

Civil society and extractive industry reform in Myanmar: Key challenges

Myanmar Alliance for Transparency and Accountability (MATA) represents civil society in Myanmar's Extractive Industries Transparency Initiative (EITI). MATA's role includes leading civil society consultations, bringing civil society concerns to stakeholders in the EITI process, advocating for effective EITI reforms and ensuring public access to information on extractive industries governance in Myanmar. MEITI has published three EITI reports so far and made progress towards implementing EITI Standards. However, critical challenges remain that prevent meaningful reform and endanger civil society participation.

Shrinking civic space

Civil society is a living organism. An enabling environment is essential for civil society to grow, hold government to account, ensure public access to information and to participate in reforms related to the extractive industries. While Myanmar has made progress in opening civic space since 2010, unacceptable restrictions on civil society remain. Limited legal protections have been inadequately guaranteed and, in some cases, there has been increased repression under the National League for Democracy (NLD) government.

MATA is a broad civil society coalition. MATA members are engaged in the EITI process, along with a range of other issues related to democratic reform, natural resource governance, social and environmental justice, peace, equality and human rights. Any undemocratic restrictions on civil society creates an impediment for civil society participation in EITI and are in breach of the EITI Protocol on the Participation of Civil Society.

2.1 Expression: Civil society representatives are able to engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal.

2.5 Access to public decision-making: Civil society representatives are able to speak freely on transparency and natural resource governance issues, and ensure that the EITI contributes to public debate.

In August 2017, the Myanmar Government amended the 2013 Telecommunications Law. Section 66(D) was updated to include imprisonment:

66. Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both. (d) Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network.

The Telecommunications Law has since become a key tool to restrict freedom of expression. Since the amendment was enacted, there have been 85 charges filed according to [Athán](#), a MATA member organisation that monitors and promotes freedom of expression. [These include](#)

[cases](#) brought against journalists, politicians, civil society actors and individuals. The law has been used to persecute those who criticise the military, a setback on the limited democratic reforms that began in 2010.

In addition to the Telecommunications Law, the Myanmar Government has failed to reform laws that were introduced during the British colonial regime and have been used by successive government to repress civil society and freedom of expression. An example is the 1923 Official Secrets Act, which was used to prosecute the Reuters journalists Wa Lone and Kyaw Soe Oo, who were investigating crimes against humanity in western Myanmar. The law criminalises a broad range of acts that could be ‘useful to an enemy’, including the receipt of documents and being in a restricted area. The maximum sentence is 14 years. Since the military is heavily involved in the extractive industries in Myanmar, the law could be used against civil society actors and journalists working towards the goals of EITI.

Another colonial-era law being used to shrink civic space is 505 (a) and (b) of the Penal Code, which criminalises free speech. 505(a) makes it a crime to criticise the military and has been used most recently to [prosecute activists engaged in a traditional form of political satires](#). 505(b) is used to repress freedom of speech. The wording of the clause is starkly undemocratic, applying to anyone who makes, publishes, or circulates any statement, rumour, or report with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity.

2.3 Association: Civil society representatives are able to communicate and cooperate with each other regarding the EITI process.

2.4 Engagement: Civil society representatives are able to be fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process

Myanmar’s Peaceful Assembly and Peaceful Procession Law was passed in 2014 and amended in 2016. The amended law requires 48 hours advanced notification to authorities for assemblies and processions. Breaching the law is a criminal offence and it has been used to arrest and imprison civil society actors, including MATA members. The law is applied inconsistently – while notice rather than permission is required, authorities regularly attempt to refuse or restrict assemblies. Some of the worst abuses take place in rural and ethnic minority areas.

In Sagaing, the site of two controversial copper mines that operate through a partnership between a Myanmar military conglomerate and a Chinese State-Owned Enterprise, [two MATA members from a village in the mining area were arrested for protesting forced relocation](#).

In Kayah State, the government requires ten days advanced notice for gatherings, including meetings and workshops. This is in breach of the Peaceful Assembly Law. As a result of the Kayah State Government’s unlawful restrictions, civil society is prevented from responding to urgent issues and is forced to follow unreasonable bureaucratic hurdles for basic operations. Groups that do not follow this requirement are at risk of harassment and prosecution. MATA

members in Kayah State have been prosecuted under the law for responding to

In 2017, the Karen State Government approved a joint venture with Toyo Thai Power Myanmar for a coal power plant in Hpa-an, against the wishes of local communities. MATA supported community mobilization and advocacy to respond to the project. The Karen State Government created a hostile environment for civil society, even threatening that any party opposing the project would be seen as an enemy of the state. This led to a confrontation with the Karen State Government, which initiated criminal proceedings against MATA's Karen regional focal person for unlawful printing of campaign materials.

Other laws that restrict civil society and are shrinking civic space include Unlawful Associations Act of 1908, News Media Law and the Privacy, recently highlighted by Human Right Watch as leading to the [‘criminalisation of peaceful expression’](#) in the country.

These laws have a chilling effect on media and civil society in Myanmar. Journalists face a significantly increased risk under the law, and it prevents critical reporting, especially when it concerns the military, businesses and individuals that have economic and political power. Civil society is at risk whenever speaking out about the government, the military and affiliated businesses. Association is restricted, repressing critical civic activities. While speech inside the MSG is protected, there are unacceptable barriers for wider participation as long as speaking out and protesting issues related to politics and businesses can be a crime.

For EITI to work effectively in Myanmar, there must be freedom of expression, for accurate information to enter the public sphere and for effective accountability of all EITI stakeholders. For communities to participate and respond to natural resource issues, freedom of association and assembly must be guaranteed.

The Myanmar military is a key actor in the extractive industries through military owned conglomerates and links to SOEs. EITI Standards cannot succeed in Myanmar as long as criticism of the military is a criminal offence. Myanmar remains in clear breach of the **EITI Standard 1.3: Civil Society Engagement and the Participation of Civil Society Protocol**. For meaningful EITI reforms, there must be urgent law reform to create an enabling environment for civil society.

Myanmar has received a satisfactory score in the country’s first draft validation report. Given the serious and ongoing repression of civil society in Myanmar, a satisfactory score is unacceptable and misleading. There is a high risk that a satisfactory score could reinforce the government’s undemocratic restrictions on civil society and even lead to further back-sliding of reforms.

MATA demands the full implementation of EITI Standard 1.3. The government must urgently reform all laws that restrict civil society and freedom of expression in Myanmar.

Hydropower

Hydropower is a major sector in Myanmar and a leading source of public spending, including through international loans. Despite this, it continues to be excluded from the MEITI. MATA has been advocating through MEITI for the inclusion of the hydropower sector and after a series of MSG discussions, agreement has been reached for the sector's participation. In February 2019, preparation was made for EITI expansion to hydropower, including an orientation involving the Hydropower Department so the concerned public servants are ready for implementation. Despite reaching a consensus in the MSG, the MSG has postponed by the government. There are signs that the government may further postpone the inclusion of hydropower in 2019. This appears to be a politically-motivated decision and demonstrates a key weakness in EITI implementation in Myanmar.

MATA is concerned that government intransience could be a result of Chinese political pressure over the controversial [Myitsone Dam](#) in upper Myanmar, which was suspended under the former Thein Sein government, as a result of public pressure but has not been resolved. MATA is concerned the continued refusal to include hydropower can erode the authority of the MSG.

MATA demands the inclusion of hydropower within the Myanmar EITI. The sector must be publicly accountable and transparent. The right to information on hydropower in Myanmar is urgently needed.

Beneficial Ownership (BO)

In Myanmar, corruption in the extractive industries is extensive and resources are a key contributor to conflict. [The jade sector is particularly problematic](#), as documented by Global Witness. There is extensive involvement of the military, former military officials and their families in extractive businesses. In contested areas of Myanmar, ethnic armed organisations are heavily involved in mining and forestry, in partnership with businesses, including those affiliated with the Myanmar Armed Forces. MATA wants beneficial ownership reforms to be urgently implemented to increase transparency of actors and mitigate corruption.

Since 2017, MATA has been urging BO reforms through the MEITI. Due to the entrenched power of the military and armed groups in the sector, strong leadership is needed. The MSG has made progress, agreeing to a definition of BO that has been submitted to the government for approval. MATA wants to see a BO law that could support a robust legal framework. As a transitional measure, a presidential decree is required to begin BO implementation. A decree has been drafted but the government is delaying enactment, likely under pressure from the military and businesses with a vested interest in maintaining the status quo.

To prepare for implementation, technical support is essential. MEITI's funder, the World Bank, is currently blocking funding for BO support as it was not in the 2019 Workplan. Donor inflexibility that restricts changes to the Workplan may also put BO reforms at risk.

MATA demands the immediate enactment of beneficial ownership and the effective implementation of BO standards. MATA wants to see strong government leadership for BO reforms to be successful in Myanmar. MATA is concerned that lack of donor flexibility could impede critical BO reforms.

Fiscal regime

Myanmar's political system remains highly centralised, which is a cause of ongoing armed conflict. Within civil society, there is strong support for federal reforms that would guarantee rights and political participation at a localised level and accommodate ethnic minority demands for self-determination. A significant proportion of the extractive industries take place in ethnic minority regions that have high rates of poverty, a lack of social services and low levels of development. While a small number of powerful individuals acquire extreme wealth through the exploitation of natural resources, the majority see little or no benefit. In the current system, revenue flows to the central budget and is then allocated to states and regions in a way that is top-down and non-transparent.

Fiscal reform is therefore urgently needed, to ensure that a fair proportion of resource wealth benefits local communities. This must be managed in a way that is transparent to the public and allows for democratic participation, especially for individuals in communities affected by resource extraction.

For the benefit of all the people of Myanmar, MATA wants to see the establishment of a sovereign wealth fund that will save and reinvest natural resource wealth for future generations. Myanmar is resource rich but many of the resources extracted are non-renewable. Without reform, there could be serious repercussions for people's future wellbeing.

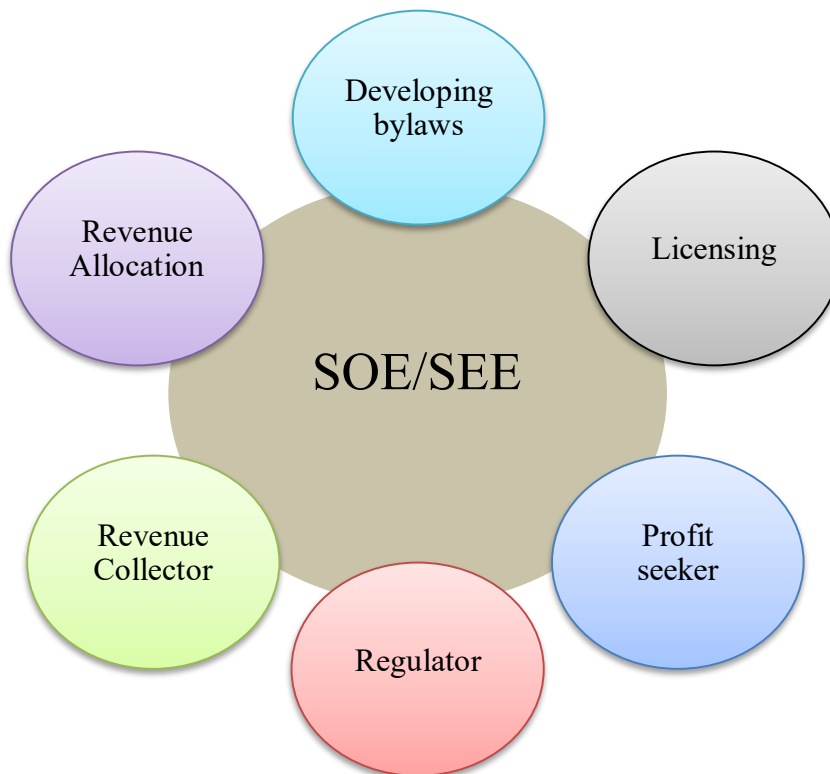
MATA wants to see meaningful steps to reform the fiscal regime, including steps towards fiscal decentralisation and a sovereign wealth fund.

SOEs

A central concern of MATA and a key reason for discrepancies in Myanmar’s EITI reports are the expansive role of SOEs within the extractive industries. SOEs are a major cause of corruption and impediment to reform, due to the entrenched conflict of interest in their role and the domination of ex-military figures within all key SOEs. For instance, in the leadership structure of the Myanmar Gem Enterprise, the dominant SOE in the jade and gem sector, the head is a former brigadier-general, the director is a former major and the deputy directors are former captains. Former military officials are their primary labour pool and there is a total lack of civilians in their management.

The privileged position of SOEs was solidified in the 1989 SOE Law. In the extractive industries sector, there are six SOEs: Myanmar Oil and Gas Enterprise (MOGE), Myanmar Gems Enterprise (MGE), Mining Enterprise 1, Mining Enterprise 2 and Myanmar Timber Enterprise and Myanmar Pearl Enterprise (MPE).

While laws are passed by the *hluttaw*, SOEs have a high degree of autonomy to develop by-laws and control how policies are implemented. In the mining sector, large-scale licencing is regulated through SOE joint ventures, while SOEs have full authority over small-scale licencing. Small-scale licencing is officially decided on a first come, first served basis. However, due to a lack of transparency over the order of applications, SOEs in practice have full discretion to award licences as they wish as there is no way to monitor the order of licence applications.



SOEs have authority over licencing in the jade, gemstone and other mining sector and a high level of influence over licencing in other extractive industry sectors. This role is further complicated by the fact that SOEs themselves are established to operate at a profit, and are regulating and licencing themselves through joint ventures. Their commercial role impedes transparency, as negotiations are confidential. As their role also includes revenue collection and revenue allocation, it is unsurprising that there is widespread evidence of tax evasion, corrupt in-kind payments, weak enforcement and other forms of corruption in the extractive industries.

SOEs in Myanmar often operate in joint venture with local and foreign companies. In these cases, there is no state policy of contract disclosure. As a result, there is no mechanism for civil society to monitor projects involving those SOEs. In one case, a member of parliament received a copy of the contract for the Ta Gaung Nickel mine in Sagaing Region, operated by MEI and Myanmar CNMC, a Chinese subsidiary of CNICO. Through parliament, it was disclosed that the contract terms strongly favour CNMC at the expense of the Myanmar public. For instance, the contract states that if the per/ton price of Nickel is below USD\$15,000, the government only receives 1% of the profit. Because of an extreme lack of transparency, it is not yet possible to know why the government agreed to such unfavourable terms. MATA expects that there is widespread corruption within the contracting regime but is currently unable to assess it due to the misuse of confidentiality clauses in contracts.

MATA demands urgent reform of SOEs in Myanmar. There must be an end to the inherent conflict of interests of SOEs so they solely operate as state businesses with no role over regulation, policy development, licencing, revenue allocation and revenue collection.

Other accounts

A key concern of SOE practice in Myanmar is the use of other accounts, which they receive money into and can spend with a high degree of discretion. Before 2012, budget decisions were made solely by the military, with no budget transparency. This gave military leaders a free hand to finance conflict, human rights abuses and to increase the wealth of themselves and their associates. Under Myanmar's democratic reforms, budget decisions, including defence spending, have to be approved by the Union parliament.

Under the current regulatory framework, SOEs may hold funds in other accounts at the Myanmar Economic Bank, recorded by the SOE Budget Department of the Ministry of Planning and Finance (MOPF). This is justified as part of the business development process of SOEs and for staff bonuses and development, which are kept as commercial secrets. According to research by NRGi and the Renaissance Institute in 2018, there is an estimated [USD\\$8.6 billion in other accounts](#).

Through the EITI process, records of funds flowing into other accounts have been noted, which included discrepancies of USD\$24 million in 2015-16. These take place as government to government transactions, between an SOE and MOPF. However, according to information received by the Multi-Stakeholder Group, some other accounts are unaudited and there is limited transparency over other account spending. The NLD government is taking positive steps to bring other accounts into the state budget. Strong, democratic leadership is needed for successful other account reforms to succeed.

MATA urges the government to fully reform other accounts, so all revenue goes into the national budget and is publicly accountable and transparent.

Mining cadastre

Under the EITI standards, mining cadaster data has to be harmonised and made available online, to guarantee transparency and the right to information. MEITI is supporting MONREC establish a Mining Cadaster Department and MATA has engaged in the process in 2018, as a participant of the Mining Cadaster Taskforce.

MATA sees the mining cadaster as a key area of concern because it can support villagers, the media and civil society to access data on mines and implementing companies across the country. The data should prevent land grabbing, as villagers and local civil society would have access to mine coordinates.

MATA remains concerned about the method used to harmonise maps, which could create discrepancies that may negatively impact residents with land in a mining area. Currently, GIS systems are not standardised across departments and if the mining cadaster is not based on the coordinates used by local residents, it could lead to a loss or reduction of land. Implementation is further challenged by the military's hold on GPS data for Myanmar.

About MATA

The Myanmar Alliance for Transparency and Accountability (MATA) is a national network of civil society actors that aims to promote greater transparency and accountability in the management of the natural resources of Myanmar. MATA consists of 518 members from all 14 states and regions in the country.

The vision of MATA is for a federal democratic country with sustainable development that is driven by active participation of the people. The mission is to engage civil society in promoting transparency and accountability for good natural resource management that benefits all the peoples of Myanmar.



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The network emerged from the government’s decision to join the Extractive Industries Transparency Index (EITI), a global standard to promote open and accountable management of natural resources in 2012. The EITI standard requires that a Multi- Stakeholder Group (MSG) consisting of government, private sector and civil society representatives be established to oversee the EITI process in each country. Following the government’s decision to join, a group of concerned organisations held a consultation of civil society from the 14 states and regions in Myanmar, during which the MATA network was formed. Consequently, MATA organised elections to select the nine civil society representatives to the EITI MSG through its national network structure.

The network is also engaged in other initiatives for promoting greater transparency and better resource management, such as the Open Government Partnership. While focusing initially on extractive industries, MATA is expanding its scope to also address issues within the forestry and fisheries sector, as well as to other areas that have an impact on natural resources, land use and the environment.

MATA’s strength is its ability to bring together a wide range of community stakeholders from all states and regions and to bring different perspectives to address common issues. The national MATA network is organised into regional networks in each of the states and regions of Myanmar. Within each regional network, members elect 15-30 representatives who form the Regional Working Group, which guides and implements activities in each state and region. Each Regional Working Group selects 5 Regional Representatives to participate in the National Working Group, which consists of a total of 70 members (5 from each of the 14 states and regions). The National Working Group represents the national assembly and meets twice a year to provide overall guidance for the network.

In order to make key decisions on the direction and functioning of the network and the MATA Programme, the National Working Group elects a Steering Committee consisting of one representative from each state and region and the 9 elected EITI MSG members. The Steering Committee provides oversight and makes strategic and policy decisions with regards to the MATA Programme. Additional sub-committees are established as needed.

The network is supported by a national Secretariat and Coordination Office based in Yangon. At the regional level, activities are implemented by regional network members, coordinated by Regional Working Groups. Activities at the national level are coordinated by the MATA Secretariat and implemented in close collaboration with MATA members.