



# **SUSTAINABLE DEVELOPMENT LAW ON CLIMATE CHANGE**

## **WORKING PAPER SERIES**

**05**

### **THE ASEAN ACTIONS ON CLIMATE CHANGE: RECOGNIZING OR PRO-ACTIVELY ADDRESSING THE ISSUE?**

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December 2011

CISDL



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#### **Published by:**

International Development Law Organization (IDLO) and the Centre for International Sustainable development Law (CISDL).



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# **THE ASEAN ACTIONS ON CLIMATE CHANGE: RECOGNIZING OR PRO-ACTIVELY ADDRESSING THE ISSUE?**

Mélodie Sahraie<sup>1</sup>

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## 1. Introduction

Established in 1967, the Association of Southeast Asian Nations (ASEAN) consists of ten states, namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam. In the aftermaths of some of its member-countries facing devastating floods in late 2011 (particularly Cambodia, Thailand and the Philippines), the region is more than ever known to suffer greatly from more frequent and severe extreme weather events.<sup>2</sup>

In particular, it is noteworthy that the high concentration of people and economic activities (especially coastal areas) as well as its rich biological diversity and its economies based on natural resources make the region particularly vulnerable to climate change.<sup>3</sup> With Southeast Asia facing such severe climate impacts, a significant role needs to be further played in addressing climate change. The ASEAN is *a fortiori* urged to take a more active role in taking appropriate mitigation actions and adaptation measures to combat climate change in a proactive and responsible manner.

Although climate change is already an immediate issue in Southeast Asia, the role played by ASEAN in international climate change policymaking has remained relatively small. Conversely, ASEAN has undeniably undertaken an increasing task in term of regional cooperation against climate change among its country members. Measures for mitigation and adaptation to climate change have expanded beyond the realm of international policy, into the regional sphere. My paper examines the emerging regional framework for climate change adaptation and mitigation in ASEAN and the involvement and cooperation of its member states in such initiatives. ASEAN is now aware of the threat of climate change in Southeast Asia and it has acknowledged its potential to mitigating climate change and adapting to it through a coordinated response. The "ASEAN Way", which is characterized by consensus-based decision making, the principle of non-intervention and the sanctity of state sovereignty,<sup>4</sup> is questioned throughout the paper, either as a systemic drawback or as an original, yet creative mean to trigger regional cooperation. This paper focuses on both reactive and proactive adaptation and mitigation measures so as to determine whether the issue of climate change has merely been recognized so far or has already been proactively addressed. In this respect, the first section outlines the key features of the institutional and policy framework for climate change adaptation and

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<sup>2</sup> Chang Chew-Hung, "Preparedness and storm hazards in a global warming world: lessons from Southeast Asia" (2011) 56 *Natural Hazards* 667 at 668; M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden and C.E. Hanson (eds) *Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press: Cambridge, 2007), chapter 10, online: [http://www.ipcc.ch/publications\\_and\\_data/ar4/wq2/en/ch10.html](http://www.ipcc.ch/publications_and_data/ar4/wq2/en/ch10.html).

<sup>3</sup> ADB, "The Economics of Climate Change in Southeast Asia: A Regional Review", Manila, April 2009; WWF International, "A Climate Vulnerability Ranking for Major Coastal Areas in Asia", 2009.

<sup>4</sup> See Gillian Goh, "The 'ASEAN Way' – Non-Intervention and ASEAN's Role in Conflict Management", 3(1) *Stanford Journal of East Asian Affairs* (2003), 113.

mitigation within the ASEAN. This leads to the second section which will assess ASEAN's efficiency and effectiveness in addressing climate change and highlights options for the region.

## 2. Institutional and policy framework

Before outlining the key features of the institutional and policy framework pertaining to climate change within the ASEAN, it is relevant to expound the necessity of a coordinated regional framework, strategy and mechanism to cope with climate change and its impacts.

### 2.1. the necessity of a coordinated regional framework, strategy and mechanism

Climate change negatively impacts many sectors, in particular the economy, environment, development, energy, agriculture, fisheries, livestock and forestry sectors in South-East Asia.<sup>5</sup> Moreover, a growing population results in an increasing need for food, energy, land and water resources.<sup>6</sup> This constraint, when combined with climate change's impacts on those sectors, can be aggravated and may lead to conflicts over the use of resources, to internal and regional migration of people. Therefore, because climate change has negative effects on many sectors that can in turn impact on other issues and even trigger them, it is crucial to support the resilience of people and ecosystems and to improve the adaptive capacity of the region to deal effectively with the threat of climate change.

Environmentally-induced migration also implies possible threats to the regional security.<sup>7</sup> The imminent threat of climate change has thus trans-boundary effects. As such, floods and droughts may generate outbreaks of infectious diseases as well, which may also move between countries and increase endemic mortality.<sup>8</sup> Those transnational issues are thus directly or indirectly triggered by climate change and can be exacerbated with time because of the region's particular vulnerability. Vulnerability differs between countries within the ASEAN, but the imminent threat of climate change will still have trans-boundary effects.<sup>9</sup> For that reason, regional

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<sup>5</sup> International Centre for Environmental Management (ICEM), *Climate Change Adaptation in the Lower Mekong Basin Countries – Regional Synthesis Report* (Hanoi: ICEM, 2009); Republic of Indonesia, *Indonesia Country Report: Climate Variability and Climate Change, and their Implication* (Jakarta: Ministry of Environment, 2007); Than Myint and San Hla Thaw, "Climate Change Adaptation in Myanmar", Presentation at the Second Workshop of the Asian University Network of Environment and Disaster Management, February 2009, online: <<http://www.auedm.net/Data/activities/1st%20Workshop/Workshop/U%20Than%20Myint/SecondMyanmar-Climate%20change.pdf>> ; Manila Observatory for the Congressional Commission on Science & Technology and Engineering, *Technical Primer on Climate Change in the Philippines* (Manila: COMSTE, 2010); and Ministry of Natural Resources and Environment, Government of Vietnam (MNRE), *Climate Change, Sea Level Rise Scenarios for Vietnam* (Hanoi: MNRE, 2009).

<sup>6</sup> FAO, "How to Feed the World in 2050", online: [http://www.fao.org/fileadmin/templates/wsfs/docs/expert\\_paper/How\\_to\\_Feed\\_the\\_World\\_in\\_2050.pdf](http://www.fao.org/fileadmin/templates/wsfs/docs/expert_paper/How_to_Feed_the_World_in_2050.pdf).

<sup>7</sup> Simon Tay and Phir Paungmalit, "Climate Change and Security In the Asia-Pacific", Conference Paper Prepared for the 2nd Tokyo Seminar on Common Security Challenges: "Future Defense Sector Cooperation in the Asia-Pacific Region" 26 March 2010.

<sup>8</sup> Adam Kamradt-Scott, "Changing perceptions of pandemic influenza and public health responses" 2011 *Am J Public Health*.

<sup>9</sup> Yusuf, Arief Anshory and Herminia Francisco, "Climate Change Vulnerability Mapping for Southeast Asia" Swedish International Development Cooperation Agency 2009, online:

cooperation is essential when planning and implementing climate change responses. More precisely, translational effects of potential climate change scenarios, as well as potential responses, call for a coordinated regional framework, strategy and mechanism to cope with climate change and its impacts. Recognizing this necessity and then transforming it into concrete actions followed by pro-active measures are not straightforward steps. Rather, they call for measured advances which will be scrutinized throughout the coming sub-sections.

## 2.2. ASEAN Initial milestone

Efforts to address climate change through cooperation started at ASEAN Ninth Summit in October 2003, when the Organisation announced its intention to create an ASEAN Community based upon three pillars: Security Community, Economic Community and Socio-Cultural Community.<sup>10</sup> During the 12th ASEAN Summit in 2007, member countries' leaders signed the *Cebu Declaration on the Acceleration of an ASEAN Community*, affirming their strong commitment to accelerate the establishment of an ASEAN Community by 2015.<sup>11</sup> This vision of ASEAN, as a region willing to cooperate in diverse fields and unified by common social and cultural values, represents an important turning point for the Organization. Above all, a milestone was initiated for climate change cooperation within the region.

First, the ASEAN Economic Community (AEC) mentions climate change. Regarding infrastructure development, AEC emphasized the importance of ensuring the sustainability of the establishment of an ASEAN Community by 2015. As such, sustainability can be achieved through mitigating greenhouse gas emission by means of effective policies and measures, thus contributing to global climate change abatement. AEC recognizes the limited global reserves of fossil energy and the unstable world prices of fuel. Therefore, it considers as essential for ASEAN to emphasize the need to strengthen renewable energy development, such as bio-fuels. As well, ASEAN should promote open trade, facilitation and cooperation in the renewable energy sector and related industries. Furthermore, the organization should promote investment in infrastructure for renewable energy development and. AEC in addition supports investment climate to contribute to climate change mitigation.<sup>12</sup>

Second, the other pillar based upon Socio-Cultural Community (ASCC) is first and foremost a major advancement in addressing climate change since ASEAN's 13<sup>th</sup> Summit, where its leaders agreed to develop a Blueprint to ensure concrete actions in its establishment. The Blueprint for the ASEAN Socio-Cultural Community was officially launched in 2009 as part of the Roadmap for an ASEAN Community. It presents a plan for building a regional identity grounded in ten priority areas of regional

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[http://www.aseanforestchm.org/document\\_center/knowledge\\_networks/arkn\\_fcc/climate\\_change/yusuf\\_francisco\\_2009\\_climate\\_change\\_vulnerability\\_mapping\\_for\\_southeast\\_asia.pdf?download=true](http://www.aseanforestchm.org/document_center/knowledge_networks/arkn_fcc/climate_change/yusuf_francisco_2009_climate_change_vulnerability_mapping_for_southeast_asia.pdf?download=true)

<sup>10</sup> ASEAN, *Declaration of ASEAN Concord II*, online: <http://www.aseansec.org/15159.htm>.

<sup>11</sup> ASEAN, *Cebu Declaration on East Asian Energy Security*, online: <http://www.aseansec.org/19319.htm>

<sup>12</sup> ASEAN, *Economic Community Factbook* (Jakarta: ASEAN Secretariat, 2011), online: [http://www.aseansec.org/publications/ASEAN\\_AECFactBook.pdf](http://www.aseansec.org/publications/ASEAN_AECFactBook.pdf).

importance, one of them being climate change. From that moment on, ASEAN cooperation on climate change has been guided by this ASCC Blueprint and its Section D10 on *Responding to Climate Change and Addressing Its Impacts*. The cooperation targets at enhancing regional and international cooperation to address the issues of climate change and its impacts on socio-economic development, health and the environment in ASEAN Member States through implementation of mitigation and adaptation measures. They have to be based on the principles of equity, flexibility, effectiveness, common but differentiated responsibilities, respective capabilities, and to reflect on different social and economic conditions.<sup>13</sup>

### **2.3. From climate change as a threat to regional cooperation**

On November 2007, ASEAN Heads of States recognized for the first time climate change threat through their *ASEAN Declaration on Environmental Sustainability*, where they noted with concern its menace to the environment and economic development.<sup>14</sup> Following the recognition that the ASEAN region is highly vulnerable to the adverse impacts of climate change, the ASEAN Leaders then agreed to enhance cooperation in addressing it. An ASEAN Climate Change Initiative (ACCI) was created for that purpose in 2009. The ACCI was envisaged to be a consultative platform to further strengthen the region's capacity both in mitigation and adaptation efforts through cooperation. It has been developed to provide a regional framework for that purpose, and an ASEAN Working Group on Climate Change (AWGCC) was subsequently established to implement the ACCI. The scope of collaboration through the ACCI includes *Policy and Strategy formulation, Information Sharing, Capacity building* and last but not least, *Technology Transfer*.<sup>15</sup> The strong asset of the ACCI is that it is legally grounded on 2007 ASEAN Charter, a legally binding agreement. By concluding the Charter, ASEAN's leaders had indeed indicated their commitment to legal obligations and rights, thereby making ASEAN a rules-based inter-governmental organization. The new ASEAN charter also provided for a legal framework for incorporating ASEAN decisions, such as the ACCI and other policies, treaties and conventions, into the national legislation and policy of member countries.<sup>16</sup>

### **2.4. From cooperation to concrete actions**

ASEAN actions to prevent transboundary haze pollution form a prominent part of the region's mitigation to climate change. A concrete action was indeed taken through the 1997 *Regional Haze Action Plan (RHAP)*, which is a framework plan to guide the process of strengthening Southeast Asia's capability to address transboundary haze pollution. It has three main components: prevention, monitoring, and mitigation. The 2003 *ASEAN Agreement on Transboundary Haze Pollution* provides the legal

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<sup>13</sup> Roadmap for an ASEAN Community 2009-2015 (Jakarta: ASEAN Secretariat, 2009), online: <http://www.aseansec.org/publications/RoadmapASEANCommunity.pdf>.

<sup>14</sup> ASEAN Declaration on Environmental Sustainability, online: <http://www.asean.org/21060.htm>.

<sup>15</sup> ASEAN, ASEAN Cooperates on Climate Change, online: <http://www.aseansec.org/21248.htm>.

<sup>16</sup> ASEAN, the ASEAN Charter, online: <http://www.aseansec.org/publications/ASEAN-Charter.pdf>; Surin Pitsuwan, "Progress in ASEAN Economic Integration since the Adoption of the ASEAN Charter", online: <http://www.aseansec.org/Speech-SG-290609-JapanChambersofCom&Ind.pdf>.

framework for implementing the RHAP. Its objectives are to prevent and monitor transboundary haze pollution through concerted national efforts and international cooperation.

While there have been frictions within ASEAN, some of them even public, the Organization has always stuck to its role of “discreet consensus builder”.<sup>17</sup> This “ASEAN Way” did not prevent the region to move on. More recently, the step from discussions to actions was significantly taken through the drafting of frameworks from 2009. During the *ASEAN High-Level Seminar on Climate Change Adaptation and Mitigation: Towards a Cross-Sectoral Programme Approach in ASEAN*, held in Berlin (Germany) in March 2009, ASEAN focused on the design of cross-sectoral programs and the management of interministerial coordination, considered as being among the priorities for ASEAN.<sup>18</sup> The Seminar accordingly developed a draft proposal to this end, intending to foster mutual learning and sharing of experiences. It also combined strategic thrusts already agreed upon by the ASEAN Ministers with additional ones to help ASEAN Member States cope with the challenges for food security resulting from climate change. One of the most crucial issues relating to adaptation is indeed food security and the adverse effects of temperature increase on agricultural productivity in Asia are well documented. Many ASEAN countries do rely on agriculture and fisheries for livelihood and employment. Yet, much can be learnt from local people regarding climate change adaptation. Over many generations, they indeed had to adapt their production systems to climate variability. That is why one of the draft’s components focuses on the “Strengthening of national and regional knowledge sharing, communication and networking on climate change and food security”. Another noteworthy component is the “Cooperation on the implementation of adaptation and mitigation measures”. It aims at sharing, promoting, and cooperating on the implementation of integrated climate change adaptation and mitigation measures in the agriculture, fisheries, livestock and forestry sectors, including response to climate-related disasters.

The same year, ASEAN reiterated a similar firm intention to cope with the challenges for food security resulting from climate change. The *ASEAN-FAO Regional Conference on Food Security* held in Bangkok in May 2009 proposed to address food security together with sustainable development of agriculture, good practices for bio-fuel production, and the mitigation and adaptation of climate change in Southeast Asia.<sup>19</sup> The Conference called for the establishment of a more inclusive and participatory mechanism. For that purpose, the ASEAN Secretariat was requested to develop a brief concept note on strengthening the ASEAN Secretariat’s capacity to monitor and implement a coordinated response. A concept note was therefore developed by ASEAN in the form of a framework,

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<sup>17</sup> Charles W Freeman, Michael J Green, Robert S Wang, Jeffrey D Bean, Victor D Cha, *Asia’s response to climate change and natural disasters : implications for an evolving regional architecture* (Center for Strategic & International Studies, Washington, 2010) at 49.

<sup>18</sup> Montgomery van Wart, Daniela Goehler, Fika Fawzia, *ASEAN High-Level Seminar on Climate Change Adaptation and Mitigation Towards a Cross-Sectoral Programme Approach in ASEAN*, online: [http://www.climatefocus.com/documents/files/seminar\\_proceedings\\_asean\\_high\\_level\\_seminar\\_climate\\_change\\_adaptation\\_and\\_mitigation.pdf](http://www.climatefocus.com/documents/files/seminar_proceedings_asean_high_level_seminar_climate_change_adaptation_and_mitigation.pdf).

<sup>19</sup> ASEAN-FAO Regional Conference on Food Security, online: <http://www.asean.org/PR-ASEAN-FAO-Regional-Conference-FS.pdf>.



known as the *Multi-Sectoral Framework on Climate Change and Food Security* (AFCC Framework).<sup>20</sup> It represents a comprehensive and strategic ASEAN approach to address the impacts of climate change in three sectors: Agriculture, Fisheries and Forestry. Its overall goal is to contribute to food security through sustainable, efficient and effective use of land, forest, water and aquatic resources by minimizing the risks and impacts of climate change. The AFCC Framework is actually aligned to and focused on elements of the ASEAN Blueprints Socio-Cultural Community mentioned earlier and was endorsed by the ASEAN Ministers on Agriculture and Forestry in November 2009.<sup>21</sup>

Last but not least, 2009 also marks the entry into force of the *ASEAN Agreement on Disaster Management and Emergency Response* (AADMER)<sup>22</sup>. It is again aligned to ASCC Blueprint which calls for “strengthening cooperation on disaster management and emergency response”.

Now that the main features of the institutional and policy framework have been presented, the following section will highlight its weaknesses and options for the region.

### **3. Weaknesses and options for the region**

It clearly appears from the first section that ASEAN already overcame division and passivity and is actively addressing the particular vulnerability of the region to climate change. The section presented ASEAN paradigm shift in treating climate change – from mere discussions on climate change growing concern to the recognition that trans-boundary impacts of climate change and potential responses call for a coordinated regional response, strategy and mechanism to cope with them. As such, ASEAN has thereby developed a combination of reactive and proactive adaptation/mitigation measures but most of them have been reactive. While ASEAN has been proactive in the development of adaptation-related programmes, their implementation has been limited. The notable lack of effective mechanisms to address the issues of monitoring, reporting, sanctions and non-compliance indeed constrains the effectiveness of ASEAN’s efforts to pro-actively address climate change. This point can adversely affect the agreement’s ability to support adaptation activities. A significant example is ASEAN’s actions to prevent transboundary haze pollution. This issue results from Indonesia’s fires generated by the country’s extensive tropical deforestation. This is a unique regional issue and therefore particularly calls for a coordinated regional response. As mentioned earlier, a concrete action was taken through the 1997 *Regional Haze Action Plan* (RHAP). The 2003 ASEAN Agreement on *Transboundary Haze Pollution* that followed provided the legal framework for implementing the RHAP and was legally binding. However, it had no

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<sup>20</sup> ASEAN Secretariat, ASEAN Multi-Sectoral Framework on Climate Change and Food Security, online: <http://www.asean.org/23109.htm#Article-5>.

<sup>21</sup> Joint Press Statement of the Thirty First Meeting of the ASEAN Ministers on Agriculture and Forestry, online: <http://www.asean.org/24000.htm>.

<sup>22</sup> The ASEAN Agreement on Disaster Management and Emergency Response, Vientiane, 26 July 2005, entered into force on 24 December 2009; online: <http://www.aseansec.org/17579.htm>.

punitive measures. Besides, once the agreement entered into force, Indonesia publicly clashed with Singapore and implicitly with other ASEAN members. Indonesia put forward that the haze problem is strictly its domestic issue and added that other members should not interfere.

Another feature related to ASEAN uniqueness is its "ASEAN Way", characterized by consensus-based decision making, the principle of non-intervention and the sanctity of state sovereignty.<sup>23</sup> It cannot be denied that the adoption of the "ASEAN Way" has restricted the local impact of regional adaptation and mitigation initiatives. It purposely avoids any action that could be seen as challenging the sovereignty of one of its member and has always stuck to its role of discreet consensus builder. The above-mentioned example of transboundary haze pollution issue is a good illustration of ASEAN's inability to properly implement regional climate change adaptation and mitigation measures in a coordinated manner. This issue is all the more a striking example as the 2003 ASEAN Agreement on *Transboundary Haze Pollution* was legally binding. On the other hand, some other ASEAN agreements are non-legally binding; this drawback may be even more disadvantageous to the ASEAN because the certainty and predictability of climate mitigation actions cannot be guaranteed. Moreover, ASEAN's ability to support regional climate change adaptation actions is dependent on external agencies. Yet, there is no financial commitment from national governments to support them. This can undeniably restrict the scope of the measures. In addition to that, the efficiency and effectiveness of ASEAN cooperation in terms of mitigation and adaptation depend on its member countries level of development as well as development path. Nonetheless, ASEAN is a diverse group of countries with varying levels of development.

The availability of financial resources is not the only issue at stake. It is coupled with limited availability of experts, accurate information on the climate change situation and adaptation options,<sup>24</sup> as well as scientific uncertainty and the current state of technology.<sup>25</sup> Adaptive capacity is thereby constrained and potential efforts largely depends on developed countries for financing, technology transfer and capacity building/enhancement.<sup>26</sup> The successful implementation of most adaptation policies is indeed contingent upon the availability of international funding and technology transfer *inter alia* to undertake research and development in climate and economic modelling and to improve technologies. As well, they are required in order to support vulnerability analysis and impact assessments to generate good quality information. This is indispensable to improve the understanding of the phenomena of climate change, the resulting impacts, adaptation needs

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<sup>23</sup> See Gillian Goh, "The 'ASEAN Way' – Non-Intervention and ASEAN's Role in Conflict Management", 3(1) *Stanford Journal of East Asian Affairs* (2003), 113.

<sup>24</sup> "Adaptation to climate change in the countries of the Lower Mekong Basin", MRC Management Information Booklet Series No. 1, September 2009, online: [http://www.mrcmekong.org/download/free\\_download/MRC-IM-No1-Adaptation-to-climate-change-in-LMB.pdf](http://www.mrcmekong.org/download/free_download/MRC-IM-No1-Adaptation-to-climate-change-in-LMB.pdf).

<sup>25</sup> K. Urwin and A. Jordan, "Does public policy support or undermine climate change adaptation? Exploring policy interplay across different scales of governance", 18(1) *Global Environmental Change-Human and Policy Dimensions* (2008) at 180.

<sup>26</sup> ASEAN Joint Statement on Climate Change, Cha-am Hua Hin, Thailand, 24 October 2009; and ASEAN Leaders' Statement on Joint Response to Climate Change, Ha Noi, Vietnam, 9 April 2010.

and the appropriate design and implementation of adaptation measures. ASEAN can provide the basis for regional collaboration and coordination; but ultimately, it is national governments that initiate appropriate measures and provide the necessary support system for better adaptation. Therefore, the lack of the above-mentioned essential requirements clearly affects the development and implementation of appropriate adaptation/mitigation strategies and mechanisms in the region, despite the creation of institutional and policy frameworks.

Last but not least, the current framework drifts apart from a human rights-based approach. ASEAN does recognize the issues resulting from climate change. But on the other hand, it does not recognize issues resulting from measures and actions taken to address it. ASEAN's strategy has no allusion to help people suffering from climate change effects or measures taken against it. More specifically, ASEAN seems to turn a blind eye to Indigenous people and other vulnerable groups, whose fragile ecosystems are the most prone to climate change impacts. As such, Indigenous peoples are not at all mentioned or referred to in any ASEAN document, although they are an integral part of the ASEAN community. Besides, many of the mitigation and adaptation measures set up or applied by ASEAN members, to cope with climate change, are often directly violating the rights of Indigenous peoples. Instances range from the expansion of biofuel plantations, the building of dams under the Clean Development Mechanism, uranium extraction for nuclear power plants to the inclusion of Indigenous peoples' forests in REDD without their consent. More concretely, recent illustrations include oil-palm plantations in Malaysia and Indonesia, which evicted Indigenous peoples from their traditional lands. The production of second-generation biofuels is known as another way of mitigating climate change; it is used instead of fossil fuels. However, this mitigation measure is also known to affect Indigenous peoples in Malaysia and Indonesia, because of the aggressive expansion of oil palm plantations.<sup>27</sup> In Myanmar, the government has pushed for jatropa plantations in Chin State, where forced labour was used to establish these plantations. The army was brought in to confiscate indigenous lands, and there was a loss of income for the people because they were forced to buy jatropa seedlings. Besides, fines were imposed as punishment for non-compliance.<sup>28</sup>

A recent report of the Office of the High Commissioner for Human Rights<sup>29</sup> outlines various implications of adaptation and mitigation measures for the human rights of Indigenous peoples and other vulnerable groups. The report concludes that climate change and the various mitigation measures adopted threaten to undermine not only Indigenous peoples' subsistence and livelihood, but also their cultural and social identity, and their right to selfdetermination.<sup>30</sup>

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<sup>27</sup> Kirsty Galloway McLean, *Advance Guard: Climate Change Impacts, Adaptation, Mitigation and Indigenous Peoples – A Compendium of Case Studies* (Darwin: United Nations University, 2010) at 71.

<sup>28</sup> *Idem*.

<sup>29</sup> adopted by the Human Rights Council in 2009

<sup>30</sup> Report of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights. A/HRC/10/61, 15. January 2009

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.61AEV.pdf>

Social and environmental safeguards are needed to guarantee their rights with any project intended to mitigate climate change. The reality on the ground should be better reflected and more specifically the needs of vulnerable groups such as indigenous people. Therefore, one of ASEAN's challenges is to make vulnerable people visible in terms of their rights in all aspects of the ASEAN actions to cope with climate change and its impacts.

#### **4. Conclusion**

This working paper presented ASEAN paradigm shift in addressing climate change, from mere discussions on climate change growing concern to the recognition that trans-boundary impacts of climate change and potential responses call for a coordinated regional response, strategy and mechanism to cope with them. It is undeniable that ASEAN have been involved in and evolving toward adaptation/mitigation initiatives and actions. ASEAN is addressing climate change, not through a mere policy on climate change, but through the framework of ASEAN Community building, with strategies and actions rooted in the various development and sectorial areas. ASEAN has developed a combination of reactive and proactive adaptation measures, but this paper argued that most of them have been reactive. In particular, the effectiveness of ASEAN efforts to address climate change is being constrained by limited implementation mechanisms and the scarcity of legally binding agreements. In addition to that, this paper pointed out that the "ASEAN Way" does restrict the local impact of regional adaptation and mitigation initiatives, by purposely avoiding any action that could be seen as challenging the sovereignty of one of its member. This traditional decision-making based on consensus has divided the Organization at some point where consensus was not reached. Nonetheless, regional organizations do present a unique role in addressing climate change because they can better and more directly impact a limited number of countries in a specific area. They are definitely useful in developing mechanisms for sharing or coordinating standards and policies. But preconditions for this type of cooperation require higher levels of economic integration and a greater willingness to allow one's country's policies to be influenced by its neighbours. This is not necessarily always the case for the ASEAN. Therefore, taking only voluntary actions to address climate change is not useful when developing a pro-active, systematic and integrated approach to respond to such an immediate issue for 563 million people already suffering the impacts of climate change.

Adaptation and mitigation measures are also to a large extent enabled by technology transfer and financial assistance, as well as capacity building. The second section of this working paper pointed out that they mainly depend on developed countries. Lately, the ASEAN-US leaders have agreed to strengthen collaboration regarding climate impacts research and development and implementation of appropriate policies and measures. Similarly, ASEAN, China, Japan and Korea have agreed to forge closer cooperation for adaptation and to strengthen cooperation in meteorology addressing climate information and prediction services, weather

observations and climate change. The ASEAN has to commit to pursue this collaboration so as to be better armed to cope with climate change issues in a proactive and responsible manner. This has to be combined with commitment to secure legally binding agreements. More generally, ASEAN has to continue to take the lead by making more ambitious commitments to address climate change not constantly based on consensus, but rather based on the emergency of such an immediate issue. Climate change impact in the ASEAN region is already intensifying, with dire consequences. Heat waves, droughts, flood, and tropical cyclones have become more severe and frequent in the region, causing extensive damage to property and human health or even life. For the safety of the ASEAN people and benefit of the entire region, ASEAN governments must act together, urgently and decisively.

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IDLO is an intergovernmental organization that promotes legal, regulatory and institutional reform to advance economic and social development in transitional and developing countries.

Founded in 1983 and one of the leaders in rule of law assistance, IDLO's comprehensive approach achieves enduring results by mobilizing stakeholders at all levels of society to drive institutional change. Because IDLO wields no political agenda and has deep expertise in different legal systems and emerging global issues, people and interest groups of diverse backgrounds trust IDLO. It has direct access to government leaders, institutions and multilateral organizations in developing countries, including lawyers, jurists, policymakers, advocates, academics and civil society representatives.

Among its activities, IDLO conducts timely, focused and comprehensive research in areas related to sustainable development in the legal, regulatory, and justice sectors. Through such research, IDLO seeks to contribute to existing practice and scholarship on priority legal issues, and to serve as a conduit for the global exchange of ideas, best practices and lessons learned.

IDLO produces a variety of professional legal tools covering interdisciplinary thematic and regional issues; these include book series, country studies, research reports, policy papers, training handbooks, glossaries and benchbooks. Research for these publications is conducted independently with the support of its country offices and in cooperation with international and national partner organizations.

### **Centre for International Sustainable Development Law (CISDL)**

The Centre for International Sustainable Development Law (CISDL) is an independent legal research institute that aims to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

As a charitable foundation with an international Board of Governors, CISDL is led by 2 Directors, and 9 Lead Counsel guiding cutting-edge legal research programs in a fellowship of 120 legal researchers from over 60 developing and developed countries. As a result of its ongoing legal scholarship and research, the CISDL publishes books, articles, working papers and legal briefs in English, Spanish and French. The CISDL hosts academic symposia, workshops, dialogues, and seminar series, including legal expert panels parallel to international treaty negotiations, to further its legal research agenda. It provides instructors, lecturers and capacity-building materials for developed and developing country governments, universities, legal communities and international organisations on national and international law in the field of sustainable development. CISDL members include learned judges, jurists and scholars from all regions of the world and a diversity of legal traditions.

With the International Law Association (ILA) and the International Development Law Organization (IDLO), under the auspices of the United Nations Commission on Sustainable Development (UN CSD), CISDL chairs a Partnership on 'International Law for Sustainable Development' that was launched in Johannesburg, South Africa at the 2002 World Summit for Sustainable Development to build knowledge, analysis and capacity about international law on sustainable development. Leading CISDL members also serve as expert delegates on the International Law Association Committee on International Law on Sustainable Development. For further details see [www.cisdl.org](http://www.cisdl.org).