



THE FRAMEWORK FOR EXTRACTIVE INDUSTRIES GOVERNANCE IN ASEAN

THE FRAMEWORK
FIRST EDITION



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THE LEGAL CONSIDERATIONS AND PRINCIPLES FOR THE REGIONAL FRAMEWORK



The regional framework, as a tool to foster the development of a competitive economic region and Integration into the Global Economy under the AEC, must adhere to and comply with existing legal documents and formal decisions of the Summit, Councils, and Sectoral Ministerial Bodies within ASEAN, while at the same time adopting international best practices and standards that are directly related to the extractive industries. These legal frameworks will serve as the building blocks to underpin the implementation of the framework by ASEAN Member States.

The legal building blocks within ASEAN

1. The **ASEAN Charter** states in Article 1(5),(6),(7) and (9) that the purpose of ASEAN, to create “a single market and production base which is stable, prosperous, highly competitive, and economically integrated with facilitation for trade and investment” must go hand in hand with the parallel purposes of: strengthening democracy, enhancing good governance and rule of law; promoting and protecting human rights and fundamental freedoms; alleviating poverty and narrowing the development gap within ASEAN through mutual assistance and cooperation; and promoting sustainable development to ensure protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage, and a high quality of life for its people.

In pursuit of those purposes, the Charter establishes a set of principles in Article 2.2, which include adherence to the rule of law, good governance, democratic principles and constitutional government, respect for fundamental freedoms, promotion and protection of human rights and social justice.

2. The **ASEAN Vision 2020** emphasizes the creation of a Partnership in Dynamic Development to forge closer economic integration within ASEAN. The partnership includes: establishing interconnecting arrangements in the field of energy and utilities for electricity, natural gas and water; promoting cooperation in energy efficiency and conservation and the development of new and renewable energy resources; and enhancing intra-ASEAN trade and investment in the minerals sector.

Alongside the Partnership in Dynamic Development, the ASEAN Vision 2020 outlines the aim of developing A Community of Caring Societies. The Community of Caring Societies is characterised as, inter alia, a socially cohesive region which empowers civil society, is governed by principles of social justice and rule of law, includes fully established mechanisms for sustainable development to ensure the protection of the region's environment, the sustainability of its natural resources, and a high quality of life for its peoples. It further encompasses the evolution of agreed rules of behaviour and cooperative

measures to deal with problems that can be met only on a regional scale, including environmental pollution and degradation.

3. The **ASEAN Human Rights Declaration (AHRD)** sets out a framework for human rights cooperation in the region to contribute to the ASEAN community building process, including fundamental civil and political rights and economic, social and cultural rights. Within this framework, the Declaration articulates the right to development as an inalienable human right, by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural, and political development, and which should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations¹.

The AHRD obliges ASEAN Member States to adopt meaningful people-oriented and gender responsive development programs aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN, in the form of effective development policies at national level, as well as equitable economic relations, international cooperation, and a favorable international economic environment².

4. The **2004 Vientiane Action Programme (VAP 2004-2010)** was developed and agreed during the 10th ASEAN Summit in Vientiane, Laos in November 2004. The Action Programme provides a platform for unifying the strategies and goals of the three pillars of ASEAN integration: the ASEAN Economic Community (AEC), the ASEAN Political-Security Community (APSC) and the ASEAN Socio-Cultural Community (ASCC). The Action Programme sets out the key action plans and programmes towards realisation of the goals of the ASEAN Vision 2020. With respect to Trade in Goods, these include the development of a regional policy on mineral resource utilisation and intra- and inter-ASEAN minerals trade and investment, as well as enhancing private sector participation and investment in the exploration and development of mineral resources in which ASEAN enjoys a competitive advantage in the international or global market. With respect to Trade in Services, these actions include the development of comprehensive institutional arrangements for the enhanced security and stability of energy supply in ASEAN and supporting sustainable energy development through expanding the markets for renewable energy technologies and energy-efficient products.

¹ Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012, Article 35.

² Ibid, Article 36.

The Action Programme also outlines actions to increase the role of the mining sector in Promoting Environmental Sustainability by strengthening cooperation in the rational utilisation of mineral resources, through

- (i) intensifying cooperation in building institutional and human capacities to facilitate research, innovation and the application of emerging and advanced technologies in mineral resources development and geosciences, including environmental management, minerals processing and rehabilitation, among other areas; (ii) engaging ASEAN Dialogue Partners and relevant international and regional organisations in the promotion of responsible mineral resources development, research and development, and technology transfer cooperative programmes and activities; and (iii) conducting safe, environmentally sound and socially responsible mineral resources development in ASEAN.
5. The **ASEAN Economic Community Blueprint** was adopted by ASEAN leaders at the 13th ASEAN Summit in Singapore on November 2007. The Blueprint sets out guidance for member countries towards the development of a single market and production base by facilitating the free flow of investment, including the energy, mining and quarrying sectors and services incidental to the sectors, in the ASEAN Comprehensive Investment Agreement (ACIA). The ACIA enhances protection to all investors and their investments; establishes more transparent, consistent and predictable

investment rules, regulations, policies and procedures; and promotes ASEAN as an integrated investment area and production network.

The AEC Blueprint also provides guidance for establishing ASEAN as a competitive economic region through infrastructure development in the energy and mining sectors, especially by enhancing trade and investment and strengthening cooperation and capacity in the geological and mineral sectors for environmentally and socially sustainable mineral development within ASEAN. At the same time, the Blueprint encourages stronger integration into the global economy through enhanced participation in global supply networks and the ongoing adoption of international best practice and standards in production and distribution, where possible.

6. The **Ministerial Understanding on ASEAN Cooperation in Minerals** was agreed at the First ASEAN Ministerial Meeting on Minerals (AMMin) in Kuching, Sarawak, Malaysia in 2005. The Understanding sets out the key goals of developing the minerals sector as an engine for greater economic growth and social progress in ASEAN; enhancing trade and investment in the sector; and promoting environmentally sound and socially responsible mineral development practices in the sustainable management and optimum utilisation of mineral resources. The Understanding envisages the initiation and strengthening of cooperation between countries in the minerals sector, recognising that

mineral resource endowments, minerals usage and capacities vary considerably between ASEAN Member Countries. The Understanding acknowledges the need to support and promote initiatives that contribute to meeting sustainable development goals in the minerals sector and the need to advocate best practices in minerals development to the public at large. It further notes the need to meet the challenges and competitiveness arising from increased demand for minerals globally.

The Understanding identifies areas in which Member Countries propose to undertake cooperation on the basis of equality and mutual benefit, including:

- Information exchange and development of the ASEAN Minerals Database;
- Promotion and facilitation of intra- and inter-ASEAN trade and investment;
- Promotion of environmentally and socially responsible mineral resources management and development;
- Intensifying private sector participation and public-private sector collaboration in ASEAN mineral cooperation programmes, projects and activities;
- Fostering cooperation with ASEAN dialogue partner countries and relevant international and regional organisations in the promotion of scientific and technological research and development in mineral resources development and geosciences, as well as cooperative programmes on technology transfer;

- Coordination of development policies and programmes on mineral resources;
- Exchange of technical information, experience and best practices;
- Strengthening cooperation and joint approaches in addressing international and regional issues and common concerns.

7. The **Manila Declaration on Intensifying ASEAN Minerals Cooperation** was

adopted in the 2nd ASEAN Ministerial Meeting on Minerals (AMMin) on October 2008 in Manila, Philippines. The Declaration affirms strong support for the ASEAN Minerals Sector as a vibrant force in the establishment of the ASEAN Economic Community (AEC) by 2015 and adopts key policy directions, including:

- Continuous development and utilisation of the mineral resources of ASEAN Member States to enhance the sustainability of the resources and maximise the benefits to the Community and national economies, providing a necessary safety net and shield from global financial and economic turmoil;
- Cooperation in working towards the facilitation and enhancement of trade and investments in minerals through harmonisation of mineral policies, incentives and taxation, standardisation of mineral resource information, and the systematised flow and exchange of resource and trade information;
- Cooperation in development of policy guidelines and standards for

ASEAN Best Mining Practices to promote environmentally and socially sustainable minerals development in the ASEAN region;

- Development of institutional and human capacity-building in the geological and minerals sector to adequately address the current needs and future demands of the ASEAN minerals industry and economy;
 - Development of a platform for dialogue in which the private sector and ASEAN Dialogue Partners can more effectively and efficiently collaborate in mutually beneficial minerals cooperation activities, in support of ASEAN Community building.
 - Concerted cooperation and joint approaches in minerals development in international and regional fora.
8. To further enhance the minerals sector's contribution to the establishment of the ASEAN Economic Community (AEC) and to follow up the Ha Noi Declaration on Sustainable ASEAN Connectivity in Minerals, the Third ASEAN Ministerial Meeting on Minerals (AMMin), held on December 2011 in Ha Noi, Viet Nam, endorsed the **ASEAN Minerals Cooperation Action Plan (AMCAP) 2011-2015** with "Dynamic Mineral Sector Initiatives for a Prosperous ASEAN" as its theme. The AMCAP 2011-2015 focuses on following strategies: (i) promoting information sharing, facilitating trade and investment, (ii) promoting environmentally and socially

sustainable minerals development, and (iii) strengthening institutional and human capacities in the ASEAN minerals sector. The Ministers noted the Extractive Industries Transparency Initiative (EITI) as an international best practice standard on revenue transparency and agreed to include capacity building on EITI in the AMCAP 2011-2015.

9. The **Agreement on ASEAN Energy Cooperation 1986** was agreed by the ASEAN Energy Ministers in Manila, Philippines in June 1986. The Agreement laid the foundation for cooperation in the energy sector within ASEAN, including in the efficient development and use of all forms of energy, whether commercial, non-commercial, renewable or non-renewable. Agreed cooperation spans planning, development, manpower training, information exchange, efficiency and conservation, supply and disposal and other areas. The Agreement has been updated and expanded through subsequent amendments, protocols and plans of action.

10. To further enhance the energy sector's contribution to the establishment of the AEC and to build on previous agreements and initiatives, the **ASEAN Plan of Action on Energy Cooperation (APAEC) 2010-2015** was adopted on 29 July 2009 in Mandalay, Myanmar, by the ASEAN Ministers for Energy Meeting (AMEM). The APAEC serves as the blueprint for ASEAN cooperation in the field of energy for the period 2010-2015 under the theme "Bringing Policies to Actions: Towards a Cleaner, more Efficient and Sustainable ASEAN Energy Community". The plan sets out strategies for achieving the objective of enhancing energy security and sustainability for the ASEAN region, including health, safety and environment through accelerated implementation of action plans, including, but not limited to: a) ASEAN Power Grid, b) Trans-ASEAN Gas Pipeline, c) Coal and Clean Coal Technology, d) Renewable Energy, e) Energy Efficiency and Conservation, f) Regional Energy Policy and Planning, and g) Civilian Nuclear Energy.

Globally adopted norms and principles

The current framework recognizes past and ongoing efforts at international level to address the social and environmental impacts of economic activities. These initiatives highlight several common principles and draw upon a rights-based and sustainable approach to development. Many of these principles are enshrined in international agreements, voluntary and best practice standards and multi-stakeholder initiatives, such as the United Nations Global Compact³, the Extractives Industries Transparency Initiative⁴ and the Equator Principles.⁵ They constitute an important foundation for standard-setting and stakeholder engagement processes, and are therefore reflected in the current framework. The key norms and principles are as follow:

- *Sustainable development*, commonly accepted to mean development which meets the needs of the present without compromising the ability of future generations to meet their own needs⁶. Sustainable development contains two key concepts: (i) the concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and (ii) the idea of limitations imposed by the state on technology and social organisation, to ensure the environment's ability to

meet both present and future needs. The concept of sustainable development is enshrined in various international instruments and agreements, including the United Nations Rio Declaration on Environment and Development 1992⁷.

- *Precautionary principle or precautionary approach*, which is the requirement that, if an action or policy threatens serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proceeding with the action or policy or postponing cost-effective measures to prevent environmental degradation⁸. The precautionary approach implies the right of governments to decide against promoting development and to establish regulations to prevent serious environmental degradation when development proceeds. The principle further requires governments to exercise caution when considering new technologies, activities and developments that may negatively impact the livelihoods of future as well as current generations.
- *Equitable development*, which requires that development must occur in an equitable manner between men and women, among different groups in society, respecting

3 United Nations Global Compact, see: <http://www.unglobalcompact.org>.

4 Extractive Industries Transparency Initiative, see: <http://eiti.org/eiti>.

5 The Equator Principles, see: <http://www.equator-principles.com>.

6 World Commission on Environment and Development (WCED). Our common future. Oxford: Oxford University Press, 1987

7 Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Rio de Janeiro, June 1992, United Nations General Assembly A/CONF.151/26 (Vol. I).

8 Ibid, Principle 15.

the rights of future generations while considering the current needs of society, and implies fairness in the distribution of the costs and benefits of development, as well as in the treatment of women, indigenous peoples and other traditionally marginalized groups. The requirement of equitable development is reflected in various international instruments and initiatives, including those pertaining to the extractives sector⁹.

- *Human rights principles*, with reference to the obligation of the State to respect, protect and fulfil human rights, and the role of business enterprises, as specialised organs of society performing specialised functions, to comply with all applicable laws and to respect human rights principles in extractive industry development,¹⁰ including:
 - *Fundamental human rights*. All human beings, regardless of gender, ethnicity, age, race, religion, political views, or sexual orientation, are entitled to universal rights that cannot be taken away, reduced or exchanged¹¹.

Fundamental human rights encompass civil and political rights and economic, social, and cultural rights¹² and are enshrined in international human rights instruments and the ASEAN Human Rights Declaration.

- *The right to development*: stipulates that governments should ensure that development is based on the free and fair participation of all citizens and the equitable distribution of the benefits of development.¹³
- *The right to a healthy and sustainable environment*: seeks to ensure that every individual lives in an environment adequate for maintaining his or her health and well-being. The principle recognises that the right to a healthy and sustainable environment forms the basis of recognition and protection of a host of other interconnected human rights. The right applies not

International Bill of Human Rights..These are supplemented by other core human rights instruments, including: the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

⁹ See, for example, UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/ RES/61/295; United Nations Development Programme, 'Strategy Note: UNDP's Strategy for Supporting Sustainable and Equitable Management of the Extractive Sector for Human Development', 8 July 2013.

¹⁰ This requirement is set out in the United Nations Guiding Principles on Business and Human Rights: Office of the High Commissioner on Human Rights, 'United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework' (2011). The UN Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

¹¹ These rights are well recognized in many international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, which together make up the

¹² In the context of extractive industry development, the adoption of human rights as norms makes reference to the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" which are grounded in recognition of: (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached. Op. Cit.

¹³ The UN Declaration on the Right to Development aims to improve the livelihoods of all people. The right to development is also enshrined in the ASEAN Human Rights Declaration.

only to those living today, but also to future generations¹⁴.

- *Indigenous peoples' rights* encompass specific rights for indigenous peoples, including the right to existence as distinct peoples, self-determination, control over territories, cultural integrity, the right to a healthy and productive environment, political organisation and expression, the right to fair compensation for damage to indigenous lands, and the right of indigenous peoples to 'free, prior, and informed consent' for any development activities that affect their territories and livelihoods¹⁵.
- *Participatory decision making* means ensuring that all citizens have the right to participate in natural resource development decisions. This requires access to information, opportunities for

meaningful consultation and participation and effective avenues to seek appropriate forms of redress and accountability if agreements are not respected.¹⁶

- *Accountability and transparency* require that government and business enterprises must be held accountable for their activities and the use of authority and resources in extractive industries development to a broad range of stakeholders, including affected communities. This implies that governments and business enterprises should support independent monitoring and oversight and disclose the impacts of their operations, as well as enabling wider scrutiny from the public¹⁷.
- *Polluter pays principle* recognizes that parties responsible for generating pollution and environmental damage are responsible for paying for the clean-up of such damage and providing environmental remediation. The polluter pays principle is captured in Principle 16 of the Rio Declaration, which states that countries are responsible for ensuring that polluters pay for the costs associated with development¹⁸.

¹⁴ The right to a safe, clean and sustainable environment is found in Article 28(f) of the ASEAN Human Rights Declaration. A more detailed articulation of the elements of the right to a healthy and sound environment can be found in the United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), Aarhus, Denmark (1998), which entered into force in 2001. Furthermore, specific guidance on the relationship between the right to a healthy and sustainable environment and the exercise of other fundamental human rights is set out in the report of the United Nations Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment", A/HRC/22/43 at para. 42.

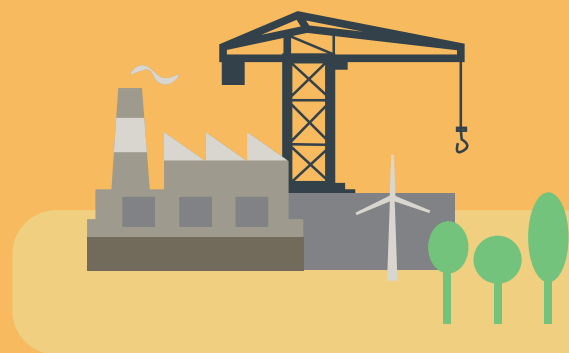
¹⁵ These rights are enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, Op. Cit., as well as International Labor Organization (ILO) Convention 169, a binding treaty that addresses indigenous and tribal peoples' rights. In addition, the United Nations Special Rapporteur on the Rights of Indigenous Peoples has articulated specific obligations with regard to indigenous peoples rights relating to the extractive industries: James Anaya, Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries and indigenous peoples, A/HRC/24/41 (1 July 2013).

¹⁶ Aarhus Convention, Op. Cit.

¹⁷ These principles are set out in detail in relation to the extractive industries in the Extractive Industries Transparency Initiative, 'EITI Standard', adopted at the EITI Global Conference in Sydney 23-34 May 2013.

¹⁸ Rio Declaration 1992, Op. Cit.

THE FRAMEWORK



General context

Extractive industries development, in the form of growth in the exploration, extraction and processing of minerals and hydrocarbons (coal, oil and gas), is a key component of building the AEC. The ASEAN Member States believe that the development of the extractive industries can boost economic growth through the provision of employment, export revenues and investment in infrastructure and human capital.

ASEAN has strong reasons to support a prominent role for the extractive industries in the current drive for regional economic integration. Firstly, ASEAN Member States are endowed with abundant reserves of fossil-fuel, energy and mineral resources. Secondly, the key role of extractive industries in building the AEC is supported by the continuous growth of the sector in various member countries. Despite volatile commodity prices in the world market and the recent global economy slump, extractive industries remain vibrant. The third reason is the significant contribution of the extractive industries to ASEAN Member State economies. However, differing resource endowments, risk profiles, levels of economic development and regulatory and institutional factors currently account for the considerable diversity in the extent and scope of hydrocarbon and minerals extraction and production and their role in economic development across ASEAN countries.

Despite active development and a continuous flow of investment towards the extractive industries in ASEAN, several factors have constrained realisation of the industries' full

potential in the region. A key impediment across various ASEAN countries is weak governance at many levels, encompassing the absence of rule of law, a lack of robust mechanisms to ensure transparency and accountability and to facilitate partnership between government and non-government organisations.. Governance is broadly defined as the sound exercise of political, economic and administrative authority to manage a country's resources for development. Good governance requires sound economic management, exercise of the rule of law, public participation, transparency, accountability; and predictability in public administration. The extractive industries, by nature, are particularly sensitive to governance issues at each level.

Good governance must be implemented comprehensively throughout the extractive industries' value chain. The value chain reflects interconnectedness across a sequence of activities in the industry, from the extraction of hydrocarbon and mineral resources, to their processing and sale, to the ultimate use of the revenues obtained from extractive activities. Governance challenges in ASEAN's extractive industries can be found at each level of the value chain.

The development of extractive industries in ASEAN therefore calls for a strong and effective regional policy framework. Member States and national governments are ultimately responsible for the regulatory and institutional settings within which the industry operates in a given jurisdiction, and their actions are critical to

achieving sustainable benefits from the extractive industries for national and regional economies. More specifically, the sustainable development of the extractive industries is contingent on providing strategic direction: this includes ensuring the requisite legal, regulatory and institutional frameworks are in place to pursue desired economic, social and environmental objectives; guaranteeing accountability, transparency, and stakeholder consultation; and establishing effective systems to deliver tangible benefits from resource extraction to the country's citizens.

In the ASEAN context, the policy framework must also address diversity in the extent and scope of the extractive industries across Member States, based on the varying resource endowments, risk profiles and levels of economic, regulatory and institutional development of member countries. The policy framework must also serve to address the development divide and accelerate the economic integration of the less developed ASEAN member countries, so that the benefits of ASEAN integration can be shared and enjoyed by all members.

The framework aims to contribute to the development of extractive industries within ASEAN that are accountable, transparent, and well-governed and are effective in stimulating economic growth at regional, national and local levels, environmentally sound, socially responsible and involve the participation of surrounding communities. The framework aspires to create an extractives sector that is a key component of a diversified, vibrant and globally competitive industrialised economy at regional level while harnessing the potential of small-scale mineral extraction to stimulate local/national entrepreneurship, improve livelihoods and

advance integrated rural social and economic development.

The framework will provide principles and a platform for the harmonisation of extractive industry policies in ASEAN member countries, to ensure high standards of accountability for mining companies and governments, the adoption of human rights, sound fiscal frameworks and revenue management, transparency and social equity, as well as protection of the environment and the rights and interests of local and affected communities. At the same time, the framework will serve as a standard-setting instrument for the management of the extractive industries in ASEAN, enabling a similar level of competitiveness across ASEAN member countries and avoiding a "race to the bottom".

Implementation of the framework will ensure that standardisation and harmonisation of standards takes into consideration the different stages and contexts in each ASEAN Member State in relation to development of the extractive industries and the need to flexibly develop and enact policies and strategies to address the specific needs of each Member State. Furthermore, the framework will provide a set of guidelines for developing tools to monitor the progress of extractive industries development in ASEAN countries.

Detailed framework

The regional framework is a tool to foster the development of a competitive economic region and Integration into the Global Economy under the AEC and other key pillars of the ASEAN Community. The framework adheres to and complies with the existing legal documents and formal decisions of the Summit, Council and Sectoral Ministerial Bodies within ASEAN, while at the same time adopting international best practices and standards directly related to the extractive industries.

Based on these decisions, principles and standards at regional and global levels, the framework consists of the following four cornerstones: (i) protection of the environment; (ii) protection and respect for human rights; (iii) transparent and accountable practices; and (iv) sound fiscal frameworks and revenue management. Those cornerstones encapsulate the key issues that need to be addressed in order to ensure good governance throughout the extractive industries value chain, in both the fossil-fuel energy (hydrocarbons) and minerals/mining sectors.

Artisanal and small-scale mining (ASM) represents a cross-cutting issue in the framework. In many ASEAN member countries, ASM is predominantly a poverty-driven activity which plays an important economic role, particularly in terms of the numbers of people employed in the sector. Nonetheless, ASM can be also extremely environmentally damaging and often has serious health and safety consequences for workers and surrounding communities. The lack of formalisation of the sector means that

improvements in environmental performance, labour conditions and livelihoods are much more difficult. Many of the potential economic benefits of the small-scale mining sector are lost due to poor practices in the mining, processing and marketing of target minerals while artisanal and small-scale miners are regularly involved in serious disputes with communities, government agencies and large-scale mining interests.

The framework targets four audiences: (1) governments and government agencies as representative of ASEAN Member States; (2) private sector business enterprises and corporations (3) citizens, community and citizen groups, including affected communities and civil society organisations; and (4) financial institutions, including public and private banks, as well as insurers.

The effective implementation of this framework requires active government involvement and buy-in. Prior initiatives have demonstrated that the establishment of voluntary standards is not sufficient to ensure that mining maximises benefits and minimises costs to the environment and local communities. Many of the issues outlined in this framework require a functioning government context, including strong regulations and the will and capacity to enforce laws. Member State governments hold a primary role in fulfilling the guiding principles set out in this framework and ensuring its effective implementation through: enacting appropriate policies and regulations; ensuring adjudication that prevents and penalises infringements; addressing substantial legal and

policy incoherence and gaps; building knowledge and capacity within the sector for effective compliance; and ensuring adequate budget and resources to oversee implementation and enforcement.

Business enterprises usually act as license/concession/resource extraction rights holders in the extractive industries. Businesses have the responsibility to respect and comply with the state's requirements as well as to act with due diligence to avoid any contravention of the framework. The business responsibility to respect obligations and ensure compliance applies across business activities and operations, and throughout relationships with third parties connected with those activities — such as business partners, entities in the value chain, and other non-state actors and state agents. This includes the responsibility of financial institutions to avoid financing or supporting projects with potentially significant adverse environmental and social risks and/or impacts that are diverse, irreversible or unprecedented.

Some businesses and financial institutions already acknowledge the need for compliance with international codes, instruments, and policies that protect the environment, human rights, labor and social standards, and cultural integrity. In this regard, numerous business enterprises globally subscribe to voluntary codes and multi-stakeholder initiatives, such as the United Nations Global Compact, the Equator Principles and the Extractive Industries Transparency Initiative (EITI). The framework aims to build on existing international and voluntary initiatives to keep businesses accountable by subjecting corporate operations to independent scrutiny and enabling a verifiable chain of custody for their products.

Even where institutions operate optimally, extractive industries can still result in adverse impacts and where this occurs, affected communities must have access to redress. States must take appropriate steps within their territories and/or jurisdictions to ensure that when such impacts occur, those affected have access to effective remedies through judicial, administrative, legislative or other appropriate means. Businesses have a responsibility to cooperate in these remedial processes and mechanisms and to institute their own internal grievance processes. Civil society organisations also have an important role as watchdog for these remedial processes, as well as assisting citizens and community groups to exercise their rights and voice their grievances.

I. Protection of the environment

I.1. Member States shall designate some land areas as “no go zones” for extractive industry development in places that are environmentally, socially and culturally sensitive, such that the risks posed by development in these areas are too great. The designation of such areas shall be determined through appropriate regulation and criteria established for their designation based on a multi-stakeholder process involving indigenous people and potentially affected communities.

I.2. The “no go zones” must include socio-culturally as well as environmentally valuable areas. Environmentally valuable areas are areas with high conservation value where the biodiversity is rich and/or the area provides essential ecosystem services, such as clean water, climate regulation, and soil maintenance.

The area, at the minimum, shall include:

- Areas under IUCN I–IV protected areas or in any marine protected areas (categories I–VI).
- Areas classified as Ramsar sites that are categorized as IUCN I–IV protected areas.
- Areas classified by other international treaties as areas with high natural and cultural conservation value, such as World Heritage Sites
- Areas which are legally designated under national law and regulation in member countries as conservation and protected area, including national parks.
- Biologically valuable areas that may become future protected areas and

areas which are considered too environmentally or socially sensitive for resource extraction to occur (e.g., areas with high species diversity, small islands, mountain-tops, sacred graves/ancestral domain area, and conflict zones).

- Area with high vulnerability to natural disasters

I.3. A multi-stakeholder process shall be used to identify additional areas of high conservation value that qualify as “no go zones”. Given the need to take into account the livelihoods of local communities and indigenous peoples, any discussion of “no go zones” with regard to hydrocarbon and mineral resource extraction must be reflective of the interests not only of conservation, but also of those who depend on natural resources to guarantee sustainable livelihoods. Member States shall ensure that policies on natural “no go zones” must be consistent with community rights to ‘free, prior, and informed consent’ before any development occurs.

1.4. Member States shall legally require that decisions to extract hydrocarbon and mineral resources and subsequent actions to deny or grant extraction rights are based on comprehensive and independently reviewed environmental and social impact assessments, which involve meaningful public participation to ensure the environmental and social acceptability of the activities, and a commitment to protecting the environment, local livelihoods and public health in the activities. Such assessments shall include, inter alia:

- Full environmental costs, including those associated with regulatory oversight, reclamation, closure, and post-closure monitoring and maintenance.
- Consideration of worst-case scenarios and analyses of off-site impacts to identify potential emergency scenarios and to develop appropriate response strategies.

1.5. Member States shall ensure that the holders of hydrocarbon and mineral extraction rights prevent and manage spillage of tailings and other hazardous substances related to their activities.

1.6. Member States shall ensure that rivers are not be used for the disposal of mine waste, and that holders of resource extraction rights shall not engage in shallow-water submarine waste disposal. Deep-water submarine waste disposal shall not be used unless an independent assessment can demonstrate minimal environmental and social risks.

1.7. Member States shall ensure that resource extraction rights holders restore all disturbed areas so that they are consistent with future uses.

1.8. Member States shall set up a Rehabilitation Fund to support efforts in reclaiming and rehabilitating mined out areas.

1.9. Member States shall adopt appropriate legislation (where non-existent) to provide for complaint mechanisms and audits for the observance of obligations to protect the environment.

1.10. Member States shall take steps to enact appropriate legislation to provide for artisanal and small scale mining rights to citizens and ensure safe, efficient, and environmentally sustainable artisanal and small-scale mining activities.

2. Respect and Protect Human Rights

- 2.1. Member States and holders of resource extraction rights have obligations to respect and promote recognized human rights in their resource extraction activities, including the rights of women, children, indigenous peoples and workers. Member States have a primary role in ensuring the protection of human rights through appropriate policies, regulation, and adjudication that prevents infringement and ensures the allocation of adequate resources to oversee compliance. Business enterprises, as resource extraction rights holders, have responsibilities to respect and comply with the state's requirements as well as to act with due diligence to avoid any contravention of state policy on human rights.
- 2.2. Member States and holders of resource extraction rights shall ensure that the rights of affected local communities are respected at all times. Member States and the holders of resource extraction rights shall in particular respect the rights of local people and communities to own, occupy, develop, control, protect, and use their lands, other natural resources, and cultural and intellectual property. Where human rights legislation does not exist, Member States shall enact appropriate legislation to ensure respect for human rights.
- 2.3. Resource extraction rights holders shall obtain the 'free, prior, and informed consent' of affected local communities before any exploration activity begins, prior to each subsequent phase of resource extraction and post-extraction operations.

- 2.4. Resource extraction rights holders shall maintain consultations and negotiations on important decisions affecting local communities throughout the resource extraction cycle. They shall conduct resource extraction activities in a manner that respects the right to development and enables affected peoples and the public to participate in, contribute to, and benefit from all economic, social, cultural, and political developments in a sustainable manner.
- 2.5. Resource extraction rights holders shall in all phases of operations give preference to employment to citizens of Member States where the extraction activities take place, especially to members of affected communities to the maximum extent possible and consistent with the requirements of safety, efficiency and economy.
- 2.6. With regard to indigenous people's rights and community rights, Member States shall ensure that:
- The holders of resource extraction rights obtain the 'free, prior, and informed consent' of indigenous peoples before exploration begins and prior to each subsequent phase of mining and post-mining operations.
 - The holders of resource extraction rights negotiate with indigenous peoples and communities, including women and men, before exploration. Such negotiations shall continue throughout the life of the resource extraction activities, with the understanding that indigenous peoples or local communities may withhold consent at each stage of development of such activities.

- The holders of resource extraction rights conduct consultations with local and affected communities that are culturally appropriate, using mechanisms and institutions that are recognised by the affected indigenous peoples and communities, including women and men, in the area in which they wish to operate.
- Indigenous peoples and communities, including women and men, must be provided with sufficient information and resources to evaluate projects in order to decide whether, and how, they would like resource extraction activities to proceed.
- The holders of resource extraction rights shall not attempt to obtain a community decision in support of mineral and hydrocarbon extraction (or encourage governments to do so on their behalf) as this may divide communities and create dissent.

2.7. Member States shall ensure peaceful co-existence between large scale resource extraction and artisanal and small-scale mining activities and operations.

2.8. Member States and large-scale resource extraction rights holders shall adhere to guidelines on relocation and compensation, if it is necessary to remove affected communities and small-scale miners from their homes and places of work, as follows:

- Resettlement should be avoided if at all possible and shall not occur without the 'free, prior, and informed consent' of affected individuals set out in a binding consent agreement.
- Voluntary resettlement must be preceded by a detailed displacement impact assessment that assesses all possible costs to communities and individuals who will be affected by the displacement, either directly or indirectly.
- Resource extraction rights holders shall allow enough time for thorough assessment and consultation, the meaningful participation of affected people, alternative land acquisition, and resettlement. The absence of legal title should not constitute a barrier to compensation for the loss of land possessed or used through the resettlement process.
- Resettled individuals should be better off in their new situation than they were prior to the resettlement. No displacement should take place until all likely risks and outcomes have been independently assessed for men and for women, a binding agreement is in place, compensation has been provided, alternate land has been allocated, relocated people have had the opportunity to start rebuilding in the new location and policies and facilities are in place that

allow resettled people to preserve or increase their standard of living. In addition, resettled individuals must have access to an effective and independent complaint and dispute resolution mechanism.

- Member States and mining rights holders shall encourage the establishment of dispute resolution mechanisms so that affected women and men can freely participate in the successful implementation of the resettlement program. Any complaints should be acknowledged, recorded, and addressed expeditiously according to a transparent and agreed process.
- Resettlement insurance, in an appropriate form, shall be provided in case these efforts do not produce better livelihoods in the timeframe originally agreed upon.

2.9. Member States shall make adequate provision for the progressive realisation of economic, cultural and social rights as they relate to resource extraction activities and ensure the empowerment of women. Member governments shall provide the necessary capacity to local communities to support their engagement with resource extraction rights holders in negotiations and in settling disputes related to extraction activities.

2.10. Member States shall take appropriate steps to ensure that those who experience human rights violations related to resource extraction activities have access to an effective remedy, through judicial, administrative, legislative or other appropriate means. Member States shall require business enterprises to cooperate fully in these remedial processes and support the capacity of businesses to institute and operate their own internal grievance procedures.

2.11. The holders of resource extraction rights operating in conflict zones shall ensure full compliance with all major international human rights instruments and with international humanitarian law.

3. Transparent and accountable practices

- 3.1. Member States shall develop a thorough understanding of their mineral and hydrocarbon resource base to inform key decisions on granting, withholding or withdrawal of resource extraction rights.
- 3.2. In granting, withholding or withdrawal of resource extraction rights, there shall be transparency and accountability at each stage of the decision-making process to ensure that the rights are granted or withheld through a fair, transparent, and non-discriminatory process.
- 3.3. Qualifications for acquiring resource extraction rights in member countries must meet international best practice in the extractive industries and shall include, but not be limited to, effective measures to ensure respect for the environment and the rights of affected communities in extractive activities and a plan approved by the competent authorities for the company to utilize local goods, services, and manpower.
- 3.4. Details of each extractive industry project, the contractual arrangements agreed between national and local authorities and resource rights holders, the potential social and environmental impacts of the project and proposed mitigation measures and monitoring plans should be made available to the public and shared with affected communities and residents of the area in which resource extraction activities are to occur in an accessible and appropriate language and format.
- 3.5. Where land has been acquired for extraction of hydrocarbon and mineral resources, the owner or lawful occupier shall be paid fair and prompt compensation according to a transparent and agreed process.
- 3.6. Member States shall ensure that Corporate Social Responsibility (CSR) programs are included in the conditions for granting resource extraction rights, to ensure enhancement of livelihoods for the affected local communities. CSR programs and initiatives shall be developed with the active participation and agreement of local and affected communities.
- 3.7. Member States shall ensure that independent auditing of the corporate resources used for community, environmental, and social initiatives takes place regularly and the results of the auditing are made publicly available in an appropriate and accessible format.
- 3.8. Holders of resource extraction rights shall carry out their activities in accordance with national laws, regulations, administrative practices, and policies of the member countries in which they operate and with due regard to relevant international agreements, principles, objectives, and standards relating to the environment, public health, and safety. Holders of resource extraction rights shall conduct their activities in a manner that contributes to the wider goal of sustainable development.

- 3.9. Holders of resource extraction rights shall develop and make adequate provision to implement rehabilitation, closure and post-closure plans before operations begin which shall be subjected to periodic review.
- 3.10. Holders of resource extraction rights shall report their sustainable development performance on an annual basis, in line with globally adopted standards regulating Mining and Metal Sector Disclosure. Member States shall ensure that granting of extraction rights considers the commitment of resource extraction rights holder to comply with this requirement. Member States shall facilitate and assist the company in meeting these standards.
- 3.11. Periodic audits must be undertaken to ascertain the operational, social and environmental performance of resource extraction rights holders.
- 3.12. Holders of resource extraction rights shall maintain the requisite documents and records prescribed by law pertaining to resource extraction activities and shall furnish the appropriate and competent authorities of the member countries with such reports and records on its mineral operations annually and/or as requested.
- 3.13. Member States shall establish and enforce laws and regulations that penalise resource extraction rights holders providing false, misleading, incomplete, or otherwise knowingly misrepresentative information to the public or government.
- 3.14. Member States shall implement measures to establish adequate legal, economic, and technical oversight of resource extraction activities, including small-scale and artisanal mining (ASM) activities, to improve working and living standards as well as the yield of ASM activities
- 3.15. In the case of resettlement and compensation for the relocation of small-scale and artisanal mining rights holders from large-scale mining area, all payments and expenses related to resettlement and compensation should be publicly disclosed to ensure accountability and transparency and to counter charges of corruption or misuse of funds.
- 3.16. Member States shall take steps to ensure that good governance principles are fully implemented and enforced to combat illegal trading and illicit financial flows related to hydrocarbon and mineral resource extraction and production activities.
- 3.17. Member States shall undertake actions to promote the transparency of information concerning mining and hydrocarbon revenues, especially through fostering adherence to the Extractive Industries Transparency Initiative (EITI) and by providing support to resource extraction rights holders to promote compliance with the EITI Standard.

3.18. Member States shall provide open and transparent data on all government income tax, royalties, levies, and other revenues flows from resource extraction rights holders and demonstrate how the benefits of resource extraction activities are being distributed at national and sub-national levels. No data shall be considered confidential if it relates to degradation or claimed degradation of human health, the environment, or worker safety.

3.19. Member States shall work towards development of a regional certification-scheme for mineral commodities traded within and externally to the ASEAN region. ASEAN should develop a data standard that traces the origin of each mineral commodity, how it is extracted and produced, whether the mineral extraction process was in compliance with human rights principles and social and environmental and sustainable-mining best practice.

4. Sound fiscal framework and revenue management

- 4.1. Member States shall enact appropriate legislation to optimise and protect revenues due and accruing to them from extractive industry development.
- 4.2. Member States shall ensure that extractive industry resources and revenues are administered in the context of an overarching macro-fiscal framework that recognizes the volatility, uncertainty, and cyclical nature of resource prices and, over time, the exhaustibility of hydrocarbon and mineral resources.
- 4.3. Member States shall institute, wherever possible, a transparent system of auctions and competitive bidding for mineral and hydrocarbon resource concessions and licenses, and require that any company bidding for resource extraction rights fully and publicly discloses its beneficial ownership, with penalty of exclusion for non-compliance.
- 4.4. Member States shall channel all resource extraction revenues into the budget system, and spend revenues effectively through public expenditure programs towards development of physical and social infrastructure in the country, lowering the volatility of commodity prices, diversifying the economy and ensuring investment in sustainable development, with due consideration to the rights and interests of current and future generations.

- 4.5. Member States shall use the revenues generated by resource extraction to increase investment in improving resource knowledge infrastructure, such as investment in basic geological surveys. Such investment potentially brings extremely high returns through greater knowledge of the potential value of a resource and enhanced ability to strike equitable deals on the division of future rents and benefits accruing from resource exploitation.
- 4.6. Member States shall capture and optimize the value-added from resource utilisation in the extractive industries by opening up other resources (such as agriculture, forestry and tourism), including those with lower returns that cannot independently support necessary infrastructure, to access high potential economic zones. At the same time, Member States shall create downstream added value by establishing resource processing industries (beneficiation) that can provide the feedstock for manufacturing and industrialisation; and upstream added value in development of the resource supply/ input sector (capital goods, consumables, services).
- 4.7. Member States shall establish or appoint, where appropriate, an autonomous and independent monitoring agency with legal authority to identify the undervaluation of mineral concessions and track extractive revenues. Where there is evidence of systematic underpricing of assets and potentially illegal diversion of resource revenues, independent investigations shall be instituted to review the evidence through public hearings.

- 4.8. Member States shall allocate revenues from the extractive industries to broaden investment in clean and renewable energy sources and develop technological innovations to reduce the level of fossil fuel emissions in the region.
- 4.9. Member States shall ensure the equitable and effective distribution and transfer of shares in hydrocarbon and mineral resource extraction revenues, as provided for by relevant guidelines or member country legislation, for the benefit of local communities and support the continuous improvement of living standards and livelihoods. Member countries shall periodically review, update, and harmonise their fiscal regimes in order to develop and promote equitable benefit-sharing systems.
- 4.10. Member States shall ensure that revenue-sharing between central and sub-national governments is developed through the use of rules-based, transparent, simple, and equitable allocation criteria.
- 4.11. Member States shall establish, where appropriate, a natural resource fund for revenues from extractive industry activities that distinguishes natural resource revenues from other revenues. This will enable natural resource revenues to be managed separately from the general treasury account, in order to ensure intergenerational transfer mechanisms and to serve as a fiscal stabilisation and fiscal savings strategy.



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