



# THE FRAMEWORK FOR EXTRACTIVE INDUSTRIES GOVERNANCE IN ASEAN

FIRST EDITION





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# FOREWORD

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Extractive industry resources, such as oil, natural gas, and metallic and non-metallic minerals, are abundant in most Southeast Asian countries. The revenues from extraction of these resources for domestic use and export account for a large proportion of GDP or contribute a significant share of the annual budget of these countries. If managed well, revenues from the extractive industries can be used to finance development. However there are also risks inherent in the development natural resource wealth. These include corruption, human rights violations, environmental degradation, social and security problems in areas where extraction activities are taking place, and volatile economic growth. Such negative outcomes of resource extraction, however, are not inevitable. They can be tackled through effective strategies, legal frameworks and policies.

As far as Southeast Asia is concerned, extractive industries have seen rapid expansion in recent years. Private sector entities and national companies are pushing for exploration and prospecting in the region, ramping up capacity in the production of oil and gas and several precious metals and commodities. However, the extractive industries are in differing stages of maturity within ASEAN. The sector is well-established in the resource-rich nations of Indonesia and Malaysia. However, the extractives industries of relatively newer Member States, such as Cambodia, Lao PDR, and Myanmar are still in relative infancy, with the commercial viability and estimates of proven, probable and possible natural resource reserves subject to wide uncertainty. The differing quality of regulatory frameworks and institutions reflects varying level of economic development and historical experience with managing investments.

ASEAN has made frequent reference to the benefits that its member countries derive from the extractive industries. As part of ASEAN's larger commitment to economic growth and development and its stated goal of market and economic integration by 2015, the Hanoi Declaration at the ASEAN Ministerial Meeting on Minerals in 2011 reaffirmed ASEAN's commitment to developing greater integration in the mining sector. Accountability and transparency and best-practice regulation do not explicitly feature in the Declaration. Given the pitfalls associated with misuse of revenues from the extractive industries, it is crucial that these issues are properly considered and addressed. It is, however, likely that sensitive issues pertaining to domestic political and constitutional challenges, such as corruption, will remain within the ambit of national sovereignty and not be subject to regional multilateral agreements.

Nonetheless, the ASEAN Ministerial Meeting on Minerals in 2008 called for harmonisation of mineral policies, and cooperation to develop policy guidelines and standards for ASEAN Best Mining Practices in order to promote environmentally and socially sustainable mineral development in the ASEAN region. This intention incorporates the idea of strengthening governance of the mineral sector as a prerequisite condition to the continuous development and utilisation of the mineral resources of ASEAN Member States to enhance. Improving governance means ensuring the sustainability of the resources and maximising the benefits to the community and the national economy, providing the necessary safety net and shield from global financial and economic turmoil.

The Framework for Extractive Industries Governance in ASEAN is precisely developed for addressing the governance challenges facing by ASEAN member states in managing its natural resources in order to meet the goal of the ASEAN Community. This Framework is intended to assist ASEAN Member State to address the negative outcomes of resource extraction and to ensure that the utilisation of extractive industries resources improves human development and narrows development gaps in the region. The Framework is also an instrument and tool for ASEAN Member States to harmonise their mineral and mining policies, and to strengthen their governance, given the different stages of development of the sector that exist in the region. The Framework contains prescriptions that encompass four main issues: human rights promotion and protection, environmental protection, transparent and accountable practices, and sound fiscal framework and revenue management. Each prescription can be used to determine the existing situation regarding the quality of the policy, regulation, and institutional settings of national extractive industries.

The Framework has been developed over two and half years by IESR in collaboration with civil society organisations in the region: Cambodians for Resource Revenue Transparency (CRRT) in Cambodia, Institute for Democracy and Economic Affairs (IDEAS) in Malaysia, Bantay Kita in the Philippines, CODE and People and Nature Reconciliation (Pan Nature) In Vietnam, Luta Hamutuk Institute in Timor Leste, Spectrum and the Shwe Gas Movement in Myanmar, and Publish What You Pay (PWYP) Indonesia, Article 33, and PolGov Universitas Gadjah Mada in Indonesia. It has involved a number of in-country and regional consultations that have also engaged government and private entities.

During the two and half years of development of this Framework, IESR has received moral support from and has been provided opportunities by organisations and individuals that include, but are not limited to: HRWG, SEACA, ASEAN Study Center of University of Indonesia, and Rafendi Djamin, the Indonesian AICHR representative. The Framework would not have been developed without Chandra Kirana, who encouraged IESR's team to explore the development of a regional standard for extractive industries in ASEAN, and since then has provided moral support and inspiration to IESR's team to complete this work.

IESR also would like to thank the Natural Resource Governance Institute (NRGI) for its tremendous support and assistance, and USAID for its financial support under the IKAT-US Program.

Jakarta, November 2014

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# Value chain in the extractive industries



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# INTRODUCTION



The ASEAN Leaders, at their Summit meeting in Kuala Lumpur in December 1997, committed to transforming ASEAN into a stable, prosperous, and highly competitive region with equitable economic development, and reduced poverty and socio-economic disparities, as reflected in the ASEAN Vision 2020.<sup>1</sup> One of the three pillars in realizing this vision is the development of ASEAN Economic Community (AEC), which serves as the end goal of economic integration in the region, based on a convergence of interests of ASEAN Member Countries. The AEC envisages the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy.<sup>2</sup>

Extractive industries development, in the form of growth in the exploration, extraction and processing of mineral and hydrocarbon (coal, oil and gas) resources, is viewed by the ASEAN Member States as a key component of the AEC. The ASEAN Economic Community Blueprint includes development and cooperation of the energy and mining sectors as important strategies in establishing the AEC<sup>3</sup>. The 2005 'Ministerial Understanding on ASEAN Cooperation in Minerals'<sup>4</sup> sets out the objective of developing the minerals sector as an engine for greater economic growth and social progress in the ASEAN region. The Member States believe that development of mineral resources can boost

economic growth through the provision of employment, export revenues and investments in infrastructure and human capital. This view is supported through initiatives such as the 2008 Manila Declaration on Intensifying ASEAN Minerals Cooperation and the ASEAN Minerals Cooperation<sup>5</sup> Action Plan 2011-2015.<sup>6</sup>

The energy sector is also considered vital for the realisation of a competitive economic region under the AEC. Hydrocarbons remain the major source of energy in ASEAN, and are projected to rise to a share of 84.4 percent in 2030, highlighting the essential role of the extractive industries in supporting the transformation of ASEAN into a stable, secure, prosperous, rules-based, competitive, resilient and integrated economic community as envisaged by the AEC<sup>7</sup>. The pursuit of sustainable energy development forms a core objective of the Vientiane Action Programme 2004-2010<sup>8</sup> and the ASEAN Economic Community Blueprint. The ASEAN Plan of Action for Energy Cooperation (APAEC) 2010 – 2015<sup>9</sup> stresses that enhancing energy security, accessibility and sustainability are important objectives for promoting economic development in the region and aspirations of each ASEAN Member State. The APAEC 2010-

1 1997 ASEAN Vision 2020, adopted by ASEAN Heads of State at the 2nd Informal Summit in Kuala Lumpur, Malaysia on 15 December 1997.

2 The ASEAN Secretariat. 2008. ASEAN Economic Community Blueprint. The ASEAN Secretariat. Jakarta, p. 6.

3 Ibid.

4 Ministerial Understanding on ASEAN Cooperation in Minerals, Kuching, Sarawak, Malaysia, 4 August 2005.

5 Manila Declaration on Intensifying ASEAN Minerals Cooperation Manila, adopted at the 2nd ASEAN Ministerial Meeting on Minerals (AMMin) on 16 October 2008 in Manila, Philippines.

6 ASEAN Minerals Cooperation Action Plan on 2011 – 2015, adopted at the 3rd ASEAN Ministerial Meeting on Minerals on 9 December 2011 in Hanoi, Viet Nam.

7 ASEAN Centre for Energy. 2009. The ASEAN Plan of Action for Energy Cooperation (APAEC) 2010 – 2015. ASEAN Centre for Energy. Jakarta, p. 6.

8 2004 Vientiane Action Programme (2004-2010), adopted by the Heads of State/Government at the 10th ASEAN Summit in Vientiane, Laos on 29 November 2004.

9 2009 ASEAN Plan of Action on Energy Cooperation 2010-2015 adopted on 29 July 2009 in Mandalay, Myanmar by the ASEAN Ministers for Energy.

2015 sets out the key approaches and priorities for energy sector development, cooperation and integration in the AEC building process.

Undiscovered hydrocarbon resources are still abundant in ASEAN. The US Geological Survey (USGS) assessment estimated a mean of 21.6 billion barrels of oil and 299 trillion cubic feet of undiscovered natural gas in 23 geological provinces in Southeast Asia (including the South China Sea)<sup>10</sup>. With Southeast Asian domestic oil and gas production projected to remain flat or decline as consumption rises, the region's countries will look to new sources of energy to meet domestic demand. This shift will increase the need for investment to explore and exploit remaining undiscovered resources, including unconventional hydrocarbons.

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<sup>10</sup>The US Geological Survey. 2010. Assessment of Undiscovered Oil and Gas Resources of Southeast Asia, 2010. <http://pubs.usgs.gov/fs/2010/3015/pdf/FS10-3015.pdf>.

# BACKGROUND



## The extractive industries and economic development in ASEAN

ASEAN has a strong rationale to support an essential role for extractive industries in the current drive towards economic integration. Firstly, ASEAN Member States are endowed with abundant reserves of fossil fuel energy and mineral resources. Southeast Asia's proven reserves of oil, essentially an inventory of what is currently economic to produce, amount to 13 billion barrels, which at current levels of production would sustain output for fourteen years<sup>11</sup>. Although oil production declined to 2.5 million barrels/day in 2012 from a peak of 2.9 million barrels/day in 1996, the region has four Member States in the world's top 50 list covering total oil production and proven reserves. These are Indonesia (ranked 22nd for production and 27th for proven reserves)<sup>12</sup>, Malaysia (ranked 28th for both categories), Thailand (ranked 31st for production and 46th for proven reserves), and Vietnam (ranked 32nd for production and 26th for proven reserves). While Southeast Asia is considered to be a mature oil-producing region, potential exists to boost output, as relatively unexplored areas remain that are thought to hold significant resources, particularly in deepwater<sup>13</sup>.

In terms of natural gas, the region's proven reserves stand at 7.5 trillion cubic metres (tcm), 3.5 percent of the world's total endowment.

At current levels of production, at 202 bcm in 2012, these reserves would sustain production for 37 years<sup>14</sup>. Although volumes are declining, due to growing domestic demand and the fact that many of the key producing fields are mature and declining in output, the region remains a net exporter of natural gas. Brunei Darussalam was the first country in Southeast Asia to export liquefied natural gas (LNG), commencing in 1972, and remains an important LNG exporter today. Malaysia and Indonesia were also pioneers in LNG trade and remain among the top five exporters globally.

Coal is the most abundant fossil fuel in Southeast Asia, with proven reserves sufficient to supply around 80 years of production at current levels. These are concentrated in Indonesia and Vietnam, as is coal production<sup>15</sup>. Total coal production in the ASEAN region amounted to 419 million tonnes of coal equivalent (Mtce) in 2012, a 20 fold increase since 1990. Indonesia's coal production has been rising spectacularly, and since 2005, Indonesia has been the world's largest exporter of steam coal for generating electricity. Vietnam ranked 17th amongst the world's coal producing countries in 2012, behind Indonesia which ranked 5th, but ahead of other ASEAN countries, such as Thailand (23rd), the Philippines (30th), Malaysia (38th), Myanmar (50th), and Cambodia (68th)<sup>16</sup>.

In addition to fossil-fuel energy resources, the

<sup>11</sup> International Energy Agency. 2013. Southeast Asia Energy Outlook: World Energy Outlook Special Report – September 2013. International Energy Agency. Paris, pp.21-22.

<sup>12</sup> International Energy Agency online database: <http://www.eia.gov/countries/index.cfm?vew=production#>

<sup>13</sup> International Energy Agency. Op.Cit.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

ASEAN region is also endowed with a vast array of mineral wealth, including both metallic and non-metallic minerals. The region contributes a significant share to world production and trade in tin, nickel and copper<sup>17</sup>. In 2003, 35.24 percent of the world's refined tin was produced in ASEAN<sup>18</sup>. In the same period, ASEAN mining and refined production of nickel accounted for 11 percent and 1 percent of world production. For copper and ores, refined production in Southeast Asian countries accounted for 8% and 3% of world production respectively. Moreover, 2008 records indicate that the region contributes 58 percent in value terms of global trade in refined tin and 16 percent of the unrefined copper trade<sup>19</sup>. The region is also an increasingly significant exporter of nickel and aluminium, as a result of enhanced productive capacity.

Indonesia accounts for a significant share of ASEAN and world mineral reserves, housing 7.5 percent of the world's known reserves of copper, more than 13 percent of known reserves of tin, over 5 percent of known reserves of nickel, and more than 4 percent of the world's known gold reserves. The Philippines is considered to be the 5th most mineralized country in the world, with gold resources rank as the 3rd largest and possessing the 4th largest copper reserves and 5th largest nickel reserves, based on density of deposits per square kilometer of land<sup>20</sup>.

Malaysia, another ASEAN country with a mature mineral sector along with Indonesia, Thailand, and the Philippines, is endowed with more than 30 types of minerals; although the development of its mineral sector has been overshadowed by growth in oil and gas.

Other ASEAN member countries, including Vietnam, Lao PDR, Cambodia, and Myanmar, are also endowed with substantial mineral wealth, as shown in Table 2.1. A number of ASEAN Member States also have significant reserves of non-metallic minerals, including gemstones, potash, silica, limestone, marble, gypsum and kaolin<sup>21</sup>. In some ASEAN member countries, including Indonesia, the Philippines and Thailand, non-metallic mineral reserves are larger than those of metallic minerals.<sup>22</sup> However, in value terms, reserves of metallic minerals tend to be higher, reflecting relatively higher prices for globally traded minerals.

<sup>17</sup> Melanie, Jane et al. 2005. Enhancing ASEAN Minerals Trade and Investment. Final Report REPSF Project 04/009b. ABARE, p. (x).

<sup>18</sup> Ibid, p. 7.

<sup>19</sup> Romualdez, Benjamin Philip. 2008. "ASEAN's Strategic Role Among Giants" in ASEAN Federation of Mining Associations (Ed). Asia's Golden Opportunity. Mining Journal Special Publication, February edition.

<sup>20</sup> Vivoda, Vlado. 2009. Assessing Governance Performance of the Regulatory Regime Governing Foreign Mining Investment in the Philippines. Adelaide: The Centre for International Risk, School of International Studies, University of South Australia.

<sup>21</sup> Melanie, Jane et al. 2005. Op.Cit., p. 5.

<sup>22</sup> Ibid.

### Distribution of Metallic Mineral Reserves in ASEAN

	Bauxite	Cooper	Gold	Iron Ore	Lead	Nickel	Silver	Tin	Zinc	Other
Cambodia	✓	✓	✓	✓				✓	✓	
Indonesia	✓	✓	✓	✓		✓	✓	✓		✓
Lao PDR		✓	✓	✓	✓		✓	✓	✓	
Malaysia	✓	✓	✓	✓		✓	✓	✓		✓
Myanmar		✓	✓		✓	✓	✓	✓	✓	✓
Philippines		✓	✓	✓		✓	✓			✓
Thailand		✓	✓	✓	✓			✓	✓	✓
Vietnam	✓	✓	✓	✓	✓	✓		✓	✓	✓

Source: Jane et al (2005)

The second reason for the key role of extractive industries in the AEC is the incessant growth of these industries in the region. Despite volatile commodity prices in the world market and the recent global economic slump, the extractive industries have remained vibrant. Vietnam represents a clear example. Over the past few decades, Vietnam has emerged as an important oil and natural gas producer in Southeast Asia. Vietnam has boosted exploration activities, allowing for greater foreign investment and cooperation in the oil and gas sectors, and introduced market reforms to support the energy industry. Successful exploration has recently led to a substantial increase in proven crude oil reserves, growing to 4.4 billion barrels in January 2013 from 0.6 billion barrels two years prior<sup>23</sup>. Vietnam's efforts to intensify the exploration and development of its offshore fields have contributed to the substantial growth in reserves.

Indonesia provides another example. While oil production is declining, Indonesia's natural gas production increased by almost 25 percent between 2002 and 2012<sup>24</sup>. A similar trend is occurring in Malaysia. Declines in production at Malaysia's major producing oil fields during the past decade have led to government efforts to encourage investment in enhanced oil recovery and the development of smaller, marginal, and deepwater fields<sup>25</sup>. Furthermore, Malaysia's natural gas production has risen over the past two decades to serve growing domestic demand and export contracts. Recent foreign investment in deepwater and technically challenging fields, primarily in Sarawak and Sabah States, has provided impetus to maintain high natural gas production levels over the next few years.

At the same time, Cambodia and Myanmar are beginning to intensify their oil and gas production. The Cambodian government has repeatedly

<sup>23</sup> International Energy Agency online database. Op.Cit.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

pressed Chevron to commence oil production from Cambodia's Block A oil field since discovery of the reserves in 2004-2005<sup>26</sup>. In Myanmar, the government is eager to attract foreign investment and technical assistance following the current economic and political reforms and is issuing production-sharing contracts through direct negotiations and licensing rounds for the development of oil and natural gas fields, which commenced in 2011. As part of its most recent bidding round, initiated in 2013, Myanmar awarded 10 deepwater and 10 shallow-water offshore blocks to several foreign and domestic companies<sup>27</sup>. Myanmar's natural gas production has increased substantially over the past decade, rising from 61 billion cubic feet (Bcf) in 1999 to 416 Bcf in 2012.<sup>28</sup> The country's current natural gas output derives primarily from the offshore Yadana and Yetagun fields, but is forecast to rise further due to new projects.

A similar upward trend is found in the region's mineral extraction. In Cambodia, the government estimated mining industry growth at an average rate of 8.37 percent during the period of 2011 – 2014<sup>29</sup>. The number of mining licenses issued by the government has increased sharply since 2006. The Ministry of Industry, Mines and Energy (MIME) issued only 11 large-scale mining

licenses in the preceding decade since 1993<sup>30</sup>, but between 2006-2010 MIME issued 104 exploration licenses.

As another example, the Vietnamese government predicts coal production in Vietnam to rise from 16-17 million metric tones in 2005 to 29-30 million metric tones by 2020<sup>31</sup>. The increase reflects both rising domestic demand and a growing mining sector in the country. The number of mining licenses has increased sharply, particularly with respect to licenses issued by provincial and local authorities. Over a 12 year period from 1996 to 2008, the Ministry of Industry and the Ministry of Natural Resources and Environment (MONRE) issued a total of 928 licenses for mineral enterprises, organisations and individuals. By way of comparison, in just over three years between 2005 and 2008, city and provincial level people's committees issued 3495 licenses<sup>32</sup>.

The stable growth of the extractive industries within ASEAN member countries cannot be separated from growing energy demand in the region. An economic revival, coupled with ongoing urbanisation and industrialisation, has driven brisk growth in ASEAN energy usage since the Asian Financial Crisis of 1997-1998, which induced a sharp slump in energy consumption.

26 World Bank. 2009. Sustaining Rapid Growth in a Challenging Environment: Cambodia Country Economic Memorandum. Draft. Poverty Reduction and Economic Management Sector Unit East Asia and Pacific Region. Washington DC: The World Bank.

27 International Energy Agency online database. Op.Cit.

28 *Ibid*.

29 Sotharith, Chap. 2012. "Industrial Readjustment in Cambodia" in Yasushi Ueki and Teerana Bhongmakapat (ed.) Industrial Readjustment in Mekong Basin River Countries: Towards the ABC. BRC Research Report No. 7. Bangkok Research Center, IDE-JETRO. Bangkok.

30 Cooperation Committee for Cambodia. 2010. The Expansion of Mining Activities and Indigenous Peoples' Rights in Monduliri Province - Case Studies of Gati Village, Keo Seima District and Pou Rapeth Village, Pechreada District. Phnom Penh: Cooperation Committee for Cambodia.

31 The US Geological Survey. 2012. Mining 2012: Vietnam.

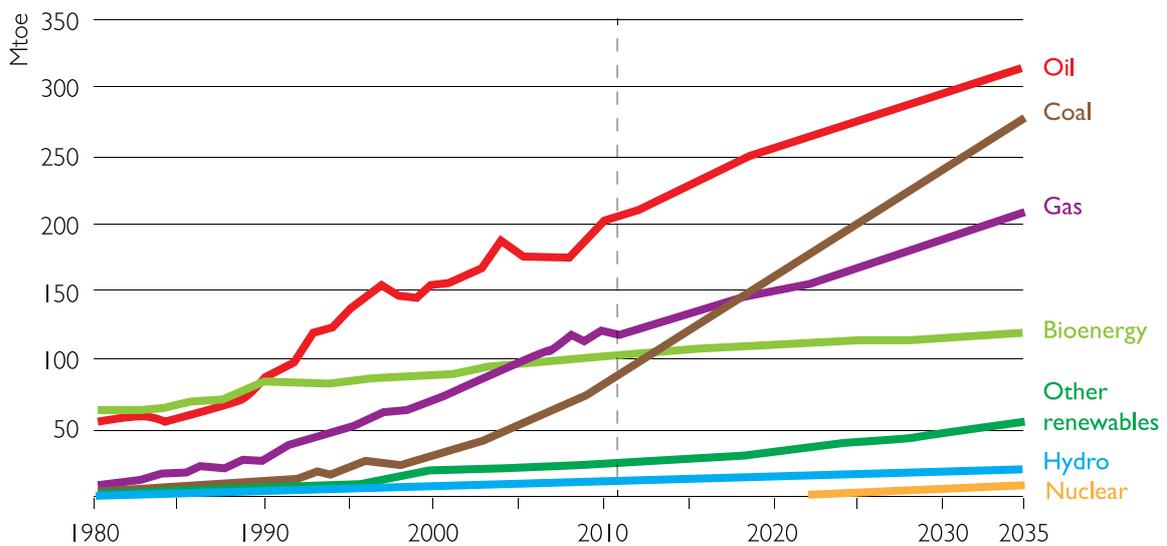
32 VGA, VUSTA, CODE. 2010. The Report of Research and Evaluation: "The situation on the management of the mineral resource exploitation and use in Vietnam". Hanoi: CODE.

Energy demand reached 1,252 MTOE (million tonnes of oil equivalent) in 2030, up from 474 MTOE in 2005, an average annual growth rate of 4 percent.<sup>33</sup> This is considerably higher than the world's average projected growth rate of 1.8 percent in primary energy consumption through 2030.

As in most parts of the world, Southeast Asia's primary energy mix is dominated by hydrocarbons, with oil, natural gas and coal contributing over three-quarters of total demand.<sup>34</sup>

Oil remains the major source of energy, with a 40.9 percent share in total primary energy supply in 2005, which is projected to rise to 41.5 percent in 2030. This increase is driven by rapid growth in consumption in the transport sector, fuelled largely by oil products. Coal is growing fastest at a rate of 6.9 percent yearly due to a sharp increase in electricity consumption; driving up its projected share from 11.8 percent in 2005 to 23.7 percent in 2030. Natural gas is growing at a slower average rate of 4 percent yearly, registering a share of 19.2 percent in 2005 and 2030.

**ASEAN Primary Energy Demand by Source**



Source: International Energy Agency, 2013

33 ASEAN Centre for Energy. 2009. The ASEAN Plan of Action for Energy Cooperation (APAEC) 2010 – 2015. ASEAN Centre for Energy, Jakarta, p. 4.

34 Ibid, p. 6.

Considering these developments, it comes as no surprise that Southeast Asia is predicted to be “one of the main drivers of growth in the Asian mining sector over the coming years.”<sup>35</sup> Aside from Indonesia, the Philippines and Vietnam show significant potential as major mining economies, given the size of their respective estimated mineral reserves. Vietnam, for example, has the potential to become one of the largest bauxite producers in the world in the near future, possessing both an abundance of bauxite reserves estimated at 2.1 bnt (billion tonnes) and the political will and initiative to exploit them<sup>36</sup>.

The third factor supporting the important role of extractive industries to building the AEC is the contribution of these industries to ASEAN Member States' economies. Extractive industry development has produced economic growth and development in many economies around the world. Development of the oil and gas and mineral sectors has the potential to boost economic growth and raise living standards in the region by providing employment, both directly and indirectly, and generating export revenues and investment in infrastructure and human capital. However, differences in resource endowments, risk profiles, comparative levels of economic development and regulatory and institutional factors, account for considerable diversity in the current extent and scope of minerals production and its respective role in economic development across the ASEAN member countries<sup>37</sup>.

In Indonesia, the mining sector contributed 4.8 percent of the country's gross domestic product (GDP) and 20.9 percent of total export value in the 2nd quarter of 2013<sup>38</sup>. Hydrocarbon resources, particularly oil and gas, play a significant economic role in Malaysia. Hydrocarbon contributed about 40 percent of Malaysia's total revenues in 2012, compared to only 7.8 percent in 1975, and RM111 billion (16.6 percent) to Malaysia's GDP.<sup>39</sup> In contrast to these examples, while the mining and quarrying sectors are also important to the national economies of Thailand and the Philippines, these industries do not contribute significantly to GDP. Mineral production accounted for approximately 1.5 percent of the Philippines' GDP in 2012 and the proportion of mineral exports has averaged 3.7 percent of total national exports since 2007<sup>40</sup>. Nonetheless, these figures are higher than those for Cambodia – a country possessed of prospective yet immature extractive industries – in which mining currently comprises only 0.3 - 0.4 percent of GDP.<sup>41</sup>

In Vietnam, on the other hand, extractive industry figures reveal an increasing contribution to the national economy over the last fifteen years. For example, the mining and quarrying industries accounted for 4.81 percent of GDP in 1995, increasing to around 9.5 - 10.59 percent between 2000 to 2008<sup>42</sup>. Revenue generated from crude oil contributed only 24.37 percent

35 Business Monitor: November 1, 2012. “South East Asia - A Rising Star In Asia Mining”, available at: <http://www.businessmonitor.com/news-and-views/south-east-asia-a-rising-star-in-asia-mining>

36 Ibid.

37 Melanie, Jane et al. 2005. Op.Cit. p. xi.

38 BKPM and Bank Indonesia online databases; see [www.bkpm.go.id](http://www.bkpm.go.id) and [www.bi.go.id](http://www.bi.go.id).

39 Thean Hock Lee, Eugene. 2013. Scope For Improvement: Malaysia's Oil and Gas Sector: REFSA. Kuala Lumpur; p. 3.

40 Sunley, Emil M. et al. 2012. Philippines: Reform of the Fiscal Regimes for Mining and Petroleum. Washington DC: International Monetary Fund.

41 World Bank. 2009. Op.Cit.

42 Weate, Jeremy. 2013. Vietnam EITI Feasibility Study: Final Draft Report. Adam Smith International.

to state budget in 2008, but in 2011 extractives generated 279,934 billion VND, corresponding to 11.04 percent of GDP.<sup>43</sup> Of this, the oil and natural gas sector dominated other extractives, accounting for 63.52 percent of the total contribution to GDP, with coal representing around 20 percent and non-fuel minerals 15 percent.

The extractives sector is not currently a significant contributor to total employment in ASEAN, reflecting the capital intensive nature of these industries. In the mining sector, approximately 300,000 workers were directly employed in ASEAN in 2004<sup>44</sup>. Although the number has grown in the past decade, its relative significance in the context of national economies remains small. According to an estimate from the Labor Force Survey of Cambodia, in 2006 the total workforce in the mining and quarrying sector was about 11,000, compared with Cambodia's total workforce of 6.3 million.<sup>45</sup> In the Philippines, on average, the industry's contribution to total employment during the period from 2001-2010 was no more than 0.376 percent<sup>46</sup>. A similar picture is found in Vietnam. The total number of employees working in the extractives sector in 2011 was 279,100, accounting for approximately 0.6 percent of the total national workforce<sup>47</sup>.

Nonetheless, the extractive industries have potential to boost local employment in some of the least developed parts of the region,

both directly and indirectly.<sup>48</sup> Furthermore, formal statistics tend to underestimate the total workforce in the extractive industries, since they are unlikely to include workers in unregulated small-scale and artisanal mining enterprises, which are significant in some ASEAN Member States.<sup>49</sup> The Philippines, for example, has a large number of self-employed miners in the informal sector operating small-scale gold mines. Additionally, considerable numbers of workers in ASEAN Member States are employed indirectly within the sector, predominantly through the provision of goods and services to mining operations and their employees.

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43 Ibid.

44 Melanie, Jane et al. Op.Cit.

45 Wu, John C. 2006. The Mineral Industries of Cambodia and Laos.

46 Gomez, Maita. 2010. "Transparency issues in the Philippines Mining Industry: Towards Tax Justice". Policy Research Paper. Quezon City: Action for Economic Reforms.

47 Weate, Jeremy. Op.Cit.

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48 Melanie, Jane et al. Op.Cit

49 Ibid.

## Current problems in the extractive industries' value chain

The global outlook for extractive industry products is expected to remain strong in the medium term, creating incentives for the expansion of exploration, production, and processing capabilities worldwide. A key determinant of ASEAN Member States' ability to capitalise on future growth opportunities will be their capacity to secure the investment necessary to support the long term development of the industries. Domestic sources of finance tend to be limited and are unlikely to satisfy total demand for investment, meaning development of the extractive industries in ASEAN is strongly dependent on inflows of foreign direct investment (FDI)<sup>50</sup>.

A variety of factors determine a country's ability to attract foreign investment in the extractive industries, some of which are common to investment decisions across all sectors.<sup>51</sup> These typically relate to the maturity and stability of the political, economic and legal systems in a potential host country and the availability of infrastructure. Other factors are more specific to the minerals and energy sectors and include geological potential, security of tenure, taxation regimes, and access to requisite technologies and skilled labor.

Despite dynamic development and a continuous flow of investment towards the region's extractive industries, several factors have constrained the realisation of full potential in

the sector.<sup>52</sup> A key impediment across various ASEAN countries is weak governance at many levels, including 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. In terms of sector specific issues, uncertainty, whether related to the scope and implementation of regulations, the process for obtaining exploration and mining licences, or the resolution of land access issues, represents a significant impediment to investment in many ASEAN countries. These factors, combined with the volatile nature of the world market and other shortcomings of the industry at the global level, heighten the risks associated with extractive industry activities in the region. The greater the risks involved, the higher the rate of return required to attract investment in the minerals and energy sectors<sup>53</sup>.

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<sup>52</sup> Ibid.

<sup>53</sup> The ability of competing minerals producers to capitalise on growth in global demand for minerals is influenced by their international competitiveness, which is in turn driven largely by relative costs of production. Productivity is a key driver of changes in the costs of production. It indicates the rate at which outputs are produced relative to the quantity of inputs, including labor (number of employees or hours of work) and capital (for example, buildings, and machinery and equipment). Productivity growth reflects increases in output that occur without a corresponding increase in inputs. Productivity improvements can stem from a combination of factors, such as technological progress, industry restructuring and resource reallocation, economies of scale, and research and development. In developing economies, FDI, through the transfer of advanced technologies and large-scale operations, can be an important avenue for productivity improvement in the mining industry. In the context of ASEAN, extractive industry investment in member countries is small relative to their resources prospectivity. This disparity results, to a large extent, from heightened risk perceptions and significant start-up costs in building infrastructure. Ibid.

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

Weak governance is considered a serious problem in ASEAN. Governance is broadly defined as the sound exercise of political, economic and administrative authority to manage a country's resources for development<sup>54</sup>. Good governance requires effective economic management; implementation of rule of law; participation, transparency, accountability, and predictability in public administration. The extractive industries are by nature particularly sensitive to governance issues at each level. For example, a key challenge facing the revitalisation of the mining industry in the Philippines is the ability to translate national policies on mining to the local level. Differences in national and local government policy approaches to large-scale mining development create legal uncertainty for investors<sup>55</sup>. Similar issues are experienced in Indonesia, where there has been a shift to regional autonomy, and the capacity to administer mining projects is considered by industry participants to be less well-developed at this level of government.

The 2013 Resource Governance Index (RGI) issued by the Revenue Watch Institute (RWI) highlights the governance challenges for the extractive industries in ASEAN. None of the ASEAN countries has attained a satisfactory score on the index<sup>56</sup>. Indonesia and the Philippines lead the ranking with partial scores. Malaysia

and Vietnam both obtained weak scores and Cambodia and Myanmar received failing scores on the index. The detailed index calculation, described in Table 2.2, reveals that each of these countries (except Malaysia) shares a weak or failing enabling environment, indicating poor performance in measures such as accountability, government effectiveness, rule of law, corruption, and the quality of democracy.

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54 Asian Development Bank (ADB), cited in Melanie, Jane et al. Op.Cit.

55 Gatmaytan, Dante. 2012. Imperiled Local Autonomy: Legal Issues in Aquino's Mining Policy. Policy Note No.003. Bantay Kita. Quezon City.

56 The index measures the quality of governance in the oil, gas and mining sector of 58 countries based on the assessment of four key governance components: institutional and legal setting; reporting practices; safeguards and quality control; and enabling environment. See Revenue Watch Institute. 2013. The 2013 Resource Governance Index. New York: Revenue Watch Institute.

### The 2013 Resource Governance Index for ASEAN countries

	composite score	institutional and legal setting	reporting practice	safeguards and quality control	enabling environment
Indonesia	66	76	66	75	46
Philippines	54	63	54	51	46
Malaysia	46	39	45	39	60
Vietnam	41	63	39	31	30
Cambodia	29	52	13	46	20
Myanmar	4	8	5	2	2

Note: 0-40 = failing; 41-50 = weak; 51-70 = partial; 71-100 = satisfactory

Source: Revenue Watch Institute (2013)

In the extractive industries, good governance is required comprehensively throughout the value chain. The extractive industries 'value chain' reflects interconnectedness across a sequence of activities within the sector, from the extraction of hydrocarbon and mineral resources, to their processing and sale, to the ultimate use of the revenues obtained from extractive activities. While the extractive industries value chain can take on varying definitions and forms, it encompasses several basic features, shown in Figure 2.2.

The value chain includes five decision-making processes that require the use of good governance principles. These processes are:

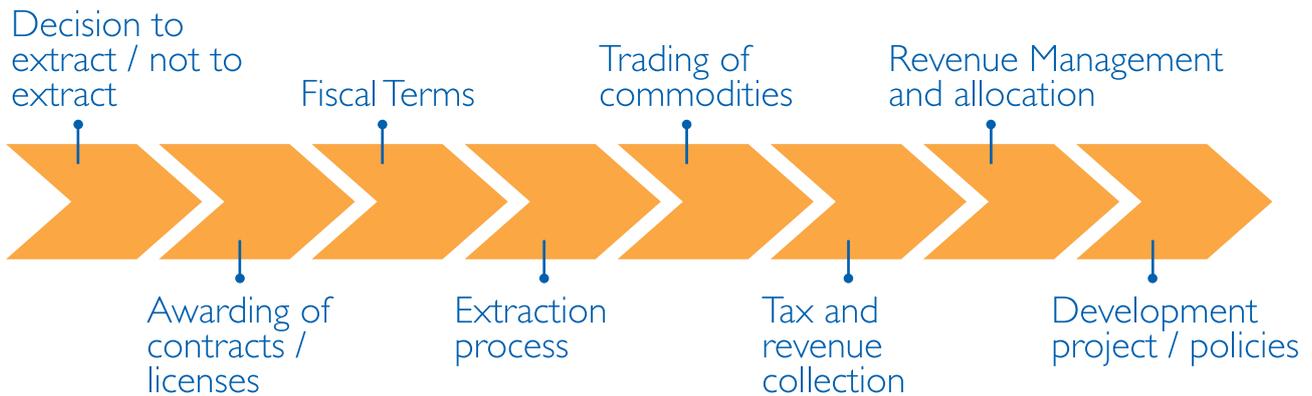
- (I) Deciding whether or not to extract: The first decision faced by a government or community is if and when to begin extracting their natural resources and convert them into monetary or other benefits;
- (II) Terms of the contract/licensing process: After a decision is made to extract, the government must decide on a framework for awarding rights to explore and extract, and establish the legal and financial terms

- governing those rights;
- (III) Revenue transparency in the extraction process: Once the terms for exploration and extraction are established, extraction will begin and the companies will typically pay a variety of financial or in-kind payments to the government for exploration and extraction rights. At this stage it is necessary to determine the appropriate monitoring and financial accountability framework to ensure the transparency of these revenue flows;
- (IV) Managing volatile resources and revenues: As revenues are accumulated, the government and communities must decide how to make effective use of these in light of their finite nature and the challenges of a volatile market and commodities price swings. This stage requires decisions on the proportion of extractives revenue to be saved and expended in order to mitigate against the adverse effects of natural resource revenue dependency. Decisions at this stage encompass long and medium-term planning, as well as development of annual budgets;

(V) Investing for sustainable development: Hydrocarbon and minerals are non-renewable assets that must, over time, be replaced with other assets - physical,

human and financial – which can support a country’s economic growth and development when non-renewable resources are depleted or prices decline.

**Value chain in the extractive industries**



Source: Revenue Watch Institute (2009)

The governance problems within ASEAN's extractives industries can be found at each stage of the value chain. In Cambodia, for example, the extractive industries are shrouded in secrecy. The government does not publish information on the licensing process and contract terms are not disclosed because the current Mining Law contains a non-disclosure provision. The non-disclosure requirement often extends up to and even beyond the term of the contract<sup>57</sup>. The 1991 Petroleum regulations also contain a confidentiality clause in Article 54, which states that “[a]ll information, documents, data and materials acquired by a Contractor during Petroleum Operations shall be kept confidential in accordance with the provisions of the Petroleum Agreement”<sup>58</sup>.

The extractives sector in the Philippines provides another illustration. Although the mining regime in the Philippines is 'one of the most modern' in the Asia-Pacific region in terms of environmental and social safeguards, including adoption of the principle of 'free, prior and informed consent' (FPIC)<sup>59</sup>, the application of these safeguards is unacceptably weak, particularly in the areas of environmental impact assessment, community participation, and compliance with FPIC. The mining sector in the Philippines is also associated with various environmental disasters, such as the Marcopper and Rapu-Rapu accidents.

57The NGO Forum on Cambodia (2011) A Brief Guide to Information on Extractive Industry Revenue Management in Cambodia. Phnom Penh: The NGO Forum on Cambodia.  
58Ibid.

59Hatcher, Pascale. 2010. "Investment-Risk in the Philippines: Multilateral Mining Regimes, National Strategies & Local Tensions". GSIR Working Paper series. Ritsumeikan University.

The Marcopper accident became the cornerstone for opposition against large scale mining projects in the Philippines. On March 24, 1996, the Marcopper's open pit burst, releasing 2 to 3 million cubic meters of mine tailings into the Boac River.<sup>60</sup> The spillage killed marine life in the 26 kilometre long waterway and flooded farmlands and villages along its banks. Around 1200 local residents were evacuated as flash flooding isolated 5 villages. The flooding inundated 6-10 hectares of cropland, damaging local livelihoods. The clean-up cost US\$ 80 million. In addition to environmental disasters such as the Marcopper accident which can devastate communities and ecosystems, large-scale mining companies in the Philippines are frequently accused of serious human rights violations, including extrajudicial killings of anti-mining activists.<sup>61</sup>

The extractive industries in ASEAN are also closely associated with corruption. In Vietnam, mining companies have to make unofficial payments (bribes) to a maximum of VND 5 billion in order to obtain information on mining areas, mining depth, mineral reserves, documentation requirements, procedures for acquiring licences, and other issues.<sup>62</sup> The average unofficial payment to the licensing authority is VND 178 million. Mining companies pay on average VND 110 million, to a maximum of VND 1.2 billion, for decisions regarding reserve approval. Furthermore, under the current

Mineral Law, company reporting requirements to ensure transparency and accountability are not well defined, especially for small-scale mining operations. This means that production output can go unrecorded, producing the ideal conditions for tax avoidance and smuggling<sup>63</sup>. Moreover, the prices for mineral commodities and environmental protection fees are set by provincial authorities and vary between provinces. Low pricing in comparison with market price provides additional opportunities for corruption.

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60 Alyansa Tigil Mina. 2011. *A Legacy of Disasters: The Mining Situation in the Philippines 2011*. Quezon City: Alyansa Tigil Mina. The Marcopper Mining Corporation started its mining operation in Maridique island in 1996. According to the company, the rock around the cement plug inserted into the former Tapian open pit drainage tunnel to convert it into tailing containment was fractured and the plug failed.

61 Ibid.

62 Weate, Jeremy. Op.Cit

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63 Ibid.

In many ASEAN Member States, artisanal and small-scale mining (ASM) is predominantly a poverty-driven activity which plays an important economic role, particularly in terms of the numbers of people employed by the sector.<sup>64</sup> ASM refers to mining by individuals, groups, families or cooperatives with minimal or no mechanisation, often in the informal (illegal) sector of the market that is heavily reliant on manual labor and does not involve the use of explosives<sup>65</sup>. ASM can play a crucial role in poverty alleviation and rural development; most of those involved in the sector are poor and mining often represents the most promising, if not the only, income opportunity available. In the Philippines, ASM plays an important role in the country's gold production. The Philippines Mining Almanac recorded that ASM contributed almost 80 percent of total gold production in 2007<sup>66</sup>.

Nonetheless, small-scale mining can be extremely environmentally damaging and often has serious health and safety consequences for workers and surrounding communities, due to poor practices in the mining and processing of target minerals. Governments in many countries regard ASM as an illegal activity. The industry consequently lacks an adequate regulatory and policy framework, preventing the formalisation of the sector. This makes it very difficult to achieve improvements in the livelihoods and working conditions of ASM miners and their dependent communities and to ensure improvements in environmental performance.

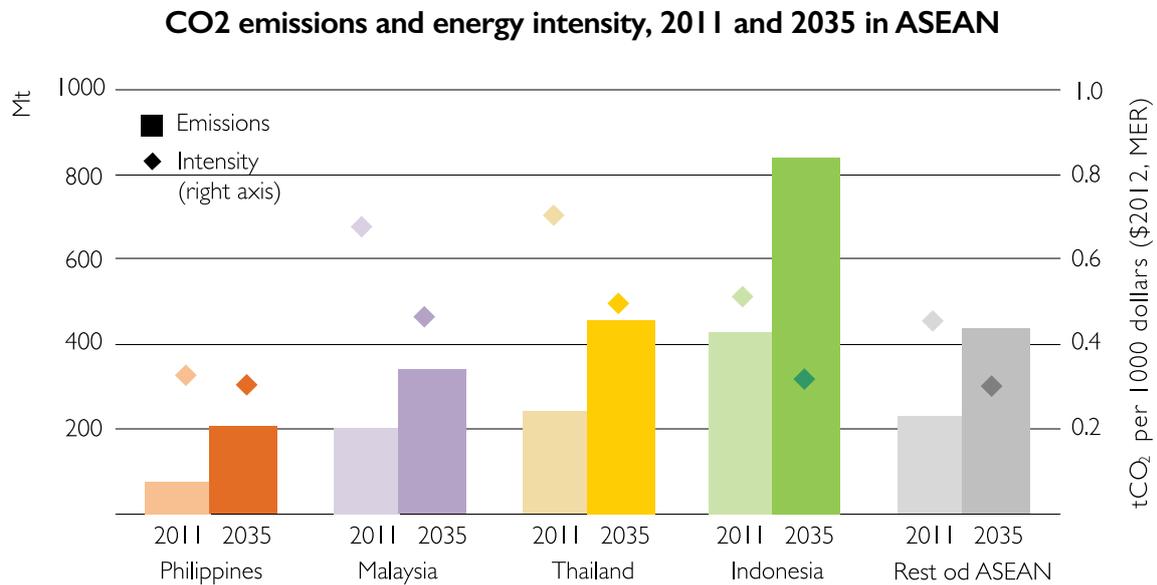
Furthermore, many of the potential economic benefits of the small-scale mining sector are lost due to poor marketing practices within the industry. Local governance structures and institutions are typically underdeveloped and the absence of adequate legal frameworks and secure rights for miners and communities exacerbates this problem. Artisanal and small-scale miners are often marginalized and frequently exposed to serious disputes with communities, government agencies and large-scale mining interests. Conflicts over land access and use can be a particularly fraught issue in areas where indigenous or tribal peoples have traditional land rights or land-use patterns.

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64 Hentschel, Thomas et al. 2003. *Artisanal and Small-Scale Mining: Challenges and Opportunities*. London. IIED.

65 Alternate Forum for Research in Mindanao. 2012. *A Background Study on the Small-Scale Gold Mining Operations in Benguet and South Cotabato and Their Impact on the Economy, the Environment and the Community*. Quezon City: Bantay Kita.

66 Ibid



Source: International Energy Agency (2013)

A key objective of ASEAN and the AEC is the promotion of sustainable development, including in the energy and minerals sectors.<sup>67</sup> In terms of promoting investment for sustainable development, the impact of the extractive industries on the level of CO<sub>2</sub> emissions in the region creates a significant value chain problem. The growing production of hydrocarbon base energy resources and their domination in the energy mix of ASEAN Member States continues to drive up regional energy-related carbon-dioxide (CO<sub>2</sub>) emissions. These emissions are projected to almost double from 2011 to 2035, from 1.2 gigatonnes (Gt) to 2.3 Gt, and from 3.7 percent to 6.1 percent of global emissions<sup>68</sup>.

This is a faster growth rate than predicted for primary energy demand, reflecting a pronounced increase in the share of hydrocarbons – particularly coal – in the energy mix. On a per-capita basis, emissions are projected to rise from approximately 20 percent to 42 percent of the OECD average. Most ASEAN Member States have relatively high carbon intensities when measured as CO<sub>2</sub> emissions per dollar of GDP. This poses a major challenge for ASEAN Member States on the effective use of extractive industry revenues for sustainable development, in order to balance the need to fulfill domestic energy demand and pursue economic growth with ensuring long term environmental quality and sustainability.

<sup>67</sup> Charter of the Association of Southeast Asian Nations, adopted at the 13th ASEAN Summit in Singapore in November 2007, Article 9; 2004 Vientiane Action Programme (2004-2010), Op. Cit., at page 15; ASEAN Economic Community Blueprint 2008, Op., Cit.

<sup>68</sup> International Energy Agency, Op.Cit.

# WHY THE REGIONAL FRAMEWORK IS NEEDED



Development of the extractive industries in ASEAN requires a strong and effective policy framework. 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 both national and regional economies. More specifically, the sustainable development of the extractive industries is contingent on the provision of 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.

These conditions are also necessary for attracting the substantial levels of private sector investment, particularly FDI, required to support development of the hydrocarbon and minerals sectors in ASEAN member countries. At a time when globalisation is creating new opportunities for investment and increasing the competition for extractive industry capital, maintaining a stable and facilitative policy climate is both increasingly important and challenging.

In the ASEAN context, the regional policy framework must take into account the considerable diversity in the size, scope and nature of extractive activities across the region. This diversity reflects the varying resource endowments, risk profiles and levels of economic development, and the effectiveness of regulatory regimes and institutions among ASEAN member countries. The policy framework must 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 are shared and enjoyed by all members in accordance with the Initiative for ASEAN Integration (IAI)<sup>69</sup> and the Hanoi Declaration on Narrowing the Development Gap (NDG) for Closer ASEAN Integration.<sup>70</sup>

Based on those considerations, the proposed framework reiterates the commitment to realizing the ASEAN Economic Community (AEC) through (i) the development of a competitive economic region in which cooperation in the energy and mining sectors are integral to developing infrastructure that promotes environmentally and socially sustainable development; (ii) advancing Equitable Economic Development within the structure of the Initiative for ASEAN Integration (IAI), in order to provide direction and sharpen the focus of collective efforts to narrow the development gap, not only within ASEAN Member States but also between ASEAN and other regions of the world; and (iii) progress towards Integration into the Global Economy by enhancing participation in global supply networks and the continuing adoption of international best practices and standards in the production and distribution of good and services.

<sup>69</sup> Initiative for ASEAN Integration (IAI), adopted at the ASEAN Summit Meeting, November 2000.

<sup>70</sup> Ha Noi Declaration On Narrowing Development Gap For Closer ASEAN Integration, adopted in Hanoi, Vietnam, 23 July 2001.

This framework aims to contribute to the development of an accountable, transparent, and well-governed extractives sector that is effective in stimulating economic growth at regional, national and sub-national levels, environmentally sound, socially responsible and involves the participation of surrounding communities. The framework aspires to create an industry that forms 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 and national entrepreneurship, improve livelihoods and advance the progress of integrated rural social and economic development.

The objectives of the proposed framework are:

- To provide principles and a platform for the harmonisation of policies in the extractive industries in ASEAN Member States, in order to ensure high standards of accountability for mining companies and governments, sound fiscal frameworks and revenue management, transparency, respect for the principles of human rights and social equity, and protection of the environment and the rights and interests of local and affected communities.
- To provide a standard-setting instrument for the effective management of the extractive industries in ASEAN that ensures a similar level of competitiveness across ASEAN Member States, avoiding a “race to the bottom”.
- To ensure that harmonisation and standardisation through implementation of the framework takes into consideration the different stages of development of the extractive industries in each ASEAN Member State and the flexible development and enactment of policies and strategies to address the specific needs and conditions of each country.
- To provide guidelines for the development of tools to monitor the progress of extractive industries in ASEAN Member States.

# 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 generations<sup>71</sup>.

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 environment<sup>72</sup>.

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.

<sup>71</sup> Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012, Article 35.

<sup>72</sup> 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 Compact<sup>73</sup>, the Extractives Industries Transparency Initiative<sup>74</sup> and the Equator Principles.<sup>75</sup> 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 needs<sup>76</sup>. 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 1992<sup>77</sup>.

- *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 degradation<sup>78</sup>. 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

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

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

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

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

77 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).

78 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 sector<sup>79</sup>.

- *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,<sup>80</sup> 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 exchanged<sup>81</sup>.

<sup>79</sup> 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.

<sup>80</sup> 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.

<sup>81</sup> 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

Fundamental human rights encompass civil and political rights and economic, social, and cultural rights<sup>82</sup> 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.<sup>83</sup>
- *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

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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.

<sup>82</sup> 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.

<sup>83</sup> 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 generations<sup>84</sup>.

- *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 livelihoods<sup>85</sup>.
- *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.<sup>86</sup>

- *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 public<sup>87</sup>.
- *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 development<sup>88</sup>.

84 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.

85 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).

86 Aarhus Convention, Op. Cit.

87 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.

88 Rio Declaration 1992, Op. Cit.

# THE FRAMEWORK



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

1.1. 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.

1.2. 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

1.3. 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.

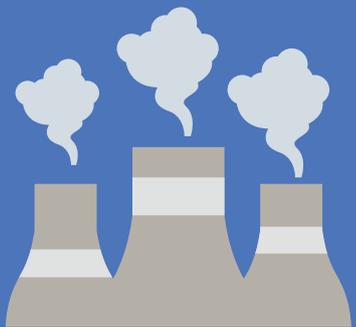
#### 4. Sound fiscal framework and revenue management

- 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.

# MEANS OF IMPLEMENTATION



## Country level process

All ASEAN Member States should adopt the framework to govern their extractive industries at national level in order to ensure the framework's effectiveness as a regional harmonisation and standard-setting tool. Implementation of the framework by national governments must take into consideration the differences in extractive industry development of each ASEAN Member state, based on variations in national resource endowments, risk profiles, levels of economic development and existing regulatory and institutional frameworks. Therefore, adoption in a particular national setting will be based on the current stage of extractive industry development of each ASEAN Member State and the need for enactment of varying policies and strategies to address the specific needs in each Member State. The framework targets four audiences: (1) governments and government agencies as representative of the State; (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. Each of these should be involved in the effective implementation of the framework at national level.

Member State governments have the role of leading the process of implementation. Each Member State will be responsible for the development and enactment of the requisite policies and strategies to implement the framework in the domestic context. Member States should develop appropriate policies, regulation, and adjudication in order to prevent

and penalise infringements of the framework and ensure adequate budget and resources to oversee implementation and enforcement. Member State governments should identify and appoint a key agency or institution to serve as a focal point overseeing and coordinating the implementation of the action plan at country level. The focal point should develop a strategic schedule or action plan, including key milestones for the timely integration of the framework into national policy. This will require a baseline assessment of legal, regulatory and policy frameworks to identify coherence with the framework principles and to address existing weaknesses and gaps.

Furthermore, Member States should play a key role in communicating the framework within government agencies and departments at national and sub-national levels and with relevant stakeholders, including the business and financial communities engaged in the extractives sector; civil society groups, affected communities and the public. Member governments, through the national focal point, should work to build knowledge and capacity within the sector, including among businesses and financial institutions to encourage and facilitate compliance. This may include conducting technical studies or training programmes on issues and challenges for implementation at national level.

The focal point shall develop a multi-stakeholder platform at national level for open discussion and sharing information on issues regarding the implementation of the framework. This platform

should engage representatives of the business sector in the extractives industries, including business enterprises, industry associations and financial institutions, as well as representatives of civil society, affected and local communities and community and citizen groups. Such groups should include adequate representation of women, indigenous peoples, small-scale miners and other traditionally marginalized groups. The multi-stakeholder platform shall serve as a forum for reporting on issues and challenges regarding the implementation of the framework and support mechanisms to record and regularly report on the outcomes of the implementation process.

As an example, in the initial stage, Member State governments can use the framework to conduct a Rapid Assessment or Gap Analysis to identify the current situation regarding extractive industries governance in the country, and to determine the readiness level and existing barriers in the implementation of the framework. The results of the Gap Analysis can assist the government to develop the action plan at country level necessary to address those gaps. The process for conducting the RA/GA and developing the national action plan should be done with the meaningful involvement and support of the business/private sector and civil society organization and the public.

Businesses enterprises engaged in the extractive sector in ASEAN will be responsible for respecting and complying with the national government's requirements for implementation of the framework. In addition, they should enact relevant internal corporate policies and act with due diligence to avoid any contravention of the framework principles. The business responsibility

to respect obligations and ensure compliance with the framework 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.

Both Member States and business enterprises will be responsible for ensuring access to effective remediation for community affected by substantial failures to comply with the framework principles. Member States must take appropriate steps within their territories and/or jurisdictions to ensure 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 the implementation of the framework and for these remedial processes, as well as assisting citizens and community groups to exercise their rights and voice their grievances.

## Support from ASEAN bodies and institutions

ASEAN bodies shall support the actions of Member States to adopt and implement the framework by issuing directives and guidelines for the process. Ideally, in order to achieve effective implementation at regional level, the Framework for Extractive Industries Governance in ASEAN must be integrated within ASEAN institutional and policy structures and adopted in existing and future plans and strategies for ASEAN integration. With respect to the current framework, the ASEAN Minerals Cooperation Action Plan (AMCAP) and ASEAN Plan of Action for Energy Cooperation (APAEC) will each be renewed in 2016 and can provide ASEAN Member States with a point of reference at regional level for implementation of the framework.

Promotion of the framework by relevant ASEAN bodies, as an important tool to support ASEAN integration and community building, will strengthen and support the commitment of ASEAN Member States to adopt and implement the framework at national level. Relevant ASEAN Sectoral Ministerial Bodies will therefore have a key role in developing actions and guidelines for implementation of the framework at regional level and within Member States. In particular, the ASEAN Ministers on Energy Meeting (AMEM) and the ASEAN Ministerial Meeting on Minerals (AMMin) should develop and incorporate the requisite directives and guidelines for adoption of the framework into the new AMCAP and APAEC documents. These bodies will be responsible for leading the detailed implementation of the framework under the umbrella of the APAEC and AMCAP and monitoring the commitments under their respective purviews.

Other relevant Sectoral Ministerial Bodies will also have a role in implementing the framework into plans and strategies for integration and community building. For example, the ASEAN Investment Area (AIA) Council, responsible for overseeing the implementation of the ASEAN Comprehensive Investment Agreement (ACIA), should implement framework standards into plans and policies for enhancing intra and inter-regional investment. Under the Political Security Pillar, the ASEAN Law Ministers Meeting (ALAWMM) has a role with respect to plans and strategies for the development and harmonisation of legal and regulatory frameworks necessary for the effective implementation of the framework. Similarly, under the Socio-Cultural Community Pillar, the ASEAN Ministerial Meeting on the Environment (AMME) and the ASEAN Ministers on Rural Development and Poverty should integrate framework standards into policies and plans on environmental protection and poverty eradication as they pertain to the extractive industries.

Implementation of the framework within the standard-setting and programmatic agendas of the Sectoral Ministerial Bodies should be reinforced by endorsement of the framework at Summit and Council levels. Endorsement of agreements and policy documents by the ASEAN Leaders at the Summit signifies the highest level of commitment of ASEAN member states. The ASEAN Summit is the supreme policy-making body within ASEAN, setting the direction for ASEAN policies and objectives. The Summit deliberates, provides policy guidance

and makes decisions on key issues relating to the realisation of the objectives of ASEAN, important matters of interest to Member States and all issues referred to it by the ASEAN Coordinating Council, the ASEAN Community Councils, and the ASEAN Sectoral Ministerial Bodies. The four Council bodies support the role of the Summit: the ASEAN Coordinating Council (ACC) which oversees the overall implementation and coordination in the ASEAN Community, the ASEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council to ensure coordination of the activities under each of the three areas.

While the framework is most directly linked to the standard-setting and programmatic work of the AMEM and AMMin Sectoral Ministerial Bodies, effective implementation is dependent on the achievement of other objectives of ASEAN community building, including those of the ASEAN Community's Political-Security and Socio-Cultural Pillars. The standards set out in the framework should therefore be implemented in relevant plans and programmes across the three pillars of the ASEAN Community. It will be important for the relevant Sectoral Ministerial Bodies to work closely with the ASEAN Coordinating Council to ensure the inclusion of the framework in the ASEAN Summit agenda as well as the agendas of the AEC, APSC and ASCC Councils, enhancing policy coherence, efficiency and cooperation among the ASEAN pillars.

The success of the framework requires the involvement of all stakeholders in the process. An effective communications programme is required to create greater public awareness of the framework within all ASEAN Member

States as well as to keep all stakeholders, including the business community and peoples of ASEAN, informed of the progress of the adoption process. The AMEM and AMMin Sectoral Ministerial Bodies should launch a comprehensive communications plan to explain to the government officials, key stakeholders in the business community, civil society, and the general public the objectives, benefits and challenges of the framework. This plan should serve as a regional platform for open discussion and information sharing for all Member States. At the same time, the Member States should each establish a mechanism at national level to regularly report on the outcomes and issues raised during the adoption process.

## Key Steps for implementation of The Framework

### Country Level

1. Member States can use The Framework to conduct Rapid Assessment/Gap Analysis (RA/GA) across all four pillars of the Framework. The purpose of RA/GA is to:
  - 1) Provide quick summary of extractive industries governance in each Member State and to identify the current stage and level of extractive industries development;
  - 2) Provide a solid review of where the country stands in terms of the four key pillars of the Framework;
  - 3) To provide a clear estimation of the key challenges and opportunities vis-a-vis the fulfillment of the four key pillars of the Framework and identification of areas for improvement;
  - 4) Enabling a sound basis and background for the development of a national Action Plan for Framework implementation.
2. Identifying a national focal point, as the most suitable government department or agency to host the RA/GA and coordinate the implementation of the national Action Plan.
3. Establishing a Working Group/Multistakeholder Group (WG/MSG) that comprises representatives of relevant government department or agencies, business and civil society. The purpose of the WG/MSG is to:
  - 1) Prepare and agree on the ToR for RA/GA;
  - 2) Review, provide comments and feedback on the RA/GA;
  - 3) Develop and monitor the national Action Plan based on the result of RA/GA.
4. Conduct further consultation for the national Action Plan and implement the Action Plan.

### ASEAN Level

1. Sectoral Ministerial Bodies adopt and promote the Framework as the basis for: harmonising mineral policies and promoting best practices in the mining and energy sectors and regional cooperation in these sectors.
2. Establishing a mechanism for a peer-review process of the RA/GA and national Action Plans, and a coordination mechanism for the implementation of the Framework within ASEAN Member States.
3. Establishing a review mechanism to monitor the implementation of national Action Plans and measure the level of achievement and progress by each Member State.
4. Provide technical assistance, in cooperation with dialogue partners, to Member States in conducting RA/GA and development of national Action Plans and implementation strategies.

## Integrating and reinforcing multi-stakeholder and other initiatives

Prior initiatives have demonstrated that the establishment of voluntary standards is not sufficient to ensure that mining maximizes benefits and minimises costs to the environment and local communities. The current framework aims to build on existing international and voluntary initiatives and standards by providing a binding standard to ensure the accountability of business and governments by subjecting corporate operations, as well as government management and oversight, to public scrutiny and enabling a verifiable chain of custody for extractive industry products.

The implementation of the framework should be integrated with and complement existing initiatives to strengthen extractive industry governance at national, regional and international levels. This includes existing model and best practice frameworks for the extractive industries and voluntary and multi-stakeholder initiatives.

In this context, multi-stakeholder initiatives are defined as initiatives and processes that bring together the expertise of diverse stakeholders, including representatives of government, business and civil society, in an effort to find joint solutions to complex issues and to develop and promote new policy approaches at national and international levels for meeting the social and ecological challenges of sustainable development. A number of ASEAN Members States, business enterprises and financial institutions with activities and operations within the ASEAN extractives sector are already members of such initiatives. For example, Indonesia and Timor-Leste are

currently designated EITI complaint countries and the Philippines is EITI candidate country. Business enterprises and financial institutions within the sector have signed up to voluntary and industry initiatives such as the UN Global Compact, the UN Voluntary Principles on Security + Human Rights and the Equator Principles<sup>89</sup>.

Relevant initiatives and tools include, but are not limited to:

- Extractive Industries Transparency Initiative: The EITI is a global coalition of governments, companies and civil society working together to improve the transparent and accountable management of revenues from natural resources. Countries implementing the EITI Standard must ensure full disclosure of taxes and other payments made by oil, gas and mining companies to governments. These payments are disclosed in an annual EITI Report which allows citizens to monitor government revenues from the country's natural resources<sup>90</sup>.
- Natural Resource Charter: The Charter is a set of economic principles providing guidance to governments and societies on how to best manage the opportunities created by natural resources for development. The Charter

<sup>89</sup> The Equator Principles is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making. See: <http://www.equator-principles.com>.

<sup>90</sup> Extractive Industries Transparency Initiative, see: <http://eiti.org/eiti>.

comprises twelve principles covering the choices and strategies that governments can pursue to help ensure sustained economic development from the exploitation of natural resources.<sup>91</sup>

- **United Nations Global Compact:** The Global Compact is a voluntary strategic policy initiative enabling businesses to collaborate and partner with governments, civil society, labour groups and the United Nations to improve the impacts of their operations on human rights and environmental sustainability. Businesses subscribing to the Global Compact must commit to aligning their operations and strategies with ten universally accepted principles encompassing human rights, labour, environment and anti-corruption<sup>92</sup>.
- **Voluntary Principles on Security + Human Rights:** The Voluntary Principles are a set of non-binding principles developed to assist extractive companies to balance security concerns with human rights. The Voluntary Principles were launched in 2000 and are a tripartite multi-stakeholder initiative, engaging governments, civil society and businesses. The Voluntary Principles were developed in response to reports of human rights abuses allegedly committed by security providers contracted by the extractive industry. The principles apply to interactions with both public and private security forces. A number of companies have incorporated the principles into their management systems

and agreements with contractors<sup>93</sup>.

- **Open Contracting Partnership:** The OCP aims to strengthen responsible disclosure and participation related to oil, gas and mining agreements, build an the evidence base to inform policy and good practice, develop tools to make contract information more accessible and usable, and facilitate dialogue and action between relevant stakeholders to improve contracting outcomes<sup>94</sup>.

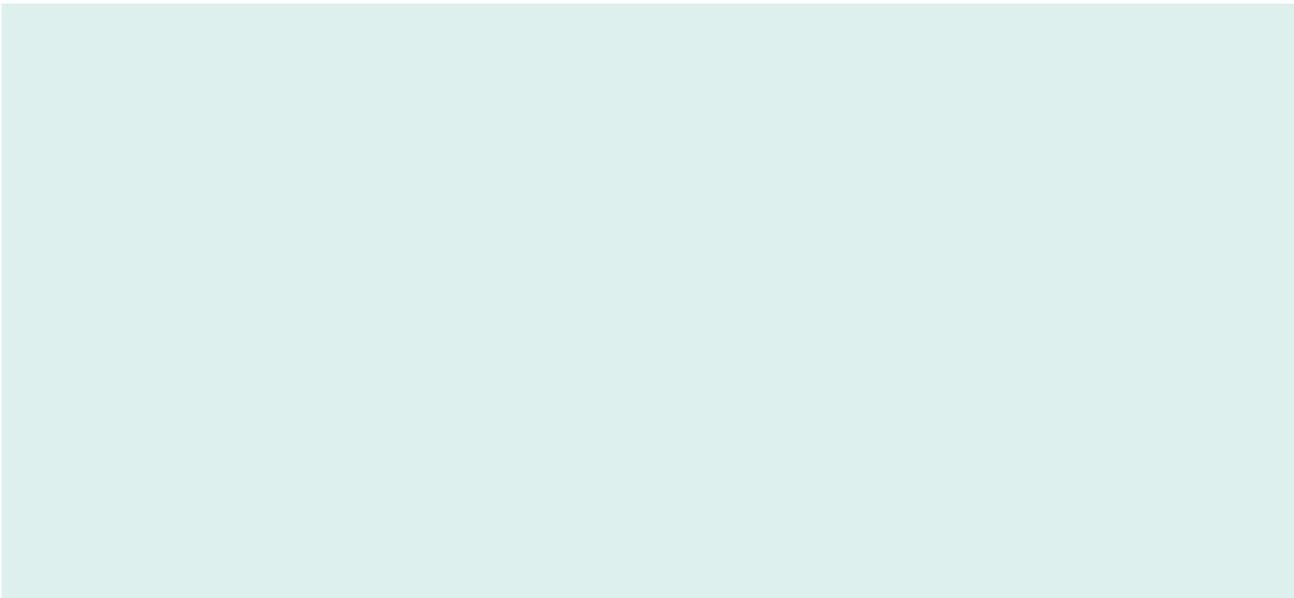
These existing initiatives can provide support for the implementation of the framework at regional and national levels within ASEAN, including providing more detailed guidance in key areas such as revenue transparency, social and environmental risk management in project finance, and the protection of human rights within conflict zones. Efforts towards implementation of the framework should therefore also encourage and support further endorsement by Member States and business enterprises of voluntary and multi-stakeholder initiatives.

91 Natural Resource Charter, see: <http://naturalresourcecharter.org>.

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

93 Voluntary Principles on Security + Human Rights Initiative, see: <http://www.voluntaryprinciples.org>.

94 Open Contracting Partnership, see: <http://www.open-contracting.org>.



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