MYANMAR

and the

NATURAL RESOURCE CHARTER

28 Priority Issues for the Extractive Industries

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Front Cover Photo:
Saw Mat, a supervisor of a private coal mine in Thigyit, Shan State, Myanmar. (Suthep Kritsanavarin/NRGI)

Back Cover Photo:
Oil barrels at an oil field in Minhla Township, Magwe Region, Myanmar. (Matt Grace/NRGI)

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GLOSSARY OF TERMS

Myanmar laws & policies

- **Anti-corruption Law (2013)** requires officeholders to declare their assets and establishes an Anti-corruption Commission.

- **Environmental Conservation Law (2012)** establishes national policies for environmental protection, including requirements to conduct environmental impact assessments for projects of certain types and sizes.

- **Foreign Investment Law (2012)** sets out requirements for foreign investors in Myanmar and mandates the creation of foreign investment rules. It replaced the Union of Myanmar Foreign Investment Law of 1988. It is complemented by a Citizens Investment Law (2013). It is proposed to merge and amend the two Laws in 2016.

- **Framework for Economic and Social Reforms (2012)** is a plan published by the Myanmar government, specifically the Ministry of National Planning and Economic Development, identifying policy priorities for the period 2012 to 2015. It acts as a bridge between the Fifth Five-Year Plan (2011-12 to 2015-16) and the long-term National Comprehensive Development Plan (2011-31).

- **Mines Law (1994)** establishes the legal framework for activities in the mining sector. It was amended in late 2015.

- **Myanmar Energy Sector Policy (2013)** establishes a 9-point plan for the developing energy resources and meeting internal energy needs formulated by the Myanmar National Energy Management Committee in 2013 with assistance from multilateral institutions.

- **National Comprehensive Development Plan (2014)** details strategies for developing Myanmar's economy over the 20-year long-period spanning from 2011 to 2031. The NCDP was developed by the Myanmar government in consultation with the Parliament.

- **National Sustainable Development Strategy 2009 (NSDS)** prioritizes the sustainable management of natural resources, integrated economic development and sustainable social development. The National Commission on Environmental Affairs, later reconstituted as the National Environmental Conservation Committee (NECC), spearheaded the elaboration of NSDS.

- **Oil Fields Act (1918)** and **Petroleum Act (1934)** establish the legal framework for activities in oil and natural gas. The Ministry of Energy is currently working to revise requirements in the upstream sector.

International statutes & frameworks

- **Extractive Industries Transparency Initiative (EITI)** is a global effort to promote open and accountable management of natural resources.

    - The **EITI Standard** is the authoritative source on how countries can improve the governance of natural resources by implementing transparent practices. Countries must submit their candidacy to EITI before they can be declared compliant with the Standard.

    - Much of the work in EITI candidate countries is undertaken by a **multi-stakeholder group (MSG)**, which facilitates exchange between government, business, civil society, and international community members.

- **United Nations Convention against Corruption (UNCAC)** is a global legally binding international anti-corruption instrument to which Myanmar is a party. UNCAC is overseen and enforced by the United Nations Office on Drugs and Crime (UNODC).

- **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** is an international instrument adopted by the United Nations in 2007. It enshrines the individual and collective rights of indigenous peoples, including the right to free, prior and informed consent (FPIC).

Myanmar government entities

- **Central Statistical Organization (CSO)** collects data from government agencies and the private sector. It is organized under the Ministry of National Planning and Economic Development (MNPED).

- **Department of Geological Survey and Exploration (DGSE)**, a department of the Ministry of Mines (MOM), is responsible for countrywide geological mapping, mineral prospecting and exploration using geological, geochemical, geophysical and exploratory drilling techniques.

- **Ministry of Energy (MOE)** is the line ministry responsible for Myanmar's energy sector. It oversees state-owned economic enterprises in the oil and gas sector.

- **Ministry of Environmental Conservation and Forestry (MOECAF)** supervises the country's forestry and logging sectors as well as the assessment and mitigation of environmental impacts. MOECAF chairs the National Environmental Conservation Committee (NECC).

- **Ministry of Finance (MOF)** administers Myanmar's fiscal and monetary policies, and is responsible for collecting tax revenues in the extractives sector.

- **Ministry of Mines (MOM)** is the line ministry responsible for Myanmar's mining sector. It oversees state-owned economic enterprises in the mining sector.

- **Ministry of National Planning and Economic Development (MNPED)** formulates national development plans, oversees statistical collection and analysis, and coordinates activities with international organizations. It oversees the Myanmar Investment Commission (MIC).

- **Myanmar Economic Bank (MEB)** is a state-owned financial institution under the authority of the Ministry of Finance (MOF).

- **Myanmar Investment Commission (MIC)** is inter-ministerial body under the Ministry of National Planning and Economic Development (MNPED) that evaluates investment proposals. Its members include officials from various line ministries.

- **National Environmental Conservation Committee (NECC)** is an inter-ministerial body under the Ministry of Environmental Conservation and Forestry (MOECAF) charged with ensuring environmental protection and sustainable development. Its responsibilities include reviewing submitted Environmental Impact Assessments (ESAIs).

- **Parliament** refers to the **Pyidaungsu Hluttaw**, which is the national bicameral legislature of Myanmar. It consists of two houses: the 224-seat Amyotha Hluttaw (House of Nationalities) and the 440-seat Pyithu Hluttaw (House of Representatives).

Myanmar corporations

- **Myanmar Economic Corporation (MEC)** is one of the two major conglomerates operated by the Myanmar military. It was established to administer activities in the heavy industries.

- **Myanmar Electric Power Enterprise (MEPE)** is a state-owned economic enterprise organized under the Ministry of Electric Power (MEP).

- **Myanmar Gems Enterprise (MGE)** is a state-owned economic enterprise organized under the Ministry of Mines (MOM). MGE is responsible for gemstone production and marketing.

- **Myanma Oil and Gas Enterprise (MOGE)** is a state-owned economic enterprise organized under the Ministry of Energy (MOE). MOGE is responsible for the upstream oil and gas sector.

- **Myanmar Petrochemical Enterprise (MPE)** is a state-owned economic enterprise organized under the Ministry of Energy (MOE). MPE is responsible for the downstream oil and gas sector.

- **Myanmar Petroleum Products Enterprise (MPPE)** is a state-owned economic enterprise organized under the Ministry of Energy (MOE). MPPE is responsible for the distribution of petroleum products.

- **No. 1 Mining Enterprise (ME1)** is a state-owned economic enterprise organized under the Ministry of Mines (MOM). ME1 is responsible for the production and marketing of non-ferrous metals and industrial minerals and their by-products.

- **No. 2 Mining Enterprise (ME2)** is a state-owned economic enterprise organized under the Ministry of Mines (MOM). ME2 is responsible for production, refining and marketing of ferrous metals and associated products.

- **Union of Myanmar Economic Holdings (UMEHL)** is one of the two major conglomerates operated by the Myanmar military. It was established to administer activities in the light industries and commerce.

Other organizations

- **Asian Development Bank (ADB)** is a multilateral development bank for the Asia-Pacific region. ADB is constituted of member governments and seeks to facilitate economic development in Asia.

- **Centre for Social Responsibility in Mining (CSRM)** is an Australia-based research center affiliated with the University of Queensland. It seeks to improving the social performance of the resources industry globally.

- **Global Witness** is a London-based non-governmental organization that works to break the links between natural resource exploitation, conflict, poverty, corruption, and human rights abuses worldwide.

- **International Finance Corporation (IFC)** is an international financial institution and member of the World Bank Group. It offers investment, advisory, and asset management services to encourage private sector development in developing countries.

- **International Monetary Fund (IMF)** is a multilateral economic institutions focused on ensuring stability in the international monetary system. The IMF offers lending and technical assistance to its 188 member countries.

- **Organization for Economic Cooperation and Development (OECD)** is an international organization composed of 34 advanced economies. It seeks to promote economic development and global trade.

- **Open Government Partnership (OGP)** is an international organization promoting multilateral initiatives for increasing transparency and civic participation.

- **Overseas Private Investment Corporation (OPIC)** is the US government's development finance institution. It mobilizes private capital to help solve critical development challenges and, in doing so, advances U.S. foreign policy.

- **Multilateral Investment Guarantee Agency (MIGA)** is an international financial institution which offers political risk insurance and credit enhancement guarantees. It is a member of the World Bank Group.

- **Myanmar Centre for Responsible Business (MCRB)** is a joint initiative of the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) to promote responsible business activities in Myanmar.

- **Natural Resource Governance Institute (NRGI)** is a New York-based non-profit organization providing policy analysis and advocacy in order to help people to realize the benefits of their countries' endowments of oil, gas and minerals.

- **World Bank** is a multilateral development bank that provides loans to developing countries for capital programs. The World Bank's official goal is the reduction of poverty.

Additional terms

- **Accountability** is the principle that actors are answerable for the actions they take, and that there is redress when commitments are not met.

- **Bamar** refers to the majority ethnic group in Myanmar, who are also colloquially identified as "Myanmar" people or "Burmese" people.

- **Beneficial ownership** is a term used to describe the natural person or people who own or control entities that operate or invest in a specific industry, such as oil and gas or mining.

- **Cadaster** is a comprehensive register. In the extractives sector, cadasters typically include information on the physical properties and ownership of land or resources.

- **Civil society** refers to actors other than private business and government. Civil society maybe composed of individual citizens, families, communities and **civil society organizations (CSOs)**. CSOs are constituent groups that provide benefits, services, or political influence to specific members of society.

- **Corporate social responsibility (CSR)** is the responsibility of enterprises for their impacts on society. Given the variety of definitions associated with corporate social responsibility, the related term **social performance** will be used in this report.

- **Environmental and social impact assessment (ESIA)**, more commonly known in Myanmar simply as an **environmental impact assessment (EIA)** is a tool used to identify, predict and assess the type and scale of environmental and social impacts, both positive and negative, of an extractive resource project.

- **Extractive industries** refers to the process of extracting natural resources from the earth for commercial use. For the purposes of this study, extractive industries generally refers to activities in the oil, gas and mining sectors.

- **Freedom of information (FOI)** is the principle that information in the public interest should be made publicly available.

- **Free, prior and informed consent (FPIC)** is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. It is a core part of the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

- **Production sharing contract (PSC)** is an agreement between a government and resource extraction company specifying how much of the resource each party will receive. The terms of PSCs are distinct from those of risk sharing contracts or service contracts used in the extractive industries.

- **Public financial management (PFM)** is the administration of government budgets and other processes that contribute to economic development.

- **Revenue sharing** generally refers to the distribution of revenues between different government entities, including national, regional, and local levels of administration.

- **Rule of law** is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

- **State-owned economic enterprises (SEEs)**, also known as **state-owned enterprises (SOEs)**, are entities wholly or partially owned by the government that undertake commercial activities.

- **Strategic environmental assessment (SEA)**, is a tool used to evaluate the consequences of policies, institutions, programs and plans, including in the extractive industries. Unlike the project-focused ESIA, a SEA is used to determine impacts at the sectoral level.

- **Transparency,** in the context of the extractive industries, transparency is the practice of making relevant, timely information easily available to all actors so that they can observe what decisions are made and analyse their implications.

INTRODUCTION

Background

Myanmar is a country rich in natural resources, including deposits of oil, natural gas, coal, copper and other minerals. It dominates production of jade and is the source of approximately 90 percent of the world's rubies. While Myanmar's official production value of minerals and gemstones is estimated at USD 1.5 billion, total output from the mining sector is generally considered to be much higher. United Nations trade data indicate that the value of precious stone exports to China in 2014 was USD 12.3 billion, and a recent report by London-based NGO Global Witness estimates that total jade production was worth as much as USD 31 billion in the same year. Last year Myanmar produced 16.8 billion cubic meters of natural gas, three quarters of which was exported via pipelines to neighboring Thailand and China. These exports are worth approximately USD 170 million each month, according to government statements from June 2015.

This natural wealth has attracted growing interest from foreign and domestic investors at a time of regulatory and institutional change. Since the 2010 elections, the Myanmar government has implemented major political and economic reforms as it transitions from military rule to a civilian state. This is a significant undertaking for any country, and Myanmar is no exception. Careful consideration is needed for setting new policy agendas that balance economic growth and environmental and social protection using transparent and accountable processes.

Important steps are being taken to improve the governance of resource wealth in Myanmar, including the development of new policies, legislation and institutions to manage the challenges that the country faces. As this happens, a healthy debate is emerging about how the country should best harness its resources for development. A plethora of research and recommendations for action has been produced in recent years.

Set against this backdrop, Myanmar's candidacy to the Extractive Industries Transparency Initiative (EITI) presents a major opportunity to enhance debates around natural resource issues. Myanmar joined EITI, a global effort to promote open and accountable management of natural resources, as a candidate country in July 2014. Its first EITI report is expected to be published in January 2016.

The Myanmar EITI process provides the first multi-stakeholder forum for discussion of the extractives industries and its impacts within the country. Under the coordination of the Ministry of Finance (MOF) and the Myanmar Development Resource Institute (MDRI), engagement between government, civil society and the private sector has started. However, in many cases these discussions take time given their technical complexity and because they are built on many years of distrust between the different stakeholders.

Seeking to complement these efforts, this report aims to provide a unified structure to build common understanding about the challenges Myanmar faces in transforming extractive wealth into tangible benefits, including accounting for the social and environmental costs associated with the extractive industries. Drawing on the stakeholder consultations and independent research, the report seeks to identify shared priorities and opportunities for policy change going forward.

Methodology

This report attempts to reflect discussions between government, civil society and private sector stakeholders involved in the Myanmar's candidacy to the EITI. It is based on a series of consultations and workshops organized in close coordination with the Myanmar EITI stakeholders over the course of 2015. Planning commenced in April 2015, and the process was presented to the Myanmar EITI multi-stakeholder group (MSG) in May 2015. As this happened, preliminary research and consultations were carried out by the Natural Resource Governance Institute (NRGI) and the Centre for Social Responsibility in Mining (CSRM) at the University of Queensland, with important in-country support provided by Yangon-based NGO Spectrum. A first round of consultative discussions took place in July 2015, after which an initial report was drafted. This was reviewed through a series of individual consultations and workshops organized in October and November 2015.

While this report was elaborated with the input of numerous organizations and individuals, it does not necessarily represent those stakeholders' views and has not been formally endorsed by them. In several cases, this report attempts to highlight key disagreements between the diverse actors involved in the extractive industries. While NRGI was solely responsible for the consolidation of this report, the content does not necessarily reflect the positions of this organization or of CSRM. For a full list of contributing institutions and organizations, please see the Annex of this report. Since this report was finalized prior to the release of Myanmar's first EITI report (released in January 2016), it does not make use of latest information made public through the EITI process.

Structure of the Report

The structure of this report follows the Natural Resource Charter, a global initiative that assists governments and societies of countries rich in non-renewable natural resources to effectively govern those resources in a way that generates economic growth, promotes the welfare of the population and is environmentally sustainable. The Charter consists of 12 good practice principles ("precepts"), which cover the sequence of choices faced by governments in relation to resource extraction (see Figure 3). These range from how to create the right environment for responsible investment, to fiscal terms, contracts, institutions and regulations, to macroeconomic management and strategies for sustainable development. Since the Natural Resource Charter framework has been specifically designed to be compatible with the EITI Standard, the information and analysis contained in this report can be of great utility to the Myanmar EITI reporting process.

The subsequent sections of this report, corresponding to the 12 Charter precepts, outline key considerations along each step of the natural resource decision chain. They review existing knowledge regarding natural resource governance issues in Myanmar. With the goal of framing and facilitating future discussion and consensus building, each chapter highlights priority areas as identified through research and stakeholder consultation (see Figure 4). This report could serve as a starting point for further policy discussion among Myanmar stakeholders and contribute to informing and outlining a comprehensive reform agenda for the future government's actions from 2016.

Page 9 Photo:
Freelance jade miners work at night in Hpakant, Kachin State, Myanmar. (Minzayar/NRGI)

Page 10 Photo:
Open air gold mine in Mandalay Region, Myanmar. (Andre Malerba/NRGI)

FIGURE 1: FOREIGN INVESTMENT IN ENERGY AND MINING

2001-2007 AND 2008-2014 (USD MILLIONS)

Source: Myanmar Statistical Information Service

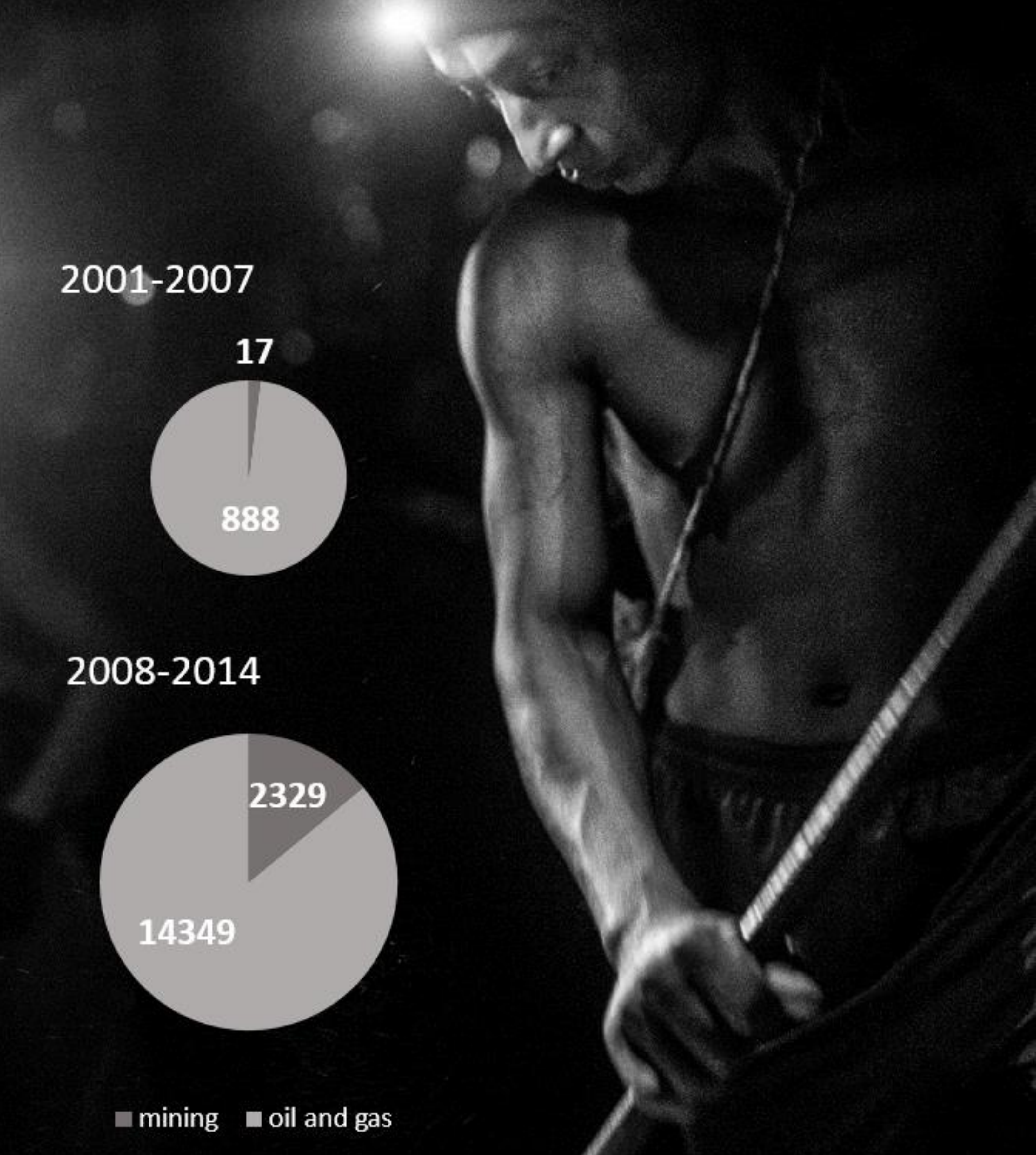


FIGURE 2: ENERGY AND MINING EXPORTS

SHARE OF TOTAL EXPORTS (%), 2001-2014

Source: Myanmar Statistical Information Service

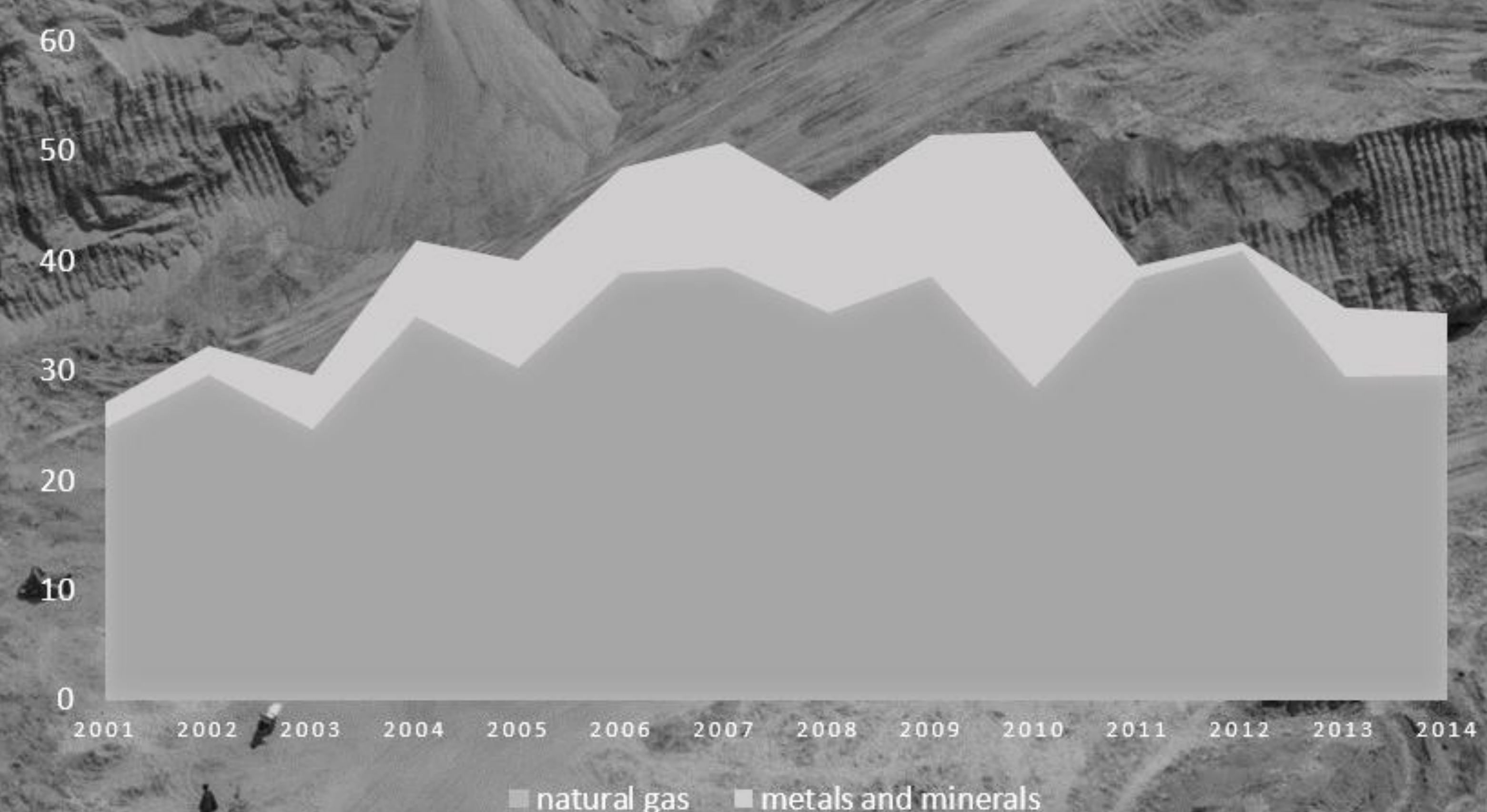


FIGURE 3: OVERVIEW OF THE NATURAL RESOURCE CHARTER

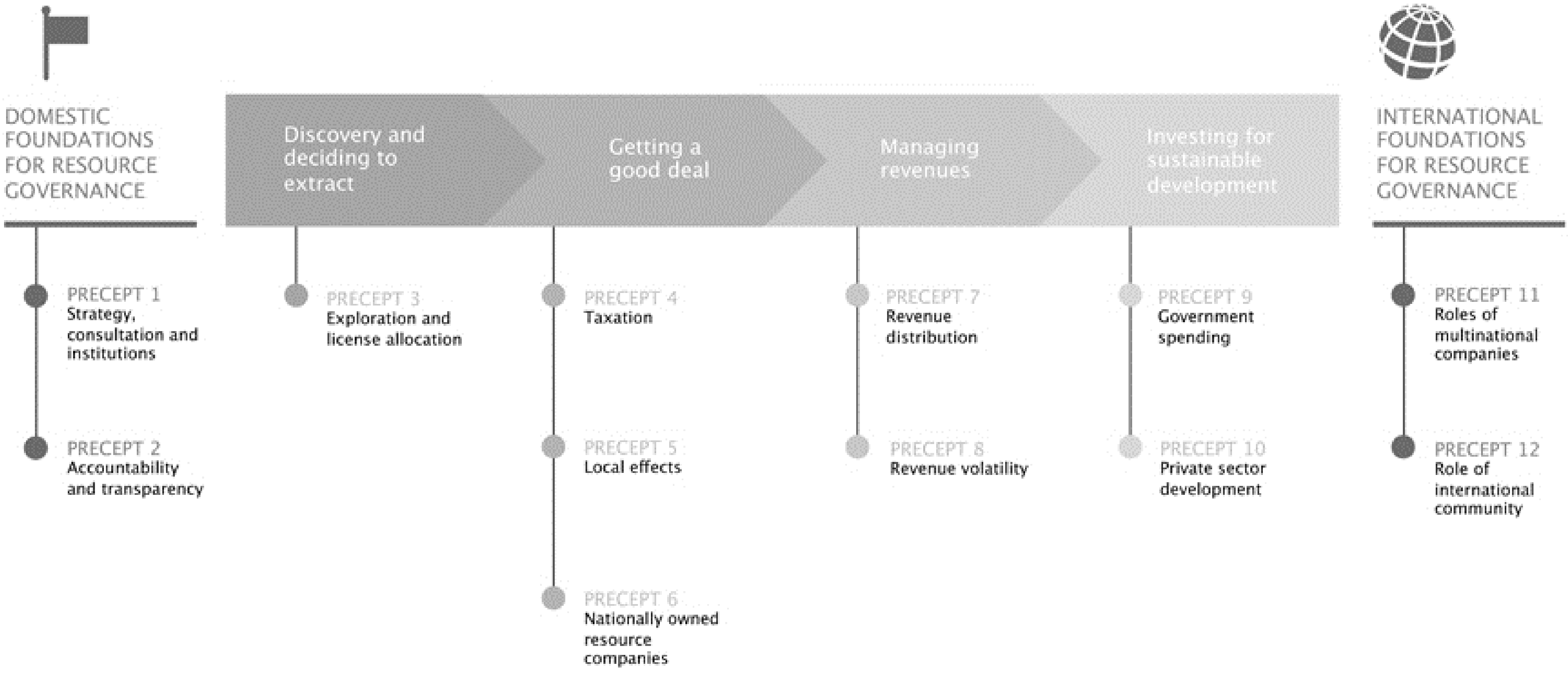
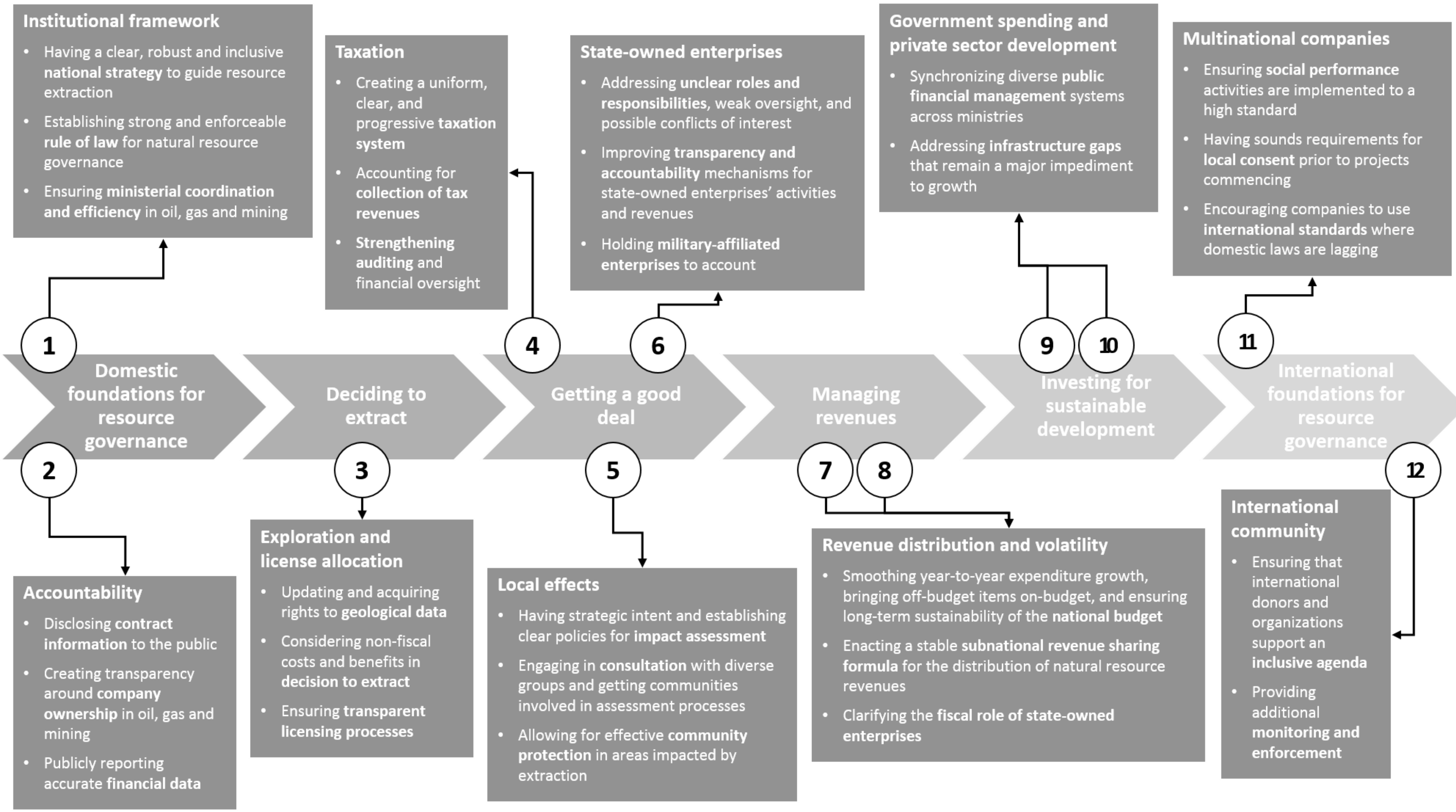


FIGURE 4: PRIORITY ISSUES FOR MYANMAR'S EXTRACTIVE SECTOR



1. INSTITUTIONAL FRAMEWORK

RESOURCE MANAGEMENT SHOULD SECURE THE GREATEST BENEFIT FOR CITIZENS THROUGH AN INCLUSIVE AND COMPREHENSIVE NATIONAL STRATEGY, A CLEAR LEGAL FRAMEWORK, AND COMPETENT INSTITUTIONS.

ABOUT

Effective extractive resource management requires an inclusive and comprehensive institutional framework. Adopting a national strategy for oil, gas and mining development could enhance the formulation of important and difficult policies, manage public expectations, and guard against a piecemeal approach to decision-making. In countries where such frameworks have been implemented with great success, close consultation with the many stakeholders has been crucial to supporting good management of natural resources. Effective administration of a national strategy and supporting policies also requires coordinated enforcement by competent government institutions.

PRIORITY ISSUES

1. **National strategy:** having a clear, robust and inclusive national strategy to guide resource extraction
2. **Rule of law:** establishing strong rule of law for extractives and enabling ministries to better enforce existing rules
3. **Institutional role of ministries:** ensuring ministries involved in extractives management are efficient and well-coordinated

MYANMAR CONTEXT

Since the 2010 elections, the Myanmar government has implemented major political and economic reforms as it transitions from military rule to a civilian state. Part of Myanmar's reform process has been the ongoing revision, updating and implementation of the country's legal and institutional frameworks. To date, the country's guiding principles for extractive resource governance have been primarily articulated in three documents:

- *National Sustainable Development Strategy (2009)*
- *Framework for Economic and Social Reforms (2012)*
- *Myanmar Energy Sector Policy (2013)*

The directives laid out in these documents and supporting laws are implemented by a wide range of government ministries, agencies and departments, which are summarized in Table 1.

PRIORITY ISSUE 1: NATIONAL STRATEGY

At present, Myanmar lacks a comprehensive and detailed national strategy for the development of oil, gas and mining. While the *Framework for Economic and Social Reforms (2012)*, *Myanmar Energy Sector Policy (2013)* and other policy documents establish priorities for resource governance, they do not provide officials with the tools to realize desired outcomes. For example, the *Framework for Economic and Social Reforms* acknowledges Myanmar can benefit enormously from its rich extractive resources if these are properly managed, but fails to outline a roadmap for their responsible development. Similarly, the country lacks clear policies or programs for meeting the goal of energy security articulated in the *Myanmar Energy Sector Policy*. Underdeveloped legal frameworks, including the lack of a comprehensive policy on land use, impede the creation of an effective national strategy for natural resources.

TABLE 1: KEY GOVERNMENT MINISTRIES AND EXTERNAL STAKEHOLDERS WITH AN INTEREST IN MYANMAR'S EXTRACTIVE RESOURCES

Source: Stakeholder consultations and "Institutional and Regulatory Assessment of the Extractive Industries in Myanmar" prepared by Adam Smith International and MDRI-CESD.

*At the time of publication, the following laws are undergoing review and revision by the Myanmar government.

Name	Function	Governing Law(s)
Ministry of Finance (MOF)	Collects certain tax payments from extractive companies and information about revenue flows from the mining, oil and gas sectors.	• *Union Tax Law 2015*
Central Bank of Myanmar	Controls national bank accounts and two state-owned commercial banks, the Myanmar Economic Bank (MEB) the Myanmar Foreign Trade Bank (MFTB).	• *Central Bank Law 2013*
Ministry of Energy (MOE)	Governs the oil and gas sector in Myanmar. The Myanmar Oil and Gas Enterprise (MOGE) is a state-owned economic enterprise (SEE) which sits under MOE and has the right to collect oil and gas revenues.	• *Oil Fields Act 1918** • *Petroleum Act 1934** • *Farm Land Law 2012*
Ministry of Mines (MOM)	Governs the planning and extraction of minerals sector in Myanmar. There are five state-owned economic enterprises (SEEs) in the ministry that oversee mining ventures.	• *Mines Law 1994 (amended in late 2015)** • *Farm Land Law 2012* • *Vacant, Fallow and Virgin Lands Management Law 2012*
Myanmar Investment Commission (MIC)	Involved in permitting and supervising international companies interested in doing business in Myanmar.	• *Foreign Investment Law 2012** • *Myanmar Citizens Investment Law 2013**
Ministry of Environmental Conservation and Forestry (MOECAF)	In charge of environmental protection matters nationwide and plays a coordinating role between different ministries to achieve this.	• *Environmental Conservation Law 2012*
Extractive Industries Transparency Initiative (EITI)	A coordinated effort between government ministries, CSOs and businesses to improve transparency and accountability in the extractive industries in Myanmar.	• *Presidential Decree 99/2012*
Office of the Auditor General (OAG)	An independent body charged with carrying out audits of government agencies. OAG reports to the President and the Parliament.	• *Auditor General of the Union Law 2010*
Donor organisations	Includes international financial institutions such as the World Bank and Asian Development Bank, as well as national aid organizations from the Australia, Canada, Japan, Norway, the United Kingdom, the United States and other nations.	
International companies	Firms involved in the oil and gas sector include multinationals from China, France, Malaysia, South Korea, Thailand, and Vietnam, among others. Chinese and Thai companies also have interests in the mining sector.	• *Foreign Investment Law 2012** • *Sector-specific legislation related to energy, mining, etc.*

National dialogue around oil, gas and mining is complicated by the country's dynamic political system, its economic challenges and the reforms intended to address them, as well as the evolving debate over the rights of the country's numerous ethnic groups. A national strategy for the extractive industries should recognize and seek to balance the needs of diverse stakeholders.

External engagement is key to the elaboration of a balanced and effective national strategy. With the exception of the EITI multi-stakeholder group (MSG), affected citizens, civil society groups and other stakeholders have been afforded few opportunities for input in the development of new policies in Myanmar. As a result, many stakeholders consulted indicated that current policies do not reflect their views on long-term natural resource management. (For more on consultation, see Precept 5, "Local issues.") Engaging with significant stakeholders, including CSOs and the private sector, creates a level of "buy-in" and allows for more comprehensive and representative policies.

If the government does not increase awareness and manage expectations regarding the trade-offs that must be made in the natural resource sector, competing demands from industry and citizens could endanger efforts to sustainably develop and distribute resources. EITI has established guidelines for elaborating a national communications strategy, which could be employed in Myanmar to inform stakeholders and the public about strategic management of oil, gas and mining. EITI communications strategies emphasize key features of the extractive industries, including that:

- extractive resources and associated revenues are finite
- without capital investment and strong institutions, countries may not reap the benefits of resource extraction
- conflict over resource ownership may be addressed through the distribution of natural resource profits

PRIORITY ISSUE 2: RULE OF LAW

Rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

Implementation and enforcement of Myanmar's legal and institutional frameworks remains insufficient to direct extractive resources development in a way that is conducive to promoting sustainable growth. Procedural transparency for oil and gas block bidding has improved in recent years through processes overseen by MOE and MOGE. MOM is also trying to improve processes through amendments to the *Mines Law 1994* (amended at the end of 2015) and the adjustment of current practices.

However, contracts in Myanmar's extractive sector have generally been approved without robust legislative or administrative frameworks in place to ensure compliance. During consultations, private sector stakeholders noted that contract terms, as well as environmental and social standards, are often violated with impunity in the mining sector. Participants noted that the situation of the mining industry contrasts notably with the oil and gas industry, where rule of law is comparatively strong. The country scores poorly on the World Bank's rule of law measure in its *Ease of Doing Business: Enforcing Contracts* (2015), and the *Framework for Economic and Social Reforms* acknowledges that the government must address the "questionable enforceability of contracts" in order to bolster investment and productivity.

Myanmar policy documents further direct the government to "undertake legal and judicial reforms to improve the independence and effectiveness of the judiciary […] as well as independent prosecution, enforcement, and legislative oversight." In many extractive projects, CSOs have called into question the criteria by which land is confiscated, and the court's autonomy in addressing a growing number of citizen complaints. The Myanmar legal framework lacks a number of human rights protections, including for resettlement and indigenous peoples.

PRIORITY ISSUE 3: INSTITUTIONAL ROLE OF MINISTRIES

Myanmar's fragmented regulatory structures are evolving as investment and production increase in the mining and oil and gas sectors. The principal government bodies involved in the extractive industries (summarized in Table 1) include:

- Ministry of Mines (MOM), which is responsible for planning and enforcing the laws and regulations related to the mining sector. Its mandate includes mine inspection and safety, mineral conservation, mining-related environmental protection, license application processing and industry investment promotion. The ministry also oversees the state-owned economic enterprises (SEEs) operating in the sector.
- Ministry of Energy (MOE), which oversees the oil and gas sector and supervises the activities of Myanmar's three oil and gas state-owned economic enterprises (SEEs).
- Ministry of Environmental Conservation and Forestry (MOECAF), which is responsible for regulating environmental and social impacts of the extractive industries as stipulated in the Environmental Conservation Law (2012).
- Myanmar Investment Commission (MIC), which since 2012 is required to grant approval to domestic investment proposals in the oil and gas and mining sectors in addition to the relevant line ministry.

The responsibilities of these ministries are sometimes unclear and agencies are generally insufficiently resourced to carry out their mandates. Stakeholders observed that a general dearth of information and miscommunication between ministries can slow licensing processes or reduce regulatory effectiveness. For example, participants reported that MOM and MOECAF do not sufficiently coordinate pre-licensing procedures for proposed mining activities on protected forest lands, which requires the approval of both ministries. Coordination in this case is complicated by the lack of a unified land use policy and by disagreements over authority between the MOM and MOECAF.

Stakeholders from civil society and the private sector indicated that licensing and regulatory processes are overly bureaucratic. In the mining sector, for example, operations are delayed for months by permitting procedures, which reportedly include more than 40 steps. Some representatives suggested that an inter-ministerial one-stop service for extractive industries should be set up to reduce these inefficiencies.

2. ACCOUNTABILITY

RESOURCE GOVERNANCE REQUIRES DECISION MAKERS TO BE ACCOUNTABLE TO AN INFORMED PUBLIC.

ABOUT

Accountability ensures that diverse stakeholders -- including government officials and the private sector as well as ethnic groups and civil society -- are answerable for the actions they take, and that there is redress when commitments are not met. It incentivises good performance among all actors involved in the management of extractive resources. In environments with strong accountability, officeholders are bound to their responsibilities and deterred from engaging in corruption and self-dealing. Errors in planning or implementation are also more likely to be recognized and corrected. Accountability helps generate policies and practices that reflect the public interest, and contributes to creating a wider governance environment that is both stable and responsive.

PRIORITY ISSUES

4. **Contract disclosure:** making contractual terms available to the public
5. **Company ownership:** knowing whether government officials are involved in natural resource projects
6. **Open data:** publicly reporting accurate and complete financial information

MYANMAR CONTEXT

Recent economic and political reforms have improved accountability within the government and provided greater transparency in decision-making and revenue flows in Myanmar. The government has committed to joining EITI and the Open Government Partnership (OGP). As part of the EITI process, the government has stated its intention to introduce greater transparency in decision making and better oversight mechanisms. There have been encouraging improvements already to transparency and accountability during recent onshore and offshore oil and gas bidding rounds.

All members of the Myanmar executive, judiciary and legislative branches are required to declare their assets under the *Anti-Corruption Law 2013*. However, it is unclear how closely this rule is followed and monitored, and the framework has been criticized as being weak and inconsistent with the United Nations Convention against Corruption (UNCAC). The Office of the Auditor General (OAG) was established in 2012 as an independent body charged with conducting audits of government entities. It is expected to conduct bi-annual and project-by-project audits of state-owned economic enterprises (SEEs), including those in oil, gas and mining. OAG's effectiveness and capacity to hold government ministries, SEEs and the Parliament to account has yet to be determined, and its reports are not disclosed to the public. The Myanmar Human Rights Commission could serve as another independent check on powerful actors in energy and mining. However, the commission has issued few statements regarding extractive resource development.

Though no long-term substitute for well-functioning policies and institutions, civil society has played an increasingly important role in holding powerful actors to account since Myanmar's political transition was initiated in 2011. In certain cases, most notably those of the Letpadaung copper mine and Myitsone dam, effective large-scale mobilization of citizens has sparked intense public debate over the impacts of natural resource development, altered the business realities facing mining and energy companies, and influenced national policy formulation. Civil society groups continue to face challenges, including a lack of reliable public information sources and continued harassment of protestors in rural areas. However, the EITI process provides a unique opportunity at the national level for government officials, CSOs and businesses to jointly improve accountability in the resources sector through more comprehensive reporting and disclosure practices.

PRIORITY ISSUE 4: CONTRACT DISCLOSURE

Transparency around contracting is essential to enable accountability in any country. Public disclosure of contracts and financial arrangements can be enabled by freedom of information (FOI) laws. Myanmar's Constitution and existing laws do not include FOI provisions. Similarly, natural resource legislation does not require disclosure of contract terms, the role of governmental authorities in the natural resource sector, or the fiscal system for extractive revenues.

Contract terms remain largely unknown, thanks to confidentiality clauses included in most oil, gas and mining agreements. Companies say they are unable under contract terms to unilaterally disclose contracts without government consent, even where they are willing to do so, although they claim contractual terms are available (at a price) via commercial databases such as Wood Mackenzie. No public register of oil and gas and mining permits and concessions exists, although a cadaster of existing licenses is currently being developed as part of Myanmar's efforts to comply with the EITI Standard.

Secrecy in the extractive industries creates barriers to investment and curbs the ability of government ministries to comply with their legal responsibilities. Despite notable improvement in transparency during the most recent onshore and offshore oil and gas bidding rounds, including the public advertising of tenders in English, the selection criteria and decision-making process has remained opaque. Civil society stakeholders, in particular, maintain that future decisions should be informed by publicly available contract and Environmental Management Plan (EMP) information, and that the government should follow consistent criteria based on the public interest. Some government representatives have also complained that they cannot effectively monitor environmental mitigation by companies unless they know contract terms.

PRIORITY ISSUE 5: COMPANY OWNERSHIP

Beneficial ownership is a term used to describe the person(s) who own or control entities that operate or invest in a specific industry, such as oil and gas or mining. In Myanmar, the identity of the beneficial owners of companies that acquire rights to explore and extract oil, gas and minerals, as well as the details of those who benefit from extractive project supply chains, is often unavailable. Opaque ownership can create opportunities for private companies to engage in money laundering, tax evasion and other illicit practices. It can also open the door for government officials with ties to the extractive industries to make decisions that benefit their own business ventures, political aspirations or personal wealth at the expense of the public interest.

Myanmar's first EITI report will include data on legal ownership. However, Myanmar will remain without a comprehensive and publicly available database on beneficial ownership. It is possible to obtain certain information through online research, consultation with companies, and with beneficial owners themselves. For example, a report published in 2014 by London-based NGO Global Witness identified that 17 out of 36 recently-awarded oil and gas blocks had fully declared their beneficial owners. In the mining sector, complex relationships between administrators, legislators, business owners, and ex-military commanders continue to obscure chains of ownership, most notably in the jade and gemstone industry.

PRIORITY ISSUE 6: OPEN DATA

Open data is data that is freely available for anyone to use without restrictions. This information greatly enhances the ability of government and other actors to monitor activities and hold public officials to account. In the extractive industry context, open data should detail decisions, negotiations and payments made in connection with resources. It should not only cover the management of the extractive sector, but also the way that revenues generated by the sector are used. All information collected should be published in an open, machine-readable format like Microsoft Excel, and should be subject to an open data use license that enables unfettered analysis.

Information about production volumes, exports, licenses, terms of contracts, and revenues is very restricted in Myanmar. The government does not maintain an open data portal and most of the information on the extractive industries is not published on a consistent or timely basis. An exception is the Central Statistical Organization, which releases aggregated information on gas production volumes and exports, and the Central Bank, which provides annual reports with historical information on license fees and the cost of subsidies (though these are not available online). OAG reports on extractive revenues are not made public.

The exact share of Myanmar's revenue deriving from natural resources is difficult to measure because:

- tax revenue collected by the Internal Revenue Department (IRD; a department of MOF) includes taxes paid by extractive companies and SEEs, as well as taxes not related to the extractive sector;
- SEE revenues are aggregated at the level of the supervising ministry, making it hard to ascertain how much loss or profit each enterprise makes; and
- payments, royalties and fees collected by the government ministries and subnational entities are not uniformly recorded and made public.

Disclosures of financial data are also difficult to access. One particular shortcoming is that companies do not have to publicly declare taxes and payments. In consultations, government stakeholders reflected that a lack of disaggregated data makes tracking and verifying financial flows difficult, and in many cases impossible, even for the line ministries tasked with overseeing extractive companies. (For more on tax issues, see Precept 4, "Taxation.") Revenue flows for the oil and gas, mining and hydropower industries are made available to MOF but are aggregated at the level of the line ministry's total contribution to the budget. There are no public reports that chart separate flows based on sector or project.

It is further unclear where money is deposited. Revenues from extractive industries are managed by ministries and SEEs through "other accounts" at the Myanmar Economic Bank (MEB) – which in the 2012/13 fiscal year accounted for MMK 2.54 trillion, or 44 percent of these companies' total revenues. These off-budget accounts are not reported on, weakening external oversight and raising concerns about accountability. Accurate information about production rates, product quality, sales, buyers, and prices should be openly reported and available to the public to improve transparency in the extractives sector.

Through the EITI process, efforts are underway to introduce systems to allow for revenues to be accounted for and reported on. Myanmar's first EITI report will include data on production and export volumes and values, taxes and revenues, SEE income and expenditures. However, a lack of complete data will limit the information on certain industries, including jade and other gemstones, available in the EITI report.

3. EXPLORATION AND LICENSING

THE GOVERNMENT SHOULD ENCOURAGE EFFICIENT EXPLORATION AND PRODUCTION OPERATIONS, AND ALLOCATE RIGHTS TRANSPARENTLY.

ABOUT

Understanding the quality, extent and geological distribution of the country's natural resource base is an important first step in resource management. When the government knows this information, it strengthens its bargaining position vis-à-vis companies, which typically have a better understanding of the country's geology. Geological information helps the government decide whether a particular block is appropriate for extraction or not. Understanding the quality of the geology also allows governments to make educated decisions regarding the rate of extraction and the optimal means of allocating licenses.

PRIORITY ISSUES

7. **Geological data:** updating and acquiring rights to geological information
8. **Decision to extract:** considering non-fiscal impacts before licenses are allocated
9. **License allocation:** ensuring licensing processes are efficient and transparent

Efficient and transparent licensing processes have benefits for both extractive companies and governments. For companies, they provide predictability and certainty over the terms and conditions of agreements; for governments, they help ensure that licenses are allocated to the most qualified companies and, therefore, that the country gets the best deal for extraction of its natural resources.

MYANMAR CONTEXT

Progress is underway towards having clear and objective licensing processes that ensure concessions and contracts are awarded to companies with the necessary technical and financial capabilities. However, the mining sector continues to lag behind the oil and gas industry in the adoption of clear, consistent and effective procedures for the awarding of permits and concessions. In particular, the geological information needed to inform mineral licensing remains limited in Myanmar.

The Myanmar Oil and Gas Enterprise (MOGE) is a state-owned economic enterprise (SEE) overseen by the Ministry of Energy (MOE). It supervises mapping for the oil and gas sector, provides detailed maps of all oil and gas blocks, and sets procedures for bidding and licensing. Since 2010, the bidding process for the oil and gas sector has improved and more recent bidding rounds have been more transparent. However, no unified legal framework for oil and gas licensing exists, and stakeholders reported that the criteria used to award permits was unclear even to oil and gas companies involved in the latest bidding round. Revisions to existing petroleum laws are expected to establish new systems in the future.

The Ministry of Mines (MOM) is responsible for overseeing mining permits under the *Mines Law 1994*. The processes and regulations that must be followed when applying for, and complying with the terms of, prospecting, exploration and production permits are expected to be modified by an amendment to the mining law currently under parliamentary review, and new mining rules that will be drafted following its passage. The Department of Geological Survey and Exploration (DGSE) sits within MOM and is responsible for countrywide geological mapping, mineral prospecting and exploration using geological, geochemical, geophysical and exploratory drilling techniques.

PRIORITY ISSUE 7: GEOLOGICAL DATA

Having accurate and accessible geological data helps governments make informed decisions about whether an area is appropriate for exploration and production. Geophysical surveys can improve land use planning, prioritization of highly valued areas and returns on investment for the government if the information obtained increases the attractiveness of the geology to investors. Data which is collected, stored and analyzed in an organized and accessible manner can strengthen the government's negotiating power with investors and help it decide the most appropriate means of allocating licenses, for example, by competitive processes or direct negotiation. Understanding the extent of natural resource endowments also enables policy makers to accurately forecast potential revenue, regulate the pace of exploration activity and generally manage the resources effectively.

In the mining sector, a lack of geological data acts as a disincentive to high-quality investment. DGSE has aggregated a significant amount of geological data about mining regions, but has yet to publish a full mining cadaster. Outdated formatting and scarce resources prevent the effective storage of information in a digital format. Updating data is also a challenge given the government's human resources and companies' reluctance to share independently-collected data. Similarly, oil and gas companies looking to enter Myanmar have been disappointed by the paucity of government data.

It is important for Myanmar to improve geological data accuracy and make information and maps readily accessible. Stakeholders noted that MOM is currently receiving support from the government of Finland to bolster geological mapping capacity and digitize its geological data. Companies should be required to share any data collected with the government in order to help build their database.

PRIORITY ISSUE 8: DECISION TO EXTRACT

Deciding whether to allow natural resource extraction requires consideration of a range of factors. These include the type and value of the resource, the potential social and environmental risks associated with its development, and the revenues and other benefits that the project will bring. These site and project level considerations should be guided by a long-term national strategy that, in particular, includes consideration of environmental impacts. (For more on national resource planning, see Precept 1, "Institutional framework.")

The regulatory framework in Myanmar has been undergoing reform to update and strengthen the policies that protect the environment and communities. For a variety of reasons – including a lack of capacity, authority, and implementing regulations – current practices in the mining and oil and gas sectors are not aligned with the evolving regulatory framework. At times, companies have not been open and honest about their plans to extract and have applied for small-scale licenses, but ultimately developed large-scale operations. The *Environmental Conservation Law (2012)* will require companies to conduct environmental impact assessments (EIAs) which will mandate planning around ecological, social, health, and other impacts for certain sizes and types of extractives activities. However, supporting EIA procedures and guidelines to support these are not yet finalized and few companies have taken the step of implementing EIAs at their own discretion. This means some projects have advanced without due consideration of community interests or environmental impacts. (For more on environmental and local impacts, see Precept 5, "Local Effects.")

PRIORITY ISSUE 9: LICENSE ALLOCATION

Exploration and production licenses are generally awarded by MOM in the mining industry and by MOGE in the oil and gas sector. Foreign companies entering into a joint ventures with the state or a state-owned enterprise must obtain a special permit from the Myanmar Investment Commission (MIC) as articulated in the *Foreign Investment Law (2012*). MIC has the authority to set minimum equity participation for partners in joint venture agreements (JVAs).

Though challenges remain, Myanmar has made important strides towards open and transparent permitting procedures. Reforms of the license allocation process in recent years have limited biddable terms, disclosed bidding processes, and standardized contract terms for licenses in the oil and gas sector. In particular, Myanmar has improved company pre-qualification requirements and penalties for companies that do not adhere to licensing guidelines. But inefficient processes still remain a concern for some. Mining company representatives, for example, note that slow and bureaucratic permitting procedures increase the risks for companies looking to invest in certain minerals.

Greater accountability is still needed for license holders, particularly in the mining sector. Most stakeholders pointed out very serious issues related to enforcement, giving examples of companies who register to mine one commodity and then mine another, or mine beyond the demarcated limits of the extraction site, and of projects where extraction continues after the expiration of the license. In others cases, unclear beneficial ownership makes it difficult for stakeholders monitoring the sector to identify the individual(s) or entity(s) benefiting from the project.

4. TAXATION

TAX REGIMES AND CONTRACTUAL TERMS SHOULD ENABLE THE GOVERNMENT TO REALIZE THE FULL VALUE OF ITS RESOURCES CONSISTENT WITH ATTRACTING NECESSARY INVESTMENT, AND SHOULD BE ROBUST TO CHANGING CIRCUMSTANCES.

ABOUT

Countries with abundant natural resources can benefit significantly from the revenues generated by extractive projects. Realizing revenues requires a well-designed fiscal regime that takes into account the characteristics of a country's resource wealth, the considerable uncertainties inherent in its exploitation, and the capacity of the government to establish and manage a fiscal regime. Fiscal frameworks for the extractive industries should provide strong returns from resources in reasonable timeframes, take account of uncertainty and market volatility, and attract necessary capital investment for resource development.

PRIORITY ISSUES

10. **Uniform, clear and progressive taxation:** ensuring the tax regime is consistent, easy to understand and responsive to commodity price movements
11. **Revenue collection:** ensuring that tax obligations are accounted for
12. **Rigorous auditing**: applying stringent standards to financial oversight

Successful fiscal regimes for natural resources are generally distinguished by two features. One component is a royalty or other production-based tax that provides a minimum flow of revenue to the state during production; and the other is a mechanism for capturing a share of profits and remaining rents. A fiscal system that incorporates both production and profits-based taxes can be adapted to diverse contexts. In the oil and gas and mining sectors, a production and profits-based fiscal regime is widely used consisting of a royalty payment based on production and ordinary income taxation of the extracting company's profits. Where there are production-sharing arrangements, a portion of the output is reserved for the contractor for recovery of its costs and the remainder—the "profit" output-- is split between the contractor and the government. These arrangements are usually governed by production sharing contracts (PSCs). Service contracts may also be organized when governments grant licenses to state-owned economic enterprises (SEEs), which then hire an investor to develop the resource.

MYANMAR CONTEXT

Myanmar's tax regime for natural resource rents is not standardized. PSCs set out the fiscal terms for most companies in Myanmar's extractive industries. Oil and gas PSCs entitle the state-owned Myanma Oil and Gas Enterprise (MOGE) to collect between 40 to 60 percent of profit oil or gas, and include other clearly articulated standard requirements. In the mining sector, the government takes different shares of mining production based on the mineral commodity and current commodity prices. The *Foreign Investment Law (2012*) sets out a special tax regime for prospective foreign investors in the mining and oil and gas industries. Different criteria are applied to state-owned economic enterprises (SEEs) and companies affiliated with Myanmar's military. (For more on these entities, see Precept 6, "State-owned economic enterprises.")

Most tax revenues from the oil, gas and mining sectors, including corporate income tax and commercial tax revenues, are collected by the Internal Revenue Department of the Ministry of Finance (MOF). One exception is the gemstone industry, where the state-owned Myanmar Gem Enterprise (MGE) also collects some corporate income tax. SEEs are responsible for administering royalties, bonuses, and other fees. While MOGE collects these duties in the oil and gas sector, in the mining industry payments may flow to one of several SEEs (including ME1, ME2 and MGE) depending on the commodity.

In the 2013/14 fiscal year, the top six foreign payers of corporate income tax in Myanmar were energy companies. In the same year, the non-tax revenues reported by SEEs amounted to USD 2.5 billion in oil and gas and MMK 885.3 billion (approximately USD 667 million) in mining. Although direct and indirect tax payments were not publicly reported in the past, Myanmar's candidacy to EITI has provided momentum for increased transparency around resource revenue flows.

PRIORITY ISSUE 10: UNIFORM, CLEAR AND PROGRESSIVE TAXATION

Transparent and uniform rules reassure investors, reduce opportunities for corruption, facilitate administration, and may also reduce the demand by individual investors for special accommodations. SEEs in the natural resource sector should face the same tax terms as private companies. There is room for improvement in how the Myanmar government sets and enforces taxation criteria and how it accounts for price fluctuations and market volatility. A fiscal regime consisting of royalties, production sharing, profit sharing, corporate taxes, and so on are all clearly specified in MOGE and MOM's summary tax forms. Still, enforcement of the tax code remains uneven.

During consultations, private sector stakeholders noted that Myanmar's taxation of companies in the extractive industries was unduly burdensome. Oil and gas company representatives consulted also claimed that the country's "take" in production sharing contracts is among the highest in the world. Given uncertainty over the extent of Myanmar's resource endowment and additional risks to market entry, participants considered this a potential disincentive to high-quality future investments.

On the other hand, some stakeholders noted that tax holidays and other tax incentives decrease the government's take of resource revenues. Thanks to provisions in Myanmar's *Foreign Investment Law (2012)*, most foreign investors in the extractive industries are granted a five year tax holiday from the start of operations. The standard PSC allows oil and gas companies to pay back all their capital costs and to be reimbursed by MOGE for the 15 to 25 percent government share of expenses prior to being assessed for corporate income tax.

PRIORITY ISSUE 11: REVENUE COLLECTION

Collecting revenue in Myanmar can be challenging, and payments from extractive industries often go unrealized. Although estimates vary widely, it seems clear that many resource rents are absorbed by local elites, are diverted to military enterprises, or escape taxation altogether through illicit markets. Revenue collection is particularly challenging in the opaque mining sector, with much of the trade in jade and other precious minerals unaccounted for according to civil society estimates. Since many ministries and SEEs lack a systematic approach for identifying taxpayers and rely on manual recordkeeping, it is difficult to access information and reliably account for government revenues.

There is a strong aspiration within Myanmar's government to reform the fiscal regime. Stronger institutions are needed to bolster the government's capacity and authority to identify and pursue tax evaders, and stakeholders consulted indicated the need to strengthen entities with investigative power to monitor tax collection. (For more on challenges relating to license enforcement, see Precept 3, "Exploration and licensing.") Myanmar's government is now working with the International Monetary Fund (IMF) to establish a Large Taxpayers Office. Since 2012, the World Bank and other development partners have also supported the Modernization of Public Finance Management (PFM) project in Myanmar. Best practices in this area, including adopting integrated information and filing systems and creating a central point for revenue collection, can improve the transparency of revenue flows. (For more on existing gaps in revenue transparency, see Precept 2, "Accountability.")

PRIORITY ISSUE 12: RIGOROUS AUDITING

In the absence of careful controls and well-written statutes or regulations, there is considerably less certainty that a government will collect all the taxes to which it is entitled. Established in 2008, the Office of the Auditor General (OAG) has the authority to audit government ministries, SEEs, and their joint venture partners. The Myanmar Economic Corporation (MEC), a military-affiliated company, remains exempt from auditing or taxation.

It is important that Myanmar strengthen oversight bodies and consistently apply stringent audit standards. OAG lacks the authority to investigate cabinet members or the Parliament. Though watchdog groups in Myanmar are beginning to hold the government to account in certain cases, they lack access to OAG reports and other financial data.
Officials consulted during the elaboration of this report noted that insufficiently detailed financial data constrains the effectiveness of audits in the extractive industries. Civil society representatives also noted that audits in oil, gas and mining should further extend to sub-contractors.

5. LOCAL EFFECTS

THE GOVERNMENT SHOULD PURSUE OPPORTUNITIES FOR LOCAL BENEFITS, AND ACCOUNT FOR, MITIGATE AND OFFSET THE ENVIRONMENTAL AND SOCIAL COSTS OF RESOURCE EXTRACTION PROJECTS.

ABOUT

Communities and the environment closest to resource extraction projects are often disproportionately impacted by the extraction process. The effects of extraction are not inevitably negative; when appropriate policy and practices are in place, communities can benefit from resource projects through employment, training, business opportunities and infrastructure legacies. Measures can also be implemented to mitigate negative environmental and social impacts of extraction.

PRIORITY ISSUES

13. **Impact assessment:** having strategic intent and establishing clear policies for EIAs/ESIAs
14. **Consultation**: engaging with diverse groups and getting communities involved in assessment processes
15. **Community protection:** allowing for a robust safeguards that protect affected communities

MYANMAR CONTEXT

The Myanmar government has taken steps to include environmental and social impact considerations in various strategies and policy frameworks for promoting sustainable development, including the *National Environmental Policy (1994)*, the F*ramework for Economic and Social Reform (2012)*, and the *National Comprehensive Development Plan (2014)*. Collectively, these measures set foundational social and environmental management goals for Myanmar.

A key outcome from such policy development has been the enactment of the *Environmental Conservation Law (2012)*. Under this law, an Environmental Impact Assessment (EIA) procedure for evaluating project impacts has been drafted. The Environmental Conservation Department within the Ministry of Environmental Conservation and Forestry (MOECAF) is the core body tasked with implementing rules and regulations stemming from the *Environmental Conservation Law (2012)*. MOECAF additionally chairs the National Environmental Conservation Committee (NECC), an inter-ministerial body that reviews submitted EIAs.

While policy frameworks indicate that the government has a strategic commitment to environmental and social protection, Myanmar still lacks robust and enforceable systems for assessing performance in these areas. New laws provide a high-level framework but rely on secondary rules, regulations and procedures to establish a detailed roadmap for implementation. In the case of EIA procedures, for example, the approval of secondary rules has been significantly delayed.

PRIORITY ISSUE 13: IMPACT ASSESSMENT

Environmental and Social Impact Assessments (ESIAs; in Myanmar commonly referred to simply as Environmental Impact Assessments or EIAs) are used to identify, predict and evaluate the type and scale of project impacts, both positive and negative. ESIAs/EIAs are often accompanied by an environmental management plan that sets out mitigation measures for the identified potential impacts. Foreign projects registered under the *Foreign Investment Law 2012* are required to complete an EIA before obtaining investment approval from Myanmar Investment Commission (MIC). Until Myanmar's EIA procedures are published, however, there is no legal requirement for projects not seeking MIC permits to carry out an EIA. These procedures, first drafted in 2013, are currently awaiting Cabinet approval. They will delineate which extractive ventures require an Initial Environmental Examination (IEE) or an EIA based on the size and type of project.

While the government is working to improve impact assessment and mitigation in the extractive industries, the strict safeguards required to protect communities and the environment remain lacking or inadequate under Myanmar's nascent regulatory regime. There is contention around the rigor and transparency of the EIA process, and the degree to which social and human rights impacts are included. Some stakeholders characterized the proposed framework as a "tick the box" exercise, while others contend that the EIA process provides legitimacy for contested projects.

Effective regulation of environmental and social impacts is further constrained by a lack of institutional capacity within government (to assess impacts), by consultants (to identify and address impacts), and among civil society organizations (to hold the decision makers to account). Developing sufficient technical capabilities to implement new regulations and mainstream them across the relevant government departments will require some time, and addressing capacity and transparency gaps during this process is critical to establishing a successful impact assessment system.

ESIAs/EIAs can be complemented by Strategic Environmental Assessments (SEAs), which evaluate the policies, institutions, programs and plans at the sectoral level. Several multilateral banks have adopted SEAs as a means of assessing system-wide factors prior to considering loans for specific projects. While they cannot adequately substitute for assessments which mandate specific processes for consultation, information gathering, and impact mitigation planning at project level, SEAs can play an important role alongside and in advance of ESIAs/EIAs and other evaluative tools. There is currently no provision for SEAs in Myanmar law or the draft EIA procedures, and the only SEAs underway are those initiated by development partners.

PRIORITY ISSUE 14: CONSULTATION

Effective ESIA/EIA frameworks serve as a mechanism for companies to engage with communities in order to better understand the social and environmental impacts that projects are likely to have. When carried out according to good practice principles, public consultation can be an effective way to share information with project stakeholders while empowering them understand potential impacts and voice their concerns. In some cases, consultation allows communities the opportunity to provide input into project design, such as new roads or other infrastructure projects.

In Myanmar, public consultation at the local level is conducted on an ad hoc basis. Practices for consultation generally depend on the project developer's internal standards and policies. Although the EIA procedure pending adoption by Myanmar's government would require projects to undertake consultation, the scope and specific requirements of this process remain unclear based on recent drafts. Ideally, new rules would enforce best practice guidelines for stakeholder and public engagement such as those outlined in the International Association for Public Participation (IAP2) Spectrum, the International Finance Corporation (IFC) Good Practice Handbook on Stakeholder Engagement and the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector. During consultations, civil society stakeholders also suggested the creation of an independent body to monitor enforcement of environmental and social standards at extractive sites.

Civil society groups further noted the need for greater information sharing about the potential impacts on communities. Consultation should be conducted in a form that local people can easily access and understand. This may entail adapting language for stakeholders possessing little technical knowledge, translating information into local languages and dialects, and using local experts to undertake engagement on behalf of the company. It is particularly important to include ethnic minorities, women, and other marginalized groups in consultation and education activities.

PRIORITY ISSUE 15: COMMUNITY PROTECTION

The protection of citizens and communities proximate to extractive resource projects is an important priority for any country. When communities are directly impacted, either through physical or economic displacement, it is good practice to provide fair compensation, including livelihood restoration and land-for-land compensation. IFC Performance Standard 5 provides an example of good practices for land acquisition policy and resettlement activities. In Myanmar, these guidelines are rarely applied. Instead, one-off payments to families or employment at the project is offered as compensation – and in many cases the level of this compensation has been strongly denounced by community-based and civil society organizations.

Many local communities in Myanmar remain vulnerable to negative impacts while realizing few benefits from the extractive industries. Particularly in the mining sector, inadequate labor standards generally expose individuals working in the extractive industries to greater health and safety risks. Most of the projects have weak “local content” practices, with good local employment or training opportunities rarely observed. (For additional information on corporate practices and policies, see Precept 11, “Multinational companies.”) At the same time, a national policy of resource revenue and benefit sharing has yet to take shape.

Companies maintain security to protect their project infrastructure and personnel from external threats. These personnel have been accused of harassing communities in numerous instances. Communities feeling threatened have few avenues for raising their concerns. According to private sector representatives consulted, the grievance mechanism established by oil and gas company MPRL E&P stands out as the best among few corporate avenues for redressing complaints. However judicial grievance mechanisms have largely proven inadequate for disputes regarding extractive projects. Although civil society organizations or political parties may respond to citizen appeals in other cases, there is no guarantee for most communities that their concerns will be effectively addressed via these channels.

6. STATE-OWNED ENTERPRISES

NATIONALLY-OWNED COMPANIES SHOULD BE ACCOUNTABLE, WITH WELL-DEFINED MANDATES AND AN OBJECTIVE OF COMMERCIAL EFFICIENCY.

ABOUT

State-owned resource companies can be a key part of a country's strategy to harness the development potential of its natural resources. These state-owned enterprises can facilitate the transfer of technology and business practices to local companies, support the development of domestic linkages between the extractive sector and other industries, and help the country develop stronger sectoral expertise over time. State-owned companies, however, can pose a risk to a country if they are governed poorly or assigned roles that they are ill-equipped to carry out. At the extreme these companies can destroy rather than create value for citizens.

PRIORITY ISSUES

16. **Unclear responsibilities of SEEs:** addressing opaque uses of public revenues, weak oversight and possible conflicts of interest
17. **Transparency of SEEs:** improving information and oversight regarding companies' activities and finances
18. **Military-affiliated enterprises**: holding these opaque companies to account

MYANMAR CONTEXT

In Myanmar, several state-owned economic enterprises (SEEs) are engaged in the oil and gas and mining sectors. The Ministry of Energy (MOE) oversees three SEEs: Myanma Oil and Gas Enterprise (MOGE), Myanmar Petrochemical Enterprise (MPE) and Myanmar Petroleum Products Enterprise (MPPE). The Ministry of Mines currently oversees five SEEs: No. 1 and No. 2 Mining Enterprises (ME1 and ME2, respectively), Myanmar Gems Enterprise (MGE), Myanmar Salt and Marine Chemical Enterprise (MSMCE) and Myanmar Pearl Enterprise (MPE). SEEs are regulated by the *State-owned Enterprises Law 1989*. As part of ongoing economic reforms, Myanmar's extractive SEEs have experienced numerous structural and operational changes in recent years, including the closure of Mining Enterprise No. 3 (ME3), an increase in the responsibilities assigned to the private partners of mining-sector SEEs, and a broader shift towards marketization and professionalization among these entities (some government officials consulted even argued that the term "SEE" does not reflect the current reality of companies de facto operating as private entities).

In addition to SEEs, a number of military-affiliated companies—formally private entities believed to be owned and managed by military officers and other public officials—play an important role in the management of extractive industries, particularly in mining. The Union of Myanmar Economic Holdings Limited (UMEHL) and the Myanmar Economic Corporation (MEC) are the most prominent such companies, the former a company with shares held by military and former military, the latter a quasi-SEE. UMEHL's subsidiaries include Myanmar Imperial Jade Company and Myanmar Ruby Enterprise. MEC is known to have stakes in limestone, marble, coal and gypsum operations in Kayin, Mandalay, Shan and Tanintharyi states. Military personnel or associates operating outside of these entities are also reportedly among the largest license holders for mining jade and other precious stones.

PRIORITY ISSUE 16: UNCLEAR RESPONSIBILITIES OF SEES

The extractive industry SEEs play a significant role in public financial management (PFM). Government figures indicate that in fiscal year 2012/13, these entities accounted for 28.5 percent of total government revenue and 15 percent of expenditures. They also provide leadership in the government's management of extractive sector activities, particularly in oil and gas, where MOGE dominates decision-making.

Stakeholders have expressed significant concern about the unclear roles and responsibilities allotted to these enterprises, and the relationships that they have with their overseeing ministries. In many resource-rich countries, poor delineation of authority has generated problems including weak monitoring and enforcement of legal regimes, patronage in the allocation of sub-contracts and weak development of commercial programs. While Myanmar's SEEs have served principally as minority partners in upstream activities with private companies, the full range of their activities and ambitions is unknown. The business strategies of state companies also remains unclear. Given the importance of SEEs to public finances, questions about how these entities manage and spend public revenues are significant. (For more on the fiscal role of SEEs, see Precepts 7-8, "Revenue distribution and volatility.")

The SEEs in the oil and gas sector appear to assume regulatory and commercial responsibilities simultaneously, which creates the possibility for conflicts of interest in the allocation of licenses and other areas. The regulatory authority of the mining-sector SEEs appears to be less extensive, but remains poorly understood by most stakeholders.

PRIORITY ISSUE 17: TRANSPARENCY OF SEES

Myanmar struggles with transparency and accountability in various institutions, including extractive SEEs. For example, MOGE was ranked as one of the least transparent SEEs in the world in NRGI's 2013 Resource Governance Index. At that time the SEE did not publish data on reserves, production volumes, sales, production costs or budgets, or auditing procedures. Since 2013, MOGE has begun disclosing total production figures for each offshore field, amounts for export and domestic use, blocks currently under contract and companies engaged. MOGE also delivers reports to media outlets to prevent incorrect information being spread. While these are regarded as positive developments, there are still improvements to be made in transparency and corporate governance.

The mining sector is even less transparent than the oil and gas sector, though the MOM is reportedly taking greater steps this year to standardize requirements for SEEs and private companies. State mining enterprises disclose very few details about the joint ventures in which they participate, their revenues, expenditures, or relationships with subcontractors.

While Myanmar established an Anti-Corruption Commission in 2014 under the *Anti-Corruption Law 2013*, this body has not taken any steps to make SEEs and military-affiliated enterprises more transparent or accountable. (For more regarding anti-corruption issues in Myanmar, see Precept 2, "Accountability.") The EITI process should improve the transparency of these entities. The EITI Standard requires Myanmar to report on the fiscal flows between the SEEs and the state, the enterprises' level of ownership in extractive ventures and any quasi-fiscal expenditures by SEEs.

In addition to improvements in public reporting, other steps could promote stronger internal accountability. State-owned resource companies in other countries have benefitted from the appointment of technically-skilled and independent board members. While the leadership composition of extractive SEEs in Myanmar is unknown, many stakeholders have expressed a view that the selection of key principals is based primarily on political patronage rather than technical expertise. The consistent completion of thorough and independent audits and the establishment of explicit benchmarks to measure company performance are other tools adopted by most accountable, commercially-successful SEEs.

PRIORITY ISSUE 18: MILITARY-AFFILIATED ENTERPRISES

Myanmar's military exerts strong influence over SEEs and government ministries, and ex-military personnel have often occupied senior positions in both. Private, military-affiliated companies including UMEHL and MEC wield substantial *de facto* sway to date over decisions about which other private companies are able to participate in potentially lucrative mining projects. These enterprises are particularly involved in the jade industry, including the extraction and trade of jade in the legal and illegal arenas.

Civil society organizations have strongly criticized the opaque management of SEEs and military enterprises. These companies' roles and responsibilities are not clearly articulated and few public mechanisms exist for holding their personnel to account. While the official SEEs face many governance challenges, they must abide by certain formal rules, including licensing processes and rules on revenue transfers. Military-affiliated companies operate with a greater degree of impunity, as they are most often exempt from financial audits and other oversight mechanisms.

7. REVENUE VOLATILITY &
8. REVENUE DISTRIBUTION

THE GOVERNMENT SHOULD INVEST REVENUES TO ACHIEVE OPTIMAL AND EQUITABLE OUTCOMES, FOR CURRENT AND FUTURE GENERATIONS. IT SHOULD SMOOTH DOMESTIC SPENDING OF REVENUES TO ACCOUNT FOR REVENUE VOLATILITY.

ABOUT

Natural resource revenues are often difficult to manage due to their finite nature, the typical boom-bust cycles in commodity prices, and the tendency of natural resource exports to render other exports less competitive. Revenue volatility is of particular concern in Myanmar. Uncertainty over future revenues increases the challenges associated with public investment planning. Resource-dependent governments risk over-spending on poorly planned projects in boom times, and may be forced to undertake harsh spending cuts or unsustainable borrowing when prices or production fall. In many other countries facing similar challenges, including Chile, Norway and Peru, governments smooth domestic spending to mitigate the negative impacts of revenue fluctuations.

PRIORITY ISSUES

19. **National budget:** Smoothing year-to-year expenditure growth, bringing off-budget items on-budget, and ensuring long-term fiscal sustainability
20. **Revenue sharing:** enacting a stable revenue sharing formula with subnational authorities that includes distribution of natural resource rents
21. **Fiscal role of SEEs**: clarifying how much capital SEEs can retain and how funds are used

Fair and efficient distribution of natural resource revenues is as important as good revenue management. Providing equal opportunities for benefits across regions and generations to maximize welfare should be a key priority for any government. Natural resource rents can be allocated to national or sub-national budgets, earmarked for special development or pension funds, saved in sovereign wealth funds for when revenues collapse or for future generations, or distributed to SEEs, such as national oil companies or public lending institutions.

MYANMAR CONTEXT

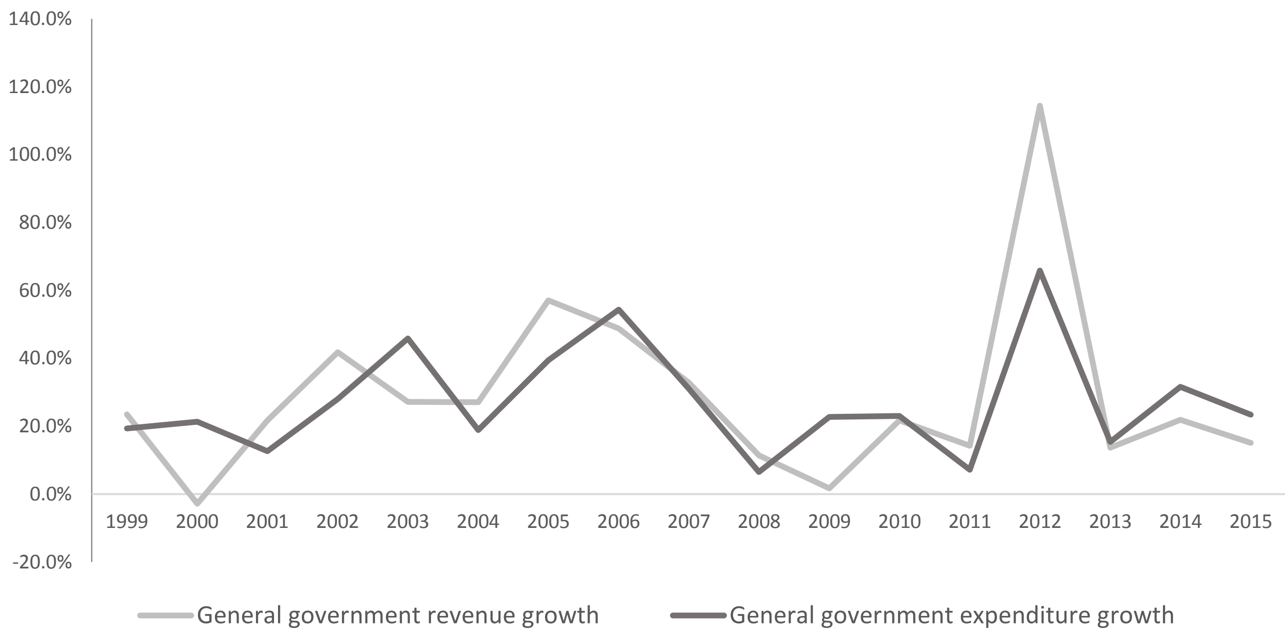
Myanmar's government is implementing broad-based policy reforms to improve stability and address impediments to market-based growth, as outlined in the *Framework for Economic and Social Reform (2012)*. One of the most significant measures taken was the abandonment of an overvalued fixed exchange rate regime in 2012. Fiscal reforms in the country—such as establishing a 5 percent of GDP deficit target—have also supported more responsible budgeting. However, Myanmar has not yet enacted a rule to smooth government spending, and additional challenges relating to taxation and budgeting remain.

Some stakeholders have advocated for greater sharing of resource revenues between the Union government and state/regional governments. However, the limited but growing percentage of revenues currently transferred to subnational governments in the national budget are not reliably converted into social services and infrastructure that benefit affected communities. A fiscal decentralization process is underway to improve service delivery in the states and regions.

State-owned economic enterprises (SEEs) also retain a large share of resource revenues. Myanmar currently does not possess a sovereign wealth fund, but in 2015 an executive order established a committee chaired by the Ministry of Finance to create such a mechanism for managing oil and gas revenues.

FIGURE 5: GROWTH OF GENERAL GOVERNMENT REVENUES AND EXPENDITURES IN MYANMAR, 1999-2015 (%)

Source: Ministry of Finance.



PRIORITY ISSUE 19: NATIONAL BUDGET

Some resource-rich countries, such as Chile, have enacted fiscal rules that establish limits and guidelines for public finance. For example, expenditure rules prevent governments from increasing spending too quickly and debt rules limit government borrowing. These regulations can help smooth normally volatile expenditures, encourage good public investment choices, control the value of wages and currency, and prevent debt crises. They also promote a long-term vision for sustainable government spending.

The Myanmar government's capacity to raise funds remains limited, in part due to poor tax collection at the local level. At the same time, certain public entities are empowered to borrow money "off-budget" without direct supervision of the Ministry of Finance. This can further increase the government's debt burden and complicates fiscal planning.

According to the International Monetary Fund (IMF), Myanmar's fiscal deficit was approximately 3 percent of GDP in fiscal year 2014/15, within the government's limit of 5 percent of GDP. However, the true fiscal deficit may be significantly larger due to significant off-budget spending. Low natural gas prices are also expected to widen the gap between government revenues and expenditures in the coming years. Extractive revenues are difficult to track since they are not specified in budget documents.

Myanmar's 5 percent deficit limit is pro-cyclical, meaning it can lead to a cut in spending when the economy is in recession and a rise in spending when the economy is growing quickly. This poses challenges for a resource-rich economy, where income from the extractive sector may vary widely (see Figure 5). In terms of forward planning, Myanmar does not have a medium- or long-term strategy to "smooth" resource revenues.

PRIORITY ISSUE 20: REVENUE SHARING

Myanmar is undertaking a process of fiscal decentralization in accordance with the 2008 Constitution. This involves allocating several key responsibilities to subnational governments, such as oversight of local ports, roads and bridges, small and medium-sized electric power production and distribution, and agricultural water management. Since regions and states are not allowed to raise significant tax revenue, they are reliant on transfers from the Union government to finance related expenditures.

Until 2015, transfers per state or region were made mostly on an ad hoc basis. This has made development planning difficult and subnational revenue sharing susceptible to patronage and political manipulation. In practice, conflict-affected areas have generally received a higher per capita share of revenues. Ministry of Finance (MOF) officials state that poverty, population and regional GDP indicators have been used lately as guidelines for intergovernmental transfers. In 2016 additional indicators should be added to calculate revenue sharing. As of yet, there are no plans to make resource revenue-specific allocations, though some government officials and CSOs have advocated in favor of this.

Intergovernmental transfers to the states and regions can be found in the annual budget. Resource revenue transfers are unspecified and public reports from local governments on revenue transfers are unavailable.

PRIORITY ISSUE 21: FISCAL ROLE OF SEES

The rules covering transfers from SEEs to the government are known: SEEs are required to pay 45 percent of net profits into the State Fund Account but may deduct costs and retain the remaining 55 percent of net profits. Additionally, loss-making SEEs can receive transfers of up to 20 percent of their working capital from the government in any given year.

IMF figures indicate that extractive and non-extractive SEEs transferred 32 percent of their gross revenues to the government in fiscal year 2009/10, but that the percentage dropped to 12 percent in fiscal year 2012/13. This appears consistent with the government's stated policy of fostering greater independence and commercialization among SEEs. However, IMF figures indicate that the SEEs (extractive and non-extractive) retained sums were equivalent to over 50 percent (or over USD 1 billion annually) of total government expenditure in fiscal years 2012/13 and 2013/14 -- raising the question of whether this is the best use of public money.

At present, there is very little publicly available information on extractive SEE operations with which to determine how well the over USD 1 billion per year retained and spent by national oil, gas and mining companies was managed. While partial information is available on production figures, licensing, revenues and expenditures, and participation in joint ventures, almost no information is available on corporate leadership, assets held and other financials. MOGE has recently initiated a program to spend retained profits on local community development (For more on SEEs, see Precept 6, "State-owned enterprises.")

9. GOVERNMENT SPENDING &
10. PRIVATE SECTOR DEVELOPMENT

THE GOVERNMENT SHOULD USE REVENUES AS AN OPPORTUNITY TO INCREASE THE EFFICIENCY OF PUBLIC SPENDING AT THE NATIONAL AND SUB-NATIONAL LEVELS. IT SHOULD FACILITATE PRIVATE SECTOR INVESTMENTS TO DIVERSIFY THE ECONOMY AND TO ENGAGE IN THE EXTRACTIVE INDUSTRY.

ABOUT

Resource revenues provide governments with an opportunity to invest in social services, infrastructure, and dynamic industries key to spurring growth and economic development. Governments can also leverage the presence of the extractive industries to encourage growth of the private sector. For instance, they can introduce incentives for industry expansion, implement local content policies, or require that some oil or mining infrastructure be available for other economic activity. In the end, the goal for many resource-rich countries is to achieve sustained growth beyond the extractive sector since resource dependence harms other sectors of the economy and because oil, gas and minerals are finite assets.

PRIORITY ISSUES

22. **Public financial management:** Synchronizing diverse systems across ministries to improve public investment
23. **Infrastructure gaps:** Improving telecommunications, electricity, water, and transport systems, which remain major impediments to private sector growth

One challenge is that resource revenues can just as easily feed corruption and waste, particularly if the government or the economy do not have the capacity to absorb large revenue inflows efficiently. Some governments lack adequate administrative or human capacity to transform tax revenues into tangible benefits, like education or clean water. Others do not have the right financial management policies in place to generate these benefits, such as accountable budgeting, project appraisals, reliable public procurement systems, or monitoring and oversight of government projects.

Private sector investment can be hampered by low levels of education, poor infrastructure, lack of access to capital, frail rule of law, and weak public accountability. In most cases where natural resources have generated diversified growth, the government has worked to improve the 'enabling environment' for the private sector to flourish.

MYANMAR CONTEXT

In 2013, the World Economic Forum conducted a study of private sector investor perceptions of Myanmar. Some of the biggest perceived challenges to sustainable growth included access to financing, policy instability, corruption, an inadequately educated workforce, and inefficient government bureaucracy.

Creating an attractive investment environment for private sector development has been central to Myanmar's economic and political reforms. The *Framework for Economic and Social Reforms* (*2012)* outlines a number of the government's priorities for improving public financial management (PFM) and generating broad-based growth to spur investment. These include improving budget transparency, broadening the tax base (except for food), liberalizing import licensing, standardizing approval of foreign investments, reducing red tape for small and medium-sized businesses, and improving rural health care. In terms of infrastructure improvements, the government has committed to improving internet connectivity, developing a master plan for power production and distribution, and improving public transport in Yangon.

Since 2012, the World Bank and other development partners have been assisting the Ministry of National Planning and Economic Development (MNPED) and Ministry of Finance (MOF) to assess and reform the government's PFM system. These reforms have aimed to achieve budget credibility, transparency and accountability. Still, budget and project delivery information remains opaque in Myanmar.

PRIORITY ISSUE 22: PUBLIC FINANCIAL MANAGEMENT

In Myanmar, there is no single system for public financial management (PFM). Instead, government agencies and institutions each maintain separate systems, generating chaotic outcomes. For example, there is no regular reconciliation between personnel and payroll records and there is no internal audit system in most ministries, meaning that in many cases there is no way to verify whether government agencies are paying ghost workers. Subnational governments are not informed of the size of fiscal transfers in a timely manner, meaning they cannot plan their budgets.

Procurement is a particular challenge identified by government officials and civil society. While many tenders are publicly advertised, each ministry may select contractors according to its own guidelines and there is no framework for ensuring that the procurement process follows best practices. Contract information is usually secret and project execution often goes unverified. The quality of public infrastructure suffers as a result.

According to the World Bank's Public Expenditure and Financial Accountability (PEFA) assessment and the International Budget Partnership's Open Budget Survey, Myanmar's budgeting process has traditionally been one of the World's most opaque. In the past, basic information regarding revenues and expenditures, debt stocks, financial assets and budget outcomes has not been disclosed to the public, though this may change soon. Audits and contracts on large capital projects have generally remained secret. Donor information is also generally unavailable, though the website mohinga.info has been introduced as an aid transparency portal to track international development assistance to Myanmar. (For more on transparency and accountability issues, see Precept 2, "Accountability.")

The Modernization of Public Financial Management project—supported by the World Bank and the Australian and UK governments—is working to address many of these issues. Among the initiatives underway are:

- Establishing a Large Taxpayers' Office
- Bringing state-owned economic enterprises (SEEs) on-budget
- Implementing a medium-term fiscal framework that includes the subnational level
- Establishing a single computerized financial management system to store and organize information
- Establishing common procurement rules and practices
- Establishing a Public Account Committee Office to undertake independent analysis of the budget
- Enhancing the capacity of OAG
- Creating a PFM Academy for civil servants

PRIORITY ISSUE 23: INFRASTRUCTURE GAPS

Sizeable natural resource revenues can allow the government to finance expensive infrastructure projects. The presence of extractive projects also provides an opportunity to leverage new or existing infrastructure serving hydrocarbons or mining operations to drive broader economic development, for instance by sharing communications technologies or providing communities close to mine sites with access to mining-related power generation.

Government officials, business representatives and civil society leaders highlighted Myanmar's widespread infrastructure gaps as a high priority issue. Myanmar has about 33,000km of paved roads, compared to nearly 100,000km of paved roads in Thailand (not including urban roads). Railroads are generally dilapidated, though plans are already in place to expand railroad infrastructure, namely the sections spanning Yangon-Mandalay-Myitkyina and Bago-Mawlamyine. The transport agenda established by the Association of Southeast Asian Nations (ASEAN) also includes building a Singapore-Kunming rail link through Myanmar.

According to a 2013 KPMG report, Myanmar currently has 69 airports, of which only 32 are operational. Expansions of the Dawei, Mandalay, and Yangon airports are underway. Ports and other borders present a serious bottleneck to economic development. Myanmar ranked 145 out of 160 globally on the 2014 Logistics Performance Index, a World Bank scorecard on ease of trade which includes indicators on quality of infrastructure. Currently, 90 percent of sea trade is handled by the Port of Yangon. To help improve the situation, port expansion is planned for Dawei and Kyaukphyu, with several other sites under consideration.

With regard to electricity, World Bank statistics indicate that in 2012 Myanmar produced only 152 kWh per capita of electricity, compared to 2,479 kWh per capita in Thailand and 3,475 kWh per capita in China. Myanmar has one of the lowest electrification rates in Asia. According to the 2014 Census, only 32 percent of citizens use electricity for lighting and only 16 percent for cooking. Predominantly rural Ayeyarwady region, and Rakhine and Tanintharyi states had by far the lowest access to electricity. Hydropower is currently the main source of electricity in Myanmar though there is much potential for additional production using natural gas and renewable sources.

Water and sanitation facilities are lacking as well. Based on the 2014 Census, 30 percent of the population does not have access to clean drinking water and more than 25 percent of the population does not use sanitary latrines. The cities' sewer systems have not been improved since the 19th century, though there are plans to build a sewage treatment plant in Yangon. Most cities have open sewers or rely on rainfall to wash away waste, posing a distinct health hazard.

Telecommunications remain an enormous challenge. Mobile phone connectivity has risen dramatically in recent years, yet still lags significantly behind regional neighbors. According to the World Bank, in 2014 Myanmar had 49 mobile phone subscriptions per 100 people, compared to 74 in India, 144 in Thailand, and 147 in Vietnam. Only 6 percent of people have access to the internet at home, compared to 35-50 percent in China, Thailand, and Vietnam. The *Framework for Economic and Social Reforms (2012)* outlines a number of policies to liberalize the sector and encourage greater use of information and communications technologies.

11. MULTINATIONAL COMPANIES

THE GOVERNMENT SHOULD USE REVENUES AS AN OPPORTUNITY TO INCREASE THE EFFICIENCY OF PUBLIC SPENDING AT THE NATIONAL AND SUB-NATIONAL LEVELS. IT SHOULD FACILITATE PRIVATE SECTOR INVESTMENTS TO DIVERSIFY THE ECONOMY AND TO ENGAGE IN THE EXTRACTIVE INDUSTRY.

ABOUT

It is widely accepted that multinational companies investing in projects have an obligation to prevent, reduce and remediate the identified social, environmental and human rights impacts of their activities. Governments should make companies accountable for following through on their commitments and applying standards that benefit the country and its people. Groups most vulnerable to the negative impacts of resource extraction, such as indigenous peoples and ethnic groups, merit particular attention from governments and companies alike.

PRIORITY ISSUES

24. **Social performance:** ensuring high standards of social performance and building strong links with communities
25. **Local consent:** having sound requirements for consultation prior to projects commencing
26. **International standards:** encouraging companies to use international standards where domestic laws are lagging

MYANMAR CONTEXT

The role of international and multinational companies in Myanmar varies considerably between the oil and gas and mining sectors. Large international oil and gas operators in Myanmar originate from France, Malaysia, China, Thailand and South Korea. The 2013/2014 oil and gas bidding round also attracted successful participation by companies from the United Kingdom, United States, Australia, Canada, Norway, The Netherlands and Italy. By contrast, there are no international majors in Myanmar's mining sector. Mining in Myanmar mostly consists of domestic investment and joint venture arrangements with Chinese companies. There are also some investments from Australia, Canada, Hong Kong and Thailand. Although British firm Aurasian Minerals had submitted three mining exploration applications in Myanmar in early 2015, the firm backed out in August of the same year citing the country's slow approval process.

Myanmar is interested in attracting greater foreign investment in the country's extractive industries. Multinational corporations can demonstrate higher safety, environmental and social protection standards, and more advanced technology. They may commit more to early stage community engagement and investment. Multinational companies have international reputations to uphold, which in some cases can positively influence their performance in Myanmar.

PRIORITY ISSUE 24: SOCIAL PERFORMANCE

Myanmar stakeholders – whether from government, the private sector, or civil society – tend to use the phrase "corporate social responsibility" (CSR) to describe their expectations of companies in the community. The prevailing expectation of companies is that they should fund initiatives that address poverty and underdevelopment, even where there is little direct connection to the business. Spending targets are highly emphasized. Such an approach is not aligned with the practices of major international extractives companies today, and multinational extractive companies prefer to speak of sustainability, environmental and social performance, creating shared value, and community investment. This approach emphasizes company behaviors rather than spending and is designed to strengthen the company's "social license to operate," particularly with local communities.

The current production sharing contracts (PSCs) in Myanmar's oil and gas sector require companies to "expedite the Corporate Social Responsibility (CSR) in the Contract Area as well as for the people of Myanmar in consultation with MOGE according to the code of conduct of each [CONTRACTOR]." Such an approach allows sufficient flexibility to foreign companies to pursue their corporate policies as described above.

It is not clear whether such a requirement is included in mining contracts. However one consequence of the renegotiation of the Letpadaung copper mine investment was the inclusion of a legally binding clause requiring 2 percent of net profits to be spent on "CSR" with a focus on immediate communities, and USD 1 million annually prior to production. This spending-focused approach has been taken up by Myanmar Investment Commission (MIC) which since 2014 has been strongly encouraging (although not legally requiring) all investors to commit to spend at least 1 percent of pre-tax profit on "CSR." MOGE is reported to have committed to spend 2 percent of its profits to "CSR," a significant amount. Multinational mining companies (e.g. BHP Billiton or Anglo American) calculate that they spend around 1 percent of global profits on social and community investment.

Private sector stakeholders noted that an approach to social performance driven by spending targets can result in waste and corruption, as companies - which are not designed to be development organizations - have to push money out of the door to be spent by other entities. This approach may fail to respond to local needs or priorities which are not best solved by money. It can also undermine public financial management and accountability, by allowing local and national government to evade their own responsibilities to distribute revenues fairly, spend effectively and provide efficient and accountable social services. (For more on government spending and financial management, see Precepts 7, 8, 9, and 10).

Complaints from local communities' about extractives companies in Myanmar to date, and in particular mining and pipeline projects, have tended to focus on poor company practices and attitudes. These include inadequate environmental performance and human rights abuses, including where companies have taken advantage of gaps in Myanmar law and its enforcement. Another concern is an absence of consultation, communication and transparency, including about contractual obligations, and the absence of mechanisms to address community grievances. (For more on community impacts, see Precept 5, "Local Issues.")

These issues have been documented in the 2014 *Oil and Gas Sector-Wide Impact Assessment* by the Myanmar Centre for Responsible Business (MCRB). A parallel assessment of the mining industry will be published by MCRB in 2016. Myanmar's candidacy for EITI has also increased awareness of good international practice, raised expectations across all groups about what good international practice looks like, and increased demands for more information about companies' community and social investment, including how funds have been spent.

PRIORITY ISSUE 25: LOCAL CONSENT

Environmental and Social Impact Assessments (ESIAs; more commonly called EIAs in Myanmar) are used to identify, predict and assess the type and scale of impacts, both positive and negative, of an extractive resource project. Environmental Management Plans (EMPs) set out the contractual requirements to mitigate those impacts. Under the draft EIA procedures laid out in the *Environmental Conservation Law* (*2012),* most extractive projects in Myanmar are required to have regulatory clearance of an EIA and EMP. Existing operations will have to complete EMPs. (For more on environmental and social impact assessments, see Precept 5, "Local Effects.")

Consultation with communities is a requirement of the Myanmar EIA process. However, there are no minimum requirements in Myanmar for the degree of public participation during EIA consultations. How, when and with whom the consultation is carried out remains at the discretion of the government and the company on a project-by-project basis – a feature of the current framework that has drawn criticism from civil society stakeholders. So far few companies appear to be following good practice guidelines for community consultation in projects, although the companies who have recently been awarded offshore oil and gas blocks are leading the way. In the mining sector, the violent controversy surrounding the Letpadaung mine led the company to undertake an EIA which has been fully disclosed, but the government restricted consultation in some of the most affected villages for "security reasons."

The concept of free, prior and informed consent (FPIC) is relatively new in Myanmar but has received increasing attention from civil society and others who see it as a means by which indigenous or ethnic communities can assert the right to decide what, and how, projects are implemented on their lands. FPIC enshrines the principle that indigenous peoples' communities have the right to give or withhold their consent for a project to go ahead. It is a core part of the United

Nations Declaration of Rights for Indigenous Peoples (UNDRIP), which the Myanmar government voted in support of in 2007. The term “indigenous peoples” presents challenges in Myanmar, a country of many ethnic groups who may not all be considered “indigenous.” There is no evidence that the principle and guidance notes on FPIC have been applied in any extractive resource project in Myanmar to date. Multilateral institutions such as the International Finance Corporation (IFC) and the Asian Development Bank (ADB) that have mandatory provisions for FPIC in their respective Performance Standards and Safeguard Policies have yet to demonstrate how they comply with FPIC requirements.

PRIORITY ISSUE 26: INTERNATIONAL STANDARDS

Firms receiving financing from multilateral institutions, such as the International Finance Corporation (IFC) or Asian Development Bank (ADB), are subject to stricter rules regarding good governance practice, including the disclosure of payments to government, as well as many other requirements related to social and environmental protection. Projects not financed by such organizations rely on the country’s legal requirements to establish thresholds for acceptable corporate behavior, which in the case of Myanmar remain insufficient. Although publicly-listed oil and gas and mining companies must comply with domestic statutes regulating overseas investment, most such legislation targets transnational bribery and corruption rather than social or environmental standards.

The current regulatory regime for both mining and oil and gas in Myanmar dates back to the 1990s and does not reflect international good practice. Civil society organizations have strongly lobbied for environmental and social protections, revenue transparency and the adoption of international standards. The entrance of OECD-based multinational oil and gas companies with global policies and shareholders provides an opportunity to raise the performance of the oil and gas sector, as these companies operate to the same standards they adhere to in other countries. In the case for mining, however, ownership remains limited to Myanmar corporations and investors from other countries in the region where standards and enforcement are not of the same level.

In addition to the EITI Standard, which is currently being adopted, better social performance by extractives companies in Myanmar could be improved by actively encouraging and in some cases requiring companies to adopt good international practice. Specific standards include those of the International Finance Corporation (IFC) (the eight Performance Standards, and the general and sectoral Environmental Health and Safety Guidelines), as well as the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, and the guidance from the industry bodies ICMM and IPIECA. In 2014, with assistance from OECD, German aid organization GIZ and London-based NGO Global Witness, the China Chamber of Commerce for Minerals, Metals and Chemicals Importers and Exporters (CCCMC) adopted Guidelines for Social Responsibility in Outbound Mining Investment which draw on a number of these standards.

Moving forward, international requirements could be placed in contracts and integrated into the regulatory process. Adoption of the human rights due diligence approach in the 2011 United Nations Guiding Principles on Business and Human Rights, including the establishment of operational grievance mechanisms, could also be made a requirement for any company in receipt of an MIC Permit, as could a requirement to produce an annual sustainability report detailing the company’s social performance. A good track record on sustainability could also be adopted as one criteria in bidding rounds for licenses.

12. INTERNATIONAL COMMUNITY

GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS SHOULD PROMOTE AN UPWARD HARMONIZATION OF STANDARDS TO SUPPORT SUSTAINABLE DEVELOPMENT.

ABOUT

The international community participates in extractive projects by financing, developing or investing in the natural resource sector. Multilateral agencies involved in this process may include international financial institutions, agencies of the United Nations, international civil society organizations and others. These bodies set international standards and exercise diplomatic, commercial and development assistance links with the host national government. Their activities can influence the scale, location and conduct of extractive projects and proactively seek to mitigate negative impacts and enhance positive effects for the nation, resource regions and local communities. The international community also plays a key role in maintaining pressure on companies to act as good corporate citizens.

PRIORITY ISSUES

27. **Inclusive agenda:** keeping international assistance and the role of multilateral organizations in line with broad and equitable development principles
28. **Monitoring and enforcement:** implementing international codes of conduct and best practices

MYANMAR CONTEXT

Most international institutions and the governments of OECD member states support Myanmar's efforts to improve the governance of its extractive industries. Following years of limited engagement by Western countries, these governments have begun to allow greater foreign direct investment in Myanmar. Following the November 2010 general elections and the subsequent economic and political reform process, Australia, Canada, the European Union and United States suspended or removed most economic sanctions. In 2013, major development partners welcomed the Naypyitaw Accord for Effective Development Cooperation, a non-binding agreement drafted by Myanmar's government that establishes goals and priorities for both government and the international community.

Myanmar has participated in many international initiatives and has ratified a number of multilateral instruments including three of the eight International Labour Organization (ILO) Fundamental Conventions, the *Convention on Biological Diversity*, *Declaration on the Rights of Indigenous Peoples*, *Convention on the Rights of the Child*, and the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*. However, implementation is limited.

Another process in Myanmar supported by the international community has been Myanmar's candidacy for EITI. EITI is making progress in transparency and accountability by bringing together the government, businesses and local and international CSOs. The wider international community is keen to see how the country manages the EITI processes.

PRIORITY ISSUE 27: INCLUSIVE AGENDA

The Myanmar government has been working to improve its international standing and participate more actively in the international community in recent years. In partnership with the Organization for Economic Cooperation and Development (OECD) and Association of Southeast Asian Nations (ASEAN), for example, the Myanmar government undertook a review of the country's investment policies to make them more attractive to investors. The government has also received advice from international organizations, bilateral donors and others regarding priorities for, and sequencing of, reforms.

In 2013, Myanmar became a member country of the World Bank's Multilateral Investment Guarantee Agency (MIGA), which means that direct foreign investment into the country is eligible for the agency's investment guarantees. MIGA provides political risk insurance for foreign investors in emerging markets, and helps investors and lenders ensure that projects comply with international best practice – a clear benefit while the political situation in Myanmar remains fluid. Myanmar has also signed or is pursuing multilateral and bilateral investment treaties.

Myanmar is receiving widespread financial, human resource and other support from the international community to help the government to reform and accelerate economic development. However, some stakeholders consulted shared the belief that this influx of international assistance demonstrates tacit support for a development agenda that favors large-scale extraction by international investors producing for export. Critics fear that international assistance channeled through the government will not necessarily promote the sustainable development of Myanmar in a way which benefits the poorest and most marginalized. Such concerns underscore the need for international organizations and donors to engage equitably and promote inclusive development.

PRIORITY ISSUE 28: MONITORING AND ENFORCEMENT

Efforts have been made in Myanmar to improve adherence to international standards and codes of conduct. In addition to efforts to implement the EITI Standard, Myanmar has supported a number of international agreements and non-binding statements regarding environmental protections, human rights, labor rights and indigenous peoples. However, there is little evidence that these standards have been adopted to any extent. It is important to note that there have been some significant questions raised during Myanmar's candidacy to the EITI and initial implementation phase about whether the country is meeting the civic space requirements.

The international community has also supported codes of conduct for businesses investing in Myanmar. Frameworks in developed economies, such as *The Dodd-Frank Act* (for the United States) and the *EU Accountancy and Transparency Directives* (for the European Union), mandate that any company registered in their jurisdiction must disclose their payments in all countries where they operate. In 2012, the US Department of State released new *Reporting Requirements on Responsible Investment in Burma* [Myanmar]. Any US person seeking to make new investments over $500,000 in Myanmar must comply with new reporting requirements administered by the US Department of State. (For more on international standards applying to foreign investors, see Precept 11, "Role of multinational companies."). The OECD Guidelines for Multinational Enterprises also provide for a form of non-judicial remedy and mediation through National Contact Points in the host countries of companies infringing the guidelines.

With progress underway, it is now important to ensure that international codes of conduct are implemented effectively and that governments and companies failing to comply are subject to appropriate public scrutiny and relevant legal sanctions. Energy and resources should be directed to promoting and enforcing good practice standards of public disclosure, financial propriety, and the management of environmental and social impacts. The international community should monitor compliance with international human rights instruments, such as those governing labor rights and the rights of indigenous peoples, including their right to give or withhold their free, prior and informed consent (FPIC) for projects on their traditional lands. (For more on FPIC, see Precept 11, "Multinational companies.") There should also be strong cooperation in efforts to reduce corruption, smuggling and other illicit transactions related to the extractive industries.

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ANNEX

The following organizations, as well as numerous individual academics and analysts, were consulted in the preparation of this report:

- Asian Development Bank (ADB)
- BG Group
- Environmental Law Institute (ELI)
- Karen Human Rights Group (KHRG)
- Ministry of Finance (MOF)
- Ministry of Gas and Energy (MOGE)
- Ministry of Mines (MOM)
- MPRL P&E Pte. Ltd.
- Myanmar Alliance for Transparency and Accountability (MATA)
- Myanmar Centre for Responsible Business (MCRB)
- Myanmar Development Resource Institute – Centre for Economic and Social Development (MDRI-CESD)
- Myanmar Federation for Mining Association (MFMA)
- Myanmar Geosciences Society (MGS)
- Myanmar Investment Commission (MIC)
- Myanmar National Prosperity Company Ltd.
- Norwegian Agency for Development Cooperation (NORAD)
- Parami Energy
- Paung Ku
- Proximity Designs
- Parliament Natural Resource Management Committee
- Parliament Public Accounts Committee
- Shwe Gas Movement
- SMART Myanmar
- Spectrum
- Statoil
- Total SA
- UK Department for International Development (DFID)
- World Bank Group

The views reflected herein do not necessarily reflect the perspective of these organizations or of CSRM, which played a key role in the preparation of this report. The views presented in this final report also do not necessarily reflect the positions of the NRGI, even if the NRGI is the sole responsible for the consolidation of such report.

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1 framework
12 precepts
28 priority issues