Head of Group Sustainability Division at FGV Holdings

81. As a responsible company, many of the plantation companies including FGV has made commitments to NDPE (No-Deforestation, No Peat Land Development and Exploitation). This is not new; the commitment is born in 2013, cascaded and amplified to be adopted by many plantation companies and it is also embraced by the Roundtable on Sustainable Palm Oil (RSPO).
82. Companies such as FGV have embed their commitment to NDPE in the company's policy commitment. Ms. Nurul Hasanah shared that the company conducts assessments – mostly on the ground – to ensure its operation is not involved in any exploitation. They would also need to engage an independent external assessor – independent of RSPO and Malaysian Sustainable Palm Oil (MSPO). Social NGOs would conduct the assessments to ensure that there are no forced labour incidents.
83. FGV has taken efforts to enhance its labour practices including through the due diligence process. The company has identified areas and issues that requires improvement: child labour, gender equality, indigenous communities and communities around our operation. On matter concerning forced labour, FGV looks into the matter of ensuring that all workers claiming to be under the force of debt bondage to be reimbursed for the fee they have claimed to have paid in their home country. This is part of FGV's due diligence process of human rights.

Recommendations

The recommendations that were extracted from Session 4 were:

1. To fully endorse and integrate those existing standards and concepts from the UNGP, OECD and Multinational Enterprises (MNE) Guidelines.
2. For NHRIs to integrate their work on BHR when it comes to their role of raising awareness; their very important role as a grievance mechanism, as a state non-judicial grievance mechanism to be looking at complaints.
3. Investors should set expectations to companies; investments should go to business operations that are clean and green across the supply chains.
4. Due diligence processes need to be robust and done in a more targeted fashion.
5. Though there are sufficient mandatory requirements that are already in place for listed users, there is still a need for further enhancements. For non-listed users and SMEs in Malaysia, the Companies Commission of Malaysia (SSM) have a voluntary measure known as 'business review report' to be produced by directors

as part of the company's reporting. It should be implemented in terms of mandatory due diligence. However, reporting requirements are completely different from implementation requirements.

**Session 4: Ensure Justice and Equity in Environment and Climate Action:
Effective Remedy for Human Rights Harms**

**Professor Surya Deva, Director for the Centre of Environmental Law at
Macquarie University & the UN Special Rapporteur on the Right to
Development**

84. Access to remedy is seen in the context of Pillar 3 of the UNGP. However, access to remedy is a cross-cutting issue that can be found in all 3 pillars of the UNGP. If read carefully, Principle 1 of the UNGP talks about the duty of states to protect against human rights abuses; that itself talks about the element of investigations and punishments, among others. The states are required to ensure access to remedy as part of the duty to protect against human rights abuses by business enterprises within the territory or jurisdiction.
85. Pillar 2 talks about human rights due diligence. It has received the most significant attention under the UNGP but Principle 22 also talks about remediation. If businesses are not able to provide remediation for harms that they have caused or contributed to, then they will be considered as not discharging their responsibilities in respect of human rights. Pillar 3 focuses entirely on access to remedy element. Access to remedy is not getting that much attention that it deserves under the UNGP, not normatively nor in practice. Pillar 3 specifically outlines both procedural and substantive dimensions of access to justice or remedy.
86. Often, the focus is on procedural dimensions because the term is "access" to remedy. The effectiveness should be both in relation to procedural aspect; there should be access, no high costs, legal aid should be available – and only then people should be able to see substantive remedy that is tangible and effective. Non-state based non-judicial mechanisms: where grievance mechanisms of companies or multi-stakeholders or sector specific may become relevant, or these could be international financial institutions that have those systems. But irrespective of the type of mechanisms, what is crucial is that these are effective. The effective is both procedural and substantive component.
87. There are elements in Principle 31 about effectiveness that are very crucial. The gender responsiveness or the intersectional elements of discrimination or the harm that may be there. All of these institutions must take cognisance of the differentiated impact of children, women, indigenous people, persons with disabilities, and more. Then, craft their remedies which are responsive to the needs and aspirations and different experiences of different people. The UNGP does not make any explicit reference to climate change. Despite that, they are absolutely relevant. Businesses cannot respect human rights unless they integrate climate change consideration into their HRDD process. Climate change is already impacting everyone. That is where the relevance of UNGP as well as remediation become crucial.

Mr. Roberto Cadiz, Founding President of Climate Action and Human Rights (CAHRI) & Former Commissioner at the Commission of Human Rights of the Philippines (CHRP)

88. The National Inquiry on Climate Change that was conducted by CHRP was the very first inquiry that was conducted by any NHRI that sought to establish the link between human rights and climate change. This in itself was a challenge; there was no precedent, there were no previous activities or exercises conducted by any NHRI on such a topic. The jurisdiction over the subject matter was challenged by the respondents or the carbon majors; there no business looking into the topic of climate change. The other practical challenge is that there were insufficient resources; the inquiry was first demanded by a petition. There is a recognition that this concerns extra-territorial obligations and that it did concern transboundary harm. He shared that the inquiry saw success; hearings were conducted in Manila, in London, in New York City, with witnesses all over the globe. It was a very successful global inquiry that was conducted by a small NHRI.
89. The party that has a primary obligation in addressing human rights issues are states. Having said that, under international law, businesses are also responsible towards human rights. There is a controversial holding that CHRP has done; the sale of carbon fuel cannot be made the basis of liability of carbon majors. During the inquiry, the Commission found that at best, the ratio of renewable energy as against fossil fuels in terms of climbing the global economies is 12% to 88%. If the carbon majors were to be held liable for the carbon fuel, that would be equivalent to saying the need to start selling fossil fuel. In doing so, the global economy will drive forward and the adverse impact of climate change will be equally great.
90. The challenge is therefore to transition the global economy from dependence of fossil fuel to the use of renewable energy. The primary obligation of states in the context of addressing climate change issue is to hasten or to catalyse this transition. This means that for example, dependence on global fossil fuel companies should no longer be incentivised. The financial incentives should instead be channelled towards renewable energy enterprises. The point of the obligation of states is to require primarily carbon majors and other enterprises to conduct EIA, climate change impact assessment and human rights impact assessment.

Dato' Mah Weng Kwai, Former Court of Appeal Judge of Malaysia & Past President of Malaysian Bar and the Law Association for Asia and Pacific (LAWASIA)

91. Section 2 of the Environmental Quality Act (EQA) is very well defined. "Environment" is being dealt as a separate legislative subject because the expression of environment is a multi-dimensional concept that is incapable of having an independent existence. It is a concept that must entrench or relate itself to some physical geographic feature such as land, water, or air or to a combination of one or more of these or all of them.
92. There are 34 Acts of Parliament that deal with environment ranging from pesticide laws to fisheries, land and so forth. To date, there are 41 subsidiary legislation and counting. All these are now well drafted. The question is if they are sufficient in terms of commitment and enforcement. How much of these are being enforced and if not, why not? Why are the enforcement agencies not doing

their work? Only when problems arise, the public becomes fully aware of what the law is and where or not it is sufficient.

93. Article 5(1) of the Federal Constitution – “right to life” – is not just a right to living but it includes the right to live in a reasonably healthy and pollution-free environment. Order 53 of the Rules of High Court 2012 (Judicial Review) is where the court can review the decisions that have been made, to check whether or not it is right or wrong. As a general rule, the court has to take into account not only the interest of the applicant and the respondent but also the interest and merits of the public as a whole in good administration.
94. The *locus standi* question is a recognition of the right and access to court.
- *Taman Rimba Ampang*: court granted leave to the applicants to have a judicial review. It was an important case dealing with the issue of locus standi. The Federal Court rules that the applicant has to pass the adversely affected test; the applicant had at least to show that he has a real and genuine interest in the subject matter. It is not necessary for the applicant to establish infringement of a public right or a suffering of special damage. This is a very important criteria; as long as you have a right and that right has been adversely affected.
 - *DBKL v Trelisses*: Federal Court upheld the principle of locus standi and public interest; the appellants have genuine interest in the subject matter of the judicial review and have demonstrated that they have been adversely affected by the impugned decisions because they are residents, or occupiers of properties in the immediate vicinity in the proposed developments as well as users of the park.
95. Charlie Holt defines Strategic Lawsuit Against Public Participation (SLAPP) as having an intimidating and chilling effect on public participation where both those directly sued and those aware of suits targeted at others are dissuaded from engaging in public participation due to the fear of being sued, running the risk of having to pay damages and costs.
96. SLAPP disrupts the legitimate collective action to defend the rights of workers and communities. This is a strategy; big corporations with resources would attempt to pre-empt strategic litigations by the small NGOs. Example of SLAPP cases:
- (i) An NGO in Malaysia (Save Rivers Sarawak) reported of deforestation had several breaches, defaults, certification without compliance and bogus consultations and the company in counter filed a defamatory action.
 - (ii) *Public Prosecutor v Megatrix Plastics*: after all the breaches, the company was sentenced to a fine of RM30,000 and a default 12 months imprisonment on each of the charges. RM30,000 is just a slap on the wrist for these big companies.
 - (iii) *Prolific Yield* case: Justice Celestina had very strong words to talk about the people who disregard the laws and talking about the social cause and so on. Here, the court imposed a fine but it was far from sufficient.
 - (iv) *Tan Bun Teet / Lynas* case: Australian companies were coming to Malaysia to mine rare earth and cause pollution. Judges in the past were not as brave as they are today in 2023 as they allowed it to continue.

Ms. Nicole Ponce of the World Youth for Climate Change

97. The World Youth for Climate Change launched a Youth Climate Justice Handbook which addresses the obligations of states and the legal consequences under these obligations. This handbook serves as a tool to assist states in preparing their submissions before the ICJ. Such consensus-based adoption carries profound significance marking an unprecedented moment in the history of international law because never before has the UNGA requested an ICJ advisory opinion through a resolution adopted by consensus. This consensus underscores the universal recognition among states of the seriousness of climate crises and the importance of multilateral cooperation in addressing it, highlighting the crucial nexus between climate change and human rights.
98. The handbook comprises a summary for policymakers, a legal memorandum, a status report on the principles of international human rights law relevant to climate change, aims to amplify the voices of youth and civil societies of human rights and inter-generational equity. She hopes that the handbook will serve as a literature to the court and legal guidance to states and legal advisors. It is actually an embodiment of youth voices from around the world demanding climate justice and inter-generational equity. It is a significant step forward in our call for meaningful participation.
99. In addressing the obligation of states on their body of international law to ensure the protection of climate system and other parts of the environment:
- The overarching legal obligations states owe to each other and to present and future generations is ensuring that climate system and other parts of the environment are protected from anthropogenic GHG emissions. This overarching obligation has been firmly established in customary international law, general principles of law, treaty law, and in the rulings of international courts and tribunals.
 - Taking into account the principles of inter-generational equity, this overarching obligation of states requires protecting the environment through both present and future generations.
 - Protecting the environment including the climate correlates directly with protecting human rights. Very often, environmental degradation leads to human rights violations and human rights cannot be enjoyed with severe pollution and climate change curtail, among others, access to health and clean water. International environmental law principles inform the application of the law and create legal obligations of the states.
100. The legal consequences for not upholding international law obligations are state's responsibility, and state responsibility is based on three primary principles:
- (i) Every internationally wrongful act of a state entails its international responsibility.
 - (ii) An internationally wrongful act exists when conduct consisting of an act or omission is attributable to the state and constitute a breach of an international obligation owed by that state.
 - (iii) The characterisation of an internationally wrongful act is governed by international law and is not affected by its characterization as lawful by internal law.
101. Failure of states to ensure the protection of the climate system and other parts of environment from anthropogenic GHG emissions and for present and future

generations is an ongoing violation of international law that continues to cause harm. This situation must be rectified and full compliance with international law must be reinstated. Such compliance can only be achieved by taking decisive action to address climate change as required by international law. The legal consequences for states that breach these obligations are those of state responsibility that is the obligation to cease harmful conduct and the obligation to provide reparation for the harm caused including but not limited to restoring affected ecosystems to a regional state, and if restoration is not feasible, the infringing state must provide sufficient reparation to affected parties which may include compensation and other forms of redress.

102. The importance of power of storytelling in this narrative and how civil societies campaign was actually the first to persuade the public – through their leadership, governments throughout the world have since its inception been propelled and energised by students and young people. The successful adoption of the UNGA resolution, thus, was achieved through partnerships between high ambitious governments, organised youth and civil society partners.

Dr. Rachel Widdis, Director of Article

103. What is really important is to recognise the global dimensions. There is a need to enhance accountability and access to remedy as there has been so little accountability or so little access to remedy.
104. Change is occurring in terms of access to remedy, through the following:
- (i) Legislation; national and proposed EU framework for CSDDD.
 - (ii) Numerous litigations
 - (iii) Litigation taken in tort law as there was no other way to take it. Lawyers and claimants had to find innovative ways to seek access to justice and remedy.
 - (iv) Climate litigation against governments and private companies with human rights strategically involved in it.
105. The difficulty that arises in taking these cases is that they are extremely difficult to take; they are long and very expensive. There is very little legal aid available and very little information for claimants. There is a big asymmetry in access to justice. They can take decades in certain cases. In one of the cases, there were 7,500 claimants. By the time it has been decided which country would hear the case, 1,000 of those claimants had passed away.

Dr. Prabianto Mukti Wibowo, Commissioner at the Human Rights Commission of Indonesia (Komnas HAM)

106. The Commission was first established under the Presidential Decree 50/1993 and was further reinforced by law on human rights No. 39 of 1999. It was given the mandate to conduct human rights education and disseminate information about human rights in Indonesia. The Commission, further, conducts monitoring and investigation and mediation in relation to human rights and provide recommendations to related government agencies.
107. In the next five years of its programme, the Commission has decided to prioritise the following nine working areas:
- (i) Gross violation on human rights
 - (ii) Human rights issues in Papua

- (iii) Agrarian conflict
- (iv) Marginal group especially for women, children, indigenous people
- (v) Protection of human rights defenders (HRD)
- (vi) Freedom of religion and belief
- (vii) BHR
- (viii) Anticipate the 2024 Election
- (ix) Monitoring of National Action Plan on Human Rights (NAPHR) 2022-2024

108. BHR is an important issue for the Commission; corporations are the second biggest defendants in terms of number of complaints received by the Commission. Last year, more than 3,250 complaints were received and were about land rights, environmental rights, labour rights and misconduct of law enforcers including torture and violence. On BHR, their work strategy will include the raising awareness, monitoring the implementation of BHR principles, by conducting assessment and giving rewards to corporations that implement BHR in business activities. The Commission would conduct effective and fair mediation in handling cases of human rights violations by corporations, develop remedial patterns and mechanisms to fulfil the rights of victims of human rights violations by corporations, and provide cooperation and networking at the national, regional and multilateral levels.

109. The Commission focuses on mediation mechanism in settling conflicts on environmental aspect as court proceedings can be lengthy and costly from experience. At times, it is difficult for the victims to prove the evidence; it is even difficult when the justice has a limited knowledge on environment and human rights norms. Even if the case is won, it is not necessarily executed because of the difficulties in the execution process and of course the defendant will always defend their arguments to not be executed according to the court's decisions. However, in particular cases, the Commission is also involved in court proceedings by providing *amicus curiae*.

110. In Indonesia, there are currently at least two regulations that may help victims of corporate abuse in obtaining access to remedies:

- (i) Supreme Court No. 13/2016 on the Guidance in Handling Corporate Crimes
 - Clarifies to what extent companies may be held liable for committing criminal offences and provides a way for victims to obtain restitution.
 - Despite these advantages, there are remaining challenges. Almost 70 laws in Indonesia contain criminal sanctions for companies, including crimes in the environment, forestry, plantation, mining, fishery, etc. Unfortunately, there has been no criminal cases brought against the corporations since the adoption of this regulation. The regulation procedure is burdensome and exhaustive and therefore it might be difficult for victims to obtain remedy.
- (ii) Presidential Regulation No. 13/2018 on the Disclosure of Corporate Beneficiary Owner
 - The obligation to disclose information on the corporate beneficiary owner is useful to identify who should be held responsible for corporate wrongdoings. Unfortunately, although information on beneficiary owners is regarded as public information but procedures

to obtaining public information may not be easy. Hence, procedures to obtain remedies for corporate crimes must be made simple and the obligation to disclose beneficiary owners must be adopted into law on limited liability companies. Failure to comply may be sanctioned.

Recommendations

1. Effective remedies require the following critical elements; public apology, compensation, prosecution, guarantee of non-repetition, rehabilitations, depending upon the nature of the harm that has been caused and what the victims are seeking for. It is vital that the people who are seeking remediation, they have no fear of retaliation. If that fear is there, these systems cannot provide remediation.
2. States should require carbon majors to adhere to transparency measures. Laws should be properly implemented such that private enterprises will be more transparent in their operations regarding their carbon footprint, investment on renewable energy as against continued investment on fossil fuels.
3. To create a stronger framework for implementation; coming up with stronger penalties for not complying with the provisions of the agreement, dispute resolution mechanisms and strengthening education, awareness and promotion programmes concerning all these transboundary harms.
4. Judges to be brought into this discussion to increase awareness on environmental law. The Malaysian Bar emphasises the importance of enforcing environmental regulations to curb actions that endanger our ecosystem permanently.
5. Proposed Order 70A of the Rules of Court: an order which is to be brought in. The issue of *locus standi* and recognition of rights. Under Order 70A, one could come to the court and it would provide you an avenue to determine the various terms of reference and all other matters that come with environmental cases. It addresses on the methods of initiating cases in court; right down to the filing of relevant cause papers, service of cause papers, etc.
6. There is a movement in accountability and access to remedy but it remains very difficult. The best thing is to prevent. Access to remedy is so necessary to have, but ideally it should never occur in the first place. Crucial importance of grievance mechanisms:
 - Open-to-all grievance mechanisms; anyone should be able to access the grievance mechanism with a legitimate complaint. They should be accessible to everyone with no literacy and internet access.
 - There should be very low threshold. Companies should be engaging with their grievance mechanisms in vital way to improve access to remedy.
7. Mediation would be the most appropriate mechanism to overcome the conflict or the complaints on the environmental issues. Tangible outcomes may be achieved and would be less costly as compared to litigation.
8. Strengthening regional transboundary criminals on BHR; having a regulatory framework to be implemented and provided in regulations that may be applicable to all AMS.
9. Suggest that the ASEAN member states through the AICHR collectively collaborate with the NHRIs to strengthen the implementation of the UNGP in advancing and providing effective access to remedy.

DAY 2: NATIONAL ACTION PLAN (NAPs) ON BHR AND CONSULTATION ON REGIONAL FRAMEWORK ON ENVIRONMENTAL RIGHTS IN ASEAN

Session 5: National Action Plan on Business and Human Rights (NAP BHR). Incorporating Climate Change and Environmental Protection into NAP BHR: Issues and Challenges

Dr. Punitha Silivarajoo, Deputy Director General (Policy & Development) at the Legal Affairs Division of the Prime Minister's Department, Malaysia

111. On the process of developing the NBA and consequently the NAP BHR, Malaysia kicked off the engagement and data collection in 2019. The engagement with stakeholders were carried out over 2020 to 2023. The next phase after developing the NAP BHR is to monitor the action plan over the course of 2027 to 2028, and evaluation to be conducted in 2029. The current government structure for the NAP BHR is as follows:
- a. The Steering Committee chaired by the Minister in the Prime Minister's Department.
 - b. The Technical Committees consists of the Ministry of Human Resource, Ministry of National Resources, Energy & Climate Change and the Malaysian Anti-Corruption Commission.
112. The government recognises the importance of the environment in BHR given that it cuts across various areas and agencies. It also has a far-reaching effect and may arise from many sources. She shared that the government understands the impacts it has on both the state and federal jurisdictions and it needs to be dealt with as a very sensitive issue due to some of the issues that encroach on the state's jurisdiction.
113. It must be acknowledged that in Malaysia, there is no mention of the word 'environment' in the Federal Constitution. The only acknowledgement received is through the Tan Teck Seng case that touches on the right to life in Article 5(1), which was held to include the right to a clean and healthy environment. The government is currently waiting for the submission of the final report of the NBA. After the report is received, the government intends to host a national conference on BHR where the NBA report will also be launched. Then the development of the Zero Draft for NAP BHR will then follow with hopes that it will be launched in 2024.

Ms Nareeluc Pairchaiyapoom, Director of International Human Rights Division at the Rights and Liberties Protection Department, Ministry of Justice of Thailand

114. Thailand launched its NAP BHR in 2019. It started off with NHRI submitting statistics to the government and cases related to human rights violations are increasing. NAP BHR was done by voluntary pledges and Thailand had accepted recommendations from Sweden. 2016 to 2019 was when the study was being developed and regional consultations were conducted. 4 key areas of the NAP BHR were agreed upon based on voting:
- (i) Labour
 - (ii) Community, Land, Natural Resource and Environment
 - (iii) Human Rights Defenders
 - (iv) Cross Border Investment and Multinational Enterprise

115. The NAP BHR contains mainly voluntary measures for businesses to set the minimum expectations from the government. Some of the measures include: requiring businesses to adhere to relevant rules and monitor their supply chain to do the same; involving and listening to the voice of the people in the project by ensuring of their participation; conducting human rights due diligence (HRDD), human rights impact assessment and disclosing results to the public; and promote communication, mediation and ensuring access to complaints and grievance mechanisms.
116. The government has achieved 130 out of 142 activities (91.55%) of the NAP BHR. The Securities and Exchange Commission (SEC) has mandated all listed companies to disclose information on ESG. The Ministry of Finance (MOF), on the other hand, has included eco-friendly products into the preferred list of vendors for public procurement to provide incentives for businesses. She shared that it has been difficult to regulate the NAP BHR in businesses as it is not a law but rather a plan. Most big businesses have reported back to the government and based on these reports, they found some key achievements. For instance, most of the companies have officially announced its human rights policy, adopted guidelines to prevent human rights violations, conducted HRDD, monitor supply chain management, and provide remedy when human rights violations occur.
117. The challenges in the implementation of the NAP BHR also follows. One of the challenges encountered is COVID-19, where the NAP BHR was implemented three months before the pandemic. There were also different needs among the stakeholders (government and private sector) and the different levels of resources depending on the size of the business or sector. She shared the important observations made on the NAP BHR are that there are a number of government initiatives on law and policies related to the environment that were launched. As for the business sector, only big companies voluntarily report on the implementations on the NAP BHR. Hence, there is a need to work more with SMEs. Some of the incentives for businesses that have been made are the Human Rights Awards from the Prime Minister to incentivise businesses to be a model company for their business group. The BHR Label and Tax incentives are also currently under consultation. Thailand's 2nd NAP BHR key priorities are the same as the first instalment. There are new issues such as measures to address the problem of PM2.5, climate change, carbon reduction, green energy, cross border environmental impact, and so forth. The format stays the same as a smart mix between obligation for states and voluntary measure for businesses.

Ms Patricia Rinwigati Waagstein, Director at Djokosoetono Research Centre, Faculty of Law, University of Indonesia

118. The first stage of Indonesia's journey towards the NAP BHR began in 2017. Initiatives were taken by the Human Rights Commission of Indonesia (Komnas HAM) and civil societies. The idea was taken up by the government under the coordination of the Ministry of Economic Affairs, Ministry of Foreign Affairs, Ministry of Law and Human Rights as well as the National Planning Agency. The process included meetings and consultations with the public, civil societies and business associations to discuss about the concept of NAP BHR including the challenges and issues to be covered and is to be followed up by the baseline studies. Finally, there was the drafting process.

119. The second stage was in 2021, known as the adoption process. It was led by the Ministry of Law and Human Rights. To smoothen the process, a national task force was established consisting of 20 ministries, three civil society organisations (CSOs), one academician and three business associations to conduct two tasks:
- (i) To prepare for the adoption of the NAP BHR. There was a decision to aim for the higher legitimation switch – the presidential enforcement through the presidential decrees. There was a need for a binding power to bind the whole ministries so the human rights itself is not dealt with solely by the Ministry of Law and Human Rights but also other ministries.
 - (ii) A national task force at the provincial level was also established, in which two main streams began streaming human rights into the local government, as well as the corporations at the provincial and city level. She shared that a draft was submitted to the Presidential Office (special mechanism) to obtain endorsement. Unfortunately, until the end of the year, there was no response from the President nor the State Secretariat. Another alternative was figured through an annual program, which consequently led to its adoption.
120. In January 2023, the NAP BHR was listed in the 2023 Primary Priority list; the NAP BHR is to be finalised by the end of the year. Financial allocations will be given to that process. The second question is whether the environment, including climate change, has been included in the NAP BHR. She shared that three documents are being prepared, which concerns:
- (i) The draft of Presidential Regulations of Presidential Decree;
 - (ii) Strategies: The three different strategies are not based on the issues but rather on the actions. The first strategy focuses on the discussion on including environment in guidelines to government, CSOs and businesses. This includes defining the right to environment and climate change, which must be elaborated further and included in policy.
 - (iii) Strengthen access to justice, particularly on non-judicial mechanisms. This consists of activities that will be renewed every year, which is flexible and depends on the needs.
121. Process is very important component. It took more than five years to finalise the NAP BHR and it is still uncertain if the NAP BHR will indeed be finalised by the end of this year. The process, however, was quite meaningful because there were communications, interaction, disagreements, agreements that focus on BHR. Through these processes, awareness was created. The NAP BHR and human rights are tools to increase the capacity of the businesses to be able to compete at the global level. When it comes to approaches, she shared that they adopted a more realistic and minimalistic for better buy-ins from, and agreements by, all the government ministries as well as the CSOs.

Ms. Karen Gomez-Dumpit, Former Commissioner at the Commission on Human Rights of the Philippines, (CHRP)

122. The UN Working Group on BHR (UNWG) was formed in 2011 to promote the effective and comprehensive dissemination of the implementation of the UNGP. The UNWG is a charter-based mechanism at the international level. The UNWG has established an NAP Guidance Note. Thailand is a stellar example in the region; the NAPBHR is based on the following essential criteria:
- The NAP BHR is to be founded on the UNGP.

- The NAP BHR needs to be context specific and addresses the country's actual and potential business-related human rights abuses.
- The NAP BHR needs to be developed in an inclusive and transparent processes such as in Malaysia and Indonesia.
- The NAP BHR must be reviewed and updated regularly, which Thailand is in the process of it.

123. The UN Human Rights Council welcomes the important role of NHRIs – established in accordance with the Paris Principles – in relation to BHR and are encouraged to further develop their capacity to fulfil this role effectively. Capacity building actions for NHRIs and regional networks on BHR include identification of priority areas. There is a need to strengthen advocacy of the NHRIs by enhancing the NHRIs' visibility and communication and sharing relevant information and best practices on BHR. The Philippines is part of the working group to develop a NAP BHR. The government is however, not committed to developing the NAP. The process that was undertaken by the Commission on Human Rights of the Philippines (CHRP) has been encouraging. The Commission has been further pushing for the development of a NAP BHR since 2013, aside from its other efforts to encourage enhanced respect for human rights by businesses.

124. In 2016, Presidential Human Rights Committee, which is the advisory body composed of the main cabinet agencies of the executive, held a government consultation on NAP BHR. In March 2017, the head of the Presidential Human Rights Committee Secretariat announced that the executive branch will embark on developing a third National Human Rights Action Plan for the term 2018 to 2022. The UNWG has tiered or categorised countries that have produced a NAP. She was in view that Thailand has done the best in ASEAN in terms of BHR. Another category is states to include a BHR chapter in their country's NAP on human rights, which none of the AMS has. The third category is states that are in the process of developing a NAP BHR i.e., Indonesia and Malaysia, as well as states in which NHRIs and/or CSOs have initiated steps in the development of a NAP on human rights such as the Philippines.

125. Taking a look at selected actions taken on BHR issues in the Philippines, since the first cycle of the Universal Periodic Review (UPR), the Philippines have submitted business-related incidences of human rights violations. The issues include airline policies on admitting persons with disabilities (PWD) passengers, impact of mining operations, violence, displacement, mining militia, labour rights violations, HRDs, threats, harassment, killings, red tagging – all of which are similar issues in ASEAN. In one of the cases, CHRP conducted a fact-finding mission in 2016 that involves displacement of residents in an area due to coal mining operations in an island called Semirara. The Commission formed an inter-agency working group, participated by various government agencies and CSOs, and conducted field visits to the island to be able to ascertain certain facts and practices of the corporation in this regard. Through the working group, the CHRP raised the following recommendations:

- Mining corporations to engage with communities and enhance trust using a human rights-based approach and adopt a no-displacement policy as part of its human rights commitment.
- For the Philippine government to establish or strengthen laws with anti-discriminatory provisions, to protect marginalised and vulnerable groups from the effects of forced eviction and resettlement.

126. She further shared of a position paper on the corporation code that was submitted to the Committee on Trade and Industry in the House of Representatives, by CHRP, to amend the corporation code. The Commission recommended for a UNGP alignment to the code, specifically relating to Pillar 2 on business responsibility to respect human rights and the principal of ‘do no harm’ as well as HRDD, which are at the corner of the second pillar. The corporation code amendment was nevertheless passed without having incorporated the position paper of the Commission. The Commission has continued to advocate for the inclusion of BHR principles through draft legislations and also through advocacy for a NAP BHR. In the context of corporate responsibility, the limitations of the UNGP have been highlighted:

- The voluntary nature of the UNGP; and,
- The weak regulatory functions and capacities of government agencies to monitor, enforce and assess BHR.

127. There are opportunities and key entry points to push for a NAP BHR. There is added value of the NAPBHR as seen in the examples of the process in Indonesia Malaysia. Specifically in the Philippines, it is a matter of the convergence point to apply the UNGP which crystallises state obligations, businesses’ obligations to respect, protect and fulfil remedy for human rights.

Recommendations

1. Consider amending the Federal Constitution to add the term *environment*.
2. To ensure the coverage of at least the important eight areas concerning environment in the NBA and consequently the NAP BHR, which are as follows:
 - (i) *Environmental governance*: for a systematic and well-structured governance structure which fosters effective implementation and accountability in environmental reporting. In Malaysia, there is a government structure in place but the question is: how effective it is, and if all parties are involved in such a mechanism.
 - (ii) *Effective legislation*: to ensure domestic laws that are developed or amended meet the needs of international commitments made. This includes the laws relating to areas of energy, climate change, biodiversity. It is difficult to make international commitments if the domestic laws do not make up for those international commitments.
 - (iii) *Public participation*: to ensure that public participation environment projects, particularly development projects are given emphasis. Include environment and social impact assessments to be conducted prior to any development projects.
 - (iv) *Environmental justice*: recognising HRDs and their plight. To look at SLAPP cases in the areas of environment and the rights of indigenous people, particularly on land rights.
 - (v) *Pollution and forest management*: to look at economic based instruments coupled with Command and Control (CAC) instruments as well as specific legislations to provide incentives or disincentives.
 - (vi) *Education and promotion*: to ensure sufficient awareness at all levels of society, even businesses.

- (vii) *Green technology*: to ensure and encourage use of green and low carbon technology including renewable energy, energy efficient technology and for technologies to be affordable for businesses to utilise.
- (viii) *Sustainable Consumption & Production (SCP)*: to ensure responsible business practice including sustainable public procurement and to monitor carbon footprint and work towards reducing it.

Keynote Address 2: The Escazú Agreement – Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean

Mr. David Barrio Lamarche, Legal Officer, United Nations Economic Commission of Latin America and Caribbean (ECLAC), Secretariat of the Escazú Agreement

128. The Escazú Agreement has 24 signatories and 15 parties with a few more on the way. The agreement entered into force on 22 April 2021, two years to have been fully fledged into implementing the treaty. On 21 April 2021, the first seven members of the committee board of experts were appointed to assist parties on a cooperative, non-confrontational approach. Earlier this year, the official implementation guide to the agreement was published. As the African proverb says: 'If you want to go fast, go alone. If you want to go far, go with others.' It all started in 2012 with the 2012 UN Conference on Sustainable Development (Rio+20) in Rio de Janeiro, Brazil (Rio+20).
129. The three main aspects of the Agreement are as follows:
1. The first underlines the verb representation. The mere connection of rights was not considered sufficient. There was a need to make this aspect a reality in practice.
 2. The second underscored the importance of capacity building operations, placing them at the same levels as implementation.
 3. The third, the importance of referring to intergenerational equity, in the notion of sustainable development, which was included in the objective encompassing of the three dimensions - social, economic and environmental. The agreements have definitions, principles, general provisions in place as well as what concerns the main pillars that are access to information, public participation, access to justice, human right defenders in environmental matters and capacity building and cooperation. In addition to that, it offers final provisions.
130. Latin America decided to embark on this journey more than 10 years ago. The region is one of the most affected regions by climate change, land declaration and biodiversity loss. Though the region may not be the poorest, it is one of the unequal regions in the world and with such inequality was also expressed, the most vulnerable populations suffer. Further, the region is one of the most dangerous regions in the world for the defence of the environment. According to the reports, ¾ of murders of environmental activists worldwide occurred in the Latin American region last year. Thus, these contextual elements defined and shaped the agreement.
131. There was a shared notion that these matters cannot be addressed by a single country alone, and that regional cooperations offers a valuable platform to act collectively, linking the national and global commitments. There were also some common understandings: it needs to be flexible to reflect different visions and

priority systems but to also allow for different levels of development. It needed to be adapted to the regional context, it needed to be realistic not ambitious, leaving room for future developments. It needed also to be based on national priorities, frameworks, grounded on the spirit of partnership and be directed at within and among countries.

132. As for the benefits, it is premised on concerted action both among and within states. No country can tackle environment challenges alone, so the empowering call on society is to act and adopt transformative pathways for people and planet and recognising that the environment is the basis of the people's existence, well-being, and development. Thus, everyone must be informed, have a say and must be engaged in preserving it.
133. There are five stages of environmental governance.
 - i. First, it levels the playing field. It offers a common narrative, a regional standard that is shared by, and applicable to, all.
 - ii. Second, it puts people right at the core of policies and responses, ensuring that no efforts go to the detrimental populations or its environments.
 - iii. Third, it emphasises people and groups in vulnerable situations, targeting specifically those at greatest need and reaching those furthest behind.
 - iv. Fourth, the agreement preserves life; life on land but also those who defended it.
 - v. The last is implementation of the agreement that favours peace, justice, and prevents conflicts. Most environment disputes in a region are associated with the fact of lack of meaningful engagement in decision making processes and lack of accountability, transparency and effective access to digress and remedy.
134. Regional action is a driver for environmental stewardship, openly negotiated and included particularities of countries at the centre and puts a better position to deal with challenges. The region may seem homogeneous from the outside but the region has dissimilar countries and have joined efforts to reach impactful outcomes. Countries such as Brazil, an Amazon country with 210 million people that could reach an agreement, is just as valuable as countries as small as Saint Kitts and Nevis. There are also developed countries such as Chile, Mexico and Columbia, that are OECD countries, with some of the poorest like Haiti. So, the agreement really found common ground between different legal systems as well as traditions and became meaningful to different realities. It also showed that powerful solutions can emerge from the global south. It can make regional cooperation and coordination an asset. It is based on the South corporation but drew from the experience of the North. It demonstrated also that governments and non-governmental actors from all walks of life whether it be academic, private, or civil societies can work together for the prosperity of the nation. It shows that other actors from outside the region can work for a blueprint for sustainability. Developing banks, international donors, investors, and international organizations have seen in Escazú valuable partnership to strengthen their support to implement environmental access rights. The Latin America and Caribbean regions share many similarities. He hopes that the example can inspire Southeast Asia and Asia Pacific in general as it sets to give shape to its regional environmental rights framework.

Session 6: Introduction on the ASEAN Regional Framework on Environmental Rights

H.E. Professor Dr. Amara Pongsapich, Representative of Thailand to the AICHR

135. Her Excellency first shared the challenges in the disposal of the AICHR's mandates and functions in the drafting process of the ASEAN Regional Framework on Environmental Rights. The AICHR is looking at the overall process with the body was the driving agency to collaborate with other bodies and other pillars in ASEAN. The AICHR feels obligated to be looking after human rights issues in the region, though they are crosscutting and covers different dimensions. Nevertheless, the AICHR will act as the overarching agency on the issues of human rights. The second challenge is the principles of consensus decision making, which requires all AMS' agreement. This principle is followed by the principle of non-interference that leads to inaction or delay in the implementation of cross-border environmental workplans. The third challenge is the strong promotion and weak protection mandate that puts limitation on the AICHR. The AICHR has been focusing on activities concerning promotion to raise awareness and promote regional cooperation on environmental issues. The body does not have a mechanism in place to deal with protection.
136. ASEAN has an agreement on transboundary haze pollution, which is important. It was adopted in 2002 but obtained 10 signatures in 2014, which is in consensus. The ASEAN too has a convention that focuses on anti-trafficking. The convention came into place due to the pressure placed on ASEAN from Europe and the US. This took 10 years for the convention to be adopted after discussion in 2007.
137. From 2021 onwards, Thailand led the activities on environment such as workshops on human rights, environment and climate change. It was a three-day meeting with the objectives to advance environmental decision making and having protection and promotion activities on environment issues. On the first day, the meeting discussed on advancing rights-based approaches to environmental decision-making. In terms of human rights-based approach to the environment, there are three categories of human rights:
- Firstly, substantive rights that encompasses of environmental rights such as the right to clean water, air, with reference to SDG 6, 7, 13, 14 and 15.
 - Second is governance and accountability such as roles and responsibilities of duty-bearers in the context of climate action. This includes transparency and access to justice that hold duty-bearers accountable for meeting their responsibilities (with reference to SDG 1-5 and 8-12).
 - Third is access or procedural rights which is how people are included in the decision-making process regarding their climate and environment through consultation and direct participation and accessibility to relevant information (with reference to SDG 16 and 17).
138. On the second day, the workshop focused on gender and looked into the UN Women's Report on Climate Change, Gender Equality and Human Rights in Asia and the third day discussed on strengthening children's rights to a safe, clean, healthy and sustainable environment.

139. At that 3-day workshop, AICHR laid ground on the issues that need to be focused on. The workshop was hosted in 2022 and brought in the conversation on the impact of COVID-19 on human rights. It became clear that COVID-19 has posed negative repercussions on the community and people such as the lack of jobs. There were, however, also positive developments. Businesses realised that they need to do more and the government realised that social welfare and support need to be improved. Therefore, when viewed in a different perspective, COVID 19 had woken businesses and the government up to be more responsive to the pandemic spread for which all sides have been affected. Government provided remedies to eliminate the gaps in workers protection.

140. There is a need to realise to move forward to coordinate and look at environmental rights with the view of involvement of business sectors. In AICHR, there is an agreement that when working on environment rights, there is a need to include businesses and vice versa. The AICHR, on 23 September 2022, met and agreed that it should:

- Establish a Working Group on human rights and environment in ASEAN;
- Establish two co-chairs from AICHR and ASOEN;
- Establish a secretariat to provide technical advice to the Working Group;
- Coordinate with UN agencies for technical support and assistance to the Working Group;
- Engage with stakeholders and strengthen institutionalisation across ASEAN bodies and members of the working group should include qualified and experience experts in the area of environmental rights from across the ASEAN region.

141. In November 2022, the AICHR agreed to draft a proposal priority program for approval at the AICHR meeting. Earlier this year, the proposal was adopted. The AICHR intends to develop a regional strategy for mainstreaming a human rights-based approach to address substantive rights and procedural rights. The Working Group composition will include the following bodies: AICHR, ASOEN, ACWC, ASEAN Sectoral Body, ASEAN Secretariat, ASEAN Youth Forum, ASEAN Disability Forum, relevant UN Agencies and qualified and experienced experts. In addition, there may be separate meetings or consultation with informal reference groups such as the NHRIs, CSOs, and ASEAN-focused think tanks. This Regional Consultation is one of the forms of stakeholder engagement that was agreed upon by AICHR Malaysia. In April 2023, the Human Rights Commission of Thailand had organised a consultation with CSOs on the issue of environmental rights. Meetings as such can involve different stakeholders in small groups and to share the recommendations with the AICHR.

Session 7.1 & 7.2: ASEAN Regional Framework on Environmental Rights

Group 1: Access to Environmental Information, EIA and Public Participation

142. Group 1 discussed on the access to environmental information and have identified several challenges from the sharing of various countries and different perspectives. The challenges were as follows:

- (i) The lack of coordination among institutions to promote access to information.

- (ii) The lack of awareness on one's right to access information with the fact that the procedures to obtain information are complex and differs across countries.
 - (iii) Issues concerning the lack of transparency when studying on environmental impacts, government interference, and public participation.
 - (iv) The lack of standardised methods and data.
 - (v) The lack of coordination between stakeholders and the government.
143. To address these challenges, the group proposed the following recommendations:
- The need for CSOs and NGOs to be aware of public consultations within and beyond their countries and to advocate for legislation that improves freedom of information in a timely manner.
 - To agree on principles while considering national contexts to build a regional framework.
 - To customise recommendations based on different groups' access to information and focusing on disadvantaged and vulnerable groups.
144. With regard to the EIAs and public participation, one of the challenges identified is the dilemma between free access to information and confidentiality for natural resource companies that hinder comprehensive environmental impact assessments. It was suggested that impact assessments should be followed by action plans, and transboundary impact assessment was discussed, particularly in relation to the worsening of haze issues.
145. Other recommendations included:
- Initiate bilateral negotiations involving different countries to establish a legally binding framework for a transboundary impact assessment.
 - Develop guidelines to increase transparency, including human rights in EIAs.
 - Better communication channels and transparency for target groups, as well as mechanisms for international cooperation.
 - Refer to past successful international treaties and reviewing previously ineffective ones to identify areas for improvement.
146. The right to access the information is a right recognised by many of the country's constitution and laws, but the reality is that there are times communities on the ground are unaware of their right to access information. There also needs to be awareness on the type of information that the public can access.

Group 2: Equality and Non-discrimination

147. The group's first topic of conversation focused on examining human rights mechanisms and the importance of fostering consensus in information-related declarations. The group acknowledged the challenges posed by ASEAN as a legacy framework, hindering the advancement of protection mandates.
148. In the discussions, the group raised concerns on SLAPP tactics being employed against EHRDs. This oppressive approach, deployed not only by governments but also by private companies, aims to silence voices through

alternative complaints mechanisms, bypassing official channels. The group also delved into the inadequacy of present modalities in ensuring true protection against discrimination, stressing the need for improvement and adherence to the principles that uphold equality.

149. Further recognising that SMEs form a significant portion of the economy, the group discussed their exclusion and the importance of government support. To establish an effective climate change and environmental compliance framework, SMEs require policies, technical assistance, and financial backing. This support should facilitate the adoption of sustainable technologies, enabling SMEs to comply with regulations than resorting to illegal practices borne out of frustration.
150. To address these issues, the group discussed the importance of public information, education, communication strategies, and the need for better public feedback mechanisms. In addition to this, the group emphasised the significance of data analysis to identify and address the environmental impact on affected communities. They expressed optimism about the potential of new technologies to enhance protective mechanisms for SMEs.

Group 3: Access to Remedy and Grievance Mechanism in Environmental Cases

151. The group focused on examining existing mechanisms and discussing desired improvements. Some of the themes that emerged included sharing best practices, addressing transboundary issues, fostering consensus, transparency, accountability, mediation, and mechanisms for strengthening or leveraging existing frameworks.
152. The group noted that there already are grievance mechanisms within human rights that individuals can use, and a referral pathway involving national human rights representatives. However, the group recognised the challenges and the need for more information sharing on the outcomes of these mechanisms. Further, the group explored the scope of the grievance procedure, the meaning of remedy within it, and the accountability and reporting it should entail. The group also touched upon investigations, mediation, and the jurisdictional reach of the mechanism, considering the possibility of legal mechanisms across countries.
153. Structural issues related to ASEAN were also discussed, emphasising that it operates as a consensus-building body rather than a decision-making entity and acknowledging the regional framework on environmental rights as a contribution to ongoing dialogues and an opportunity for progress. The importance of acknowledging its aspirations and viewing it as a starting point were highlighted, appreciating the examples of best practices shared by member states. For instance, the National Human Rights Institute in the Philippines shared a draft document that could serve as a framework to initiate discussions.
154. Finally, the group recognises the importance of linking the outcomes of COP27, particularly regarding financial aspects such as compensation and loss and damage, with a framework on environmental rights. This connection could be leveraged effectively. Mediation emerged as an intriguing conversation point, particularly in the context of transboundary issues and achieving remedies. The group deliberated on the balance between access to justice and access to law, considering litigation versus mediation as means of seeking redress.

Session 8: Issues and Challenges of a Regional Framework on Environmental Rights in ASEAN: Perspectives from Stakeholders

Ms. Fiona Marshall, Secretary to the Compliance Committee at the Aarhus Convention of the United Nations Economic Commission for Europe (UNECE) & Assistant to the Special Rapporteur on Environmental Defenders

155. Ms. Fiona reiterated that the human right to a clean, healthy, and sustainable environment is crucial in the face of the triple global environmental crisis of climate change, pollution, and biodiversity loss. The Aarhus Convention, formally known as the Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters, was adopted in 1998 in Aarhus, Denmark. It came into force in October 2001, and this year, on June 25, it will mark its 25th anniversary since adoption. While the convention is sometimes mistaken as a European instrument, it is actually open globally to any UN member state.
156. The 47 parties to the Aarhus Convention spanned from Western Europe to Central Asia, and now Africa with Guinea Bissau's accession this year. These parties represent diverse political, legal, and economic backgrounds. They include countries with different systems, such as monist and dualist, federal and national governments, and a wide range of environmental concerns like mining, oil and gas, water scarcity and pollution, nuclear energy, renewable energies, and desertification. Despite their diverse circumstances, each party has equal standing under the Convention, and every country can benefit from the protections it provides.
157. The Convention is structured around three pillars that are interconnected and mutually reinforcing:
- (i) Access to information that requires public authorities to possess and update relevant environmental information and make it easily accessible to the public. The parties must also provide access to environmental information upon request.
 - (ii) Public participation. It is crucial in decision-making concerning specific activities, plans, programmes, policies and draft laws relating to the environment. The outcome of public participation should be taken into account during decision-making processes.
 - (iii) Access to justice in environmental matters. It is addressed in three contexts: review procedures for information requests; decisions on activities subject to public participation; and acts that contravene national environmental laws by private individuals or public authorities. Access to justice must also be fair, equitable, timely, affordable and provide effective remedies.
158. The drafting of the Aarhus Convention involved extensive civil society participation, setting it apart from many international processes. While states make all decisions under the convention, civil society has played a central role in the negotiation process and continues to contribute to the convention's bodies and processes. This inclusive approach has fostered a respectful and professional atmosphere within the processes. Consensus decision-making has been fundamental to the convention, with all decisions made by consensus during negotiations and the first 20 years of its enforcement. The Aarhus Convention has been a binding force for environmental rights among its parties for over two decades, disproving the argument that public participation and

access to justice hinder economic growth. The binding nature of the convention's obligations ensures that these rights remain protected, regardless of any future changes in government. Overall, the Convention stands as a powerful instrument safeguarding environmental rights globally, with its three pillars addressing access to information, public participation, and access to justice in environmental matters.

Dr. Jason Squire, Director of Regional Asia office at Raoul Wallenberg Institute (RWI)

159. RWI's work revolves around providing an unwavering evidence base and contributing to a discourse that cuts through the noise. The institute strives to place human rights at the forefront of its response to the climate challenge.
160. The overarching principle is to consider what serves the common good, not just in terms of nations but as a species and as custodians of this planet for future generations. Obligation and custodianship have been mentioned during discussions, highlighting the responsibility borne during the relatively brief presence in the grand scheme of things. What contributions can be made and what are the accomplishments? These are significant questions for all.
161. When discussing of a regional framework and its potential contributions, reaching a consensus on the meaning of ASEAN's rights and a healthy environment would be a remarkable achievement. It would demonstrate to the world that ASEAN is committed to making a meaningful contribution to the global conversation. Additionally, it signifies the unity of 10 nations speaking with one voice, which holds immense power. These instruments set forth aspirational goals that surpass individual interests and focus on the common good. They convey a message of determination, presenting desires, needs, and collective actions to the world. They serve as inspiration for various bodies within nations, including national human rights institutions. Governments can view them as guiding principles, shaping how they are perceived globally and how they contribute to the world.

Professor Dato' Dr Rahmat Mohamad, Chairman of the Human Rights Commission of Malaysia (SUHAKAM)

162. As the conversation to establish a regional framework on environmental rights in ASEAN continues, there are ongoing deliberations and conversations on ESG and corporate due diligence taking place within the business community. In terms of a just transition from a fuel-based economy to a green economy, there is a need to consider how fairness can be achieved for various aspects. Europe has already embarked on a just transition, but in the ASEAN region, where many countries still heavily rely on fossil fuels, the path forward is uncertain. There is a need to ensure a just and equitable distribution of wealth, particularly for workers. It is crucial to have a government blueprint outlining the steps for a just transition. The Westphalian concept, which has shaped international law for the past 300 years, recognises only states and intergovernmental organisations (IGOs) as legal entities, excluding NGOs and non-state actors. However, it is the people who ultimately bear the impact of decisions made by governments in ratifying treaties and conventions. These negotiations and compromises can take years, and governments may face pressure or be compelled to compromise on important matters. He hopes that humanity's interests prevail, though the effectiveness and fulfilment of objectives, as seen in the Paris Agreement on climate change, remain uncertain. Speaking of the

international community, there is a need to consider the role of individuals alongside states. It is important to reflect on ASEAN's progress. Despite its establishment in 1967, and the recent ratification of the ASEAN Charter as a legal instrument, the process has taken many years.

163. When discussing the ASEAN regional framework on environmental rights, it essentially speaks of a rule-based or legalistic approach. However, reaching a compromise will take time and years of effort. The positive aspect of ASEAN's transformation is the shift towards a rule-based system from a political and diplomatic one. Numerous treaties and conventions are signed within ASEAN, which is a significant development. Yet, the challenge lies in ensuring compliance and enforcement. An example raised was Singapore's legislation on transboundary haze, which has extraterritorial effects. Enforcement and compliance pose another challenge. Is ASEAN constrained by the non-intervention principle that prevents one from addressing the issue? There is also the question of where dispute settlements should take place: should it be at the regional level, following a system of complementarity where national courts take precedence unless they are unwilling or unable? These are important considerations that need to be thought through. The different legal systems within ASEAN, including the dualist and monist approaches, add complexity to the matter. ASEAN must not be burdened by legal intricacies, though it still requires careful consideration. Additionally, there are disparities in economic development among ASEAN countries. Resolving issues in countries that heavily rely on fossil fuels or transitioning to a green economy requires deliberation. There is also a lack of understanding in causal relationships regarding the environment, which needs to be addressed.
164. These issues cannot be addressed in a fragmented manner; a comprehensive approach is needed, considering the ecosystem as a whole. Resolving challenges like poverty requires a deeper understanding, especially considering the impact of the post-pandemic situation. It is important to understand ASEAN's economic situation and acknowledge the lack of a strong institutional framework within ASEAN itself. Unlike the European Court, ASEAN operates as an intergovernmental organisation, which poses challenges for establishing a supranational structure. To move forward, NHRIs should continue working with civil societies and government agencies, engaging in conversations and acting as both advocates and mediators. Data collection is crucial, as decisions should be based on facts rather than assumptions. Ultimately, political will and leadership are vital in achieving consensus among leaders to prioritize a regional environmental law that serves the people's interests.

Mr Kiu Jia Yaw, Deputy Co- Chair of the Malaysian Bar Council Environmental and Climate Change Committee & Co-Chair of the Malaysian CSO-SDG Alliance

165. The Malaysian Bar Council Environmental and Climate Change Committee aims to address the unfair distribution of environmental benefits and burdens resulting from flawed systems or the lack thereof. Currently, the Committee observed a situation where corporations enjoy the freedom to utilise natural resources such as air, water, and rivers as part of their means of production. However, the burdens arising from these activities disproportionately affect marginalised communities, leaving them behind in the process. Environmental justice plays a vital role in shifting developmental paradigm from one that exploits resources to one that fosters sustainable development. To achieve this, there is a need for regional frameworks within ASEAN that facilitate the effective

- transition of national systems from exploitative practices to sustainable models. The Committee's approach involves leveraging important blueprints for the common good, such as the Universal Declaration of Human Rights, UNGP, the UN Agenda 2030 for Sustainable Development Goals, and the UNFCCC. These serve as clear north stars in pursuing development that leaves no one behind.
166. Recognising that poverty is not solely the lack of wealth but the presence of injustice, ASEAN should transcend its singular focus on economic growth. It is crucial to prioritise indicators of well-being beyond mere GDP, as not all forms of economic growth are equal. A callous approach to economic growth can perpetuate injustice, resulting in the emergence of hardcore poor and vulnerable communities. With the ongoing climate change crisis, these injustices will compound exponentially, as supported by available data. Hence, civil society activities in upholding environmental justice are of utmost importance.
167. There is a need to confront the existing vacuum within ASEAN countries, which is overlooked due to ASEAN centrality. It is imperative to muster the confidence to acknowledge and address this issue. Upholding the rule of law across the region is non-negotiable as it serves as the bedrock of decency. He added that there is a need to recognise that it is not merely a luxury but a fundamental requirement. Such a regional framework should incorporate systems of environmental justice, establishing feedback loops that hold polluters accountable for their actions. Polluters, whether due to negligence or unawareness of the environmental and social impacts of their supply chains, subsidiaries, or minority-controlled investments, need to be made aware and empowered to exercise influence.
168. In the work on transboundary haze pollution, CSOs have significantly improved their ability to collaborate across different countries. Overcoming language barriers has been made easier through the use of online tools and thus, possess a better understanding of each other's work, share knowledge, and draw inspiration. With a stronger online presence, organisations can connect on social media platforms and engage in meaningful workshops, public consultations, and other events. This proliferation of collaboration is a crucial element that should be recognised and supported.
169. There is a need to further foster a regional framework that promotes environmental justice, transitions from exploitative development to sustainable practices, and upholds the rule of law. By doing so can ensure that businesses in ASEAN are accountable and transparent, and that there is an expanding civic space throughout the region. It must not be taken for granted, especially since in many member states, permission is required to assemble, and concerns are often met with suspicion and in a national security lens. Therefore, it is crucial to include the systematic support of civic space.
170. Transparency should also be a deliberate part of civil society's design. Businesses in ASEAN should be required to make their sustainability data available as a default practice. There is a need to actively pursue this requirement, ensuring that the data is useful, timely, and aligned with the suggestions made by Fiona. This approach empowers active civic societies and movements, providing them with tangible information to work with and enabling them to frame questions more accurately. These efforts should be celebrated as they contribute to the collective understanding of the impacts of the activities both within individual nations and regionally.

Dr Annalisa Savarasi, Director of Europe of the Global Network on Human Rights and the Environment & Associate Professor at the Centre for Climate Change, Energy and Environmental Law, University of Eastern Finland

171. The right to a healthy environment and the relationship between human rights and environment has been discussed at length in intergovernmental forums, as well as in human rights parties. This has happened at the national, international and regional level. What has happened in Europe in these connections is that there has been a consistent movement for the greening of existing human rights. Existing political, civil, economic and social rights have been reinterpreted or interpreted in order to cater at least for some environmental interests. The example of the European Convention of Human Rights is a case in point. The European Court of Human Rights over the years has progressively interpreted a number of rights within the Convention as a conduit to protect environmental interests associated with pollution of sites and the impact on health and life that that endangers.
172. The Manual on Human Rights and Environment that Council of Europe published showcases the case law of the European Court and the decisions of the committee that was created in the European social charter. This is a rich body of practice that demonstrates the evolution of the understanding within the Council of Europe of the relationship between human rights law and environmental law. She believes that the Aarhus Convention can comfortably be described as a great success story in the sense that it has a large number of members well beyond membership of the EU. The EU too is a party. The Aarhus Convention, the first treaty of its kind in the history of international law, is to recognise dedicated environmental rights. Environmental rights may be regarded as an evolution. They build on existing human rights, but they are dedicated and focused on the environment, access to environmental information, access to decision making concerning environmental matters, and access to justice concerning environmental matters.
173. All these rights are not only enshrined in the Aarhus Convention, but in the years since its entry into force have been elaborated on, amongst others, by the Compliance Committee of the Convention that played an influential role in moulding the thinking and the interpretation of these rights within the member states of the Aarhus Convention. This has been so much so that even the EU, on occasions, has been found to fall foul of the standards of the Aarhus Compliance Committee. The EU recently had to review its legislation that was adopted in order to comply with the Aarhus Convention. It is thus, a serious compliance committee that performs an important role within the region even though it shows how even soft governance tools can have a significant impact in the practice of states.
174. There is also an ongoing debate within the region concerning the explicit recognition of the right to a healthy environment and the rights of nature; these are two separate conversations. The former is happening within the Council of Europe. Member states of the Council of Europe are in the process of deciding ways to explicitly recognise the right to a healthy environment. This would certainly open up opportunities to litigate on the basis of this right and its justiciability before the European Court of Human Rights. The rights of nature are a separate conversation that is taking place and is going beyond the recognition of the right to a healthy environment because recognising the right to a healthy environment according to some is still anthropocentric in nature. It still puts humankind at the centre of the construction of human rights and this is arguably unavoidable. The rights of nature therefore as an idea tend to

separate the construction of human rights from that of the rights of nature as a self-standing item.

175. Corporate due diligence has a lot of potential to extend the exercise of jurisdiction of the EU beyond its borders. Legislation of this subject matter is presently under negotiation but if proposals that have been put on the table come to pass, what happens would be truly revolutionary in the sense that the EU standards will be applicable beyond the EU to corporate actors and this will mean better hopefully corporate governance including on matters concerning human rights and environment, which is important. Most recently Shell has been the first corporate actor to be found to be in breach of its obligations under national law by another Dutch court and while this case is still going through itinerary of the courts and might not be confirmed on appeal, the importance of this milestone is that it has established that corporate actors have responsibilities that are justiciable in court under human rights law and these responsibilities entail amongst others taking action on climate change.

CLOSING REMARKS

Mr. Francesco Floris, First Counsellor of Head of Trade and Economic Relations, EU Delegation to Malaysia

176. The issue of deforestation and loss of biodiversity and greenhouse gas and certain pieces of legislation like the renewable energy directive and its amendment and his proposing another piece of legislation on deforestation. Indonesia and Malaysia have launched a dispute on the renewable energy directive on the claim it unfairly targets palm oil, to which the EU is waiting for the palm oil report that would be out in September this year.
177. This Regional Consultation is an important platform to share the efforts, address the challenges and also provides opportunities to gain insights on opportunities taken by other countries. The First Counsellor expresses his appreciation for the commitment of the ASEAN communities. Not only has there been exchange of views but there were concrete proposals for actions. This Regional Consultation has facilitated dialogue on the EU, ASEAN and joint efforts to promote sustainable development, protect human rights and preserve the environment.

H.E. Professor Dato' Dr. Aishah Bidin FASc, Representative of Malaysia to the AICHR

178. The Representative expressed her gratefulness that AICHR Malaysia was given the opportunity to organise the Regional Consultation and invite speakers and panellists from all around the world. It is especially important to include civil societies and NHRIs in this conversation. While AICHR and ASEAN meetings are usually closed, it is crucial to establish affiliations with CSOs and forums like this serve as an excellent starting point for continued brainstorming sessions. When she first began working on environment and climate change, she was under the impression that it only related to environmental issues such as biodiversity, GHG emissions, when in fact, it actually goes beyond that. It also covers an array of social and governance factors of ESG components of sustainability. More importantly, climate change has a multiplier effect. It

- escalates to social, politics, transitional justice, access to remedies, SLAPP actions and economic tensions within fragile and conflict affected settings.
179. She quoted a statement by Dr Ian Fry in his earlier key note address during the first day that climate change has affected more than about 748 million children all along the world. So, when this Regional Consultation was crafted last year, the topics and content were carefully selected. It started with the taxonomy of ASEAN approaches and policy frameworks, which was provided by the ASEAN Secretariat. It then goes into the protection mechanisms in terms of environment and climate change in ASEAN presented by human rights advocates, environmentalist experts, lawyers and also scientists.
180. There have been multiple and complex legal and technical issues when dealing with cross-border and on protection of environment and climate change. The crux of the matter, which started last year with the CSDDD and the corporate sustainability mandatory due diligence, has opened quite a number of views; some of which are dissenting, some gaining approval. This Regional Consultation intends to provide a platform to provide views and opinions. Present at this Regional Consultation are nine AICHR representatives, which is a first for an event. In the fourth session that focuses on access to justice is relevant especially when discussing on the topic of SLAPP. In relation to the NAP BHR, which is based on UNGP, it is crucial to look at a soft law that has created a lot of implications, due diligence for one aspect, and that is the reason it is set up. The UNGP has been a source of reference at the moment. As for the Escazú Agreement, it is said to be the first agreement that actually provides the role of EHRDs.
181. These are perhaps situations and opportunities to look into the good practices that can be applied within the ASEAN context. The Regional Consultation has been planned for quite some time. The ideas were developed when the Representative took the position as the Representative of Malaysia to the AICHR last year, but the physical event organised by AICHR Malaysia took a relatively short time. Most of the content and ideas actually derived from the Representative's own experience as a former Human Rights Commissioner at the Human Rights Commission of Malaysia. She concluded by thanking all those involved in the preparation of the Regional Consultation.

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