

# Forest Fires and Transboundary Haze

Exploring the International and Regional Avenues of Redress and Advocacy for  
Victims of Transboundary Haze Pollution in Southeast Asia

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## COMMON SECTIONS

In November 2021, Friends of the Earth Groups (*Milieudefensie, WALHI and SAM*) asked Utrecht University's Public International Law legal clinic to explore different avenues of redress and advocacy for individuals affected by transboundary haze pollution in Indonesia and Malaysia. The Law Clinic has produced three memoranda to address these issues. The **first memorandum** focuses on regional avenues of redress and advocacy, namely the ASEAN system and the ASEAN Agreement on Transboundary Haze Pollution. The **second memorandum** explores the different UN systems, focusing on its Charter-based and Treaty-based avenues of redress and advocacy. The **third memorandum** explains avenues of redress and advocacy under international law beyond the UN, looking at the UN Framework Convention on Climate Change, the Sustainable Development Goals, and the UN Guiding Principles on Business and Human Rights. While the memoranda share common sections, such as on the human rights and environmental obligations, they can be read jointly or independently.

The **thematic background** to all three memoranda is the transboundary haze pollution experienced by populations in Indonesia, Malaysia, and Singapore because of an increased number of forest fires in Indonesia and Malaysia. The number of forest fires has increased over the past years because of an increase in palm oil plantations, among others, which has had different impacts on the environment. Haze pollution impacts individuals in different capacities of their lives, including their health, living environment, and livelihood. As a result of the pollution, different human rights are therefore affected, including, but not limited to, the right to life, right to health, and right to a healthy environment. There are different stakeholders to discussion transboundary haze pollution, namely small holder farmers, (multi) national corporations (focusing on palm oil in the report), financiers, the government, and the affected indigenous and local populations.

The memoranda were written with a clear **hypothetical case study** based on real companies in mind to ensure that the recommendations are practically relevant to CSOs in the field. The hypothetical company sells RSPO certified palm oil, owns 150,000 Ha of palm oil plantations and works together with scheme smallholders, contracted smallholders that fall under the company's RSPO certification, and independent smallholders. The hypothetical company has been linked to 1500 fire alerts between August and October 2019, two of which are proven to have sparked large-scale wildfires. A closer analysis of the hypothetical company is not further included in the final memoranda because the majority of avenues of redress that are discussed do not offer case-specific solutions to transboundary haze pollution, but rather encourage long-term advocacy strategies.

Chapter 3 on **human rights and environmental obligations** common in all three memoranda provides for an overview of some of the main human rights and environmental obligations that have emerged from our research and are particularly prevalent for victims of transboundary haze pollution. These are derived from the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), relevant multilateral environmental agreements (MEAs) such as the Aarhus Convention, the Rio Declaration, and relevant environmental case law. Rights and obligations are divided into substantive and procedural. Substantive rights comprise of civil and political rights, economic and social rights, and cultural rights. The existence of or the enjoyment of the rights themselves are directly affected by transboundary haze pollution. Substantive obligations refer to State obligations to protect against environmental harm

which interferes with human rights and adopt and implement legal frameworks to that effect. Procedural rights and obligations prescribe formal steps that must be taken to enforce substantive rights. An example includes the State obligation to provide the public with information on environmental matters or activities that may impact their human rights.

The memoranda were created through a combination of legal desk-research and semi-structured expert interviews. The primary sources consulted are the relevant treaties and agreements. The secondary sources consist of both legal and non-legal documents. They include the official websites of the different avenues of redress, , together with policy documents, NGO reports, scholarship, and news articles. The semi-structured expert interviews predominantly had a clarification and guiding purpose. All memoranda were read by (legal) experts in the corresponding fields, who had the opportunity to share their feedback and insights.

## MEMORANDUM 1: REGIONAL AVENUES OF REDRESS AND ADVOCACY

The purpose of this memorandum is to provide an overview of the ASEAN system and the avenues of redress and advocacy available for civil society organisations (CSOs) and victims of transboundary haze pollution in the Southeast Asian region. The ASEAN system as analysed in this memorandum includes the human rights mechanisms and the environmental regime, specifically analysing the 2002 ASEAN Agreement on Transboundary Haze Pollution. These mechanisms can become relevant to long-term advocacy strategies of *Friends of the Earth* groups to address transboundary haze pollution in Indonesia and Malaysia. The memorandum also briefly explores the 2014 Transboundary Haze Pollution Act of Singapore, which provides a direct avenue of redress for victims of transboundary haze pollution, within a civil liability regime.

The **Association of Southeast Asian Nations (ASEAN)** is a regional inter-governmental organisation comprised of ten Member States, including Indonesia and Malaysia. ASEAN was established on 8 August 1967 with the signing of the ASEAN Declaration. ASEAN's fundamental principles include sovereignty, non-use of force, peaceful settlement of disputes, non-interference and decision-making by consultation and consensus. These principles have collectively come to be known as the "ASEAN Way". Whilst the ASEAN Way has promoted identity-building and mutual trust and cooperation between Member States, it has also been criticised by political scholars and civil society as a major obstacle to ASEAN's goal of achieving human rights and fundamental freedoms, democracy, the rule of law and good governance.

The **ASEAN Intergovernmental Commission on Human Rights (AICHR)** is intended to be ASEAN's human rights body. The AICHR's mandate is still relatively undefined but its Terms of Reference (TOR) does set out its purposes, principles, mandate and functions, composition, modalities, work plan, funding and its relationship with other institutions. The AICHR has also identified areas for thematic studies, including corporate social responsibility, business and human rights, migration, right to life, right to health, right to education and legal aid. It is also required to provide advisory services and technical assistance on human rights matters to ASEAN Sectoral Bodies. Notably, the AICHR does not have a complaints mechanism to receive or investigate human rights violations and issue findings and recommendations. However, since 2019, the AICHR can receive and respond to human rights complaints. In practice, this means that letters of complaints can be sent to the AICHR for discussion at its next meeting and then forwarded to the concerned country representative, who then has the onus of addressing the complaint. Despite its relatively undefined mandate, the AICHR is still a relevant human rights mechanism to connect with as it is obliged to engage in dialogue and consultation with other ASEAN bodies, CSOs, national human rights institutions and other stakeholders.

The most recent turning point for ASEAN cooperation on the haze problem is the **2002 Agreement on Transboundary Haze Pollution (AATHP)**. The AATHP also has clear implications for the rights to life, human health, and livelihood, and attempts to integrate internationally recognised environmental principles into ASEAN's regime, including no-harm, common but differentiated responsibilities, and cooperation and coordination to prevent and monitor. The AATHP, however, contains a weak dispute resolution mechanism of only consultation or negotiation and stresses non-intervention and non-interference. Nonetheless, the AATHP encourages States to actively engage with

all stakeholders, including CSOs, local communities, NGOs, farmers and private enterprises. Unfortunately, whilst ASEAN is keen to collaborate with the business sector, the public sector and non-profits have had little engagement with ASEAN's policy dialogues or forum.

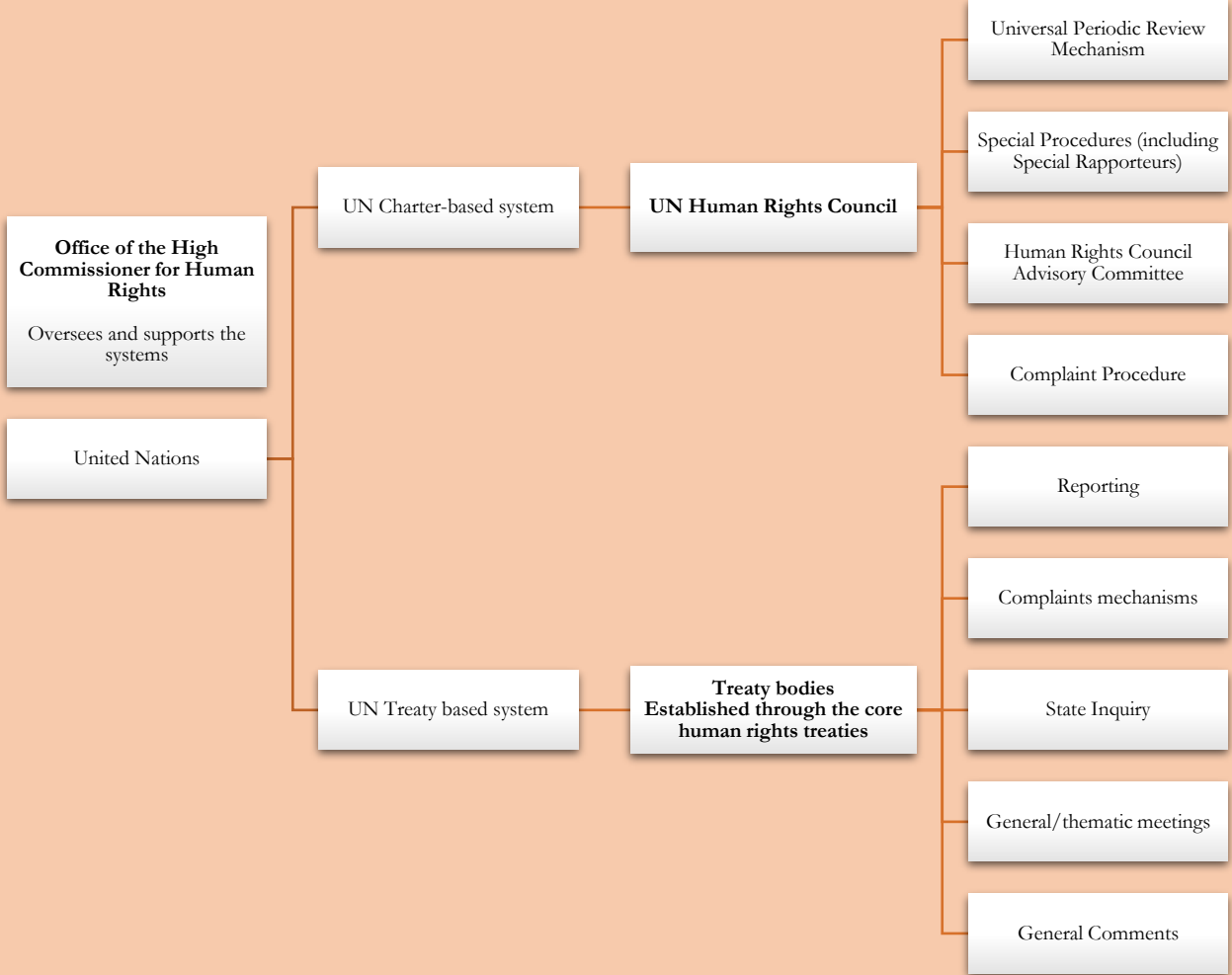
The **2014 Transboundary Haze Pollution Act of Singapore** is a controversial example of national legislation and action. The THPA is a statute under which companies may be financially penalized for haze affecting Singapore in circumstances where the haze originates from activities outside Singapore's boundaries. Although this constitutes a domestic avenue of redress, its extraterritorial implications and potential as a civil liability alternative to state-based avenues is of particular interest to this research. The THPA is intended to apply extraterritorially and allows individuals in Singapore to bring civil liability claims against entities in any land within and outside of Singapore which causes or contributes to any haze pollution in Singapore. The THPA, ideally, can be used to target transnational companies. However, the THPA faces several challenges, including over-reliance on cooperation in monitoring between ASEAN Member States and a lack of extradition agreements between Singapore and Indonesia. Furthermore, it may be seen to be an overly confrontative solution that undermines the ASEAN Way, as argued by the [Indonesian State](#).

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<p><i>Make a submission</i> to the AICHR or the AICHR Representative of the concerned country. This submission can be a report based on field-research of the situation, an overview of corporations involved in activities leading to transboundary harm pollution, or even proposals for consultation events or new areas for thematic studies.</p>	Advocacy	<p>The AICHR's new mandate to assess complaints and forward them to AICHR Representatives for action allows CSOs to raise issues of transboundary haze pollution with a regional human rights body. These complaints are discussed at the next meeting of the Representatives. Action taken can range from contribution to the AICHR's working plans, programmes, and recommendations to other ASEAN Sectoral Bodies. Although it has not been realised it, AICHR does have a mandate to request information from Member States on the promotion and protection of human rights. Complaints can also be made with the view of leading AICHR to make these requests.</p>	No
<p><i>Engage</i> in the AICHR's thematic studies, particular studies on business and human rights, corporate social responsibility and environmental rights. Although these do not provide avenues for redress, ideally, the thematic studies should incentivize States to improve their human rights situations. Unlike the UN's UPR process, it is unlikely these studies will apply regional pressure. Nonetheless, these studies can bring awareness to potential human rights violations at a regional level.</p>	Advocacy	<p>Including human rights concerns on the basis of forest fires and transboundary haze pollution in thematic studies can increase regional awareness about related ongoing human rights violations and incentivize policies to address these.</p>	No

To conclude, the first memorandum outlines key avenues of redress and advocacy under the ASEAN system. Whilst the ASEAN human rights mechanisms are still being developed, there is room for **CSO engagement through advocacy campaigns and participation in thematic studies**. The ASEAN environmental regime is likely to be more useful for *Friends of the Earth* groups, but work within this regime is still dominated by the **ASEAN Way** and its **focus on negotiation and diplomacy**. Any advocacy, lobbying or even litigation conducted within this system must **balance the realisation of access to justice for victims of transboundary haze pollution and navigating the politically sensitive framework within which the pollution occurs**.

# MEMORANDUM 2: UNITED NATIONS-BASED SYSTEMS OF REDRESS AND ADVOCACY

The purpose of the second memorandum is to provide an overview of the **United Nations Charter- and Treaty-based human rights systems** and the avenues of redress and advocacy available under these systems for civil society organisations (CSOs) and affected people.



*Overview of the mechanisms and their avenues for redress or advocacy*

The **UN Charter-based system** includes the UN Human Rights Council and its different mechanisms, which are the Universal Periodic Review Mechanism, the Special Procedures (including Special Rapporteurs), the Human Rights Council Advisory Committee, and the Complaint Procedure. All four mechanisms can become relevant to a larger, **long-term strategy** of *Friends of the Earth groups* to address transboundary haze pollution in Indonesia and Malaysia. They mostly provide **indirect avenues of redress** for individual complainants and should primarily be utilized as **avenues for**

**advocacy.** Of these four mechanisms, the most important to *Friends of the Earth groups* are the Universal Periodic Review (UPR) and collaboration with the UN Special Rapporteurs. In both cases, *the groups* can directly influence the work and output of these two mechanisms in the form of lobbying, targeted submissions and questions, and collaboration.

Indonesia and Malaysia have not included any mention of nature or climate issues in their UPR reports. Neither were these issues mentioned by the UPR working group nor raised in submitted questions by UN Member States. This should be considered a grave omission by all actors involved. An inclusion of environmental concerns in future UPR is important to ensure that States will have to work with stakeholders to address the human rights issues related to these concern. Regarding the UN Special Rapporteurs, predominantly a cooperation with the UN Special Rapporteur on Human Rights and Climate Change, UN Special Rapporteur on Human Rights and the Environment, Working Group on Business and Human Rights, and UN Special Rapporteur on the Right to Physical and Mental Health is encouraged when addressing cases of harms inflicted on victims through forest fires and haze. The Special Rapporteurs can alert the public about violations, assert diplomatic pressure, and influence legislative and policy reform.

The **UN Treaty-based system** refers to the monitoring and compliance of the nine core human rights treaties. These treaties all have **treaty bodies** that oversee the implementation and monitoring of the human rights treaties. They do so in various ways, including through state reporting, complaints mechanisms, special inquiry, holding general and thematic meetings, and issuing general comments.

The main recommendation is for *Friends of the Earth groups* to conduct **general advocacy** through participation in the different procedures in both the charter based and treaty-based system. *The groups* can directly influence the work and output of these two mechanisms in the form of lobbying, targeted submissions, and collaboration. Guidelines and suggestions on how to do so are contained in the memorandum. This general advocacy on the international level is ideally suited for two purposes. Firstly, pressuring Indonesia and Malaysia to undertake certain actions. Secondly, to push for new interpretations and applications of the human rights treaties that would aid *Friend of the Earth International's* domestic efforts with the applicable human rights treaties, as these may trickle down to application by domestic courts.



Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<p><i>Participate</i> in the Human Rights Council regular session to voice the concerns about human rights abuses connected to forest fires and haze. <i>Engage</i> in the country report drafting stages and <i>lobby</i> with the Dutch government to push it to ask questions relating to negative human rights implications resulting from environmental factors, such as forest fires and haze.</p>	Advocacy	Addressing the effects environmental issues have on human rights is important to underline the relevance of addressing these concerns on a global scale. Greater international awareness is likely to translate into greater national awareness in the long-run. Additionally, including human rights concerns on the basis of forest fires and transboundary haze pollution in Indonesia's and Malaysia's country reports can increase (inter)national awareness about related ongoing human rights violations and incentivize policies to address these.	No
<p><i>Cooperate</i> with relevant special rapporteurs by making submissions, providing information, and further support. Relevant special rapporteurs include: UN Special Rapporteur on Human Rights and Climate Change, UN Special Rapporteur on Human Rights and the Environment, UN Special Rapporteur on Business and Human Rights, UN Special Rapporteur on the Right to Physical and Mental Health; and potentially to a lesser extent: UN Special Rapporteur on the Right to Development, UN Special Rapporteur on the Right to Education, UN Special Rapporteur on the Right to Adequate Housing. <i>Keep in mind</i> that the Special Rapporteurs can use their diplomatic power to expose human rights violations, address the perpetrators directly or/and publicly and exert influence over policy and legal developments.</p>	Advocacy	Special Rapporteurs are important key figures in the international human rights sphere. Cooperating with them on addressing (the effects of) forest fires and transboundary haze can be influential in raising international awareness and concern about these issues and promoting policies to counter these. The Special Procedures include a complaint mechanism which can assess individual cases and provide remedies to victims when successful.	Yes

In conclusion, the formal complaint procedures under the UN Charter-based mechanisms or Treaty Bodies might not provide immediate and effective redress. Still, collaboration with different Special Rapporteurs might **raise international awareness** and **promote domestic legislative and policy reform**, and advocating for the inclusion of environmental issues such as forest fires and haze in the UPR of Malaysia and Indonesia can steer the countries to address the environmental harms with more urgency. Further, awareness may be raised through advocacy in the procedures the treaty bodies of international human rights treaties. When done in a targeted manner, this can lead the treaty body to adopt interpretations of international human rights treaties and norms that can be utilised in domestic proceedings.

### MEMORANDUM 3: OTHER INTERNATIONAL AVENUES OF REDRESS AND ADVOCACY

The purpose of the third memorandum is to outline international avenues of redress and advocacy other than the UN Charter- and UN Treaty-based systems introduced in the second memorandum. Three international mechanisms are thereby discussed, namely the UN Framework Convention on Climate Change and the different agreements and nationally determined contributions connected to it, the Sustainable Development Goals, and the UN Guiding Principles on Business and Human Rights.

The **UN Framework Convention on Climate Change (UNFCCC)** was adopted in May 1992, providing a foundation for intergovernmental efforts to address climate change. The UNFCCC divides countries into Annex I and non-Annex I Parties, with non-Annex I countries as mostly developing countries with less mitigation responsibilities. All Parties are required to develop a national inventory of greenhouse gas (GHG) emissions and to report on their mitigation policies and measures. Parties submit **national communications (NCs)** and provide information on GHG inventories, measures to mitigate and to facilitate adequate adaptation to climate change, and any other information that the Party considers relevant to the achievement of the objective of the Convention. In addition to this, Parties shall also submit **biennial update reports (BURs)** that update the information in the NCs. Both Indonesia and Malaysia's NCs and BURs have contained minimal references to the transboundary haze pollution issue; Indonesia's BUR only vaguely noted that forest and peatland fires cause disasters that damaged the environment, health, disrupt the economy, and worsen relations between countries.

The NCs and BURs are relevant to *Friends of the Earth* groups as reviewing a State's NCs allows CSOs to be kept up to date with the country's most updated GHG inventory. CSOs also need to be aware of the State's commitments and progress in achieving these commitments. Importantly, NCs highlight the State's priorities and do not properly include the forest fires and haze issue currently.

The **2015 Paris Agreement** aims to continue regulation of greenhouse gas reductions, and addresses adaptation, climate financing and a new global commitment on common but differentiated responsibilities. Under the Paris Agreement, Parties are obliged to submit **nationally determined contributions (NDCs) and intended NDCs (INDCs)**. Although Article 4(2) and the obligation to prepare, communicate and maintain NDCs is a legally binding provision, the Paris Agreement's compliance mechanisms are not mandated to review the NDCs themselves as that it within the purview of national legislation. In its efforts to continue combatting climate change, Indonesia aims to scale up local participation in climate change mitigation and adaptation and mainstream the climate agenda into its development planning. Engagement of non-party stakeholders, such as local government, private sectors, and civil society actors will continuously be enhanced. Indonesia's NDC is quite ambitious, and particularly emphasises the intensification of efforts to reduce emissions in forest-and-land and energy sectors. Compared to Indonesia's NDC, Malaysia's emission reduction goals are more ambitious, with an unconditional reduction target of 45%. Malaysia also focuses much of its adaptation efforts on enhancing sustainable forest management, with increasing efforts to collaborate with the private sector in preservation of its biodiversity.

The **Sustainable Development Goals** provide countries with an integrated and indivisible framework for sustainable development, with quantitative objectives incorporating social, economic,

and environmental aspects of sustainable development – all to be achieved by 2030. Whilst not binding law, the SDGs provide an international framework and a universal language to meet commitments on a wide range of sustainable development issues. They are thus important to advocacy campaigns in order to create an equal starting point for discussions on climate change, air pollution and social and economic development with a multitude of stakeholders. The SDGs also provide for **Voluntary National Review (VNR)**, a process through which States assess and present progress made in achieving the global goals. Each year, they present at the annual High Level Political Forum (HLPF). Both Indonesia and Malaysia have signed up for the VNR.

The **UN Guiding Principles on Business and Human Rights** are soft law principles (meaning, they are not legally binding on States that have signed or endorsed them but can be used by courts to interpret national laws) that codified previously existing duties businesses and States have under international human rights law. They have been endorsed by numerous States, multinational corporations, and international bodies, such as the Organisation of Economic Co-operation and Development (OECD) which aligned its Guidelines for Multinational Enterprises with the Guiding Principles. Though the Guiding Principles do not impose legally binding obligations on States or businesses, they can guide judges in interpreting the obligations under binding national or international laws (such as international human rights law) and may even be translated into hard law through domestic jurisprudence. They are therefore relevant to *Friends of the Earth groups* by providing an internationally agreed-upon benchmark against which to analyse and evaluate the conduct of corporations regarding their human rights obligations, which can frame national litigation strategies or broader advocacy campaigns.

Recommendation	Legal/ Advocacy	Impact Potential	Victims' redress?
<i>Produce</i> a non-party stakeholder submission to the UNFCCC.	Advocacy	As a non-party stakeholder without observer status, Friends of the Earth groups are invited to send their submissions, as per the <a href="#">guidelines</a> , to the UNFCCC Secretariat by email. These submissions are particularly important as CSOs may be more adept at data collection and ensuring transparency.	No
<p><i>Review</i> the draft VNR report, if available. In some cases, CSOs and other stakeholders may have the opportunity to provide feedback and comments on a draft VNR report. Where CSOs have this opportunity, they should ensure that the report contains the following information;</p> <ol style="list-style-type: none"> <li>A review of all 17 SDGs</li> <li>An overview of stakeholder engagement</li> <li>A summary of national-level accountability processes</li> <li>A dedicated section on and/or cross-cutting approach to the pledge to ‘leave no one behind’</li> <li>Recommendations or information from existing human rights reporting</li> </ol> <p><i>Provide independent contributions to VNR reports</i></p>	Advocacy	The impact potential lies in strengthening the national ownership of the SDGs. The VNR process is a tool for accountability, promoting transparency, inclusivity and participation in reporting on the SDGs. However, given that the SDGs are non-binding aspirations and the voluntary nature of the 2030 Agenda, the impact of the VNR process is primarily norm-building and standard-setting for the regional community.	No
<p><i>Produce</i> a civil society shadow report to the VNR. These reports are particularly important where civil society has little or no opportunity to engage in official VNR processes at the national level. Shadow reports may be produced in partnership with civil society coalitions, National Human Rights Institutions (NHRIs), academia or other stakeholders</p>	Advocacy	The impact of the shadow report will, again, be primarily norm-building. However, if the shadow report is written in partnership with other CSOs or the NHRIs, it can support the creation of a coalition against transboundary haze pollution, thereby creating bottom-up pressure on governments to act in preventing and mitigation this pollution.	No
<p><i>Expose</i> companies that fail to meet their human rights duties. For this, use the language of the Guiding Principles on Business and Human Rights. These principles clearly outline companies’ responsibilities to respect human rights. The Guiding Principles, which are soft law themselves, can be used to interpret hard laws. These hard laws are the company’s human rights obligations under national law and their obligation to respect human rights under international systems.</p>	Advocacy	The impact of this strategy is primarily on the respective company’s public image as well as the general public’s awareness about the adverse human rights impacts caused by the respective company. For victims of transboundary haze pollution, this strategy may bring moral satisfaction, but it will not directly provide legal justice or reparations.	No

<p><i>Bring a case</i> before either national law or relevant international bodies if the companies in question fail to adequately mitigate their negative human rights impacts.<sup>1</sup> These cases should be based on hard law (human rights law under international or national law), which can be interpreted according to the principles laid out in the Guiding Principles on Business and Human Rights. Refer to the <a href="#">case</a> brought to the Malaysian Human Rights Commission (SUHAKAM) by CERAH, Greenpeace Malaysia, and other NGOs on 7 December 2021 as an example of a case brought before an international body. Refer to <a href="#">Milieudedefensie et al v Royal Dutch Shell</a> as an example of a domestic case, though keeping in mind that the domestic legal systems within other countries may not follow the Dutch court’s example.</p>	<p>Legal</p>	<p>Bringing a case before national law or international legal bodies that can give legally binding judgements is a double-edged sword: If the case is won, such as in the <i>Milieudedefensie et al v Royal Dutch Shell</i> case, this can both set a precedent for future cases as well as change the mere duty companies have to respect human rights into a legal obligation. This will have a clear and direct impact on improving the respective human rights situation and, if included in the claim, provide justice for victims. If the case is lost, however, this may undermine future similar cases and weaken the human rights situation for affected groups and victims. Therefore, while cases should be brought against companies where possible to enforce compliance with human rights, this should not be done recklessly or carelessly.</p>	<p>Yes, if included in the case</p>
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To conclude, the third memorandum outlines key avenues of redress and advocacy under international law beyond the UN Charter and UN Human Rights treaties. Most importantly, these agreements and principles indicate the **common language and commitment** shared among States and other international actors (such as businesses). They can be used by *Friends of the Earth* groups as a **soft law** basis to engage and cooperate with other international stakeholders, and support arguments in cases before national Courts..

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<sup>1</sup> The human rights most likely to be negatively impacted are hereby mostly right to health right to life, right to a clean, healthy and sustainable environment, and to a more limited extent right to development, right to adequate standards of housing, and right to equality and non-discrimination.

## CONCLUSION

There are different mechanisms under international law that can be utilised by *Friends of the Earth groups* as avenues of redress and advocacy. The regional system focused on is the ASEAN system, which primarily provides avenues of advocacy rather than redress for individual cases. ASEAN's human rights mechanism allows for submissions of complaints regarding a country's human rights situation but does not provide for a legal avenue of redress. Both Indonesia and Malaysia's NHRIs also allow for submissions of complaints and may be more effective in responding to them, as compared to the AICHR. Legal avenues of redress can be pursued under the Singaporean THPA, which prescribes a civil liability regime where individuals in Singapore can bring suits against entities or persons engaged in activities that result in transboundary haze pollution in Singapore. The UN Charter-based system predominantly provides avenues of advocacy rather than redress for individual cases. Advocacy before the relevant bodies – most importantly of which the Universal Periodic Review and the UN Special Rapporteurs – is important to raise international awareness for and strengthen policies against the adverse human rights impacts of forest fires and transboundary haze pollution. The UN Treaty Bodies may provide various avenues of redress. State enquiries and individual complaints are not available for action against Indonesia or Malaysia due to the ratification status of the additional protocols needed for this. There is, however, ample opportunity for general advocacy by NGOs during the reporting cycle of States and in other processes of the treaty bodies. Such general advocacy may raise awareness for issues and further feed into general comments of the treaty bodies which can in turn be relied upon in domestic proceedings on the human rights issues raised by Indonesian forest fires and transboundary haze. Other international avenues of redress discussed in the third memorandum are soft law principles that do not impose legally binding obligations on corporations. Therefore, they are based on voluntary cooperation and compliance of businesses, which undermines their relevance to ensuring large-scale change. Nonetheless, they are worthwhile tools that can be used in long-term advocacy strategies to support arguments made domestically.

## Annex I: Recommendations

Recommendations - Regional avenues of advocacy and redress	Legal/ Advocacy	Impact Potential	Victims' redress?
<p><b><i>Make a submission</i></b> to the AICHR or the AICHR Representative of the concerned country. This submission can be a report based on field-research of the situation, an overview of corporations involved in activities leading to transboundary harm pollution, or even proposals for consultation events or new areas for thematic studies.</p>	Advocacy	<p>The AICHR's new mandate to assess complaints and forward them to AICHR Representatives for action allows CSOs to raise issues of transboundary haze pollution with a regional human rights body. These complaints are discussed at the next meeting of the Representatives. Action taken can range from contribution to the AICHR's working plans, programmes, and recommendations to other ASEAN Sectoral Bodies. Although it has not been realised it, AICHR does have a mandate to request information from Member States on the promotion and protection of human rights. Complaints can also be made with the view of leading AICHR to make these requests.</p>	No
<p><b><i>Engage</i></b> in the AICHR's thematic studies, particular studies on business and human rights, corporate social responsibility and environmental rights. Although these do not provide avenues for redress, ideally, the thematic studies should incentivize States to improve their human rights situations. Unlike the UN's UPR process, it is unlikely these studies will apply regional pressure. Nonetheless, these studies can bring awareness to potential human rights violations at a regional level.</p>	Advocacy	<p>Including human rights concerns on the basis of forest fires and transboundary haze pollution in thematic studies can increase regional awareness about related ongoing human rights violations and incentivize policies to address these.</p>	No
<p><b><i>Apply</i></b> to have consultative status with the AICHR.</p>	Advocacy	<p>Consultative status has the benefit of engaging with AICHR on a deeper level and, presumably, increased access to AICHR's network and resources. On the other hand, this is also reliant on the AICHR remaining open and willing to CSO engagement. In the last few years, this has only come to fruition after pressure from countries' Representatives – Indonesia and Thailand's in particular.</p>	No
<p><b><i>File a complaint</i></b> or request for enquiry under the NHRI. <b><i>Refer</i></b> to the <a href="#">SUHAKAM complaint</a> as a similar course of action.</p>	Advocacy	<p>Upon receiving the complaint, NHRIs have the mandate to conduct an initial assessment, investigate and make recommendations to the government with a view to resolve the dispute. Bringing a complaint to an NHRI is a quasi-judicial avenue and can have the impact of</p>	No

		raising awareness for the alleged human rights violations and pressure the government to take action, upon the NHRI's recommendation. In the complaint to the NHRI, recommendations to the NHRI can be included that may inspire the NHRI's own recommendations. Bear in mind that the potential impact of this avenue also depends on the willingness of the government to consider the NHRI's recommendations and take action.	
<b><i>Identify</i> key companies or individuals that either participate in the management or operational affairs of other entities contributing to negative human rights impacts (as a result of forest fires and haze), engages in conduct which causes or contributes to any haze pollution in Singapore, or directly linked to the haze in Singapore.</b>	Advocacy	In itself, this recommendation has no impact on halting human rights violations or helping victims. However, it provides the foundation of the following recommendations and can be impactful through this.	No
<b><i>Collect</i> all relevant data to prove the relationship between one entity, the entity's actions and/or policies and the haze pollution. Partnerships with local CSOs and individuals are likely to contribute to create a clear, evidence-based overview of these relationships.</b>	Advocacy	Similar to recommendation 1, the collection of data in itself only has a limited impact. It is fundamental to any advocacy campaign or national litigation, however. As aforementioned, there are challenges to be considered in this data collection phase and may entail additional research into stock exchange disclosures or company registration information that requires the company to share information on the land they own or occupy.	No
<b><i>Bring a case</i> if the entity in question can be proven to be liable for the transboundary harm pollution and if the entity is based and can be located in Singapore.<sup>2</sup> If these individuals do not fall under Singapore's jurisdiction or if there is no extradition treaty in place, the case is unlikely to be successful.</b>	Legal	Bringing a case under the THPA can be beneficial in setting a precedent for future cases and clarify the duties of corporations to respect human rights. Furthermore, if the suit incorporates human rights of victims, it may potentially provide justice for them. On the other hand, regardless of whether the case is successful or unsuccessful, if the case targets an Indonesian corporation or individual based in Singapore, it may be a politically contentious case contrary to the Asian Way and further aggravate political tensions between the two States.	Yes, if included

<sup>2</sup> The human rights most likely to be negatively impacted are the right to health, right to life, right to a clean, healthy and sustainable environment, and to a more limited extent the right to development, right to adequate standards of housing, and right to equality and non-discrimination.



Recommendations - UN-Based Systems	Legal/ Advocacy	Impact Potential	Victims' redress?
<p><i>Raise</i> human rights issues both internationally and domestically (for example national human rights commission) where possible.</p> <p><i>Engage</i> internationally to create pressure and international attention for the issues.</p>	Legal/ Advocacy	This reflects a broad recommendation to engage with the human rights system internationally as specified in the further recommendations and further raise human rights issues domestically through advocacy and legal action. Domestic action based on human rights obligations may lead to victims' reparation.	Yes
<p><i>Engage</i> internationally, through general advocacy to the treaty bodies with human rights issues domestic lawyers and CSOs would like to raise.</p> <p><i>Make tactical contributions</i> that are aimed at solving or making easier specific issues with domestic lawyers are encountering when using human rights within the domestic legal system.</p>	Advocacy/Legal	On the international level, the main opportunities are found in general advocacy. General advocacy has the most potential when it is part of a long-term strategy that is specifically tailored to human rights issues that domestic lawyers may wish to raise and issues that they run up against. This is because international advocacy may have a trickle-down effect (which is described in more detail in the full memorandum).	Yes
<p><i>Contribute</i> to general comments of the treaty bodies</p>	Advocacy	Contributions to general comments are more likely to create a trickle-down effect as explained above.	No
<p><i>Contribute</i> during the different phases of the reporting cycle of international human rights treaties</p>	Advocacy	Contributions made in the reporting mechanism are more likely to put pressure on the states being targeted.	No
<p><i>Stay updated</i> on current calls for input and comments of the OHCHR.</p>	Advocacy	This will allow the spotting of opportunities for advocacy	No
<p><i>Consult</i> OHCHR guidelines on engagement with the UN but use with caution regarding the time of creation (some information in the guidelines may be outdated at the time of reading).</p>	Advocacy	The OHCHR creates guidelines on the engagement of CSOs with human rights bodies that one can consult for guidance.	No
<p><i>Lobby</i> with the Dutch government to push it to ask questions relating to negative human rights implications resulting from environmental factors, such as forest fires and haze.</p>	Advocacy	As there is currently no mention of environmental issues in either Indonesia's or Malaysia's UPRs, raising this issue with the Dutch government, which in turn can include it in its questions to the UPR working group can have significant effects on putting these issues on the radar of human rights bodies. As a result, this may be translated into	No

		national policies and greater emphases overall.	
<i>Engage</i> in the country report drafting stages (relating to Friends of the Earth International and more specifically SAM (Malaysia, June 2023), as the deadline for Indonesia's report has passed already by the time this memorandum is published). Although these do not provide avenues for redress, the UPR process does incentivize states to improve their human rights situations as a result of international political pressure.	Advocacy	Similar to the impact potential above, including human rights concerns on the basis of forest fires and transboundary haze pollution in Indonesia's and Malaysia's country reports can increase (inter)national awareness about related ongoing human rights violations and incentivize policies to address these.	No
<i>Participate</i> in the Human Rights Council regular session to voice the concerns about human rights abuses connected to forest fires and haze.	Advocacy	Addressing the effects environmental issues have on human rights is important to underline the relevance of addressing these concerns on a global scale. Greater international awareness is likely to translate into greater national awareness in the long-run.	No
<i>Cooperate</i> with relevant special rapporteurs by making submissions, providing information, and further support. Relevant special rapporteurs include: UN Special Rapporteur on Human Rights and Climate Change, UN Special Rapporteur on Human Rights and the Environment, UN Special Rapporteur on Business and Human Rights, UN Special Rapporteur on the Right to Physical and Mental Health; and potentially to a lesser extent: UN Special Rapporteur on the Right to Development, UN Special Rapporteur on the Right to Education, UN Special Rapporteur on the Right to Adequate Housing.	Advocacy	Special Rapporteurs are important key figures in the international human rights sphere. Cooperating with them on addressing (the effects of) forest fires and transboundary haze can be influential in raising international awareness and concern about these issues and promoting policies to counter these.	No
<i>Keep in mind</i> that the Special Rapporteurs can use their diplomatic power to expose human rights violations, address the perpetrators directly or/and publicly and exert influence over policy and legal developments.	Advocacy	The Special Procedures include a complaint mechanism which can assess individual cases and provide remedies to victims when successful.	Yes
<i>Submit a complaint</i> to the Complaint Procedure if national avenues of redress	Advocacy	While there are high thresholds to get a complaint accepted in the scope of	Yes

fail. If accepted, the Council will appoint experts for immediate monitoring and work with the relevant state.		the Complaint Procedure, once it has been accepted the issue will be addressed in cooperation with the State and the Human Rights Council, and reparations may be paid to victims.	
<i>Raise issues</i> during the reporting cycle on the Indonesian forest haze or on topics that are highly related as a form of general advocacy.	Advocacy	This is a way to conduct general advocacy through the treaty bodies and may serve to pressure the state concerned and work towards new interpretations by the treaty bodies.	
<i>Lobby</i> for Malaysia and Indonesia to ratify the optional protocols of the core human rights conventions.	Advocacy	If successful, the ratification of optional protocols could allow the treaty bodies to engage in state enquiries, investigations into the country's human rights situation. It could also allow the treaty body to hear individual complaints, which would open up the possibility for victims to bring claims before the treaty bodies.	If successful it may open up the possibility
<i>Use</i> precedent from the <a href="#">Portillo Cáceres v. Paraguay</a> to argue that environmental harm falls under the ICCPR and does not have to be proven to directly affect the people invoking its protection as long as it is proven to contribute to a general harm. This is easier to prove than a specific harm.	Advocacy/Legal	This is an argument that can be made in legal proceedings or in submissions to strengthen this interpretation.	Yes (When used in legal proceedings)
<i>Lobby</i> governments to start mentioning minimum core rights in their reports.	Advocacy	Lobbying governments to start mentioning these more will bring greater recognition and pressure states into adhering to these minimum core rights so they can include a positive report.	No
<i>Reference</i> minimum core rights in domestic cases, to advance this approach to the ICESCR.	Advocacy/Legal	Referencing these rights in domestic cases will help develop them as well as potentially bring redress. It is worth mentioning them even in cases unrelated to the haze due to the advocacy potential.	Yes (When used in domestic cases)
<i>Advocate and bring action</i> both domestically and internationally on the basis of State obligations to regulate the behaviour of corporations	Advocacy/Legal	Referencing these obligations in domestic cases will help develop them as well as potentially bring redress. It is worth mentioning them even in cases unrelated to the haze due to the advocacy potential.	Yes (When used in domestic cases)

<p><i>Utilise</i> the obligations of corporations under the ICESCR to strengthen domestic cases</p>	<p>Legal</p>	<p>This is an argument that can be made in legal proceedings or in submissions to strengthen this interpretation and as an avenue for redress if successful.</p>	<p>Yes</p>
<p><i>Make written submissions</i> relating to the frameworks of business responsibility by Indonesia and Malaysia to contribute to the list of issues or contribute in the form of a shadow report to the ICESCR committee's procedures</p>	<p>Advocacy</p>	<p>Specific example of an area in which general advocacy might be particularly useful to pressure Indonesia and Malaysia into reporting on these issues.</p>	<p>No</p>
<p><i>Engage</i> in the drafting process of <a href="#">General Comment 26. on Children's Rights and the Environment with a Special Focus on Climate Change.</a></p>	<p>Advocacy</p>	<p>As the Committee on the Rights of the Child is currently in the process of drafting a general comment on the rights of the Child and climate change, this is a great opportunity for CSOs to engage and contribute. If contributions are adopted into the final general comment this can feed into future legal strategies.</p>	<p>No</p>
<p><i>Engage</i> with existing research initiatives on health impacts of the haze on people with disabilities.</p>	<p>Advocacy</p>	<p>While not being direct advocacy it may yield useful results if for CSOs if they were to engage with existing research initiatives on the haze, to further build argumentation.</p>	<p>No</p>
<p><i>Partner</i> with an NGO or other organisation that has more knowledge about the medical consequences of the haze.</p>	<p>Advocacy</p>	<p>While not being direct advocacy it may yield useful results if for CSOs if they partner with other NGOs that have a more comprehensive understanding of the full range of medical impacts of the haze, to further build argumentation.</p>	<p>No</p>

Recommendations – Other international avenues of advocacy and redress	Legal/ Advocacy	Impact Potential	Victims’ redress?
<i>Engage with</i> designated government actors responsible for NDC implementation.	Advocacy	Creating a channel of communication with high-level actors responsible for NDC implementation will provide opportunities for the CSO to advocate for and support better NDC implementation and review. The CSO can also facilitate input from citizens and provide technical support where the designated bodies may be lacking.	No
<i>Produce</i> a non-party stakeholder submission.	Advocacy	CSOs are invited to send their submissions, as per the <a href="#">guidelines</a> , to the UNFCCC Secretariat by email. These submissions are particularly important as CSOs may be more adept at data collection and ensuring transparency.	No
<i>Attend and engage</i> in COP27 at Sharm El-Sheik, Egypt, including organising a side event.	Advocacy	CSO-organised side events are the most visible venue for CSO involvement in international climate negotiations. These side events provide an important opportunity for information dissemination, capacity building and benefit negotiations by enhancing access to information and ideas presented by CSOs and other engaged parties, outside the formal negotiations.	No
<i>Review</i> the draft VNR report, if available. In some cases, CSOs and other stakeholders may have the opportunity to provide feedback and comments on a draft VNR report. Where CSOs have this opportunity, they should ensure that the report contains the following information: <ul style="list-style-type: none"> <li>a. A review of all 17 SDGs</li> <li>b. An overview of stakeholder engagement</li> <li>c. A summary of national-level accountability processes</li> <li>d. A dedicated section on and/or cross-cutting approach to the pledge to ‘leave no one behind’</li> <li>e. Recommendations or information from existing human rights reporting</li> <li>f. Provide independent contributions to VNR reports</li> </ul>	Advocacy	The impact potential lies in strengthening the national ownership of the SDGs. The VNR process is a tool for accountability, promoting transparency, inclusivity, and participation in reporting on the SDGs. However, given that the SDGs are non-binding aspirations and the voluntary nature of the 2030 Agenda, the impact of the VNR process is primarily norm-building and standard-setting for the regional community.	No
<i>Produce</i> a civil society shadow report. These reports are particularly important where civil	Advocacy	The impact of the shadow report will, again, be primarily norm-building. However, if the	No

<p>society has little or no opportunity to engage in official VNR processes at the national level. Shadow reports may be produced in partnership with civil society coalitions, National Human Rights Institutions (NHRIs), academia or other stakeholders</p>		<p>shadow report is written in partnership with other CSOs or the NHRIs, it can support the creation of a coalition against transboundary haze pollution, thereby creating bottom-up pressure on governments to act in preventing and mitigation this pollution.</p>	
<p><i>Pursue</i> follow-up activities after the VNR, including disseminating the national report and outcome of the VNR, providing an assessment of the country's review, holding a conference or meeting with other CSOs, and engaging with the government to follow-up the main findings of the VNR.</p>	Advocacy	<p>Once a VNR report is available, follow-up activities will be important to support the norm-building process, especially as they relate to information dissemination and increasing public participation and awareness of the State's progress in achieving the SDGs.</p>	No
<p><i>Identify</i> key companies that are either causing, contributing to, or directly linked to negative human rights impacts (as a result of forest fires and haze).</p>	Advocacy	<p>In itself, this recommendation has no impact on halting human rights violations or helping victims. However, it provides the foundation of the following recommendations and can be impactful through this.</p>	No
<p><i>Collect all relevant data</i> to prove the relationship between the company's actions and/or policies and the negative human rights impacts. Partnerships with local CSOs and individuals are likely to contribute to creating a clear, evidence-based overview of these relationships.</p>	Advocacy	<p>Similar to recommendation 1, the collection of data in itself only has a limited impact. It is fundamental to any advocacy campaign or national litigation, however.</p>	No
<p><i>Analyse</i> whether the companies in question are aware of the negative human rights impacts they are causing, contributing to, or directly linked to. If they are unaware, <i>inform</i> them of their human rights duties.</p>	Advocacy / Legal	<p>While this recommendation may not be relevant in all cases (such as when it can be reasonably assumed that a company is aware of its obligations under international law), ensuring this awareness of companies' adverse human rights impacts is crucial when claiming their inaction in the scope of advocacy campaigns or when building a national litigation case.</p>	No
<p><i>Expose</i> companies that fail to meet their human rights duties. For this, use the language of the Guiding Principles on Business and Human Rights. These principles clearly outline companies' responsibilities to respect human rights. The Guiding Principles, which are soft law themselves, can be used to interpret hard laws. These hard laws are the company's human rights obligations under national law and their obligation to respect human rights under international systems.</p>	Advocacy	<p>The impact of this strategy is primarily on the respective company's public image as well as the general public's awareness about the adverse human rights impacts caused by the respective company. For victims of transboundary haze pollution, this strategy may bring moral satisfaction, but it will not directly provide legal justice or reparations.</p>	No
<p><i>Bring a case</i> before either national law or relevant international bodies if the companies in question fail to adequately mitigate their negative human</p>	Legal	<p>Bringing a case before national law or international legal bodies that can give legally binding judgements is a double-edged sword:</p>	Yes, if included

<p>rights impacts.<sup>3</sup> These cases should be based on <i>hard law</i> (human rights law under international or national law), which can be interpreted according to the principles laid out in the Guiding Principles on Business and Human Rights. Refer to the <a href="#">case</a> brought to the SUHAKAM by CERAH, Greenpeace Malaysia, and other CSOs on 7 December 2021 as an example of a case brought before an international body. Refer to <a href="#">Miliendefensie et al v Royal Dutch Shell</a> as an example of a domestic case, though keeping in mind that the domestic legal systems within other countries may not follow the Dutch court's example.</p>		<p>If the case is won, such as in the <i>Miliendefensie et al v Royal Dutch Shell</i> case, this can both set a precedent for future cases as well as change the mere duty companies have to respect human rights into a legal obligation. This will have a clear and direct impact on improving the respective human rights situation and, if included in the claim, provide justice for victims. If the case is lost, however, this may undermine future similar cases and weaken the human rights situation for affected groups and victims. Therefore, while cases should be brought against companies where possible to enforce compliance with human rights, this should not be done recklessly or carelessly.</p>	<p>in the case</p>
<p><i>Lobby</i> States to respect their duties under the Guiding Principles to create a mechanism of accountability and redress regarding businesses and their human rights obligations.</p>	<p>Advocacy</p>	<p>Once States have implemented a functioning mechanism of accountability and redress regarding the human rights obligations of businesses, this can have a great impact on enforcing greater compliance of businesses with their obligations as this shifts the pressure from international duties to national obligations. Based on the mechanisms created by States, this can additionally provide an avenue of redress for victims.</p>	<p>Yes, if included</p>
<p><i>Participate</i> in the drafting processes of the National Action Plans of Malaysia and Indonesia. In this, cooperate with local organisations that lead these processes, such as SUHAKAM in Malaysia.</p>	<p>Advocacy</p>	<p>The impact of this final strategy is indirect and more long-term than some discussed above. It is important because it can shift national priorities and policies to recognise the effects of environmental issues (here: forest fires and transboundary haze) on human rights.</p>	<p>No</p>

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<sup>3</sup> The human rights most likely to be negatively impacted are the right to health right to life, right to a clean, healthy and sustainable environment, and to a more limited extent the right to development, right to adequate standards of housing, and right to equality and non-discrimination.