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Natural Riches?
Perspectives on Responsible Natural Resource Management in Conflict-affected Countries

The Network of Global Agenda Councils

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Contents

Preface

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About *Natural Riches? Perspectives on Responsible Natural Resource Management in Conflict-affected Countries*

To meet growing global demand, natural resources are under increasing pressure. New sources have entered global markets – many of them in developing or emerging economies. Valuable resources such as oil, copper, tungsten, gold and timber can be found in many poor or fragile states, sometimes in very remote areas. Myanmar, a country that has recently embarked on an important political transition, is one of these resource-rich nations.

Over the past decade, more and more actors have recognized that natural resources, when properly managed, hold great potential to contribute to social and economic development. Mounting evidence from resource-rich countries, such as Botswana, Chile and Norway, points to the positive outcomes for local communities and countries when natural resources are developed. Elements such as equitable redistribution of revenues, strong public institutions, investment in local capacity, environmental planning and transparency measures contribute to the virtuous circle of natural resource management, bringing wealth and prosperity to citizens and companies alike.

Conversely, the risks associated with the poor management of natural resources – social unrest, corruption, graft, environmental degradation – are also well known. New research by the United Nations has revealed an important correlation between natural resource exploitation and violent civil conflict, with estimates indicating that 40% of intrastate conflicts are related to or fuelled by natural resources.[1] More than three-quarters of the states classified as "fragile or failed"[2] possess extensive natural resources that could be instrumental in creating economic opportunity.[3] But if these resources are poorly managed, the potential to create new conflicts and exacerbate old ones in already challenging environments increases.

To address the relationship between natural riches and conflict, international organizations, companies and civil society are collaborating on a wide variety of important guidelines and tools that can assist countries in ensuring their resources are developed properly. A significant body of expertise pertains to the challenges and opportunities associated with natural resource exploitation, including support mechanisms that can help ensure that a country's wealth – be it in gold, land or oil – does not undermine its prosperity.

The debate continues, however, on what constitutes the responsible management of natural resources, and how governments, communities and companies can maximize the development potential of resources, particularly in fragile states.

To advance the debate, this publication provides a range of perspectives on important topics related to responsible natural resource management, with an eye on how they may be applicable to the context in Myanmar. The project was born of conversations between unusual allies – non-governmental organizations (NGOs) working to build peace in conflict-affected countries, multinational companies in the extractive sector, industry associations and academics – all of whom share a commitment to ensuring natural riches are used wisely. The multistakeholder nature of this publication's Editorial Board reflects both the recognition that responsible natural resource management can make an important difference in a country and that continued dialogue and collaboration between multiple stakeholders is required to make sure this happens.

The publication is intended to help governments and communities in resource-rich countries better understand the context for natural resource management, and in so doing, contribute to more effective policy-making.

Because this is a collection of perspectives, this publication does not promote a one-size-fits-all approach for Myanmar or other nations. Responsible natural resource management involves many parties and needs to reflect local circumstances. Through a collective effort, the report's authors focus attention on the key areas where oversight and careful consideration are required to achieve optimal outcomes.

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The Global Agenda Council on Conflict Prevention wishes to thank all the Council Members from sister Councils who contributed their ideas and provided support to this project. The Council is committed to fostering business and peacebuilding collaboration, fuelling new and more effective peacebuilding alliances.

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1. Introduction

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This publication sets out to offer high-level guidance on how natural resource wealth can be responsibly exploited for the benefit of the nation where it is found, in circumstances where there is violent conflict or a high risk of it.

For a developing country facing high poverty levels, a growing population with high expectations, a low revenue-base, a sluggish economy with weak institutions, and at the same time possessing abundant natural resources, the exploitation of these resources will present a relatively quick and simple avenue to secure revenues that can be used to mitigate poverty and modernize infrastructure. The opportunities offered by natural resources to developing nations are extraordinary.

However, experience from a range of otherwise very different countries shows that reaping the benefits of natural resources is not a straightforward process. Indeed, the exploitation of mineral wealth is all too often associated with increased conflict risk, corruption and an arbitrary and unstable system of government.

At the outset of this project, two overarching questions needed to be addressed:

- What is conflict risk?
- What is responsible resource extraction?

Conflict Risk

Never has there been an armed conflict with a single cause. In every conflict, a number of features of the social and political landscape interact with each other; this process is different in every case. Analysing conflict risk involves paying close attention to the particular circumstances of the country, especially its recent history and current development trajectory. However, a number of elements repeat themselves in different shapes and hues across recent armed conflicts. The mix of these elements, the weight each one carries in each case, how individual political leaders respond to and use the elements for their own advantage all vary, but the basic elements are similar. Key among them are:

- **Institutional deficiencies** - Risks are high when there is a dearth of well-developed institutions, such as departments of state, parliament, courts, police, local authorities, chambers of commerce and other business organizations, professional associations and civil society organizations. They all play a role in handling conflict, channelling it for constructive outcomes and avoiding violence. Access to justice and the chance to participate in decisions that shape citizens' lives are not only basic human rights, but also basic elements of a peaceful society; when these are inadequate, those with grievances may have no place to go except into radical organizations and militant action, often leading to violence.

- **Economic deficiencies** - Risks are also high where the economic wherewithal to meet the reasonable basic needs of ordinary people is lacking, or when ordinary people's livelihoods are hit by a sudden economic shock, such as a downturn in the terms of trade. Such developments sharpen the effect of inequalities, including not only the gap between rich and poor but those between different ethnic groups and between different regions of the country. All this provides fertile soil in which conflicts are generated, grow and explode. Access to a reasonable degree of prosperity is a legitimate expectation and a further ingredient of a peaceful society.

- **A lack of social well-being** - Frustrations arise with the poor or non-existent provision of basic public services in sectors such as health, education, sanitation and transport, as well as from divisions and group resentments in society. These sources of frustration form an impediment to social cohesion. They are often expressed in terms of resentment of the advantages enjoyed by another group – a different clan, tribe or ethno-national group, or from a different part of the country, or immigrants into the country – even when those advantages are mythical. The sense of belonging that develops when a society visibly looks after its members, whether this is achieved through the state sector or by other means, is a contributing factor in a peaceful society; its absence is a debilitating weakness.

It is worth noting that the most useful and durable definition of peace does not prescribe an absence of conflict; if that were taken literally, peace would be the stuff of nightmares and totalitarian fantasy. Peace is, rather, the situation in which citizens can pursue their conflicts without damage to each other or their neighbours. Peace is therefore characterized by an ability to *handle* conflict, not to suppress it.

Conflicts arise against a background they also shape. Political leaders – regardless of whether they set out to air a genuine popular grievance, support the common interests of all citizens, or exploit difference for sectional or individual gain – decide and act against that background.

The downward spiral

Untenable resource development strategies can undermine long-term growth and generate unbalanced economic performance. At worst, untenable resource strategies feed violent conflict.

The consequences of poorly calibrated resource strategies unfold at a number of levels and in different ways, depending upon both national and international circumstances. It is therefore difficult to draw a generic causal pathway, but several issues that can derail the momentum of development and lead to conflict are worth close attention.

Resource extraction has an impact on the environment in which people live, whether because it means village communities have to be moved so mining can go ahead, or because of environmental degradation. If these issues are handled poorly by the authorities, through inadequate consultation with local communities about how to meet their interests, grievances can turn quickly to unrest.

The exploitation of natural resources offers many opportunities and incentives for unscrupulous looting of the wealth by the economic elite if it can get hold of the levers of state power, and equally by armed militias if they can take control of resource-rich areas. As a result, natural resource extraction is widely associated with high levels of corruption, rent capture by the elite, and ineffective governance. In some documented cases, groups that are ostensibly engaged in violent conflict with the state are acting in covert alliance with some segments of the state, to their mutual advantage and to the detriment of the country as a whole and its ordinary citizens.

The heart of the issue is not the quality or abundance of resources themselves, but how they are governed. It is, first, a question of who is able to access them and for what purposes. For example, predatory extraction of natural resources by foreign multinationals can lead to loss of sovereign control over them and thus loss of national sovereignty in exchange for short-term gain for a narrow segment of the country's elite. Second, the social and environmental impact of resource extraction determines whether these are addressed by government policies and how.

This dynamic of exploitation and violence creates a downward spiral in which the state essentially leaves ordinary people to fend for themselves, while natural resource production falls under the control of those with access to power and weapons. If the state is not an effective provider of services, security or legitimacy, armed groups will often claim those roles, reinforcing their strength against the state.

Responsible Resource Extraction

What makes responsible resource exploitation responsible is that it sets out to avoid exacerbating those risk factors so that the benefits are shared by the country as a whole. How to set about this is explored further in the chapters that follow, which offer experience, best practices and models for responsible resource management. Because this publication is intended to provide guidance for general use, it does not answer the specific questions that arise in each country or how responsible managers will need to tackle them; rather, it lays out what to look for, what the general direction of travel should look like, and who the key actors are along the way. Before zooming in to look at each segment of the map, it is worth offering an overview, based on experience, drawing on the evidence presented in the following chapters.

Responsible exploitation of natural resources depends in part on avoiding some negatives. A "do-no-harm code" for resource extraction prioritizes the following:

- It avoids feeding corruption and uneven development – because that will weaken institutions, deepen inequalities and undermine social well-being;
- It respects the human rights of those who live in the vicinity, including ensuring that security for mining or drilling does not become insecurity for everybody else;
- It sets out to minimize the grounds for conflict over who gains most and who pays the highest cost;
- It avoids raising expectations of social and economic benefit too high.

A do-no-harm approach mitigates the risk factors; it should not be thought of as a purely technical process, though getting the technical details of legislation and regulation is important. What truly drives this process forward is a national consensus, among political, business and civic leaders, that the country's interests are best served by responsibility, regulation and respect for human rights.

Alongside taking care to avoid the ills already mentioned, responsible resource extraction also involves undertaking some positive steps. The keynote of the first two is inclusivity:

- Responsible resource extraction involves widespread consultation as a social process, discussing options and choices, shaping policies and actions in ways that meet the widest range of interests. This helps strengthen institutions, decreases the likelihood of deepening inequalities, and helps keep expectations realistic.
- At the same it involves an emphasis on sharing benefits:
  - Between different regions and social groups;
  - With strategic social investment and job creation (recognizing that one aspect of ill-managed expectations is exaggerating how many jobs the mine/drilling will create).

Two further positive components of responsible resource extraction fall into place alongside inclusivity:

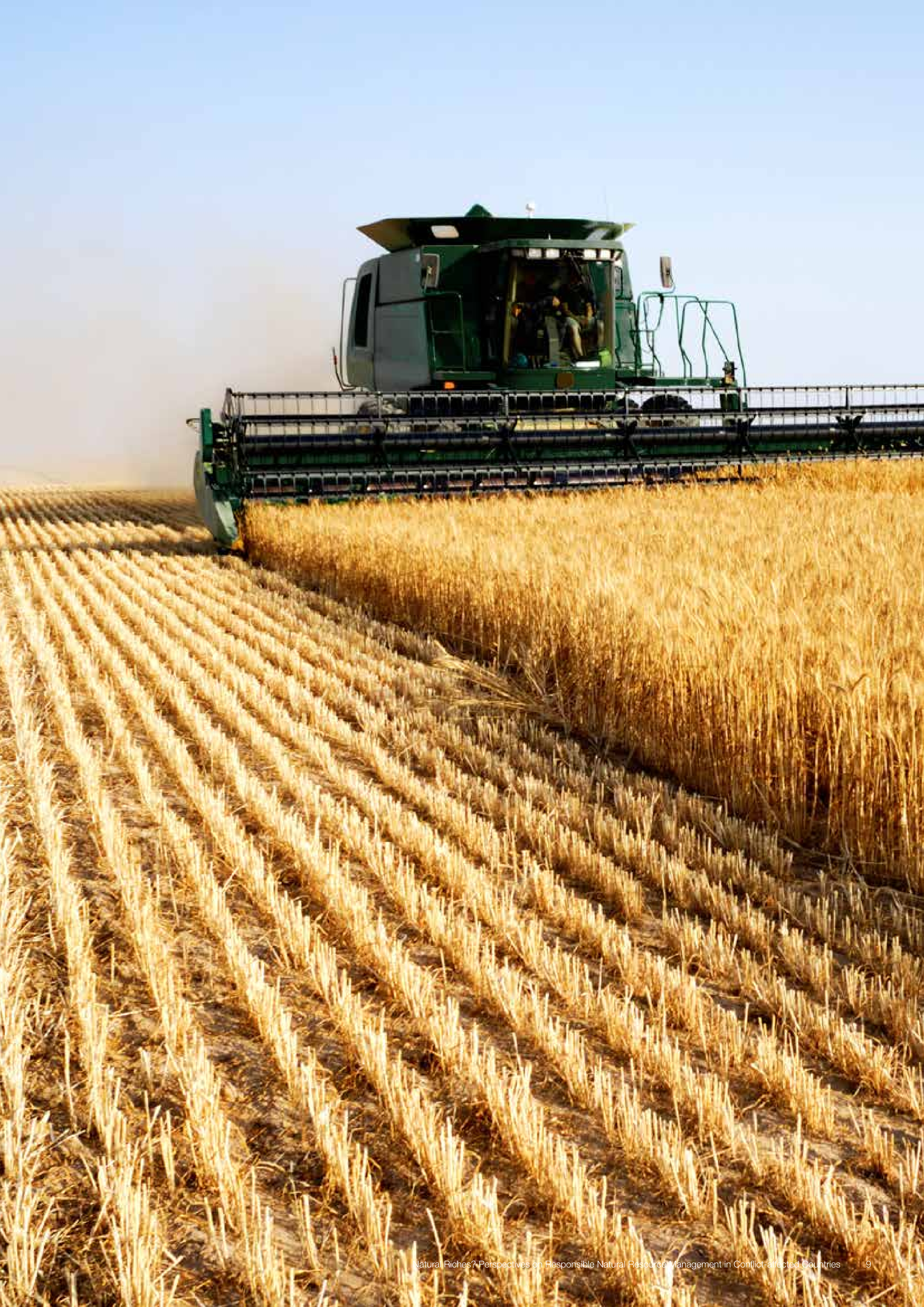
- Care is needed to establish the right legal procedures for transparency and accountability, without which stakeholder consultation is a sham; these should under no circumstances be weaker than current international standards, which should be regarded as establishing the minimum criteria;
- This approach to natural resources will work best within a social and economic development strategy that:
  - Makes the benefits of resource extraction visible;
  - Uses resource income to invest rather than relying on it for short-term gains;
  - Diversifies the foundations of prosperity so that the economy does not rest on resource extraction alone, but includes, for example, value-adding activities in the resources supply chain and other economic sectors.

As a broad but tenable generalization, natural resource exploitation that is fast, furious and provides benefits to a narrow segment of the population offers a relatively high risk of generating conflict that escalates into violence, especially since in such circumstances the institutions that can manage conflict have probably not been built.

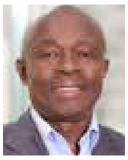
By contrast, natural resource exploitation that is relatively broadly based and provides benefits to the population as a whole minimizes the risk of violent conflict, especially since in such circumstances conflict-management institutions almost certainly have been built along the way.

The remaining chapters in this book will further examine the elements of a responsible approach to natural resource management:

Chapter 2	Natural Resource Management as Part of the Development Agenda
Chapter 3	International Approaches: Overview of Key Factors and Approaches in Natural Resource Management
Chapter 4	Legal and Regulatory Framework and Contract Design
Chapter 5	Essentials: Transparency and Accountability across the Resource Chain
Chapter 6	Security and Human Rights
Chapter 7	An Institutional Framework for Natural Resource Management
Chapter 8	Fostering Dialogue across Stakeholders in Natural Resource Management
Chapter 9	Community Engagement and Environmental Management
Chapter 10	Stimulating Broader Social and Economic Development from Natural Resources
Chapter 11	Conclusion: The Road Ahead



2. Natural Resource Management as Part of the Development Agenda



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Introduction and Context

For a developing country facing high poverty levels, low revenue-base levels, a sluggish economy with weak institutions, and a growing population with high expectations, and at the same time possessing abundant natural resources, the exploitation of these resources will present a relatively quicker and simpler source of additional revenues than the accumulation of domestic tax revenues or the negotiation of loans that in turn can be used to mitigate poverty, build and modernize infrastructure, access finance, promote competitiveness, and generally transform the economy. However, at the same time, these goals could all be compromised by the inappropriate management of those natural resources. While there are many successful resource-rich countries, several examples exist of others that have suffered from what is referred to as the "natural resource curse" and even descended in to conflict.

The key question facing the policy-maker in such situations is how to find the right balance between attracting investments through the immediate provision of concessions demanded to launch natural resource-based enterprises, and ensuring that long-term development goals are not compromised. To find this balance, the linkages between the overall development policy objectives and the direct and indirect consequences of the exploitation of natural resources must be defined and managed. Once the definitions are in place, the next step is to formulate a clear policy   though an inclusive process   that sets priorities for the development of extractive resources and ensures coherence with broader national objectives.

Admittedly, establishing the legal and institutional framework to effectively manage the investments and revenues from extraction all take time and political will. The pressure for quick results and the high expectations of the population once normal economic activities resume in a country such as Myanmar can present a high political cost if not taken into account. Knowing what these trade-offs are and making the right choices are among the first steps to avoid the "curse".[5]

Box 1: Balancing Extraction with Development: The Case of Land and Environmental Impact

Land set aside for mineral extraction is not available for other uses, and this can have major impacts on other sectors, regions and peace processes. What is an appropriate policy mix to satisfy both the demands for natural resources and the need for available land?

Policy-makers must also consider the environmental impact of leasing land for productive activities. For example, wetlands represent a key component of the ecosystem, yet may also be one of the most productive areas for large-scale rice farming. What is the appropriate choice to make? In both cases, it is essential that the population be involved in discussions on the issue.

Natural resource development embraces the concept of the use of natural resources for overall development and the idea that natural resources should be developed rather than exploited. Exploitation creates images of wasting an asset, while development suggests more care for longer term opportunities. This chapter describes the links between natural resources and other sectors of the economy and examines the relationships among the different types of natural resources, acknowledging that the quest to improve livelihoods through natural resource extraction generates tensions and opportunities in the economic, social and political domains. The chapter concludes with a series of recommendations aimed at managing these tensions while optimizing the use of natural resources for sustainable development and peace in the country.

Box 2: Key Issues to Consider

- What should the level of public expenditure that relies on natural resource revenues be, bearing in mind the volatility, unpredictability and exhaustibility of this source of revenue?
- Large revenue flows from the extractive sector encourage capital-intensive essential infrastructure projects, as well as spending on pure consumption. The former could give the illusion of rapid growth but can quickly become burdensome when sources of revenue to pay running costs dry up. The second alleviates poverty, but only temporarily. The choice of how to channel revenue flows made must be based on clearly thought-out criteria.
- The depletion of non-renewable resources could be equivalent to the depletion of the country's wealth; how much of the revenues should be saved or invested, rather than used to meet immediate consumption needs?
- Minimizing the potential effects of Dutch disease is important because changes in production patterns may result from changes in land allocation due to natural resource extraction demands, leaving a country even less food secure than before.
- Developing human resources to accompany resource exploitation is an essential part of the transformation process and must be incorporated in the policies adopted. The question is whether to assign priority to short-term demands over longer term requirements – such as human resources – for a sustainable and vibrant economy.

Countries about to emerge from low-income status have found a number of measures useful in setting the foundation for efficient and effective management of their natural resources. These take into account the economy's sectoral interlinkages, including:

- Developing an overall strategy for the natural resources sector that incorporates the major goals for transformation and development. Such a strategy would outline optimal levels of extraction consistent with the economy's trajectory, specifically engender all natural resource management policies, determine levels and types of incentives to encourage investments, prescribe transparency and accountability mechanisms to be set up, stipulate the need for protection of the environment and biodiversity, and put in place a system for the effective use of revenues derived from natural resource development.
- Performing a comprehensive survey or inventory of the various forms of natural resources. Such information is essential for short- and long-term planning and efficient allocation decisions.
- Adopting a policy on the terms and conditions for granting concessions.

Many forms of natural resource exploitation have potential repercussions on peacebuilding and sustaining peace after a conflict. The greater the size and value of the natural resources in a country, the more difficult it is for all stakeholders to find common ground and accept that the gains are being shared equitably, especially with the intervention of external forces competing for control.

Guiding Principles and Recommendations

Land

As a resource, land is, or forms part of, the basis for the development of each of the other resources. In addition, land is instrumental in the promotion of almost all other sectors. The competition for land by sectors such as agriculture, industry and transport, as well as the protection of water catchment areas, environmental management, etc., make it essential to seek a national consensus for a comprehensive land-use and planning policy as soon as possible.

In Africa, the existence of several, often conflicting, policies for land allocation and use has constrained agricultural development, rendered the erection of factories uneconomical, and threatened wildlife reserves. A classic example is the protection of a nature reserve, which is often the prerogative of the unit responsible for parks and wildlife, while the allocation of a mining license is with the ministry of mining. The institutions may find themselves at loggerheads over how to best use the land. However, the unplanned use of land in rural areas by mining or by land grabbing can result in pollution and the destruction of ecosystems. A politically challenging question is how to modernize agriculture while retaining the cultural and traditional ties of communal land ownership? Similarly, unplanned settlements for mining or due to rapid urbanization can create other tensions that clash with overall national economic development goals.

Measures that can mitigate these risks include:

- Formulating a comprehensive land-use and land-tenure policy after extensive consultations;
- Establishing effective coordination mechanisms for the management of competing demands, such as for building permits, mining rights or property rights;
- Setting up a land registry or cadastre office;
- Building land administration capacity;
- Establishing an integrated Web-based Geographic Information System (GIS) for land management.

Water

Water as a resource for industrialization, rather than for human consumption, is a distinction that is useful both for planning purposes and in relating it to other development goals. Until recently, water pricing for industrial use was not appropriately priced as long as domestic consumption was not affected. Yet energy, agriculture, inland fisheries and mining all compete for ground and surface water resources. In addition, ecosystem preservation depends on the maintenance of the delicate balance between water availability and quality. Measures to address water include:

- Setting up the appropriate institutional and legal framework for comprehensive water management;
- Building capacity and raising awareness for water resource management at all levels;
- Creating effective monitoring systems for ground and surface water resource assessment.

Minerals

The minerals subsector has extensive interrelationships with other development goals, such as employment, infrastructure, education, diversification and revenue management, as well as linkages with land, environment, water and agriculture, among others. The interlinkages and their implications must be analysed at an early stage to ensure coherence among policy goals at the national level, and also to create synergies among them.

At the early stages of economic growth, this sector could be the principal driver of economic activities because of the heavy investments required for mine development, the potentially large revenues from mineral taxes, demand for pre-production employment, and, when properly managed, backward linkages to the rest of the economy. However, at the same time, tensions will have to be managed to deal with pressures for exemptions from the prevailing law governing almost all mining operations, including: from rules and regulations governing all forms of taxation on enterprises, maintaining respect for human rights by both artisanal and industrial mines, enforcing transparency in contracts and agreements, and penetration of conservation areas for mining. Tensions could also emerge between mining operations and environmental protection or pollution, agriculture and other land-use opportunities. Measures that have mitigated these tensions and managed the pressures include:

- The formulation of a clear mining policy to ensure transparent and public knowledge of the rules of the game and the country's aspirations for the sector;
- A standard and publicized fiscal regime to reduce the provisions for negotiations;
- A modern legal framework that is comprehensive and contains provisions for community issues as well as national concerns, reconciles environmental and conservation demands and development goals, standardizes fiscal provisions for all, and singles out artisanal mining issues;
- A separate revenue regime for the management of highly unpredictable revenue flows.

Hydrocarbons

The two key areas of direct linkages for hydrocarbons are their effects on the finances of the country and potential tensions with the environment. The highly capital-intensive nature of the industry does not lead to many linkages at the early stages in its development. Nevertheless, the long site development stage provides time for the preparation of other sectors, such as human resources, and support to the industry by local suppliers in readiness for the commercial stage.

The promise of large revenues can lead to distortions in expenditure management, non-transparent agreements and macroeconomic instability. Likewise, the linkage between carbon mining and oilfield operations with the environment is problematic, mainly from the perspective of local capacity to effectively monitor the operations of a large, complex site. In both cases, some measures to mitigate risks that have been applied successfully include:

- The creation of a natural resource fund management facility. Many examples of these funds exist, ranging from sovereign wealth funds to heritage funds[6] and others. The issue is determining how much to save and how much to consume immediately, given the pressures to meet development goals set at the political level. Lessons can be learned from failed efforts and successful programmes.[7] After designing the facility, the greatest challenge is to avoid a complete bypassing of the rules governing its operations. It is important to obtain a broad-based consensus and provide widespread information on its use, even before resources are tapped.
- For environmental and conservation matters, the chief concern is local capacity to monitor and pre-empt damage. Local capacity building and linkages with countries in similar situations have been found to be very useful in managing environmental concerns derived from hydrocarbon projects. In the short term, access to external specialist support may be inevitable.

Marine resources

This renewable resource requires special rules of engagement to address risks which may compromise objectives relating to sustainability and environmental conservation. In addition, the trade-offs between industrialization and sustaining the livelihoods of artisanal fish operators who traditionally depend on the sector must be carefully considered. Marine resources probably have the fewest direct links with other sectors outside conservation and environmental protection. Its impact on the livelihoods of the poor – artisanal fishermen and women – however, are very direct. An example is the encouragement of industrial fishing as a policy goal. In Senegal and other countries in the West African coast, the traditional fishermen and the women who depend on them for marketing their catch complain that large industrial operators are crowding them out and even reducing stocks.

The impact on the environment of irresponsible fishing can result, for example, in the destruction of the mangrove swamps in Myanmar, which is blamed for having left the habitat exposed to the devastating Tsunami of 2004.[8] Hence, measures to mitigate risks call for direct intervention through policies and programmes that would impose fishing methods with less negative effects. Other measures include the pro-active recovery of lost habitat, the establishment and management of marine protected areas, surveillance systems that are undertaken collaboratively with neighbouring countries, and the encouragement of alternative and modern livelihoods for local and artisanal operators.

Forestry

Forestry is a renewable resource that demands close monitoring systems because of its potential impact on the livelihoods of local communities, on domestic energy use and, most crucially, its links with the protection of biodiversity, especially of the flora and fauna of the country.

Myanmar's northern forest complex is home to a wide variety of unique species of flora and fauna, many of which are endangered; at the same time it is also the source of much sought after tropical hardwood and other rare forest yields. However, the development of transportation corridors will open the entire area to exploitation that could come at the expense of much needed conservation initiatives. Elsewhere in the world,[9] delays in setting up comprehensive forest management and planning systems have had disastrous effects.

Measures to sustain forest exploitation include:

- A comprehensive evaluation and forestry survey.
- Capacity building for forest conservation and management.
- Joining the UN REDD initiative.[10]

Environment

Although the environment cuts across all other forms of natural resources, it merits being a sub-category to treat specific issues peculiar to it. In this context, the environment is perhaps the most challenging sub-sector as trade-offs have to be made and conflicting goals reconciled. The general problem of balancing the costs of conservation against the benefits of exploitation will sometimes require national debates combined with strong political leadership. In addition to the internal challenge of conserving the environment, there is also the challenge of climate change, a subject that is usually beyond the control of local authorities, which requires mainly corrective action or adaptation measures. Both areas must draw on long-term mitigation measures. Important among these are:

- The development of policies that will balance out private and public incentives on the one hand with conservation and environmental concerns on the other;
- Embarking on massive environmental education for policy-makers and community leaders;
- Promoting trans-boundary initiatives for environmental protection.

Conclusion

The biggest challenge in managing natural resources efficiently and effectively lies in its indirect effect on undermining democratic structures and principles. The large amount of investments involved in natural resource exploitation encourages rent seeking and corrupt practices, either to compensate for weak institutions and service delivery or to pay for evading the law. Until the institutions and governance structures of a nation are robust enough to ensure that the rule of law prevails, there will be a strong drive towards these resources being a curse rather than a blessing.

Successful measures to mitigate risks must include strong participation and monitoring by local civil society groups, political will to enforce rules and regulations, and capacity building of personnel in charge of mitigating risks.

Even when the right measures are in place, managing natural resources requires great sensitivity. In conflict-affected states, policy-makers must be aware of how natural resources can juxtapose community-level needs and national interests, raise tensions between competing stakeholders, and exacerbate grievances between ethnic groups. These flares are potential sources of conflict and must be addressed through a responsible approach.

An examination of the links between natural resources and the rest of the economy reveals the extent to which natural resource management influences key areas of economic activity and development in a country.[11]

Box 3: New Energy Architecture   Myanmar

The World Economic Forum, in collaboration with the Myanmar Ministry of Energy, Accenture and the Asian Development Bank, will present a report on the development of a new energy architecture in Myanmar, which is the outcome of a nine-month process engaging the government, local and foreign businesses and civil society through interviews, workshops and research.

The world's energy architecture, defined as the integrated system of energy sources, carriers and demand sectors, is in a state of transition. Under pressure from rising demand, concerns about climate change, and the depletion of some natural resources, governments, businesses and civil society are finding it increasingly difficult to manage their energy needs. It is becoming ever more apparent that a major transformation is required in the way that the world produces, delivers and consumes energy. The imperatives of energy systems in the face of these challenges are neatly summed up by the three corners of the "energy triangle": economic growth and development, environmental sustainability, and energy security and access. While the sheer scale of development needed to meet these imperatives can be daunting, there are inspiring new possibilities: alternative energy sources, more efficient technologies and the political will of many developing states to harness the potential of their own domestic resources.

The study's main goal is to bring together the principal actors in this energy architecture   the public sector, private sector and civil society   to deliver concrete, actionable insights that enable Myanmar to transition towards a new energy architecture. It offers clear support for the development of national strategies and policy frameworks to help Myanmar achieve and balance the goals of economic growth, sustainability and energy access and security.

Overview of actionable insights discussed within the report

Effective and transparent governance of institutions

1. Create an integrated energy plan (IEP)
2. Construct institutions to deliver the IEP
3. Strengthen public support and improve energy literacy
4. Strengthen regulatory framework for environmental and social standards and impacts
5. Increase transparency of extractive industries and implement Extractive IndustriesTransparency Initiative
6. Strengthen the capabilities of Myanmar Oil and Gas Enterprise and consider the appropriate National Oil Company model

Investment frameworks to enhance supply and efficiency

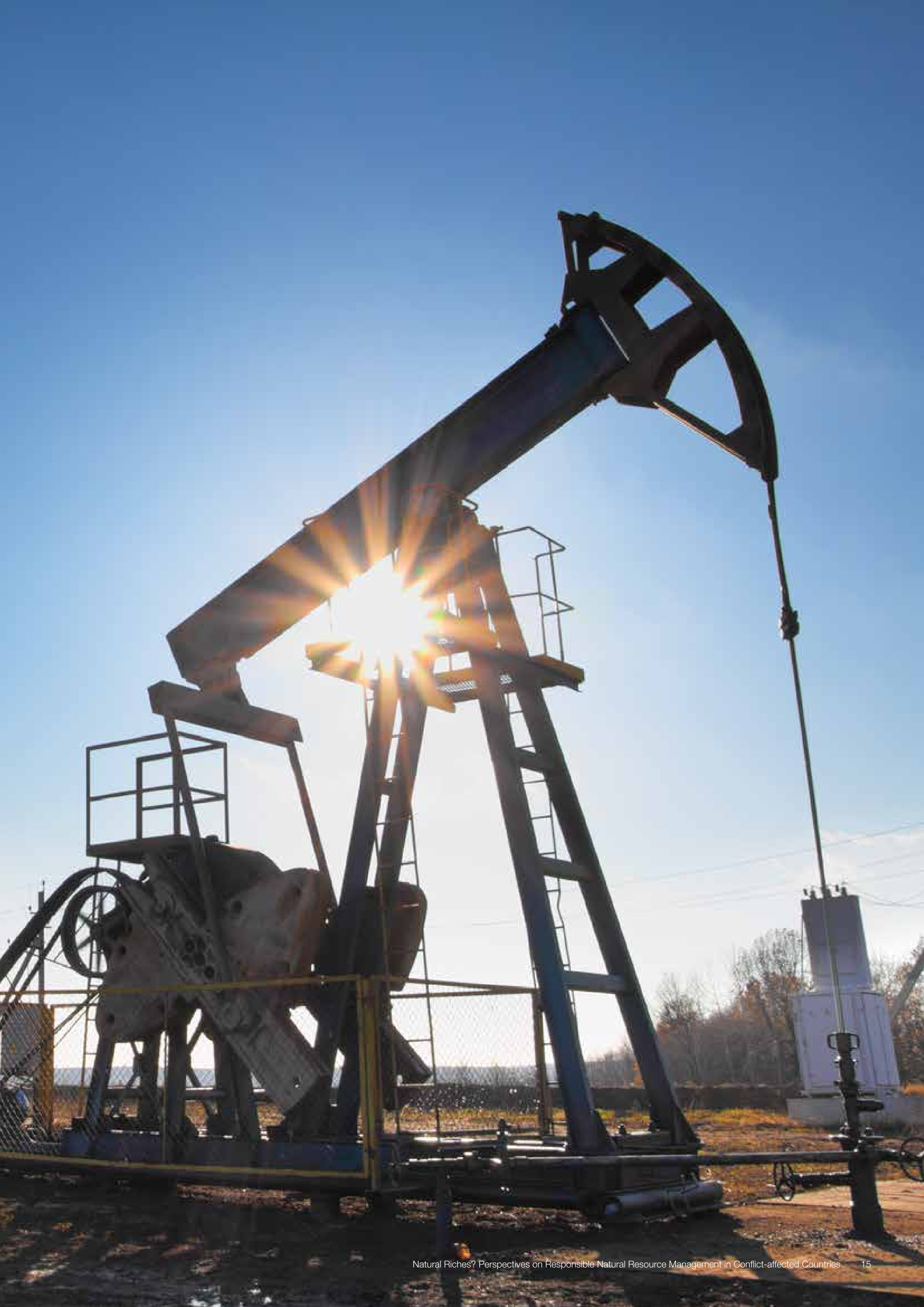
1. Reform energy subsidies
2. Establish energy efficiency standards and regulations
3. Expand rural energy access
4. Establish a clear vision and legal framework for private investment
5. Create an investment framework to expand local energy supply
6. Assess power generation options and integrate these into a power development plan
7. Strengthen transmission and distribution networks

Strategies for generating long-term value

1. Assess options for building local industry
2. Improve human capacity within energy sectors
3. Identify "green growth" opportunities
4. Strengthen the macroeconomic environment

Now is a critical time to be exploring this topic in Myanmar. More than 50 years ago, Myanmar was one of Asia's leading economies, with a per capita income far superior to today's regional powerhouses of Indonesia and Thailand. After decades in the shadows, the country has embarked on an ambitious programme of reforms. Under a new semi-civilian government, the country is emerging from its isolation and is committed to reintegrating the global economy. Myanmar is a resource-rich country, is strategically located between major emerging countries China and India, and is home to a vast, young population. Yet a large share of its population lacks access to electricity and the country's infrastructure is basic by international standards.

If Myanmar is to develop and grow, as indeed is expected from a country so promisingly engaged in political and economic reform, it must craft an energy sector fit to serve its ambitions. That energy sector must be sustainable, must deliver widespread access, and must be able to engage with external stakeholders who offer advanced technologies, new markets and deep investment. The importance of these initiatives cannot be overstated. History has proved that nations do not develop in isolation, and the most successful among them have found ways to leverage their particular assets, both globally and domestically, so that not only governments or businesses, but entire populations are prosperous, dynamic and ambitious representatives of great countries. With its abundant resources, Myanmar is poised on the brink of an exciting transformation that has the potential to see it carve its own niche in the global economy, and in history. Its energy architecture will be pivotal to this transformation.



3. International Approaches: Overview of Key Factors and Approaches in Natural Resource Management

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Introduction

Developing natural resources is a challenge for governments that want to ensure optimal benefits for society as a whole and ongoing sustainable development. While guidance exists for company operations, little is tailored to processes managed by governments. As an overarching framework for government and companies, the *UN Guiding Principles on Business and Human Rights* (otherwise known as the "Ruggie Guidelines") are an important starting point as they set out a state's duty to protect its citizens from human rights abuses, alongside business obligations to respect human rights and the communities' right to redress.

This chapter provides an overview of the process and relevant guidelines for sustainable natural resource management in conflict-prone countries.

Process Overview

For a government, the process of responsible natural resource development starts well before a company's involvement, with the strategic decisions about the country's development path, priorities and policies. Such decisions are underpinned by public engagement processes, sector plans and strategic social and environmental impact expectations. Responsible natural resource management also includes planning for development following the completion of resource extraction. This requires parallel processes to ensure that revenues from resource extraction go towards an overall development plan.

Figure 1 gives an overview of the overall process, together with key actions and cross-cutting issues. The table in the annex expands on this diagram by summarizing associated issues, guidelines, standards and potential roles for governments in the process.

Figure 1: Responsible Mineral Development Process

Natural resource development process

- **Resource mapping and national development strategy**
- **Strategic impact / Prioritizing/ planning /zoning**
- **Commercial assessment / Project impact assessment/ Exploration**
- **Establishment and management of operations**
- **Divestment / land restoration**
- **Ongoing sustainable development**

Key activities And cross-cutting issues

(as identified by WEF Responsible Mineral Development Initiative 2010-2011)

- **Capacity Building/Knowledge Sharing -** Create tailored training and development programmes
- **Stakeholder Engagement -** Establish national dialogue platforms and local development councils
- **Shared Understanding Of Costs And Benefits -** Conduct rigorous and collaborative socio-economic studies
- **Early And Comprehensive Dispute Management -** Prepare effective dispute resolution mechanisms
- **Transparent Process Arrangements -** Publish relevant agreements, tax and royalty payments
- **Licensing and contract negotiations -** Contract monitoring , review and enforcement
- **Compliance Monitoring, Enforcement Of Commitments -** Develop commonly agreed compliance, monitoring and enforcement mechanisms
- **On-going economic developement, succession and diversification planning**

The key activities and cross-cutting issues which need to be addressed at various stages of the process have been highlighted by the World Economic Forum's Responsible Mineral Development Initiative (RMDI) in 2011. The initiative was undertaken to explore the views, priorities and concerns of key stakeholders on mineral development.[12]

Multistakeholder processes should start early on in the natural resource development process. Ideally, this would be initiated by the government as part of a public dialogue on the country's economic development or as part of a poverty reduction strategy processes, or the country sustainable development or assistance strategy. These can serve as important tools for consensus building, prioritization and to frame the context within which the private sector engages with society. Related tools and processes include national development platforms and local development councils.

"Community consent" has become a formal requirement of multiple instruments, such as "the broad community support standard" of the International Finance Corporation (IFC), following the 2007 United Nations Declaration on the Rights of Indigenous Peoples requiring the "free prior informed consent" of indigenous communities for investments on their territory.

Since responsible natural resource development involves a number of key ministries (agriculture, development, environment, finance, mines), *governments may establish cabinet level sustainable development committees* to steer sustainable development, placing natural resource development options within this framework. The establishment of *tools and processes for community involvement* is part of a multistakeholder approach. These include local development councils. Collaborative approaches, similarly, include developing capacity and processes for conflict and grievance resolution, as well as mechanisms for the transparent and democratic investment of revenue flows. A safe place for dialogue and dispute resolution is important for both companies and communities. Effective communication, management of expectations and a wide understanding by all stakeholders of costs and benefits are essential to addressing multiple challenges.

Box 4: Challenges

Natural resource exploitation impacts on existing land users and uses (ecosystem services, agricultural livelihoods, and forestry over mineral deposits) and can exacerbate existing conflicts, corruption, environmental degradation, unemployment and poverty.

Natural resource development is of particular significance because of its potentially large-scale impacts. Rarely if ever is the land involved free from existing use or occupation. Impacts can be wide ranging through their effect on other resources essential to life, such as water, as well as social conditions through an influx of migrant labour, increases in cost of living, health impacts, etc.

There is also the risk of undue focus on the new wealth source for the country. This can lead to the neglect of more traditional, sustainable activities, such as agriculture. Investment in such key areas of the traditional economy needs to be maintained or enhanced alongside natural resource development. If not, the country will be left impoverished once natural resources run out.

Source: UN-EU Partnership on Natural Resources, Conflict and Peacebuilding, available at http://www.unep.org/disastersandconflicts/Introduction/EnvironmentalCooperationforPeacebuilding/OtherECPActivities/UNEUPartnership/tabid/54648/Default.aspx

Key Guidelines

Risks should be mitigated at all stages of a natural resource development process. Recognizing this, much work has been done by way of guidance to assist governments and companies in their respective roles.

Box 5: Global Approaches

The World Economic Forum Responsible Minerals Development Initiative

The World Economic Forum's Responsible Mineral Development Initiative (RMDI) was launched to explore the views, priorities and concerns of key stakeholders on mineral development, and to seek answers on what works, what does not, where discontent and frustration most commonly arise, and where improvements should occur.

http://www.weforum.org/reports/responsible-mineral-development-initiative

International Finance Corporation (IFC) *Sustainability Framework*

Includes: assessment and management of environmental risks and impacts; labour and working conditions; resource efficiency and pollution prevention; community health, safety and security; land acquisition and involuntary resettlement; biodiversity management and sustainable management of living natural resources; indigenous peoples; cultural heritage. http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/

International Alert's *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*

Includes: operational guidance charts; screening tool; macro-level conflict risk and impact assessment tool; project-level conflict risk and impact assessment tool; flashpoint issues (stakeholder engagement; resettlement; compensation; indigenous peoples; social investment; dealing with armed groups; security arrangements; human rights; corruption and transparency).

http://www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries

UN-EU Partnership on Natural Resources, Conflict and Peacebuilding

Includes: guidance notes for practitioners on land and conflict; extractive industries and conflict; renewable resources and conflict; strengthening capacities for conflict-sensitive natural resource management. Also available, training courses and online training programme. http://www.unep.org/disastersandconflicts/Introduction/EnvironmentalCooperationforPeacebuilding/OtherECPActivities/UNEUPartnership/tabid/54648/Default.aspx

Extractive Industries Transparency Initiative (EITI) – *EITI Rules*

Includes: validation and compliance requirement; validation methodology; petitions and settlement of disputes; standard terms of reference for validation; policy notes.

http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf

Organisation for Economic Co-operation and Development (OECD) *Guidelines for Multinational Enterprises*

The OECD Guidelines for Multinational Enterprises are far reaching recommendations for responsible business conduct that 44 adhering governments – representing all regions of the world and accounting for 85% of foreign direct investment – encourage their enterprises to observe wherever they operate.

http://www.oecd.org/daf/inv/mne/48004323.pdf

Organisation for Economic Co-operation and Development (OECD) *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*

The OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* provides management recommendations for global responsible mineral supply chains to help companies respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices. The guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas.

http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf

United Nations Guiding Principles on Business and Human Rights

Includes: operational principles on the state duty to protect human rights; the corporate responsibility to protect human rights; and access to remedy. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Myanmar national context

Institute for Human Rights and Business Responsible Investment in Myanmar: The Human Rights Dimension

Includes investment challenges and approaches for companies

http://www.ihrb.org/pdf/Occasional-Paper-1-Burma-Myanmar-FINAL.pdf

Many of these guidelines cite other specific guidelines which may be of relevance in specific situations. Distinction can be made between mandatory approaches, including international law (e.g. United Nations Convention against Corruption), domestic laws of relevance to companies investing in post-conflict zones (e.g. Dodd-Frank in the United States), voluntary standards developed by international institutions (e.g. OECD), voluntary industry initiatives or codes of conduct (e.g. Conflict-Free Gold Standard), and voluntary initiatives (e.g. Extractive Industries Transparency Initiative). Some companies have also developed their own guidance and codes which should be available to governments where they operate. Other organizations are moving the discussion to notions of accountability.

Of the voluntary codes, a number have now become accepted as standard practice in large investments (the OECD Guidance; the Voluntary Principles on Security and Human Rights, and the Extractives Industry Transparency Initiative in particular). Although aimed primarily at companies, these guidelines require the engagement of governments. Compliance with these also becomes a factor in relation to World Bank/International Finance Corporation/International Monetary fund and other loans.

Also notable is the guidance provided in association with the *IFC Sustainability Framework* performance standards with which borrowers (companies and/or governments) have to comply.

Box 6: IFC Performance Standards on Environmental and Social Sustainability

Performance Standard 1: Assessment and management of environmental and social risks and impacts

Underscores the importance of identifying environmental and social risks and impacts, and of managing environmental and social performance throughout the life of a project

Performance Standard 2: Labour and working conditions

Recognizes that the pursuit of economic growth through employment creation and income generation should be balanced with protection of basic rights for workers

Performance Standard 3: Resource efficiency and pollution prevention

Recognizes that increased industrial activity and urbanization often generate higher levels of air, water and land pollution, and that there are efficiency opportunities

Performance Standard 4: Community health, safety and security

Recognizes that projects can bring benefits to communities, but can also increase potential exposure to risks and impacts from incidents, structural failures, and hazardous materials

Performance Standard 5: Land acquisition and involuntary resettlement

Applies to physical or economic displacement resulting from land transactions such as expropriation or negotiated settlements

Performance Standard 6: Biodiversity management and sustainable management of living natural resources

Promotes the protection of biodiversity and the sustainable management and use of natural resources

Performance Standard 7: Indigenous peoples

Aims to ensure that the development process fosters full respect for indigenous peoples

Performance Standard 8: Cultural heritage

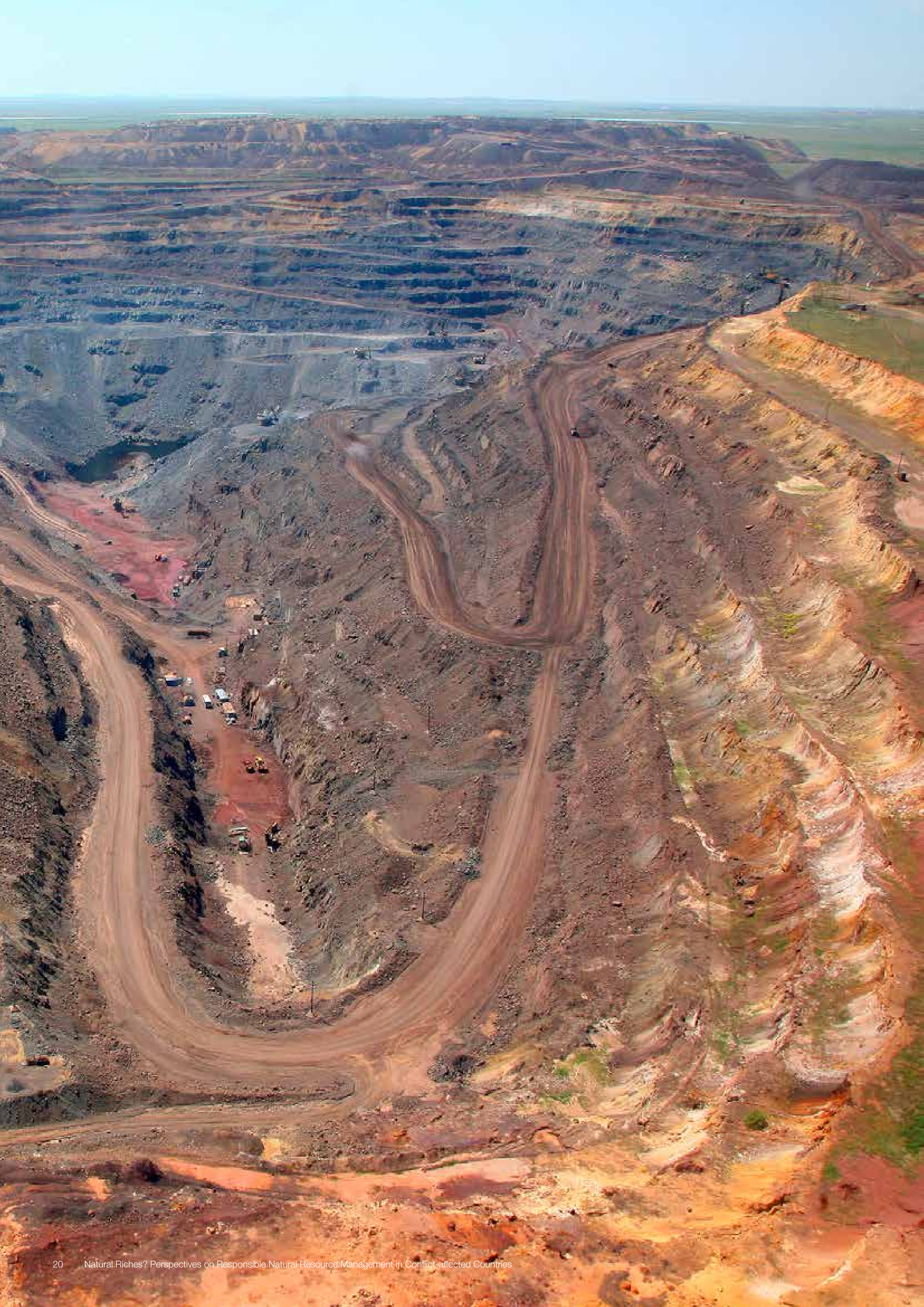
Aims to protect cultural heritage from adverse impacts of project activities and support its preservation

Source: IFC's Sustainability Framework (2013), available at http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/

The evolution of company-focused guidance follows a growing emphasis on corporate social responsibility (going well beyond philanthropy), which recognizes the duty of the private sector towards society, as well as the duty of government towards its people. Increasingly, corporate social responsibility, stakeholder engagement and participation are seen as fundamental elements of risk management, especially in conflict-sensitive areas. How well a government supports and requires such responsible approaches impacts significantly on the business environment and the attractiveness of a country for potential investors. Also, for lenders and cost of loans, there is an increased risk if such guidance and recommended processes are not followed.

Critical gap

Apart from more practical guidance needed (e.g. how to integrate natural resource management into development strategies; concessions management; contracting; engagement with non-state armed groups), there is a strategic gap in understanding how large-scale private sector investment fits into larger systems of conflict prevention and risk mitigation. This includes the question of how business can work with government, development agencies and civil society actors to meet their collective and individual goals. It is necessary to move beyond bilateral perspectives on business in fragile environments and focus on the shared responsibilities but differentiated roles of the different actors engaged in a specific context.



4. Legal and Regulatory Framework and Contract Design

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Why Contracts Are Important

The international and domestic legal regimes as well as other specific contractual arrangements between the investor and the state regulate major natural resources projects. Both offer opportunities to maximize the chances that natural resources will play a positive role in the development of the country, and to minimize risks of negative social impacts.

Ideally, most of the requisites should be included in the relevant national legislation. But the reality is that countries affected by conflict or in transition often have weak or highly outdated regulatory regimes and need to rely on specific contracts. Therefore, careful attention should be given to their negotiations. The challenges faced by these countries in negotiating contracts which fully promote their economic interests are starting to be well documented and addressed through specific capacity-building projects. Just as important as the economic or fiscal aspects of the investment, contracts constitute key instruments for the responsible management of natural resources by addressing a full range of potential social impacts that will necessarily be created by large footprint projects and which, if left unattended, are likely to fuel a relapse into conflicts. Or – simply put – integrating a conflict sensitive approach in the legal regimes that govern investments is a crucial part of the roadmap for responsible natural resource management.

Table 1: Key Questions to Consider

Pre-negotiations	Negotiations	Project implementation
Are all the potential risks of negative impacts identified?	Are mitigation mechanisms and processes codified in a realistic and effective manner?	Are the implementation and monitoring mechanisms and processes in place with the necessary resources?

Guiding principles

Eight key principles can help guide the integration of a risk management approach into contract negotiations in conflict-prone areas.

1. Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to properly address the potential conflict and destabilizing implications of projects during negotiations.
2. Management of potential adverse impacts: Responsibilities for the prevention and mitigation of risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
3. Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative impacts throughout the life cycle of the project.
4. Physical security for the project: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with relevant principles and standards, including human rights.
5. Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
6. Project monitoring and compliance: The state should be able to monitor the project's compliance with relevant standards, while providing necessary assurances for business investors against arbitrary interference in the project.
7. Grievance mechanisms for non-contractual harms to third parties: Individuals and communities impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.
8. Transparency/disclosure of contract terms: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

Principle 1: The parties should be adequately prepared and have the capacity to properly address the potential conflict and destabilizing implications of projects during negotiations.

Key implications of Principle 1 for the negotiations

- The state and the business investor should enter the negotiation with a clear idea of how the project objectives, opportunities and risks relate to the potential conflict factors in its country and overall social impacts.
- The state and the business investor should enter the negotiation aiming to ensure that adverse impacts are avoided, mitigated or remedied throughout the life cycle of the project. This should be the case even where a state participates as an investor or as a beneficiary to the project's revenues or both.
- The parties should enter the negotiation with the appropriate information and access to expertise and negotiation support to pursue these aims, and the negotiating agenda should reflect them.

Recommended checklist for Principle 1

- The state and investors' representatives directly engaged in the negotiation are tasked with achieving a project agreement that will help secure potential positive social impacts from the project throughout the project's life cycle.
- Both parties have access to expertise that will allow them to make informed decisions regarding how best to allocate responsibilities for the prevention, mitigation and remedy of negative impacts in the context of the project. For example, both parties are equipped to understand the potential financial and legal implications of different options proposed by either party.
- The parties have ensured that their respective obligations or responsibilities are reflected in the negotiating agenda.

Principle 2: Responsibilities for the prevention and mitigation of risks associated with the project and its activities should be clarified and agreed before the contract is finalized.

Key implications of Principle 2 for the negotiations

- While more specific studies on potential adverse impacts should occur throughout the life cycle of the project, parties need to be aware of any potential adverse impacts that are foreseeable from feasibility studies, early impact assessments, due diligence assessments or other initial project preparation.
- The parties need to have adequate expertise to identify and manage conflict risks throughout the project and before impacts occur, either by building their internal capacity or by securing external expertise.
- Ensuring that adverse impacts can be prevented and mitigated requires that appropriate funds be available and allocated to enable the necessary measures to be taken.
- Prevention and mitigation plans should be developed by including information and insight gained through community engagement efforts with those who may be adversely impacted.

Recommended checklist for Principle 2

- The contract clearly delineates who is responsible and accountable for mitigating the risks of adverse impacts, as well as for how mitigation efforts will be financed.
- The parties either agree on a set of baselines measurements of the state of enjoyment before a project begins or agree how such baselines will be established before project work begins.
- Parties have assessed their own capacity to fulfil their responsibilities related to the management of risks under the agreement.
- Parties have ensured that funding for mitigation efforts will be available when needed, setting up special financial mechanisms with independent or joint accountability structures where appropriate.
- Before the contract is finalized, the parties have agreed on an initial plan to communicate with potentially impacted individuals and communities regarding risks of adverse impacts from the project to involve them in the development of prevention and mitigation plans.
- If the project foresees a special financial mechanism for compensation, there is agreement on how information about both its existence and ongoing management will be shared with potential beneficiaries.

Principle 3: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative impacts throughout the life cycle of the project.

Key implications of Principle 3 for the negotiations

- The parties are aware of any legislative, regulatory and enforcement gaps and are prepared to work to identify whether or how they can be overcome.
- The parties should supplement local laws, regulations and standards with external standards not currently incorporated into domestic law, where these can facilitate the prevention, mitigation and remediation of negative impacts throughout the life cycle of the project.

Recommended checklist for Principle 3

- The state representatives responsible for negotiating the contract have consulted with relevant ministries or agencies who can advise on any current laws relevant for safeguarding stability, including human rights and any other social provisions, on their adequacy for the management of risks posed by the project, and on the state's capacity for enforcement.
- The operating standards necessary for the protection of stability, including human rights and any other social provisions throughout the life of the project, have been agreed between the parties, including any external standards (financial, industrial, environmental or other) necessary to supplement applicable domestic laws or standards that relate to stability, including human rights and any other social provisions.
- The parties have ensured that all operating standards, including any external standards necessary to supplement domestic standards, apply to successors and sub-contractors.
- The parties have agreed to methods for: (1) ensuring compliance with the relevant external standards; (2) managing conflicts between domestic law and external standards should they arise; and (3) ensuring that project governance allows for updates in standards as they evolve.

Principle 4: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with relevant principles and standards, including human rights.

Key implications of Principle 4 for the negotiations

- The provision of physical security for investment projects, irrespective of private or state accountability, should in all cases be carried out in compliance with internationally recognized principles on social and humanitarian law.
- The level of physical security envisioned for projects has to be carefully considered, and where security is needed, parties should create clear written protocols to manage security provisions aimed at avoiding and mitigating any related risks and remediating any abuses that occur, including through a credible grievance mechanism.

Recommended checklist for Principle 4

- The state and the business investor have identified risks, as well as potential criminal and civil liabilities involved in the provision of physical security for the project.
- The parties have agreed protocols for the management and implementation of security services throughout the project that (1) address how to involve local law enforcement or other relevant public officials; (2) address how to coordinate private and public security services; and (3) are in line with internationally recognized human rights law and humanitarian law relevant to the management and implementation of security.
- The parties have agreed that an operational-level grievance mechanism will be available to address grievances regarding the provision of security services and activities. Such a grievance mechanism will not prejudice or hinder access to other state-based or non-state based grievance mechanisms, such as those provided by regional bodies or UN treaty body mechanisms.
- The parties have agreed that community engagement plans will include engagement with local individuals and communities on issues related to security.

Principle 5: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.

Key implications of Principle 5 for the negotiations

- Both the state and business investor should view community engagement as a fundamental aspect of creating common expectations for the project, and mitigating risks for themselves, for the project and for individuals and communities impacted by the project.
- The community engagement plan should be inclusive, with clear lines of responsibility and accountability. It should be initiated as soon as practicable.
- Consultation with impacted communities and individuals should take place before the finalization of the contract.
- Disclosure of information about the project and its impacts is an integral part of meaningful community engagement.
- The history of any previous engagement efforts carried out by either of the parties with the local community regarding the investment project needs to be known by both parties to take this into account in planning.
- Community engagement plans should be aligned at a minimum to the requirements of domestic and international standards. For example, free, prior informed consent or consultation with those potentially impacted may be required.

Recommended checklist for Principle 5

- Potentially impacted communities and individuals have been identified to the extent practicable before the contract is finalized.
- Parties have agreed on the scope of community engagement and have agreed to their respective roles, responsibilities and accountability for these efforts.
- Parties have agreed on methods of communicating to impacted communities information that is relevant to their situation, while adequately protecting proprietary information.
- To the extent possible at the contracting stage, the cost of the community engagement plan has been properly budgeted and resourced.
- The parties have shared information regarding any previous community engagement efforts concerning the project and have agreed how information gathered through future community engagement will be shared.

Principle 6: The state should be able to monitor the project's compliance with relevant standards, while providing necessary assurances for business investors against arbitrary interference in the project.

Key implications of Principle 6 for the negotiations

- The standards relevant to preventing, mitigating and remedying any adverse impacts of the project need to be agreed for monitoring and compliance efforts to be effective.
- The state is responsible for ensuring compliance with such standards, while the business investor is responsible for adhering to the standards.
- Where state capacity for monitoring compliance of the project with such standards is lacking, alternative agreed methods of monitoring and compliance should be substituted.
- The contract should reflect the state's right to monitor compliance with all relevant standards (such as technical, social, environmental, fiscal, financial and accounting standards), while at the same time integrating guarantees for business investors against arbitrary interference in the project.

Recommended checklist for Principle 6

- The contract assigns responsibility for compliance with agreed project standards.
- The contract gives the state the necessary rights to ensure that the business investor is in compliance with agreed project standards, including ensuring state access to information and project sites reasonably required to ensure compliance.
- Necessary guarantees are in place for the business investor against arbitrary interferences in the project.
- The state has assessed its capacity and capabilities to monitor compliance effectively, identifying any gaps or weaknesses.
- The contract identifies how gaps in capacity and capability to monitor compliance, where they exist, will be mitigated, for example via self-reporting requirements, external assistance or other means.
- The state has properly determined the cost of its compliance monitoring role.

Principle 7: Individuals and communities impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.

Key implications of Principle 7 for the negotiations

- The contract should ensure that individuals and communities who are impacted negatively by the project have access to an effective operational-level grievance mechanism enabling grievances to be lodged and addressed at an early stage.
- Operational-level grievance mechanisms should not prejudice or restrict access to state-based or other non-state based complaint mechanisms, including judicial mechanisms, or mechanisms provided by project lenders, regional tribunals or other.

Recommended checklist for Principle 7

- The contract requires that individuals or communities who allege that they have suffered harm in the context of project activities have access to an effective non-judicial grievance mechanism.
- The grievance mechanisms will comport with the effectiveness criteria for non-judicial grievance mechanisms contained in the *UN Guiding Principles on Business and Human Rights*.[15]
- The parties have ensured that the grievance mechanism will not prejudice or restrict access to state-based or other non-state based complaint mechanisms.

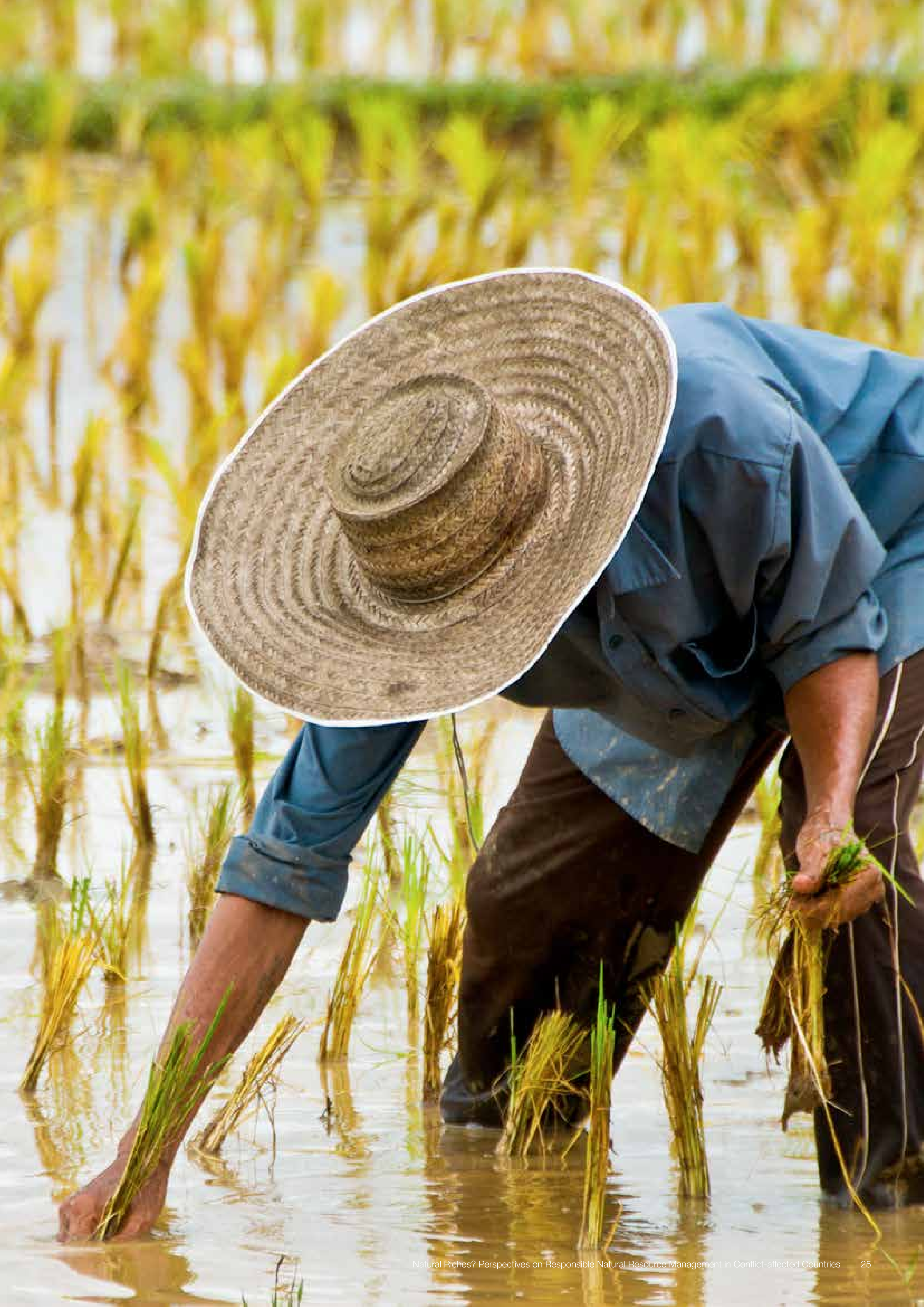
Principle 8: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

Key implications of Principle 8 for the negotiations

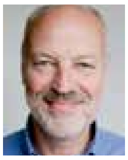
- Contract terms, with exceptions for compelling justifications, should be disclosed in an accessible manner and be seen as part of the community engagement plan for the project. Disclosure of information related to the project throughout its life cycle allows people to have information that is pertinent to them. Transparency of project information throughout its life cycle should be considered as part of the ongoing community engagement plan. Initiatives like the Extractive Industries Transparency Initiative and some lending standards offer additional benchmarks on disclosure that can be useful reference points for parties.
- Exceptions to the disclosure of contract terms should be based on compelling justifications, such as business proprietary information or information that could directly impact the position of one of the parties in a concurrent or imminent negotiation. Exceptions to disclosure should be time-bound to fit the compelling justification.
- Where there are exceptions to disclosure, the subject matter of the excluded clause(s) should be identified, along with their expected release date.
- Applying disclosure requirements to all business investors equally can contribute to alleviating business investor concerns regarding competitiveness.

Recommended checklist for Principle 8

- The state has considered how it can facilitate the disclosure of contract terms, for example by standardizing disclosure rules for all business investors.
- The parties have agreed to disclose the contract terms and identified the exceptions, if any, made for particular clauses or subjects where there are compelling justifications. The parties have agreed to a reasonable time frame to keep exceptions confidential.
- The contract requires that where clauses are kept confidential, the subject matter of the excepted clause(s) is disclosed, along with the expected release date.
- If disclosure of contract terms entails costs or poses risks, measures to resource or mitigate them have been agreed between the parties before the finalization of the contract.
- The contract delineates responsibility for making the contract terms accessible. The contract requires publication in an accessible manner, taking into account possible barriers to access, such as linguistic, technological, financial, administrative, legal or other practical constraints.



5. Essentials: Transparency and Accountability across the Resource Chain



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The Global Picture

Natural resources hold immense potential for financing development. In 2010, exports of oil and minerals from Africa, Asia and Central and South America were worth roughly US$ 1,117 billion, over 15 times the value of international aid.[16]

Table 2: Exports of Fuels and Minerals vs Net Official Development Assistance Received

Region	Exports of fuels & minerals[17]	Net ODA received[18]	Ratio of exports vs aid
Asia	US$ 540,000,000,000	US$ 23,922,770,000	22.57264:1
Africa	US$ 333,000,000,000	US$ 38,955,780,000	8.548154:1
South, Central America & Caribbean	US$ 244,000,000,000	US$ 8,718,270,000	27.9872:1
All three regions	US$ 1,117,000,000,000	US$ 71,596,820,000	15.6:1

Yet instead of contributing to development and prosperity, the exploitation of natural resources often has the opposite effect – increased poverty and suffering. On average, resource-rich countries have performed more poorly than countries that lack natural resources. They have grown more slowly, with greater inequality, and are prone to political instability and violent conflict.[19]

The Emerging Global Consensus on Natural Resource Transparency

Harnessing the benefits and avoiding the risks posed by natural resource extraction cannot be achieved without transparency and accountability of government and the private sector. Encouragingly, great gains have been made in recent years to create a global standard for transparency over resource revenues in the extractive industries.

The Extractive Industries Transparency Initiative (EITI) – a global coalition of governments, companies and civil society groups – is the most successful voluntary payment disclosure system in the world for oil, gas and mineral extraction.[20] Thirty countries have started to publish payment information in EITI reports, and more than 900 companies have disclosed over US$ 600 billion since the scheme launched in 2002.[21] However, for a number of reasons voluntary initiatives have proven to be insufficient.

The first legislation with global reach came with Section 1504 of the 2010 US Dodd-Frank Act, which requires all oil, gas and mining companies listed on US stock exchanges to disclose the revenue payments they make to governments in each country in which they operate; more recently, similar disclosure requirements have been agreed by the European Union.

However, these initiatives address only one part of the extractives value chain – the revenue payments from companies to governments – and momentum is growing for greater transparency along more steps of the chain. These include the contract and licensing allocation process; the contracts themselves; the ultimate beneficial ownership of the companies that benefit from resource extraction and also how the revenues ultimately benefit citizens.

For example, the World Bank is developing a set of global standards for open contracting in the oil, gas and mining sectors, from tendering process to award.[22] The IMF and IFC encourage contract transparency for the extractive industries, and government policies in countries such as the US, Ghana, Ecuador, Peru and East Timor require disclosure of extractive industry contracts.[23]

In terms of company ownership, the new international anti-money laundering standards developed by the Financial Action Task Force (FATF)[24] require countries to ensure that company beneficial ownership information is available to national authorities in a timely manner, and the EU is currently revising its legislation in this area.

Accountable public financial management processes are critical and initiatives and methodologies like the Public Expenditure Review, Public Expenditure Financial Assessment, Open Budget Survey, Budget Transparency Accountability Project, Public Expenditure Tracking System all address aspects of public financial management accountability and transparency work.

Natural Resource Transparency in Myanmar

Discussions about natural resource revenue transparency in Myanmar are not new. Focus has been particularly associated with gas projects, with some very detailed information made public.[25] Inside Myanmar, openness to behind-the-scenes advocacy in discussions began in 2007, and a Myanmar civil society representative attended the EITI conference in Doha in February 2009. In August 2009, the National Sustainable Development Strategy (NSDS) was published, and included the recommendation that Myanmar examine and consider joining the EITI as a means of avoiding resource curse issues. A number of high-profile events promoted revenue transparency, with clear recommendations made by scholars such as Professor Joe Stiglitz[26] advising that Myanmar could use EITI to be more transparent, and use resource revenues as a means of funding broader agricultural and economic development.[27]

Discussions broadened further over time, paving the way for the EITI secretariat visit on 17 July 2012[28] and then the announcement of the formation of an EITI lead authority on 14 December 2012.[29] This presidential announcement indicated the involvement of the key ministries of Finance (secretarial role), Energy, Mines, Environmental Conservation and Forestry, with the President's Office (chair), and coordination by the Myanmar Development Resource Institute (MDRI). The Ministry of Electric Power has also expressed interest, in likely recognition of the complexity of energy issues in the country.[30]

Key issues for the EITI process seem likely to be: informal and illegal material flows, possible resistance from state-owned companies in process involvement, sectorial barriers and the inability to have satisfactory civil society membership in an extremely complex multi-ethnic, multi-interest environment that has not yet fully emerged from civil conflict. From a sector perspective, some may suggest that hydropower is not a traditional sector for EITI, yet because of the critical interaction of energy sources, interrelation of gas sales for hydropower generation and the huge investments involved, it is clear that system transparency will be extremely limited if a holistic view of the energy sector is not taken. The Myanmar situation is somewhat unique in this respect, and the complexity of the situation will make it hard to rationalize strategy and approach between external groups who will strive for simplicity and internal groups who will aim for completeness.

Overall, these developments are welcome because resource-revenue transparency in Myanmar currently is limited. Contract information is largely unavailable. Sector information in all sectors is scant, and the quality of data is questionable and differs among different government reports. Informal flows, particularly in the gems, jade and gold sub-sectors, are considered capable of distorting revenue flows immensely. For example, some industry experts consider a ratio of informal to formal sectors of 9:1 possible. The hydropower sector is considered particularly opaque from the perspective of contract pricing, capital inputs, energy flows, revenue flows and signature bonuses. A key task for the multistakeholder group that will accompany the EITI process is to initiate discussion on sector materiality factors. The pre-scoping study proposed that the materiality factors should not be based only on revenue factors, but should include:

- Sector income and size
- Export earnings
- Proportion of GDP
- Importance in the economy and national development plan
- Amount of investment planned
- Critical factors with respect to industry sustainability or exploitation
- Particular citizen concerns about transparency and accountability
- Particular community concerns about national benefits compared to impacts.

Oil and gas

Oil and gas bidding rounds are currently more transparent than in the past, with the most recent onshore and offshore block process advertised in the state run newspaper.[32] The much awaited next phase release of off-shore blocks expected in September 2012 has been deferred temporarily for "transparency" reasons.[33] However, there are indications that previous tenders were not conducted in similarly transparent terms.

Local partnership requirements in current bidding for onshore and shallow water blocks in Myanmar present risks of potential corruption locally because, while there are compelling arguments for ensuring joint ventures with local partners, abuse of similar requirements elsewhere illustrates the potential corruption risk. If an international company enters into partnership with a local company without knowing its beneficial owner, and the owners turn out to be local officials or politicians, then the international company could find itself in breach of either international or its home country's anti-corruption legislation.[34]

Land

Following trends evident across South-East Asia, foreign and domestic investor interest has most recently targeted Myanmar's land. This has been encouraged by the government's own land and agricultural policies, which aim to convert 10 million acres of "wasteland" into private industrial agricultural production by 2030.[35] Export crops such as rubber, palm oil, rice, pulses and sugarcane are prioritized.[36] According to available government data, the total area of agricultural concessions leased to domestic companies increased from 1 million acres held by almost 100 companies in 2001, to 204 companies holding rights to nearly 2 million acres in 2011.[37] However, due to the lack of disclosure of current land holdings and complexity surrounding government jurisdiction (particularly in the areas of ongoing conflict), accurate statistics on the amount of land currently under agribusiness lease are not available. Experts predict that the revisions to land and agricultural legislation during 2012, as well as the passing of the Foreign Investment Law, will fuel further investment in land.[38]

The broader context of weak rule of law also has consequences for governance of land–based investments. Sixty five per cent of the country's population (or 35 million people) are rural and depend on land and forest resources for their livelihoods.[39] The agriculture sector provides 39% of the country's GDP and employs almost 70% of the nation's labour force.[40] However, a significant proportion of rural communities lack secure tenure for their land and forest resources, a problem which is particularly acute in the upland areas, such as Kachin and Northern Shan states, which conversely are receiving the largest volumes of agribusiness investments.[41] As a consequence, without adequate social and environmental safeguards in law or practice, this investor rush into land has had significant negative environmental and social impacts, and is the driver of an increasing number of disputes between concessionaires and local residents across the country.[42]

Forests

Myanmar is home to some of mainland South-East Asia's most ecologically and commercially valuable forests. Within Myanmar, meanwhile, controls on forest exploitation and accountability before the law remain weak, despite periodic enforcement operations by the authorities. Pressure for land within Myanmar now ranks alongside a ravenous global timber industry as the main threat, with monoculture plantation development frequently being used as a pretext to fell entire forests at a time.

Like other natural resources, Myanmar's forests have fuelled the country's war economy and been subject to the corrupt predations of powerful officials. The consequences for the environment and the livelihoods of the rural population have been devastating. According to a recent study by Forest Trends, some foresters in Myanmar estimate that only 20-30% Myanmar still has closed forest cover.[43]

Over the past 20 years, the pressure on Myanmar's forests has been magnified by the demands of the international wood products industry and the consumers in Asia and the West that it supplies. Detailed research by Global Witness between 2000 and 2009 uncovered a sprawling illicit trade along the border between Kachin and Shan states in Myanmar and Yunnan Province in China. By 2005 China was importing more than 1.5 million cubic metres per year with an estimated value of approximately US$ 350 million. Almost all of these imports were illegal.[44]

In response to the attention generated by these findings, the Chinese government closed its land border to timber from Myanmar in 2006. Over the years that followed, however, the restrictions were quietly eased, and trans-frontier trade resumed. The recent Forest Trends study notes that much of the slack left by the trade with China has been taken up by India, which is now becoming the main importer of timber from Myanmar.

Conclusion: What Can Be Done

Transparency and accountability are essential to avoiding the resource curse. To achieve them, the government should focus on three key areas:

First, the government needs an over-arching plan on how to manage its land and all its natural resources in the public interest. That plan needs broad popular consultation and buy-in from citizens, political parties, local authorities and investors. If the state's efforts to attract foreign investment are not matched by efforts to safeguard local people's rights and the environment, Myanmar risks escalating social and political tensions.

Second, ordinary citizens need to be able to follow the money from natural resource extraction. The basic rules of the resource business need to favour disclosure of information rather than secrecy at every point along the chain. This allows for the public to scrutinize resource deals, hold the state accountable for how income from resource extraction is spent, and reduces the risk of the corruption which has plagued extractive industries worldwide.

Third, the resource business needs to be embedded in wider reforms to improve the rule of law, freedom of information and proper government financial management. One simple example: disclosures from the resource business need to map over to a transparent public budget process with clear rules on how the government intends to spend and save citizens' money in accordance with national development priorities. There also needs to be a clear process to review how that money was spent. Major investment or infrastructure projects also need to be properly governed and transparently managed, as does spending on critical sectors such as defence, education and health.

According to a famous Buddhist proverb: "Three things cannot be long hidden: the sun, the moon and the truth." President U Thein Sein and his government's commitment to revenue transparency through the EITI is the right place to start, but they should not stop here if they are truly committed to tackling Myanmar's resource curse. The following measures are key to ensuring transparency and fairness in the accessing of natural resources.

Ensuring transparency and fairness in the accessing of oil, gas, minerals and forests

The following checklist is intended as guidance for governments to design regulatory regimes for the oil, gas and mining sectors, and as a set of benchmarks that civil society groups can use to assess whether their country's rules and procedures are sufficiently transparent to mitigate inequitable resource allocation.

The key features of the checklist are: a need for clear rules and effective institutions, openness and full public disclosure at key stages of the resource chain, combined with continuous oversight by independent third parties. The aim is to ensure that companies that win the rights to extract are qualified to do so, have done so honestly and fairly, do not represent the interests of corrupt officials, and will actually meet the terms of their licences.

Access to natural resources: A checklist

Before hydrocarbon and mineral rights are awarded to companies:

1. A country should have a long-term strategy, prepared in an open and consultative way, for the management of its natural resource base. The aims of this strategy should include:
   a. Gaining the fullest possible information on the country's resource base; this should include consideration of any externalities to extractive activities – such as impacts on water and land – to allow for informed decision-making;
   b. Maximizing the benefits to the country and its citizens over the longer term, rather than emphasizing one-off payments to the government by companies;
   c. Developing strategies to use the extractive sector as a catalyst for linkages into the economy so that it produces, for example, in-country processing and spin-off industries in related services;
   d. Applying the highest standards on social, environmental and human rights protections and identifying regions where extraction should not take place.

   The laws and public institutions to regulate, manage and oversee the hydrocarbon and mineral sectors need to be in place before companies are granted access to the resource.
2. The public institutions that regulate, manage and oversee the extractive sector need to:
   a. Have political support for adherence to the rule of law;
   b. Have distinct roles that are clearly defined in law;
   c. Have sufficient funds, expertise and regulatory power to fulfil their mandates;
   d. Be managed and audited in a transparent fashion.
3. The laws governing these public institutions should prevent conflicts of interest and forbid corruption. State-controlled extractive companies should not act as regulators.

4. The strategy, laws, institutions and policies on the extractive sector should be crafted through open debate, and discussed and approved by the country's legislature. All resulting documentation should be easily available to the public in an accessible form.
5. The laws governing the extractive sectors should have a strong bias in favour of openness and against confidentiality and secrecy.

The awarding of rights

6. Open and competitive bidding should be the norm for awarding hydrocarbon and mining rights. It should be acknowledged however, that competitive bidding might not work for small scale or artisanal mining. There should be dispensation for sole source contracts for legally predefined reasons, including proprietary skills.
7. The right to exploit, post-exploration phase, should be dependent on the completion and review of social and environmental impact assessments by an appropriately skilled and independent third party. Impact assessments must be public documents.
8. The same terms should be offered to all companies. The terms should be as clear and simple as possible, and should be set out in law as far as possible. Individual contracts that are negotiated on a case-by-case basis should be phased out and a common law applied to all exploration and mining applicants.
9. Where negotiation is allowed for particular contract terms, the parameters for what can be negotiated should be published a reasonable period in advance.
10. No prospective bidder should be offered preferential rights, preferential access to information or any other form of preferential treatment.
11. The public agency responsible for awarding hydrocarbon or mining rights should not allow any company to bid for such rights, whether as a sole operator or a member of a consortium, until this agency has confirmed that the company has:
    a. Published its ultimate beneficial ownership and audited accounts;
    b. Proved its technical and financial ability to fulfil the terms of the contract;
    c. Proved that its funds come from legitimate sources;
    d. Not been found guilty of criminal activities.

    Any companies found to be involved in collusion to obtain a concession should be disqualified from the process.
12. The information in points 11 a-d above should also be required from companies that acquire rights previously awarded to other companies, for example via farm-ins or corporate mergers.
13. The prequalification of bidders should be cross-checked by an independent third party to confirm that requirement 11 has been fully met.
14. Bidding should take place against a timetable which is disclosed to the public, and bidding outside such a timetable should not be allowed. In cases where unforeseen external factors mean that an extension is reasonably necessary, the government should publicize this and explain why such an extension is needed.
15. The fullest possible information should be disclosed to the public, including:
    a. Tender documents;
    b. Lists of pre-qualified companies, accompanied by evidence of 11 a-d above;
    c. Successful and unsuccessful bids;
    d. Contracts and other agreements signed with extractive companies;
    e. Confirmation from the agency overseeing the award of rights (see point 13) that all the rules have been complied with.
16. Companies should fully disclose all payments to the country in respect of extractive rights and only make such payments into bona fide government accounts which are linked to the national budget.
17. Countries' receipts of such payments should be independently audited and disclosed, for example through the Extractive Industries Transparency Initiative (EITI).

Continuous oversight

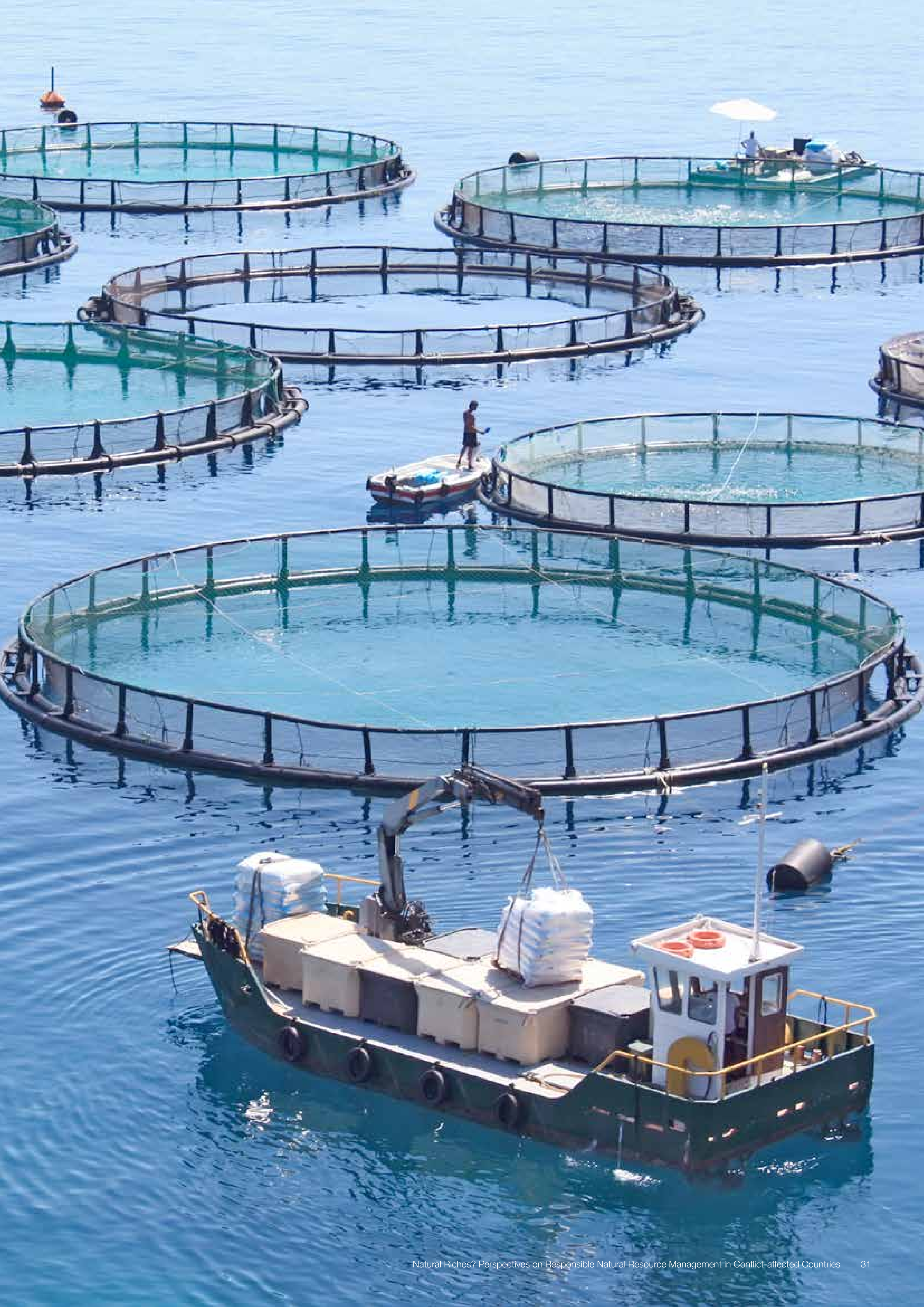
18. Continuous oversight by an independent third party of the award of rights and the implementation of contracts by companies is necessary. This agency needs sufficient authority, resources and expertise to carry out this task. It should make regular and timely public reports.
19. Independent civil society groups should be actively involved in the oversight of the hydrocarbon or mining sectors at all stages of the resource value chain   for example, by working with public oversight agencies, or through their role in the multistakeholder groups of the EITI. They should be provided with the documentation and information required for such oversight in a timely manner.
20. Countries exploiting hydrocarbons and minerals should implement the EITI and extend its remit to cover the allocation of exploration and exploitation rights.
21. A country's legislature, oversight and law enforcement agencies should have a right of access to all information on the award of oil, gas and mining rights.
22. Credible allegations of corruption should automatically lead to independent investigation. Proven corruption should bring serious penalties for any companies, company employees and government officials who are implicated, including the cancellation of contracts and publication of findings.
23. All contracts and other agreements governing hydrocarbon and mining rights should explicitly forbid corrupt acts, human rights violations and environmental offences as defined in national and international law, and follow the principles as set out in the UN Guiding Principles for Business and Human Rights.

Actions for home governments of extractive companies

24. Home governments of companies that seek access to hydrocarbon or mining rights should:
    a. Use their regulatory powers to ensure that such companies routinely disclose their revenue payments to governments around the world, on a project-by-project basis;
    b. Consistently and proactively enforce their own laws against foreign bribery and the laundering of the proceeds of foreign corruption;
    c. Work with the international community to end secrecy over the ultimate beneficial ownership of extractive companies, especially in offshore jurisdictions;
    d. Refrain from actions that undermine transparency, such as pressuring resource-rich countries to give undue preference to «our» companies;
    e. Endorse and implement the EITI.

Actions for international donors

25. International donors (governmental and private sector) should jointly evaluate whether development assistance is still needed, and for what timeframe, in light of the findings of point 1a.
26. International donors that work with resource-rich countries should use their aid, loans and technical assistance to ensure that the practices listed in this checklist are in place before these countries grant access to their hydrocarbon or mineral reserves with a view to ensuring domestic resources are effectively harnessed for development.



6. Security and Human Rights

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Why This Is Important

Many of the world's remaining supplies of oil and gas are in harder-to-reach places such as under deep oceans, in the Arctic, and close to communities or conflict zones. In the meantime, global energy demand continues to surge and could rise by up to 80% in the first half of this century due to improved living standards and development in emerging economies.

There is a strong business case for the effective management of security and human rights in natural resources extraction. Preventing security issues in the first place is clearly the most effective way to manage them, and in many places where extractive companies operate this is a significant part of the "licence to operate". Research has shown that the majority of the risks that slow down or prevent large projects that are the norm for oil and gas companies are non-technical. In fact, these risks erode the net present value of company assets.

Perhaps the business sector has not made a sufficiently strong case for the importance of devoting management time and attention to managing security and human rights issues. This chapter thus aims to specify how this could be done, using examples experienced by Shell, where security and human rights are a priority.

Key Questions to Consider

- Has sufficient staff with expertise in stakeholder relations, social performance, business and human rights and security been deployed to the operation concerned? Has the correct "social seismic" capacity been developed?
- Has risk identification been started early enough in the project life cycle minimize the chance of conflict? In particular, is there a good enough understanding of local environments before entering them? Early detection of potential conflict can enable early mitigation strategies.
- Are senior and project management staff aware and trained on human rights and security issues?
- Is human rights management integrated into existing business practices, even though each company and each location is different?
- Is security and human rights management formalized into company policies, accompanied by training course and regular assurance programmes?
- Is social investment in community projects designed to help prevent conflict? Unintentional consequences of misguided social investment are numerous.

Guiding Principles

- The Voluntary Principles on Security and Human Rights (VPSHR) provide a global framework for companies to seek practical guidance on security and human rights. It represents good practice (see box 8 for more details).
- A number of tools exist for companies to screen for security and human rights issues. These include simple risk assessments.
- Companies should allow for significant contractor training in security and human rights. Hundreds of contractors may require training in the case of a major project.
- Several civil society players – for example, on-the-ground non-governmental organizations (NGOs) and United Nations bodies – can help companies understand their local environment. In turn, this can help reduce the risk of conflict.
- Timely escalation mechanisms within companies, including formalized escalation of potential conflict, can help ensure that company responses are put in place.
- In projects, it is important to identify those individuals that can make an impact on security and human rights. This may include project and line management staff as well as security professionals.
- It is essential that security and human rights be embedded in the individual performance contracts of those whose roles can impact security and human rights performance. Personal recognition and consequence management should apply to performance.

Box 8: Voluntary Principles on Security and Human Rights

The governments of the United States and United Kingdom, companies in the extractive and energy sector and prominent non-governmental organizations, developed and jointly agreed in 2000 to a set of Voluntary Principles on Security and Human Rights. Since then, other governments, companies and NGOs have joined the process. The objective of the Voluntary Principles is to guide companies in maintaining the safety and security of their operations, in an operating framework that ensures respect for human rights and fundamental freedoms.

Box 9: Shell and Human Rights

Since their development in 2000, Shell has actively implemented the Voluntary Principles on Security and Human Rights (VPSHR), which guide companies in assessing risks when working with public and private security. Shell trains security staff and contractors in the Voluntary Principles, and Shell incorporates the principles in its security contracts.

Shell has been a leading supporter of the Voluntary Principles since their inception. The Voluntary Principles are reflected in the Shell General Business Principles, which require Shell companies to respect the human rights of their employees and express support for fundamental human rights to society.

Mandatory requirements for the implementation of the Voluntary Principles are included in the "Shell Security Standards and Security Manual" section of Shell's Health, Safety, Security, Environment & Social Performance (HSSE & SP) Control Framework.

These requirements are specific to country chairs, managers, vice-presidents of corporate security and contract holders.

Compliance with these requirements is reported through Shell's annual internal assurance process, which includes the completion of a performance indicator questionnaire for VPSHR priority countries.

There are 22 priority countries where implementation of VPSHR is being focused. Shell uses the new VPSHR *Implementation and Guidance Tool (IGT)* to undertake risk assessments and complete agreed actions resulting from these assessments using Shell's Corporate Governance, Risk & Assurance action tracking system.

Considerations on Relevance to Country Concerned

Case studies are provided below that set out what has been put in place in two countries where Shell operates, as examples of how security and human rights can be addressed in an extractive project. The basic structure is one of risk assessments, stakeholder engagement and training. The aim is to use this process to integrate the outcome of such work into the everyday management of the operation concerned.

Nigeria

Shell Petroleum Development Company of Nigeria is the operator of a joint venture between the government-owned Nigerian National Petroleum Corporation (SPDC, 55%), Shell (30%), Total (10%) and Agip (5%). Shell Nigeria Exploration & Production Company (100% Shell-owned) operates and has a 55% interest in the offshore Bonga field, Nigeria's first deep-water project. Shell also has a 26% interest in Nigeria Liquefied Natural Gas, which exports liquefied natural gas around the world.

In the Niger Delta, where most Nigerian oil is produced, poverty and violence are serious problems, making it one of the most difficult places where Shell companies do business. A government amnesty for militants that began in 2010 has allowed SPDC engineers to reactivate dozens of wells and hundreds of kilometres of pipeline. These had been shut down under threat of violence or actual attacks during the upsurge in militancy from 2006 to 2009. Despite an end to militant attacks, urgent action is still needed to tackle oil theft and illegal refining by criminal gangs.

Shell Nigeria continues to be confronted with security challenges, especially in the Niger Delta, and as a consequence the VPSHR will remain a key focus area.

The 2012 VPSHR in-country implementation process for Shell in Nigeria included the following actions:

Risk assessment

- A VPSHR risk assessment, conducted in September 2012, was led by the in-country security manager and facilitated by Shell's global human rights implementation manager.
- Stakeholder engagement
- Structured engagements took place with external stakeholders, including government security agencies, armed forces, national police and state security services.
- Shell attended VPSHR stakeholder meetings which were hosted by the Dutch Embassy and USAID.

Training

- A two-day Human Rights and VPSHR specific training facilitated by Shell's Issues and Crisis Management Department was rolled out to 33 staff and 112 district security supervisors. Area security advisers and VPSHR champions conducted in-house VPSHR training for security supervisors and security contractor personnel.
- Shell in Nigeria continued its human rights and conflict resolution training programme for supernumerary police officers and district supervisors.
- Some 1,975 private security providers attended VPSHR briefing sessions at deployment.

The Nigerian Government is not a member of the Voluntary Principles. To ensure inclusion and awareness of the public security forces, the need for government support is high. Shell continues to drive awareness with foreign embassies for support and advocacy to influence the Nigerian government to subscribe to the VPSHR. Shell uses the International Oil Company Industry Platform as a conduit to this end.

Iraq

The Shell-operated Majnoon project is developing one of the largest oil fields in the world, estimated by the Iraqi government to hold around 38 billion barrels of oil. Shell has a 45% interest, with partners Petronas holding 30% and the Iraqi state, through the Missan Oil Company, holding 25%. The aim in the project's first phase is to reach production of 175,000 barrels of oil a day.

Iraq's rejuvenated energy industry continues to help the country rebuild. The country is now the world's third-largest oil exporter, according to the International Energy Agency. However, significant challenges remain, including a need for investment to improve ageing oil and gas infrastructure, which accounts for more than 90% of government revenues. The lack of reliable power for homes and businesses also hinders economic progress.

Shell is helping to create jobs, build skills, improve health programmes and offer educational opportunities. Unemployment, especially among youth, remains a major challenge for the country. Through a partnership with the United Nations Development Programme (UNDP) and a series of train-the-trainer programmes, in 2012, Shell supported a number of small and medium-sized enterprises in areas such as safety, business planning, and contracting and procurement.

Many people are too poor or are otherwise unable to travel to hospitals for medical care. With the AMAR International Charitable Foundation and the Basrah Health Directorate, Shell set up a health programme in 2012 using three mobile clinics that regularly travel to the poorest communities around the Majnoon field providing health checks and medicines.

The lack of education reduces job opportunities for local people. In 2012, Shell launched a literacy campaign to help women learn to read and write. This programme has helped some of the most vulnerable people in Majnoon communities gain basic skills that can lead to future opportunities. Shell also continued to focus on helping to improve road safety in Iraq.

Implementation of the VPSHR is an integral part of the business start-up process for Shell in Iraq, and included the following actions in 2012:

Risk assessment

- A new VPSHR risk assessment was conducted for the Basra province by using the *Implementation and Guidance Tool*.

Stakeholder engagement

- Regular meetings with various stakeholders were held and of VPSHR training completed;
- Security providers were and continue to be audited every six months to ensure that all staff has completed VPSHR training prior to deployment. Vetting and background checks were completed pre-contract;
- Structured planned meetings with the local unit commander were organized every two weeks and with the commanding general every 3 months;
- Social development engagements with local communities as part of Shell's social investment strategy in Iraq positively improved mutual relationships.

Training

- VPSHR training was provided to 70 company staff and contractors;
- 200 private security hires and 400 staff of public security forces received VPSHR training.

Shell is one of the participants of the informal Iraq VPSHR working group, which aims to identify and share good practices and lessons learned for in-country implementation.

7. An Institutional Framework for Natural Resource Management

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Key Questions

The role and responsibility of governments in the management of natural resources on behalf of their citizens is to exercise stewardship so that resources can be a foundation for durable peace, stability and prosperity. Challenges in exercising this function include preventing or mitigating predatory behaviours, establishing accountability mechanisms and decision rights, building organizations and investing in human capacity, and moderating the varied and sometimes oppositional interests of relevant stakeholders. Resolving distributional issues of the wealth and potential community impact for citizens is a delicate calculation for national authorities. All these tasks are immeasurably more difficult in countries afflicted by conflict and fragility, or undergoing transitions.

Governments can be most successful when they understand their comparative advantage (vis-à-vis firms, civil society, foreign capacity) set against the larger economic, social and environmental goals of the country. They can then act with confidence and authority to nurture a thriving sector rooted in rule of law, partnership, transparency, clarity, and consistency. Non-government institutions are also key players within the natural resource sector. Industry associations can represent collective interests, increase transparency, and lower transaction costs of cooperation. Civil society organizations can promote stewardship for social and environmental issues and increase process transparency for the benefit of citizens, government, and firms alike. International bodies set standards, monitor obligations, facilitate the exchange of information that increases efficiency, and create a community of interest around issues related to natural resource management.

Civil society and businesses are also important drivers of institutions which can support natural resources development. Collaboration between governments, NGOs, community organizations, industry associations and companies is key to ensuring health institutions.

Box 10: Critical Stakeholders in the Natural Resources Sector

- Governments (central and local) are responsible, directly or indirectly, for the translation of natural resource wealth into equitable peace and prosperity over the long term on behalf of their citizens.
- Citizens both reap the potential benefits of natural resource development and bear the costs of extraction and commercial activities; their understanding of what this cost-benefit analysis entails is ensured through transparent sectoral activities.
- Firms can bring technical expertise, employment opportunities, and the commercial processes that grow economies through profitable endeavours.
- Civil society organizations, non-governmental organizations and non-profits, particularly ones consisting of directly impacted citizens, resolve coordination issues, increase transparency, facilitate coordination for parties of mutual interest, and act as stewards of the environment through standards setting, watchdog activities, and other actions in the public interest.

Guiding Principles and Practices for Key Organizational and Functional Bodies

It is essential that institutional frameworks and organizations match the functions that must be achieved. Therefore, there are no standard prescriptions for countries that have very different needs to be met by varied national assets and resources. That said, there are important functional roles and decisions to be carried out by organizations, public or private, at a variety of levels, and with careful consideration:

Information, exploration, resource mapping - Governments must understand what resources are available to a nation, both in terms of those natural and geological ones associated with extractive industries and the knowledge, infrastructure, relationships and human capital that facilitate a thriving sector. Capacity for this research, exploration and mapping might be available domestically or provided by technical expertise from foreign governments, multilaterals or the private sector internationally. Institutions that take on this function might involve government geological surveys; departments of the interior, mining or labour, universities, and international geological or commodities organizations, among others.

Box 11: Resource Mapping

In the United States, the United States Geological Survey at the Department of the Interior makes public domain maps and data on geological deposits available both domestically and globally.[46]

As for human capital resources, the International Minerals and Mining Association is a professional body for people working in the materials, minerals and mining communities that links those with technical skill sets to a global community of practice and provides informational resources to members. Many countries have similar geological surveys and minerals and mining associations.

Feasibility studies, commercial viability - Considerations of scale, timing, sequencing, profitability and feasibility are a simultaneous but critical portion of the process of understanding and managing resource wealth. Geological information alone is not enough to understand the ability for resources to generate economic wealth. Thorough information on the feasibility and commercial viability of operations can allow government and businesses to strike the right balance of arrangements to operate in a way that can generate the most benefit for all stakeholders. These studies, done at various levels of detail,[47] also lend insight into the potential environmental and social impacts of resource development, as well as clarify assets for legal status of ownership and management. They can be conducted and funded by governments, the foreign or domestic private sector, multilaterals, or, often, a mix of all. The best arrangement for who assumes the cost and responsibility for determining commercial viability is highly context dependent. Considerations of firm structure, legal arrangements, beneficiaries and technical expertise are necessarily key to decisions on these roles and responsibilities.

Box 12: Feasibility Studies

In Australia, special purpose firms often conduct studies, whereas in Pakistan, the World Bank provides technical expertise. Experience in Mongolia has demonstrated the value of early consultation with technical experts to build bureaucratic capacity within government to manage commercial activities early on, such as financial management, regulation and other legal frameworks.

Licensing, rights and taxation - Permission to participate in processes and gain access to capital, minerals, land and incorporation/formation is often a way that government organizations, national or local, can clarify roles and sequence/moderate action according to the interests of the population at large. It is the area wherein transparency and fair competition are important. It is also a way in which governments can demonstrate a low reputational risk, high organizational capacity, and respect for fair legal processes.

The ability of the government to tax firms operating within the mining sector, if applicable, also heavily impacts the shared wealth distribution among stakeholders. Taxation is a key function of the government alone, though it may happen at the national and/or local level and at various rates. The determination of appropriate licensing and taxation rates for mining operations is highly context dependent, but must fit into a larger context of national plans for private industrial activity, land use, the environment, and economic and social development. The process of determining these arrangements should be highly transparent, consultative and government controlled.

Box 13: Consultations on Mining Activities

While the Peruvian case has its own political and social challenges, the highly consultative process that requires a local referendum on mining activities and land use takes citizen input seriously and demonstrates government ability to be constructive in a process involving local citizens and larger foreign and domestic companies.

As for British Columbia, its Ministry of Energy, Mines and Natural Gas has developed Mineral Titles Online, a GIS-based map selection system that impressively combines ecommerce technology with government functions of titling and information management.[48]

Industry management and operations - The actual extraction of natural resources, their processing and distribution are done in a variety of ways often linked heavily to the licensing and rights structures made available by a country. The prioritization of operational access opportunities based on certain types of entities is regulated in a country-by-country manner (for example: domestic firms, joint partnership structures, public-private partnerships, foreign qualified investors, parastatals). Various formations might be in the public benefit, including simple regulations of independent private firms (foreign or domestic), requirements for joint partnership arrangements and technological transfer, or parastatal firms like Norway's Statoil or Brazil's Petrobras.

The role of cluster management organizations, industry associations, and labour unions can be particularly important in influencing mining arrangements. These various institutional arrangements exist to organize industry for the public benefit and to avoid the capture of natural resource wealth and its potential developmental and human capital benefits by foreign entities rather than citizens. They might ensure the transfer of skills, the employment of local citizens, the best profit or the benefits of international commercial cooperation according to national needs. For example, Canada and India recently reaffirmed, through a memorandum of understanding, the value of joint partnerships in the mining sector and the complementarities of economic activity and human capital assets within this area.[49] This formalization of a cooperative relationship, clarification of expectations, and establishment of a working group on these topics eases the burdens of liberalization by ensuring clarity of responsibility and expression of preferential treatment of Canadian capital and expertise on that basis.

Revenue management - The sale of mining resources can generate vast revenues for governments, firms and citizens that can, if properly managed and invested, generate development that improves the lives of citizens in some of the poorest communities. Countries like Chile, Australia and Canada stand as hallmarks in the ability to translate mining wealth into true economic development. More than three-quarters of the states classified as "fragile or failed"[50] possess extensive natural resources that could be instrumental in creating economic opportunity.[51] Institutional frameworks translate this opportunity into reality.[52]

Sovereign wealth funds and other investment structures for the national wealth generated by resource windfalls can allow for furtherance of an economic development and capacity building agenda that benefits all stakeholders in the long term if well managed. It is important that revenue management be used to best achieve agreed upon national objectives rather than popularly redistributed in a manner that creates inflation and undermines the potential for investment in durable growth.

Box 14: Sovereign Wealth Funds

Contrasting experiences of sovereign wealth fund management in Norway and Alaska show the potential for beneficial long-term gains in development from well-invested resource wealth versus inflationary effects with less than optimal growth impact. The Alaskan Permanent Fund features an annual dividend to citizens that creates inflation and fails to create long-term development, whereas the Norway Government Pension fund manages volatility by investing in global markets for maximum revenue and use for smoothing consumption despite income fluctuation.

Oversight and regulation - The legal framework sets the requirements for transparency and compliance with specific laws. Laws and regulations can also specify terms for inclusion, social, labour and environmental objectives. Access to remedy is an important means of ensuring a well-functioning system for all stakeholders. While the legislature and/or specific agencies will issue regulations, other bodies including oversight authorities will be tasked with monitoring operations and financial transfers to ensure laws, contractual obligations and standards - including for safety, environmental and social protection - are met. Civil society may also play an instrumental role in the monitoring of legal compliance and publicity, or lack thereof.

While various international standards exist to ensure many of the outcomes meant to be ensured by government oversight and regulation, it is important for governments themselves to require an independently considered and rigorous policy on issues such as transparency.[53] These often exceed the minimum standards in order to translate the spirit of transparency into the policy requirement. International regulations are necessary but not sufficient for the generation of the transparency instrumental to building citizen trust in government for the management of their natural resource wealth.

Trade, reputation and risk - Governments also regulate international trade, from OPEC (Organization of the Petroleum Exporting Countries) to simple export licensing, and can control the markets for, and therefore prices of, extractive goods sold. The provision of further commercial services to private or alternative firm arrangements is another means by which industries can excel globally. These include industry financing, business consultation, cluster management and information provision. Also of importance is the management of political and market risk perception. Risk management can foster a competitive and thriving business environment by signalling government stability and commitment to principles that ensure the private sector against loss due to the risks associated with fragile state environments. Considerations of limiting or liberalizing markets for sale and the distribution of products directly must be made with the maximum long-term interest of public benefit in mind. Without a reputation for responsible, transparent and consistent policies toward trade and investment, a government forfeits its ability to attract the best partners, capital and stakeholder involvement. It can face issues of branding that extend beyond its ability to govern the mining sector alone.[54]

Government provision of inputs - While not traditionally considered a direct part of the mining sector, the government and society play a role in creating a facilitating environment that is mutually beneficial and maximally profitable. Operating in a country with sufficient infrastructure, human services, logistics, associated industry capacity, etc. can greatly increase the efficiency of mining operations. Perhaps even more importantly, a talented and trained workforce and investment in human capital can generate the most capacity for managing every step of the process. This means everything from engineers to government regulators, to manufacturing labour for the goods purchased by mining companies.

Box 15: Human Capital

Preparing the labour force should fundamentally be a partnership between government, industry and society who have an interest in creating jobs and growth in the long term. Rio Tinto's regional economic programmes focus on creating a pipeline of skilled labour in indigenous communities through job training programmes, curriculum development, and meaningful corporate social responsibility efforts.[55]

Development and inclusion   The potential for the extractive sector to transform economies and create opportunities is immense. Governments, industry, and society should orient themselves toward long-term policies of growth, rather than redistribution or quick profits. Mining must be situated within the larger economic interests of the society. Governments must consider the appropriate revenue that they should take from operations that would otherwise be spent, reinvested or exported. They must also consider the extent to which they wish to be an economy engaged, in large part, in mining rather than other sectors and the volatility or instability that a lack of balancing in the industrial portfolio might create. Laws and their enforcement can ensure the appropriate balance of inclusion, efficiency, profitability and capacity, and set the rules of the game in a way that creates good on behalf of their citizens. National laws on labour (right to strike, child labour regulations), the environment (disposal, reporting and restoration requirements), and capital tend to cover these objectives in many ways, though national economic plans also drive the role of mining within the larger economic activity of a country.

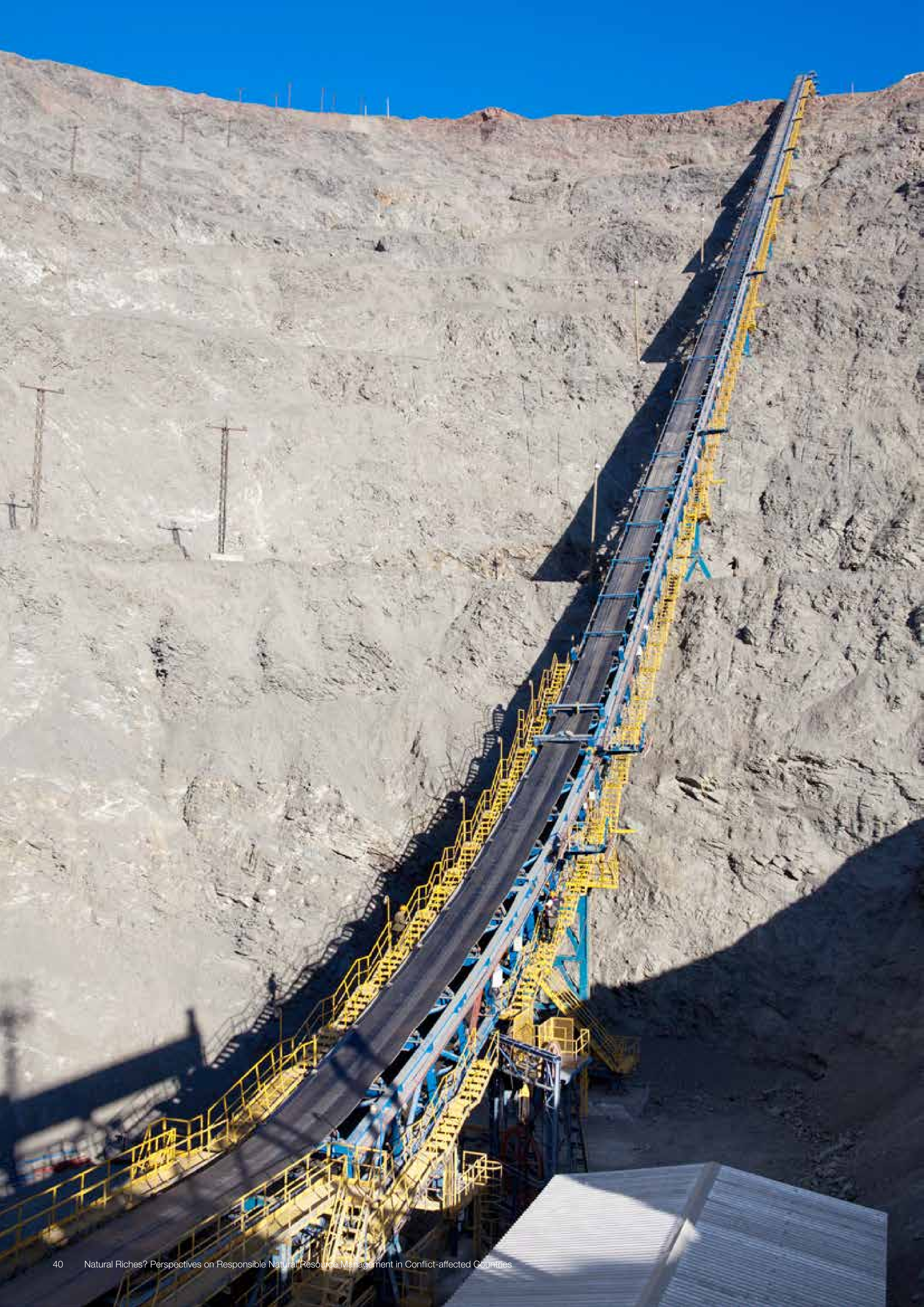
Myanmar: Opportunities and Challenges

Myanmar possesses a wealth of assets and the potential for true growth and development within the economy overall. Endowments of tin, antimony, zinc, copper, tungsten and lead as well as petroleum, timber, coal, marble, limestone, gemstones, natural gas and hydro power are potentially extremely lucrative and transformative.[56] Maximizing the potential of these assets for Myanmar's citizens will require the appropriate legal framework and institutional and bureaucratic capacity in a variety of areas.[57] Ultimately, the ability for Myanmar to translate natural resource wealth into prosperity will be dependent upon its ability to set the rules of the game for all stakeholders, nurture domestic capacities where they might be competitive, including human capital, and create infrastructure and services that allow for a successful industrial presence and beneficial supply chains. First determinations will necessarily be the best arrangements for mutually beneficial interactions between the government, international and domestic investors and society. Coordination of technical expertise and determination of commercial viability and resource endowments are crucial first steps in this process.

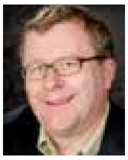
A variety of institutions within Myanmar require strengthening for a robust sector that can generate economic development. The Ministry of Mines will need to be able to manage relationships with other government agencies, citizens and firms to set out a sector strategy and corresponding policy to support development objectives. These should be specific, measurable, and benchmarked to the outcomes in countries with similar regional and economic conditions. The Ministry of Finance and Revenue requires consultation with financial experts on the various options for revenue management and investment in this highly specialized field of finance. The Investment Commission should examine global regimes for this strategic sector and identify the appropriate restrictions and conditions for global capital and firm operation and the necessary legal structures and assurances that would support mutually beneficial investment. Multiple ministries should cooperate to form a comprehensive strategy for environmental conservation and set standards for industry that will ensure best practices. The ministries of Science and Technology; Labour, Employment and Social Security, and Education should immediately determine the necessary labour requirements of the future sector and associated sectors (how many engineers, businessmen, construction managers, bureaucrats, etc. are needed?). This should serve as a basis to identify current capabilities as well as identify where investment in human capital and external expertise must be an investment. The Department of Geological Survey & Mineral Exploration (DGSE) should identify global resources and appropriate international partners at its disposal and aim to manage information systems in a way that facilitates usable data, registration, bidding, and other systems that can ensure transparency and efficiency.

Box 16: Relevant Government Entities in Myanmar for the Natural Resources and Mining Sectors

- Department of Geological Survey & Mineral Exploration (DGSE)
- Ministry of Education
- Ministry of Electric Power
- Ministry of Environmental Conservation
- Ministry of Finance and Revenue
- Ministry of Forestry
- Ministry of Industry
- Ministry of Labour, Employment and Social Security
- Ministry of Mines
- Minister of National Planning and Economic Development
- Ministry of Oil and Gas
- Ministry of Science and Technology
- Myanmar Investment Commission
- Office of the President



8. Fostering Dialogue across Stakeholders in Natural Resource Management



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As global population growth, urbanization and industrialization continue, particularly in China and other emerging economies, global demand for metals will continue to expand, making the ongoing development of new mining projects inevitable. These new projects increasingly occur in developing countries, at times fragile or conflict-affected, where they have the potential to be a key driver of economic growth and poverty reduction.

Yet governments and local communities in these countries are questioning the value of mineral development within their borders. Heated policy debates about the proper allocation of costs and benefits, threats of resource nationalism, and violent confrontations over new projects are all on the rise. Trust among stakeholder groups is waning; platforms for respectful engagement and dialogue are in short supply; and the goal of a shared understanding regarding the potentially transformative benefits of mineral development remains elusive.

The process of dialogue – open, inclusive, transparent and thorough dialogue – has emerged as a key component of ensuring responsible management of natural resources.

The Challenge of Dialogue

Beginning in 2010, the Responsible Mineral Development Initiative (RMDI), launched under the auspices of the World Economic Forum, has been working to gain a better understanding of the challenges and complexities involved in realizing the potential for responsible, sustainable mineral development, and to identify and pilot potential solutions to address these challenges. Over the course of two years, extensive stakeholder consultation identified the following key challenges:

- Among all stakeholder groups, an insufficient understanding of the perceptions of other stakeholders regarding the potential value to be derived from mineral development often exists; a misalignment of expectations can occur regarding the nature, scope and timing of both the benefits and costs of new mining projects.
- Groups often talk past one another, and fail to listen to the priorities, concerns and ambitions of others.
- Representatives of local communities may be excluded from negotiation processes relating to mineral development, and may hold either unrealistic expectations or inaccurate misconceptions as a result.
- A lack of transparency about the legal and regulatory arrangements in place regarding specific mineral development projects, and about the timing and amount of tax and royalty payments to be made as mining proceeds, often leads to distrust and conflict.
- Roles and responsibilities with respect to the management of impacts and revenue streams are often unclear, and host country governments and local communities may lack the institutional capacity to manage these impacts and revenues effectively.
- Opportunities to leverage investments in mineral development into broader economic growth opportunities are often lost because key players in government and civil society are not involved in initial discussions and negotiations, or because companies active in the same region are not collaborating.

Adopting a broader understanding of "value", to incorporate the social and environmental and economic dimensions of mineral development, is key to building trust and avoiding conflict.

Paths Forward

The RMDI has identified a number of possible actions, initiatives and case studies that address this set of challenges, based on extensive consultations with stakeholder representatives on six continents. These are not presented as universal solutions, but as practical examples that have helped to advance responsible mineral development in specific circumstances.

1. Collaborative processes for stakeholder engagement and dialogue

During its consultations, the RMDI identified a gaping need in many countries for platforms dedicated to respectful engagement and dialogue among stakeholders. Trust and stability can only be achieved if there is an ongoing and neutral forum for stakeholders to meet for open, honest and robust dialogue, where positions and decisions can be explained and explored and contentious issues can be debated and hopefully resolved. Engagement should start at the earliest possible stage and will only be effective if it operates consistently and inclusively.

The RMDI is actively working to establish collaborative multistakeholder dialogue platforms in a number of countries where mineral development is or will be an important sector of the economy (e.g. Peru, Chile, Mongolia and Guinea). To succeed, these platforms must include committed policy-makers and representatives of all relevant stakeholder groups, and ideally should strive to develop action plans among various combinations of participants to build institutional capacity and working partnerships on specific issues. The dialogue platforms ideally should develop their own relevant metrics, success criteria and monitoring mechanisms.

This type of platform can be established at the national or local levels, and indeed national platforms will need to be linked to local level platforms and vice versa. At either level, a dialogue platform can explore the perceptions and attitudes of participants regarding the "value" to be derived from mineral development activities (see section 1.1 below), and can collaboratively assess the mining sector's likely economic and social contributions and impacts and its interaction with existing government structures (see section 1.2 below).

At the national level, additional potential topics for discussion include:

- The effective management of mineral revenue streams, including for example the establishment of mineral stabilization or "rainy day" funds;
- Transparency and accountability with respect to the granting of mineral concession rights; the negotiation of mineral development agreements; and the receipt and management of tax and royalty revenues, and building capacity within government to handle these issues;
- The need to return a portion of mineral revenues back to communities impacted by the mining sector, and how that should be managed if deemed necessary;
- The leveraging of mineral investment dollars to build or promote other sectors of the economy;
- The opportunities and challenges associated with downstream mineral processing activities;
- Mineral development on lands controlled or inhabited by indigenous communities, and the increasingly important concept of "free and prior informed consent";
- The management of artisanal or informal mining activities;
- The impact of the mining sector on other sectors, such as agriculture or tourism, and on water resources, the environment and biodiversity;
- The monitoring and enforcement of commitments made by various stakeholders;
- The establishment of effective dispute resolution mechanisms and institutions.

At the local level, the RMDI highlighted an effective process at Alcoa's Juruti Project in northern Brazil, which has created a broad and democratic public space that allows for the regular, ongoing participation of interested stakeholders in a dialogue on a long-term local economic development agenda. And indeed, it is often the case that some portion of the tax or royalty income from a mining project is directed back to local or regional level governments; or in other cases, commodity producers contribute a portion of mineral revenues or profits to local community foundations or development funds. In each of these cases, a local dialogue process can be instrumental in developing a more strategic approach to deployment of these funds, by:

- Developing or enhancing regional and local economic development plans;
- Identifying ways in which company-funded infrastructure (e.g. roads, railroads, power plants, electric transmission lines, ports) can be leveraged for other industries and users;
- Building sustainable regional and local supply chains and company programmes to seed small and medium enterprises in communities surrounding an operation;
- Developing strategic planning capacities among regional and local governments and civil society.

With respect to corporate social investments (e.g. schools, medical clinics), a local dialogue platform can act as the "nagging voice" that points out the ongoing recurrent costs of donated facilities and forces all parties to define long-term sustainability strategies for services and facilities once the mining operations have closed. If there is consensus that such facilities will add long-term value to the community, governments may choose to earmark a portion of their tax and/or royalty income from the mining operation to provide post-closure support.

1.1 Measuring baseline perceptions

During the RMDI consultations, it was repeatedly emphasized that among all stakeholder groups involved in the mining sector, an insufficient understanding of the perceptions of other stakeholders regarding the potential "value" to be derived from mineral development often exists, as well as a misalignment of expectations regarding the nature, scope and timing of both the benefits and costs of mining projects.

To address this challenge, the RMDI focused in 2012 on developing a tool for measuring and understanding the perspectives of various stakeholder groups on the value of mineral resource development, both positive and negative, and current and future. This tool, called the Mineral Value Management Tool, was developed in collaboration with the Boston Consulting Group and explores perceptions of value along seven dimensions:

- Fiscal and regulatory environments, including tax and royalty regimes and revenue management practices;
- Employment and skill development;
- Environmental and biodiversity impacts;
- Socio-economic and cultural impacts;
- Infrastructure development;
- Beneficiation and downstream industries;
- Procurement and local supply chain development.

The tool will test perceptions about both positive and negative drivers of value in each of these dimensions, as well as both direct and indirect or multiplier impacts. It will also consider a variety of structural and enabling factors that can enhance or restrict the creation of value in each dimension, including the inherent nature of a country's mineral resource base, its current stage of economic development and the maturity of its minerals industry, the level of governmental capacity and institutional development, and the existing level of trust and collaboration among stakeholder groups.

The Mineral Value Management Tool was unveiled at the World Economic Forum on Latin America in April 2013, and members of the initiative will pilot the tool in Peru and other countries as part of multistakeholder dialogue processes during 2013. The intent is to make the tool available to any interested group of stakeholders engaged in or intending to start a dialogue process.

1.2 Assessing mining's socio-economic contributions and impacts

Another key starting point for an effective dialogue process is providing participants with an objective analytical framework to assess the mining sector's likely economic and social contributions and impacts at local, regional and national levels and its interaction with existing government structures. The objective is to establish, in partnership with key stakeholders, an objective evidence base on socio-economic conditions and on the potential socio-economic contributions and impacts of the mining sector through an agreed, rigorous and collaborative methodology.

The International Council on Mining and Metals (ICMM) has developed a toolkit to conduct such a collaborative assessment. Its Mining: Partnerships for Development (MPD) Toolkit, now in its third version, provides companies, development agencies and other stakeholders in mining countries with a template for the development of such an evidence base, and to use that evidence to identify issues, policies and practices that could maximize benefits for local communities and countries as a whole. The toolkit encourages partnerships in six areas: (i) linking mining to poverty reduction, (ii) revenue management, (iii) regional development planning, (iv) local content, (v) social investment, and (vi) dispute resolution. This type of collaborative action can help combat the capacity limitations of stakeholders, while enhancing understanding of the issues, policies and practices that may be helping or preventing host communities, regions or the country from benefiting more fully from mining. Stakeholders can debate the draft assessment of the positive and negative economic and social effects of mining at in-country workshops that structure discussion and build specific partnership-based action plans. The common analytical framework it provides allows for impacts to be measured as development progresses, and helps to ensure that comparisons can be made of mining's contributions and impacts across different countries or regions within a country.

Since 2006, the toolkit has been applied in nine countries, and implementation in a 10th country, Brazil, is currently underway.

2. The overarching need for transparency

The RMDI has strongly endorsed the need for transparent processes and arrangements in all countries where mineral development is a major contributor to economic development. After all, how can an effective dialogue about mineral development take root in a country if most of the development projects in that country are governed by secret agreements and opaque tax and royalty structures?

During the RMDI process, civil society representatives expressed a strong view that all mineral development agreements and ancillary arrangements should be published and made available to interested stakeholders in accessible ways. Indeed, in many countries, these types of agreements are being publicly disseminated prior to presentation at a parliament or other legislative body. In this way, trust is built among all stakeholders that there are no illegal arrangements in place relating to a specific mineral development project or its owners.

In addition, many stakeholders feel that, in light of the US Dodd-Frank legislation and similar initiatives around the world, all tax and revenue data related to mineral development projects should be published on a disaggregated, project-by-project basis (although it is acknowledged that there are complex accounting issues involved, particularly where production from a single mine is routed to multiple processing facilities, or where a beneficiation plant receives mineral feed stocks from multiple mines). With respect to governments, the RMDI highlighted the Extractive Industries Transparency Initiative (EITI), which supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining.

Box 17: EITI and Ghana

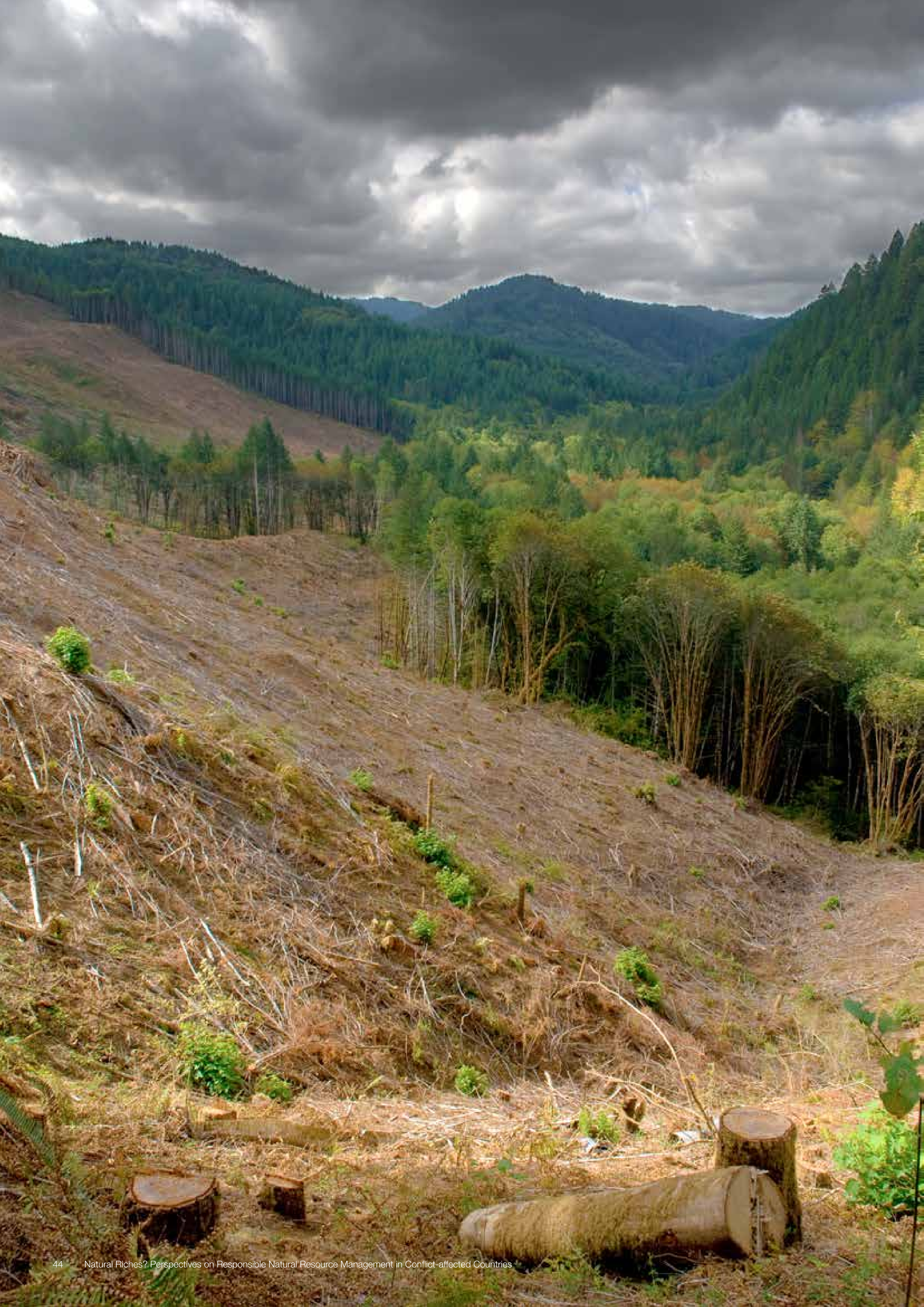
In Ghana, implementation has gone beyond EITI minimum requirements by supplying tax and royalty payment disclosure on a disaggregated, project-by-project basis. The premise behind the EITI is that, armed with actual data about how much revenue governments are receiving from taxes and royalties in the natural resources sector, NGOs, donor organizations and citizens at large can become more effective in demanding accountability from governments with respect to the distribution and use of those funds.

Governments should also encourage the private sector (both local companies and multinationals doing business in a country) to adopt and promote transparency and good corporate governance practices, and should identify and reward those companies that exhibit leadership in this area.

Transparency and accountability can also be enhanced through tools such as social impact audits, a free and responsible press, and providing access to information. Spatial technologies (such as geographic information systems, global positioning systems, Google maps) and social networks are particularly useful in addressing the need for transparency and the challenge of building trust.

Conclusion

This summary of three years of consultation and research conducted by the RMDI is outlined in more detail in three separate reports: *Research Report: Stakeholder Perceptions and Suggestions - Responsible Mineral Development Initiative 2010*, World Economic Forum, World Bank Institute and Australia's Commonwealth Scientific & Industrial Research Organization (which was released in January 2011 and describes Phase I of the initiative);[58] *Responsible Mineral Development Initiative: A Framework for Advancing Responsible Mineral Development*, World Economic Forum and Boston Consulting Group (which was released in February 2012 and describes Phase II of the initiative);[59] and *Responsible Mineral Development Initiative - Mineral Value Management*, World Economic Forum and Boston Consulting Group.[60]



9. Community Engagement and Environmental Management

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Political and economic shifts create a range of opportunities for developing countries in a state of transition. Restrictions to doing business, both international and domestic, are often relaxed, economic and financial reforms can oil the wheels of commerce, and the comparative advantages present within the country regularly take on new value. When such shifts occur in countries with advantageous locations, strong resource endowments and high ceilings for growth, these countries can rapidly attract new investment opportunities and attention from international public and private sector actors alike.[61]

Unsurprisingly, however, such bourgeoning opportunities bring attendant challenges. Extractive industries that can meet the needs of resource-hungry export markets typically receive disproportionate attention as developing states become greater players in international economic systems.[62] While such industries provide a potentially strong source of capital, they bring about a litany of possible social and environmental costs, many of which play out at community levels.

Community-level engagement is essential for responsible resource development. This chapter offers Principles to guide resource development projects in ways that bring relevant communities into the fray and presents some essential characteristics of effective community engagement within multiple contexts. It concludes by exploring recent policies in Myanmar that speak to community engagement on resource development.

Principles for Community Engagement

The importance of community engagement in natural resource management is essential to achieving sustainable and responsible development. Clear values and principles are needed to guide community engagement strategies on resource development. Inclusive development principles based on greater participation of the people in decision-making and resource management, accountability and transparency, and environmental protection offer pathways to avoid the pitfalls of resource extraction. Table 3 presents some key elements of such approaches.

Table 3: Key Values and Principles for Responsible Community Engagement

Values and principles	Application
Participation and consensus-building	Acknowledge that he involvement of both men and women in decision-making processes is critical to success; both through direct participation and legitimate representative institutions taking multiple stakeholders' perspectives into consideration.
Equity, respect and inclusiveness	Ensure that all stakeholders are engaged, with particular effort made to engage marginalized communities and ensure respect for different opinions.
Fair and accessible legal frameworks	Implement an impartial and enforceable regulatory regime that protects minorities in order to avoid the dominance of majority groups.
Transparency	Ensure that decisions can be traced – who made them, when and how.
Effective, efficient and responsive	Develop the ability of institutions and processes to react in a timely fashion and use available resources in best possible way.
Accountability	Acquire the means to hold decision-makers to their words and deeds. Accountability goes hand-in-hand with transparency and an effective regulatory regime.
Courage to shift the status-quo	Accept that the aim of whole-of-community engagement is to make a difference. Recognize things need to change, and people need to learn new skills and new ways to move forward.

Source: Adapted from Caballero-Anthony and Cook (2013)

Around the world, cases abound in which the absence of a meaningful community engagement strategy has affected the viability of the natural resource exploitation project. Recognizing and implementing principles of participation and consensus-building, equity, respect and inclusiveness, justice, transparency, efficiency, and accountability will help promote inclusive and efficient strategies to ensure a whole-of-society approach to development. These principles focus on processes rather than outcomes, ensuring that stakeholders are engaged and have ownership over the direction of processes that affect them.

Newly engaged stakeholders will neither replace experts nor marginalize other stakeholders, but will rather be called upon to make honest contributions, influence decisions and see their inputs in the decisions made.[64] This is particularly germane to cases in which local communities and national governments have different visions and priorities concerning the exploitation of proximate natural resources. Furthermore, it is necessary to recognize structural constraints by engaging those marginalized *within* communities as well, such as women and young people. Such inclusive approaches can mitigate and pre-empt grievances within local communities over resource extraction policies and perceptions of inadequate transparency and accountability.

Careful analyses of decision-making processes can reveal who uses, has access to and controls the natural resources and who benefits from their development. By addressing these core questions within communities, policies can identify opportunities and constraints for individuals and groups seeking secure livelihoods and human security. Among the most prevalent constraints faced by communities near natural resource stocks are the capacities of the communities and local governments to ensure sustainable practices, resolve conflicts and promote economic gains for their people. Community engagement principles offer tested pathways to improve such capacities.

Indeed, the core principles outlined in table 3 above have been codified and implemented in several instances by both state and non-state actors. For example, the OECD provides guidelines for multinational enterprises which include a commitment to "engage with relevant stakeholders in order to provide meaningful opportunities for the views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact local communities."[65]

Such guidelines are particularly important given that the development of natural resources is oftentimes carried out by businesses. Particularly in underdeveloped areas where there are poor, deprived or marginalized communities, investors run the risk of becoming entangled in problematic business-community relationships. Introducing principles that will help such communities move out of poverty and deprivation is good for the companies and makes business environments safer. As such, profiling affected communities is a key component in planning and understanding the needs of local communities. It is likewise essential to ensure that local communities have a stake in decision-making processes, and that such processes are participatory in nature throughout the lifespan of development projects.

Transparency is particularly important throughout such engagement efforts, and here again there are useful precedents for guiding principles. While the OECD has designed guidelines for multinational enterprises, individual business sectors have also voluntarily developed strategies that recognize responsible community engagement principles and the need for transparent processes.[66] These efforts create opportunities for frank and open discussions between private investors and affected people, and foster public-private dialogues that effectively promote extractive industry transparency on behalf of the state.

In addition to the promotion and implementation of transparent, inclusive and effective decision-making processes, it is also necessary to establish dispute-resolution mechanisms to address grievances that arise during the lifespan of a particular development project. An effective mechanism to handle complaints is central to redressing the objections of local communities affected by development projects. The absence of such mechanisms has resulted in the accumulation of grievances exploding into mass protests, recriminations and instability.

The development of inclusive and transparent decision-making processes, along with appropriate dispute resolution mechanisms, will improve the durability of regulatory regimes and lead to greater project stability and community satisfaction. The accurate identification and engagement of stakeholders will provide fertile ground for the dual goals of poverty alleviation and sustainable economic development; familiar ambitions for all transitioning developing countries.

Myanmar's Efforts towards more Responsible Development Policies

While principles provide the foundation for community engagement, policies are needed to ensure that it comes to fruition. Myanmar has made strides to this end since the beginning of the country's lauded political reform process, and these strides have a number of earmarks.

Community profiling

On 14 December 2012, a project to conduct a census of population and housing in 2014 was launched by the Myanmar Ministry of Immigration and Population and the United Nations Population Fund. The successful completion and comprehensive publication of a universal census in Myanmar is a key component in planning and understanding the needs of local communities. It is also a central element of responsible development efforts to ensure that local communities have a stake in decision-making processes, and that such processes are participatory in nature throughout the lifespan of development projects.

Inclusive foreign investment law

On 1 November 2012, Myanmar's Parliament passed amendments to the Foreign Investment Law. The stated objectives of the new legislation include natural resource exploitation, infrastructure development, human resource development, job creation, educational development.[67] While it clearly retains a growth focus, the law is in many ways a departure from previous resource management legislation. Its language has far more provisions for environmental and social considerations than its predecessors and lists "environmental conservation" among its key objectives.[68] The law also restricts and prohibits any activities that would adversely affect public health or the environment or that would involve bringing hazardous or toxic waste material into Myanmar. Given that adverse environmental impacts of development projects contributed significantly to community-level grievances, this new investment regulation offers opportunities to mitigate some negative outcomes of the countries development drive.

Promoting transparency and accountability

Another sign of Myanmar's commitment to improve its resource governance is its openness to adopting global standards. Myanmar announced plans in July 2012 to sign onto the Extractive Industries Transparency Initiative (EITI) to improve resource revenue transparency in its rich oil, gas and mining sectors.[69] The EITI is the most widely used global standard for revenue transparency and has been adopted by 36 countries. EITI Principles encourage the use of revenue wealth for sustainable growth; public understanding and participation; greater financial transparency, management and accountability; and government accountability for extractive industry revenue streams and expenditures. The criteria for meeting these principles include the regular publication of extractive industry revenues received by governments; independent auditing of revenues and budgets; and the active engagement of civil society.[70] The initiative has enjoyed vocal support from both President Thein Sein and the Minister of Industry SoeThein.[71]

Institutionalizing environmental impact assessments

Recent foreign investment legislation pays greater attention to the need to mitigate the adverse environmental impacts of large-scale development projects. Effective environmental impact assessments (EIAs) can provide useful tools for this purpose. EIAs are processes for "identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made."[72]

Protests over the expansion of Letpadaung copper mine in September 2012 and the derailing of the Myitsone dam project in September 2011 highlight the urgency of incorporating EIAs, currently not mandatory, into Myanmar's legal framework.[73] The country needs to ensure independent and transparent EIAs for potentially disruptive projects, and the approval of such projects should be contingent upon acceptable outcomes.

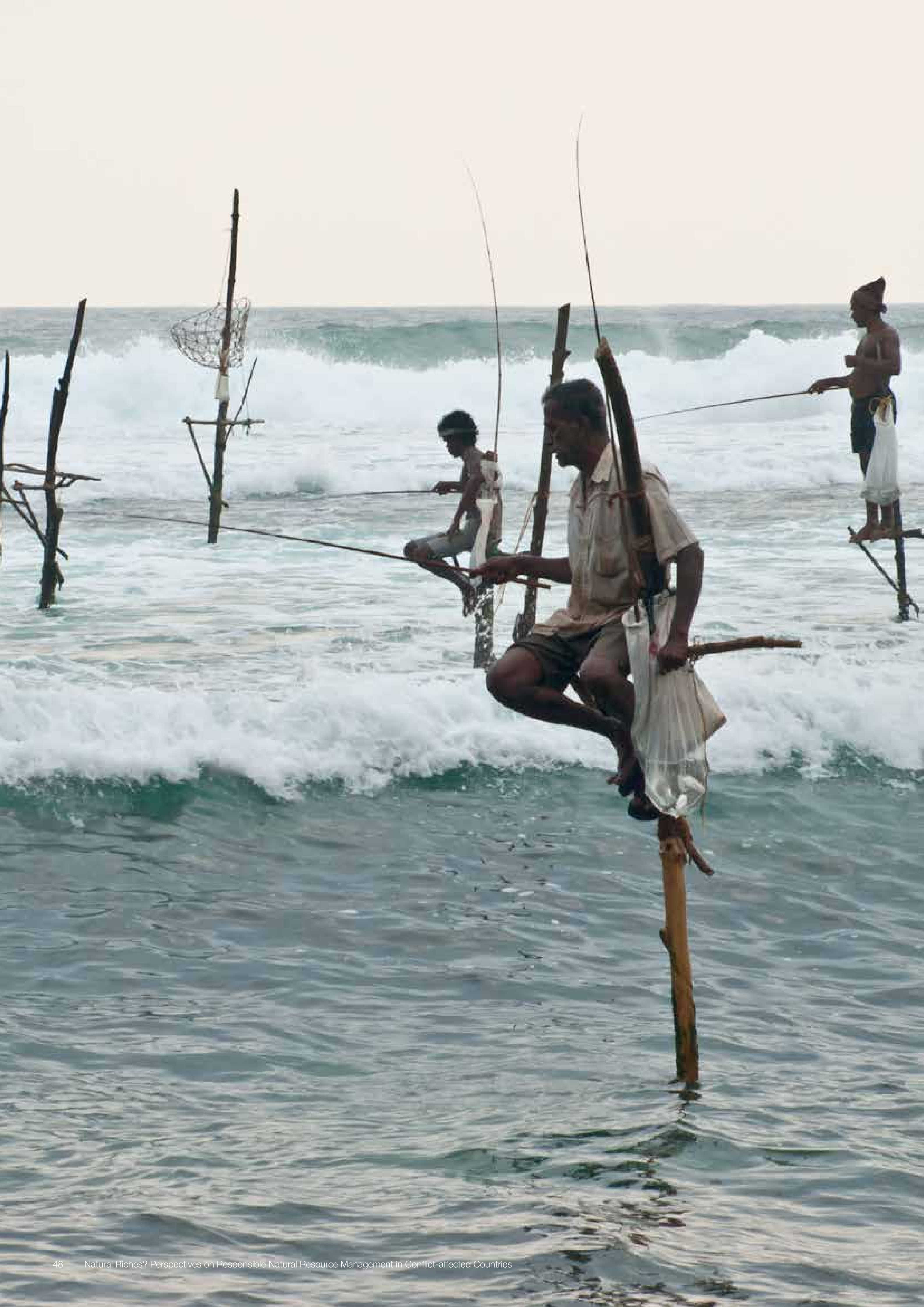
Establishing a dispute-handling mechanism

In November 2012, Myanmar's parliament approved a motion to form an independent, national-level commission to investigate allegations of heavy-handed military responses to the Letpadaung copper mine protests.[74] The motion called for the commission to investigate the expansion of the mines at Letpadaung, as well as existing mines at Sabetaung and Kyisintaung. The findings were made public in mid-March 2013. While this is an important step towards addressing the affected community's grievances, it was reactive in nature. Preventing a recurrence of such incidents requires a mechanism to handle complaints which could help pre-empt potential conflicts between communities, security agents and foreign companies.

Conclusion

Ongoing political and economic reforms in Myanmar offer a pathway to improve the daily lives of the country's population. If beneficial changes are to endure, however, internally coherent legal and procedural frameworks that are consistent with tested principles and facilitate the implementation of reforms are essential. Strengthening social, economic and civil rights within the country requires policies and actions that educate people about their rights and offer practical assistance to those whose rights have been breached.

In short, government plans and principles on managing land and resources in the public interest need further codification along with fair and effective implementation. This necessitates broad popular consultation and buy-in from people, communities, local authorities, central government officials, and private sector actors. Outside of Myanmar's borders, regional and international organizations can help provide principles for this codification process, as well as its future application. Private sector actors, meanwhile, can provide socially and environmentally attractive projects that may gain support from Myanmar's increasingly wary populace. Taken together, such community-focused approaches will go far towards ensuring that Myanmar takes responsible advantage of its natural endowment, rather than fall victim to it.



10. Stimulating Broader Social and Economic Development from Natural Resources

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Context

Countries often come to the conclusion that their economy's dependence on raw materials is its key chronic weakness. Recognizing this, many resource-rich states have called for the modernization of their societies and economies. Few have managed to succeed in this transformation so far. Often, the natural resource abundance has increased volatility and distorted the economic structure. This situation is avoidable. Not only can the resource extraction industry provide resources for diversification and modernization, its operations may and should become a driver for modernization per se, and future economic prosperity.

Indeed, revenues generated from resource extraction can distort both the local economy and the political processes of host countries. However, natural resources are currently an irreplaceable source of wealth; natural resource revenues, properly managed, can break the cycle of poverty and kick-start a country on the path to sustainable economic growth. The aspiration is that technical expertise and the capital that are invested in the extraction of natural resources ultimately would become a source of shared prosperity for all stakeholders industry, host countries and their communities.

Box 18: Defining Local Content

The term "local content" typically refers to the value added through the procurement of local goods and services and local workforce development.

The definition of "local" can vary by region and industry. A narrow understanding of "local" is frequently used in operations where the majority of employment and procurement is done in-country. In this case, "local" tends to refer to the immediate vicinity of an operation. "Local" content often refers to any in-country expenditure. The terms "local" and "national" content are used interchangeably, especially in regulatory or contractual provisions.

Determining what qualifies as "local" content with respect to procurement has been debated extensively. In some cases, it equates to supplies by a locally owned business with local capital invested, while in others it is by any business that maintains a permanent operational presence in the country.

The challenges, however, should not be underestimated. The extractive industry is often a high-risk but potentially high-return activity, and there is a danger of creating unrealistic expectations. During the development and construction phases, the industry is very capital intensive, but the number of direct jobs created is relatively small, particularly for unskilled workers. When production is finally achieved, the use of and benefits accruing from the revenues generated may appear inequitable or opaque to many stakeholders.

Considerations on Relevance to Conflict-affected Countries

Governments wishing to usher sustained high growth rates that are driven by the non-resource extraction sector have to rely on a number of complementary policies and instruments, including:

- Sound policy to ensure macroeconomic stability;
- Structural reforms aimed at increasing the supply responsiveness of the economy;
- Diversification strategy;
- Industrial policy, which may use local content requirements as one of its core instruments.

Governments can act in specific ways to maximize the spill-over effects of large-scale natural resource developments. Macroeconomic strategies that foster a favourable investment climate could stimulate social and economic development through stronger linkages between natural resources and the rest of the economy. These include instruments for adequate taxation of resource wealth, prudent but sustainable fiscal positions, stabilization instruments, monetary policy that provides price stability, and a flexible, market-based exchange rate policy. Further, improvement of infrastructure and human development can be achieved through the removal of structural impediments in key areas such as education, technical training and infrastructure, the regulation of which are also to be aligned with industrial requirements and standards.

Box 19: Developing Local Capacity – BP

The BP Enterprise Center in Azerbaijan (funded by BP and the co-venture partners) began as a way to develop local capacity to deliver goods and services to the oil and gas industry. The programme was targeted at the development of small- and medium-sized enterprises (SMEs), which provide broad opportunities for increased employment and investment. BP recognized that it was not sufficient just to provide training to build capacity, but that participating companies required in-depth support in business development, marketing, sales, quality control, health, safety and environment, and in key technical areas. A process of developing these skills was set-up and linked to the expected purchases by the oil and gas industry so that upon completion companies would be able to compete for specific new business.

Over 80 different sectors, such as fabrication, catering, information technology services, engineering, laboratories, and non-destructive training, were analysed and developed over the 2007-2012 timeframe. Companies that participated in the programme garnered US$ 184 million in new contracts, 25% of which were outside of the oil and gas sector. This spill-over effect is important as it demonstrates that participation in the programme allowed companies to achieve the requirements of demanding domestic and international buyers, which supported manufacturing and service sector diversification.

To benefit from the investment and resource revenue flows, as well as from technological and organizational innovation associated with their extraction, a resource-dependent country can:

- Adopt a responsible macroeconomic policy to ensure macro stability;
- Pursue structural reforms with a special emphasis on human capital development, infrastructure and improvements in the investment climate (reducing costs of doing business, making the country an attractive place for private investments);
- Facilitate private investment by instilling greater confidence among the business community and boost foreign direct investment as well as remittances from nationals living abroad;
- Adopt an industrial policy that uses national resource wealth to diversify out of the resource sector by conducting an efficient policy of public investments and promoting partnerships with private investors to build new industries;
- Foster joint ventures with major foreign companies to develop natural resources and include provisions for the acceleration of local social and economic development, such as local content requirements, in the regulatory frameworks;
- Reduce barriers to the development and participation of domestic industries in the supply-chains of multinational corporations, not only in-country but also internationally, and recognize the importance of spill-over effects and transgression into other non-natural resources sectors;
- Use best practices in supplier and enterprise development, capacity building instruments such as enterprise centres, and the training and qualification elements of the foreign companies' cadre to upgrade local capabilities in business strategy, project management, supply chain management and outsourcing of R&D through the support of national technical, vocational and educational training initiatives and agendas;
- Expand the impact of local content requirements through intra-sectoral, cross-sectoral and spatial linkages by strengthening cooperation and collaboration with planning institutions, universities, research centres and relevant service providers worldwide.

A successful local content policy on its own will not be sufficient to generate sustainable wealth generation and further social and economic development in a country. Thus, due regard must be paid to how a policy to enhance local content within the extractive industry can impact non-extractive sectors of the economy. Furthermore, capacity building to increase local content should be considered as a means to enhance private-sector development in general, which implies giving priority to capacity building in areas with potential large positive spill-overs to non-extractives sectors and infrastructure investments that enable business development in general.

Fostering a Wider Opportunity

Local content requirements play an important role generally in the contract strategies of multinational companies in the natural resources sector. The extractive industry can positively support the development of local content requirements aimed at establishing robust legislation and strong joint public-private initiatives to build local capacity and in cooperation with all levels of local and national government. Local content requirements require careful calibration due to the likely rise in the industry's supply chain costs and the costs involved with managing local content. Taxes spent on local development could well balance modest local content requirements. Industry can extend the impact of local content through supplier development and capacity building initiatives to a wider range of services and goods. Potential spill-over effects through vocational training and support to other sectors, such as agro-industry, are most significant. With local content requirements properly reflected in host-country agreements and regulatory frameworks – and as such properly incentivized – local content activities and applications can be encouraged to carry across industries and expand to related sectors (e. g. into wider services, manufacturing and tourism).

The multiplier effect of higher standards, entrepreneurial networks and business-to-business relationships can accelerate economic and social development beyond the natural resources sector. Lasting improvements in quality, productivity and governance can serve as a magnet to attract other goods and services, foreign direct investment and human capital. Growing a country's private sector is the only sustainable way to build a dynamic economy that benefits the lives of local people. In partnership with a wide range of national stakeholders, industry can assist in building the right environment to facilitate local and international investment, thereby creating jobs and building a more diversified economy.

On the regulatory side, however, fostering local content for wider social and economic development requires careful assessment of the overall development strategy (i.e. beyond natural resources) to identify potential obstructions that might undermine developmental opportunities with a special emphasis on a regulatory framework to assess in a comprehensive way its impact on the incentives of private investors, domestic and foreign, to invest, expand employment and cooperate with government and other stakeholders.

Creating an enabling framework for the diversification of local content into other industries can be further advanced through enhanced standards for education and training, while the strengthening of governmental institutions can be supported by capacity building efforts, with attention focusing on nurturing administrative and regulatory systems in coordination with the private sector and non-government entities. Most important is enhancing the capabilities of government personnel at all levels, especially those that are involved in natural resources development and public finance management.

A Strong Local Content Operating Model

Local content operating models are focused on identifying opportunities for the expansion of local content at the earliest possible stage in the extractive industry's activities. Local content often is mandated as part of procurement and employment strategies and is a critical element of operators' contracts with their international suppliers. Industry also seeks to engage with in-country stakeholders to develop country-specific plans for local content development. This helps to manage expectations regarding opportunities that would become available, develop practical and realistic plans, and gain support and form collaborative relationships to implement such plans. Local content country plans normally include the appraisal, development and registration of potential local suppliers; the identification of potential partners among international companies; and the establishment of enterprise development initiatives.

Box 20: Oil and Gas Industry Employment in Norway

Based on research conducted by the Norwegian Oil Association published in 2005, companies that deliver goods and services to the Norwegian offshore employed 43,800 people, versus the 16,700 that are employed by oil companies. Further, a total of 5.4% of employees in Norwegian business and industry are employed within offshore activities. With ripple effects and indirect employment, more than 220,000 people are employed in the oil and gas industry.[75]

Many governments have made requirements for local content a critical component of their industrial policy and regulatory frameworks. Depending on how such frameworks are structured, they may impose limits on the creation, growth and development of new local enterprises and hence restrict opportunities for social and economic development. The prevailing regulatory environment influences the feasibility of implementing a local content strategy, its outreach and overall sustainability.

Box 21: Sourcing Local Content   BP

According to BP's sustainability reports, over the period from 2005 to 2011, BP Azerbaijan doubled its local purchases of goods and services from US$ 350 million to almost US$ 700 million, and increased the real percentage of local purchases from 6% to almost 60% of BP's total in-country spending. This was driven by increased investments by both the government and private sector in business capabilities as well as human resource development.

This development has allowed private firms to expand beyond supplying the oil and gas sector and has led to increase exports of goods and services to the region.

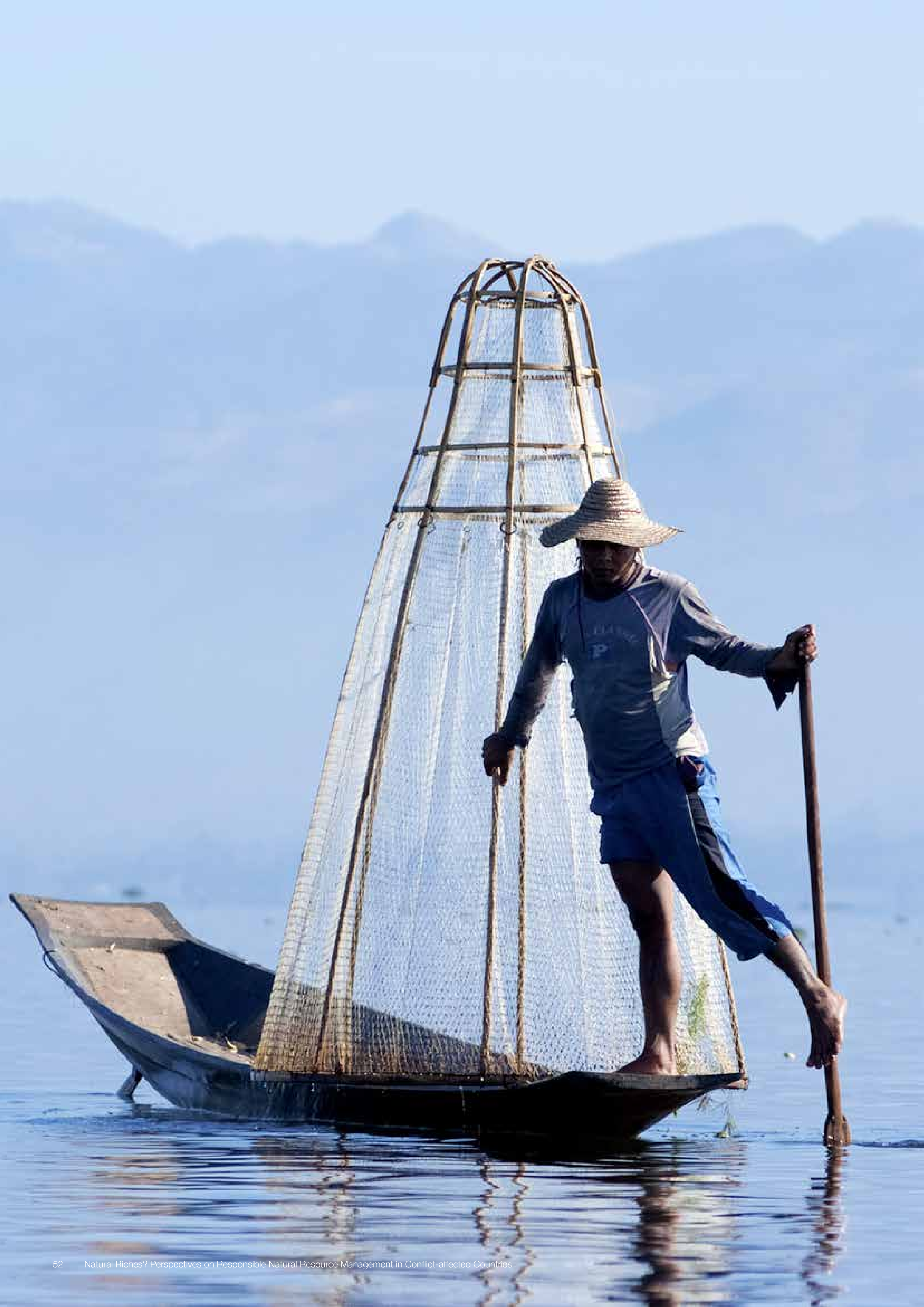
Transparency about the way contracts are awarded and about how to win business with the natural resources industry is very important to building an open and competitive segment of local suppliers. Often the industry supports higher transparency standards by working collectively with governments, trade bodies and NGOs in the design of model contract strategies and disclosure standards. Industry also hosts supplier forums, and provides training prior to tender processes and bidding.

Local content programmes are inevitably delivered in collaboration with national stakeholders, who play a key role in the process of its mainstreaming. A range of organizations, in addition to national and local governments, have a direct interest in local content expansion. By collaborating and coordinating with them, industry and regulators can identify those that are the most useful and relevant, for example as policy advocates, potential partners in delivery of educational services, etc.

Conditions and objectives with regard to local content requirements and local capacity building should be formulated in a clear, realistic and transparent way and integrated into the licenses which the natural resources companies are awarded. Regulators should then have the authority to monitor the performance of the companies with regard to local capacity building, and to let good performance in this respect be one factor to be rewarded when new licenses are awarded, or when it is a matter of extending old ones. Performance indicators and sanctions for non-compliance should be realistic and reasonably flexible. Civil society's involvement in monitoring may be helpful as a tool to expand public support for sector activities.

Local policy content could be usefully complimented by adequate levels of public funding of local services and infrastructure projects in the areas of natural resource development. This also suggests that attention has to be given to inter-government fiscal arrangements that would provide adequate funding for local governments in extractives industry areas.

The best path to succeed with a policy to enhance local content is for all stakeholders to stay focused on and dedicated to capacity building in local firms and in people. Capacity is something that is created through training, practice and knowledge transfer, and capacity building requires dedicated and committed engagement from the political and civil service side at the national and local levels, from natural resources companies and supply and service providers, and from industry associations, planning boards, institutions for vocational training, universities and NGOs.



11. Conclusion: The Road Ahead

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A country with natural resources faces the hardest choices. Properly managed, such resources can power development and a better life for all. But without openness, strong institutions and meaningful safeguards, many developing countries have found that the exploitation of natural resources has left communities poorer and more vulnerable than ever.

The information presented here points to many important elements and supporting resources that can foster responsible natural resource management. There is no one-size-fits all approach; each country and society must design a bespoke approach to ensure their natural riches drive development.

Although all stakeholders agree that natural resources present a developing country with out-sized opportunities and out-sized risks, there is no unanimity of on how to operationalize responsibility. There are areas of convergence on which government, communities, investors and others largely agree. Many of these have been captured here, or have been referred to in ways that will allow stakeholders to dig deeper. But some issues around natural resource exploitation involve differences of perspective that can only be managed in the political space. The premium, therefore, must be on the development of a political space that allows for healthy competition among contending views.

A do-no-harm approach, which balances opportunities with risks, can be designed for each country. Such an approach must consider broader developmental objectives, engage with international standards and practice, ground itself in transparency and a sound legal framework, be supported by and therefore support sound institutions. This approach should address security and human rights; it must leverage dialogue as a social process, and enable broader social and economic development.

Myanmar's opening up to foreign investors presents great opportunities for the country to maximize its economic potential, bring increased wealth to the population, promote long-term stability, and reduce the risks associated with extraction, including armed conflict. Myanmar is a country "coming in from the cold" after decades of political isolation. It has opportunities to capitalize both on its fabulous natural resource wealth and reengagement with the global community. Like other countries in similar positions, it also faces risks associated with the misuse of its resources, which experience shows can cripple the most noble of aspirations.

The way forward must take into account that there are inter-dependent agendas for resource sector management, peacemaking and peacebuilding in fragile contexts such as Myanmar. This consciousness must acknowledge the political economy of conflict, and focus more deeply on inclusion through the multiplication of spaces for peacemaking and peacebuilding related to resource management. Further, a focus on consensus rather than consultation as the basis for decision-making where government is building legitimacy and capacity may strengthen the agenda for reforms that this publication recommends.

Indeed, early indications of reform in Myanmar, as evidenced by engagement with EITI, are promising. The country will undoubtedly require extensive assistance in encompassing international best-practice natural resource governance standards, especially since these in themselves are relatively new and challenge even the world's most developed nations. Strong partnerships and collaboration between government, business, civil society and academia will need to nurture and support the construction of a responsible natural resource management architecture in Myanmar.

The Network of Global Agenda Councils offers its support and expertise to all actors in Myanmar who wish to continue this conversation and deepen the debate on the way forward. Together, through dialogue and collaboration, Myanmar's great natural riches can be harnessed for peace, stability and prosperity.

Annex: Overview of Stages, Issues and Key Guidelines Relevant for Governments

Guidance and Tasks for the Different Stages of Natural Resource Development			
Strategic impact assessment/ prioritizing/zoning		Commercial Evaluation/potential impact assessment/ exploration	Establishment and management of operations
Project phase	**Planning &exploration**	**Pre/feasibility**	**Construction**
Key issues	- Assessing strategic social and environmental risk - Sustainability - Stakeholder engagement - Local communities and information access - Free, prior informed consent - Addressing gaps in national governance - Overall development context	- Protecting land and water rights, traditional uses, cultural resources, etc. - Conflict prevention and peacebuilding opportunities - Getting free, prior informed consent - Establishing grievance mechanisms and multistakeholder processes - Evaluating impact of project on sustainable livelihoods	- Transparency about activities and impact on communities and region - Establishing community participation and grievance mechanisms - Economic provisions - Security - Environmental safeguards - Land and water rights - Social package - Heritage issues and other area-specific risks
Relevant guidelines and standards	- IFC *Sustainability Framework* - Prospectors and Developers Association of Canada, World Vision Canada, and The Corporate Engagement Program - CDA Collaborative Learning - Projects Preventing *Conflict in Exploration: A Toolkit for Explorers and Developers* - International Alert – Conflict Sensitive Business Practices: Guidance for Extractive Industries - UN-EU Partnership on Natural Resources, Conflict and Peacebuilding	- OECD *Guidelines for Multinational Enterprises* - UN Human Rights Council, Principles for responsible contracts - Global Witness contracting examples - Extractives Industry Transparency Initiative - IFC *Sustainability Framework*	- Global Reporting Initiative - UN *Guiding Principles on Business and Human Rights* - Voluntary Principles on Security and Human Rights - Global Witness Do *No Harm – Excluding conflict minerals from the supply chain* - OECD *Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected High- Risk Areas* - Kimberley process - UN Human Rights Council Principles for responsible contracts - IFC *Sustainability Framework*
Public sector roles: **Ministerial level**	- Address gaps in national governance - Understand the overall development context and integrate development needs and plans - Clarify ministerial coordination/ decision-making processes - Carry out due diligence on company track record in HR - Communicate to companies about legal and "voluntary" (corporate social responsibility) obligations	- Ensure environmental safeguards exist - Clarify property rights, procedures for transfer of titles and long-term leasing - Address heritage issues and other area-specific risks - Ensure oversight assessments and monitoring - Reduce macroeconomic dependence and vulnerability	- Establish independent third-party oversight mechanism to ensure compliance with international law and standards - Agree on transparent mechanisms for disclosure of royalty payments and other resources generated by the project - Focus diversification planning on job creation and economic development - Support anti-bribery initiatives
Public sector roles: Local government	- Establish relationship with company reps - Integrate investment with ongoing development regional priorities - Incorporate responsibilities for prevention and mitigation in human rights in contracts with the company	- Establish formal communication channels with company and affected stakeholders - Communicate agreements made with company regarding mitigation mechanisms and agreeing on its funding provisions - Jointly establish HR baselines for the area and impacted communities - Reach formalized agreements with affected communities regarding their rights and compensation - All parties agree to community engagement plan and secure funding	- Play a mediation role in case of conflict with the company communication - Agree upon security arrangements for the project including coordination with public security forces - Include affirmative actions from company for disadvantaged groups

Source: PeaceNexus

		Divestment/ land restoration	Ongoing sustainable development
Operations	**Expansion**	**Closure**	**Post-closure**
- Employment - Environmental impact - Social impact	- Assessing strategic social and environmental risk - Sustainability - Stakeholder engagement - Local communities and information access - Free, prior informed consent - Addressing gaps in national governance - Overall development context	- Employment - Environmental impact - Social impact	- Employment - Environmental impact - Social impact - Ongoing economic development options
- ILO Core Conventions - Global Compact - Social Accountability International SA8000 standard - Global Reporting Initiative - UN *Guiding -Principles on Business and Human Right*s - Voluntary Principles on Security and Human Rights - Dodd-Frank Act - Global Witness *Do No Harm – Excluding conflict minerals from the supply chain* - OECD *Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected High - Risk Areas* - UN Human Rights Council *Principles for responsible contracts*	- Ruggie, John/UN Human Rights Council *Principles for responsible contracts* - IFC *Sustainability Framework*	- IFC *Sustainability Framework* - IFC environmental impact safeguard policies - ICMM guidelines	- IFC *Sustainability Framework* - IFC environmental impact safeguard policies - National country development plans/ poverty reduction strategies, etc.
- Assess capacity and capabilities to monitor compliance effectively at local level and address gaps - Support anti-bribery initiatives	- Ensure expansion of operations meets existing standards - Disclose new terms of expansion's contract - Support anti-bribery initiative	- Establish final land clean-up and restoration - Factor in closure impact in development needs and plans - Clarify ministerial coordination/ decision-making processes - Public investment into the area to counter closure	- Reduce macro-economic dependence and vulnerability
- Ensure company is fulfilling its obligations through ongoing monitoring and community engagement - Focus on jobs and economic development projects	- Gather evidence the company has been meeting its obligations towards affected communities - Give access to an effective non-judicial grievance mechanism to communities that have suffered harm	- Agree with company on key milestones and activities for divestment, land restoration, etc. to ensure company fulfils its obligations - Design alternative livelihood schemes for affected population - Create training programmes and investment schemes	- Identify needs in terms of public investment to communicate to central level - Monitor environmental and social conditions in the area - Monitor sustainable development indicators in the region

Endnotes

1. United Nations Department for Peacekeeping Operations and United Nations Environment Programme, "Environment and Sustainability - Conflict and Resources", available at http://www.un.org/en/peacekeeping/issues/environment/resources.shtml.
2. For a definition and classification of fragile states, see the World Bank Harmonized List of Fragile Situations 2013.
3. See a review of common factors present in fragile or failed states developed by the Global Agenda Council on Fragile States 2011-2012 at http://reports.weforum.org/global-agenda-council-2012/councils/fragile-states/.
4. Members of the Editorial Board are acting in an individual capacity rather than speaking on behalf of the organizations with which they are affiliated.
5. Some of the classic trade-offs are found in literature on Dutch disease (reliance on natural resources affects exchange rates which can impact industrial policy, affect diversification, etc.); see Corden, Max and Peter Neary (1982), "Booming Sector and deindustrialization in a small open economy". *Economic Journal,* 92, December 1982.
6. Examples of sovereign wealth and heritage funds include the Kuwait Investment Authority and the Heritage and Stabilization fund in Trinidad and Tobago.
7. For example, Chad and Nigeria differ from Norway and East Timor in the experiences gained.
8. Kinver, Mark (2008), "Mangrove loss 'put Burma at risk'". BBC, 6 May 2008, available at http://news.bbc.co.uk/2/hi/7385315.stm.
9. Ivory Coast and Cameroon illustrate the problem.
10. UN-REDD is an initiative launched in 2008 by the Food and Agriculture Organization of the United Nations, the United Nations Development Programme and the United Nations Environment Programme to reduce emissions from deforestation and forest degradation in developing countries.
11. This chapter has drawn from research and best practices put forward by the Natural Resources Charter, at http://naturalresourcecharter.org, and the Africa Mining Vision, at http://www.africaminingvision.org.
12. More information on the RMDI is available at http://www.weforum.org/reports/responsible-mineral-development-initiative-2011.
13. Ganson, Brian and Achim Wennmann (2012), *Evidence for an action framework, review of salient trends,* consultancy report to PeaceNexus, December 2012.
14. The principles are adapted from the *Principles for responsible contracts: integrating the management of social risks into State-investor contract negotiations: guidance for negotiators* presented by Professor John Ruggie, Special Representative of the Secretary-General for Business and Human Rights. While focused on social issues, these principles are directly relevant to responsible natural resource management in conflict-prone areas as most of the negative and destabilizing impacts of natural resource management can be traced to social abuses. These principles were developed through a consultative process bringing together civil society experts and negotiators representing business enterprises, states and others directly involved in facilitating and supporting investment projects, such as private and public lending institutions and development organizations. They were endorsed by states in 2011 and have been supported both by business and civil society since then. For the original text, see United Nations A/HRC/17/31/Add.3.
15. The *Guiding Principles on Business and Human Rights* describe both state obligations and business entity responsibilities regarding remedy. See specifically Guiding Principles 25-31.
16. Organisation for Economic Co-operation and Development (OECD) (2008) "Query Wizard for International Development Statistics".
World Trade Organization statistics, 2008.
World Bank figures on official development assistance (ODA).
17. World Trade Organization (2011), *World Trade Statistics*, available at http://www.wto.org/english/res_e/statis_e/its2011_e/its11_world_trade_dev_e.pdf.
18. World Bank, "Net official development assistance received", available at http://data.worldbank.org/indicator/DT.ODA.ODAT.CD.
19. Humphreys M., J.D. Sachs, and J.E. Stiglitz (eds) (2007), *Escaping The Resource Curse*, New York: Columbia University Press.
Collier, P and A. Hoeffler, (2005), "Resource rents, governance, and conflict", *The Journal of Conflict Resolution*, Vol. 49, No. 4.
20. Extractive Industries Transparency Initiative (EITI), available at www.eiti.org.
21. Extractive Industries Transparency Initiative (EITI) (2011), *Extracting data: An overview of EITI Reports published 2005 – 2011*, Oslo: EITI.
22. World Bank Institute (2012), From Deals to Development – Open Contracting in Extractives, available at http://wbi.worldbank.org/wbi/stories/deals-development-%E2%80%93-open-contracting-extractives.
23. Revenue Watch (2009), *Contracts confidential: ending secret deals in the extractive industries*, New York: Revenue Watch.
24. See the Financial Action Task Force at www.fatf-gafi.org.
25. See Earthrights International (2009), *Total Impact: The Human Rights, Environmental and Financial Impacts of Total and Chevron's Yadan Gas Project in Military Ruled Myanmar*, September 2009.
26. United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) and Government of Myanmar (2009), "Economic Policies for Growth and Poverty Reduction", 1st Myanmar Development Partnership Forum, December 2009.
27. Green Economy Green Growth Conference, Nay Pyi Taw, Myanmar, November 2011.
28. As reported in the *New Light of Myanmar*, 18 July 2012.
29. As reported in the *New Light of Myanmar*, 15 December 2012 and on the website of the Office of the President of the Republic of the Union of Myanmar, at http://www.president-office.gov.mm/en.
30. Confidential interview, 25 February 2013.
31. Hughes, Richard (2013), 2nd Myanmar Mining Conference, January 2013.
32. *New Light of Myanmar*, 17January 2013 for onshore and 11 April 2013 for offshore.
33. Confidential industry sources, February 2013.
34. Just one of many examples is that of US company Cobalt Energy, which had been assigned local partners by Angola's state oil company, Sonangol. In March 2011, Cobalt Energy announced that it was the subject of enquiries by the US Department of Justice and the Securities & Exchange Commission into "allegations of a connection between senior Angolan government officials and Nazaki", one of their joint venture partners.
35. Ministry of Agriculture and Irrigation of Myanmar, 30-year Master Plan for the Agriculture Sector (2000-01 to 2030-31).
36. Ibid.
37. Department of Agricultural Planning, Ministry of Agriculture and Irrigation of Myanmar, 2011.
38. See for example, Turrell, Sean (2012), "Myanmar: Asia's next 'tiger'?", *East Asia Forum*, 8 September 2012, available at http://www.eastasiaforum.org/2012/09/08/myanmar-asias-next-tiger/ (last accessed 22 April 2013).
39. Food and Agriculture Organization of the United Nations, Statistics Division (FAOSTAT) (2011), *Myanmar country profile*, FAOSTAT, available at http://faostat.fao.org/CountryProfiles/Country_Profile/Direct.aspx?lang=en&area=28 (last accessed 22 April 2013).
40. Ibid. CIA (2013*), Myanmar Country Factbook*, Central Intelligence Agency, US Government, available at https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html (last accessed 22 April 2013).
41. Information relating to which areas have been targeted for agribusiness investments is compiled from Myanmar government sources: Myanmar Agriculture in Brief (2010) and 2012 statistics from the Myanmar Rubber Planters and Producers Association and the Myanmar Industrial Crops Development Enterprise and the Ministry of Agriculture and Irrigation; Food Security Working Group (2012), *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, November 2012, Food Security Working Group's Land Core Group.
42. Ibid.
Motlagh, J. (2013), "Land-grabbing endures in new Burma", *Washington Post*, 31 January 2013, available at http://articles.washingtonpost.com/2013-01-31/world/36646837_1_Myanmar-fertile-agricultural-lands-new-land-laws (last accessed 22 April 2013).
Karen Human Rights Group (2013), *Losing Ground: land conflicts and collective action in eastern Myanmar*, March 2013 Report Briefer.
43. As estimated by Forest Trends, *Baseline Study 4, Myanmar: Overview of Forest Law Enforcement, Governance and Trade*, available at http://www.forest-trends.org/documents/files/doc_3159.pdf.
44. International Finance Corporation (IFC) (2012), *Performance Standards on Environmental and Social Sustainability*, available at http://www1.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Document.pdf?MOD=AJPERES
45. UN Office of the Commissioner for Human Rights, "New Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council", available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11164.
46. From the US Geological Survey website: "The USGS is a science organization that provides impartial information on the health of our ecosystems and environment, the natural hazards that threaten us, the natural resources we rely on, the impacts of climate and land-use change, and the core science systems that help us provide timely, relevant, and useable information."
47. Detailed feasibility studies require a significant amount of formal engineering work, are accurate to within 10-15%, and can cost between one half to one and a half per cent of the total estimated project cost according to De la Vergne (2000), *Hard Rock Miner's Handbook,* Tempe/North Bay: McIntosh Engineering.
48. For more information see: Ministry of Energy, Mines and Natural Gas of British Colombia, "Mineral Titles Online", at http://www.empr.gov.bc.ca/Titles/MineralTitles/mto/Pages/default.aspx
49. The memorandum of understanding and steering committee were implemented as part of a broader liberalization strategy that involved the 2008 National Mineral Policy and the Mines and Minerals (Development and Regulation) Act of 2010.
50. For a definition and classification of fragile states, see the World Bank Harmonized List of Fragile Situations 2013.
51. See a review of common factors present in fragile or failed states developed by the Global Agenda Council on Fragile States 2011-2012 at http://reports.weforum.org/global-agenda-council-2012/councils/fragile-states.
52. See: North, Douglas C. (1991), "Institutions", *The Journal of Economic Perspectives*, Vol. 5, No. 1 (Winter, 1991), pp. 97-112, published by the American Economic Association, at http://www.edegan.com/pdfs/North%20(1991)%20-%20Institutions.pdf.
53. The Dodd-Frank Wall Street Reform Act requires oil, gas and mining companies listed on US stock exchanges to make full disclosures of payments made to governments in countries where they do business.
54. Bolivia's reputation for inhospitality towards mining companies including actions such as expropriation, as well as the inability to successfully mediate the concerns of indigenous populations, has marred its attractiveness as a place to do business. Serial nationalizations have placed it as 155th out of 183 countries in the World Bank's "Ease of doing business (rank)" in the *Doing Business 2013* report.
55. See: http://www.riotinto.com/documents/ReportsPublications/RT_PolicyandProg.pdf.
56. For example, the Pahtolon oilfield may have 909 billion cubic feet, and possibly as much as 7.16 million barrels of gas condensate, according to national statistics.
57. Australia has played an active role in assisting the government of Myanmar as they create the appropriate regulatory frameworks for a successful mining sector. See McNulty, Lucy, (2012), "Australia to help Myanmar build mining regulatory regime", *International Financial Law Review*, 10 April 2012, at http://www.iflr.com/Article/3008848/Regulatory/Australia-to-help-Myanmar-build-mining-regulatory-regime.html.
58. World Economic Forum, World Bank Institute and Australia's Commonwealth Scientific & Industrial Research Organization (2011), *Research Report: Stakeholder Perceptions and Suggestions Responsible Mineral Development Initiative 2010*, January 2011, available at http://www3.weforum.org/docs/WEF_MM_RMDI_Report_2010.pdf.
59. World Economic Forum and Boston Consulting Group (2012), *Responsible Mineral Development Initiative: A Framework for Advancing Responsible Mineral Development*, available at http://www.weforum.org/reports/framework-advancing-responsible-mineral-development.
60. World Economic Forum and Boston Consulting Group, *Responsible Mineral Development Initiative Mineral Value Management*, available at http://www.weforum.org/reports/responsible-mineral-development-initiative-rmdi-mineral-value-management.
61. In Myanmar, this dynamic is in full swing. See: Barta, Patrick (2012), "Final Frontier: Firms Flock to Newly Opened Myanmar", *Wall Street Journal*, 12 November 2012, available at http://online.wsj.com/article/SB10000872396390443749204578050773460553586.html.
62. Such is the case in Myanmar. See: Bissinger, Jared (2012), Foreign Investment in Myanmar: A Resource Boom but a Development Bust?", *Contemporary Southeast Asia*, 34(1), pp. 23-52.
63. Caballero-Anthony, Mely and Alistair D. B. Cook (2013), "NTS Framework" in *Non-Traditional Security in Asia: Issues, Challenges and Frameworks for Action*, Singapore: ISEAS Publishing.

64. Abelson, Julia and Francois-Pierre Gauvin (2004), *Transparency, Trust and Citizen Engagement: What Canadians Are Saying About Accountability,* Canadian Policy Research Network, December 2004, available at http://www.cprn.org/documents/33621_en.pdf.

65. Organisation for Economic Co-operation and Development (OECD) (2011), *Guidelines for Multinational Enterprises*, available at http://www.oecd.org/daf/inv/mne/48004323.pdf.

66. The forthcoming discussion of the Extractive Industries Transparency Initiative (EITI) provides one example.

67. Melville, Iain G.O. "Details of Myanmar's new foreign investment law", Legal update, *Mayer Brown JSM*, 19 November 2012, available at http://www.mayerbrown.com/Details-of-Myanmars-New-Foreign-Investment-Law-11-19-2012.

68. Ibid.

69. Kelly, Kate (2012), "Burma set to join transparency initiative", *Democratic Voice of Burma*, 18 July 2012, available at http://www.dvb.no/news/burma-set-to-join-transparency-initiative/22942#.UAbLPVl86Gc.twitter.

70. Extractive Industries Transparency Initiative (EITI) (2011), *EITI rules, 2011 edition, including the validation guide*, Oslo: EITI International Secretariat, available at http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf.

71. President Thein Sein declared that the country is preparing to sign the EITI "to ensure that there is maximum transparency" in the oil, gas and mining sectors and "to make sure the benefits go to the vast majority of the people and not to a small group". See: Kelly, Kate (2012), "Burma set to join transparency initiative", *Democratic Voice of Burma*, 18 July 2012, available at http://www.dvb.no/news/burma-set-to-join-transparency-initiative/22942#.UAbLPVl86Gc.twitter.

72. International Association for Impact Assessment (IAIA) and Institute of Environmental Assessment, UK (1999), *Principles of environmental impact assessment: Best practice*, Fargo, ND: IAIA, January 1999, available at http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf.

73. Although China Power Investment, the company building the Myitsone Dam, did fund and publish an environmental impact assessment (EIA) in September 2011, questions were raised about its quality and independence.

74. Soe Than Lyn (2012), "Myanmar parliament approves Letpadaung mine probe", *The Myanmar Times*, 24 November 2012, available at http://www.mmtimes.com/index.php/national-news/3343-myanmar-parliament-approves-letpadaung-mine-probe.html.

75. Center for Corporate Social Responsibility, BI Norwegian Business School, available at http://www.bi.edu/research/research-centres/Center-for-Corporate-Responsibility/CSR-research-at-BI-Norwegian-School-of-Management/

References

Abelson, Julia and Francois-Pierre Gauvin (2004), *Transparency, Trust and Citizen Engagement: What Canadians Are Saying About Accountability*, Canadian Policy Research Network, December 2004, available at http://www.cprn.org/documents/33621_en.pdf.

Africa Mining Vision, available at http://www.africaminingvision.org.

Barta, Patrick (2012), "Final Frontier: Firms Flock to Newly Opened Myanmar", *Wall Street Journal*, 12 November 2012, available at http://online.wsj.com/article/SB10000872396390443749204578050773460553586.html.

Bissinger, Jared (2012), Foreign Investment in Myanmar: A Resource Boom but a Development Bust?", *Contemporary Southeast Asia*, 34(1), pp. 23-52.

BP, "Sustainability – Global Reports", available at http://www.bp.com/sectionbodycopy.do?categoryId=3411&contentId=7081516.

Caballero-Anthony, Mely and Alistair D. B. Cook (2013), "NTS Framework" in *Non-Traditional Security in Asia: Issues, Challenges and Frameworks for Action*, Singapore: ISEAS Publishing.

Center for Corporate Social Responsibility, BI Norwegian Business School, available at http://www.bi.edu/research/research-centres/Center-for-Corporate-Responsibility/CSR-research-at-BI-Norwegian-School-of-Management/.

Central Intelligence Agency (CIA), US Government, (2013*)*, *Myanmar Country Factbook*, available at https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html (last accessed 22 April 2013).

Collier, P and A. Hoeffler, (2005), "Resource rents, governance, and conflict", *The Journal of Conflict Resolution*, Vol. 49, No. 4.

Corden, Max and Peter Neary (1982), "Booming Sector and deindustrialization in a small open economy". *Economic Journal,* 92, December 1982.

De la Vergne (2000), *Hard Rock Miner's Handbook,* Tempe/North Bay: McIntosh Engineering.

Department of Agricultural Planning, Ministry of Agriculture and Irrigation of Myanmar, 2011.

Earthrights International (2009), *Total Impact: The Human Rights, Environmental and Financial Impacts of Total and Chevron's Yadan Gas Project in Military Ruled Myanmar*, September 2009.

Extractive Industries Transparency Initiative (EITI), available at www.eiti.org.

Extractive Industries Transparency Initiative (EITI) (2011), *EITI rules, 2011 edition, including the validation guide*, Oslo: EITI International Secretariat, available at http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf.

Extractive Industries Transparency Initiative (EITI) (2011), *Extracting data: An overview of EITI Reports published 2005 – 2011*, Oslo: EITI.

Financial Action Task Force (FATF), see www.fatf-gafi.org.

Food and Agriculture Organization of the United Nations, Statistics Division (FAOSTAT) (2011), *Myanmar country profile*, FAOSTAT, available at http://faostat.fao.org/CountryProfiles/Country_Profile/Direct.aspx?lang=en&area=28 (last accessed 22 April 2013).

Food Security Working Group (2012), *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, November 2012, Food Security Working Group's Land Core Group.

Forest Trends, *Baseline Study 4, Myanmar: Overview of Forest Law Enforcement, Governance and Trade*, available at: http://www.forest-trends.org/documents/files/doc_3159.pdf

Ganson, Brian and Achim Wennmann (2012), *Evidence for an action framework, review of salient trends,* consultancy report to PeaceNexus, December 2012.

Global Witness (2009), "Dramatic decrease in illegal timber trade between Burma and China but smuggling continues", 21 October 2009, available at http://www.globalwitness.org/library/dramatic-decrease-illegal-timber-trade-between-burma-and-china-smuggling-continues.

Global Witness (2010), *Do No Harm – Excluding conflict minerals from the supply chain*, Global Witness Limited 2010.

Government of Myanmar (2010), *Agriculture in Brief*.

Green Economy Green Growth Conference, Nay Pyi Taw, Myanmar, November 2011.

Hughes, Richard (2013), 2nd Myanmar Mining Conference, January 2013.

Humphreys M., J.D. Sachs, and J.E. Stiglitz (eds) (2007), *Escaping The Resource Curse*, New York: Columbia University Press.

Institute for Human Rights and Business (2012), *Responsible Investment in Myanmar: The Human Rights Dimension*, available at http://www.ihrb.org/pdf/Occasional-Paper-1-Burma-Myanmar-FINAL.pdf

International Alert (2005), *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*, available at *http://www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries*

International Association for Impact Assessment (IAIA) and Institute of Environmental Assessment, UK (1999), *Principles of environmental impact assessment: Best practice*, Fargo, ND: IAIA, January 1999, available at http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf.

International Finance Corporation (IFC) (2012), *IFC Sustainability Framework*, available at http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework.

International Finance Corporation (IFC) (2012), *Performance Standards on Environmental and Social Sustainability*, available at http://www1.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Document.pdf?MOD=AJPERES

International Council on Mining and Metals (ICMM) (2011), *Mining: Partnerships for Development (MPD) Toolkit*, third edition.

Karen Human Rights Group (2013), *Losing Ground: land conflicts and collective action in eastern Myanmar*, March 2013 Report Briefer.

Kelly, Kate (2012), "Burma set to join transparency initiative", *Democratic Voice of Burma*, 18 July 2012, available at http://www.dvb.no/news/burma-set-to-join-transparency-initiative/22942#.UAbLPVl86Gc.twitter.

Kinver, Mark (2008), "Mangrove loss 'put Burma at risk'". BBC, 6 May 2008, available at http://news.bbc.co.uk/2/hi/7385315.stm.

McNulty, Lucy, (2012), "Australia to help Myanmar build mining regulatory regime", *International Financial Law Review*, 10 April 2012, available at http://www.iflr.com/Article/3008848/Regulatory/Australia-to-help-Myanmar-build-mining-regulatory-regime.html).

Melville, Iain G.O. "Details of Myanmar's new foreign investment law", Legal update, *Mayer Brown JSM*, 19 November 2012, available at http://www.mayerbrown.com/Details-of-Myanmars-New-Foreign-Investment-Law-11-19-2012/.

Ministry of Agriculture and Irrigation of Myanmar, 30-year Master Plan for the Agriculture Sector (2000-01 to 2030-31).

Ministry of Agriculture and Irrigation, 2012 statistics.

Ministry of Energy, Mines and Natural Gas of British Colombia, "Mineral Titles Online", available at http://www.empr.gov.bc.ca/Titles/MineralTitles/mto/Pages/default.aspx

Motlagh, J. (2013), "Land-grabbing endures in new Burma", *Washington Post*, 31 January 2013, available at http://articles.washingtonpost.com/2013-01-31/world/36646837_1_Myanmar-fertile-agricultural-lands-new-land-laws (last accessed 22 April 2013).

Myanmar Industrial Crops Development Enterprise, 2012 statistics.

Myanmar Rubber Planters and Producers Association, 2012 statistics.

Natural Resources Charter, available at http://naturalresourcecharter.org.

New Light of Myanmar (2012), "Formation of Extractive Industry Transparency Initiative Leading Authority", Republic of the Union of Myanmar President Office, Notification No 99/2012, 15 December 2012.

New Light of Myanmar (2012), "Perspectives – State-Society Relations", 18 July 2012.

New Light of Myanmar (2013), "Invitation for Bids to Conduct Petroleum Operations in Myanmar Onshore Areas (2013)", The Government of the Republic of the Union of Myanmar Ministry of Energy, 17January 2013.

New Light of Myanmar (2013), "Invitation for Bids to Conduct Petroleum Operations in Myanmar Offshore Areas (2013)", The Government of the Republic of the Union of Myanmar Ministry of Energy, 11 April 2013.

North, Douglas C. (1991), "Institutions", *The Journal of Economic Perspectives*, Vol. 5, No. 1 (Winter, 1991), pp. 97-112, published by the American Economic Association, available at http://www.edegan.com/pdfs/North%20(1991)%20-%20Institutions.pdf.

Office of the President of the Republic of the Union of Myanmar, at http://www.president-office.gov.mm/en.

Organisation for Economic Co-operation and Development (OECD) (2008), "Query Wizard for International Development Statistics".

Organisation for Economic Co-operation and Development (OECD) (2011), *Guidelines for Multinational Enterprises*, available at http://www.oecd.org/daf/inv/mne/48004323.pdf

Organisation for Economic Co-operation and Development (OECD) (2013), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, Second Edition, OECD Publishing.

Prospectors and Developers Association of Canada, World Vision Canada, and The Corporate Engagement Program CDA Collaborative Learning Projects, *Preventing Conflict in Exploration: A Toolkit for Explorers and Developers.*

Revenue Watch (2009), *Contracts confidential: ending secret deals in the extractive industries*, New York: Revenue watch.

Rio Tinto, *Aboriginal policy and programmes in Australia,* available at http://www.riotinto.com/documents/ReportsPublications/RT_PolicyandProg.pdf.

Ruggie, John (2011), *Principles for responsible contracts: integrating the management of social risks into State-investor contract negotiations: guidance for negotiators*, United Nations Human Rights Council. For the full text see United Nations A/HRC/17/31/Add.3.

Shell, Shell General Business Principles, available at http://www.shell.com/global/aboutshell/who-we-are/our-values/sgbp.html.

Shell, Health, Safety, Security, Environment & Social Performance (HSSE & SP) Control Framework, see http://www.shell.com/global/environment-society/s-development/our-commitments-and-standards/hse-manuals.html

Soe Than Lyn (2012), "Myanmar parliament approves Letpadaung mine probe", *The Myanmar Times*, 24 November 2012, available at http://www.mmtimes.com/index.php/national-news/3343-myanmar-parliament-approves-letpadaung-mine-probe.html.

Turrell, Sean (2012), "Myanmar: Asia's next 'tiger'?", *East Asia Forum*, 8 September 2012, available at http://www.eastasiaforum.org/2012/09/08/myanmar-asias-next-tiger/ (last accessed 22 April 2013).

United Nations (2011), *Guiding Principles on Business and Human Rights*, New York and Geneva: United Nations.

United Nations (2007), Declaration on the Rights of Indigenous Peoples, New York and Geneva: United Nations.

United Nations Department for Peacekeeping Operations and United Nations Environment Programme, "Environment and Sustainability - Conflict and Resources", available at http://www.un.org/en/peacekeeping/issues/environment/resources.shtml.

United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) and Government of Myanmar (2009), "Economic Policies for Growth and Poverty Reduction", 1st Myanmar Development Partnership Forum, December 2009.

United Nations Office of the Commissioner for Human Rights, "New Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council", available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11164

United Nations and European Union, "UN-EU Partnership on Natural Resources, Conflict and Peacebuilding", available at http://www.unep.org/disastersandconflicts/Introduction/EnvironmentalCooperationforPeacebuilding/OtherECPActivities/UNEUPartnership/tabid/54648/Default.aspx

United States Geological Survey (USGS) website, http://www.usgs.gov/.

Voluntary Principles on Security and Human Rights, see http://www.voluntaryprinciples.org/.

Voluntary Principles on Security and Human Rights, *Voluntary Principles on Security and Human Rights Implementation and Guidance Tool (IGT)*, available at http://www.voluntaryprinciples.org/files/VPs_IGT_Final_13-09-11.pdf.

World Bank (2013), *Harmonized List of Fragile Situations 2013.*

World Bank Institute (2012), "From Deals to Development – Open Contracting in Extractives", available at http://wbi.worldbank.org/wbi/stories/deals-development-%E2%80%93-open-contracting-extractives

World Bank, "Net official development assistance received", available at http://data.worldbank.org/indicator/DT.ODA.ODAT.CD.

World Bank (2013), "Ease of doing business (rank)", *Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises*, 10th Edition.

World Bank, figures on official development assistance (ODA), available at http://data.worldbank.org/indicator/DT.ODA.ODAT.PC.ZS (accessed 29 April 2013).

World Economic Forum (2012), Global Agenda Council on Fragile States 2011-2012, available at http://reports.weforum.org/global-agenda-council-2012/councils/fragile-states/.

World Economic Forum, Responsible Mineral Development Initiative, available at http://www.weforum.org/reports/responsible-mineral-development-initiative-2011.

World Economic Forum (2012), *Responsible Mineral Development Initiative (RMDI) Mineral Value Management Tool.*

World Economic Forum and Boston Consulting Group (2012), *Responsible Mineral Development Initiative: A Framework for Advancing Responsible Mineral Development*, February 2012, available at http://www.weforum.org/reports/framework-advancing-responsible-mineral-development

World Economic Forum and Boston Consulting Group, *Responsible Mineral Development Initiative Mineral Value Management*, available at http://www.weforum.org/reports/responsible-mineral-development-initiative-rmdi-mineral-value-management

World Economic Forum, World Bank Institute and Australia's Commonwealth Scientific & Industrial Research Organization (2011), *Research Report: Stakeholder Perceptions and Suggestions Responsible Mineral Development Initiative 2010*, January 2011, available at http://www3.weforum.org/docs/WEF_MM_RMDI_Report_2010.pdf.

World Trade Organization (2008 and 2011), *World Trade Statistics*, available at http://www.wto.org/english/res_e/statis_e/its2011_e/its11_world_trade_dev_e.pdf

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