

Testing Transparency: The Political Economy of the Extractive Industries Transparency Initiative in Myanmar

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Executive summary

This paper explores the political economy dynamics of extractive resources in Myanmar and, specifically, the Extractive Industries Transparency Initiative (EITI) process. It examines the interests of political, administrative, private sector and civil society actors engaged in this process and the contests among them. It considers how the EITI process has contributed to Myanmar's continuing economic and political reforms and identifies the potential difficulties in implementing it. Emerging lessons include: that a limited and technically focused international initiative such as the EITI can sometimes provide a vehicle for potentially significant domestic reforms – particularly at moments of broader political and economic change; that shared decision-making platforms for state, private sector and civil society actors can play an important role in building trust and delivering reforms in low trust settings; and that progress, however, may be built on contestation as much as it is on cooperation and coordination. These lessons are also relevant for other resource-rich countries seeking to improve extractives governance.

The context

Myanmar is in the midst of a significant political and economic transformation. In 2011, many of Myanmar's ruling generals swapped their uniforms for suits and launched a series of fundamental reforms. In November 2015, Aung San Suu Kyi's National League for Democracy won a landslide victory in openly democratic elections, and on 1 April 2016 her close ally Htin Kyaw takes office as President.

Observers ask whether Myanmar can continue to move from a political and economic system that is closed, exclusionary and informalised to a system that is rules-based, open, inclusive and fair. An important facet of this is open and accountable management of natural resources, which the EITI seeks to promote. In late 2012, Myanmar's government agreed to sign up to the EITI and work towards compliance with this global standard as a flagship reform.

This has had both practical and symbolic significance. The country is rich in natural resources which, until now, have been exploited for the personal gain of the military elite and their business allies and, in regions where resources were controlled by non-state armed groups, to bankroll conflict. More open and equitable governance of those resources could provide a sound basis for the development of both Myanmar's economy and its new democratic institutions; but the EITI process could also set a precedent for how Myanmar's government, its private sector and its civil society groups interact in the future. It has the potential to act as a wedge that could, over time, expand the space for transparency and accountability in the extractives sector – and beyond.

Methodology

This study is based on interviews and direct observation, and textual analysis of both published and grey literature. The author relied on four primary sources of information:

- Extended, semi-structured interviews with a broad range of actors engaged in or knowledgeable about the EITI process in Myanmar. Around 50 interviews were conducted over 20 months.
- Published and unpublished data on Myanmar's extractives resources and industries (though reliable data are scarce) and on Myanmar's political actors and institutions and its overall reform processes.
- Stakeholder and actor-network analysis to identify key EITI-relevant individuals and organisations in government, civil society and the private sector. This maps their economic and political interests and their connections to one another.
- Observation at first-hand of Myanmar's EITI process from 2013 to 2015.

Key findings

The EITI's multi-stakeholder group (MSG) has provided a forum for cooperation among the state, business and civil society in Myanmar. It has built a basic level of trust among these actors and allowed them to make significant headway on Myanmar's EITI candidacy. Progress, however, has often come as much from contestation and conflict among these actors as it has from collaboration. This is hardly surprising given the vested political and economic interests at stake. Civil society actors have used

the MSG to challenge business and government counterparts and to push Myanmar's EITI process to be both broader and deeper than many observers expected.

Myanmar's EITI process has also provided a platform through which a wider range of reforms and issues are being debated. These include beneficial ownership, prior informed consent, contract transparency and improved monitoring of and compensation for the social and environmental impacts of extractives projects.

In addition, the EITI process has led to the creation of the Myanmar Alliance for Transparency and Accountability (MATA), a nationwide umbrella organisation for civil society actors engaged in MEITI and other resource governance processes. MATA has fostered civil society coordination not only for the EITI, but also for other areas of accountability and resource governance. It is continuing to expand its membership and activities.

While Myanmar's EITI process is creating a foundation for potential improvements to resource governance – which could in turn boost peacebuilding – it faces challenges. These include inflated expectations, capacity constraints, pressure from criminal networks, the risk of civil society fragmentation, and concerns among ethnic civil society groups about government control over extractives in the borderlands.

Implications

What are the implications of this analysis for those working on the EITI and other transparency initiatives in Myanmar and elsewhere?

Sustaining leadership: Strong executive, civil society and private sector leadership initiated and maintained Myanmar's EITI process. Sustaining progress on EITI, however, has been more difficult and suggests the importance of skills and support in facilitation, negotiation and managing meetings.

Building relationships and trust: Fostering trust and collaboration within civil society and between civil society, business and government is challenging but essential. Shared decision-making platforms such as Myanmar's multi-stakeholder group bring actors together and build collaborative capacity. Continuing mediation and shuttle diplomacy by trusted intermediaries maintains and deepens trust.

Providing longer-term incentives for reform: Once candidacy and particularly EITI compliance are achieved, the reputational benefits of EITI decrease. There is evidence from other countries that this can slow the pace of and commitment to reform. It would be useful to explore how the EITI process could continue to develop incentives for further extractives governance reform in candidate and compliant countries.

Deepening EITI below national level: The EITI in Myanmar and elsewhere might explore how it can engage more at subnational and downstream levels. In countries like Myanmar, where regional and local concerns about extractive resources and revenues are particularly important, state and regional EITI pilot schemes could be expanded, and greater effort could be made to track downstream licensing, production and payments.

Engaging parliaments: There is substantial interest in EITI among parliamentarians in Myanmar and elsewhere. One area to consider is how relevant parliamentary committees could acquire the capacity to understand and review EITI reports.

Encouraging innovation and adaptation: The 2016 EITI Standard has optional components (for instance, improving contract transparency) that could help to extend the EITI process across more of the extractive industries value chain. EITI-compliant countries could be further encouraged to adopt these components and rewarded for doing so. They could also be encouraged to apply EITI approaches to other resources (such as hydroelectricity) where relevant.

Making EITI relevant and tangible: There is a risk in Myanmar and elsewhere that EITI's focus on extractive revenue is too technical and abstract to inspire sustained citizen and civil society commitment. The information EITI produces will need to be locally relevant where possible. This suggests a need for effective, sustained communications and public engagement and for an EITI process that is linked to tangible priorities. These priorities might include revenue sharing and fiscal devolution, preventing environmental degradation, and attending to the local economic and social impact of extractives projects.

Managing expectations: It is important to manage expectations about what the EITI can deliver. It is a technical instrument focusing on revenue transparency, and if it is oversold or overburdened, important civil society actors may become disillusioned or even seek to discredit the process.

Linking to other reforms: The EITI process alone cannot deliver sustained improvement in resource transparency and governance. It needs to be accompanied by initiatives to strengthen the judiciary, parliamentary and statutory oversight and the media, and to address grievances.

Guarding against 'initiative clutter': Introducing too many initiatives could undermine reform efforts already underway.

1

Introduction

In recent years, analysts and policy makers have developed increasingly insightful and sophisticated frameworks for exploring the links between politics, economics and extractive resources – oil, gas and minerals. They have moved beyond blanket statements about the ‘resource curse’ (through which a country’s resource wealth is seen to reinforce poor governance and feckless economic behaviour) and toward a more nuanced and better-evidenced analysis of how extractives can influence fiscal policy and taxation, leadership and accountability, rent-seeking and corruption, and political settlements. At the same time a range of instruments have been created, including the Extractives Industry Transparency Initiative (EITI), that seek to improve the governance and transparency of extractives globally and at a country level.

This paper explores the political economy dynamics of extractives and the EITI process in Myanmar. It examines the interest of and incentives facing government, private sector and civil society actors engaged in Myanmar’s EITI. It also highlights the opportunities for the EITI to contribute to Myanmar’s ongoing economic and political reforms and the potential pitfalls entailed in its implementation. The paper aims to provide insights not just for those interested in Myanmar’s complex and ongoing reform process, but also for those working in other resource-rich countries attempting to improve the governance of extractive resources.

Myanmar is a complex and salient context in which to explore the political economy dynamics of extractives governance and efforts to improve transparency. Myanmar is extraordinarily well endowed with renewable and extractive resources. Rather than providing the foundation for prosperity, however, these resources have tended to bolster Myanmar’s authoritarian systems of government and its economic mismanagement, and fuel its protracted civil wars. In 2013, Myanmar ranked 58th out of 58 countries in Revenue Watch’s Resource Governance Index and was ranked 156 out of 174 countries on Transparency International’s most recent Corruption Perception Index (Natural Resource Governance Institute undated) ; Transparency International 2014).

Since 2011, however, Myanmar has embarked on a significant political and economic transformation, with the government ushering in a range of fundamental reforms. Many of the country’s ruling generals have swapped their uniforms for suits. The armed forces have loosened their iron grip over the economy, society and the state. The government has re-opened peace negotiations with non-state armed groups, relaxed restrictions on the press and on freedom of association, released political prisoners and opened up the political process to the Aung San Suu Kyi-led National League for Democracy (NLD). These reform processes are redefining the political settlements and rewriting many of the fundamental rules of the game for politics, public administration, state-citizen relations and the economy in Myanmar.

Joining the EITI is one of the Myanmar government’s flagship reforms. In December 2012, President U Thein Sein publicly committed Myanmar to the EITI. Presidential Decree No. 99 established the Myanmar EITI Leading Authority and Coordinating Body. In December 2013 he re-emphasised his commitment to the EITI process, declaring: ‘We want to use the EITI to ensure that resources are developed and managed in a transparent manner for the sustainable benefit of our people. Becoming a member of EITI will be a tangible result from these reforms.’ (EITI Secretariat 2013b).

At the same time, the government’s core policy planning document, the Framework for Economic and Social Reforms (FESR), declared:

As part of the process of reforming management of natural resources, the government is committed to implementing EITI, which requires governments to publicly disclose their revenues from oil, gas and mining assets, and for companies to make parallel disclosures regarding payments. By signing up to the global standard that EITI sets, Myanmar can enhance the accountability and transparency of her revenue collection efforts. In an accelerated time frame, Myanmar will issue an unequivocal public statement of its intention to implement EITI and begin extensive collaboration with civil society and companies on EITI implementation. (Union Government of Myanmar 2012: 27)

Myanmar’s most famous daughter, Aung San Suu Kyi, has also backed Myanmar’s EITI application in a number of high profile speeches at home and abroad. In a 2012 speech to the UK Houses of Parliament she highlighted the importance of extractives transparency in general and the EITI process in particular as a means of delivering real benefits to Myanmar’s people and strengthening the democratic reform processes (BBC Parliament 2012).

This paper uses the case study of Myanmar's EITI (MEITI) process to explore a range of questions of interest to those working on resource governance and transparency, evolving political settlements and political and economic transitions. In particular the paper aims to address the following:

- How does extractives wealth shape a country's political and economic institutions and, conversely, how do these institutions shape how this resource wealth is governed?
- What are the possibilities and limits of international governance and transparency initiatives like the EITI in improving domestic governance and resource management?
- To what extent can these initiatives build effective working relationships between government, business and civil society actors?
- What are the emerging lessons from Myanmar for the EITI process as a whole and for other countries implementing the EITI?

Overall, Myanmar's EITI process provides a window into the broader political and economic contests currently underway in Myanmar. At an overarching level, the country's current transition can be seen as a contest over the nature of the political settlement and the openness and inclusivity of Myanmar's political and economic system. Can Myanmar continue to make the shift from a political and economic system that is closed, exclusionary and informalised to one that is more rules-based, open, inclusive and fair?

While the EITI process is just one facet of this broader contest, it is symbolically important. It also has the potential to set a precedent for how Myanmar's government, its private sector and its civil society groups interact on future policies. As an internationally recognised standard, the EITI has weight and legitimacy. For the first time in Myanmar's history, it also brings government, civil society and business to the same table to improve the governance of Myanmar's resource wealth.

1.1 Methods

Grappling with these and other questions requires an applied political economy perspective – an approach that focuses on the 'interaction of political and economic processes in a society: the distribution of power and wealth between different groups and individuals, and the processes that create, sustain and transform these relationships over time' (OECD 2008, cited in UNDP undated). In practice, this means analysing the ways in which economic and political actors vie for and use resources and power; and the ways in which formal and informal 'rules of the game' and deep-seated political and economic structures shape strategies, incentives and actions of political and economic actors (DFID 2010; Hudson and Leftwich 2014).

The author began research in mid-2013, following the government's creation of the MEITI Leading Authority. This initial analysis led to a report for development partners working in support of the EITI process. In 2014-15, the author continued to conduct focused interviews with MEITI participants and observers and to track the progress and pitfalls of Myanmar's EITI process. Field visits to Myanmar were conducted in May 2013, November 2013, April 2014, July 2014, September 2014, November 2014, January 2015, May 2015 and November 2015.

This study is based on interviews and direct observation, and textual analysis of both published and grey literature. The author relied on four primary sources of information:

- First, the author conducted extended, semi-structured interviews with a broad range of actors. Those interviewed were purposively selected from those engaged in or knowledgeable about the EITI process in Myanmar. Interviewees included: government ministers, administrators and parliamentarians; political party leaders and activists; the owners and senior staff of domestic and international extractives enterprises; civil society organisations and activists; researchers and academics; journalists; diplomats and development agency staff; and international non-government organisations (INGOs). Overall, around 50 interviews were conducted over the course of 20 months.
- Second, the study draws on published and unpublished data on Myanmar's extractives resources and industries, and on analysis of Myanmar's political actors and institutions and its overall reform processes. Given the historically closed and opaque character of Myanmar's political and economic system, reliable data on the character of extractive industries is scarce – something that the EITI process obviously aims to address. This study does, however, draw on what reliable data is available from public and other sources. It also draws on publicly available minutes from MEITI multi-stakeholder group meetings and other workshops and events related to the MEITI process.
- Third, interviews were complemented by stakeholder and actor-network analysis. This analysis builds on publicly available information to identify key EITI-relevant individuals and organisations in government, civil society and the private sector. It maps out who these individual and organisational actors are and their economic and political interests. It then explores how these actors are connected to one another through shared economic, political and social networks. This approach helps to shed light on some of the deeper connections between government, the military and the private sector; for instance.

- Finally, the author has been an observer of the MEITI processes over the past three years. This has made it possible to observe at first-hand the dynamics, challenges and opportunities entailed in the MEITI process so far. These observations have deepened this analysis of how the political and economic contests entailed in EITI process are playing out in practice.

In the interest of confidentiality, this study does not provide the names and titles of interviewees, but aims to provide sufficient information about their position to illustrate their reliability as a source.

1.2 Overview

Section 2 of this paper briefly explores the links between extractives, governance and transparency and the theory and practice of the EITI.

Section 3 analyses the political economy of extractives in Myanmar. It examines how the country's extractive resource wealth has been intertwined with its conflict-prone and extractive political system. It also explores the characteristics of the extractive sectors to be included in the first MEITI report (oil and gas, and mining) and hydropower (which will be the subject of a feasibility study in the MEITI scoping study).

Section 4 explores the actors (state, business and civil society individuals and organisations) engaged in the EITI. It examines not just who these actors are, but also what their interest is in the EITI process and what influence they have over it.

Section 5 explores the collaboration and the contests that are at the heart of the EITI process. It examines the steps taken for Myanmar to become an EITI candidate country and towards EITI compliance. It then looks at Multi Stakeholder Group (MSG) dynamics and efforts to build trust and a working relationship between the government, civil society and business actors engaged in the EITI. It explores the political and economic contests at the heart of the EITI process and the ongoing challenges facing EITI implementation in Myanmar.

The paper concludes by reflecting on the prospects for greater transparency and improved resource governance in Myanmar. It considers future challenges to the MEITI process and what the Myanmar case study reveals about the role of EITI and other global governance initiatives in shaping domestic political and economic reforms.

Myanmar's EITI is very much a living process. While Myanmar has signed up as an EITI candidate country, it has much ground to cover before it is EITI-compliant. It is a country in the midst of profound change processes. Myanmar is grappling with significant organisational, political and economic change while simultaneously navigating a peace process and its first openly democratic elections in almost fifty years (held in November 2015). Myanmar's political and economic reforms are significant but remain fragile. In this context, key actors and their interests are in flux with new players and new contests likely to emerge over relatively short periods of time. This paper should therefore be seen as a snapshot of a very dynamic process.

2

Extractives, governance and transparency

Extractive industries present both a significant opportunity and a substantial risk to the economic and political development of resource-rich countries. The revenues from extractives, if well managed, have the potential to finance the building of infrastructure, the delivery of public goods and services and the creation of jobs and income. In practice, however, extractives often pose as much of a threat as an opportunity. Resource wealth can, and often does, distort domestic economies, undermining the quality of governance and fuelling exclusion and conflict (Auty 2001; Auty 2007; Brooks and Kurtz 2012; Collier and Hoeffler 2012; Sachs and Warner 2001).

Over much of the past decade, growing demand and increasing commodity prices have fuelled significant exploration and investment in extractive industries. New technologies have also made the extraction of previously uneconomic sources of hydrocarbons and minerals an attractive proposition. Large-scale exploration has led to major new discoveries of commercially viable oil and gas fields and mineral deposits, and high levels of foreign direct investment have followed (theIDLgroup 2013). While commodity prices have declined more recently, in the longer term demand for extractive resources is likely to remain high and extractive industries are likely to remain a long-term driver in the global economy.

Alongside the growth of the extractives sector, analysis of the political issues and governance challenges of converting extractive resources into development outcomes have become more sophisticated. Our understanding of these dynamics has moved beyond broad generalisations about the risks of 'resource curse' towards a better understanding of how extractives influence public finance, political competition, public policy priorities and state-citizen relations. There is also increasingly robust and insightful analysis of the ways in which domestic governance is influenced by international actors and markets for extractive resources (see, for instance, Barma et al. 2012).

For many analysts and advocacy groups, improved transparency and accountability are seen as the foundations upon which improved governance can be built – paving the way for countries to use their resource wealth to deliver growth and human and social development (see, for instance, publishwhatyoupay.org). Proponents of transparency argue that open and accessible information makes markets work more efficiently; enhances trust and cooperation between citizens and their governments; stimulates government responsiveness; reduces corruption and mismanagement; and increases the legitimacy of decisions and institutions. As Haufler notes, transparency is seen by some as 'the Swiss Army Knife of policy' (2010: 55).

The last decade has also seen the emergence of a range of new international initiatives, agreements and codes of conduct that aim to improve transparency and the governance of extractives. These mechanisms aim to improve the conduct of global business actors, to increase the transparency and integrity of bidding and contracting processes, to track extractives revenues, to track the origin and legitimacy of specific extractive and renewable resources, and to enable governments, businesses and civil society to work together. Although the focus of this paper is on EITI, other initiatives of note include: the Revenue Watch Resource Governance Index, IFC standards on environmental and social management of extractives, the Dodd-Frank Act, the Kimberly Process, the Forest Law Enforcement Governance and Trade (FLEG-T), Equator Principles, and the Voluntary Principles on Security and Human Rights.

2.1 The EITI

Launched in 2002, the Extractive Industries Transparency Initiative is a 'global Standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust' through a coalition of government, companies and civil society (EITI Secretariat, *What Is the EITI?*).

There are two key steps to EITI implementation. First, the candidate country must form a board with representatives from government, the business sector and civil society. This board, known as the multi-stakeholder group (MSG), is responsible for overseeing the implementation of the EITI in the country. Second, the country must develop and implement an annual reporting framework (an EITI Report) in which all significant payments to government from extractive industry companies are reconciled against government receipts.

For its proponents, the EITI process offers a means through which transparency and governance can be improved in resource-rich countries. The EITI assumes that the enhanced flow of information generated by its reporting processes can be

used by citizens and civil society to hold governments and companies to account for how they use and generate revenues from a country's resources. This, it is argued, can improve governance overall and encourage governments to invest in economic and human development outcomes.

Benefits for implementing countries include an improved investment climate [...]. EITI also assists in strengthening accountability and good governance, as well as promoting greater economic and political stability. This, in turn, can contribute to the prevention of conflict based around the oil, mining and gas sectors (EITI Secretariat, *What is the EITI?*).

The requirements for EITI membership are summarised in Box 1. EITI members can, however, go beyond these requirements. The 2013 *EITI Standard* says: '[T]hese are minimum requirements and implementing countries are encouraged to go beyond them where stakeholders agree that this is appropriate.' (EITI Secretariat 2013a: 10) The new 2016 Standard strengthens recognition of efforts to go beyond minimum requirements:

Where Validation concludes that the multi-stakeholder group has comprehensively implemented 'encouraged' or 'recommended' aspects of the EITI Standard, and/or MSG work plan objectives, the EITI Board will recognise these efforts in the assessment card. (EITI Secretariat 2016a: 34)

Until recently, the EITI has directly tackled only one link in the extractive industry value chain (see Figure 1): the collection of taxes and royalties. It did not engage with the award of extractives contracts and licenses, the regulation and monitoring of extractive operations or how revenues (once collected) are managed and allocated. Its proponents argue that a targeted focus on revenues has the potential to have a ripple effect – improving the transparency of other links in the extractives value chain.

Recent reviews of global transparency initiatives and the EITI, however, highlight the limitations of this narrow focus on transparency and access to information. Gaventa and McGee's (2010) wide-reaching review of international initiatives to support transparency and accountability shows that while transparency may be a necessary condition for greater accountability, it is not always a sufficient one. Reviews of EITI itself come to similar conclusions. In a 2011 review of the EITI, Scanteam stated that there are 'few indications that EITI programmes are so far having impact on dimensions such as governance, corruption, poverty reduction or other objectives that were stated in EITI's *Articles of Association*' (Scanteam 2011).

O'Sullivan (2013) and Scanteam (2011) show that the EITI has the potential to make a difference to the governance of extractives sectors and to change norms and expectations of governance and accountability in a wider sense by supporting informed public debate about the sources and uses of revenues. Whether EITI actually delivers these kinds of benefits is dependent on the quality of the other institutions that must enforce accountability, such as the legal system and parliament. It also depends on the other reform processes that accompany EITI, the quality and sustained engagement of civil society in the process and the degree to which the government continues to invest its political capital in EITI once compliance has been reached.

David-Barrett and Okamura note that there is a tendency for more corrupt countries to join the EITI. Of the 23 countries that achieved EITI compliance by 2013, only three have a Corruption Perception Index (CPI) score greater than 40 on a scale where 0 means a country is perceived to be highly corrupt and 100 means the country is perceived to be very clean (David-Barrett and Okamura 2013). They argue that corrupt countries join EITI because they are concerned about their international reputation and access to aid. Their quantitative analysis shows, however, that the EITI process does contribute to reduced perceived corruption – with a country's CPI score improving in the years following its commitment to become an EITI candidate.

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Others have been even more sceptical of the limited focus of EITI. Bracking (2009), for instance, argues that governments and businesses can use EITI as a 'fig leaf'. The EITI process, she argues, provides governments, big businesses and donors with a highly visible and internationally recognised symbol that something is being done to promote good governance, while at the same time failing to address the underlying political and economic system. She notes that:

Box 1: EITI Requirements

- Effective oversight by the multi-stakeholder group.
- Disclosure of the rules for how the extractive sector is managed, including allocation of contracts and licenses.
- Disclosure of information on exploration, production and exports.
- A comprehensive reconciliation of company payments and government revenues from the extractive industries.
- Disclosure of information on revenue allocations, including distribution of revenues, subnational transfers, and revenue management and expenditures.
- Disclosure of information on social expenditures and the impact of the extractive sector on the economy.
- Timely publication of EITI Reports.
- A credible assurance process that applies international standards.
- EITI Reports that are comprehensible, actively promoted, accessible, and contribute to public debate.
- Steps taken by the multi-stakeholder group to act on lessons learned, address discrepancies and review the outcomes and impact of EITI implementation.

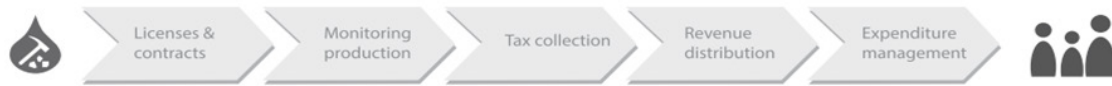
(Source: EITI Secretariat 2016a)

The principal benefit to a signatory government is arguably a political one: the ability to make a fanfare over not very much. The holding of a national conference and stakeholder meeting, the publication of a report and anointing of a Secretariat all add to the anti-corruption credentials of an administration with little actual cost in the spoiling of nepotism or patronage. (Bracking 2009).

As O'Sullivan also notes: 'At the risk of stating the obvious, the mere fact that government publishes information does not mean that fundamental changes in its workings are taking place.' (O'Sullivan 2013)

Partially in response to these shortcomings, the EITI Secretariat revised, simplified and strengthened the EITI rules in 2013 through a new EITI Standard (2013a). This included stronger reporting requirements so that the EITI Report provides 'the full picture of revenues received' (EITI 2013a) and covered more of the extractives value chain – the steps from the extraction of natural resources, to their processing and sale, all the way through to the ultimate use of the revenues (See Figure 1). The 2013 reforms also aimed to bring the EITI Standard into line with new rules in the United States and the European Union – both the USA's 2008 Dodd-Frank Act and the EU's 2013 Accounting Directive require listed companies engaged in logging or extractive industries to declare any significant payments to the governments of the countries where they operate.

Figure 1: The extractive industries value chain



Source: EITI Secretariat (2013a)

Myanmar was one of the first countries to become a candidate under the broader 2013 EITI Standard. Specific changes to the EITI in 2013 included the following:

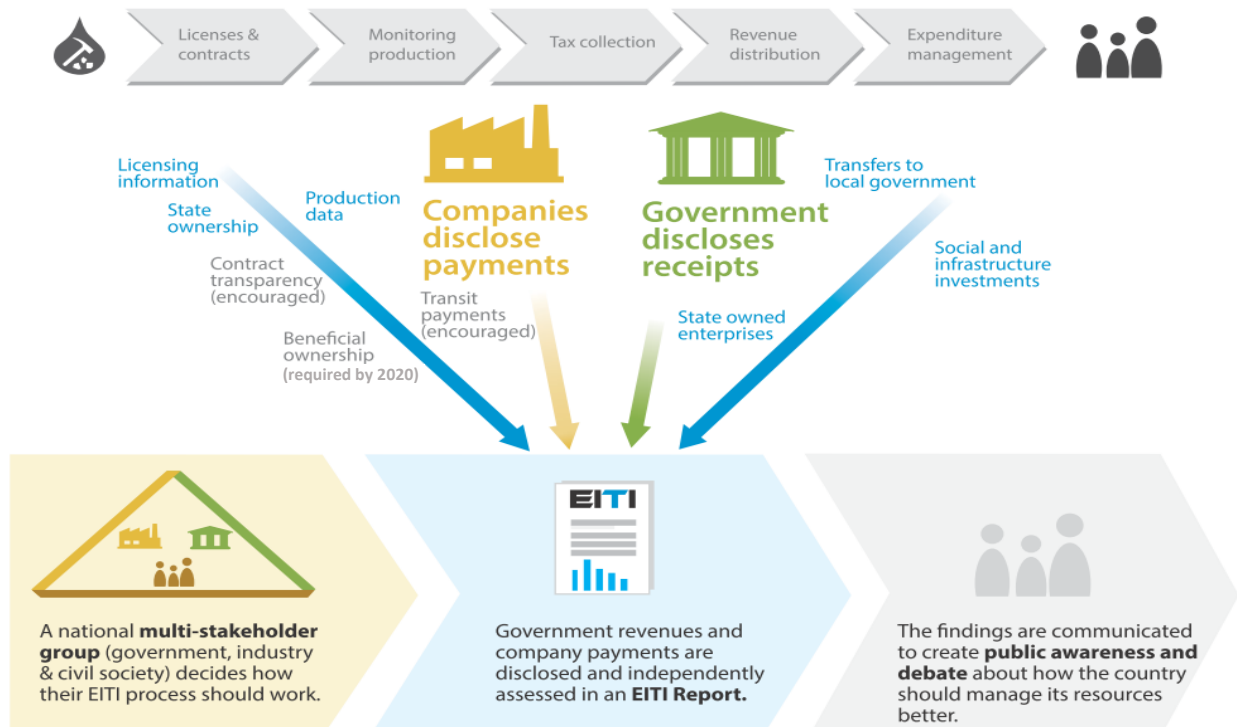
- EITI reports should show payments by each individual company rather than aggregated data;
- EITI reports should disclose payments from state-owned companies;
- countries should maintain a license register with up-to-date information such as which companies hold which licences, the coordinates of the licence area, and the duration of the licence area;
- countries are also required to disclose information related to the award or transfer of licences;
- social payments from companies should be disclosed if they are mandated by law or if part of the company's contractual obligations;
- disclosure of transfers between levels of government are also required where mandated by law or other agreed revenue-sharing mechanism;
- countries are encouraged to disclose contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals;
- it is recommended that countries maintain a publicly available register of the beneficial owners (the ultimate owners of business) of the corporate entity(ies) that bid for, operate or invest in extractive assets.

A new EITI Standard was launched in February 2016. It encourages countries to use 'existing reporting systems for EITI data collection and make the results transparent at source, rather than duplicating this exercise through EITI reporting' (EITI Secretariat 2016a: 8). From 1 January 2020, disclosure of beneficial ownership – who owns the companies that bid for, operate or invest in extractive projects – will become a requirement (ibid.: 21). In addition, validation assessment will 'to a greater extent ... incentivize continuous improvements in implementation' (EITI Secretariat 2016b).

These changes have the potential to extend the breadth and impact of the EITI process, especially if some of the optional recommendations are included. Reporting payments by individual companies and the disclosure of contract details could, for instance, allow civil society and citizens much greater scrutiny over individual extractive projects. The disclosure of beneficial ownership and state-owned companies might help non-state actors to untangle the complex web of ownership and interests that often underpin extractive investments. The disclosure of social payments and transfers to local government could help local citizens and local government have a clearer sense of whether and how an extractive project investment benefits them.

The EITI process and its links to the extractives value chain are summarised in Figure 2.

Figure 2: The EITI



Source: EITI Secretariat (2013a; 2016a)

3

Extractive politics, extractive resources: the context for reform in Myanmar

Myanmar has a troubled history. For most of the past five decades, Myanmar has been under direct or indirect rule by a military-backed regime that grew increasingly repressive, extractive and isolationist over time. The country has been wracked by conflict since independence from Britain in the 1948; its civil wars are the longest running in the world. Economically and socially, Myanmar's long suffering citizens have seen their country slip from being the most prosperous in South East Asia to its poorest. They have also watched their infrastructure and their health and education systems deteriorate as a result of decades of underinvestment and mismanagement. Against this backdrop, citizen trust in government is low, state capacity is weak and state and non-state institutions are seldom inclusive and fair. This exclusionary and extractive political and economic system has been intertwined with Myanmar's extractive resources.

This section briefly explores the structural and institutional aspects of Myanmar's political economy that have fundamentally shaped the use and governance of extractive resources in the past, and will continue to shape the prospects for extractives governance and transparency in the future.

In particular, it highlights:

- the extractive and exclusionary character of Myanmar's political system;
- the linkages between extractive resources and conflict;
- the centralised and siloed character of the state;
- Myanmar's relationship with its neighbours and the international community;
- the limited reach and capacity of the state; and
- the elite-dominated and resource-dependent character of the economy.

This section then briefly examines the extractive resources that are included in the Myanmar EITI scoping study and initial MEITI report: oil and gas, and mining. It also looks at the hydropower sector which is the subject of a feasibility study in the MEITI scoping study. It briefly explores the character, scale and geography of each of these resources; it considers the actors engaged in their extraction and processing; and (where possible) the revenues involved.

3.1 Extractive politics

An extractive and exclusionary economic and political system

Myanmar's political and economic system has long worked to benefit elites rather than the majority of the country's population. In the pre-colonial era, the Burmese state was structured in ways that reinforced the wealth and power of a traditional ruling elite. Under colonial rule, Burma became the rice bowl of Asia, but the growth in production was aimed not at building domestic prosperity but at feeding the rest of the British Empire.

Under the military regime, the economic and political system became increasingly centralised and predatory, focused on enriching and empowering military officers and their business allies. The military government of 1988-2011 tended to see Myanmar's population as a source of economic rents and its natural and extractive resources as wealth to be captured and exploited (Steinberg 2005). The government, with regional and local military commanders, developed a system of in-kind taxation and procurement to finance their activities, regularly expropriating land for development and forced labour for their projects. Military leaders and their families, in partnership with economic allies (cronies and external businesses), used their coercive power and gate-keeping roles to exploit and profit from Myanmar's renewable and extractive resources (such as hardwoods, jade and gems). As one analyst notes: 'The military acted like a vortex, sucking in resources and moving its own agenda forward at the polity's expense.' (Prasse-Freeman 2012: 375).

The state has also been highly exclusionary. Under the military regime, political power was concentrated in the hands of ethnically Burman male elites. This continues to be the case; few non-Burman officials hold positions of significant authority

in government and all high ranking military officers in the armed forces (*Tatmadaw*) are Burman men. Even Myanmar's civil society organisations, think-tanks and media outlets tend to be dominated by Burman men (Simpson 2014b).

The Burmese nationalist agenda pursued by post-independence governments sought to impose an exclusionary identity that structurally marginalised nearly a third of the country's population, particularly non-Burman ethnic groups living in Myanmar's borderlands. From the 1960s onward, successive governments sought to enforce a unified national identity based on the Burmese language, lowland Burmese culture and Buddhism. This exclusionary vision of the state contributed to economic and social exclusion and uneven development. While data are scarce, existing surveys show that poverty is highest in ethnic areas and that these areas scored significantly worse on a range of human development indicators than the lowland, Burmese areas of Myanmar (UNDP 2011). Poverty rates in Rakhine and Chin States, for instance, are estimated to be above 70% (World Bank 2014b).

It will take time to undo the legacy of an economy and political system focused on rent-seeking rather than production, and on elite enrichment rather than shared prosperity and poverty reduction. It creates significant barriers to the sorts of openness and transparency the EITI process aims to foster.

Conflict and extractives intertwined

Myanmar has experienced near-constant conflict since the 1940s. Conflict has undermined economic growth, poverty reduction and human development across Myanmar, but particularly in its ethnic borderlands. Politically, perpetual conflict has served to justify military rule and the militarisation of the state. It has also helped to reinforce the self-image of the Armed Forces (*Tatmadaw*) as 'the defender of national integrity'.

There are currently 17 significant non-state armed and political groups (NSAGs) operating along Myanmar's ethnic borders. In addition to these larger groups, the Myanmar Peace Centre (MPC) estimates that there are around 3,000 small scale militias and paramilitary groups, including dozens of government-organised border guard forces (BGF) and militias. All told, the MPC estimates that there are around 300,000 non-state armed combatants in Myanmar (Burma News International 2013).

Myanmar civil wars have been fuelled by political ideology, historical grievances, and social, ethnic, political and economic exclusion. Exploitation of extractive resources has helped to finance conflict and is also a significant source of grievance for those living in the ethnic borderlands. Rather than forge an inclusive political system, successive military-dominated governments relied on force, coercion, co-optation and the allocation of rents to govern. The armed forces relied on revenue from oil and gas to finance the military machine, while in the recent past regional commanders were allocated the rights to resources in their territories to augment the salaries of their soldiers and for individual benefits. NSAGs have also relied on revenue from extractives and renewables (such as mining, timber and opiates) to finance their military wings and quasi-government functions (Buchanan, Kramer, and Woods 2013).

The majority of Myanmar's most valuable extractive and renewable resources are in its contested borderlands where there has been a history of conflict. These same parts of the country are the focus of most significant investment in extractive industries. About 65% of all approved foreign direct investment (FDI) has been in the conflict-affected ethnic states of Rakhine, Shan and Kachin (Buchanan, Kramer, and Woods 2013), a figure that is likely to be significantly higher if 'unofficial' investments are included. The maps in Figure 3 illustrate this overlap between extractives, ethnic minorities and conflict.

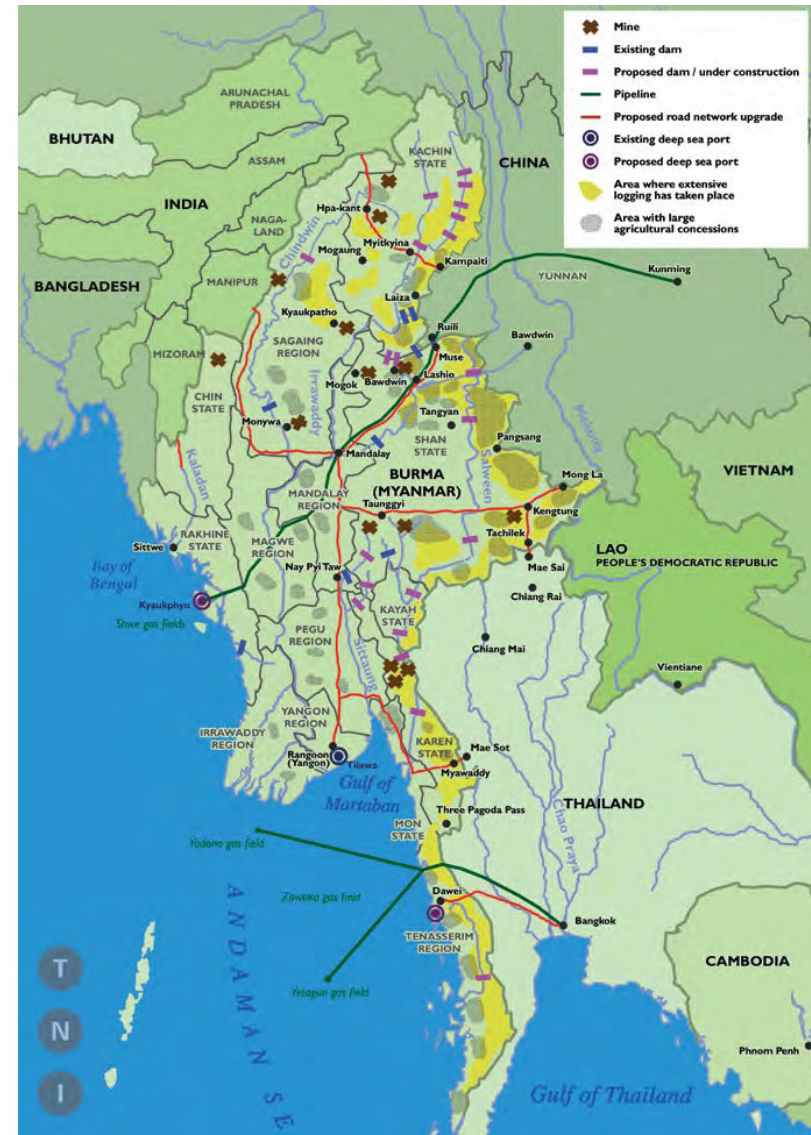
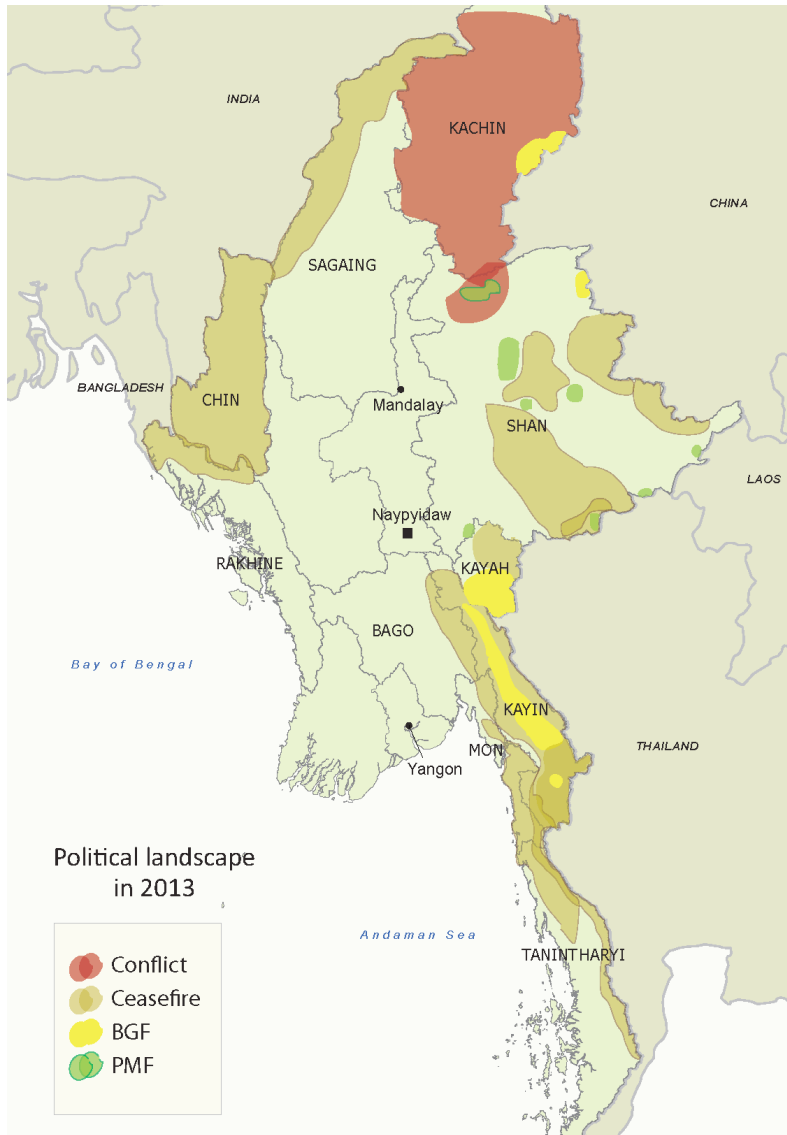
Long-term improvements to resource governance in Myanmar are intertwined with Myanmar's peace process and the political dialogue that will review the relationship between the central government and Myanmar's ethnic states and regions.

As part of its broader reform strategy, the Myanmar Government launched a comprehensive peace process in 2011. Since then, the government (and military) has conducted peace talks with all of Myanmar's major armed groups, struck bilateral ceasefires with many of them and in October 2015 signed a joint ceasefire with eight NSAGs (Government of the Republic of the Union of Myanmar 2015). The largest and best armed groups, however, the Kachin Independence Army, the Shan State Army and the United Wa State Army, did not sign the ceasefire.

The government has also made a commitment to pursue a national political dialogue that aims to negotiate an end to conflict, but also to map out a more inclusive and devolved political system. This political dialogue aims to engage not just NSAGs, but also political parties and civil society in decisions about the future of Myanmar. This process has yet start in earnest and may be delayed by the NLD's election victory. Any political dialogue, however, will have to include substantive discussions about resource governance and revenue sharing for it to make progress (Yawnghwe 2014).

While active violent conflicts have relied on extractive revenues, periods of relative peace have also triggered scrambles for resources. In previous ceasefire periods, such as during the early 1990s, military actors, the state, NSAGs and domestic and external investors flooded into border areas. This rapid increase in extractives development ended up fuelling further conflict and exclusion. There is a significant risk that this pattern is currently being repeated (Woods 2011). As one well-placed observer of the peace process explained: 'Now that many NSAGs have signed a ceasefire, both the armed groups and the government are busy taking land and allocating resource rights.' Current large-scale investments in hydro, plantations and mining have the potential to undermine ceasefires as people are being displaced and grievances against the state are deepened rather than resolved (Buchanan, Kramer, and Woods 2013).

Figure 3: Extractives and conflict in Myanmar



Note: The map on the left shows areas of ongoing or recent armed conflict. The map on the right shows key large scale extractive projects including oil and gas, mining, hydro projects, logging and agricultural concessions. Note the significant overlap between conflict-affected areas and investment. BGF stands for Border Guard Force and PMF People's Militia Force—two categories of ethnic militias allied with the national army. (Source: Burma News International 2013)

Myanmar is at the strategic crossroads of Southern Asia. It lies at the meeting point of three of the fastest growing, populous and resource-hungry markets in the world: China, India and the ASEAN countries of South East Asia. Myanmar has the potential to act as both transport hub and lynchpin of regional economic integration. As a recent *Economist* article notes: 'Myanmar's geographical position...has become its prime asset.' (Economist 2013)

According to historian Myint-U, Myanmar is at 'the new crossroads of Asia' (Thant Myint-U 2011). Massive infrastructure projects aim to develop trade and transport corridors connecting Myanmar to southwest China and Northeast India, and all of Myanmar's neighbours plan significant investments in Myanmar's renewable and extractive resources.

Myanmar's location also make it geo-strategically significant for countries outside its immediate neighbourhood. For the United States, Europe, Japan and Australia, and its South East Asian neighbours, Myanmar offers a check to China's hegemony in the region. Myanmar features in the US government's strategic 'pivot' from the Middle East to East Asia and Japan has long invested in both building relations and commercial ties with Myanmar (Haacke 2015).

Myanmar's leaders, however, have historically been wary of external actors intervening in domestic affairs. This wariness has deep historical roots and Myanmar has long sought to maintain its identity and autonomy independently of its powerful Chinese and Indian neighbours. In the 1950s this wariness found expression in Burma's role in founding the Non-Aligned Movement. Over subsequent decades, Myanmar has generally sought to create a strategic balance between its neighbours (South 2012: 12). By the mid-2000s, however, many leaders in the previous military regime became concerned that Myanmar was becoming too economically and strategically dependent on China. Chinese investment was \$8.27 billion in 2011 and \$4.35 billion in 2012, mostly in extractives and hydropower, dwarfing other sources of investment (Gronholt-Pedersen 2013). Concerns over Chinese dominance were a significant factor in driving Myanmar's regime to initiate political and economic reforms and to re-engage with the international community. The current government is making a concerted effort to distance itself from China's sphere of influence and is rebalancing its economic and diplomatic relations toward its ASEAN neighbours and OECD countries.

Myanmar's engagement in the EITI should be seen in this light – as a means to expand the range and quality of investment in Myanmar and to counter Chinese hegemony. Despite its recent embrace of international norms, however, this history means that Myanmar's leaders are likely to resist initiatives that they view as imposed or overly prescriptive.

A centralised, competitive and siloed government

The government in Myanmar has historically been centralised and top down. Under the previous military regime, the hierarchies, loyalties and command and control structure of the armed forces were merged with colonial and traditional hierarchical structures of state administration. This system of government, along with the lack of internal checks and balances from either the judiciary or legislature, concentrated political power in the hands of the Number One General and a small cadre of senior military officers.

Within this top-down autocratic system of government, however, there continued to be significant competition and jockeying for position. This competition and factionalism created administrative silos in which ministers (usually appointed generals) and ministries operated with a degree of autonomy and in competition with one another. It was widely held that as long as these ministers channelled sufficient resources upward, they were allowed to run the ministry more or less as their personal fiefdom. In addition, a 'self-sufficiency' model was applied to regional military commanders. These generals were given free-reign to use their military and administrative authority to extract revenue from the local economy. The armed forces have their own separate accountability lines that do not intersect with those of the rest of government. They have their own audit function and the Commander-in-chief directly appoints three of the most powerful ministers in government – the Ministers of Home Affairs, Defence and Border Affairs – all three of whom are serving military officers.

Since Myanmar's 2011 political transition, the President and his political allies have sought to foster greater coordination across government. Public administration, however, remains centralised, siloed and rigid. Central government ministries remain as hierarchical as ever, while state, regional, district and township officials continue to be appointed by and are accountable to the central government. The Home Ministry's General Administration Department (GAD), for instance, continues to appoint and oversee local administrators (Saw and Arnold 2014).

In this context, much of the President's time is absorbed by political management, balancing the ambitions and interests of different factions and powerful individuals both inside and outside of government. Managing this process inevitably entails significant compromises on the reform agenda to keep more conservative elements of the state and military onside. As an experienced Myanmar journalist explained: 'The transition is a chess game to ensure that everyone who can be a spoiler is looked after, but that real change occurs as well.'¹

The continuing siloed and competitive character of the state poses a significant challenge to implementing EITI and other reforms aimed at improving transparency and accountability. Policy coordination and the flow of revenue information flows across government remains a significant challenge and the Ministry of Finance lacks significant convening power over other ministries. Moreover, as will be discussed below in section 4.1, different ministries continue to have strong vested and sometimes competing financial interests in extractive resource revenues.

¹ Interview with a senior Myanmar journalist, Yangon: 9 May 2013.

A weakly institutionalised state with limited administrative and technical capacity

In this context, the state (outside the military) has been weakly institutionalised. Formal institutions of government have not always been robust, deeply rooted or routinised. Public administration has relied on patronage networks, military hierarchies and informal command and control structures rather than on routinised administrative procedures and processes to govern.

Rules, procedures, roles and responsibilities have been intentionally ambiguous, making it possible for those in positions of authority to manipulate them. This has contributed to the high levels of rent-seeking, collusion and graft found in government. Under the military regime, this also meant that the whims of the Number One General were seldom challenged even if this led to ineffective and damaging policy decisions.

This has also been true of the economy. As Turnell notes:

Instead of functioning amidst formal rights and laws, economic activity in Burma exists according to a set of parallel rules of the informal economy - rules determined by arbitrary procedures for dispute settlement, nepotistic patron-client relationships between the military, state and business, extra-legal allocations of natural resource concessions and of licenses to engage in external activity, and by a governing apparatus that is as unpredictable as it is predatory (Turnell 2011: 138).

Fifty years of military rule has also eroded the technical capacity of state organs and undermined the skills and competencies of civil servants. Successive military governments favoured loyalty and military background over technocratic capability (International Crisis Group 2012b: 7). The practice of allocating ministries to regional commanders meant that many key positions in ministries and departments were filled by those who had limited technical competency. Under-investment in education and a significant overseas brain drain have further weakened the quality of the civil service.

Decades of military rule have also ensured that civil servants are both risk-averse and upwardly accountable; they are only likely to act when pushed from above, but even then are likely to avoid exposing themselves by taking significant action. As a former senior administrator explained: 'The system only rewards you [administrators] for doing exactly as you are told [...] you don't push from below'.² These human resource constraints are combined with a pronounced lack of formal systems and procedures in government; Myanmar's public financial management, and its regulatory and tendering policies and practices have long been highly opaque and subject to manipulation and abuse by military and government officials.

This lack of capacity, combined with the pressing need for reforms across a wide number of areas, can make it difficult for ministries to prioritise and deliver on reforms. This includes those required by the EITI process.

A weakened, elite-dominated and resource-dependent economy

Myanmar's economy, including both the public and the private sectors, have suffered from decades of misrule, intentional and sanctions-driven isolation from global markets, under-investment in infrastructure and human resources, and pernicious monetary policies. As a result, Myanmar's private sector and the economy as a whole have gone from being the most dynamic in South East Asia at the time of independence to the region's weakest. In 1962 Myanmar's per capita income was twice that of Thailand's; now it is about a fifth of its similarly sized neighbour. For every \$25 exported by Thailand, Myanmar exports only one dollar (International Crisis Group 2012a: 1).

During the 1960s and 1970s, the government's socialist vision of development resulted in state-centred, authoritarian and autarkic economic policies. Swathes of the economy were either nationalised or heavily controlled and regulated. In the years following 1988, the military regime selectively privatised and deregulated the economy in an effort to stimulate growth and investment. As was the case with many other countries making the shift from centrally planned economies in the late 1980s and early 1990s, Myanmar's gradual and halting liberalisation was based around a system of crony capitalism in which well-connected business people were rewarded with privileged access to emerging economic opportunities. By the mid-1990s, a group of 15-20 of these favourites, along with military-controlled holding companies (see section 4.1), ended up dominating the economy. In this context, much of the entrepreneurial energy that might have driven growth and production was instead focused on securing rents, permits and licences, and preferential treatment.

The environment for business in Myanmar has until recently been among the very worst in the world. Its highly distorted exchange rate mechanism combined with heavy and unevenly implemented government regulation and weak enforcement of contracts made Myanmar an extremely costly and unpredictable place to do business for many decades. While there have been some recent reforms, Myanmar continues to rank near the bottom of the World Bank's 'Doing Business' survey (ranking 182 out of 189 countries) (World Bank 2014a).

Myanmar's economy continues to be dominated by extractives and agriculture. In 2013 secondary industry only contributed 19.3% of GDP and manufacturing only received 8.4% of total FDI in the country (PwC 2014: 8). Oil and gas, timber, minerals and gems, and rice and other agricultural products make up the majority of Myanmar's GDP and its exports. From 2006 to

² Interview with former senior government administrator, Yangon: 16 November 2013.

2010 oil and gas alone accounted for 45% of Myanmar's total exports (Ferrarini 2013: 4). If illicit flows of minerals, jade and gemstones are included, these figures are likely to be dramatically higher (see section 4.2).

Myanmar's domestic producers also lag near the bottom of their respective value chains and are unable to take full advantage of opportunities for value addition. Myanmar tends to export whole logs rather than finished boards or furniture, uncut jade and gemstones rather than jewellery or carvings, gas and petroleum rather than plastics, fertilizers or manufactured products. This constrains Myanmar's export earnings, leaving it overly dependent on a few, often volatile, international markets. Furthermore the lack of industrial processing means growth is creating relatively few jobs.

Myanmar's weak economic foundations and reliance on extractives put improved resource governance and transparency at the heart of Myanmar's economic reform process, but also reveal the depth of challenge faced by EITI and other governance and transparency initiatives.

3.2 Extractive resources

Myanmar is extraordinarily well-endowed with renewable and extractive resources. The country's hills, mountains, forests, lowlands, rivers, coasts and oceans contain significant quantities of oil, gas, timber and forest products, base and industrial metals and precious and semi-precious stones. Its rivers also have some of the highest untapped hydroelectricity potential in Asia. As noted above, Myanmar is geographically well positioned to take advantage of growing markets for its abundant resources; its neighbours – China, India and the countries of South East Asia – are all growing rapidly and are all hungry for resources.

It is difficult to know the true value and composition of Myanmar's resource exports. Official figures are likely to significantly underestimate revenues due to capacity constraints and the amount of timber, gems, narcotics and other products smuggled to Thailand, China, and Bangladesh. According to official figures however, in fiscal year 2010/2011 the government reported \$8.86 billion in total export revenues. Natural gas exports made up about 33% of this total (USD 2.91 billion) and minerals accounted for nearly 26% (USD 2.3 billion) – with revenues from jade alone estimated at US \$1.7 billion (Fong-Sam 2012: 6; Egretreau 2011). Revenues from extractives are expected to continue to grow in the coming years.

This section explores the opaque and contested character of extractive resources in Myanmar. It also underscores the challenges Myanmar's EITI process faces in attempting to bring transparency to resource governance.

Oil and gas

Myanmar's proven gas reserves are estimated to be 2.5 trillion cubic metres, while its oil reserves are estimated to be around 3.2 billion barrels. Myanmar is currently the 10th largest producer of natural gas in the world. Given the limited exploration that has so far occurred in Myanmar, however, potential oil and gas reserves are likely to be significantly higher (UK Trade and Investment 2015).

Most oil is refined and consumed domestically. Almost all gas, however, is exported; 80% of Myanmar's current gas production flows to Thailand. Gas revenues are the governments' single largest source of foreign exchange and are expected to jump significantly in the coming years.

Myanmar was one of the world's earliest oil producers, exporting its first barrel as early as 1853. The Rangoon Oil Company, later known as the Burmah Oil Company (or BOC) dominated oil and gas production from its founding in 1871 until 1963 when the military government nationalised the industry. It was joined by other international operators including Standard Oil in 1902. In 1988 the government again allowed outside investment in to the petroleum sector and Western companies like Total and Unocal (later bought by Chevron) entered the Myanmar market (Wall Street Journal 2009, Open Oil 2012, Padma Oil Company Ltd. 2015; UK Trade and Investment 2015).

Starting in 1990, the U.S. and Europe imposed a series of sanctions against the military regime including a prohibition on new investments or partnering with state owned enterprises. These sanctions prevented Western companies that were not already operating in Myanmar from entering the market. Other investors, mainly from Asia, expanded their operations to fill this gap. These include CNOOC Ltd. of China and South Korea's Daewoo International. By 1999, the oil and gas industry became the regime's biggest legal revenue earner (The Wall Street Journal 2009; Open Oil 2012).

Under the military regime there was a complete lack of transparency over oil and gas revenues and very little of Myanmar's significant oil and gas wealth was invested in Myanmar's development. According to a report by Arakan Oil Watch, the military used a dual exchange rate mechanism to siphon off the vast majority of oil revenue during much of the 2000s:

Gas revenues are recorded at the 'official' exchange rate of 6 kyat: USD 1 while the market exchange rate ranges from 800-1,000 kyat: USD 1, leaving billions of dollars' worth of gas payments completely unaccounted for: [...] Based on this exchange rate system, the military regime has hidden 99% of the Yadana gas exports from 2000 to 2008 (an estimated USD 4.80 of USD 4.83 billion) (Arakan Oil Watch 2012: 12).

This dual exchange system purportedly provided direct and indirect revenues to the military, its leadership and its important business allies. As Turnell (2009) highlighted:

The motivation for this sleight of hand is probably to “quarantine” Burma’s foreign exchange earnings from the country’s public accounts, thereby making them available solely to the regime and its cronies. The accounting is facilitated by Burma’s state-owned Foreign Trade Bank and some willing offshore banks. (Turnell 2009)

In 2011, as part of the new Myanmar government’s reform efforts, exchange rates were finally amalgamated closing this significant loophole. More recently, the government has begun to register oil revenues on its national accounts. There remains significant opacity, however, around government revenue generated by oil and gas (ASI and MDRI 2015).

In 2012, the EU and the U.S. eased their sanctions on new investment in the country, paving the way for petroleum companies from these countries to potentially invest in Myanmar. A year later, in 2013, the government opened up a range of onshore and offshore blocks for oil and gas exploration and production. Two bidding rounds have been held. In October 2013, the Ministry of Energy awarded 16 onshore oil and gas blocks. In May 2014, it awarded licences to 20 offshore oil and gas blocks (10 deep water and 10 shallow water). This bidding process was an improvement on the utterly opaque allocation of oil and gas fields in the past. Fifty-nine international oil companies submitted tenders with those awarded licenses include several of the world’s largest global oil and gas companies including: Statoil, Conoco Phillips, Shell, Chevron and Total (UK Trade and Investment 2015). While an improvement over previous practices, the tendering process has also drawn criticism from a number of domestic and international observers who see it as less transparent than the 2012 auction of mobile phone licenses. They also raised concerns about the ultimate (beneficial) ownership of some of the companies awarded concessions (Global Witness 2014b; Peel 2014).

Mining

Myanmar has a broad range of minable minerals including: base metals (gold, copper, silver, lead, zinc, tin, manganese, tungsten, molybdenum, antimony, chromium, iron), industrial minerals (cement, clays, gypsum, fertilizer bases, dolomite, limestone, salt, feldspar and barite), energy sources (coal and uranium) and gems (jade, rubies, spinel, peridot, sapphires, kyanite) (Spectrum 2012).

During the colonial period most large scale mining was conducted by the Burma Ruby Mines Ltd. A slump in the market during the First World War bankrupted the company and from 1926 to well after independence, mining was mainly conducted at a small scale using artisanal methods. Following the military coup in 1962, a series of laws put jade and most other mines off limits to foreigners. In 1969, the Ministry of Mines officially banned private exploration for gems, and most gems and jade were subsequently mined by the military and its affiliated enterprises in government controlled territory or by non-state armed groups in areas outside of government control (DeLeon 2007).

In 1994, the government passed the Myanmar Gems Law, with the stated intent of curbing the widespread smuggling of jade and gems. The law permitted private companies and mining cooperatives to enter into joint ventures with the State to mine for precious stones. In doing so, however, the law effectively undermined the independence of existing mining companies and favoured military cronies; the majority of ventures entered were either directly or indirectly held by companies with direct relations to military generals (DeLeon 2007; 8-8-08 for Burma 2008).

Box 2: Mining in Myanmar: complex and opaque

Mining in Myanmar is a complex and murky business – particularly for jade, gemstones and gold – for at least four reasons:

- Mining has been a significant source of direct and indirect revenue for the military and its business allies. There is significant direct investment in mining by military-affiliated companies and former and current generals. In addition, the military-backed trading and holding companies and the state-owned Myanmar Gem Enterprises (MGE) control the lucrative gem trade and the Emporiums. Regional military commanders and government officials have also engaged directly in mining in areas under their control (Buchanan, Kramer, and Woods 2013; Global Witness 2015).
- In some conflict-affected border areas, mining has also provided significant sources of revenue to non-state political and armed groups (Global Witness 2015). In Kachin State, domestic and ethnic Chinese-owned companies have mined jade in cooperation with the Kachin Independence Organization (KIO) (8-8-08 for Burma 2008). These groups also enforce taxation on mining operations in the areas they control; one reliable source reports that the KIO collected about USD 21 million in ‘taxes’ on jade in 2012. The recent spate of ceasefires has reportedly led to an upsurge in mining activity and deal-making in some border areas, and it is suggested that mining concessions are being allocated as part of the peace process with Karen National Union (KNU) leaders (Buchanan, Kramer, and Woods 2013).
- There has been no open bidding process for mining rights; awarding of concessions has tended to be secretive and transaction intensive. The Ministry of Mines has also used the yearly renewal of mining permits for smaller and medium sized operations as a means to generate significant additional on- and off-the-books revenue.
- Finally, the revenue streams from mining are complex and opaque. As one well-placed former government official explained: ‘revenue flows in mining are almost impossible to track – it is all very complicated’ (Interview with former senior Ministry of Finance official, Yangon: 10 May 2013). Different forms of revenues, bonuses, taxes and royalty fees flow not only to the Ministry of Finance, but also to the Ministry of Mines.

Myanmar's mineral wealth generates significant legal and illicit revenues. By some estimates Myanmar produces 90% of the world's rubies and sapphires and the vast majority of the high quality jade (Htet 2013). The government-run Myanmar Gems, Jade and Pearl Emporiums generated official sales of USD 3.7 billion in 2011 and USD 3.4 billion in 2014 (ASI and MDRI 2015). The actual revenue generated by jade and gems, however, is dramatically higher than this; smuggling and unregulated border trade are thought to dwarf official sales. A recent Global Witness report on jade in Myanmar estimates that official jade production in 2014 was over USD 12 billion (based on Chinese import data) and is likely to have been as much as USD 31 billion if smuggled jade is taken into consideration. This is the equivalent to almost half of Myanmar's official GDP (Global Witness 2015).

The ownership and revenue flows of mining in Myanmar continue to be opaque and intertwined with the drugs trade and armed conflict (see Box 2). The jade industry is particularly murky; the Global Witness report found that the jade industry is dominated by current and former military elites (including the family of former dictator Than Shew and current senior government ministers), US-sanctioned drug lords and crony businessmen (Global Witness 2015). As a result of these dynamics, gems and jade continue to be subject to United States and European Union sanctions.

New and planned large-scale mines have also attracted significant protest. The Letpadaung Copper Mine in particular has been a focal point of high profile national and local civil society protest and international media scrutiny (see Box 6).

Hydroelectricity

Myanmar is rich in hydropower potential; it has numerous large and free-flowing rivers, a growing domestic electricity market and is surrounded by the power-hungry regional markets of China, India and Thailand. The World Bank estimates that Myanmar has the potential to produce 100 gigawatt hours each year; its existing dams, however, produce a maximum of 2.78 gigawatt hours (ASI and MDRI 2015: 107). While access to electricity in urban areas has improved, only 52% of Myanmar's population has access to electricity – one of the lowest percentages in Asia (World Bank 2015). Even city dwellers and urban businesses that have access to electricity suffer regular load-shedding and blackouts.

Hydropower is currently Myanmar's second largest recipient of investment and some observers anticipate that investment in hydro could eventually eclipse that for oil and gas. It is anticipated that between USD 40 and 70 billion could be invested in existing and planned projects in the coming decade (Spectrum, 2012: 35) although lack of transparency makes it difficult to ascertain the full extent of investment.

Until recently, Myanmar's hydropower projects have been small compared to those in neighbouring countries. The 16 projects currently under construction however, are comparable in size to projects in Laos, Cambodia, Vietnam and Thailand. Moreover, several projects on the drawing board could be among the world's largest. Up to 4.4 megawatt hours of hydropower are currently planned for Myanmar – an amount that would more than double the country's current output (ASI and MDRI 2015).

Investment in the sector has come primarily from Chinese, Thai, Indian and Bangladeshi state-owned enterprises (Buchanan, Kramer, and Woods 2013). The Chinese are by far the most prominent investors in hydropower. These hydro-projects are being built to feed Myanmar's neighbours' growing demand for electricity, not the needs of Myanmar's citizens and industries. Up to 90% of the energy generated from these dams will be exported to China and Thailand. Myanmar has been seen by these countries' operators as a particularly attractive place to produce electricity. This is not only because of Myanmar's untapped water resources but also because of its weak regulatory environment. As the Burma Environmental Working Group cautions: 'Building dams inside Burma offers an opportunity to acquire cheap electricity for neighbouring countries, while investors are not accountable for the negative economic, social and environmental impacts of the dam building' (Buchanan, Kramer, and Woods 2013)

As with mining, many dams are being built in conflict-affected parts of Myanmar, primarily in ethnic states such as Kachin, Shan and Karen. This has the potential to exacerbate existing conflicts and generate new discord with local communities and non-state political and armed groups. As a recent Transnational Institute report highlights:

The construction of dams in areas contested by armed ethnic groups requires security. Environmental groups and academics alike have argued that dam projects, much like other large-scale infrastructure projects in the country, lead to renewed conflict as military units are deployed to wrest the territory from armed ethnic groups and then to maintain security. (Buchanan, Kramer, and Woods 2013: 32)

Hydropower generation, like large-scale mining, has triggered significant protests at a local and national level. The Myitsone dam project, described in Box 6 below, is the most prominent example.

This section has outlined the interrelationship between Myanmar's extractive resources and its extractive political system. It has shown how the use and governance of resources has reinforced a political system that is exclusionary, top-down and conflict-prone. It also highlights how these factors pose an ongoing challenge to resource governance and transparency and to the EITI process. The next section explores the actors and interests at the heart of Myanmar's EITI process. What motivates these actors and how they interact will fundamentally shape how the EITI plays out in Myanmar.

4

Actors and interests

The EITI is useful not only for the information it generates, but also for the participatory, multi-stakeholder process at its heart. At the heart of the EITI process is the tripartite multi-stakeholder group (MSG) comprised of state, business and civil society actors. As noted in section 2, the MSG acts as a country's EITI board and each of its three sets of members carry equal weight. In Myanmar, the dynamics within and between state, civil society and business actors are complex and, as each set of actors navigates the country's rapidly changing economic, political and social landscape, those dynamics are in flux.

The MEITI is one of the first significant processes in the country's recent history that has brought these three sets of actors together. Yet Myanmar's recent political history makes building trust and sustaining collective action a fundamental challenge. While Myanmar's political system and its economy are undeniably more open and inclusive than before 2011, there continue to be powerful economic, social and political actors and interests who seek to limit reform or to shape reforms in their own interest. As section 3 suggests, there are also many structural and institutional features of the political economy landscape that will be slow to change and will limit both the substance and depth of reform.

This section examines the interests of ministries, the military and parliament from the government side, and the interests and incentives of business and civil society actors.

4.1 State actors and interests

A range of state actors are fundamental to Myanmar's EITI process. These include: the President and his Advisors in the Office of the President; relevant sector Ministers, their deputies and senior ministerial staff; senior officers in the armed forces and military-affiliated enterprises; managers of state-owned enterprises; and parliamentarians.

As noted in the introduction, the highest levels of Myanmar's government have backed the EITI process. The President and several of his most important advisors have repeatedly and publicly supported the EITI, and leading officials in relevant ministries have been drafted into the process. There are at least five significant and mutually reinforcing incentives underlying this high-level government commitment to implement EITI in Myanmar.

Visible and symbolic reform: The President and his key allies see EITI membership as a means by which they can cement their reputation and legacy as reformers. EITI membership is also seen as a way to build both domestic and international legitimacy. It demonstrates to a domestic audience (including the electorate and business leaders) that the current government is making a break with the previous military regime. Internationally, EITI places the government in 'good standing' in the global community, showing that it is committed to abiding by global norms and ways of doing business. As the Minister of Finance explained:

We are committed to EITI [because] it is what *modern* countries do [...] The EITI is very important for me and other government officials all the way up to the President. In the past we relied on self-reliance, but now is the time to re-engage with the international community [and to] learn and use international best practices like EITI.³

Improved international investment: EITI membership is seen as a way to improve the quantity, quality and diversity of international investment in Myanmar. The government's commitment to greater transparency and rule of law has already contributed to the suspension of economic sanctions. EITI compliance would also, it is hoped, enable a range of global companies (from, for instance, the United States, Europe, Japan and Australia) to invest more easily in a Myanmar perceived to be acting in line with international standards.

Improved revenues: EITI membership is seen as a route to negotiating better deals on extractives. Under the military regime, the bidding process for extractive resource rights was opaque and uncompetitive, benefiting military leaders, their business allies and well-placed public administrators. The problems this caused were exacerbated by the limited pool of external

³ Interview with the Minister of Finance, Nay Pyi Taw: 16 May 2013.

actors who were able and willing to invest in Myanmar while sanctions remained in place. As a result, there was seldom any direct competition for extractives concessions. Deeply entrenched cronyism and corruption also meant that there were few incentives for government ministries to secure the best deal. Concession-granting was often *ad hoc* and investors were likely to have consistently paid below regional market prices to mine, cut, drill and harvest Myanmar's resources or to dam its rivers. Key reformers in government hope that increased openness and transparency in the bidding process will generate a market estimation of prices as well as boost competition and the government's bargaining power with potential investors. The diversity of companies awarded concessions for oil and gas blocks in 2013 and 2014 reinforces this perspective.

Reinforced autonomy: Senior government officials also see EITI membership as a way to counterbalance dependence on China (South 2012; Thant Myint-U 2011).⁴ As noted above, Chinese businesses have become by far the biggest external investors in Myanmar's oil and gas, mining and hydro sectors. Myanmar's leaders worry that this economic dependence has the potential to undermine Myanmar's autonomy – a concern that holds deep historical resonance. Recent anti-Chinese sentiment in the media and among activists has reinforced this view. This has particularly been the case with the conflicts surrounding the Chinese-managed Letpadaung Copper mine (see Box 6) (Parameswaran 2015). The government wants to continue to encourage Chinese investment. It is hoped, however, that adhering to international standards like EITI will improve the diversity and quality of international investment for major infrastructure and extractive projects. As one analyst explained: 'The government is no longer willing to accept terms that are less than optimal to the national interest. The renewed availability of Western and other foreign capital after decades of isolation and stagnation caused by economic sanctions has made Chinese investment less appealing' (Sun 2014).

Greater control of revenues: The President, the Presidential Ministers and senior officials in the Ministry of Finance see the MEITI process as a means through which they might be able to achieve greater central control of revenues. As mentioned above, many of the revenues from extractive industries have tended to flow into the hands of regional commanders and sector ministries. Historically, little revenue information (not to mention revenue itself) reached the Ministry of Finance from the Ministry of Mines, the Ministry of Energy, or Myanmar Oil and Gas Enterprise (MOGE) or the military holding companies (MEC/UMEHL). By clarifying what revenues are paid into government at what level, reformers hope that EITI will ultimately help them to channel more revenues into the Ministry of Finance's coffers (see Box 3 below). As a senior Ministry of Finance Official explained:

Many [sources of] income go straight into the ministerial budgets, but we [the Ministry of Finance] are unable to track what goes where. [The EITI] will be one way in which we can get the money from the Ministries and onto the budget.⁵

For Ministers, Deputy Ministers and many high level civil servants, the President's public commitment to the EITI carries its own weight; they have wanted to demonstrate their loyalty to the president and have therefore been quick to state their support for the EITI process.⁶

The government, however, is far from monolithic and there are many important government and military actors with vested interests who are likely to be less enthusiastic about the EITI process. While most military hardliners have retreated or been pushed to the side-lines, there remain some military and government officials who are concerned about the speed and depth of political change and who fear they may lose the wealth and privileges that they accrued under the old system (International Crisis Group 2014).

The success of the EITI in Myanmar depends on the balance of power between reformist and more conservative elements of the government and military. It will also depend on winning over those officers and officials who are sitting on the fence and are either ambivalent about opening up government or wary of exposing themselves to scrutiny.

Beyond the Executive, three groups of government actors are central to MEITI implementation: relevant sector ministries, the military and the legislature. The interests and incentives of each of these are explored below.

Sector ministries

The EITI multi-stakeholder group (MSG) includes representatives from five government ministries. These ministers, their deputies and high level administrators are each likely to have different interests in and potential concerns about the EITI process. Under the military regime, as highlighted above, ministries operated as virtual fiefdoms in which ministers and other high level officials were able to build significant wealth and power.

Each of the extractive sector ministries in the MSG (Mines, Energy and Environment and Forestry) has historically received a range of officially sanctioned and lucrative revenues from licencing and regulating extractive industries. While some of these rents have been passed on to central coffers, much has been kept within the Ministries to finance their operations and to provide income to Ministers and senior civil servants. In addition, these ministerial officials have a history of utilising their gate-keeping positions to secure facilitation payments and rents.

⁴ Interviews with longstanding political analyst, Yangon: 30 April 2014.

⁵ Interview with senior Ministry of Finance officials, Nay Pyi Taw: 16 May 2013.

⁶ Interview with longstanding political analysts, Yangon: 9 May 2013 and 15 May 2013.

Box 3: Ministerial enterprises

Each sector ministry engaged in the MEITI process manages state-owned enterprises.

The Ministry of Energy manages three enterprises:

- Myanmar Oil and Gas Enterprise (MOGE) has a stake in all onshore oil and gas exploration and production in Myanmar and in each of the major pipeline projects;
- Myanmar Petrochemical Enterprise (MPE) operates Myanmar's refineries, large fertiliser plants and LPG and methanol production; and
- Myanmar Petroleum Products Enterprise (MPPE) is the main distributor and retailer of petroleum products.

The Ministry of Mines not only grants concessions and leases to mining companies, it also directly runs six mining enterprises covering everything from coal and industrial minerals to base metals and gems. One of these, the Myanmar Gem Enterprise (MGE), oversees the lucrative Myanmar Gems, Jade and Pearl Emporiums.

The Ministry of Electric Power operates Myanmar Electric Power Enterprise (MEPE). MEPE currently runs the production and distribution of electricity generated by major hydropower and gas turbine stations. All current and future hydro projects are through joint-ventures with MEPE.

The Ministry of Environmental Conservation and Forestry runs Myanmar Timber Enterprise (MTE) which is responsible for timber harvesting, milling, downstream processing and marketing of forest products.

Significant government-owned enterprises are also under the direct management of Ministries as Box 3 illustrates. Given the permeable character of public financial management in Myanmar, these state-owned enterprises provide ministers, their deputies and senior officials with potential rent-seeking and patronage opportunities.

MEITI has the potential to expose these flows of revenues and rents by disclosing payments made by domestic, international and state-owned companies, and potentially publicising licensing agreements, beneficiary ownership and transfers between levels of government.

Armed forces and military affiliated enterprises

Until 2010, the Myanmar government and the *Tatmadaw* were synonymous with one another. The military hierarchy and particularly the Number One General made all significant policy and administrative decisions. Ministers and senior bureaucrats were directly appointed by and were accountable to the generals; in many cases they were actively serving military personnel.

Over time, the military also became deeply involved in Myanmar's economy and extractive industries. During nearly 50 years of rule, the military used its 'power to issue licences and permits to privilege their own business interests and build up a powerful military-economic complex' (International Crisis Group 2012a: 11). By the late 1990s, military and business interests and companies directly owned by the military or their associates dominated Myanmar's economy.

The most visible manifestations of the military's economic power are the two large and powerful military holding companies: the Union of Myanmar Economic Holdings Limited (UMEHL) and the Myanmar Economic Corporation (MEC). The MEC focuses on heavy industry, while the UMEHL focuses on light industry and commercial trade. These holding companies drew together many of the state-owned enterprises that were ostensibly 'privatised' in the 1990s. In the two decades that followed, the military government granted these companies key licences and permits for strategic and valuable imports and exports. The conglomerates are owned by the Directorate of Defence Procurement and by active and veteran military personnel. UMEHL provides a sort of pension fund for retired senior officers. MEC-held businesses support the industrial and technological needs of the armed forces and large infrastructure projects. It is also thought that MEC provides off-budget support to the Defence Services. Both have, until recently, been exempt from commercial and profit taxes (International Crisis Group 2012a). For the past two decades these two holding companies have dominated key areas of economic life including key imports (for instance, cars and edible oils) and joint ventures with foreign firms. They also engaged in a range of extractive industries and are therefore important stakeholders in the MEITI process. UMEHL is directly engaged in the mining and processing of gem stones, jade, oil and gas, and timber. The MEC is engaged in coal mining, marble mining and tile production and steel manufacturing.

The military also provides security for major (foreign and domestic) extractive investments in Myanmar. *Tatmadaw* troops are stationed at all significant oil and gas sites and pipelines, hydroelectric dams and mining operations. This has contributed to greater militarisation around these extractive project areas and, in some contested areas, greater levels of conflict. In the past few years, the *Tatmadaw* is much less visible than in the past and many generals have exchanged their uniforms for suits. The new government has also shown some willingness to erode the dominance of military enterprises. Key monopolies on car imports, edible oils and beer were ended and both holding companies have started to pay at least some taxes. Despite

these changes, however, the military remains a central political and economic player in Myanmar; many ministers and their deputies are former military men and the military holding companies continue to have significant interests in extractive industries. Given their role in extractive industries, engaging militarily-held companies will be crucial to the success of the MEITI process. A significant challenge for MSG will be to ensure that these companies are willing and able to report on their revenue payments.

Parliament

The EITI validation rules are ambiguous on the role of parliaments in the EITI process. The EITI Standard (EITI Secretariat 2013) only briefly mentions parliamentarians as potential members of the MSG and as an audience for EITI reporting; it does not discuss parliament as playing a substantive role in the management of a country's EITI. In Myanmar, as in other countries, however, parliament can play a potentially important role in EITI. Parliaments can ideally provide a check on executive and ministerial power, revise and question policy choices, and raise awareness of and scrutinise revenue and budgetary choices.

In mid-2015, the ruling Union Solidarity and Development Party (USDP) and the military held 180 of 224 seats (80%) in the upper house and 331 of 440 seats (75%) in the lower house. Despite the ruling party's numerical dominance in parliament, the legislature was much more dynamic and willing to scrutinise ministerial and presidential authority than many observers had anticipated (International Crisis Group 2013; Robinson 2013). MPs discussed issues previously considered sensitive and even taboo, including political prisoners, ethnic tensions, government expenditure and exchange rates. Ministers were called to parliament to answer tough questions based on statistics and factual evidence. Parliament has also actively engaged in the legislative process. For instance, 54 amendments were made to the Foreign Direct Investment Bill before it was finally passed.

Twenty-seven parliamentary committees have been created, with the Resource Management Committee and the Public Accounts Committee of particular relevance to MEITI. The Parliament also has an ethnic caucus, an informal gathering of MPs from ethnic-based parties. Given the focus on mining and hydroelectricity generation in ethnic borderlands, it is important that the MEITI process engages with this caucus.

A number of factors drove parliamentary assertiveness and activism.

First, the *Hluttaw* (the National Assembly) became the power centre for two very powerful political actors: the speaker of the Lower House, U Shwe Mann, and the Leader of the NLD, Aung San Suu Kyi. Both saw parliamentary activism as a way to build a power base before the 2015 elections and both sought to cooperate together on parliamentary issues where there was mutual political advantage (Robinson 2013).

U Shwe Mann was the third-ranking general under the military regime and in 2011 was tipped to be selected as president to replace Thein Sein, who was the fourth-ranking general. He used his authority as the Speaker of the House and as the acting Chair of the USDP to manage the legislative agenda and shape committee processes. While U Shwe Mann sometimes struck a confrontational tone with the President, he often took a conciliatory tone with opposition parties in parliament (Robinson 2013). This made it possible for the NLD and other parties to table resolutions and parliamentary questions, and sit on and even chair parliamentary committees. As one recent report noted, the Speaker 'encouraged lawmakers to put broader national interests above narrow party-political considerations; a consequence is that USDP representatives often support opposition motions and vice versa' (International Crisis Group 2013). U Shwe Mann aimed to use his parliamentary position and relationship with Aung San Suu Kyi to launch a bid for the presidency. In August 2015, however, he lost support of the army and was stripped of the leadership of the USDP (Myint 2015).

Aung San Suu Kyi was elected to parliament in the 2012 by-election in which the NLD won 43 of the 44 seats contested. The introduction of NLD MPs coincided with increased activism in parliament. In parliament, Aung San Suu Kyi took on the role of Chair of the Rule of Law, Peace and Tranquillity Committee and pushed for the NLD's priorities of education and constitutional reform. She also forged a working relationship with Shwe Mann.

Second, the 2008 Constitution gives extensive powers to parliament and the executive. Parliament has extensive law-making authority and the President does not have the authority to veto parliamentary decisions. A law passed by parliament becomes law after 14 days regardless of whether the President signs it or not (Government of Myanmar 2008: 105a).

Third, USDP MPs did not always vote in blocks. The USDP did not have a systematic party whip system to enforce voting (International Crisis Group 2013). There were emerging blocks of MPs – those more closely aligned to the President, those more aligned to the Speaker and those who sat on the fence. In addition, many MPs did not see themselves as career politicians and were therefore less subject to party discipline than they might have been in other contexts. As one senior USDP MP explained: 'If parliament doesn't ask the difficult questions, then we risk returning to dictatorship.'⁷

Military-appointed MPs are regularly rotated and only serve for a few months before they go back into active service. Many USDP MPs were selected from senior military ranks and the civil service and are not seeking re-election. Those USDP MPs who do seek re-election are often keen to be seen delivering to their constituencies as a way to distance themselves from

⁷ Interview with senior USDP MP and former army general, Yangon: 27 April 2014.

the old military regime. The June 2015 vote on two constitutional amendments is particularly revealing. Close to two thirds of MPs voted in favour of dropping the citizenship clause that bars Aung San Suu Kyi from standing for President, and to lower the threshold of parliamentary votes needed to amend the constitution from 75% to 70%. Given that the 25% of MPs directly appointed by the military presumably voted against the proposed amendments, a significant proportion of USDP MPs must have voted with the opposition parties (Peel 2015).

The November 2015 parliamentary elections fundamentally changed the political dynamics of Myanmar. In the elections, the NLD won an overwhelming majority in Myanmar's upper and lower houses of parliament, winning 77% of the seats contested nationally and at state and regional level. The USDP was decimated, winning only 10% of contested seats (Myanmar Times 2015). This gave the NLD the votes it needed to push through legislation and to form a government and the power to select the new president. While Aung San Suu Kyi remains constitutionally ineligible for this role, she has said she will make all important decisions and appoint a president of her choice (The Guardian 2015). In March 2016, parliament elected Aung San Suu Kyi's close ally, Htin Kyaw, as Myanmar's first civilian leader in more than 50 years.

The NLD has yet to articulate a fully developed policy on Myanmar's EITI candidacy, but both before and after the elections the NLD leadership committed itself to improved environmental governance and extractives transparency (Wa 2015; Dinmore 2015). Moreover, at least a dozen incoming NLD national and state/regional MPs have been active participants in the EITI process.⁸

4.2 Business actors and interests

Under the military regime, much of the entrepreneurial energy that might have driven growth was instead focused on securing rents, permits and licences and preferential treatment. This contributed to crony capitalism in which well-connected business people were rewarded with privileged access to economic opportunities. A group of 15-20 of these cronies, along with the military-controlled holding companies, dominated the economy. The environment for business in Myanmar has until recently been among the worst in the world. As with all else in Myanmar, however, the business sector is changing. There have been a series of significant reforms including the amalgamation of the exchange rate, the privatisation of a range of state enterprises, the revocation of some monopolistic permits and export licenses, the licensing of new banks and insurance companies, and the drafting of a new Foreign Direct Investment (FDI) Law.

The opening up of Myanmar has triggered a flood of foreign business interest in the country, particularly in extractives. These changes are also opening up the economy to a wide range of new domestic investors and businesses. These economic changes are profound and have the potential to challenge the economic dominance of the military-owned companies, former and current high ranking military officials and associates. These actors, however, remain rich and powerful, and they are dominant in many areas of the economy including extractives. They are well equipped to take advantage of emerging business opportunities.

Mapping business actors and interests in the MEITI process is complex. There are at least three facets to this complexity:

- the sheer diversity of actors and interests, including domestic and international businesses directly engaged in extractive industries and those that have an indirect interest, from service industries, manufacturing and finance through to state-owned enterprises, military owned enterprises, and non-state political and armed groups;
- this diversity is repeated across each of the MEITI sectors – hydro, mining and oil and gas – and their sub-sectors;
- the state of flux in the range of actors engaged in extractives and in the rules and regulations governing the sectors—new entrants, opportunities and regulatory frameworks emerge almost by the week.

There are also often significant linkages and overlaps between different extractive industries. There are, for instance, close links between those engaged in larger scale mining and hydroelectricity, given the need for electricity to power the mines. Engagement in one extractive industry also often opens the way for another. For instance, land opened to hydroelectric development can pave the way for logging and alluvial gold mining (Buchanan, Kramer, and Woods 2013). There are also links between jade mining and opium production (Woods and Kramer 2012).

For these reasons, a wide range of domestic and international business actors matter for the MEITI process. These business actors include:

- **State-owned enterprises:** These enterprises remain significant players in extractive industries. Most large-scale oil and gas and hydroelectricity projects require partnership with MOGE or Myanmar Electric Power Enterprise (MEPE), while Myanmar Gem Enterprises (MGE) oversees the lucrative gem, jade and pearl emporiums and auctions.
- **Military enterprises:** While military companies have lost some of their privileged market access in the past two years, the government and the UMEHL and MEC remain dominant business players in many extractive sectors (see section 4.1).

⁸ Interview with MATA members and incoming NLD MPs, Yangon: 23 November 2015.

- **Domestic extractive business:** A range of medium- and larger-sized enterprises are already engaged in or entering into extractive industries. Some of these companies are long established while others have been set up to partner with the newly arrived international oil and gas companies. Many of these Myanmar-based companies have strong links to former and current military officials and their associates (see section 3.2). Some types of mining (for instance, gold, jade and some gemstones) have large numbers of smaller and even artisanal producers.
- **Businesses affiliated to NSAGs:** Many non-state armed and political groups have significant extractives business interests. NSAGs that have agreed ceasefires with the government have often been granted rights to mining and forest resources in their areas of operation. For others still engaged in active conflict, extractives provide a crucial source of income: jade, for instance, is a primary source of income for the Kachin Independence Army / Kachin Independence Organisation (KIA/KIO) (Global Witness 2015)
- **International extractive businesses:** A wide range of international oil, gas, mining and hydro companies are exploring the possibility of investing in Myanmar. The recent tenders for onshore and offshore oil and gas blocks attracted wide interest from regional and global petroleum companies. Among those awarded exploration licenses are Chevron, Total, Statoil and Shell.
- **Non-extractive businesses:** Some businesses not directly engaged with extractive industries have an indirect interest in the EITI process. They include financial services companies and construction and transport businesses that might benefit from greater transparency in mining for aggregates and other construction materials (currently dominated by military-owned enterprises).

4.3 Civil society actors and interests

Civil society participation is central to the EITI. Civil society is one of the three legs of the MSG and is intended to act as a check on both government and business actors in the EITI process. The EITI validation rules state that civil society members of the MSG should represent broader civil society interests and be independent of both government and the private sector, whether operationally or in the formulation of policy.

There is a rich history of social organisation and social protest in Myanmar, with roots in religious networks, community welfare groups and the struggle against colonial rule. The space for and character of civil society, however, was profoundly curtailed during five decades of military rule. Following the 1962 coup d'état, 'the government began extending its control over previously autonomous aspects of social life' (Petrie and South 2013). As part of the post-1962 government's 'Burmese Way to Socialism', the government clamped down on freedom of association, non-state media outlets, and professional bodies that were not affiliated with the state. Subsequent military governments worked hard to sow seeds of factionalism and distrust between remaining civil society actors.

Civil society, however, did not die under the military regime. From the late 1980s onwards, the number and capacity of community-based and national-level civil society organisations continued to grow. For example, a series of ceasefires in the 1990s and efforts to fill the gap created by lack of state services led to a proliferation of non-state organisations in Myanmar's ethnic borderlands (Kramer 2011). The spontaneous and wide-ranging local response to Cyclone Nargis in 2008 led to new confidence, capacity and coordination among civil society actors in Myanmar. It also helped to expand the political space for civil society activities (Petrie and South 2013).

Currently, civil society in Myanmar is diverse, dynamic and growing rapidly. Since 2011, some of the key restrictions facing civil society have been relaxed and the number of active organisations at both national and local levels has grown significantly. It is now possible for organisations to work more openly on areas that were formally closed to them including: peace building, human rights, policy advocacy and protests and campaigns against large-scale infrastructure and extractive projects. The space for civil society to operate is, however, more constrained at a subnational level. This is the case in conflict-affected and ethnic areas and in Bamar-inhabited rural areas 'where the authorities have yet to absorb the reforms of the past few years' (Myanmar Centre for Responsible Business 2014).

Civil society has played an important role in Myanmar's recent transition. Local organisations and networks have not just used the limited space available to them; they have also actively worked to expand this space and to open up new areas for engagement. They have been increasingly active in areas of service delivery, advocacy, peace building and conflict resolution.

The capacity of many civil society organisations has also increased in recent years (though capacity generally remains low, as outlined in Box 4) as has collaboration with international civil society organisations and networks. It remains difficult, however, for civil society organisations to register officially, and many organisations continue to operate in a legal grey area in which they are formally illegal but permitted to function.

Box 4: Myanmar civil society – some characteristics and constraints

The capacity, reach and effectiveness of civil society organisations in Myanmar has increased significantly in the past few years. There is growing confidence and professionalism among many CSOs, and civil society as a whole is increasingly able to mobilise quickly and to raise public awareness around important issues. Civil society in Myanmar, however, continues to have significant limitations and these have shaped the MEITI process.

- Most civil society groups tend to lack the capacity and analytical skills to engage in the more technical aspects of the EITI (such as discussions on materiality and auditing standards).
- Civil society generally has limited capacity and experience to engage in evidence-based policy making or evidence-based advocacy. This is hardly surprising given the historical lack of operational space and engagement with government, and the chronic lack of information on which policy discussions could be based.
- There are so many pressing needs for reform and so many emerging opportunities that civil society organisations often find it difficult to prioritise and avoid becoming over-stretched.
- Most CSOs have had very limited exposure to the private sector and to government counterparts and their ways of working.
- It will take time to overcome this history of fragmentation and distrust among civil society actors engendered by the military regime.
- Most civil society organisations have relatively weak internal governance systems. This may limit their own accountability and transparency.
- As international development agencies and NGOs flock to Myanmar and increase funding to civil society, there is a risk that CSOs might become 'projectised', implementing donor priorities and projects rather than their own.
- Many CSOs, particularly those led by former political prisoners, those in ethnic areas and those that have operated from abroad, come from a culture of resistance to the state. This has been a source of their legitimacy and may continue to shape how these organisations engage with state and/or business actors.

A wide and complex range of civil society stakeholders are engaged or potentially engaged in the Myanmar's EITI process. These include informal groups, organisations, research institutes and think tanks, professional associations, issues-focused networks and social movements, unions and the media. Given the link between extractives, environmental degradation, governance and conflict in Myanmar, the MEITI process has needed to take a broad and inclusive approach to engaging civil society. This means that civil society stakeholders in the MEITI include not only groups with interests in transparency and extractives, but also groups engaged in environment, peace building, human rights and ethnic and border area issues.

Effective and sustained media engagement in the MEITI process will be crucial to its success. The government has significantly loosened restrictions on media since 2011; press laws have been revised, internet filtering has declined significantly, censorship by the Press Registration and Scrutiny Board (PRSB) has been reduced, and private newspapers have been permitted to publish on a daily basis. The recent arrest and convictions of several journalists and increasing indirect pressure placed on publishers and editors by the government has, however, cast a shadow over these gains (Committee to Protect Journalists undated).

During the candidate phase of the MEITI process, all forms of media can play a crucial role in building awareness of EITI and its implications for Myanmar. Once the EITI reporting process begins, media can play an essential role disseminating and stimulating public debate on the findings of MEITI reports to citizens and stimulating public debate on the collection and use of extractive revenues. Sustained media interest in MEITI has the potential to put pressure on government and businesses to deliver improved transparency and accountability. As will be explored in section 5, domestic and international media coverage has helped to bolster and deepen the EITI process in Myanmar. However, media can also play a disruptive role in the EITI process; ill-informed or politically-biased coverage of EITI has the potential to undermine trust in the process (O'Sullivan 2013). This reinforces the importance of effective and sustained media training and engagement throughout the EITI process.

The Myanmar Alliance for Transparency and Accountability (MATA)

The Myanmar Alliance for Transparency and Accountability (MATA) was formed in April 2014 as a nationwide umbrella organisation for civil society actors engaged in MEITI and other resource governance processes. At its national conference in 2014, MATA elected nine of its members to the EITI MSG to represent civil society interests in Myanmar's EITI process.

MATA was quick to assemble and has brought together a wide range of civil society actors from very local community-based organisations to broader national level civil society organisations and networks. As of April 2015, MATA had 449 members. This is a significant achievement, particularly in the context of Myanmar. In a recent blog, commentators said:

The most impressive achievement so far has been the capacity of Myanmar's fledgling civil society to mobilize and organize itself, especially since its first national conference on the topic was only held in October 2013. There are no perfect processes of coalition-building and representation, but in a very challenging setting—especially at the local level where authorities still severely limit civil society activities—Myanmar civil society has done an incredible job. (Saloman and Kyte 2014).

MATA has two objectives:

- To advocate for transparency and accountability by government, elected representatives, companies, donors and civil society.
- To promote the freedom of public participation in, and scrutiny of, Myanmar's legal frameworks and guidelines for its natural resources.

MATA priorities include: national and local government revenue transparency; contract transparency; budget transparency; compensation and redress for land acquisition; environmental safeguards; and transparency about beneficial ownership. (Myanmar Centre for Responsible Business 2014)

MATA plays a fundamental role in mobilising and coordinating civil society engagement in the EITI process. This has helped to put specific issues of civil society concern on the MSG agenda. These include the Letpadaung Copper Mine; state and regional EITI pilots; and a MEITI focus on forestry, hydropower, mining, and oil and gas. MATA also aims to link together national and subnational resource governance issues. It has a national level steering group and technical working group, and state- and regional-level working groups and representatives. Its state and regional bodies aim to feed local information and concerns to the national level and to raise awareness about extractives governance, including the EITI at the local level.

While MATA developed in response to the EITI process, it has evolved into a platform for coordinated civil society engagement in a range of different processes. These include broader issues like the peace process, budget transparency, anti-corruption, the right to information and environmental protection; and specific processes like the consultations on Myanmar's new Land Use Policy, and representing civil society in Myanmar's engagement in the Forest Law Enforcement Governance and Trade (FLEG-T) process. MATA members have also been instrumental in establishing the more broadly focused Civil Society Organisations Forum (CSF) in late 2014.

Despite the diverse range of interests represented by MATA's membership, the Alliance has grown stronger since its inception. It has continued to grow and its networks at state and regional level have become more competent and capable.⁹ At least six of MATA's MSG members were elected to the national and state parliament in November 2015.

MATA has also been able to develop relationships with government and the private sector outside of the EITI process. MATA representatives, for instance, meet with senior Ministry of Mines officials every few months to discuss emerging issues in existing and planned mining operations. MATA has also developed a working relationship with the Federation of Mining Association through which they can address concerns as and when they arise.¹⁰

⁹ Interviews with MATA members and civil society analysts, Yangon: 21 and 24 November 2015.

¹⁰ Interviews with MATA and Myanmar Mining Association members 26 and 24 November 2014.

5

Contests and collective action: Myanmar's EITI so far

As highlighted in the introduction, Myanmar's EITI process reflects and reinforces a range of political and economic contests that are being played out between political, administrative, civil society and business actors. As an international observer of Myanmar's EITI processes observed: 'When it comes the EITI...everyone wants to leverage the process for their own ends – the government, civil society, the private sector and even the donors all want to use EITI to further their agendas.'¹¹

Overall, the members of the EITI multi-stakeholder group (MSG) and the government, civil society and business constituencies they represent, are negotiating over both the breadth and depth of the EITI process in Myanmar. The outcome of these ongoing negotiations will determine whether the MEITI process is narrow, shallow, technocratic and focused on the minimal requirements of extractives revenue transparency, or whether the MEITI process is broader and deeper – covering not only more of the extractives value chain but also revealing more about each individual link in the chain.

In particular, the MSG and its government, civil society and business members are negotiating whether the public information generated by MEITI is limited to the EITI minimum standard (just focused on information about company payments and licensing) or is more expansive (including social payments, transfers between levels of government, the terms of contracts and beneficial ownership). Unsurprisingly, government and business actors tend to favour a more technical, narrow and shallow EITI process, while civil society MSG members are pushing for greater depth and breadth.¹²

The EITI takes a fundamentally collaborative approach to improving accountability and transparency; it brings government, business and civil society actors together and provides a shared platform where they can work jointly on improving Myanmar's extractives transparency (EITI Secretariat 2013a; The World Bank 2008). In recent years the MSG has indeed provided a foundation for cooperation between these three sets of actors. In practice, however, progress on Myanmar's EITI has come as much from contestation and conflict as it has from collaboration. Civil society actors in particular have used the MSG as a forum to challenge government and companies and to push Myanmar's EITI so that is more expansive than would likely be the case. Civil society members of the MSG explain:

[Our role] is to use the EITI to push for bigger transparency issues.¹³

To bring change [in Myanmar] we have to push beyond just the EITI. We have to push on peace, on revenue sharing on overall transparency.¹⁴

This mix of cooperation and conflict echoes the work of Fox (2007) and Gaventa and McGee (2010) who note that while cooperation is central to improving accountability and fostering social change, civil society must also periodically take a more conflictual and adversarial approach with government and private sector counterparts if reforms are not to stall. Given the vested political and economic interests at stake, the economic value of extractive resources and the fact that Myanmar's transition was initiated by its military leaders, it would be surprising if significant change in Myanmar (or elsewhere for that matter) came solely through a collaborative approach.

The degree to which MEITI becomes a paper tiger or a potent institution with real teeth and claws will depend on the ability of government, business and civil society actors to work constructively together, but also to balance their interests.

This section explores these processes of contestation, ongoing negotiations and efforts to forge collective action through the EITI. It first explores the progress Myanmar's EITI has made so far towards EITI candidacy and compliance (section 5.1). It then looks at MSG's political dynamics and efforts to build trust and a working relationship among MSG members (section 5.2). It analyses the contests at the heart of Myanmar's EITI and how and why MSG members and their constituents are contesting the breadth and depth of Myanmar's EITI process (section 5.3). Lastly, it examines the ongoing challenges Myanmar's EITI faces if it is to achieve compliance and embed EITI standards in domestic governance (section 5.4).

11 Interview with an international observer of Myanmar's EITI process, Yangon: 13 March 2015.

12 Interviews with civil society MSG members, Yangon: 26 November 2014; Interviews with EITI MSG donor observers, Yangon: 26 and 28 November 2014.

13 Interview with civil society MSG member, Yangon 26 November 2014.

14 Interview with civil society MSG members, Yangon: 26 November 2014.

5.1 Myanmar EITI's progress so far

Since its inception, Myanmar's EITI has made significant progress despite a tight timeframe, political and technical obstacles and capacity constraints. In 20 months, Myanmar's government, its civil society actors and many of its extractive businesses have been able to mobilise themselves, form a working multi-stakeholder group, develop a MEITI Action Plan and achieve EITI candidate status. This is remarkable progress, especially given Myanmar's recent history of economic and political isolation and opaque and extractive resource governance. The MEITI process, however, has been a difficult one that has tested the capacity, commitment and patience of state, business and civil society participants. The process is likely to face even more significant challenges if Myanmar is to achieve EITI compliance in 2017 and if EITI is to maintain its relevance and credibility thereafter. The aftermath of the 2015 election may pose a particular challenge to the MEITI process.

As noted earlier, a Presidential Decree established a cabinet-level Leading Authority to oversee Myanmar's candidacy to EITI in December 2012. The Leading Authority was chaired by the Union Minister of the President's Office and included the Ministers of Finance and Revenue, the Ministry of Environmental Conservation and Forestry, the Minister of Energy, and the Minister of Mines. The Leading Authority was appointed to act as a board for MEITI until the creation of multi-stakeholder group.

At the same time, the President appointed a national think tank, the Myanmar Development Research Institute (MDRI), as the temporary Coordinating Body for the MEITI process. MDRI is a policy and analysis think tank with close ties to the executive. It was created shortly after the political transition in 2011 and provides analysis and advice to support many government-led initiatives. MDRI has acted as a secretariat, providing logistical and analytical support to the Leading Authority. The Executive Director of MDRI's Center for Economic and Social Development was appointed as the MEITI's National Coordinator. From May 2013 to June 2014, MDRI facilitated a range of outreach activities, trainings, media campaigns, research and meetings to support the Government of Myanmar's EITI application process, including meetings at the state and regional level. Since then, it has worked first with the National Secretariat and later with the MSG to provide logistical, advisory, research and outreach support.

Myanmar's EITI national-level board, the multi-stakeholder group, was created in January 2014. The MSG has 21 members drawn from government (six members), civil society (nine members) companies (six members). The president directly appointed the government members of the MSG. Civil society representatives were elected during MATA's first national convention (see section 4.3) while national and international business members were nominated from their sectoral business associations. The MSG membership is outlined in Box 5. The MSG is collectively responsible for managing the implementation of the EITI in Myanmar; it oversees the MEITI's three-year work plan, the production of the EITI Report and ensures that the EITI contributes to public understanding and debate.

In May 2014 the MSG submitted Myanmar's application to the EITI Board of Directors to be become an EITI 'candidate country'. In July 2014 at its 27th meeting in Mexico, the EITI Board approved Myanmar's candidacy application and granted Myanmar until January 2016 to produce its first EITI reconciliation report. This report (Moore Stephens 2015) was submitted on 2 January, and covered data from the financial year April 2013 - March 2014. Myanmar now has until January 2017 to meet all seven EITI Requirements (see Box 1) and attain 'EITI-compliant' status (Myanmar EITI 2015b).

In August 2014, the MSG established three sub-committees: technical and reporting; work-plan and governance; and communications and outreach. Two months later, after significant debate, the MSG agreed to set up four sub-national coordination unit pilot schemes. These coordination units are to engage in outreach and awareness-raising about natural resource governance and the EITI in some of the states and regions where mining, oil and gas exploration and production and dam construction are taking place. These pilot schemes are in Mandalay Region, Magwe Region, Shan State and Rakhine State (Myanmar EITI 2014b).

In its December 2014 meeting, after significant debate, the MSG agreed on the sectors to be included in the MEITI scoping study. It agreed that Myanmar's first EITI report would be on oil and gas, and on mining (including official data on jade and gemstones from the Gems Emporia). It also agreed to conduct a separate feasibility study of the

Box 5: Myanmar MSG membership (as of April 2015)

MSG Chair: Dr Maung Maung Thein, Deputy Minister of Finance

MSG Deputy-Chair: U Myint Zaw, Deputy Minister of Energy

MEITI National Coordinator: Dr Zaw Oo, Executive Director, MDRI-CESD

Government representatives (6): Director General (DG), Ministry of Home Affairs (General Administration Dept.); DG, Ministry of Environmental Conservation and Forestry (Dept. of Forestry); MD, Ministry of Energy (Myanmar Oil and Gas Enterprise); DG, Ministry of Mines (Dept. of Mines); DG, Ministry of Finance (Internal Revenue Dept.); Director, Office of the Auditor General of the Union.

Private sector – oil and gas (4): Total Petroleum Myanmar; PC Myanmar (Hong Kong) Limited – Petronas; MPRL E&P Pte Ltd.; GoldPetrol Joint Operating Company Inc.

Private sector – mining (2): CNMC Nickel Co. Ltd.; Myanmar Federation of Mining Associations (MFMA).

Civil Society Organisations (9): KESAN (Kayin); Green Trust (Pyin Oo Lwin); Eco Dev/Advancing Life and Regenerating Motherland (ALARM); Paung Ku; Sein Young So (Mandalay); 88 Generation (Peace and Open Society); Won Latt Foundation (Rakhine); Shwe Gas Movement; Dawei Development Foundation (DDA).

(Source: Myanmar EITI)

hydropower sector (to be completed in late 2015) to determine whether it might be included in future MEITI reporting (Myanmar EITI 2014c).

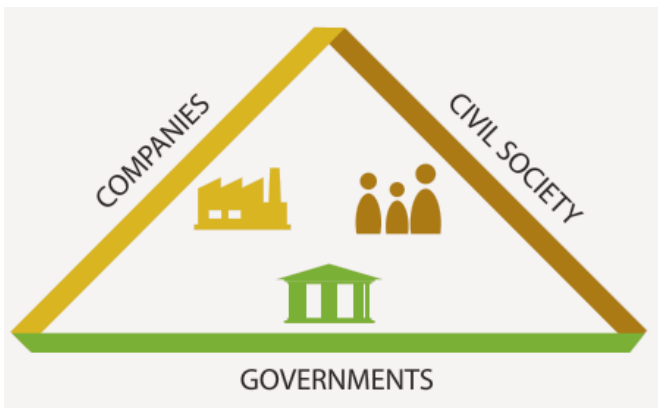
In early 2015, the MSG commissioned a team of consultants to produce a MEITI scoping study. This study provided the background information and data needed for Myanmar to deliver its first EITI reconciliation report. The study also assessed the feasibility of disclosing contractual terms relevant to the EITI, explored mechanisms for disclosure of the beneficial owners of extractive companies operating in Myanmar; provided an overview of artisanal extractive activities and give an overview of corporate social responsibility programmes in Myanmar (Myanmar EITI 2015a). The same team produced Myanmar's first EITI reconciliation report on behalf of the MSG (Moore Stephens 2015), submitted on 2 January 2016.

5.2 Multi-stakeholder group dynamics

Overall, the Myanmar EITI multi-stakeholder group has been an effective forum to bring government, civil society and business actors together. Group dynamics have at times been fraught and meetings and deliberations have been protracted. Progress has been uneven and sometimes side-tracked – something that is characteristic of MSGs in other EITI candidate countries (O'Sullivan 2013). But, overall, the MSG has worked to keep Myanmar's EITI process moving forward in a very challenging context.¹⁵

Different MSG members bring different priorities, ways of working and styles of engagement to MSG meetings. These reflect their backgrounds and organisational cultures and their fundamental interests in extractives and the EITI. These different ways of communicating and engaging are shaping how the MSG works and what it might or might not achieve.

Figure 4: EITI multi-stakeholder group



The MSG brings government, company and civil society actors together to act as an EITI board. (Source: EITI 2013)

Government participation in the MSG process has been relatively consistent and high level. When the EITI was first launched in 2012, the Leading Authority was composed of Union Ministers and was chaired by a President's Office Minister. This reflected the Presidential commitment to the EITI process. The creation of the MSG entailed a shift from ministerial engagement toward technocratic engagement with government MSG members drawn primarily from Directors General (DG) of relevant ministries (Finance, Mining, and Energy). Given Myanmar's hierarchical decision-making processes, however, government MSG members still tend to defer any significant decisions upward to their Ministers before acting.¹⁶

Government MSG members are not always clear about what it is that they want from the MEITI process and often, privately, voice concerns about the burden that the process could place on the limited capacities of their

ministries.¹⁷ They tend to be most interested in achieving the milestones needed to gain EITI candidacy and compliance. As public administrators and technocrats steeped in the formal and structured traditions of Myanmar's bureaucracy, government MEITI members often appear uncomfortable with the more confrontational style of engagement used by some civil society members of the MSG.¹⁸

Civil society MSG members tend to come from an activist background. They often have decades of experience in mobilising citizens and in engaging in specific environmental, resource or human rights causes. Civil society actors tend to bring this experience and activism to the MSG. As a result, they have been effective in bringing evidence from other countries' EITI process to the MSG and linking the MEITI process to the on-the-ground realities of those living in areas directly affected by extractive industries. They also sometimes use the MSG as a platform for specific grievances and try to push the MEITI process to tackle issues beyond its core mandate. As a prominent civil society activist explained: 'If we don't stand on our box and ask for our rights, then no one will listen.'¹⁹ Civil society representatives are also still unsure about how to engage with state and private sector: As one experienced civil society analyst noted: 'This [the EITI process] is the first time that we [civil society] have any voice in Myanmar, so people and CSOs don't really know what the rules are, what the boundaries are.'²⁰

15 The analysis in this section is based on interviews with civil society, government and business MSG members, the EITI International Secretariat staff, the MEITI leading authority team and donors and analysts who have supported and studied the EITI process. Specific interviews are referenced below.

16 Interview with donor observer of MEITI process, Yangon: 24 November 2014.

17 Interviews with Ministry of Finance, Ministry of Planning and Ministry of Mines officials, Nay Pyi Taw: 16 and 17 May 2013.

18 Interview with MSG observer, Yangon: 27 January 2015.

19 Interview with a prominent civil society activist, Yangon: 28 January 2015.

20 Interview with senior analyst, Yangon: 28 November 2014.

Business actors tend to be less vocal and less directly engaged in MSG discussions than their CSO and government counterparts. As one close observer of the process noted: 'They want the meetings to be efficient, focused and businesslike.' They sometimes express frustration with how long and contentious some recent MSG meetings have been. MSG business representatives tend to take a minimalist approach to the MSG and as one MSG member explained: 'They want to be told what to do and not do and just get on with it.'²¹

Given that state, civil society and business actors have seldom met, let alone worked together before, it is unsurprising that that Myanmar's MSG process has seldom been smooth sailing. Meetings have tended to be protracted and progress has sometimes been halting with one participant noting that 'for every step forward there is a step back or to the side'.²² There have even been times where the MEITI process has come close to being derailed. The most significant example of this is the crisis that flared after the death of protestor at the Letpadaung Copper Mine in December 2014 (see Box 6 below).

Building relationships and trust

Building trust and a constructive working relationship between government, businesses and civil society MSG members has been a significant challenge. Trust and strong working relationship matters not only for the MEITI, but also for Myanmar's broader reform processes. As one senior donor administrator said: 'Sixty years of conflict and dictatorship have left Myanmar with devastating levels of distrust.'²³ Offering the opportunity for these three actors to formally work together on a matter of national importance, the EITI has the potential to help set the 'rules of the game' for how these actors might interact over other sectors and other policies.

In many ways significant progress has been made in building trust and working relations. The MEITI process and the MSG has provided a platform through which state, business and civil society actors can meet for the first time. These MSG meetings and other interactions have helped to create the basis for structured engagement between these actors. This is a significant accomplishment in the context of Myanmar. As a MEITI technical advisor blogged:

That the MSG was established and is now functioning is in itself a unique achievement given that never before in the recent history of Myanmar have representatives from these three different stakeholder groups sat around the same table together to discuss resource governance and transparency issues (Irwin 2014).

Several shared conferences and exposure visits have helped to build a working relationship between MSG members and others engaged in the MEITI process. The 2013 EITI Conference in Australia, for instance, provided an opportunity for government officials, civil society activists and some business leaders to travel and learn about EITI together. For many, this was their first exposure to the EITI process, representatives from other EITI participant countries and to each other. As one neutral observer at the EITI Conference noted: 'The Sydney conference was transformative. It brought different actors – ministers and officials, companies, and civil society – together. It put them on the same base. It showed that they could work together.'²⁴ Similarly, a joint exposure visit to observe Mongolia's EITI process not only helped to build a shared understanding of EITI in practice, but also to forge relationships between MSG members.²⁵ In both of these cases, getting state, civil society and private sector MSG members to work together in a neutral setting (away from Myanmar) even for a few days, appears to have made a difference. Two civil society members of the MSG commented:

These trips built trust between us (civil society) and government and business people [...] before the MSG we didn't know each other. But now we stick together.²⁶

Participation with government and civil society has improved. We can talk, we can sit down together. We can express our important concerns. This is an improvement'.²⁷

In October 2014, the EITI International Board held its annual meeting in Myanmar's capital, Nay Pyi Taw. This two-day meeting was followed by a day-long workshop on Myanmar's EITI process. The event attracted international attention and high level government engagement. It helped to demonstrate the degree of global interest in Myanmar's EITI process. The meeting helped to keep the Myanmar EITI process in the domestic and international spotlight, provided a symbolic reward to the government for pursuing reform and gave domestic civil society international backing. According to participants and observers, the meeting also helped government and civil society link three of Myanmar's most significant reform processes: the EITI, public financial management (PFM) and decentralisation.²⁸ As one participant noted: 'prior to the EITI week, [many in government] saw the EITI, PFM and decentralisation as separate processes. But the meeting showed them how they are

21 Interview with MSG business member; Yangon: January 26 2015.

22 Interview with MSG observer; Yangon: 21 November 2014.

23 Interview with senior donor administrator; Yangon 13 March 2015.

24 Interview with a donor observer at the Sydney EITI Conference; Yangon: 26 November 2015.

25 Interview with a civil society MSG member; Yangon: 26 November 2014.

26 Interview with civil society MSG member; Yangon: 27 November 2014.

27 Interview with civil society MSG observer; Yangon 21 November 2014.

28 Interview with participants in the October 2014 EITI week; Yangon: November 26 and 27 2014.

all connected.²⁹

Maintaining this working relationship and the trust between (and within) the different MSG groups will be a significant challenge as the analysis of the specific contests involved in the EITI process in the next section illustrates.

5.3 Contests over the breadth and depth of EITI

Members of the MSG have actively contested the depth and breadth of the EITI process in Myanmar. In particular, civil society MSG members have sought to stretch the MEITI to include a broader range of resources, to report on beneficial ownership of companies and to pilot the EITI reporting process at the state and regional levels. They have also sought to use the MSG as a platform for raising and redressing past and present human rights and resource governance grievances.

These tactics have strained MSG relationships and even threatened to derail the MEITI process. In some ways, they have also side-tracked the MEITI process from its core mandate of reporting on government and corporate revenues. On the other hand, this strategy has helped to push the EITI process to address more of the extractives value chain than might otherwise be the case and made the process potentially more relevant and legitimate.

Extractives sectors

The MSG has hotly contested the breadth of resources to include in Myanmar's EITI reporting process. The EITI was designed to improve the transparency of only a limited range of resource revenues generated by the production of oil, gas and mined minerals. Since the EITI process was first mooted in Myanmar, however, civil society actors have pushed for the MEITI process to include not just oil, gas and mineral resources but also hydroelectricity, forest products and jade and gemstones.

Hydropower is not usually considered to be an extractive resource as it draws from a renewable source of energy: water flow. Like other extractive industries, however, hydropower exploitation requires large and long-term capital investments. The state also stands to gain significant revenues from exporting electricity to foreign markets and there is the potential for significant payments to government from corporate investors (Spectrum, 2012). These factors and the scale of potential hydroelectricity production in Myanmar, and concerns over specific hydropower investments such as the Myitsone Dam, encouraged MATA members to push for the inclusion of hydropower in the EITI reporting process.

Similarly, timber and other forest products are renewable and not strictly speaking extractive resources. Myanmar is rich in forest resources, however, and 80% of Myanmar's logs are thought to be illegally harvested (British Embassy, Rangoon 2014). In addition, most large-scale forestry concessions have been allocated in an opaque manner, and few of the benefits from forestry flow to either government coffers or to those living near forests (Woods 2013). As a result of this chronic mismanagement and accompanying deforestation, forest governance is high on the agenda of many local and national civil society groups in Myanmar. The EITI process and MATA gave these groups a forum through which they could voice their concerns and lobby to have timber included in Myanmar's EITI process.

During the seventh MSG meeting in December 2014, civil society MSG members lobbied for forestry and hydropower to be included in MEITI scoping study. The push for including these resources came from local and national activists and international NGOs. Civil society MSG members were under considerable pressure from MATA's state, regional and local members and from national activists to prioritise forestry and hydropower. A survey of MATA members, for instance, found that while oil and gas was seen as the most important set of resources to include in the MEITI process, forestry and hydropower were deemed more important than the inclusion of mining.³⁰ An expansive approach was supported by some more activist national CSOs and INGOs.³¹

Government and some business MSG members, however, sought to limit the initial MEITI reporting process to oil, gas and mining. This position was backed up by the EITI's International Secretariat whose representatives stressed that the EITI Board can only consider oil, gas and mineral resources for the EITI validation and compliance process (EITI Secretariat 2013a).

There was also significant debate about whether or not jade and gemstones should be included in the scoping study. On the one hand, civil society and some industry representatives argued that an EITI that excludes jade and gemstones would be leaving out Myanmar's most opaquely governed resources.³² On the other hand, government representatives argued that lack of data and the scale of illegal mining would pose a fundamental challenge to EITI reporting (Myanmar EITI 2014c).

After a protracted debate, government, business and civil society actors reached a compromise. The MSG agreed that the MEITI scoping study and initial EITI report would cover gas, oil and mining revenues. It also agreed that the report would include data on jade and gemstones. While the data on jade and gems is initially only drawn from official government Jade and Gems Emporia, this decision means that Myanmar is the first EITI candidate country to ever report on gems (MEITI

29 Interview with donor observer of EITI process, Yangon: 26 November 2014.

30 Interview with EITI MSG members, Yangon: 18 January 2015.

31 Interview with a civil society MSG members, Yangon 18 September 2014.

32 Interview with a civil society MSG member, Yangon 18 September 2014.

MSG 2015b). In addition, the MSG agreed that the EITI report should include the disclosure of revenue and tax generated by the transportation of oil and gas through the pipeline (MEITI MSG 2015b). The MSG also agreed to commission a feasibility study into the hydropower sector, providing the basis for future monitoring of hydropower revenues. Forestry was dropped from EITI discussions (at least for now). Civil society, government and private sector MSG members agreed that the pending FLEG-T process would provide a better forum to pursue forest governance and transparency. The government did however, agree to release timber production data (Myanmar EITI 2014c).

These compromises were achieved through a combination of brinksmanship and horse-trading. Civil society actors threatened to hold up the entire EITI process if the government failed to include jade and gemstones in the reporting process or to provide more information about hydro and forestry.³³ Government officials were willing to back down on their initial positions once they realised that the overall EITI timetable might be compromised and once they were able to shift forestry out of the EITI process. Civil society MSG members were also able to forge an alliance with several more reformist business sector members of the MSG (including those representing smaller mining operators). This enabled a stronger lobby within the MSG to ensure that jade and gems and hydroelectricity were included in the MEITI process.³⁴

Beneficial ownership

Beneficial ownership is another area where there has been significant contestation and deliberation within the MSG and beyond. Untangling who owns what, particularly in the mining sector but also in the petroleum sector, is exceedingly difficult in Myanmar. As noted above, the ownership of jade mines in both government and KIO controlled areas of Myanmar is exceedingly opaque, and involves links to current and former military leaders and their associates, and drug lords (Global Witness 2015). In many cases, there is no public information about ownership. In other cases the most visible investor in a mining enterprise is acting as a front for other domestic or international actors. In some affected areas, for instance, Chinese investors 'employ brokers to gain informal concessions from local militia leaders. Of the estimated 18 local mines in Shan State, nearly all are informally financed by ventures with Chinese companies'. (Buchanan, Kramer, and Woods 2013)

The lack of transparency of ownership extends to domestic and international actors in the oil and gas sector. In 2013 and 2014, the Myanmar Government auctioned off 36 onshore and offshore oil and gas blocks. Despite the Ministry of Energy's public commitment to manage Myanmar's oil and gas resources using 'best global practice', it provided little information about the winners of the oil and gas auctions (Myanmar Ministry of Energy 2013). As the *Financial Times* reported: 'The Ministry of Energy's announcement on its Facebook page simply lists names and contacts of the winning businesses, along with limited details of contract terms – but not the "signature bonuses" the companies have agreed to pay', or who the ultimate owner of each company is (Peel 2014).

Over the past two years, a number of investigative reports have highlighted the lack of transparency over beneficial ownership in Myanmar. As noted above, Global Witness has attempted to unpick the hidden ownership of Myanmar's jade industry (Global Witness 2015). Global Witness has also worked to expose beneficial ownership in the oil and gas sector. In 2014 it asked those companies awarded onshore and offshore oil and gas blocks to provide information about their ownership. At first, it received few responses. After a storm of publicity, diplomatic pressure and pressure from domestic and international civil society however, 25 of the 47 winning national and international companies provided 'full details of who owns and controls them' (Global Witness 2014a). As a result, all companies with an interest in 17 of 36 oil and gas blocks 'have fully declared their ultimate ownership' (Global Witness 2014a). Some of these companies are global and publicly traded, but others are not:

Of the 15 private Myanmar companies which won oil and gas block stakes, eight (i.e. just over half) have fully declared who ultimately owns and controls them. In addition, five private international companies chose to provide partial or full ownership information to Global Witness. (Global Witness 2014a)

These reports and the global and local media coverage they generated have helped to put beneficial ownership at the heart of EITI debates in Myanmar. Civil society MSG members have put pressure on government to include beneficial ownership in the MEITI reporting process. This position has been backed by international oil and gas operators sitting on the MSG. This internal MSG pressure, domestic and international media attention and discussions with the EITI Secretariat has led the MSG and Myanmar Government to agree to explore how beneficial ownership could be included in Myanmar's EITI process. As the press release for Myanmar's EITI candidacy states, the 'government has [...] committed to map and identify beneficial ownership of companies operating in Myanmar; disclose details of the 2013-14 oil and gas bidding round and explore the methodology and extent of contract transparency' (EITI Secretariat 2014). The MEITI scoping study will present options for disclosure of beneficial ownership in extractives companies operating in Myanmar. The focus on beneficial ownership in Myanmar has been strengthened by the new (2016) EITI Standard which states that disclosing beneficial ownership will be an EITI requirement by 2020 (EITI Secretariat 2016a).

33 Interview with EITI MSG members 18 January 2015 and Interview with international analyst of the MEITI process, Yangon: 13 March 2015.

34 Interview with EITI MSG members 18 January 2015.

Subnational pilots

MATA's elected MSG members have pushed the MSG to include subnational pilot schemes within Myanmar's EITI process. As noted, MATA is a national network with local networks at the state and regional level. These local members and more activist civil society groups have continually pressed MATA's MSG representatives to demonstrate that the EITI is delivering tangible, local level results. Some of these groups see the EITI process as being too centralised, too technocratic and not focused enough on the day-to-day challenges of local people. These activists and groups lobbied MATA to push for state/regional level EITI coordination units. As a civil society member of the MSG explained:

We have our meetings in Nay Pyi Taw and Yangon. But the problems are outside Nay Pyi Taw and Yangon – the problems are local. We need to bring the EITI to those areas where it really matters.³⁵

During the MSG meetings in August and October 2014, civil society representatives argued that the MEITI should pilot nine subnational coordination units in the run up to the first MEITI report (Myanmar EITI 2014b). These units, it was argued, would bring the EITI process down to the state/regional level and improve its legitimacy at national level. Initially government MSG government representatives and the MSG chair argued that subnational engagement should wait until later in the EITI process (Myanmar EITI 2014a).

Following protracted discussions, government, business and civil society agreed that pilots would be set up in four states/regions (Mandalay and Magwe Regions and Shan and Rakhine States). These coordination units would mirror the national MSG with members drawn from state/regional government, businesses and civil society (Myanmar EITI 2014b). These units aim to give focus on 'outreach and awareness raising on natural resource governance and the EITI in the states and divisions where extractive activities are taking place' (EITI Secretariat, *Myanmar*).

While this approach aims to bring the EITI process closer to the people, civil society observers and some government officials are concerned that state/region level government officials and local civil society may lack the capacity to engage on the technical aspects of the EITI. They also raise concern that the pilot coordination units may not be enough to retain the interest of many local groups whose members are focused on specific grievances.³⁶

Addressing grievances

As noted above, during the decades of military rule, government officials, military leaders and their economic allies used official and unofficial state authority to expropriate land and secure access to extractive and renewable resources – often at the expense of local people. This troubled history has fuelled citizen distrust and grievances against the government, the military and resource-related businesses. For many in Myanmar, this history of exploitation has made land, extractives and renewables into symbolic and political resources rather than just economic ones. Large scale farms, plantations, mining operations and hydroelectric dams have all become significant sites of resistance (Simpson 2014a).

These past and ongoing cases of expropriation and exploitation cast a shadow over the EITI process. As was highlighted above, the MEITI process is the only forum that brings government, civil society and private sector actors together on relatively equal footing to discuss resource issues. In lieu of other fora or structured grievance and reconciliation processes, MEITI's civil society actors have sought to address past and present, broad and specific grievances against the government and companies through this process. In MSG meetings, civil society members have repeatedly raised issues related to revenue sharing, the peace process, political prisoners, the overall enabling environment for civil society and access to mining operations. They have also raised current and longstanding grievances against specific extractives projects. As one influential civil society activist explained: 'We don't care too much about the actual EITI report itself, we care about addressing the issues on the ground.'³⁷ Or as a close international observer of the MEITI processes noted:

Many civil society actors ... are more interested in how the EITI can help them to address past misdeeds – particularly at a local level.³⁸

This focus on grievances has sometimes side-tracked and often tested the MEITI process. The most significant and high-profile instance of this was in early 2015, following the fatal shooting of a protestor by police at the Letpadaung Copper Mine project (see Box 6). Following the shooting in December 2014, MATA and civil society members of the MSG publicly accused the government of breaching its EITI commitments and submitted a formal complaint to the EITI International Board (Kean 2015; MEITI MSG 2015). This position was backed by a statement from the ten civil society members of the EITI International Board (Civil society EITI International Board representatives 2015).

35 Interview with civil society MSG member, Yangon: 26 November 2014.

36 Interviews with civil society MSG members, Yangon: 26 November 2014; Interviews with EITI MSG donor observers, Yangon: 26 and 28 November 2014.

37 Interview with a prominent civil society activist, Yangon: 21 November 2014.

38 Interview with longstanding political analyst, Yangon: 28 November 2014.

In January 2015, the MSG held an extraordinary meeting to address the crisis. This meeting was attended not only by Myanmar's MSG members but also by the Head of the EITI International Secretariat, Jonas Moberg, and others. While the meeting appeared to broadly defuse the immediate crisis, underlying tensions remain. The meeting's minutes make it clear that from a civil society perspective, 'if the current issues [around the mine] are not effectively addressed and resolved there could be significant damage to the trust-building process' at the core of the EITI process (MEITI MSG 2015: 4). As a participant from the EITI Secretariat noted, 'the issues involved went to the very core of the EITI, from the opacity of contracts covering mines of national importance to the role of an enabling environment for civil society to participate in the EITI' (Gordy 2015).

The EITI is not designed to serve as a grievance, reconciliation or human rights redress mechanism. In Myanmar, however, the lack of alternative fora to address such grievances means that they are raised at MSG meetings. An international supporter of the MEITI process explained:

[The] Myanmar EITI has had to be all things to all people. The EITI is being overloaded [...] There is incredible pressure on this one process – pressure it was not designed to handle.³⁹

Another MSG participant said much the same: 'The EITI cannot be a substitute for a grievance mechanism...the EITI is carrying too much weight.'⁴⁰

For the MEITI process to work in the long run, other mechanisms and fora are needed to address grievances and bring state and non-state actors together. These could be domestically driven or could link to other international initiatives such as the FLEG-T process, the Volunteer Principals on Security and Human Rights process and the Open Government Partnership.

Box 6: Campaigns and protests

The **Myitsone Dam** project in Kachin State is one of the largest hydro projects in South East Asia. It is expected to cost USD 3.6 billion and to produce six gigawatts of electricity. The project is managed by the Chinese Power Investment Corporation (CPI), Asia World Company (a Myanmar-based company established by former drug lord and tycoon, Lo Hsing Han) and the government's Myanmar Electric Power Enterprise. The project would have significant social and environmental impact on nearby and downstream communities, including the displacement of 20,000 people. Around 90% of the power generated would be exported to China.

The campaign against the Myitsone Dam began in 2007. At first it was spearheaded by local people likely to be displaced, Kachin-based civil society organisations and the Kachin Independence Organisation (KIO). As Myanmar began its political transition, however, the campaign became a national and even international issue and a significant test for the new government. As a recent report explains, 'the campaign remained localised until early 2011, when it was picked up in Yangon, especially by civil society groups, journalists, writers and artists. The focus of the campaign shifted from being a Kachin issue to a Burmese national issue as the Irrawaddy River also flows through the Burman heartland' (Buchanan, Kramer, and Woods 2013: 38). The government came under increased pressure and in September 2011, President Thien Sein suspended the Myitsone Dam Project. This decision reflected not just the effectiveness of the campaign, but the fact that the government was attempting to re-engage with the outside world and to demonstrate that it had turned over a new leaf (Harvey 2011). It was also a significant and symbolic way for the government to stand up to Chinese economic dominance in Myanmar.

The **Letpadaung Copper Mine** is a large open-pit mine in Sagaing Region. The mine is currently operated by Myanmar Yangtse Copper Mine Ltd (partially owned by Chinese company Wanbao) in partnership with the military-holding company UMEHL. The mining operation will eventually cover an area of about 3000 hectares of land acquired from 26 surrounding villages (Buchanan, Kramer, and Woods 2013). Around one billion US dollars has already been spent to develop the site (The New York Times 2015). As with the Myitsone Dam, protests against the mine began locally. In November 2012, security forces fired white phosphorous at protestors and several, including monks, were seriously burned. The protests swiftly escalated and drew in national and international actors. In late 2013 mining operations were suspended and a commission of enquiry headed by Daw Aung San Suu Kyi was established. It found that the mine had not compensated villagers adequately and that it had not met national or international social or environmental standards. The commission made 42 recommendations but did not recommend closing the mine. Protests against the mine have continued and, in December 2014, police guarding the mine shot and killed a 56-year-old local female protester. This led to a significant crisis in Myanmar's EITI process, described in section 5.3 of this study.

Other recent campaigns (for instance, against the Dawei Special Economic Zone in Tanintharyi Region) have also demonstrated the ways in which local, national and even international civil society can mobilise. These campaigns are not always successful from the campaigners' perspective, but they do mean that government and investors have had to engage with local citizens and national civil society actors in ways that they did not have to in the past.

39 Interview with international analyst of the MEITI process, Yangon: 13 March 2015.

40 Interview with a private sector MSG member, Yangon: 27 November 2014.

5.4 Ongoing challenges

The EITI process can be challenging in any country. Myanmar's political and economic context makes the EITI process particularly complex and challenging. There are at least six facets to this complexity:

- **Short timeframe:** The timeframe for the MEITI process is ambitious. Myanmar's first full EITI report was due in January 2016 and compliance with EITI validation is demanded a year later in January 2017. Given that Myanmar has few pre-existing systems of transparency, little experience of downward accountability and a complex range of government, business and civil society actors that need to be included in the MEITI process, this short timeframe will pose significant challenges.
- **Complex sector focus:** The MSG has agreed that the initial scope of MEITI will be oil and gas, and mining (including gemstones and jade). The feasibility of including hydroelectric power is also being explored. As has become clear throughout this study, each of these sectors (and their constituent subsectors) is incredibly complex – for each there are multiple actors, multiple interests and multiple potential pitfalls. Mining will pose a particular challenge for MEITI, while Myanmar is the first country to explore hydroelectricity through an EITI process.
- **A fragile and conflict-affected state:** Civil wars have raged in Myanmar for most of the 60 years since independence. Much of the country's resource wealth lies in these conflict-affected borderlands and, as will be explored below, resource extraction has helped to fuel these conflicts. If MEITI is to make a difference, it will need to engage in these parts of the country and, at the same time, avoid exacerbating existing tensions there between the state and non-state political actors and armed groups. This will be a significant challenge.
- **Multiple pressing reforms:** EITI is only one of a number of significant and simultaneous economic and political reforms underway in Myanmar. There are few existing financial management, transparency and accountability systems, and these multiple pressing priorities have the potential to distract government and civil society actors and stretch their limited capacity. Linking MEITI to these other reforms is a complex process.
- **Scramble for resources:** Myanmar's rich extractive and renewable resource wealth is attracting significant external interest; Myanmar is one of the last resource frontiers in Asia. Managing this influx of potential investors while simultaneously raising the bar on transparency through MEITI is tricky.

Given this complex context, this section briefly outlines some of the challenges facing Myanmar's EITI process as it works towards EITI compliance and embedding EITI in domestic governance. The MEITI process, despite its limitations, is creating a foundation for potential improvements to resource governance in Myanmar. This foundation is, however, fragile and it remains to be seen if it will be eroded by wavering government commitment, civil society fragmentation, inflated expectations or capacity constraints.

Wavering government interest?

There are some indications of waning government interest in and commitment to the EITI process. The current President and several key presidential advisors remain committed to the EITI, but other pressing reforms continually vie for their attention.⁴¹ The November 2015 elections further distracted and diluted political investment in the EITI process as the political campaign and internal ruling party dynamics overshadowed other government priorities. Moreover, the most important milestone set for the MEITI Secretariat by the initial Presidential Decree was to ensure that Myanmar became an EITI candidate country. Now that this has been achieved and a positive 'reformist' signal has been sent to the international community and to international investors, the risk is that the government might invest less in securing EITI compliance than it did in candidacy. This has happened in a range of other EITI candidate countries (O'Sullivan 2013). As a recent blog noted: 'There is a real danger that the government seems to be thinking "job done" rather than "job just getting started.'" (Saloman and Kyte 2014)

However, the NLD's landslide election victory is likely to boost the MEITI process. While the NLD's election campaign and manifesto were light on specifics, transparency and accountability are an abiding focus of the party and its leadership (Wa 2015; Dinmore 2015).

Raised expectations

The high profile launch and subsequent promotion of the EITI process created lofty expectations among many civil society actors that the EITI would bring significant, swift and tangible improvements to Myanmar's resource governance. Given the limited and technical nature of the EITI and the experiences of other EITI member countries (O'Sullivan 2013), these lofty expectations may be difficult to fulfil. While the potential scope for MEITI has been expanded to encompass more of the extractives value chain, the pace and depth of visible change may not be fast or deep enough to keep some civil society actors committed to the process. As a donor observer of the MEITI process explained:

⁴¹ Interviews with international analysts of the EITI process, Yangon 13 March 2015 and 24 November 2015.

EITI has created unduly high expectations. These lofty expectations put pressure on EITI in both a good and a bad way. They pressure it to achieve more than it might otherwise. But they also mean it might not deliver enough to keep everyone interested and engaged.⁴²

Pressure on MATA

The Myanmar Alliance for Transparency has achieved a great deal in its short lifetime. MATA has brought together a broad spectrum of civil society actors, built engagement at the local and national level and worked to represent civil society interests on the MSG. The MATA coalition and its elected MSG representatives, however, have been under continual pressure from their membership, their government and business MSG counterparts and some members of the international community.

Many of MATA's local members expect the Alliance to deliver real results on the ground. Raising awareness and conducting subnational coordination pilot schemes may not be enough to retain the interest of these civil society actors whose members are often focused on specific grievances and tangible change rather than abstract centralised reform.⁴³ At the same time, MATA's MSG members are under pressure from more activist national environmental and rights-based civil society groups who remain wary of cooperation with government and businesses. A veteran civil society activist explained: 'We don't want to be used by government to give it legitimacy. We don't want to be used by government to "greenwash" their reforms.'⁴⁴

MATA's MSG members are also under pressure from government and business MSG counterparts and the MSG Secretariat. These actors complain that MATA's activist approach makes life difficult for them and slows up the EITI process.⁴⁵ Even members of the international community express frustration with the Alliance's approach, its rhetoric and its tendency for brinkmanship.⁴⁶

All of these competing pressures have created significant strains in MATA. 'We feel like we are trapped – we are under pressure from local civil society, government and the International EITI', explained one of MATA's MSG members.⁴⁷ MATA and its MSG representatives, however, have navigated these pressures and MATA appears to have emerged from its most recent National Working Group meeting in October 2015 with increased coherence and commitment.⁴⁸

Capacity constraints

As highlighted above, government, civil society and domestic companies all face significant capacity constraints. These constraints will make it difficult to access and analyse the data needed to develop the scoping study and the EITI reconciliation report. They will also limit the ability of MSG actors and government to communicate and act on findings and recommendations.

Decades of extractive and exploitative military rule have left Myanmar's public administration (with the exception of the armed forces) with limited organisational capacity to deliver core functions including the ability to collect and manage revenue. As noted above, extractive revenues were not centralised and instead flowed into many individual coffers across government (ASI and MDRI 2015). If and when these revenues were recorded, they were often written down in ledgers and not entered into computer systems. These constraints fundamentally affect the ability of ministries to conduct effective and transparent contracting, to manage the disclosure of material payments to government by extractive industries and to disclose payments from state-owned companies.

For the Leading Authority and the MEITI process to work effectively, there also needs to be a degree of cross-ministerial coordination. As has already been discussed, such cross-government working, however, faces significant challenges in Myanmar. Ministries have tended to operate in silos and sowing competition and distrust between different branches of government has been a key political management tool. Moreover, unlike many other countries, the Ministry of Finance has historically lacked convening power over other ministries or the power to enforce fiscal policies and rules. An international EITI reconciliation expert explained:

The data in key sectors is just not there. In many cases, the government doesn't know its incomings and outgoings, and the private sector does not have accurate records.⁴⁹

42 Interview with a senior donor observer of the MEITI process, Yangon: 13 March 2014.

43 Interviews with MATA local members, Mawlamyine: 20 September 2014 and civil society MSG members 18 September 2014.

44 Interview with a veteran civil society activist, Yangon: 18 September 2014.

45 Interview with members of MSG Secretariat, Yangon: 14 July 2014.

46 Interview with donor observer of EITI process, Yangon: 28 November 2014.

47 Interview with a civil society MSG member, Yangon: 18 September 2014.

48 Interview with international observers of MATA National Working Group meeting, Yangon: 24 November 2015.

49 Interview with international EITI reconciliation expert, Yangon: 7 May 2015.

Myanmar's closed history has also shaped the capacity of business actors. Decades of state and then military economic dominance has meant that much of Myanmar's private sector has little experience of working to international management or accounting standards. Moreover, the complexity and informality of licensing and revenue flows under the military regime has meant that extractive businesses had little incentive to develop or to use formal revenue tracking or reporting systems.

Civil society capacity has also been constrained by decades of repression and limited operating space (see Box 4). While there are notable exceptions, many civil society organisations are only now developing more formalised systems and procedures. Most CSOs engaged in the MEITI process and the MSG have their roots in campaigning and advocacy. This gives these CSOs greater legitimacy to represent other MATA members on the MSG. But this background has given them few of the technical skills needed to analyse financial data and to engage with government and private sector actors on issues like materiality and auditing standards. An EITI MSG member said:

Our CSO members are activists. They focus on fighting for land and resources. They are not technical people, they are not technically strong. But EITI is a very, very technical process.⁵⁰

Having said this, during meetings surrounding the EITI International Board meeting in October 2014, civil society proved themselves more organised and impressive than their government counterparts (Simpson 2014b). They have received significant training and support from the international NGO counterparts and their MATA forums enabled them to systematically prepare for the Board meeting.

Significant efforts are underway to improve the capacity of MSG members and the capabilities and systems of relevant government ministries and of civil society organisations. However, these efforts will take time and may not be able to address many of the more deeply institutionalised constraints outlined in section 3.1.

EITI in the borderlands: non-state armed groups and ethnic civil society

As highlighted in section 3.1, extractives and conflict are intertwined in Myanmar's ethnic borderlands. Most non-state armed and political groups (NSAG) view resource management, revenue-sharing and environmental protection as central objects in their ongoing peace negotiations and in any future political dialogue (Burma News International undated). Myanmar's long-running conflicts fostered the formation of a wide range of local and cross-border civil society organisations working on human rights, basic services, humanitarian assistance and peace. Many of these ethnic civil society groups are also committed to improving the governance of extractive and renewable resources.

Improved data on revenue flows, greater contract transparency, clarity on beneficial ownership and other potential facets of the MEITI has the potential to play a constructive role in Myanmar's peace process and subsequent political dialogue. Timely and trustworthy information on extractive revenues, for instance, could provide the basis for state-NSAG discussions on revenue-sharing and fiscal devolution.

However, while most significant ethnic civil society organisations are engaged in MATA, many remain sceptical of the EITI process. In particular, they are concerned that the government could use the EITI to legitimise greater central control over extractive resources in ethnic areas. If these groups see that the EITI process is decoupled from their concerns about revenue-sharing, and if there is little progress on subnational EITI pilot schemes, then there is a risk that some of these groups and ethnic political parties could reject engagement in MEITI or even actively challenge the process in their homelands.

Uncivil society

Six decades of conflict and military rule have enabled what might be called 'uncivil society' to flourish in Myanmar. Uncivil society groups include organised criminal gangs, militias, networks and protection rackets that capitalise on weak law and order systems in Myanmar's border areas to secure resources and revenue. Many of these groups are both powerful and well-armed.

As already discussed, most of the trade in jade and gems and much of the trade in timber is through illicit channels (Global Witness 2015). Domestic and international networks are also at the heart of the opium trade. Myanmar is the second largest producer of opium (after Afghanistan) in the world. While production declined in the early 2000s, production has doubled since 2006 (Kramer 2015) and around 300,000 households are engaged in poppy cultivation. (Campbell 2013). Production of Amphetamine Type Stimulants (ATS) has also increased significantly since 2011 in what *The New York Times* calls a 'perverse peace dividend' in which ceasefires have freed up NSAG soldiers for drug manufacturing (Fuller 2012).

In many of Myanmar's border areas, the distinction is blurred between those involved in the illicit economy and some non-state political and armed groups, some military personnel, and some business interests (Buchanan, Kramer, and Woods 2013; Woods 2011). The illicit economy, however, is not confined to Myanmar's borderlands, but has links to the centres of economic and political power in Yangon, Mandalay, Nay Pi Taw and overseas (Kar and Spanjers 2015). Uncivil society groups need to invest and launder their illicit profits. This creates a stream of illicit financial flows and illegal income is invested in land

⁵⁰ Interview with civil society MSG member, Yangon: 18 September 2014.

and real estate, domestic and foreign bank accounts and legitimate businesses and investments. Smoothing the way for these illicit financial flows also undermines financial integrity and contributes to corruption among government and private sector officials. Given the track record of other countries that have moved from military rule to rapid economic liberalisation, there is a significant risk that illicit trade and organised crime will increase rather than decrease in Myanmar in the coming years.

These unsavoury individuals, groups and networks have no interest in increased revenue transparency. They also have the financial resources and domestic and international networks to sidestep or undermine the EITI process in some key sectors (for instance, jade or gems) and in some border regions.

6

Conclusion

This paper has explored the political economy of the EITI process in Myanmar. It has analysed Myanmar's political context and its extractive resources and revenues. It has explored the character and the interests of the government, business and civil society actors engaged in the EITI and the ways in which these actors have collaborated on the EITI while contesting its depth and breadth. In doing so, it has revealed the complexity of and pitfalls for MEITI and its potential to contribute to Myanmar's ongoing economic and political reforms.

EITI is a technical and relatively limited instrument. This is why it appeals to not just civil society actors wanting to foster greater transparency and accountability, but also to governments and businesses wanting to demonstrate a visible, but not too painful, commitment to reform. The EITI has, however, the potential to act as a wedge that can open and, in time, expand the space for transparency and accountability. It can stimulate dialogue and collaboration between state and non-state actors, generate information to identify governance shortcomings and inform public policy, and provide a platform and testing ground for additional reforms.

Myanmar's EITI process is still in its early stages. Myanmar's first EITI report has only just been published. No laws have been changed. No significant scandals have been exposed. No new tax revenue streams have been generated. Yet, even at this stage, the EITI process in Myanmar is significant and revealing. It has, for the first time, created a forum in which the state, business and civil society sit together and work to improve resource transparency and accountability. It has led to the creation of MATA which has fostered civil society coordination not only for the EITI, but also for other areas of accountability and resource governance. It has also provided a platform through which a wider range of reforms and issues are being debated and explored. These include beneficial ownership, prior informed consent, contract transparency, and improved monitoring of and compensation for the social and environmental impacts of extractives projects. Even the recently signed ceasefire between the Union Government and some ethnic armed groups refers to the EITI process, linking it to free prior informed consent (FPIC). The ceasefire conditions give local communities the right to participate in decision-making on projects that affect them, including plans to exploit extractive resources (Government of the Republic of the Union of Myanmar 2015).

6.1 Implications

What are the implications of this analysis for those working on the EITI and other initiatives that aim to improve resource transparency and governance in Myanmar and other similar contexts?

Sustaining leadership

The MEITI process has been initiated and maintained by high-level leadership. The President and several advisors launched the EITI and have periodically provided high-level backing to the process. Key opposition political leaders, including Aung San Suu Kyi, have also backed it, while a few committed and experienced activists played a key role in mobilising and maintaining civil society and business engagement. Sustaining day-to-day leadership in the process, however, has been more difficult. This suggests the importance of investing in facilitation, negotiation and the management of meetings, including by providing mentoring and training.

Building relationships and trust

As the Myanmar case has shown, fostering trust and collaboration within civil society and between civil society, business and government is challenging but essential. Platforms like the MSG bring these actors together. Shared experiences and training courses can build collaborative capacity, but maintaining and deepening trust also requires ongoing mediation, shuttle diplomacy and follow-through on specific commitments.

Providing longer-term incentives for reform

In Myanmar, as elsewhere, reputation has been a powerful driver for government investment in EITI. Once candidacy and particularly compliance are achieved, however, the reputational benefits of EITI decrease. As a result, the pace and commitment to reform can slow and weaken over time (O'Sullivan 2013). It would therefore be useful to explore how the EITI process could strengthen incentives for further extractives governance reform in candidate and compliant countries. These incentives could be domestic if civil society, citizens and even the private sector are able to use EITI information to maintain public pressure on government to address governance problems. They could also be external – the EITI Secretariat (2016a) seeks to encourage and reinforce those reforms that go beyond EITI compliance and to reward continuous reform.

Deepening EITI below national level

The EITI in Myanmar and elsewhere might explore how it can engage more at subnational and downstream levels. At the moment most of the emphasis within the EITI is on national revenue flows. In countries like Myanmar where subnational concerns over extractives resources and revenues are particularly salient, state and regional EITI pilot schemes could be expanded and greater effort could be made to track downstream licensing, production and payments. The 2016 EITI Standard creates greater scope for subnational reporting on company payments and revenue allocation.

Strengthening parliamentary engagement in EITI

There is substantial interest in the EITI among parliamentarians in Myanmar and elsewhere, and significant scope to strengthen the EITI through stronger parliamentary engagement. One area to consider is how relevant parliamentary committees could acquire the capacity to understand and review EITI reports.

Encouraging innovation and adaptation

Encouragement and rewards for EITI innovation and adaptation may deliver benefits. The 2016 EITI Standard has a range of optional components (for instance, contract transparency) that provide the basis for adaptation and that could help to extend the EITI process across more of the extractive industries value chain. By recognising efforts that go beyond minimum EITI requirements, the new EITI Standard gives greater scope for recognising innovation than in the past. Adoption of these optional components could be further encouraged and rewarded. EITI-compliant countries might also be encouraged to report on different resources (for instance, hydroelectricity) if locally relevant. To be a global standard, the EITI international reporting template will need to be consistent and comparable across countries and over time, and yet flexible enough to accommodate local innovation and adaptation.

Making EITI relevant and tangible

There is a risk in Myanmar and elsewhere that EITI's focus on extractive revenue is too technical and abstract to inspire sustained citizen and civil society commitment to the process. For the EITI to deliver meaningful results, the information it produces will need to be locally relevant where possible. This suggests a need for both an effective public engagement strategy and an EITI process that is linked to tangible on-the-ground priorities: revenue sharing and fiscal devolution, environmental degradation, and the local economic and social impact of extractives projects.

Investing in communications and public engagement

An effective EITI process is not just about generating information. What is done with this information, how it is presented and analysed, how it is disseminated and debated, and how it is used to influence and create new policies and practices are key factors. At the heart of an EITI process therefore is not only an effective multi-stakeholder group, but also a strong strategy for communication and public engagement. This strategy is important not just during the initial phases of the EITI process, but also once the reporting process begins.

Managing expectations

It is important to manage expectations about what the EITI can deliver. The EITI focuses primarily on revenue transparency. In a context like Myanmar, where transparency has been scarce and there are few avenues for civil society to make its voice heard, expectations can outstrip the potential of a process such as the EITI. This raises the risk that important civil society actors may become disillusioned and walk away from the process or even seek to discredit it.

Linking to complementary reforms

The EITI process alone cannot deliver sustained improvement in resource transparency and governance. In Myanmar, the EITI process is linked to the World Bank's public financial management reforms. To make a lasting difference in countries like Myanmar, the EITI needs to be accompanied by other reforms and initiatives including those that strengthen the judiciary, public financial management, parliamentary and statutory body oversight, and the media. Alternative fora for addressing past and present grievances could be developed, and a limited number of alternative mechanisms could be explored for promoting transparency and resource governance, such as FLEG-T.

But not cluttering the landscape with too many initiatives

This does not mean, however, that external actors should clutter the governance landscape with multiple governance and transparency initiatives. Government and civil society are likely to be overstretched in contexts such as Myanmar, facing many pressing priorities. Introducing too many mechanisms, particularly those that reflect development partner concerns rather than domestic priorities, could undermine efforts to deliver reform processes already underway – such as, in Myanmar's case, the EITI.

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