



## Sector Wide Impact Assessment of Limestone, Gold and Tin Mining in Myanmar

# Executive Summary and Recommendations

Myanmar Centre for Responsible Business



Myanmar Centre for  
Responsible Business

THE DANISH  
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HUMAN RIGHTS

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All findings and recommendations in this SWIA are the sole responsibility of the partner organisations.

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# Executive Summary

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This sector-wide impact assessment (SWIA) on limestone, gold and tin mining in Myanmar analyses the impacts of mining of these commodities on the environment, local communities and workers. It covers sector-wide, cumulative and project-level impacts, looking at both the formal and informal parts of the sector. Recommendations are made to the Myanmar Government, businesses, civil society, ethnic armed organisations and other governments on how adverse impacts of the mining sector can be avoided and addressed, and how positive impacts can be maximised. By outlining key findings from the extensive fieldwork undertaken for the assessment and making concrete recommendations, the assessment seeks to contribute to building a platform for dialogue about how Myanmar's mining sector can be shaped to contribute to poverty reduction and development.

Myanmar's national territory contains extensive mineral wealth with proven reserves spanning industrial minerals and stones, heavy metals, jade and gemstones, and energy sources such as coal and uranium. Although minerals have long been exploited in Myanmar, much of the country's geology remains unknown. The sector is characterised by limited access to modern technology and financial investment, with most investment being by Myanmar companies, some in collaboration with cross-border investors, and much of it informal and unlicensed.

Overall, the SWIA research found few environmental, social and human rights protections in the mining sector and widespread poor practices. Even at larger established mines, very few good practice examples could be identified. Extensive adverse impacts on the environment and human rights were documented throughout the country and across different types of mining activities. This reality has led to the poor public perception of mining in Myanmar. It means that if the mining sector in Myanmar is to be developed to make a positive contribution to the country's development, significant steps will need to be taken by the Government, businesses and civil society, to address current adverse impacts and work towards the implementation of good practices. Five main challenges that need addressing are identified below.

**The SWIA focuses on limestone, gold and tin** in the exploration and exploitation phases of the mineral value chain. These commodities were selected because, whilst the majority of Myanmar's mining revenue continues to come from jade and gemstone extraction, other commodities are increasingly being developed. Furthermore, the environmental and human rights impacts of jade and gemstone mining have received significant attention, both nationally and internationally, whereas the impacts of other mineral commodities have not been subject to the same level of scrutiny.

For all three commodities, the SWIA considers impacts associated with the formal (including formally permitted large- and small-scale mines) as well as informal (including informal subsistence mining) parts of the sector, as well as the interaction between these. While there is no reliable data on the scale of the informal sector, MCRB field research and other sources indicate that the informal sector comprises a large component of the mining sector for these three commodities. The role of the informal sector, as well as the potential for its increased formalisation, therefore comprise important discussion points in the SWIA and future dialogue and action on the Myanmar mining industry.

A SWIA goes beyond a particular project to assess the impacts of a sector at three-levels: **project-level, cumulative and sector-wide**. This means that the mining SWIA addresses the impacts of mining operations and activities on workers and communities, as well as the impacts of the sector

as a whole, on the enjoyment of human rights in Myanmar. The methodology draws on established environmental and social impact assessment (ESIA) methodologies, international human rights and labour standards, and key international frameworks such as the United Nations Guiding Principles on Business and Human Rights. The research conducted for the SWIA was both desk- and field-based, carried out over a 12 month period and including interviews with 1378 persons at 41 sites in 8 areas, and two public consultations in Yangon. The field-based research included interviews with the full range of relevant stakeholders, including Government, businesses, employees and casual workers, local communities, civil society and others.

## **Five main challenges for achieving responsible mining in Myanmar**

### **1. Policies, laws and regulations relevant to mining activities lack clarity and inhibit responsible investment**

In the current process of regulatory reform, the legal landscape is changing rapidly, including for mining. This has created a number of associated uncertainties. New laws and regulations are not always consistent: there is a lack of alignment between different applicable laws, and sometimes even contradictions or conflicting requirements. For example, the fieldwork found inconsistencies between the Union-level requirements outlined in the 2012 Environmental Conservation Law and permissions issued at state/region-level regarding permissible distance of mining activities from water sources. There is also lack of consistency between the Mining Rules and the EIA Procedure.

Furthermore, current laws and regulation are unclear regarding the attribution of responsibilities for oversight of mining projects. For example, it is unclear which government authorities are responsible for monitoring and oversight of environmental, health and safety and labour conditions in mining operations. Such gaps and inconsistencies are problematic for government oversight bodies. They are also problematic for companies, which may be undertaking activities in a manner that is legal according to one set of rules or regulations but not another.

The field research also found that there is a lack of guidance from the Ministry of Natural Resources and Environmental Conservation (MoNREC) on what precisely is required of mine operators. In the absence of clear guidance it is difficult, if not impossible, for state/region-level and township-level administrators, as well as companies, to have certainty regarding the standards to be applied in mining operations. A number of – apparently unnecessary - township-level requirements applied to mining companies, particularly at the exploration stage - were identified during the field research that seemed to have no basis in Union-level law or regulation. High level officials in some sub-national states and regions are blocking permitting without either the formal powers or a clear reason for doing so. In some cases this appears to be attributed to a fear of allowing any mining, given the experiences of the past, or taking responsibility for permitting.

While somewhat understandable in view of the extensive negative impacts of mining in Myanmar documented in this report, this creates uncertainty for operators. That includes foreign companies who previously avoided Myanmar and whom the sector needs to import best practices and raise standards in the sector. Mining companies need clarity and certainty regarding the legal and regulatory requirements to be able to implement operations in a manner that is environmentally and socially sound, and financially viable. The lack of clarity about government policy and approval procedures creates high levels of inconsistency between different states/regions and townships as well as administrative costs, and corruption risk. Permitting processes cannot be planned for by companies or effectively tracked by Union-level mine administrators.

Overall, legal and regulatory uncertainties deter responsible investment and sustainable mining practices, and this is clearly happening in Myanmar. In view of the fundamental weakness of the 2015 Law, which then flow through to the Rules, a fundamental rethink is needed, starting from the adoption of a national Mineral Resources Policy. This should lead to the drafting of new Mining Law that leaves behind the approach of the 1994 and 2015 versions, based on modern model laws which already exist. This is necessary if Myanmar wants to attract responsible mining investment and address past problems.

In the meantime, the Government needs to take urgent steps towards aligning the laws and regulations applicable to mining operations, and clearly communicate requirements to state/region- and township-level authorities, as well as mine operators, including prospective investors.

## **2. The capacity of government and business actors to monitor and address environmental, social and human rights impacts of mining is limited**

Both the Government and companies were found to lack the technical capacity and human resources to effectively monitor and address the adverse impacts of mining projects and activities. This included:

- capacity gaps in terms of technical knowledge of Government and company staff responsible for monitoring and addressing impacts;
- under-staffing of these functions;
- lack of necessary equipment to conduct effective monitoring; and
- lack of effective management systems in place for recording, tracking and responding to information.

For example, none of the companies visited as part of the SWIA field research had a community relations function, systematic management systems for health and safety incident reporting, or environmental monitoring strategies and practices. At government level, capacity limitations in terms of monitoring mining operations and impacts were exacerbated by the lack of clarity around responsibilities for monitoring of specific aspects (i.e. environmental, health and safety, labour standards). Absence of effective monitoring was found to be exacerbated in the informal parts of the mining sector, where such monitoring was essentially completely absent; as well as in those operations and mining areas in locations controlled by ethnic armed organisations (EAOs). While EAOs were found to be extensively involved in mining operations and activities in terms of exercising control over production and associated financial arrangements, only very limited examples were identified where EAO involvement also encompassed setting environmental, social and human rights standards for mining activities and subsequent monitoring of their implementation and impacts.

The EIA process and the limited capacity of EIA providers was also identified as a critical issue. Both the EIA reports reviewed as part of the SWIA as well as the field research on the processes carried out to generate such reports found significant shortcomings by local EIA consultants. In particular, the coverage of 'social' aspects in EIAs, as opposed to 'environmental' aspects, was extremely weak, despite the inclusion of social impacts being a clear requirement in the 2015 EIA Procedure. The consultation and engagement processes carried out as part of EIAs to date evidenced several limitations, such as information being provided being too technical for participants to understand and/or consultations not being carried out in local language(s). If EIAs and associated management plans are to make a meaningful contribution to addressing the adverse impacts of mining activities, the current weakness of EIAs, particularly by local providers, must be addressed. Building the capacity of local EIA providers and government officials in charge

of assessing EIAs and associated management plans is a priority area for development partner support.

### **3. The environmental, social and human rights costs of mining are externalised on local communities**

There is a cost to mitigating the inevitable adverse environmental and social impacts of mining. However even in the formal parts of the limestone, gold and tin mining sector in Myanmar, these costs are not currently borne by mine operators but by local communities and the environment. Nonetheless, formal mining in Myanmar is not particularly profitable particularly when commodity prices are low. Other costs are high such as licence fees, taxes, and dead rent, and administrative costs associated with the bureaucratic and unpredictable licensing process. This is further exacerbated by a multiplicity of informal payments and demands, including in EAO-controlled areas, unpredictable requirements to pay government security forces and one or more local EAOs.

If the Myanmar Government intends further development of the mining sector, it should reconsider how the costs fall on the investor. A rebalancing is needed. This should ensure that mine operators bear the costs for conducting operations in a manner that is environmentally and socially sound and sustainable, and that this requirement is enforced, while at the same time providing a more attractive investment climate by adjusting and streamlining licensing fees, taxes, and other fees. Such an approach may also include recognising that some current mining operations are not commercially viable if they were to be better regulated for their environmental and social impacts. It will also raise questions regarding the viability of the subsistence mining sector, including its potential formalisation (discussed further below). Developing a Mineral Resources Policy that addresses these factors and the wider sustainable development of the mining sector, including benefit sharing, could help rebalance these costs and benefits.

### **4. Governance of mining in conflict-affected areas is highly problematic**

Mining operations and activities in areas controlled by ethnic armed organisations (EAOs), or with strong EAO presence, are poorly governed (see further, Part 5.6: Conflict and Security and Chapter 6). As noted above, operations in these areas are subject to a complex web of formal and informal payments, and corruption. Unsound environmental and human rights practices are common (e.g. use of mercury in subsistence gold mining without any safeguards). EAO governance of operations in these areas was primarily found to focus on production and fiscal arrangements, with little attention paid to environmental and social safeguards. This is despite there being an explicit acknowledgment in the Nationwide Ceasefire Agreement (NCA) that EAOs have responsibility for environmental and social protection in their respective areas.

One concern which has been raised by EAOs and others, but not yet resolved in the peace talks is revenue sharing. Since most impacts associated with mining projects and activities are experienced locally, there is a strong case for more benefits to go to local people. International experience shows mixed results from regional revenue sharing in terms of delivering actual benefits to local people, particularly in contexts where government actors have limited capacity. While arrangements for revenue sharing need to be carefully considered as part of any future federal state, there are other opportunities for benefit sharing and creating shared value which do not require constitutional or legal change. These include community development agreements (CDAs), shared infrastructure or local content and employment requirements. They may be more immediate measures of ensuring that workers and local communities can benefit from mining activities.

### **5. Extensive informality in the mining sector needs to be addressed**

MCRB field research confirmed that much of Myanmar's mining sector operates informally. The informal sector includes subsistence mining activities as well as some larger mines operating in areas partially or entirely controlled by EAOs. Subsistence mining is a source of employment and livelihoods for many communities across Myanmar. However subsistence mining is associated with a range of adverse impacts for workers, communities and the environment, as well as links to conflict and informal payments (see Part 5). The informality also has implications for the Myanmar economy, such as inability to raise revenues and create sound employment opportunities, and has broader governance impacts e.g. lack of oversight, corruption, conflict.

To realise the development potential of the mining sector, efforts to progressively integrate subsistence mining into the overall economy and reduce harmful practices will be critical. While the 2015 amended Myanmar Mines Law acknowledges subsistence mining as a separate category, preliminary study of the proposed 2018 Rules suggests that these are currently burdensome - e.g. a requirement for subsistence miners to undertake an Initial Environmental Examination (IEE) - and it will not be economically viable for subsistence miners to formalise their activities. A separate set of Rules for subsistence mining is advisable.

In designing a vision, policy and rules for the subsistence sector in Myanmar, many stakeholders will need to be brought together, including government authorities at national- and state/region-level, EAOs, mining companies, and, most importantly workers/communities. Further legalising, and formalising, subsistence mining has the potential to enable better government oversight and taxation; and improve health, safety, security and environmental performance for subsistence miners. But they need economic incentives to formalise. Introducing blanket restrictions on subsistence mining or making it too difficult economically or administratively for subsistence miners to integrate into the formal sector may push the sector into further illegality and harm those who are most vulnerable.

## Overview of the SWIA report and main findings

This report starts with a **general overview of the mining sector in Myanmar (Part 2) and the legal and policy framework (Part 3)** that currently applies to the sector. Key legislative developments examined include the 2015 amendments to the Myanmar Mines Law and the proposed Mines Rules of February 2018. The need for further mining-specific legislative developments in the areas of environmental protection (as a supplement to the EIA Procedure) and health and safety are also discussed. In the context of the rapidly changing domestic governance structures, the role of the recently constituted MoNREC as well as other relevant government agencies at the national- and state/region-levels are explained.

**Sector-level impacts**, such as on **revenues, employment, conflict etc.** are then reviewed (**Part 4**). This includes sector-level **economic impacts** such as those associated with taxation and revenues, production sharing arrangements, benefit sharing between the Union- and state/region-levels, employment and economic opportunities and high level of informality of the mining sector. The SWIA highlights significant obstacles to mining contributing to economic development, linked to tax and revenue accounting, due to factors such as government capacity, conflict and illegal trading in commodities. It discusses the limitations associated with the use of production sharing contracts (PSCs) in the mining context, as opposed to the use of investment agreements and/or a greater reliance on the licensing process and general law. The economic potential of subsistence mining is hampered by the high level of informality. The problems caused by the lack of a modern mining cadaster are highlighted.

The complex topic of benefit sharing between the Union- and region/state-level is contextualised in this chapter. The SWIA field research found few examples of local communities benefiting from



mining activities, whether opportunities for local employment and supply chain development (local content) or more formal benefit-sharing arrangements such as those offered through community development agreements (CDAs). The needs of local workers and communities need to be addressed, in terms of employment, infrastructure and service delivery, rather than the ad hoc approach of unclear requirements for 'CSR spending' which was found in some areas. This spending often created further governance problems. Instead, Myanmar should actively encourage companies to 'create shared value' through local content and benefit sharing. This would be in line with global trends in the minerals industry.

**Sector-level governance impacts** identified include challenges associated with the licensing regime, governance of the mining State-owned Enterprises (SOEs) and military-owned enterprises, and transparency. Whilst there have been some improvements in recent legislation and regulation in this regard, MCRB research shows that there is still a lack of clarity in the permitting regime, and that the specific challenges faced by subsistence miners within the regime have not been fully addressed. Despite recent MEITI efforts, the role of SOEs in mining remains largely opaque, a challenge to be addressed in the current reform process, given the substantial role that these enterprises play in the mining industry and economy.

Gaps in legal enforcement and mine inspections are also discussed in this chapter. Of the many issues discussed in the SWIA, the absence of effective monitoring of environmental, social and human rights impacts of mining operations is one of the most significant shortcomings. Lack of effective monitoring is due to a range of factors, including:

- lack of clarity in terms of responsibilities for the monitoring of specific issues (e.g. environmental and labour standards)
- lack of coordination between the mining authorities and the environmental regulator
- limited government capacity and budget
- lack of knowledge on the part of companies with regard to new requirements (e.g. requirements for Environmental Management Plans and Mine Closure Plans, and
- Slow start-up of new government monitoring responsibilities (e.g. government committees charged with monitoring of Environmental Management Plans).

Addressing these challenges must be a first order priority for all involved stakeholders, including government, companies and civil society, if the adverse impacts of mining activities are to be avoided and effectively addressed. The chapter concludes with consideration of the specific governance challenges associated with mining activities in EAO-controlled areas.

Lastly, this section analyses **sector-level environmental, social and human rights impacts**. This includes the assessment and management of environmental, social and human rights impacts, community development and creating shared value and occupational health and safety (OSH). Overall, field research observed that companies currently have limited or inadequate systems in place for the systematic management of environmental and social impacts. Whilst impact assessments are increasingly being conducted, they often fall short of expected standards, in particular with regard to community consultation and engagement. Subsequent implementation of mitigation measures is haphazard and not effectively documented, monitored and followed-up. Similarly, spending on community development spending by companies is ad hoc. Priorities are determined by community elites, rather than considering potential alignment with national and local development needs and priorities to ensure sustainability. There is an urgent need to ensure comprehensive and aligned OSH laws and regulations. Lastly, environmental issues associated with land and water, reduction of mercury use, and site rehabilitation and mine closure planning are discussed, noting the need for further action and initiatives to be taken to address these issues at the sector-level.

Following the discussion on sector-level impacts, **cumulative and project-level impacts (Part 5)** are addressed under the seven subheadings: **(5.1) Community Engagement and Grievance Resolution; (5.2) Community Impacts and Development; (5.3) Land; (5.4) Labour; (5.5) Women and Children; (5.6) Conflict and Security; and (5.7) Environment and Ecosystem Services**. For each of these topics an overview of key issues, legislation and regulation is provided, followed by detailed discussion of the field research findings. Relevant international standards, guidance and initiatives for each topic conclude each chapter.

With regard to **community engagement and grievance mechanisms (5.1)**, field research found that companies currently lack systematic stakeholder consultation and engagement plans and practices. Consultation and engagement undertaken as part of EIA processes often contains significant flaws from a human rights perspective (e.g. information provided is too technical for people to understand, consultation is not conducted in the relevant local languages). Nor is it clear how community views are taken into consideration in project planning and impact management, including consideration of project alternatives. Consultation and engagement beyond EIAs was found to be ad hoc, occurring primarily between community elites and companies on bespoke issues, effectively excluding women and other potentially at-risk stakeholders such as children, young people, the elderly, people with disabilities and ethnic minorities.

No companies visited had an operational-level grievance mechanism in place. Understanding of what grievances mechanisms are and the role they might play was very limited amongst both company and community stakeholders. This is unfortunate given that the field research demonstrated that there are significant grievances associated with current mining projects. These relate to environmental impacts (including flow-on socio-economic impacts on livelihoods, such as where crops and livestock are adversely impacted), impacts on water, and impacts associated with in-migration and migrant workers, and land. Grievances related to land were particularly frequent and severe.

The chapter on **community impacts and development (5.2)** addresses community health and safety, development and employment opportunities, essential services, and cultural heritage. Nearly all communities visited experienced adverse environmental impacts as a result of mining activities. These also had health consequences, for example, soil and water pollution, noise and smells, and fumes and dust from processing sites. A number of accidents (some involving children) were also reported, in particular road accidents or accidents associated with unannounced blasting. This again highlighted limited information sharing on the part of companies, as well as insufficient identification and mitigation of impacts. Public and community services were impacted in different ways. In some instances companies appeared to make positive contributions, for example, by building roads or installing electricity or water infrastructure. However, upon closer examination such actions had sometimes been undertaken as a result of the company overstressing the services in the first place, and were done without effective consultation of local communities. Coordination between companies and local government regarding the provision of particular services in specific locations was often haphazard. Stakeholders lacked clarity on who had responsibilities for providing or monitoring what. Few adverse impacts on tangible cultural heritage were identified. Companies were generally found to be respectful of religious sites and support local religious institutions.

Mining takes place in rural areas, where the majority of households rely on agriculture as their main source of income. Impacts on **land (5.3)** resulting from mining activities was found to be a critical issue. Despite initial reforms, the legal and policy framework on land remains fragmented,

internally inconsistent and incomplete. In the context of mining activities this means people frequently have limited legal ownership or usage rights over the land on which they live, farm or mine and correspondingly weak bargaining positions when confronted with land transfer and transactions. Whilst the 2016 National Land Use Policy is an important step towards addressing uncertainties and lack of clarity relating to land governance and management, it is yet to be comprehensively implemented into law in a manner that protects citizens' land and property rights.

Resettlement was found to be poorly conducted. People had often been given very short notice and to unsuitable sites e.g. land not suitable for similar or better habitation and crop cultivation or too far from essential services. Ad hoc compensation rates did not cover actual costs. The field research also found strong evidence of forced evictions in several instances. Numerous livelihood impacts associated with land were also found. For example, damage to land, crops and water sources essential for agricultural activities were reported at many of the sites visited, in some cases even resulting in people moving and/or becoming daily mine workers as a result of losing their land for livelihood-sustaining agricultural activities. Informal subsistence miners, often internal migrants, were found to be particularly at risk with regard to land-related impacts as they usually had no formal ownership or usage rights over the land on which they lived and mined.

At most sites visited, the **labour (5.4)** conditions of workers were not in line with international labour standards and the local labour laws. In both the formal and informal parts of the mining sector, significant issues were found regarding health and safety. For example, many companies had no, or substandard, health and safety procedures and practices in place, and no formal incident reporting systems or tracking of health and safety incidents and data. Personal protective equipment (PPE) was not provided or used, or was not suitable for the health and safety risks posed. Furthermore, health and safety training and government monitoring and oversight of health and safety standards in mines were found to be very poor. Frequently, employees at formal mine sites did not hold copies of their work contracts. Working terms and conditions in the informal sector were usually based on an oral agreement between the workers and subcontracted mine owners. Union representation was found at only one of the sites visited, with no alternative forms of worker representation or grievance mechanisms observed at the vast majority of sites. In terms of discrimination and harassment, it was observed that women were significantly under-represented in the formal mining sector workforce (which is not uncommon in the mining industry globally but nevertheless indicates systemic discrimination) and usually worked in job types that were remunerated at a lower rate. Child labour was observed in most informal mining areas, and was reported to have occurred at some of the formal mine sites as well.

**Women and children (5.5)** were found to experience specific adverse impacts related to mining activities, as well as bearing a disproportionate burden of adverse impacts in some cases. As flagged above, the field research found that women and men engaged in different types of mining activities, experiencing a difference in pay. Overall, women were more predominantly engaged in mine processing and ancillary roles that receive lower pay than work in ore extraction, which is predominantly carried out by men. Women were also over-represented in the informal sector and/or working as daily workers, rather than working in formal employment in mines. In addition to the insecurity associated with working in these parts of the industry, the field research observed that the types of work women were engaged in experienced higher exposure to mercury and other processing chemicals. At one site panning and mercury use was described as 'a woman's job', and mercury processing usually occurred inside homes. As noted above, child labour was a critical issue in subsistence mining, with children sometimes as young as six or seven years old involved. In addition, children were found particularly at risk where accidents on and near mine sites were concerned (e.g. a child reportedly drowned while swimming in the ponds created by topsoil removal). Education was adversely impacted by mining activities in different ways, for

example, physical access to education being limited as a result of mining-related resettlement, or disturbances caused by noise and dust during school hours. In subsistence mining areas it was also reported that some parents deprioritised school attendance to have their children work with them in mining, as they perceived that there were no alternative future opportunities for their children.

Community insecurity near mine sites was one aspect examined under the topic of **conflict and security (5.6)**. According to MCRB field research, more than half of the sites visited were either entirely or partially controlled by ethnic armed organisations (EAOs) and/or had substantial military presence in the form of military-affiliated companies. This created fear amongst local communities and reinforced a culture of company-armed group alliances where villagers were hesitant to voice dissent for fear of reprisal. MCRB field research also included visits to several areas plagued by high levels of drug abuse (most prevalent in subsistence gold mining areas), which community members reported to be linked to elevated levels of insecurity and crime. Subsistence mining areas also faced specific issues relating to security and conflict. For example, subsistence miners were found to be subjected to unofficial taxes, charged by both government and EAO representatives, and raids confiscating their tools. Instances of conflict between subsistence miners and formal operations were also reported, often relating to the arrangements made between subsistence miners and formal miners regarding their production sharing arrangement in return for 'permission' for the subsistence miners to extract on the larger concession. Limited planning and professionalisation of the security function within formal and larger companies was consistently observed, both relating to the engagement of private security guards, as well as arrangements between companies and public security forces for security provision at mine sites.

Regarding **environment and ecosystem services (5.7)** inappropriate water and waste management, land degradation and lack of site rehabilitation and mine closure policies were critical issues identified through the field research. At numerous sites chemical waste and industrial effluents were discharged into waterways untreated, causing damage to rivers and groundwater systems and aquatic life. Both permitted and informal mining activities were also found to be operating in and near waterways, basins and rivers, some clearly in breach of the legally stipulated distance requirements. Subsistence mining activities were also found occurring directly in creeks and waterways. Waste management, including of tailings, was an issue at most sites, including accidents resulting from the malfunction of tailings storage facilities. Soil erosion and pollution was widespread causing adverse impacts on farmland with flow-on effects on livestock and people's livelihoods. Topsoil management practices were essentially non-existent, with most companies stripping and not saving topsoil and undertaking no activities to rehabilitate land. While some efforts were reported on behalf of local government agencies to compel companies to implement better practices, companies were of the view that site rehabilitation did not fall within their ambit of responsibility. None of the sites visited had adequate rehabilitation plans in place for mine closure, despite this being a new legal requirement.

A final chapter (**Part 6**) discusses **legacy and current conflicts and state-building** in Myanmar, with an emphasis on natural resources as a driver of conflicts. This section looks at armed group involvement in mineral extraction. It focusses on Kachin State, the Wa and Pa-O Self-Administered Areas in Shan State and the conflict dynamics and EAO involvement in the minerals sector in Southeast Myanmar, namely Kayah, Kayin, Mon and Tanintharyi states and region. MCRB field research carried out in 2016 visited all of these conflict-affected regions, with the exception of Mon State and the Wa SAR. This **region-specific governance and conflict analysis** aims to contextualise the specific field findings relating to conflict and insecurity by situating these within a wider historical and political perspective.

The report concludes with **Recommendations to Government, businesses, ethnic armed organisations (EAOs), civil society and other international actors (Part 7)**. These are summarised on the next page.

### **Recommendations to the Government of Myanmar**

1. Adopt a National Mineral Resources Policy; use it as the basis for new mining legislation, and for ensuring Myanmar's mineral resources benefit local people and do not drive continued conflict
2. Simplify and align mining, investment, environmental and safety permitting, and the legislation which underpins it
3. Address gaps and inconsistencies in environmental and social safeguards for mining
4. Improve enforcement of laws and permit obligations
5. Strengthen processes for judicial and non-judicial remedy
6. Enhance public participation and transparency
7. Take steps towards formalising subsistence mining and reducing harmful practices

### **Recommendations to Companies in the Mining Sector**

1. Commit to applying international standards of responsible business conduct
2. Implement human rights due diligence
3. Identify and mitigate adverse impacts
4. Implement heightened due diligence in conflict-affected areas
5. Establish an operational-level grievance mechanism for each mine
6. Engage with stakeholders, particularly workers and communities
7. Develop local content, supply chains and community capacity
8. Support the formalisation of informal and subsistence mining
9. Take collective action to improve responsible mining practices

### **Recommendations to Ethnic Armed Organisations**

1. Develop EAO approaches to mining policy and permitting
2. Improve governance of, and standards at, EAO-permitted mining operations
3. Protect the rights of communities affected by mining

### **Recommendations to Civil Society Organisations**

1. Support local communities impacted by mining so that negative impacts are prevented or mitigated, and they obtain remedy
2. Advocate for relevant legal and policy reforms
3. Participate in multi-stakeholder initiatives and make use of the data and dialogue opportunities they offer

### **Recommendations to Development Partners**

1. Provide technical assistance to strengthen environmental and social safeguards in mining
2. Provide technical assistance to formalise subsistence mining
3. Support EAOs to address impacts of unsustainable mining in conflict-affected areas
4. Encourage foreign investors to invest responsibly in Myanmar

# Recommendations to the Myanmar Government

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Part 7.1 is addressed primarily to the Executive branch of government, and to a variety of government authorities, in particular MONREC (both mining and environmental conservation departments). Some of the recommendations are also relevant to DICA, MOLIP, the Home Ministry, state/regional governments. Some are also relevant to the legislature.

## 1. Adopt a National Mineral Resources Policy; use it as the basis for new mining legislation, and for ensuring Myanmar's mineral resources benefit local people and do not drive continued conflict

A **National Mineral Resources Policy** could define a vision and strategy for the sector, give greater clarity to potential investors and guide the adoption of new mining legislation, which should NOT take the existing legislation as a starting point. Ideally it should encompass gemstones including jade.

A national policy could be accompanied by **State/Region Mineral Resources Strategies**, where there is significant mining potential (e.g. Sagaing, Mandalay, Shan, Kachin, Kayah, Kayin, Tanintharyi) setting out the State/Region's approach to mining in its development plan, identifying any no go areas, and addressing those areas in which they have delegated powers under the Constitution and identifying any additional restrictions or taxes.

### A National Mineral Resources Policy should:

- Draw on **international best practice** and effective mineral resources policies from other countries which have achieved a sustainably managed mining sector, as well as make use of **international expert assistance**.
- Involve **cross-governmental coordination**, particularly between the Mining and Environmental Departments.
- Be developed in an **open and participatory process**, consulting business, communities and EAOs. A Strategic Environmental Assessment (SEA) process as recently conducted for the hydropower sector with IFC support might assist this.
- Differentiate clearly in policy, regulation, and licencing between the phases of the mining cycle, and in particular between **prospecting, exploration** and **mining** activity.
- Support the objectives of Myanmar's **peace process and the ongoing debate on natural resource federalism**. In particular they should be based on principles of:
  - Clearly defining government roles and responsibilities at different levels;
  - Ensuring different levels of government have the capacity and resources to adequately fulfil their responsibilities;
  - Maintaining minimum national social and environmental standards despite subnational jurisdiction;
  - Promoting transparency over decision-making at all levels of government;
  - Creating platforms for discussion and information exchange between levels of government and across jurisdictions;
  - Including non-state actors such as local communities in decisions that affect them.

- Guide the **restructuring of the Ministry of Mines** including establishing a clear separation between the geological survey, cadaster/licensing and inspection functions.
- Support the development of a modern and unified **Mineral Rights Cadaster**, based on a unified cadastral database and cadastral maps. The Cadaster, which is required for EITI, should have **exclusive responsibility for licensing**, including the reception and registration of applications, the verification of eligibility, checking the overlapping, evaluating for granting or submission to granting authority and maintenance of the mineral rights (renewal, transfer, extension, expiration, etc.) Specific cadastral procedures for creation of gemstone tracts and reserved zones could be established, preserving the rights of existing titleholders and previous applicants.
- **Define evaluation criteria for decision-making in the award of licences** including the types of factors to be considered in licensing awards, and also principles for the weighing and prioritisation of different factors (e.g. to balance the interests of mining development and environmental protection). This could include consistent minimum spend rules depending on size of concession as a minimum amount of dollars to be spent per year in each granted hectare.
- Address **how to balance positive and negative economic, environmental, social, and human rights impacts** when reviewing licensing applications, and in negotiations and decision-making.
- Build broader local and national understanding, of **options for sharing revenue** between the Union Government and states/regions, as well as maximising **local benefits** from mining. (e.g. jobs, supply chain opportunities, infrastructure)
- Address positive and negative impacts in the **informal sector**, while recognising its importance for livelihoods, and identifying practical ways to formalise it.
- Clarify and further **separate the regulatory and commercial functions of State-Owned Economic Enterprises (SOEs)** and take steps to ensure that these are subject to the same level of environmental and human rights scrutiny as private companies.
- Consider **phasing out of Production Sharing Contracts (PSCs)** and instead using Investment Agreements while working towards greater reliance on a standard permitting regime and generally applicable law.
- Examine the feasibility of a **'model mine agreement'** as a basis for contract negotiations will promote greater transparency and consistency between the terms and conditions for different projects.
- Clarify policy on mineral concessions in, or close, to **Myanmar's Protected Areas**, including the potential for **'no-go' areas** for mining.
- Help Myanmar meet its **international obligations** including environmental agreements.

## 2. Simplify and align mining, investment, environmental and safety permitting, and the legislation which underpins it

The current licensing process is complex, lengthy and unclear. It does not reflect the differentiated nature of the mining cycle. It involves multiple departments and Ministries and creates uncertainty for all stakeholders. It leads to poor implementation and enforcement, and a lack of transparency which reduces trust and mining's 'social licence'. The above-mentioned National Mineral Resources Policy could be used to identify challenges faced by stakeholders, including those improvements which can be achieved under a new Mining Law. In the meantime, SWIA research has identified a number of permitting processes across Government, including at sub-national level which could be aligned and simplified. These include:

- Rationalising the 100-pages+ of **Mining Rules into several separate Rules, Orders and Guidelines on licencing, safety, artisanal mining, closure etc.** As one set of Rules, they are too long and complex to be understood and easily applied. This would also allow for easier



amendment and alignment with other laws and reforms, particularly of those Rules relating to environment and safety which are less dependent on achieving wider minerals policy reform.

- Close collaboration between ECD and Department of Mines/DGSE of MoNREC, to **align permitting processes** under the **Mining Law/Rules, Investment Law/Rules and Environment Impact Assessment (EIA)** to ensure that these are rational, transparent, simple, consistently applied, and designed to address the impacts at different stages of the mining project cycle. This includes:
  - **Making the EIA Procedure the sole determinant of EIA requirements** for different types and sizes of mines and different stages of the mining cycle, to avoid regulatory divergence. The Mining Rules should simply reference the need to abide by the EIA Procedure.
  - **Amending Annex 1 of the EIA Procedure** to distinguish between requirements at Prospecting, Exploration, Feasibility, Operation and Closure. Requirements should be appropriately scaled to the level of impact anticipated at these stages and the sensitivity of the area.
  - **Threshold sizes** for IEE/EIA requirements in Annex 1 of the EIA Procedure should be reviewed and made consistent with those used to define mining permits, as far as possible. The requirements and thresholds should be designed to discourage gaming of the system e.g. subdivision of plots to avoid EIA requirements.
  - Making clear that an **MIC Permit** is required only at the Feasibility stage of the mining cycle, when the scope of planned investment is known.
- Rolling out **standard guidelines for environmental, health and safety practices** tailored to the phases of the mining cycle. This includes simple **rules for Prospecting**, and simple **rules and model Environmental Management Plans and sub-plans for Exploration and for Small Scale Mining**. This will be more efficient and facilitate companies and regulators to draw up, review, implement, and monitor EMPs and issue Environmental Compliance Certificates. They should be developed and agreed through a cross-departmental process and with clear accountability for inspection and monitoring. They should include a list of all relevant laws.
- **Clarify accountability for regulating occupational health and safety on mining and accountability for inspection and enforcement**. At the moment, it is unclear whether OSH is to be addressed through the Mines Rules; inclusion of mining in the forthcoming Occupational Safety and Health (OSH) Law, or EIA/EMP. There should be alignment and consistency, and clarity for mining companies and other stakeholders.
- Requiring a **Stakeholder Engagement and Communication Plan (SECP)** (see below) that should combine the public participation requirements of various permitting processes
- Ensuring that, if the concept of an **'integrated mining permit'** is retained, it makes clear what companies have permission to do, and the requirements for environmental or other additional permitting as the project progresses through the 'stage-gates' in the cycle, including a full EIA at the feasibility stage.
- **Standardising terminology (either EIA, ESIA or ESHIA)** across relevant environmental laws, policies and procedures for environmental **and social** impact assessment and management plans. ESIA or ESHIA is preferable, to emphasise the inclusion of social, health and other human rights impacts.
- Ensuring that companies are not required to obtain **multiple letters of support** from local authorities if these have no added value at that stage of activity, or basis in law.
- Clarifying the requirement for **'prior permission'** (as mentioned in the Environmental Conservation Law, Rules and Procedure) e.g. by ECD in coordination with other authorities, publishing a list of permits issued by other regulatory bodies which could constitute prior permission, and the types of projects and activities for which an IEE/EIA/EMP will additionally be required.

Additionally the current approach in the Mining Law and proposed Rules to **size and length of mining permits** needs to be changed to align it with **sustainability objectives**. In particular, it encourages amalgamation of multiple small-scale licences. This leads to unclear boundaries and lack of accountability for impacts. It also results in inability to mine deep resources efficiently or safely, due to lack of area for effective mine planning and waste dumps (see Advisory Note for Hpakan/Lonkin by Coffey/Valentis).

- **Licence sizes and lengths should be increased to at least the global average** to encourage more commercially viable and efficient mining, sustainable rates of extraction, and safer practices. This includes extending the size and length of areas for prospecting licenses to incentivise acquisition of geological data, and cover a larger area, including through hi-tech, low impact technology as airborne geophysics or remote sensing. The minimum size of the small scale mining and gemstone licenses should be increased to improve safety and environmental practices.

### 3. Address gaps and inconsistencies in environmental and social safeguards for mining

The legal framework for environmental and social safeguards in mining involves the Mining Law and Rules, Myanmar Investment Law and Rules, various environmental laws and standards including on EIA as well as other laws in place and under preparation concerning OSH, Labour, Land and the rights of Ethnic Nationalities, inter alia. These contains gaps, overlaps, and some requirements which are inconsistent with good practice. They can be addressed through legislative reform and permitting requirements. Action points include:

#### Environment

- **Ratification of the Minamata Convention on mercury.** Develop and implement a National Action Plan to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, artisanal and small-scale mining and processing
- **Adopting environmental standards** under Article 7 and 10 of the 2012 Environmental Conservation Law, to guide the establishment of EIA/EMPs. These should be realistic and based on the International Finance Corporation (IFC) Environmental, Health and Safety Guidelines for Mining, and other relevant international standards and frameworks (e.g. World Health Organisation). Where these relate specifically to mining (e.g. cyanide, mine closure) they should be coordinated between the Mining and Environmental Conservation Departments, and may be appropriate for adoption under the Mining Law. They could cover inter alia:
  - water use and quality
  - waste
  - air quality
  - hazardous materials (including cyanide, and mercury)
  - biodiversity
  - payment for access, or damage to ecosystem services
  - noise and vibration
  - energy use
  - visual impacts; and
  - site rehabilitation and mine closure.

#### Labour and Safety

- Developing mining safety regulation and standards under the Mining Rules, and/or Sectoral Rules under the forthcoming OSH law, which are consistent with the **ILO Safety and Health in Mines Convention 176**, with the aim of ratifying this Convention.
- **Including requirements in permits that licence-holders must meet international standards ('good international practice') for mining-specific processes** such as tailings dams, management of spills, site rehabilitation, closure and post-closure. Ensure that these requirements are monitored, and compliance is incentivised by appropriate financial and criminal penalties.
- **Clarify maximum working hours and minimum rest time** for miners, in particular those working underground or in water.
- **Ratification of the five remaining Fundamental ILO Conventions and develop a comprehensive and overarching labour law framework** in line with international labour standards. Extend protection to all types of workers, including daily workers. Strengthen the protection of workers involved in trade union activities.
- Remove the discriminatory prohibition in the Mines Rules on **women working underground**
- **Define mining as 'hazardous work' for all children** in the list to be adopted to implement ILO Convention 182.

## Land

- **Establish a coherent legal framework for land use in line with international standards** (such as the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security) and the 2016 National Land Use Policy. This may be as part of developing a comprehensive land law, or through the coherent amendment and strengthening of existing laws that are applicable to land use practices of businesses. This should ensure the protection of land use and ownership rights of communities and vulnerable groups, provide clarity around permitted transactions, and reform land-related dispute resolution mechanisms.
- **Clarify and simplify land classification and use procedures** to provide appropriate protection for farmers from unscrupulous land transactions and for food security.
- **Develop a national land register** that documents existing land use and ownership.
- **Reform the 1894 Land Acquisition Act** to align it with IFC [Performance Standard 5](#).
- Ensure independent third-party land valuation practices are applied for land purchase and other compensation regarding land and associated assets (e.g. housing, crops) in transactions for mining projects and activities.

## Communities

All permit-holders should be required under the Environmental Compliance Certificate and/or Mining Licence) to:

- **Respect human rights**, including of workers and communities impacted by mining and the specific rights of Indigenous Peoples.
- **Protect tangible and intangible cultural heritage** such as culturally important sites, cultural knowledge and use of medicinal plants.

Additionally companies should be required (in the case of long-life large scale mines) or encouraged to:

- **assess and address potential impacts on ecosystem services** including the use of natural resources by relevant local stakeholders and incorporate avoidance or mitigation measures into Environmental Management Plans (EMPs) to protect those services
- develop a **plan for local employment and local procurement**
- negotiate a **Community Development Agreement (CDA)** with local communities.

Where companies undertake **community investment/development** they should focus on projects which are both community priorities and appropriate for company support. They should avoid religious projects, or ones which could contribute to corruption or conflict. Where possible and appropriate, community investment should align with national or local government development plans and strategies. However government should discourage companies from assuming the government's role as health and education provider.

#### 4. Improve enforcement of laws and permit obligations

While a comprehensive legal framework is important, there needs to be greater awareness of the law by all stakeholders. Even more importantly, regulators need the capacity to implement and enforce the law. SWIA research found that weak enforcement is in part due to a lack of capacity of government departments, partly a result of lack of coordination amongst different departments, partly due to corruption, in particular at the local-level, and also due to specific problems in contested areas. Lack of transparency, including of company obligations, is also a problem. Key points for improvement include:

- **Clarifying responsibilities of different government authorities** with regard to enforcement of environmental, social and human rights standards in the mining sector, particularly OSH and environmental management, as well as land issues.
- **Adequately resourcing and training all those inspecting mines**
- **Improving the capacity of the Environmental Conservation Department (ECD) to assess EIAs** and monitor commitments in EMPs, including at the local-level.
- **Publication by relevant government authorities of company obligations** such as contracts, EIA/EMP, and the Commitments Register of the Environmental Compliance Certificate, to enable stakeholders including communities and the media, as well as regulators to hold companies accountable
- Ensuring that companies abide by all their legal obligations for **disclosure**.

#### 5. Strengthen processes for judicial and non-judicial remedy

Pending the reform of Myanmar's judicial system, and even if and when it happens, there need to be effective alternatives to formal legal proceedings to ensure access to remedy is available to victims of adverse impacts associated with mining activities. It is also important that where rights holders have grievances, they should have the freedom to express them. The rights to freedom of expression, to information, and to freedom of assembly and association are not fully guaranteed in Myanmar. Restrictions on these rights need to be lifted in order to enable communities, workers and civil society to raise concerns about and engage with the mining sector.

Government actions which can support the right to remedy include:

- Making it a permitting requirement for companies to set up appropriate **operational-level grievance mechanisms** throughout the mining cycle, in accordance with the UN Guiding Principles on Business and Human Rights, and to publicly report on its operation through the six-monthly monitoring reports for the EMP
- **Amending the Law Relating to Peaceful Assembly and Peaceful Procession** to eliminate the criminalisation of protests and demonstrations, and ensuring that those who peacefully protest against mining projects are not criminalised or threatened.
- Recognising the **legitimate role of NGOs and CSOs**, whether registered or unregistered, in providing support to affected communities seeking remedy
- Improving opportunities for communities to obtain **redress via the courts**, and as a minimum, not inhibiting this.

- Adopting a modern Freedom of Information Law and amending the Constitution to give a guarantee of public access to information held by the Government.
- Raising awareness with mining companies of the **legal requirement to establish Workplace Coordinating Committees** in companies of more than 30 employees.

## 6. Enhance public participation and transparency

The SWIA field research highlighted that communities were usually not engaged as part of the permitting process or during operations. When consultations occurred, these were not inclusive, as only village leaders or elders were usually consulted. Key information about the mine, including EIA/EMP was not publicly disclosed. Consequently mines in some cases were in breach of legal requirements around public participation and disclosure and in all cases lacked a solid social licence to operate.

Various opportunities exist for improving **public participation**, some of them already legal requirements which are not being fully implemented. Actions for government include:

- **Raising awareness with companies, local authorities and other stakeholders of, and strictly enforcing, the existing requirements in the EIA Procedure for public consultation and disclosure** to ensure all stakeholders have an opportunity to obtain information about mining projects and give their views. The draft Public Participation Guidelines should be adopted and widely disseminated to provide guidance on how to conduct meaningful engagement of people affected by mining projects, including women and at-risk community members. Government should ensure that ethnic minorities have been fully consulted in EIA processes, including using local languages.
- Recognising the **legitimate role of NGOs and CSOs**, whether registered or unregistered, in public participation, including in the EIA process, and the support they can give rights-holders
- **Rejecting EIAs which fail to demonstrate that meaningful consultation of local stakeholders has been undertaken**, or where the project proponent has failed to disclose the draft IEE/EIA.
- **Requiring companies to have a Stakeholder Engagement and Communication Plans (SECP) which should be demonstrated as part of the various permitting processes.** A single SECP, and its implementation, should combine the needs of various permitting processes, including legal requirements for public consultation and EIA disclosure, negotiation with local communities under the proposed Mining Rules, and the requirements under Article 5 of the 2015 Law on the Protection of the Rights of National Races concerning the **rights of Indigenous Peoples** (*hta-nay tain-yin-tha*) to “receive complete and precise information about extractive industry projects and other business activities in their areas before project implementation so that negotiations between the groups and the Government/companies can take place.”:
  - SECPs should prioritise consultation with regional governments and local communities, including ethnic nationalities and indigenous peoples. In the SECP, a company should provide details about its stakeholder engagement processes, including what information they provide to communities about their project, from the prospecting and exploration stages onwards.
  - SECPs should also provide information on the project’s media/social media strategy
  - The SECP should be prepared and submitted to the Mining Department/ECD at each stage of permitting, and at least annually or with any required workplan.

The Mining Law and proposed Mining Rules do not currently promote **transparency**. Ongoing efforts to implement the 2016 Extractive Industries Transparency Initiative (EITI) Standard are gradually providing a better understanding of the revenue contributions of the sector and permitting. However information about the licensing process, permitted projects, as well as

environmental and social impacts and financial management of the mining sector is piecemeal and inconsistent. Further steps are needed to improve transparency including:

- **Implementing the 2016 MEITI standard and fully disclosing taxes and revenues** from mining projects, including disaggregated data on revenues from mining SOEs and transfers between government agencies, and data from the jade and gemstone industry.
- **Simplifying the currently complex licence types**
- Publishing **licensing requirements and evaluation criteria** so as to reduce government discretion over decision-making and opportunities for corruption, and improve investor confidence.
- **Establishing standard conditions for licenses** (duration, exclusivity, fees, state participation etc.). This is necessary to avoid negotiations for agreements. International experience shows standard prefixed conditions are the best solution to avoid discretion, subjectivity and corruption, and increase transparency and security of tenure.
- Publishing up-to-date information on permit-holders, including **beneficial ownership**.
- **Publish Proposal Summaries for MIC Permit applications**, in line with Myanmar Investment Rule 45
- Enforcing the requirement for mines with an MIC Permit to publish an **annual sustainability report** under Myanmar Investment Rules 196/199. These should include information about the operational grievance mechanism, stakeholder engagement, and community investment.
- Enforcing **EIA disclosure requirements** and establishing an **online register** of projects undertaking EIA/IEE/EMP with links to relevant disclosed documents to enable stakeholders to track progress and commitments and hold companies to account.

## 7. Take steps towards formalising subsistence mining and reducing harmful practices

Subsistence or artisanal mining is an important source of livelihoods for many poor communities in Myanmar. It also has significant negative impacts on the environment. Workers and community members, including children, engaged in subsistence mining were found to be particularly vulnerable to abuses, ranging from poor labour conditions, exposure to hazardous substances, lack of access to adequate education and health services, illegal taxation and repression by companies and the authorities. Moreover, the informality deprives the government of resources and contributes to corruption, illegal financial flows and criminality. A process towards legalising and formalising artisanal mining is needed to enable better government oversight, taxation and improved health, safety and environmental standards and security among subsistence miners. However it must involve participation of the subsistence miners themselves. The government should therefore learn from experience elsewhere and:

- Remove all references to artisanal and subsistence mining from the 2018 proposed Mining Rules, and put these together a basis for developing a **separate set of Rules** tailored to the specifics of the ASM sector.
- Use the step-by-step process for governments on how to develop, implement and monitor an effective **ASM Management Strategy** contained in the [2017 Guidance for Governments on Managing Artisanal and Small-Scale Mining](#) published by the InterGovernmental Forum on Mining. This could include:
  - **Engaging with subsistence miners and other relevant stakeholders** to develop a common vision/policy/approach to reduce adverse environmental and human rights impacts of subsistence mining and to progressively formalise the sector.
  - **Simplifying the permitting process** – including with regard to environmental impact assessment and management - **and taxation scheme for subsistence mining to encourage formalisation** by making the process financially, technically and physically accessible and refrain from imposing further restrictions on subsistence mining without any accompanying measures for miners.

- **Supporting and encouraging the organisation of subsistence miners into cooperatives or associations**, including by facilitating access to credit and markets.
- Partnering with development partners and CSOs to **provide training to subsistence miners, including women, on OSH and environmentally responsible practices**. For example, provide financial and technical support, as well as training targeting women in particular, to promote mercury free processing alternatives.
- **Facilitating a dialogue between small-scale and large-scale permit-holders** on collaborative formalisation programmes. Develop guidance on model contracts between subsistence miners and concession-holders.
- **Implementing a programme of action towards eliminating child labour in subsistence mining, including awareness-raising and development of education**, in accordance with ILO Convention No. 182 on the Worst Forms of Child Labour, and in collaboration with relevant national and international actors.
- **Developing access to essential services, including healthcare facilities and schools**, in subsistence mining areas.
- establishing **programmes supporting alternative livelihood activities for subsistence miners** in coordination with development partners and CSOs,

# Recommendations to Companies in the Mining Sector

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Part 7.2 is addressed to all Myanmar and foreign companies operating in the mining sector, including both small-scale and large-scale operations.

## 1. Commit to applying international standards of responsible business conduct

Due to the pace of change, lack of capacity and experience among legislators and government ministries, there is no guarantee that once adopted, national laws will fully reflect the standards of responsible business conduct (RBC) expected of companies operating in Myanmar. In addition to providing companies with certainty at a time when the national legal landscape is in flux, using international standards also provides confidence to local and international stakeholders.

- **Establish a human rights policy commitment** (standalone or integrated into a wider code of conduct) which, in line with the UN Guiding Principles on Business and Human Rights, should include reference to, at minimum, the rights outlined in the International Bill of Human Rights and the Core Labour Conventions of the International Labour Organisation.
- Make clear the expectation that **the business, its staff and business partners** will respect human rights.
- **Incorporate the UNGPs and other relevant standards in the company's environmental and social management systems (ESMS), including for EIA.** Relevant additional standards are listed with hyperlinks at the end of each section in Part 5, together with other relevant initiatives, and include the:
  - IFC Performance Standards and World Bank Group Environmental, Health and Safety Guidelines on Mining;
  - International Council on Mining and Metals Sustainability Framework;
  - Voluntary Principles on Security and Human Rights;
  - OECD Guidelines for Multinational Enterprises; and
  - OECD Guidelines on Minerals from Conflict-Affected and High-Risk Areas.

## 2. Implement human rights due diligence

Under the [UN Guiding Principles on Business and Human Rights](#), companies are expected to carry out **human rights due diligence**. This means:

- **Identifying and assessing** actual and potential human rights impacts
- **Acting on** and integrating the assessment findings into a management plan for operations
- **Tracking and monitoring** performance in managing impacts
- **Communicating** that performance to relevant stakeholders

It can be integrated into other types of due diligence procedures that assess and manage the company's impacts on society and the environment, such as EIA, since social and environmental impacts are often impacts on human rights, viewed from the perspective of the 'rights-holder'.

To manage human rights impacts effectively, companies need to allocate sufficient human, financial and other resources in a manner that is appropriately scaled to their particular operations.



Human rights should be managed holistically as part of core business operations, throughout the project lifecycle, and in business relationships (e.g. supply chains and joint venture partnerships).

- **Assign responsibility for human rights due diligence** to senior management.
- **Build internal capacity, but draw on external human rights expertise as necessary**, for examples to address specialist issues such as resettlement or Indigenous Peoples' rights. External human rights experts or organisations could also be engaged to play a neutral third-party facilitating role in community-company dialogue.
- **Arrange for the periodic assessment and monitoring of human rights impacts**
  - Undertake EIAs in line with the legal requirements of the EIA Procedure and ensure they address human rights impacts, and are fully disclosed
  - Make information available to rights-holders in formats and fora that are accessible to them (e.g. publishing non-technical summaries, holding community meetings in local language).
  - Obtain feedback from workers, communities and other relevant stakeholders, and where appropriate, consider joint monitoring of operational impacts with local communities.
- **Publicly communicate the results of due diligence**
  - Incorporate human rights issues into the 6-monthly monitoring reports required for the Environmental Management Plan.
  - Include results of human rights due diligence in sustainability reporting including the annual Rule 196 report to the Myanmar Investment Commission for companies with an MIC Permit.

### 3. Identify and mitigate adverse impacts

This section identifies typical adverse impacts observed in the Myanmar mining sector including in SWIA research (See Part 4 and 5), and makes recommendations on how to manage those identified in human rights due diligence.

#### Land and cultural heritage

- **Respect communities' land rights by:**
  - investigating existing land claims prior to investment;
  - recognising peoples' claims to land even where they might not hold formal land title certificates or other proof of such land claims;
  - recognising and respecting communally used land; and
  - pausing investment decision-making until land claims are effectively resolved;
  - not interfering with judicial and non-judicial processes that community members may be accessing to raise claims against company use of land.
- **Apply international good practice standards in resettlement planning and implementation** such as IFC [Performance Standard 5](#) (Involuntary Resettlement); the UN General Comment on the Right to Housing and Forced Evictions (and the accompanying OHCHR Factsheet) and the FAO Voluntary Guidelines on Responsible Land Tenure.
- **Determine and allocate compensation for damage to land and crops through independent third-party valuation** that reflects market rates and actual costs, and is determined in consultation with the applicable community members. Determinations of who is to be compensated and compensation amounts should reflect both physical and economic displacement and consider good practice standards, such as IFC [Performance Standard 5](#).
- **Survey cultural heritage as part of the EIA** in collaboration with communities and cultural heritage experts prior to beginning operations. Put in place measures to **respect intangible and tangible cultural heritage**. EMPs should contain a cultural heritage management subplan where relevant.

#### Water and environment

- **Put in place environmental management and monitoring strategies and systems.** These should include: incident reporting systems; proper equipment for measuring emission levels and testing of soil, air and water; independent verification of environmental monitoring data as appropriate; guidelines on hazardous substances used in processing (e.g. mercury, cyanide); tailings management; and water use.
- **Pay special attention to water consumption and impacts on water.** Evaluate proposed and/or actual water consumption, including with reference to community access to, and use of, local water sources, as well as potential cumulative impacts on water if other mining or industrial operations are active in the area and develop appropriate mitigation measures.
- **Adopt and implement the International Cyanide Management Code,** a code that deals specifically with the use of cyanide in the mining industry.
- **Allocate adequate budget and planning for site rehabilitation and mine-closure** from the start of operations, in line with new Myanmar legal requirements.

### Safety and labour rights

- **Have in place a functioning OSH management system** which at least meets the minimum Myanmar legal requirements (see **Error! Reference source not found.** for guidance on OSH in Mining). It should include:
  - health and safety training;
  - free provision of PPE;
  - incident reporting and investigation system;
  - tracking of HSE incidents;
  - escalation of serious HSE to senior management;
  - implementation of HSE risk assessments and
  - mitigation measures
- **Provide employment contracts to workers,** clearly stipulating terms and conditions, in accordance with Myanmar labour law.
- **Respect the labour rights of casual workers,** for example, that they are appropriately remunerated, do not work excessive hours and receive training on health and safety and are provided appropriate Personal Protective Equipment (PPE) free of charge.
- **Ensure company housing provided to workers is adequate** in terms of water provision and access to food, sanitation, light, air etc., and does not unduly restrict freedom of movement.
- **Do not retain workers' identity documents or salaries,** including in the form of compulsory savings schemes which are not accessible to them.
- **Proactively ensure that union membership and collective representation are allowed and facilitated.** Companies should ensure that these are explicitly allowed in company policies and that workers are not in any way restricted from joining trade unions or suffer reprisal as a result of belonging to a union or engaging in collective bargaining processes.
- **Have a worker grievance mechanism in place** where workers can raise instances on a confidential basis. **Workplace Coordinating Committees** are a legal requirement for all companies with more than 30 workers, and can play a role in addressing systemic grievances.

### Women and children

Women and children frequently bear a disproportionate burden of adverse impacts caused by mining, including in Myanmar. SWIA research found child labour; adverse impacts on children's access to school as a result of mining activities; lower pay for women workers than their male counterparts; and almost no community engagement opportunities for women.

- **Companies should combat child labour by:**

- putting in place a **policy commitment** against child labour;
  - taking steps to **avoid employing** anyone who is under 18 years of age
  - taking steps, in situations where child workers are employed or tolerated, to **develop a strategy for transition** of these workers out of work and into education or less hazardous activities;
  - taking care **not to abruptly dismiss children** from employment thereby likely causing unintended consequences, such as children entering equally hazardous work as an alternative livelihood;
  - where companies subcontract to mine owners or have arrangements for subsistence miners to mine on their concession, they should **engage subcontractors and subsistence miners in a dialogue about avoiding child labour**, as well as how to reduce the presence of small children at mining activities occurring on the concession. However companies should aim to avoid unintended negative consequences e.g. preventing women miners from earning a livelihood as they cannot leave their children elsewhere.
- **Companies should combat discrimination against women** by
- **Practicing equal pay for work of equal value.** Women workers should never be paid less than their male counterparts for performing the same work.
  - **Practicing non-discriminatory hiring.** Avoid discrimination against women in hiring, including by ensuring that job descriptions and hiring processes do not specify that certain positions are open only to men.
  - **Encouraging the engagement and promotion of women** workers through skills development and gender targets in hiring, as appropriate.
  - **Actively engaging women community members** in community consultations which were usually found to be male-dominated.

#### 4. Implement heightened due diligence in conflict-affected areas

The potential for human rights abuses is particularly high in conflict-affected areas, including those controlled by ethnic armed organisations (EAOs). Companies operating in these areas need to take additional care for example by:

- **Consulting widely with ethnic armed organisations (EAOs) at both local and headquarters level, as well as local and international NGOs** which have operations in these areas or expertise on them, in order to understand the current political economy and conflict context and significant human rights issues.
- **Reconsidering whether to operate in these areas at all**, given that it will be extremely difficult, if not impossible, to do so in a conflict-sensitive way and one which respects business integrity. This is particularly the case where the EAO is not a party to the National Ceasefire Agreement (NCA). Contacts may be illegal under Myanmar law, and put company personnel at risk.
- **Applying international standards of responsible business conduct (RBC)**, including on anti-bribery and corruption.
- **Being very transparent**, including on about payments to non-state authorities/EAOs.
- **Not adopting business practices which create conflict**, such as use of 'CSR' budgets to make payments (bribes) to elites and community leaders in return for their support or signatures, or promises of other benefits
- **Ensuring that all operations and activities meet or exceed the relevant provisions of Myanmar law and regulation**, including as regards environmental, social, labour and human rights protection.
- **Applying the Voluntary Principles on Security and Human Rights (VPSHR)**
- **Adopting IFC Performance Standards**, including PS7 on Indigenous Peoples.

## 5. Establish an operational-level grievance mechanism for each mine

Companies have a duty under the 3<sup>rd</sup> pillar on the UN Guiding Principles to provide a **remedy** or co-operate in remedying actual impacts caused or contributed to. This may be done either through the company's own grievance mechanism, or other grievance mechanisms (including judicial and non-judicial mechanisms, whether state-based or non-state based). Having an effective company operational-level grievance mechanism which is accessible directly to individuals and communities can help companies to address adverse impacts early and effectively, before they escalate into major issues. Companies holding small, medium or large-scale licences should:

- **Establish an operational-level grievance mechanism** that meets the eight effectiveness criteria outlined in UN Guiding Principle 31 (legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on dialogue and engagement).
- **Develop the grievance mechanism in close collaboration with local communities** to ensure that it is appropriate for the local context
- **Ensure that complainants are free to choose whether to use the company's mechanism or remediation processes by State or third-party institutions.** Companies should be careful not to undermine the role of judicial remedy mechanisms or nascent Myanmar trade unions. Relevant State-based mechanisms for remedy may also evolve in coming years, such as Myanmar's National Human Rights Commission or more effective local courts, and therefore the operational-level grievance mechanism should in no way restrict or limit access of complainants to such mechanisms.
- **Prevent retaliation against complainants inside and outside the company.** This includes refraining from intimidation or threats against individuals or groups that have raised concerns or grievances related to company operations and activities, as well as raising cases with the authorities where individuals peacefully protesting against mining operations are suppressed or mistreated by the police, private or public security forces, ethnic armed organisations (EAOs) or others.

## 6. Engage with stakeholders, particularly workers and communities

The SWIA research identified that historically, with a few exceptions, there was little interaction with communities around mining operations, either by the Government or companies. This is now slowly changing, including through the introduction of EIAs, and MEITI. Communities told MCRB they would like more direct contact with companies. Companies should:

- **Identify and map relevant stakeholders** and develop a regularly updated **Stakeholder Engagement and Communication Plan** that outlines the processes for stakeholder engagement, purpose, response and persons responsible.
- **Ensure engagement is more than only formal and legally required consultation meetings** e.g. those in the EIA process. There should be a broader strategy to engage workers, the local community, local government and civil society in on-going discussions about the changing face of operations and their impacts.
- **Communicate in a form and frequency that is accessible to local workers and communities, and does not put them at risk.** This will require an understanding of local ethnic dynamics, languages and appropriate communication channels, as well as identifying any literacy, cultural and physical barriers.
- **Engage with local civil society organisations (CSOs)** to understand local communities and their preferences, as well as important issues, and legacies problems.

- **Prioritise rights-holders in stakeholder engagement i.e. those directly affected by the mine.** Make special provisions to engage rights-holders whose voices may be **marginalised**, so that they can meaningfully participate. This may include women, children, people with disabilities and the elderly, minorities and the landless and illiterate.
- **Establish effective ways to share information and promote community-company dialogue.** This may include the company having dedicated community-relations staff, ideally employed from, and well-known in, the local community. A company may also consider setting up a local community or 'shop-front' office where communities can come for information, apply for jobs and make complaints.
- **Build positive relations with local communities,** and obtain broad-based community support for activities throughout the life of the project, including through **employment and training of local workers,** and **good consultation and grievance management.**

## 7. Develop local content, supply chains and community capacity

It is well recognised that in addition to longer-term contributions to national revenue, the mining sector can create positive impacts in the shorter term, in the local area of operations if planned carefully and with sufficient company support. There are a range of opportunities for companies operating in the mining sector to contribute to more immediate positive impacts in Myanmar beyond the longer-term payment of revenue that will take years to materialise, including:

- **Developing short-, medium- and long-term strategies for addressing communities' desire and need for jobs.** These may include supporting basic education and vocational training programmes for skills needed in the sector, including supporting women or other groups facing discrimination
- **Developing social investment programmes with, for and by communities** which maintain a strategic link with the mining operations and 'create shared value'. Programmes should support communities in developing their capacity to undertake needs assessments, and choose and manage small-scale development projects. Companies without qualified staff may wish to outsource this to a third-party provider
- Designing programmes to be **gender sensitive** and **inclusive.**
- **Avoiding 'donations'** which resemble payments to secure support of local elites and opinion-formers, including donations to religious leaders
- For larger projects, considering negotiating with the local communities some form of **Community Development Agreement (CDA)** that covers the medium and long term relationship between the communities and the company.
- **Promoting small business and entrepreneurship programmes** to build subcontractor capacity and local supply chains for the mine.
- **Understanding local development priorities and activities** both by Union and local government, but also international development partners and EAOs. Information is available on [www.themimu.int](http://www.themimu.int)
- **Developing more systematic planning of quality project infrastructure together with the authorities.** Companies need to minimise adverse impacts on infrastructure (e.g. roads, schools, health facilities, waste) used by communities, and together with local authorities and in consultation with communities, work towards planning of quality infrastructure that can improve community livelihoods while also serving the project.

## 8. Support the formalisation of informal and subsistence mining

Part 7.1 (Recommendations to Government), and in particular Recommendation 7 outlined the case for formalising subsistence mining. Companies can contribute to this by improving the interaction between the informal and formal parts of the sector and:

- **Proactively engage subsistence miners to understand and address their issues.** For example, companies should include subsistence miners and mining activities in feasibility studies, EIAs and EMPs, in particular where subsistence miners are operating on the mining concession. For more ideas, see [Mining Together](#) toolkit of the World Bank, ICMM and CASM and other guidance on ASM in **Error! Reference source not found.**
- Partner with development actors and CSOs to **support subsistence miners on OSH and environmentally responsible practices**, such as mercury free processing alternatives.

## 9. Take collective action to improve responsible mining practices

Collective action by companies, or in some cases in multistakeholder from, allows sensitive topics such as corruption to be broached but reduces exposure for individual companies. It promotes a level playing field, and allows for sharing lessons learned on applying international standards in other comparable countries. It also is more effective and less labour intensive for Government to deal with a group rather than individual approaches.

Opportunities for **collective action by companies in the mining sector** include:

- **Myanmar Extractives Industries Transparency Initiative (MEITI):** In addition to participating actively on disclosure of data in line with METI requirements, companies – for whom transparency generally means an improved investment climate - should press for adoption of ‘encouraged’ and ‘recommended’ requirements under the MEITI Standard. This includes disclosure of contracts and beneficial ownership. In addition, international companies with EITI experience from elsewhere can share this.
- **Voluntary Principles on Security and Human Rights:** depending on whether Myanmar develops an active pilot group, mining companies should participate and share experience of applying international human rights and humanitarian standards regarding security, including where this is relevant to the activities of Myanmar’s security authorities, and EAOs.
- **Promote learning between Myanmar and foreign companies.** While the members of the International Investors for Mineral Development Association (IIMDA) may have more experience of, and company commitment to applying international standards, they should actively engage with the Myanmar Federation of Mining Associations, to improve the sector as a whole. **Safety** should be the priority for engagement. International experts such as **EIA consultants** and mining engineers should also commit to supporting professional development of Myanmar consultants
- Work with the **Mining, ECD, and Forestry Departments of MoNREC to improve the EIA process** including through providing business input into any future amendments or new legislation or Mining EIA Guidelines. Again, mining companies that have experience of international good practice EIA should deploy this in discussion, including with development partners.
- Participation whether through Chambers of Commerce or sectoral associations, in **cross-sectoral private sector dialogues** with government e.g. on draft legislation on issues such as **labour law reform, taxation, safety, and corruption.**
- **Sharing baseline environment data, particularly around biodiversity and water**, working with academia and international and local environmental NGOs
- Work with government, academia, EAOs and development partners to adapt **education and vocational training programmes to build skills for the mining sector** to address skills shortages over the medium term, through education, technical education and certification programmes
- Collaboration on **programmes to support SMEs and supply chain development**, particularly with development partners
- Collective action to support for **formalisation of the subsistence mining sector.**

# Recommendations to Ethnic Armed Organisations

Part 7.3 is directed at individual EAOs, both those which have signed, and those which have not signed the Nationwide Ceasefire Agreement (NCA). Their relevance to EAOs will vary depending on the local context, the institutional strength of the EAO, and the interest the EAO they have in seeing responsible mining in their area. SWIA field research in conflict-affected areas found significant human rights abuses and an unclear regulatory environment. The variety of authorities present focus more on rent-seeking rather than regulation of mining impacts.

EAOs with an interest in regulating mining, who are in a position to contribute to the debate, whether through formal peace and dialogue arrangements, or through public and media advocacy, could be more effective if they draw on international standards and experience. These are highlighted in Part 5 of the SWIA at the end of each section. In addition, EAOs need a good understanding of the evolution of the national regulatory framework and its impacts (Parts 3 & 4).

There is a significant reform agenda for mining underway at Union level. This includes the possible establishment of a National Mineral Resources Policy (separate or including a Gemstones Policy), leading, ideally, to a further revision to mining legislation, as well as implementation of the decentralising 2015 changes. This, and the ongoing debate on **natural resource federalism** is very relevant to both the development of responsible mining practices in ethnic areas, and the outcome of the peace process. EAOs are encouraged to develop specific positions and proposals on the roles and responsibilities of administrations and regulators at different levels; how to maintain at least minimum national social and environmental standards; and issues such as transparency, and local community consent, including protecting the rights of Indigenous Peoples and ethnic minorities.

## 1. Develop EAO approaches to mining policy and permitting that align with the national framework, but enhance local participation

- **Study the evolving Union-level legal framework for mining** outlined in this SWIA, including the 2015 Amended Mining Law, proposed 2018 Rules, 2016 Myanmar Investment Law/2017 Rules and the Environmental Conservation Law and EIA process, as well as the amendments to the Schedules of the Constitution in Law 45/2015 which further decentralised mining permitting and revenue raising.
- Engage on the byelaws for the **2015 Protection of the Rights of National Races Law** relating the requirement in **Article 5** that Indigenous Peoples (hta-nay tain-yin-tha) “*should receive complete and precise information about extractive industry projects and other business activities in their areas before project implementation so that negotiations between the groups and the Government/companies can take place.*”
- Identify the opportunities in the national framework for **EAOs and other local stakeholders to influence investment decisions and regulation of mining**, and how these can be used to make real the ‘**interim arrangements**’ in Para 25 of the NCA.
- Develop through a transparent and consultative process, an **EAO Vision/Strategy for Mineral Resources** in ceasefire areas which takes competing demands such as protecting **ecosystems services** into account, as well as safety, transparency requirements, and requirements for local revenue/benefit sharing and closure/rehabilitation. Such an EAO Strategy could be used to input into the drawing up of a **National Mineral Resources Policy**, and could be a part of the relevant **State/Region mineral resources strategy**.

- Where relevant consider strategies for mining specific commodities (e.g. **limestone** in Kayin/Mon/Shan; **tin** in Wa)
- Develop a position on the establishment of a nationwide unified **mineral rights cadaster** which addresses EAO interests, to contribute to the work taking place on this under MEITI.

## 2. Improve governance of, and standards at, EAO-permitted mining operations

At those sites visited where EAOs had influence, and in some cases were formally permitting and taxing mining activity, there were extensive environmental and human rights impacts particularly from artisanal mining. While one EAO (the KNU – see **Error! Reference source not found.**) has mining regulations, SWIA field research did not find this for other EAOs.

- Given the limited capacity of EAO administrations to regulate the environmental, social and human rights impacts of mining activities in conflict-affected areas, **consider a pause on issuing any further permissions to mine** or renewals of existing permits (some NLD Chief Ministers introduced a similar pause in 2016).
- If new permits are issued or renewed, ensure that they contain **environmental, health and safety (EHS) standards** and that companies have clear guidance. The IFC's EHS Guidelines (both General, and [Mining](#)-specific) are a useful reference point for EAOs (see also Part 5).
- **Enforce standards through on-site inspections, suspension of operations, fines and cancellation of licences where companies do not remedy failings.** This will require allocation of human capacity and financial resources to develop these regulatory functions.
- Support moves towards **formalisation of subsistence mining** in a manner which reflects its specific nature (see guidance material in **Error! Reference source not found.**)
- Take steps towards the reduction and elimination of **mercury** use in artisanal and small-scale gold mining (see guidance material in **Error! Reference source not found.**)
- **Ensure clear institutional separation between EAO/local governance structures and ethnic/local companies** to avoid conflicts of interest, as well as companies operating with an armed presence.
- **Adjust taxation approaches** to ensure that EAO revenue is tied more closely to production and company profits.
- Introduce **transparency over mining permits and income received** to shadow MEITI This includes:
  - Ensuring greater oversight of local tax and fee collection.
  - Publishing up-to-date information on permits issued.
  - Disclosing all payments and EAO income related to these permits and projects.
  - Ensuring companies receiving permits from EAOs are registered with DICA.

## 3. Protect the rights of communities affected by mining

Some EAOs have advocated effectively for communities where companies are having negative impacts. In some cases EAO-permitted companies have caused the problem. The relevant recommendations in Part 7.1 and 7.2 concerning **consultation, grievance mechanisms, and building positive relationships with communities**, including through **employment and training of local workers** are all relevant. In view of the armed nature of the administration it will be important to ensure that **EAO security forces operate in accordance with the VPSHR**, by including these standards in training of forces as well as any contractual arrangements made.



# Recommendations to Civil Society

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## 1. Support local communities impacted by mining so that negative impacts are prevented or mitigated, and they obtain remedy

Many environmental and human rights impacts have been highlighted in Part 5 of the SWIA. Communities need the support of CSOs to assert their rights. CSOs need support from development partners to conduct effective advocacy, and an enabling environment in which to operate. Recommendations to Government in Part 7.1 highlight the important role that CSOs play in support to affected communities through advocacy and capacity-building, both in the EIA process and subsequent monitoring. CSOs could do this through:

- **Advocating for adoption by MoNREC of Public Participation Guidelines** that ensure that consultation processes are meaningful in terms of information provided, languages used, notice given and timelines, and full **implementation and enforcement by ECD of the legal requirements on public participation and disclosure** in the EIA Procedure.
- **Using the EIA process to drive more responsible mining.** To date, mining EIAs and EMPs have been developed without adequate consultation or input from affected communities, or disclosure in line with legal requirements. There is a risk that this will continue. CSOs need to develop the expertise to review EIAs and EMPs and submit comments on their own account, as well as helping communities to do so.
- **Participating in consultations**, and advocate for them to be inclusive of women and other excluded groups.
- **Building CSO and community capacity** to participate in **consultation** and ensure their rights are protected in consultation processes such as **EIAs**
- Undertaking **awareness raising and training for communities** on practices with major human rights impacts such as **artisanal mining, mine safety** and **child labour**, independently or in partnership with companies, government or development partners.
- **Submitting comments on disclosed EIAs and EMPs**, and helping communities to do so
- **Advocating for rejection of draft EIAs** which do not meet the required standards for public participation and disclosure.
- Providing **feedback to ECD on companies and EIA consultants** who behave unprofessionally or in a manner which creates conflict, or who fail to meet EMP/ECC commitments

Civil society organisations can also provide support to communities in monitoring impacts and obtaining remedies, including by:

- Undertaking **community assessments** which ideally should feed into formal environmental and social management systems **and impact monitoring**
- **Assisting workers and community members** to input into design and implementation of mine-level **operation grievance mechanisms**.
- **Undertaking advocacy with companies** based on implementation of their legal commitments in their EMP/ECC
- Supporting the establishment of **unions for mine workers**.

## 2. Advocate for relevant legal and policy reforms

The mining sector and related laws are undergoing significant reform which would benefit from civil society input. The aim should be build a legal and policy framework that leads to the reduction of negative environmental and human rights impacts.

The programme to enable Myanmar to meet the 2016 MEITI Standard provides a framework for some, but not all of these reforms. It includes a number of 'encouraged' or recommended 'options' such as disclosure of contracts and disclosure of beneficial ownership which would be beneficial for Myanmar. Other issues need to be addressed through cross-cutting laws on safety, EIA, labour, investment permitting etc. CSOs could:

- **Undertake coordinated advocacy on relevant legal and policy reforms** with government, the legislature and companies, at Union and State/Region level. The Recommendations to Government outlined in Part 7.1 offer a reform agenda identified by MCRB, but there may be other issue or priorities for CSOs.
- **Conduct independent assessments** on the actual environmental and human rights impacts of mining activities to serve as an **evidence base** for advocacy
- Use **international standards** in advocacy, such as those list in Part 5
- Use toolkits have been provided in Part 5 for use in advocacy and capacity building efforts.

### 3. Participate in multi-stakeholder initiatives and make use of the data and dialogue opportunities they offer

The main multistakeholder initiative of relevance is the **Myanmar Extractives Industries Transparency Initiative (MEITI)** in which civil society groups, supported by Myanmar Alliance for Transparency and Accountability (MATA), plays a full role. One role of civil society is to make full use of the data disclosed including with media, communities and parliamentarians to raise awareness of the sector and underpin reform.

Another potential multistakeholder initiative on the extractives industry, including mining that may be implemented more fully in Myanmar through a local pilot group is the **Voluntary Principles on Security and Human Rights**.

If the government proceeds with developing a **National Mineral Resources Policy**, it will be important that this is done through a transparent and participative multistakeholder process, similar to that being attempted for the Gemstones policy, and that CSOs play a full role, reflecting the experiences of communities and other non-governmental stakeholders. The same is true for any reforms to formalise the **subsistence mining sector**.

# Recommendations to Other Governments

Part 7.5 is directed at other governments active in Myanmar, as development partners, and as home governments for foreign companies investing in the mining sector.

## 1. Provide technical assistance to strengthen environmental and social safeguards in mining to government, and to CSOs

Development partners are essential providers of expert technical and financial assistance, which is needed for transition towards a more sustainable mining sector, particularly for EIA. However this needs to be coordinated, including between ECD and the Department of Mining, and based on qualified expertise.

- **Provide technical assistance to MoNREC to strengthen and implement the framework for EIAs.** This should include ongoing mentoring of MoNREC, technical assistance to develop EIA guidelines for the mining sector and capacity building for ECD to assess EIAs and monitor EMPs at the local level. Development partners should also support capacity-building of local EIA providers.
- **Provide technical assistance to the Government for the development of a Natural Resources Policy.**
- Support the Government to **strengthen its inspection capacity for labour and environmental protection including at the state/region-level.**
- Support programmes to **develop civil society capacity** to engage effectively with the mining sector, including implementation of EIAs (see Part 7.4)
- **Encourage the government to include references to international standards** (for example IFC Performance Standards and World Bank EHS Guidelines) in EIA Terms of Reference and permits provided to investors in the sector.
- **Encourage enhanced transparency in the mining sector** through continued technical and financial assistance to the **MEITI**.
- Support the government in the **reform of land laws.**
- Support the **development of education and vocational training programmes to build skills** for the mining sector, and programmes to support SMEs to be able to provide goods and services to mining operations.

## 2. Provide technical assistance to formalise subsistence mining

Specific support is needed for the subsistence artisanal sector which has been neglected.

- Work with the Government, subsistence miners and other stakeholders to **start a process towards formalising the subsistence mining sector** which addresses human rights impacts and draws on international experience
- **Support training programmes for subsistence miners**, including women, on OSH and environmentally responsible practices.
- Support the establishment of programmes for subsistence miners, including women, aiming at **the reduction and elimination of mercury use** in artisanal and small-scale gold mining.
- **Support the implementation of a programme of action towards eliminating child labour in subsistence mining**, including awareness-raising and development of education.

- **Support better access to essential services, including healthcare facilities and schools, in subsistence mining areas and establish programmes supporting alternative livelihood activities for subsistence miners.**

### **3. Support EAOs to address impacts of unsustainable mining in conflict-affected areas**

- **Build capacity of EAO governance bodies to regulate mining, and enforce standards.** Chapter 6 (Article 25) of the NCA recognises signatory EAOs' role in managing natural resources in areas under their authority. The NCA also authorises international development partners to support EAOs in such roles, in cooperation with the Government. The creation of protected areas should be a priority, and should be selected and managed in partnership with local communities. In many cases, EAOs have already established protected areas, the recognition and management of which should be negotiated with the Government.

### **4. Encourage foreign investors to invest responsibly in Myanmar**

Home governments of mining companies operating in Myanmar should make clear they expect those companies to apply the highest standards of responsible business conduct.

- **Home country governments should proactively express their expectations of companies domiciled in their country which invest in Myanmar.** This should include clear expectations that they should apply the UN Guiding Principles on Business and Human Rights and, where relevant, the OECD Guidelines on Multinational Enterprises, the VPSHR and the IFC Performance Standards, in the absence of Myanmar laws that provide for a higher standard. Companies should also be encouraged to set up operational grievance mechanisms.
- Include Myanmar, or at least the most conflict affected regions, within the scope of **due diligence for conflict-affected and high-risk areas** under the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the European Union Regulation on conflict minerals.
- **Consider adopting financial and non-financial reporting requirements for companies** operating in Myanmar where these do not already exist.
- **Encourage companies to ensure local benefit-sharing** including potential for CDAs.
- Map, support and strengthen **community-based dispute resolution mechanisms** in Myanmar.





**The Myanmar Centre for Responsible Business (MCRB)** was set up in 2013 by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, building of capacity, undertaking of advocacy and promotion of dialogue amongst businesses, civil society, governments experts and other stakeholders, with the objective of encouraging responsible business conduct throughout Myanmar. Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.

**Danish Institute for Human Rights (DIHR)**

Wilders Plads 8K  
1403 Copenhagen K  
Denmark

[info@humanrights.dk](mailto:info@humanrights.dk)

[www.humanrights.dk](http://www.humanrights.dk)

**Myanmar Centre for Responsible Business**

6 (a) Shin Saw Pu Road  
Kayinchan Qtr, Ahlone  
Yangon, Myanmar

[info@myanmar-responsiblebusiness.org](mailto:info@myanmar-responsiblebusiness.org)

[www.myanmar-responsiblebusiness.org](http://www.myanmar-responsiblebusiness.org)  
[www.mcrb.org.mm](http://www.mcrb.org.mm)

**Institute for Human Rights and Business (IHRB)**

34b York Way  
London, N1 9AB  
United Kingdom

[info@ihrb.org](mailto:info@ihrb.org)

[www.ihrb.org](http://www.ihrb.org)

