

Myanmar

EXECUTIVE SUMMARY

Myanmar's oil, gas and mineral resources are a leading source of investment and government revenues. However, in many cases local communities and Myanmar's government have failed to realize the expected benefits of extraction. Although the country's newly elected government has signaled a commitment to broad reform, the obstacles to successful transition remain particularly acute in the natural resource sector. The roles of military elites, non-state armed groups and foreign actors in the extractive industries are particularly sensitive and controversial.

The Natural Resource Governance Institute (NRGI) has been active in Myanmar since 2012. Using the Natural Resource Charter (NRC) framework, this strategy note outlines the key challenges and opportunities Myanmar faces in harnessing extractive resource wealth for development. This assessment forms the basis for NRGI's strategic objectives and related reform targets from 2016 to 2018.

CONTEXTUAL ANALYSIS

The 2013 Resource Governance Index (RGI) gave Myanmar a failing grade on transparency in the extractive industries. Myanmar performed extremely poorly across all four components studied (institutional and legal setting, reporting practices, safeguards and quality controls, and enabling environment) and scored lowest out of 58 countries included in the index. Despite gradual improvements in oil, gas and mining sector governance since 2013, the country lacks a strong legal framework or the capacity to implement laws and regulations.

Between 2011 and early 2016, the quasi-civilian government of former general U Thein Sein embarked on a wide series of political and economic reforms that opened the country to the international community and loosened restrictions on media and civil society organizations. This included the initial review and revision of outdated laws governing the oil, gas and mining industries. Myanmar became a candidate country to the Extractive Industries Transparency Initiative (EITI) in 2014 and published its first EITI reconciliation report in early 2016.

Although constitutionally-enshrined limits on civilian power remain, Myanmar's National League for Democracy (NLD) swept to an overwhelming victory against U Thein Sein's military-aligned Union Solidarity and Development Party (USDP)

ABOUT THIS DOCUMENT

This country strategy note summarizes an NRGI analysis of country context and reform priorities. It also outlines NRGI's engagement in Myanmar, complementing the work of other actors. Developments will naturally affect the assessments and objectives described herein. Updates to this synopsis may be made as events require.

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and assumed leadership of the government in April 2016. The new government has announced the consolidation of several key ministries, including the merging of the former Ministry of Finance and former Ministry of National Planning and Economic Development to form the Ministry of Planning and Finance; the merging of the former Ministry of Mines and former Ministry of Environmental Conservation and Forestry to form the Ministry of Natural Resources and Environmental Conservation; and the merging of the former Ministry of Energy and former Ministry of Electric Power to form the Ministry of Energy and Electric Power.

Oil and gas

IHS Global Insights estimates that Myanmar possesses 3.2 billion barrels of oil reserves and 18 trillion cubic feet of natural gas reserves. Although most production is located offshore, limited onshore oil production is concentrated around Magway Division. In 2014, Myanmar produced 16.8 billion cubic meters of natural gas, three quarters of which was exported via pipelines to neighboring Thailand and China. The country's top export, gas accounted for approximately 30 percent of total exports in 2014 and has served as the government's primary source of foreign exchange.

Myanmar's 2013-2014 onshore and offshore bid rounds resulted in the awarding of 36 new blocks and attracted new international companies such as Shell, Eni, Statoil, BG and Woodside. Although the rounds represented a step forward in terms of transparency, the criteria used to allocate licenses and the beneficial ownership of some companies engage in Myanmar's oil and gas sector remain unclear.

Oil and gas revenues are estimated to account for between 15 and 20 percent of total revenues collected. However, since 2012 approximately half of petroleum revenues have been retained in the off-budget accounts of Myanmar's state-owned oil and gas enterprises: the Myanma Oil and Gas Enterprise (MOGE), the Myanma Petrochemical Enterprise (MPE) and the Myanmar Petroleum Products Enterprise (MPPE). Accountability for these public funds is reduced by a lack of clarity over these entities' mandates and activities.

Mining

Myanmar's Kachin State accounts for most of the world's production of jade, while Mandalay Division remains a leading source for rubies and sapphires. The country also possesses reserves of gold, silver, copper, tin, nickel, coal, limestone and other minerals. Although many Chinese and Thai individuals are believed to benefit significantly from Myanmar's mining industry through local proxies, with very few exceptions the sector is dominated by local companies.

Officially, the mining sector's contribution to Myanmar's economy is modest. Of the approximately MMK 3 trillion in resource revenues included in Myanmar's first Extractive Industries Transparency Initiative report, MMK 389 billion (or approximately 13 percent) corresponds to the jade and gemstone industry and only 54 billion (or less than 2 percent) is accounted for by other minerals. However, independent estimates indicate that most minerals are not taxed or captured by government statistics. United Nations trade data indicate that the value of precious stone exports from Myanmar to China in 2014 worth was USD 12.3 billion alone, while Global Witness calculates that the value of total jade production in 2014 stood at more than USD 30 billion. Mineral smuggling is a very serious issue.

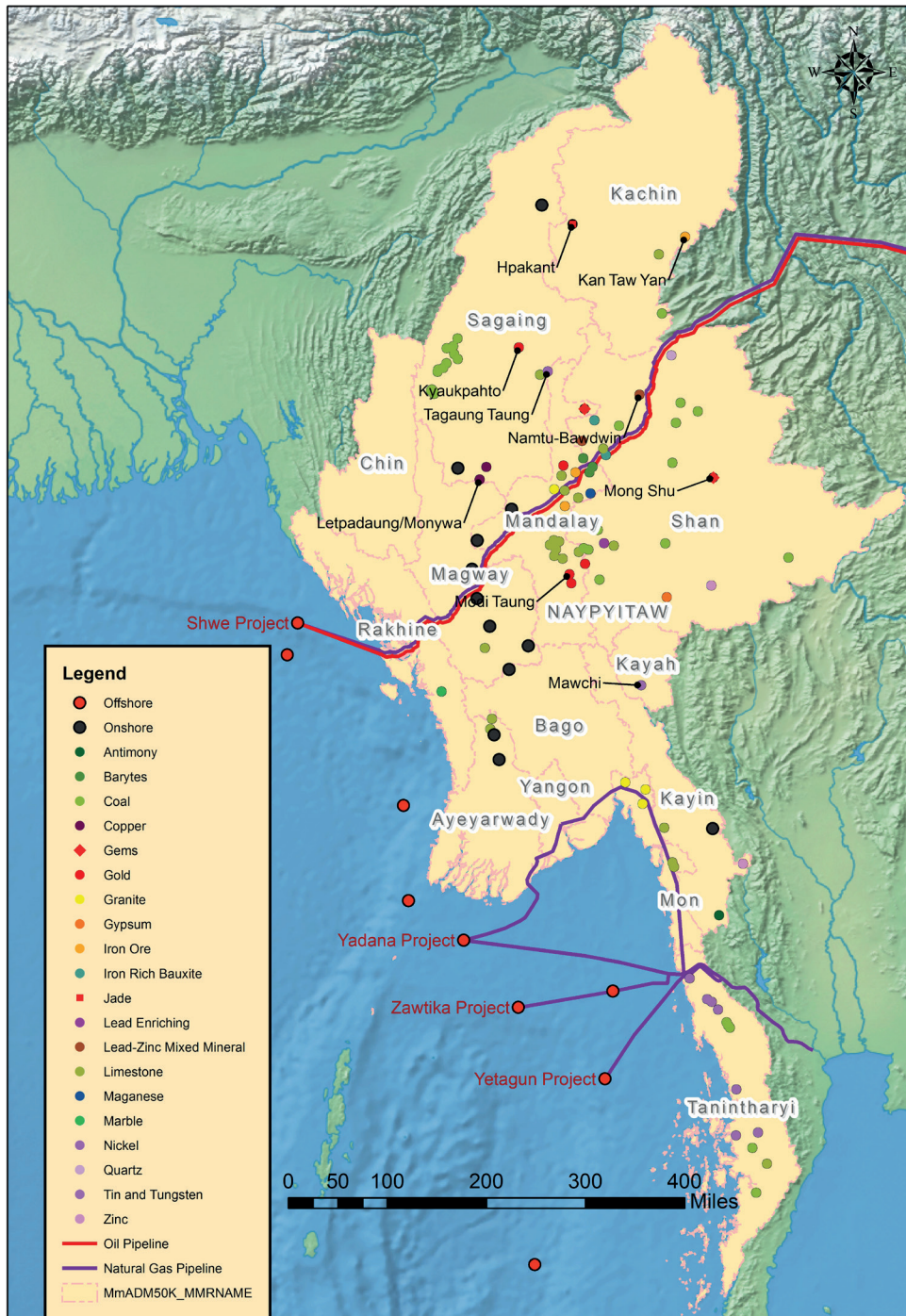


Figure 1. Overview of major oil, gas and mineral projects in Myanmar

MYANMAR AND THE EXTRACTIVE INDUSTRY DECISION CHAIN

Domestic foundations for resource governance

Precept 1: Strategy making and public participation. *Resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, clear legal framework and competent institutions.*

In 2012, Myanmar's President U Thein Sein announced a plan for the social and economic transformation of the country. The resulting Framework for Economic and Social Reforms, 2012-2015 (FESR) outlined policy priorities for the government over the subsequent three years. Most of the key laws governing the extractive sector, including the Mines Law and the Petroleum Law, have undergone or are currently undergoing revision.

Despite the recent reforms and improvements, the legal framework for extractives remains unclear and the institutions governing the sector have limited capacity. Myanmar still lacks a clear, modern and comprehensive national strategy, developed inclusively, which would allow the country to benefit the most from its resources.

Precept 2: Accountability. *Resource governance requires decision makers to be accountable to an informed public.*

Myanmar has been an EITI candidate country since July 2014 and has stated intent to become eligible to join the Open Government Partnership (OGP). Over the past few years, suspension of controversial projects like Myitsone power dam and Letpadaung copper mine have shown that public mobilization can be effective. Nevertheless, public access to information on the extractive industries remains extremely constrained. This environment has increased the challenges for key accountability actors, such as civil society organizations and the media.

Much work is also needed to build stronger accountability mechanisms within the state apparatus. The oversight exercised by the auditor general and by members of parliament remains limited. Ministries' control over state-owned enterprises is weak in practice, while military-affiliated holding companies continue to operate with a high degree of impunity.

Discovery and deciding to extract

Precept 3: Exploration and license allocation. *Government should aim to reduce geological uncertainty under a transparent licensing regime that allocates rights efficiently.*

A lack of accurate and accessible geological data continues to disincentivize high-quality investment in the extractives industries. Moreover, Myanmar remains without a digitized cadastre system. The beneficial owners and terms of contracts and licenses remain mostly unknown to stakeholders.

Reform of the license allocation process in the oil and gas sector has limited biddable terms, disclosed bidding processes and standardized contract terms. However, permitting in the mining sector remains opaque and vulnerable to clientelism. So far neither the Ministry of Energy nor the Ministry of Mines has disclosed the criteria used to evaluate license applications. Additional information is available in NRG1's briefing, "Mineral and Gemstone Licensing in Myanmar," which was published in April 2016.

	Exploration	Feasibility study	Large-scale production	Small-scale production	Subsistence-scale production	Small-scale processing	Total
Ayeyarwaddy			3	3			6
Bago	1			1			2
Chin	7						7
Kachin	62		4	71			137
Kayah	16		1	18			35
Kayin	12		6	34	17		69
Magway	33	1	3	36			73
Mandalay	64	3	46	261	102	67	543
Mon	1	4	5	19	8		37
Naypyitaw			3				3
Rakhine	3		1				4
Sagaing	40	6	24	217	2	2	291
Shan (East)	54	4	1	75			134
Shan (North)	42	2	19	50	10		123
Shan (South)	71	2	16	97	2		188
Tanintharyi	43	2	19	40			104
Total	449	24	151	922	141	69	1,756

Figure 2: Mineral mining permits issued as of December 2015.

For more information, see "Mineral and Gemstone Licensing in Myanmar" (April 2016).

Getting a good deal

Precept 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.*

Oil and gas operations in Myanmar are governed largely by contract terms and conditions between the state-owned Myanma Oil and Gas Enterprise (MOGE) and private investors via production sharing contracts (PSCs) or the improved petroleum recovery contracts (IPRCs). The preferred types of contractual arrangement within the mining sector are either production sharing or profit sharing arrangements. Current rules provide little flexibility for dealing with changing circumstances, such as unanticipated fluctuations in commodity prices.

The extractive industries accounted for at least 23.6 percent of government revenues in the 2014/15 fiscal year, with the oil and gas sector representing approximately 85 percent of revenues collected. However, many revenues remain unrealized due to a lack of monitoring and enforcement. In the lucrative jade industry, for example, it is estimated that well above 50 percent of the total production value goes untaxed due to smuggling and under-invoicing.

Precept 5: Local effects. *Opportunities for local benefits should be pursued, and the environmental and social costs of resource projects should be accounted for, mitigated and offset.*

Weak systems for social and environmental impact assessment and mitigation remain a major challenge in Myanmar. Communities proximate to oil, gas and mining projects are rarely consulted prior to the beginning of operations, and in many cases reap few benefits from resource extraction. The notion of "local content" remains unfamiliar.

Few methods of dispute resolution are available for individuals and civil society organizations impacted by extractive projects.

Ongoing reforms, including the recent finalization of environmental impact assessment (EIA) Procedures, are intended to improve environmental and social outcomes. However, the capacity of the Environmental Conservation Department and other government institutions to effectively evaluate and monitor projects remains limited relative to their responsibilities.

Precept 6: Nationally owned resource companies. *Nationally owned resource companies should be accountable, with well-defined mandates and seek to be commercial efficient in the long-term.*

Oil, gas and mining state-owned enterprises are hugely important to the national economy and government budget. Since 2012, Myanmar’s government has allowed these companies to retain a large share of their revenues in off-budget accounts rather than paying it into the treasury. The Myanmar Oil and Gas Enterprise (MOGE) is particularly significant in this respect, as it alone accounts for the vast majority of natural resource revenues. Mining sector enterprises may wield less power than is commonly assumed, as the country’s military and economic elites appear to exercise de facto control over licensing and revenue collection.

From April 2013 – March 2014, MOGE deposited more into its “Other Accounts” (\$1.4 billion) than Myanmar spent on health (\$750 million) or education (\$1.1 billion) in FY 2013/14.

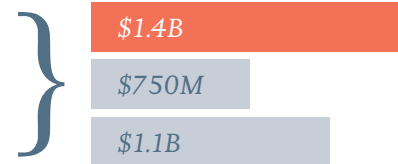


Figure 3: SEE “other accounts” compared with education and health spending.

For more information, see “Gilded Gatekeepers: Myanmar’s State-Owned Oil, Gas and Mining Enterprises” (January 2016).

In order to build modern companies that can support Myanmar’s extractive industries’ development, state-owned enterprise reform should concentrate on clarifying their structure and mandate, their accountability mechanisms, and the way they operate more transparently. A comprehensive overview of these issues is included in NRGi’s report, “Gilded Gatekeepers: Myanmar’s State-Owned Oil, Gas and Mining Enterprises,” which was published in January 2016.

Managing the revenues

Precept 7: Revenue distribution. *Resource revenues should be invested to achieve optimal and equitable outcomes for both current and future generations.*

Fiscal reforms have ushered in more responsible budgeting and efforts to broaden and deepen the revenue base. Revenues and expenditure responsibilities remain concentrated at the Union level, although state and regional governments have received a gradually increasing share of the overall budget since 2013.

Against this backdrop, natural resource revenue sharing with states and regions has emerged as an important aspect of the political agenda. Especially within the context of ongoing peace negotiations between the union government and ethnic armed organizations, local leaders have asserted that they deserve a greater share of the profits from natural resource extraction in their jurisdictions. Released in February 2016, NRGi’s report, “Sharing the Wealth: A Roadmap for Distributing Natural Resource Revenues” seeks to inform the highly political debate around decentralization and power sharing. Based on NRGi’s international experience, it reviews the key technical and economic considerations for decision-makers interested in resource revenue sharing.

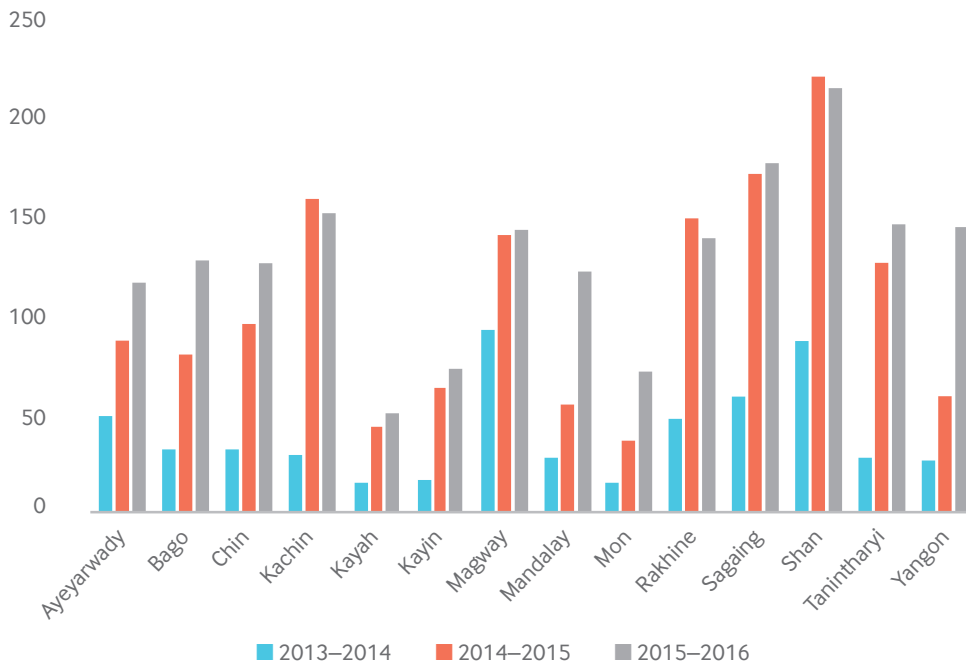


Figure 4: Union budget allocation to states and regions, 2013/14 to 2015/16.

For more information, see “Sharing the Wealth: A Roadmap for Distributing Myanmar’s Natural Resource Revenues” (February 2016).

Precept 8: Revenue volatility. *Domestic spending of resource revenues should be smoothed to take account of revenue volatility.*

Extractive revenues, particularly from the export of natural gas, represent a significant share of government income. Myanmar appears to lack a strong system for tackling commodity price fluctuations, which is a topic of growing concern in light of recent global price shifts.

Ongoing work to build public financial management (PFM) capacity presents an opportunity to improve forecasting and adopt fiscal tools to mitigate revenue volatility. The Ministry of Finance has begun investigating of how Myanmar might establish a natural resource fund. A stabilization objective may be included if a natural resource fund or other sovereign wealth fund is ultimately established in Myanmar.

Investing for sustainable development

Precept 9: Government spending. *The government should use revenues as an opportunity to increase the efficiency of public spending at the national and sub-national levels.*

Government spending has increased in recent years, although methods of budget allocation remain opaque. Despite increasing from a very low base, social services such as education (six percent of spending) and health (three percent) remain low when compared to military spending (12 percent). As noted under Precept 7, inter-governmental transfers remain quite low as a percentage of total budget.

Precept 10: Private sector development. *The government should facilitate private sector investments to diversify the economy and to engage in the extractive industry.*

Myanmar has not yet caught up to its regional neighbours in terms of foreign direct investment (FDI). However, the growth rate of FDI since the country's opening in 2011 has been remarkably high. In 2015 and the first quarter of 2016, the energy sector led as a source of investment. Despite some positive reforms, the investment environment in the extractive industries remains complicated by clientelism, bureaucracy and legal and technical barriers to entry.

Petroleum products continue to dominate Myanmar's external trade, which may signal challenges for diversification efforts. Although new local content requirements are now in place for foreign companies, the number of jobs created by the extractive industries has not been rigorously evaluated. This is partly the result of the high level of informal or temporary employment in oil, gas and mining.

International foundations for resource governance

Precept 11: Roles of multinational companies. *Companies should commit to the highest environmental, social and human rights standards, and to sustainable development.*

A range of multinational oil and gas companies participated in Myanmar's latest licensing round, while companies including Total, Petronas, Chevron and Shell have engaged with government and civil society through existing forums such as the EITI multi-stakeholder group (MSG). International company engagement in the mining sector is more limited, with China and Thailand accounting for the majority of foreign investors holding licenses.

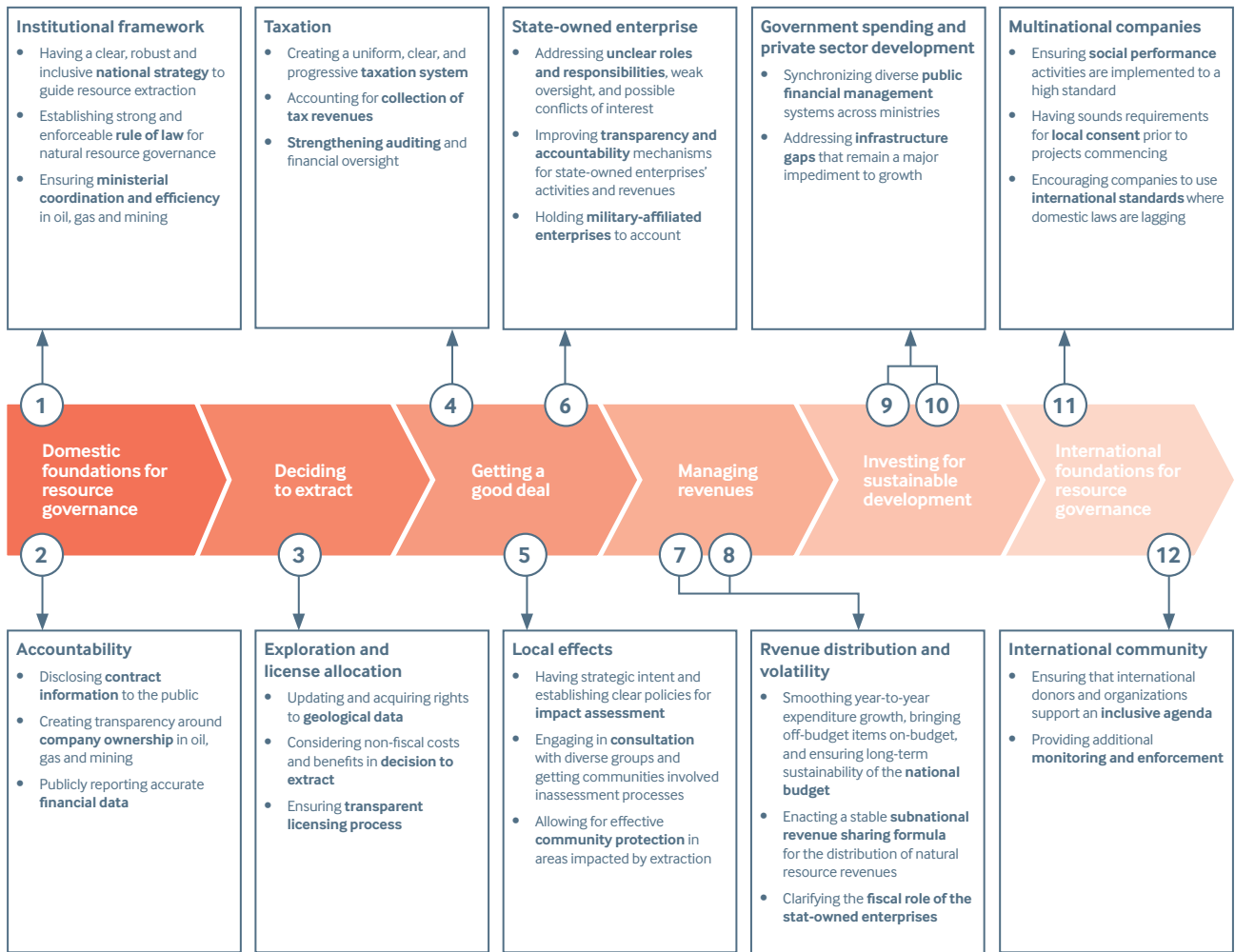
International companies may play a positive role in pursuing high performance standards, developing local capacity and promoting best environmental, social and labour practices in Myanmar. At the same time, there remains a lack of trust and mutual understanding between many companies, government and civil society stakeholders.

Precept 12: Role of international community. *Governments and international organizations should promote an upward harmonization of standards to support sustainable development.*

Myanmar is a candidate country to the Extractive Industries Transparency Initiative (EITI) and has expressed interest in joining the Open Government Partnership (OGP). Since 2013, the EITI process has served as a key forum for exchange between stakeholders and an avenue for greater transparency and accountability in oil, gas and mining.

Although certain sanctions imposed by the US Department of Treasury remain in place, the United States, European Union, Australia and Canada have eased other restrictions on doing business in Myanmar. Reform of the extractive sector is supported by a number of international organizations and donor agencies, including the World Bank, the UK Department for International Development (DFID), the Australian Department of Foreign Affairs and Trade (DFAT), and Norway's Oil for Development program.

Over the course of 2015, NRGI coordinated a series of consultations and workshops with Myanmar EITI stakeholders using the Natural Resource Charter analytical framework. The resulting report, released in January 2016, draws on the inputs of government, private sector and civil society representatives to highlight 28 priority issues in extractive industry governance.



STRATEGIC RESPONSE

NRGI works globally so that citizens may benefit from their countries' extractive resource wealth. In Myanmar, the strategic response outlined below aims at addressing the challenges and opportunities identified by our contextual analysis while taking into account the lessons learned from NRGI's previous engagement, pilot activities and international experience, as well as other actor's efforts.

Objective 1: Improved, more comprehensive, coordinated and long-term strategy for the extractive sector

- The government articulates a more comprehensive, strategic reform agenda to improve extractives governance.

Objective 2: Improved transparency and use of extractive sector data

- The EITI multi-stakeholder group agrees to an expanded reporting scope, including disclosure of contracts and beneficial ownership information. This will expand further over time and build on recommendations from previous reports.

Figure 5. Twenty-eight priority issues identified for Myanmar's extractive industries using the Natural Resource Charter

For more information, see "Myanmar and the Natural Resource Charter: 28 Priority Issues for the Extractive Industries" (January 2016).

Objective 3: Improved licensing regulatory framework designed and implemented

- The government develops a national registry of licenses, including beneficial ownership disclosure.
- The government adopts and implements a fair, transparent and more efficient license allocation process.

Objective 4: Improved extractive sector revenue sharing

- The government develops a revenue sharing allocation scheme based on consultations and informed debate.

Objective 5: Improved governance of extractive sector state-owned entities

- State-owned entities operate more transparently, accountably, and efficiently.

Gender strategy

Myanmar ranks 83rd of 152 on the Gender Inequality Index (2013). Numerous barriers to gender equality are codified in Myanmar's legal framework, while women are generally discouraged from assuming public roles or jobs considered dangerous. The women's movement is large but also fragmented among ethnic groups, Yangon groups, political leaders and activists still often working separately and lacking in trust.

NRGI's gender strategy will be translated into our country programming with a modest approach of focusing on encouraging the participation of women in activities and in leadership positions. Our active support to Myanmar EITI will serve as one concrete entry point to promote the increased representation of women in multi-stakeholder platforms. NRGI will also seek to learn from and support our key partners who are affiliated with wider networks.

FUTURE CONSIDERATIONS

Uncertainty over Myanmar's shifting political and institutional landscape remains high following an unprecedented change of government in early 2016. The following section outlines areas NRGi may wish to consider in the future, based on changing circumstances and subject to human and financial resources.

Administrative decentralization and subnational governance

NRGI's country strategy will be informed throughout by the ongoing shift towards decentralization and subnational governance. These processes, particularly as they relate to natural resources, remain closely linked to the national peace dialogue and to Myanmar's political and economic prospects.

A working group composed of international donor agencies and NGOs has led public financial management reform, which entails undertaking diagnostic work and providing capacity building among national and local government officials. NRGi may consider greater collaboration with these efforts if it encounters growing demand from stakeholders and considers significant value added from its involvement.

Jade and gemstone sector

Myanmar's most valuable natural resource, jade, is intertwined with elite economic and military elites on both sides of the country's most serious ethnic conflicts. Within the context of state-owned enterprises, natural resource revenue sharing, and licensing, jade's outsized role merits special attention.

In October 2016, Global Witness released a landmark report, "Jade: Myanmar's Big State Secret," that illuminated many of the key challenges associated with the industry. Working closely with Global Witness and other Myanmar stakeholders, NRGi has started to identify options for reform and improvement of the jade and gemstone sector.