



Gilded Gatekeepers: Myanmar's State-Owned Oil, Gas and Mining Enterprises

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Executive summary

As Myanmar seeks to build more modern and open oil, gas and mining industries, the state-owned economic enterprises (SEEs) active in these sectors will play a critical role. Enhancing the effectiveness of these SEEs will be an important goal of the country's continued economic reform as the country embarks upon its post-election transition. Such reforms will evolve in a context of a broader debate about the role of extractive industries within Myanmar's economy, growing efforts to promote transparency, and ongoing concerns about the links between extraction and conflict.

Within this complex context, this paper seeks to help governmental and non-governmental stakeholders within Myanmar assess key challenges surrounding the country's oil, gas and mining SEEs, building on preliminary information-gathering within Myanmar and NRG1's global research on the governance of state-owned enterprises. This paper aims to crystalize a set of critical discussions and to stimulate broader information-sharing.

FINDINGS

Our research highlights several findings that warrant consideration by Myanmar's leaders as they examine how SEEs can contribute to the country's reform agenda:

1. Large influence over public revenues

Oil, gas and mining SEEs exert significant influence over public revenues. Government figures indicate that in fiscal year 2012/13, oil, gas and mining SEEs were responsible for 28.5 percent of all government revenues and 15 percent of all government expenditures. The largest of them, the Myanma Oil and Gas Enterprise (MOGE) alone accounted for almost 16 percent of revenues and 10 percent of expenditures in that year. This influence continues today—the government

budget projection for fiscal year 2015/16 is that extractive industry SEEs will account for about 20 percent of revenues and 15 percent of expenditures.

2. Increasing financial autonomy and growing accounts

The government has moved in a concerted way to grant SEEs greater financial autonomy, and many SEEs appear to be amassing large reserves in independent accounts that carry over from one year to the next. As a result of reforms begun in 2012, profitable SEEs are allowed to retain almost 55 percent of their net revenues in company-controlled "Other Accounts" that are not subject to the regular annual budget process. Though we have not seen any published figures on the exact size to which these accounts have grown, some of them appear to have reached billions of dollars. The recently-released Myanmar EITI Report for 2013/14 indicates that in that year alone, the five leading upstream extractive industry SEEs transferred \$1.6 billion (1.5 trillion kyat) into these Other Accounts. MOGE alone is reported to have transferred approximately \$1.4 billion (1.3 trillion kyat) into its Other Accounts. To put these figures in perspective, this is more than Myanmar spent in fiscal year 2013/14 on health (\$750 million) or education (\$1.1 billion) across the whole country.

There is not a clear link between the activities that SEEs like MOGE are charged with performing and the large sums they are entrusted with retaining and spending. There appear to be relatively few formal restrictions on how the SEEs are allowed to spend or invest the money held in these carried-over accounts. In general, the size of revenues that extractive SEEs are allowed to retain and spend is not easily explained in light of the relatively limited commercial roles they play.

3. Unclear roles and responsibilities

SEEs' influence on public financial management suggests that Myanmar would benefit from clear rules on SEE responsibilities and strong performance incentives. However, **the contours and boundaries of SEEs' roles are not extensively defined in the legal framework, and are a source of confusion for many actors inside and outside of government.** In the upstream oil and gas sector, MOGE dominates licensing and oversight in addition to being a commercial player. In the mining sector, the Ministry of Mines indicates that the SEEs play a more limited non-commercial role. In both cases, the limits and overlaps were not well understood by other stakeholders, who expressed concerns about the mixing of roles. The mechanisms for intra-governmental control of the SEEs—including reporting practices within their supervising ministries, the appointment of executives, and oversight and auditing—also appear to depend principally upon habitual practices rather than formal rules.

4. Contributions to political patronage

Several interviewees suggested that SEEs are used to spread benefits to a network of private political patrons that support the government. Though it was not our goal to investigate such situations in detail, a number of interviewees indicated that such connections present a potentially major issue for the country. Greater public discussion around this topic is important if the country is to build stronger trust in extractive sector institutions and move toward stabilization in conflict-affected regions.

5. Weak transparency

There has been a distinct lack of public transparency in the management of these SEEs. Of the 45 state-owned enterprises assessed in NRGI's worldwide 2013 Resource Governance Index, only one (Turkmenistan's Turkmenigas) was found to disclose less information to the public than MOGE. The mining-sector SEEs have been even less transparent than MOGE in many ways. Shortcomings include a lack of public disclosure of information on SEEs' revenues, financial interests, activities and leadership structure.

6. Military involvement

Finally, many interviewees indicated that military-affiliated companies occupy a central position in the mining industry in particular, though their precise roles and activities remain unclear. Companies such as the Myanmar Economic Corporation (MEC) and Union of Myanmar Economic Holdings Limited (UMEHL) are not state-owned enterprises. They are private companies which many believe are largely owned and managed by military officers and other public officials. However, many stakeholders in Myanmar indicated that these companies play important quasi-official roles in determining who gets access to mining projects and in distributing the benefits of extraction, overlapping the authority of SEEs in confusing ways and impeding public accountability.

OPPORTUNITIES FOR REFORM

Some countries have used extractive industry state-owned enterprises as effective vehicles for national development. In other countries, these companies have hindered government efforts to maximize revenue collection, discouraged private investment, exacerbated corruption and conflict, and/or become “states within states” that divert revenues from development priorities outside the normal procedures of public financial management.

Myanmar’s reforms present an important opportunity to enhance the positive roles played by its oil, gas and mining SEEs. We suggest that stakeholders consider the following broad goals to help orient this process:

1. Revenue retention policies matched to commercial strategies

International research says that giving a state-owned enterprise autonomy to control large shares of public revenue is most advisable where the company is executing sophisticated commercial activities. Myanmar’s SEEs do not engage in particularly complex commercial tasks, but have still been entrusted with huge portions of public revenue. As the government seeks to commercialize the SEEs, it should avoid allowing them to control significantly more money than is necessary for executing a well-developed commercial strategy, and should implement strong mechanisms for expenditure oversight.

2. Enhanced public disclosure of key data

As part of the government’s commitment to greater transparency in natural resource management, better reporting on what SEEs are doing and how they are spending public money will increase public trust, create stronger performance incentives within the SEEs, and make Myanmar a more stable place to invest. A clearer explanation of the roles played by military-affiliated companies is also crucial. The Extractive Industries Transparency Initiative (EITI) process can be an important mechanism for this increased transparency.

3. Clarified roles and responsibilities, and reduction in any unnecessary overlaps between SEEs and other public entities

As part of ongoing efforts to reform the legislation and institutions governing the oil, gas and mining sectors, clearer divisions of responsibilities will facilitate more effective administration and enable the SEEs to focus on their commercial agendas.

4. Strong mechanisms for internal accountability

The consistent conduct of independent audits is one of the most powerful tools a government can employ to improve state-owned enterprise performance. Stronger requirements for SEEs to report to the Ministry of Finance on the details of their activities and expenditures would provide another important mechanism for oversight. Other factors for Myanmar stakeholders to consider include the appointment of technocratic boards of directors to help guide the companies, and systematic benchmarking of company performance against clear goals.

Context and objectives

A. INTRODUCTION

The expected growth in extractive industry investment and Myanmar's candidacy for the Extractive Industries Transparency Initiative (EITI) have underscored the need for a better understanding of the role that the country's state-owned economic enterprises (SEEs, referred to internationally as state-owned economic enterprises, or SOEs) play in the management of the oil, gas and mining industries.¹ These companies rank among the key players implementing the government's strategies for maintaining and developing its extractive industries. SEEs are seen as generators and distributors of revenue, overseers of private partners, managers of exploration and production activity and central players in the government's efforts to maintain a balance among the interests of powerful political and economic actors as well as Myanmar's citizens.

Myanmar's economy already derives significant revenues from the extractive sector, with

prospects for further growth in the coming years. As figure 1 illustrates, gas production has increased dramatically since 2000, with most production gains coming from the Yadana and Yetagun projects. Further growth is anticipated from the development of the Shwe and Zawtika projects. Myanmar also produces roughly 20,000 barrels per day of oil, though the country is a net oil importer.² The government reported that the sales value of oil and gas in the fiscal year 2012/13 was \$5 billion, of which gas exports represented \$3.7 billion.³ For the period of April 2013 – March 2014, Myanmar's first report under the Extractive Industries Transparency Initiative indicated that government bodies collected approximately \$2.7 billion in revenues from oil and gas.

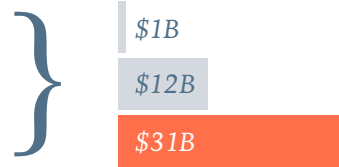
Recent licensing rounds have spurred optimism among many in government for greater oil production in future years. Rounds completed in 2013 and 2014 alone resulted in the award of licenses covering 36 onshore and offshore blocks to a mix of major international oil companies,

1 Throughout this paper, we use the term "SEE" when referring to state-owned enterprises within Myanmar, in keeping with the common nomenclature within the country. We use "SOE" when referring to state-owned enterprises in other countries, in keeping with international convention. The Extractive Industries Transparency Initiative (EITI) is a global effort to promote open and accountable management of natural resources. The EITI Standard is an authoritative source on how countries can improve the governance of natural resources by implementing transparent practices. Myanmar has been accepted as an EITI candidate country in July 2014 and is working to establish reporting practices compliant with this standard.

2 U.S. Energy Information Administration.

3 Government of the Union of Myanmar, Central Statistical Organization.

Estimated value of Myanmar jade trade:
 Official estimates: \$1 billion.
 UN Comtrade report: nearly \$12 billion.
 Global Witness: as high as \$31 billion.

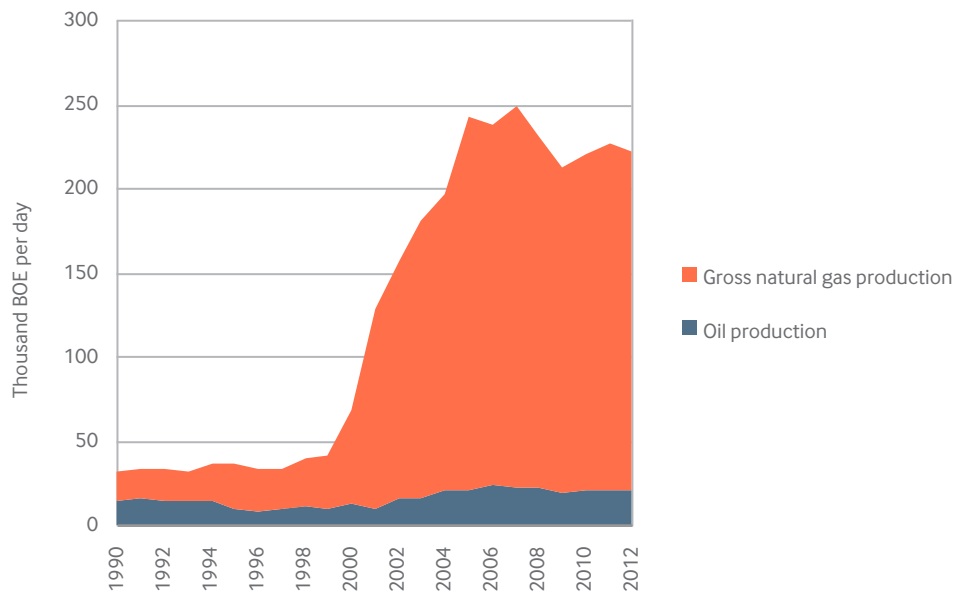


foreign national oil companies, and domestic private companies based within Myanmar. These companies are to act in partnership with the Myanmar Oil and Gas Enterprise (MOGE). The impact of the dramatic global downturn in petroleum prices from late 2014 until the time of this writing on new investments in Myanmar is unclear, with some analysts speculating that the downturn may cause companies to “re-evaluate outstanding and prospective investments, delaying the development of offshore resources.”⁴

Detailed data on the mining sector are lacking. According to the government’s Central Statistical Organization, Myanmar’s mineral exports, not including rubies, sapphires or coal, were worth \$1.15 billion in 2013/14. Of this total, more than \$1 billion was generated by jade. These figures appear to

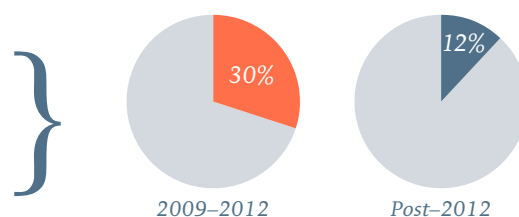
underreport the true value of exports, even without considering the informal mining and illicit trade believed to be prevalent in Myanmar’s jade industry. According to the United Nations International Trade Statistics Database (UN Comtrade), for example, Myanmar exported more than \$12 billion in precious stones to China in 2014. UN Comtrade data indicates that these commodities accounted for more than three quarters of Myanmar’s total trade with China in that year.⁵ Global Witness estimated that the value of official jade production in 2014 was “as high as US \$31 billion.”⁷ For the period of April 2013 – March 2014, Myanmar’s first report under the Extractive Industries Transparency Initiative indicated that government bodies collected approximately \$460 million in revenues from the mineral sector, most of it from gems and jade.

Figure 1. Oil and gas production, 1990 – 2012



4 Stratfor, *How Oil Prices will Impact Southeast Asia*, 4 February, 2015, <https://www.stratfor.com/analysis/how-low-oil-prices-will-impact-southeast-asia>.
 5 NRGi is currently drafting a policy paper that will provide a more detailed discussion of revenue generation and revenue sharing.
 6 Global Witness, *Jade: Myanmar’s Biggest Secret* (2015), <https://www.globalwitness.org/reports/myanmarjade/>, p. 36.

Decrease in share of SOE revenues transferred to the government



Myanmar's SEEs appear to play a dominant role in the management of the oil and gas sector. In the mining sector the power exercised by SEEs appears to be substantially lower, but these enterprises still have significant impact on the country's strategy for mining. According to a government presentation, in fiscal year 2012/13, oil and mining sector SEEs were responsible for 28.5 percent of all public revenues.⁷ This signifies that the revenue that passed through their hands was equivalent to approximately 6.6 percent of the country's GDP.⁸ The Myanmar Oil and Gas Enterprise (MOGE) alone collected 16 percent of public revenues, or 3.7 percent of GDP.⁹ In fiscal year 2015/16, petroleum and mineral sector SEEs were projected to collect 20 percent of total public revenues, though the sustained period of low prices will almost certainly impact the final numbers.¹⁰

SEEs appear to be gaining increasing autonomy to retain the revenues they earn, and thus to exert greater control over a swath of public revenue. The government is making a concerted effort to give SEEs more financial autonomy, reducing the percentages they are obligated to pay into the state treasury and allowing them to hold on to more of their profits. Between 2009 and 2012, Myanmar's SEEs (including those outside the extractive sector), transferred 32 percent of their revenues to the government. A series of policy reforms that began in 2012 helped reduce the transferred share to an estimated 12 percent.¹¹

These efforts to increase commercial incentives for SEEs are taking place within a broader context of public financial management reform in Myanmar, which includes changes to better link budgets to development priorities and to improve service delivery. Though we have focused our analysis on issues related to the governance of petroleum and mining sector SEEs, the evolution of these enterprises are situated within the context of the larger set of ongoing reforms in the country, which could have a significant impact on SEE activities and the SEEs' mechanisms for collecting and spending money. Citizens and public officials should be wary of the risks associated with public expenditure reform that does not adequately address the governance of extractive state-owned enterprises, which have access to larger revenue flows than SEEs in other sectors and are subject to strong risks of conflict of interest and mismanagement. In countries such as Angola—discussed in detail below—serious efforts to improve the management of public revenues have been damaged by decisions to allow state-owned enterprises to continue to spend billions of dollars outside of ordinary budgetary processes.

As Myanmar seeks to transform its extractive industries into an engine for growth and development, and to reduce the instance of conflict and corruption observed in too many resource-rich countries, a more systematic approach to the management of extractive industry state-owned

7 Budget Department, Ministry of Finance, "The Role of the State Economic Enterprises in Myanmar Government Budget," presentation on file with authors.

8 According to the IMF, in 2012/13, government revenues represented 23.4 percent of GDP. International Monetary Fund, *Myanmar—2015 Article IV Consultation* (Washington, DC: International Monetary Fund, 2015), <http://www.imf.org/external/pubs/ft/scr/2015/cr15267.pdf>, p. 5.

10 Figures shared by Ministry of Finance, September 2015, on file with authors.

11 Data taken from International Monetary Fund, *Myanmar—2013 Article IV Consultation* (Washington, DC: International Monetary Fund, 2013), <http://www.imf.org/external/pubs/ft/scr/2013/cr13250.pdf>, p. 26 and International Monetary Fund, World Economic Outlook Database (GDP, current prices, USD billions). The 2013 IMF Article IV report includes data on the transfers from SEEs to the Union government, a practice that was not continued in the 2014 and 2015 Article IV reports.

companies will be critical. The government has opportunities to benefit from the growing international knowledge of what helps state-owned enterprises to succeed, and to benchmark SEEs' performance and incorporate them more strategically into evolving legislation and sector policy. Meanwhile, Myanmar's citizens must better understand how these companies are managing public resources, and develop constructive ways for communicating with SEEs (and with the government more broadly) around the impact that SEE activities are having on the economy as a whole and on communities near extractive sites. Globally, energy- and mining-sector state-owned enterprises that communicate consistently with citizens about their activities and strategies for managing public resources have tended to enjoy better commercial performance, reduce the distrust that can destabilize resource-producing regions, and limit the back-room dealing that can foster corruption.

This paper analyzes the structure of Myanmar's SEEs and their impact on the governance of the extractive sectors, albeit with a significant constraint: the lack of detailed public information about the country's SEEs. This study is based on first-hand interviews with members of the government, civil society and private sector in Yangon, Naypyitaw, Kachin state and the Magway region, conducted between in 2014 and 2015. The report also relies on desk research and data provided by various sources, including the government.

In the absence of more comprehensive information, we hope that this analysis will serve as a point of departure for Myanmar's government

and its citizens to begin a dialogue around the performance of its oil, gas and mining SEEs and opportunities for reform. We look forward to further discussion on this topic with public officials, researchers and others within the country as Myanmar's strategy for extractive industry management continues to evolve, and hope that the discussions around this paper will enable us to deepen our analysis and will serve as a resource for the challenging decisions the country faces.

B. HISTORICAL PERSPECTIVE AND SCOPE OF ANALYSIS

Myanmar's 1962 coup d'état was followed by a doctrine, "the Burmese Way to Socialism," whereby most industries were nationalized. In 1988, a shift from totalitarian socialism allowed for an initial expansion of the private sector. The State-Owned Economic Enterprise Law of 1989 charges SEEs with the conduct of core economic activities, including in the extractive industries. However, some exceptions have been made for investors, including some foreigners, to invest in those areas in partnership with the SEEs.¹²

Over time, many petroleum- and mining-sector SEEs have formed joint ventures with private companies. In many cases, these partnerships served to decrease the SEEs' responsibilities in terms of day-to-day operational decision-making. Over the course of the 1990s, in addition to their commercial responsibilities, many SEEs began to perform additional regulatory functions, such as *de facto* licensing and enforcement of laws and contracts.

12 Section 4 of the SOEE law (1988/1989) Chapter II 2. "The Government may, by notification, permit in the interest of the Union of Myanmar any economic enterprise which is prescribed under Section 3 to be operated solely by the Government to be carried out by joint-venture between the Government and any other person or any other economic organization or under conditions by any person or any economic organization subject to conditions."

Myanmar's citizens must better understand how these companies are managing public resources. They must also develop constructive ways for communicating with SEEs around the impact that SEE activities have on the economy as a whole and on communities near extractive sites.

This report analyzes information available on the following SEEs:

Though this analysis addresses all of these enterprises, not all are treated at the same level of detail, because of disparities in information available on the various SEEs. We devote relatively little attention to the enterprises working in the downstream—the Myanma Petrochemical Enterprise (MPE) and Myanma Petroleum Product Enterprise (MPPE)—focusing instead on the upstream companies, which share more commonalities. Our research and interviews identified little public information about the activities and finances of the mineral-sector enterprises, so this report features more discussion of MOGE than the other companies.

In addition to the SEEs, in some sections this paper also discusses the roles played by two companies—the Myanmar Economic Corporation (MEC) and Union of Myanmar Economic Holdings Limited (UMEHL)—which are not formally owned by the state but which are believed to be largely owned and managed by military officers and other public officials, and play quasi-official roles in the government's strategy for generating benefits from extraction. We thought it was important to include these companies in our analysis because they appear to be important vehicles for Myanmar's extractive industry strategy and because they exhibit several of the challenges typically associated with state-owned enterprises. Among these challenges are unclear performance incentives, potential for conflict of interest, and fiscal management integrally connected with state economic policy.

Table 1. Companies covered in this report

Sector	Company	Responsibilities
Petroleum (under the Ministry of Energy)	Myanma Oil and Gas Enterprise (MOGE)	Upstream exploration and production, managing joint ventures with private partners
	Myanma Petrochemical Enterprise (MPE)	Petroleum refining and processing, conversion into fertilizer and methanol
	Myanma Petroleum Product Enterprise (MPPE)	Marketing and distribution of petroleum products
Minerals (under the Ministry of Mines)	No. 1 Mining Enterprise	Lead, zinc, silver, copper, iron, antimony, nickel, chromite
	No. 2 Mining Enterprise	Gold, tin, tungsten, rare earth, titanium, platinum
	No. 3 Mining Enterprise ¹³	Coal, limestone, industrial minerals, manganese, decorative stone
	Myanmar Gems Enterprise	Jade, gemstones and jewelry
	Myanmar Salt and Marine Chemical Enterprise ¹⁴	Marine chemicals
	Myanmar Pearl Enterprise	Pearls

¹³ According to discussions with Ministry of Mines officials in June 2015, Mining Enterprise No. 3 no longer exists, with its assets and activities having been merged into Mining Enterprise No. 1. Some of the backward-looking data and analysis in this report still addresses this company, however.

¹⁴ According to discussions with Ministry of Mines officials in June 2015, the Myanmar Salt and Marine Chemicals Enterprise no longer exists, having been folded. Some of the backward-looking data and analysis in this report still addresses this company, however.

C. ANALYTICAL FRAMEWORK

International lessons learned

The World Bank's core factors for good corporate governance of state-owned enterprises:

1. Sound and comprehensive legal/regulatory framework
2. Appropriate arrangements for exercising state's ownership rights
3. Strong and regular performance monitoring
4. Financial and fiscal discipline
5. Professionalism among board of directors
6. Strong transparency, disclosure and controls

From the World Bank Group, *Corporate Governance of State-Owned Enterprises: A Toolkit*, 2014

This preliminary assessment of Myanmar's state-owned enterprises is grounded in broader international research on effective strategies for designing and managing SOEs, and on the impact of these entities on extractive industry governance. In particular it is grounded in the Natural Resource Charter's Precept 6, which emphasizes the importance of creating incentives for competitive commercial performance, and the clear definition of roles.¹⁵ The paper is also informed by our subsequent research on the experiences of twelve national oil companies operating in a variety of national contexts,¹⁶ as well as a smaller set of case studies on state-owned mining companies.¹⁷

These various preceding papers drew heavily on a broader global SOE governance literature, which critically examines why some SOEs have become engines for development while others have been sources of corruption and inefficiency.¹⁸ Of particular relevance are principles devised by working groups organized by the UK's Chatham

15 The Natural Resource Charter is a set of principles conceived to guide governments' and societies' use of natural resources so these economic opportunities result in maximum and sustained returns for a country's citizens. It outlines tools and policy options designed to avoid the mismanagement of diminishing natural riches, and ensure their ongoing benefits. See *Natural Resource Charter, Second Edition*, <http://www.resourcegovernance.org/publications/natural-resource-charter-second-edition>.

16 Patrick R.P. Heller, Paasha Mahdavi and Johannes Schreuder, *Reforming National Oil Companies: Nine Recommendations* (New York: Natural Resource Governance Institute, 2014), <http://www.resourcegovernance.org/publications/reforming-national-oil-companies-nine-recommendations>.

17 *Copper Giants: Lessons from State-Owned Mining Companies in the DRC and Zambia* (New York: Natural Resource Governance Institute, 2015), <http://www.resourcegovernance.org/publications/copper-giants-lessons-state-owned-mining-companies-drc-and-zambia>.

18 See, e.g., Silvana Tordo, Brandon S. Tracy, and Noora Arfaa, *National Oil Companies and Value Creation* (Washington, DC: World Bank, 2009), *National Oil Companies and Value Creation* (Washington, DC: World Bank Working Paper no. 218); David G. Victor, David R. Hults and Mark C. Thurber, eds., *Oil and Governance: State-Owned Enterprises and the World Energy Supply*, (Cambridge, UK: Cambridge University Press, 2012); Valérie Marcel, *Oil Titans: National Oil Companies in the Middle East* (Washington, DC: Brookings Institution Press, 2006); World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit* (Washington, DC: World Bank Group, 2009), Paul Stevens "National oil companies and international oil companies in the Middle East: Under the shadow of government and the resource nationalism cycle" *J World Energy Law Bus* 1(1) (2008): 5-30; and Christian Wolf (2009), "Does ownership matter? The performance and efficiency of State Oil vs. Private Oil (1987–2006)," Christian Wolf, "Does ownership matter? The performance and efficiency of State Oil vs. Private Oil (1987–2006)," *Energy Policy* 37.7 (2009): 2642-52.

Many SOEs—including those in Chile, Malaysia and Norway—have been effective and dynamic contributors to national strategies that generate revenue, develop long-term national expertise and promote broader positive spillovers to the national economy.

House; these groups convened government officials and other experts from resource-producing countries to share experiences and devise a set of big-picture ideas about successful policies.¹⁹ The core priorities that emerged from these discussions include recognition of a need to ensure clarity of responsibilities among and between government bodies and SOEs; a concerted effort to give each body the capacity to carry out the roles assigned; and a strong commitment to transparency and accountability to the public.

We begin from an understanding that many SOEs—including those in countries such as Chile, Malaysia and Norway—have been effective and dynamic contributors to national strategies that generate revenue, develop long-term national expertise and promote broader positive spillovers to the national economy. A well-managed SOE with effective performance incentives and strong built-in accountability mechanisms can help turn an oil or mineral industry into a positive force for broad-based economic development.

But in other cases, SOEs have impeded national performance in extractive industries. They can be drains on the efficiency of public revenue generation if they fail to manage projects effectively or to enforce strong contractor performance. They can obstruct effective public financial management via obscure fiscal relationships with other branches of government, or even become a sort of “parallel treasury” by holding onto large revenue flows and spending them without going through ordinary budgetary processes. They can reduce the coherence of the legal framework by operating in a legal grey area characterized by inconsistent interpretation and poor enforcement. Perhaps most damaging, SOEs can be sources of corruption, using their *de jure* or *de facto* control over the spoils of natural resource wealth to enrich well-connected individuals or companies at the expense of the greater public good.

19 The first of these working groups was organized beginning in 2005, bringing together officials from a large variety of oil-producing countries, including some of the world's biggest producers. It produced the report: Glada Lahn, Valérie Marcel, John Mitchell, Keith Myers and Paul Stevens, *Report on Good Governance of the National Petroleum Sector* (London: Chatham House, 2007). The second working group, which launched in 2012, focused exclusively on countries like Myanmar, which are facing a heavy inflow of activity in the sector in the context of limited capacity and financial resources. This “emerging producers group” produced the paper Valérie Marcel, ed., *Guidelines for Good Governance in Emerging Oil and Gas Producers* (London: Chatham House, 2013), http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Energy%2C%20Environment%20and%20Development/0913pp_marcel.pdf.

International lessons learned

NRGI's nine recommendations for NOC reform:

1. Carefully define commercial and non-commercial roles. Limit non-commercial activities where sophisticated or expensive commercial activities
2. Develop a workable revenue retention model.
3. Procure external financing by listing some NOC shares on public stock exchanges or issuing external debt where appropriate.
4. Define clear structures and roles for state shareholders.
5. Empower professional, independent boards of directors.
6. Invest in NOC staff integrity and capacity.
7. Maximize public reporting of key data.
8. Secure independent financial audits, and publish them.
9. Choose an effective level of legislative oversight.

From *Reforming National Oil Companies: Nine Recommendations*

The challenges associated with efforts to develop a successful SOE are particularly acute in poor countries, which are often characterized by capacity constraints, widespread corruption, tendency toward internal conflict, and broad-based, contemporaneous, and systemic changes. Thus, mechanisms that have worked in countries such as Saudi Arabia or Brazil may not necessarily apply; Myanmar must create its own path, drawing from but not necessarily exactly replicating the experiences of other similarly situated countries.²⁰ In order to provide an initial set of framing questions for consideration by Myanmar's government and citizens, we have organized the analysis that follows according to the following three categories:

- Examination of SEE roles (in short, *what are these companies doing?*)
- Financial relationships between the companies and the state (*how are they earning and spending public revenues?*)
- Procedures for transparency and oversight (*how are they governed?*)

²⁰ For a more detailed discussion of the particular challenges facing low-capacity countries, see Patrick R. P. Heller and Valérie Marcel, *Institutional Design in Low-Capacity Oil Hotspots* (New York: Revenue Watch Institute, 2012), <http://www.resourcegovernance.org/publications/institutional-design-low-capacity-oil-hotspots>.

Examination of SEE roles

We begin our assessment by reviewing the information we have found about the roles that have been assigned to the country's extractive industry SEEs. Like state-owned enterprises in many countries, Myanmar's companies play various roles simultaneously. Some of these roles are formal: they act as commercial operators and sector monitors and oversight agents (including through the selection of private partners). Some appear to be informal, such as their role in the maintenance of a broad array of patronage-based relationships that empower private groups with strong political connections.²¹ Existing studies and our research suggest that there is often a lack of clarity—in public and within government—about where the SEE's responsibility ends and that of other entities begins. An unclear overlap among these roles can create the confusion and opportunism that represent some of the greatest challenges to state-owned enterprise governance.²²

In this section, we discuss what we have learned about the commercial, regulatory, and patronage-maintenance roles in turn. For each, we begin with a brief discussion of the experience of other countries, and then turn to the state of play in Myanmar. There appear to be meaningful differences in the allocation of roles to SEEs in the oil, gas and mining sectors. With regard to oil and gas, MOGE appears to play a dominant role in all aspects of the state's management of the sector, including policy-making, regulation and oversight, and commercial participation. In the mining sector, the SEEs appear to be less powerful, and their activities are more circumscribed, both

by the Ministry of Mines and by the *de facto* power apparently exercised by military-affiliated companies. In both sectors there appears to be a lack of clarity about the scope and the limits of SEE roles. This section concludes with a discussion of the policy implications of the multiplicity of roles assigned to the petroleum and mining SEEs.

A. COMMERCIAL ROLES

i. International experience

We define here “commercial role” as an SOE's “participation as a business player in revenue-generating activities.”²³

The scope of commercial roles varies significantly among extractive-sector SOEs across the world. Some (such as Chile's Codelco, Malaysia's Petronas, and Brazil's Petrobras) are top-to-bottom integrated companies responsible for a large suite of commercial activities. They manage large-scale projects, conduct complex financial transactions and generally carry out the sorts of roles in oil and mining projects that would be typically associated with large multinational companies. Some of these companies even manage extractive projects outside their own borders. Others—including many SOEs in countries lacking in administrative or financial capacity such as Ghana and Timor-Leste—have much more limited commercial roles. They seek to maximize profits principally as minority partners in operating groups or joint ventures where principal operational decision-making and financing responsibilities lie with private or foreign partners.

21 For a useful conceptual overview of the various roles that state-owned enterprises can play, and the importance of clarifying those roles and empowering institutions to play their roles effectively, see Lahn et al., 2007.

22 See, e.g., Tordo et al., 2009, Lahn et al., 2007.

23 Heller et al., 2014, p. 5.

MOGE's "commercial" role includes 15-25 percent equity participation, responsibility for the state's share of profit oil and gas, and chairmanship of the management committee of each project.

Many SOEs worldwide earn a sizable share of their revenues by selling the state's share of oil, gas or minerals, to which the state is entitled by virtue of production sharing contracts (PSCs) or state equity ownership.²⁴

A final broad category of commercial activity comprises investments that SOEs make, or joint ventures that they form, in areas outside of core extraction and marketing. In many cases, these investments are in companies that provide goods and services associated with the oil and gas or mining sectors, such as logistics support, seismic surveying and analysis, shipping, or construction of drilling platforms or other necessary inputs. In other cases, they target a more diverse set of activities less closely linked to core extractive sector activities—SOEs have been known to invest in everything ranging from the banking sector to insurance to housing construction.

ii. State of play in Myanmar

Oil and gas sector

MOGE's most significant commercial obligations lie in its participation in oil and gas project groups.

It is likely that this role generates the largest share of MOGE's revenues and accounts for the largest share of the company's expenditures. According to the Foreign Investment Law (2012)—which built on imperatives established in the State-Owned Economic Enterprises Law (1989)—any private company that wants to extract oil or gas must enter into a joint venture with MOGE or a private Myanmar company. The Foreign Investment law is currently being revised.

Core features of MOGE's commercial role in oil and gas project groups include:

- "Equity participation," meaning that MOGE is a 15-25 percent owner of the ventures created to manage petroleum projects.²⁵
- Its role as the recipient of the state's share of profit oil and gas under contractual production-sharing arrangements (as is common in such systems, this is based on a sliding scale wherein MOGE's profit share rises alongside the production level obtained in a particular project; the share has been reported to range from 60 to 90 percent once allowable costs have been recovered).²⁶

24 This responsibility often generates revenue streams that rank among the most significant for the company or even for the country. In countries such as Azerbaijan, Saudi Arabia, Iraq and Congo-Brazzaville, sales of SOE shares of oil and gas have been equivalent to 80 percent or more of total government revenue in some years. Alexandra Gillies, *Selling the Citizens' Oil: The Case for Transparency in National Oil Company Crude Sales*, (New York: Revenue Watch Institute, 2012), <http://www.resourcegovernance.org/sites/default/files/OilSales-Transparency.pdf>.

25 "Standard Terms" published by the Ministry of Energy cite a standard 15 percent participation for MOGE for existing onshore blocks and 20 percent for offshore blocks, in each case with a MOGE option to increase the participation to 25% under certain circumstances. See Albert T. Chandler and Daw Khin Cho Kyi, *Myanmar Upstream Oil & Gas Sector* (Myanmar Legal Services, 2014), http://www.myanmarlegalservices.com/wp-content/uploads/2014/04/Myanmar-Upstream-Oil-Gas-Sector-7_280414_1255300_1.pdf. Similar terms prevailed in the Model PSCs circulated as part of the 2013 and 2014 bid rounds.

26 See Chandler and Khin Cho Kyi, 2014. *Myanmar Upstream Oil & Gas Sector*, Myanmar Legal Services, April 2014, http://www.myanmarlegalservices.com/wp-content/uploads/2014/04/Myanmar-Upstream-Oil-Gas-Sector-7_280414_1255300_1.pdf. Similar terms prevailed in the Model PSCs circulated as part of the 2013 and 2014 bid rounds. Under the Model PSCs, MOGE and the contractor are to meet 180 days before the start of commercial production to determine the modalities for the partitions of cargoes associated with the production sharing. See, e.g., 2013 offshore (shallow) model contract, Section 9.10.

MOGE is pursuing a sequenced plan for commercialization that would replicate a path pursued by other SOEs such as Angola's Sonangol.

- Formal power to “be responsible for the management of Petroleum Operations,”²⁷ principally via its chairmanship and majority membership in the Management Committee to be established with its contractors for the project.²⁸ The model contracts we have seen call for decisions by this Management Committee to be made unanimously, which gives both MOGE and the Contractor veto power over major decisions.

MOGE does not serve as the “operator” of most of Myanmar’s exploration and production blocks, meaning that it depends on the expertise and capital of its contractors to develop and execute work plans. The contractors, in effect, lead the commercial development of petroleum blocks. This is in contrast to many major SOEs such as Brazil’s Petrobras, Norway’s Statoil and Colombia’s Ecopetrol, but puts MOGE in league with the majority of national oil companies in countries with severe capacity or financial constraints, as well as countries that produce petroleum in relatively small quantities.

Endowing a national oil company with this kind of operational leadership role requires billions of

dollars in investment and poses significant risks.²⁹ The officials with whom we spoke did not indicate that MOGE is likely to take on an operational role in major projects in the near term.

Interviews with representatives of contractor companies indicate that MOGE plays an important role supporting extractive projects by providing logistical assistance, identifying subcontractors and service providers, and supporting contractor companies to obtain visas, work permits, approvals, transportation and security.³⁰

Government officials have indicated that MOGE is pursuing a sequenced plan for commercialization, with an initial focus on establishing joint ventures with private companies to provide support services—in particular, seismic surveys, drilling support and pipeline development.³¹ Such a strategy would replicate a path pursued by other SOEs such as Angola’s Sonangol, which has pursued a range of joint ventures as a component of a gradual path toward increasing commercial expertise in the oil and gas business. This approach can help a country to develop indigenous human resources and accrue commercial success in more manageable increments.

27 Section 2 of the model PSCs for onshore, shallow offshore and deep offshore circulated as part of the 2013 and 2014 bid rounds. One contract from the mid-2000s which was shared with us contains a substantively identical provision.

28 Annexure E of the model PSCs for onshore, shallow offshore and deep offshore circulated as part of the 2013 and 2014 bid rounds calls for a seven-person management committee with four MOGE members. One contract from the mid-2000s which was shared with us contains an identical provision.

29 Angola’s Sonangol has successfully made this transition, moving over a period of decades from serving purely as a non-operating partner and profit-sharing participant to eventually taking over operatorship of some of Angola’s oil fields (still a relatively small share). Angola did this in the context of the economies of scale associated with producing upwards of 500,000 bpd of oil since 1992 and upwards of 1 million bpd since 2004. Ghana’s GNPC has recently expressed a similar goal of transitioning into an independent operator within seven years and a “world class operator” within 15. See GNPC, “Accelerated Growth Strategy,” <http://www.gnpcghana.com/SitePages/ContentPage.aspx?ItemID=16&ItemTitle=Accelerated%20Growth%20Strategy>.

30 Interview with private sector petroleum representative 4 September 2014.

31 Interviews with MOGE officials and other government officials; Presentation at Myanmar Extractive Industries Transparency Initiative Conference: Natural Resource Governance in Myanmar, Naypyitaw, 16 October 2014.

Mining sector

Our research revealed less systematic information about the particular commercial roles played by the mining-sector SEEs and the balance of commercial responsibilities between these SEEs and their private partners. Myanmar's mining sector SEEs reportedly dominated commercial production on their own until 1989, when according to a study conducted by Adam Smith International (ASI), the Myanmar Development Resource Institute (MDRI) and the World Bank, the state embarked upon a more concerted pursuit of private investment in the mining sector.³² A few years into the new policy, in 1992, the Ministry of National Planning and Economic Development reported that the SEEs were responsible for 73 percent of the total output of the mining sector.³³

Since then the SEEs have increasingly entered into agreements with private partners, an arrangement explicitly permitted (though requiring ministry approval) in Chapter XVI of the 1996 Mining Rules. These agreements are typically structured either as production-sharing (which gives the SEE a percentage of physical production or its equivalent value) or profit-sharing contracts. The SEEs are responsible for revenues generated by the sale of their share in the production- and profit-sharing contracts. The SEEs participate in the Joint Management Committees responsible for the execution of each project, and thus exert an

influence on commercial decisions. Typically, the managing director of an SEE serves as the Chair of the Joint Operating Committees in which his company participates.³⁴

In addition to their participation in these benefit-sharing agreements, several sources indicated to us that the mining-sector SEEs often enter into joint ventures whereby they own an equity stake in the company that holds the mining permit, in partnership with private partners. An interview with an official from the Ministry of Mines stated that this is not the case, that in practice all of the mining-sector SEEs' commercial participation in SEEs takes place via production—or profit-sharing agreements.³⁵ Taking equity stakes would appear to be allowed under the Myanmar Mining Rules of 1996, which state that “any person or organization may enter into joint venture agreements relating to mineral prospecting, mineral exploration or mineral production with any State-owned Enterprise under the Ministry under the law.” The Rules do not limit the form that such an agreement may take, saying that it can be “on production sharing basis or profit sharing based on equity contribution by both parties, or other form of benefit sharing for mineral prospecting, exploration or production for each stage of operation, or integrated operations or in any other form as may be permitted by the Ministry.”³⁶

32 Adam Smith International (ASI), Myanmar Development Resource Institute (MDRI) and the World Bank Group, *Institutional and Regulatory Assessment of the Extractive Industries in Myanmar* (Washington, DC: World Bank Group, 2015), p. 21.

33 Thet Aung Lynn and Mari Oye, *Natural Resources and Subnational Governments in Myanmar: Key Considerations for Wealth Sharing*, (International Growth Centre, Myanmar Development Resource Institute and Asia Foundation, 2014).

34 Interview with official from Ministry of Mines, October 2015.

35 Interview with official from Ministry of Mines, October 2015.

36 The Government of the Union of Myanmar, *Ministry of Mines Notification No. 125/96*, Articles 84 – 85.

In a global survey, 11 of the 12 national oil companies assessed executed at least some level of non-commercial activities.



Several interviewees indicated that in many of the more important projects private partners do the “heavy lifting” associated with development and management. But other available information suggests that this varies across enterprises and projects—Lynn and Oye, for example, report that the Myanmar Pearl Enterprise “produces pearls itself, and in cooperation with foreign and local investors.”³⁷ Descriptions of the relationships between the mining enterprises and their partners are generally less available than in the oil and gas sector: we were not able to obtain through public records a complete picture of the projects in which the mining SEEs participate.

Beyond their direct roles in exploration and production, some of the mining-sector enterprises are active in downstream processing and in ancillary activities that serve the mining industry. At the time of this writing, the No. 2 Mining Enterprise had called for submissions of interest from companies looking to enter into a private-public partnership for the revitalization of the refining of tin.³⁸ The enterprises also appear to play an important role in marketing of Myanmar’s mineral products—the Myanmar Gems Enterprise, for example, bears responsibility for running the country’s Gems Emporium.

B. REGULATORY ROLES

i. International experience

Some analysts have suggested that endowing an SOE with any responsibilities beyond purely commercial activities creates such a fundamental risk of conflict of interest that it should be avoided at all costs.³⁹ Our research indicates that such a categorical approach is not reflective of reality in most resource-rich countries—in a global survey, 11 of the 12 national oil companies assessed executed at least some level of non-commercial activities.⁴⁰ And the experiences of countries like Nigeria and Algeria, where attempts to divest the SOE of all non-commercial responsibilities have increased uncertainty without improving governance or economic performance—suggest that an overly rigid approach may not be optimal.⁴¹ Countries with significant shortfalls in financial, human resource and oil-sector capacity often have a particularly powerful reason for endowing an SOE with various responsibilities—it is one way to concentrate limited expertise in a core decision-making body.⁴² By doing this, a country can avoid spreading resources too thin across various administrative units, and can attempt to build a dynamic body capable of carrying the sector forward.

37 Lynn and Oye, 2014, p. 14.

38 Myanmar Ministry of Mines, “Invitation for Open Tender,” <http://www.mining.gov.mm/ME-2/1.ME-2/details.asp?submenuID=13&sid=389>.

39 See, e.g., Farouk al-Kasim, *Managing Petroleum Resources: The Norwegian Model in a Broad Perspective* (Oxford: Oxford Institute for Energy Studies, 2006).

40 Heller et al., 2014, p. 6. Of the countries in the survey, only Norway’s Statoil was completely devoid of any regulatory or quasi-fiscal responsibilities.

41 Mark Thurber, David Hults and Patrick R.P. Heller, “Exporting the ‘Norwegian Model’: the Effect of Administrative Design on Oil Sector Performance,” *Energy Policy* 39 (2011), 5366 – 5378.

42 Marcel, 2013, Heller and Marcel, 2012.

When a government does elect to endow an SOE with non-commercial responsibilities, it is critical that legislation clearly delineate the limits of companies' roles and defines the nature of relationships between the SOE and other state agencies.

Our research has underscored, however, that when a government does elect to endow an SOE with non-commercial responsibilities, it is critical that legislation clearly delineates the limits of companies' roles and defines the nature of relationships between the SOE and other state agencies. It is also important that the incentives and investments associated with non-commercial activities not fundamentally conflict with the company's commercial goals.

Countries such as Ghana have used SOEs to play multiple roles during a transitional period during which the country accumulates expertise and investment in the sector, then have divested the SOE of non-commercial responsibilities once production has scaled up and the SOE aspires to greater commercial competitiveness.⁴³ In other countries, including sophisticated oil producers such as Mexico and Venezuela, as well as many new producers, non-commercial responsibilities have overwhelmed the SOE, simultaneously damaging the company's competitiveness and the performance of regulatory and other functions.⁴⁴ A lack of clear public communication (and rules) about the roles of SOEs also has serious consequences in terms of public accountability

and relationships with investors. Such opacity can impede the ability of concerned citizens or interest groups to raise concerns through effective official channels, and can exacerbate risks of corruption.⁴⁵

Allocation of regulatory and quasi-regulatory functions represents a particularly challenging question. We define the "regulatory role" here to include setting detailed rules governing performance; ensuring compliance by companies (and by other government agencies) with legislation, regulation and contracts; and approving key decisions by partner companies regarding exploration and production.⁴⁶ We also include the "licensing" responsibility—the responsibility to choose the private partners who will be operating in the sector—as a sub-set of the regulatory role.

ii. State of play in Myanmar

Oil and gas sector

MOGE is the most important actor conducting contract-award processes and negotiating Myanmar's production sharing contracts (PSCs). MOGE holds the so-called "concessionaire's right," meaning that it is endowed in practice and by contract with "the exclusive right to carry out

43 Heller and Marcel, 2012, pp. 10 - 15.

44 David Huils, "Petróleos de Venezuela, S.A. (PDVSA): From Independence to Subservience, in Victor et al., eds., 2012, pp. 418 – 477; Ognjen Stojanovski, "Handcuffed: An Assessment of Pemex's Performance and Strategy," in Victor et al., eds. 2012, p.280. In an attempt to respond to this problem, in 2013 Mexico enacted a constitutional reform that seeks to dramatically reduce the non-commercial roles played by its national oil company, and to empower other bodies to serve as more effective regulators.

45 Heller et al., 2014, p. 7.

46 For a more detailed description of implications and components of the regulatory role, see Heller et al., 2014, pp. 5 - 8. Our definition is derived from Ralf Boscheck, "The Governance of Oil Supply: An Institutional Perspective on NOC Control and the Questions It Poses," *International Journal of Energy Sector Management* 1 (2007) 366-389, and Silvana Tordo, *National Oil Companies and Value Creation* (Washington: World Bank, 2011). In the *Nine Recommendations* paper we include licensing responsibilities within the definition of the regulatory role, as it does reflect a significant regulatory responsibility. Because of the primacy and the apparently evolving nature of the licensing responsibility in Myanmar, we opted to separate that into a separate sub-section for purposes of this paper.

MOGE's role in revenue collection is pivotal to the generation of public funds in Myanmar.

all operations” in Myanmar,⁴⁷ and is responsible for selecting companies to develop projects. During the most recent bid rounds for onshore and offshore acreage, MOGE was responsible for organizing and managing bid rounds for oil awards, including the evaluation and selection process and negotiation of contracts with winning bidders. While we do not seek in this paper to analyze these bid rounds in detail, we note that despite their limitations they represented significant advancements compared with prior practice in Myanmar. Prior to 2010, competitive bidding was not common in the country's oil and gas sector, whereas the 2013 and 2014 rounds contained a prequalification step, the circulation of a model PSC, a set of standard terms and conditions to guide bids, and public announcements of the winning companies.⁴⁸

Beyond its licensing role, MOGE oversees the performance of contractors and monitors enforcement of the law. The model PSCs that Myanmar circulated as part of the 2013 bid round indicate that MOGE will continue to occupy the central monitoring and oversight role in the future. It is impossible to know with certainty what terms were contained within the final contracts signed with oil and gas companies, since the contracts themselves remain secret, but if the signed contracts do not deviate significantly from the model then the PSCs will have preserved a system in which MOGE holds most of the important oversight powers associated with oil and gas projects, including:⁴⁹

- Approval of contractor appraisal programs, development plans, work plans and annual budgets (sections 6 – 8)
- Monitoring of contractor performance against agreed obligations during exploration periods (sections 4 – 5)
- Assessment of contractors' valuation of crude oil (section 12)
- Oversight of contractor training programs (section 15)

In many countries this kind of project oversight role is played not by the national oil company but by a dedicated bureaucratic unit within the line ministry (typically a ministry of energy or petroleum) or an independent regulatory body.

The model contract also provides MOGE with a significant role in the monitoring and collection of various payment streams. MOGE is charged under the model PSC with taking and marketing the state's share of profit oil, as well as collecting signature and production bonuses, data fees, and training funds that the contractor pays in cash. Figure 2 provides an example of the structure of bonuses included in one PSC from the mid-2000s.

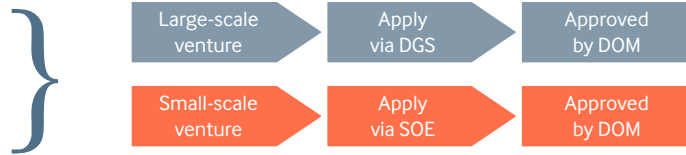
MOGE's role in revenue collection is pivotal to the generation of public funds in Myanmar. This underscores the significance of the need for MOGE to develop strong capabilities to monitor payment obligations effectively (to ensure that the state is getting its fair share), and the importance of the

47 Model Production Sharing Contract for the Exploration and Production of Petroleum between Myanma Oil and Gas Enterprise and XXXXX for Deep Water Block XXXXX Offshore Area, Republic of the Union of Myanmar, 2013, Preamble.

48 Adam Smith International et al., 2015, pp. 35 - 38.

49 We were able to access three different model production sharing contracts, covering onshore, shallow water offshore and deep water offshore blocks. The contracts vary from one another in several respects, but the MOGE roles we discuss here are consistent across the models.

De facto *licensing process in mining*



company’s accountability for its own performance against benchmarks.

Mining sector

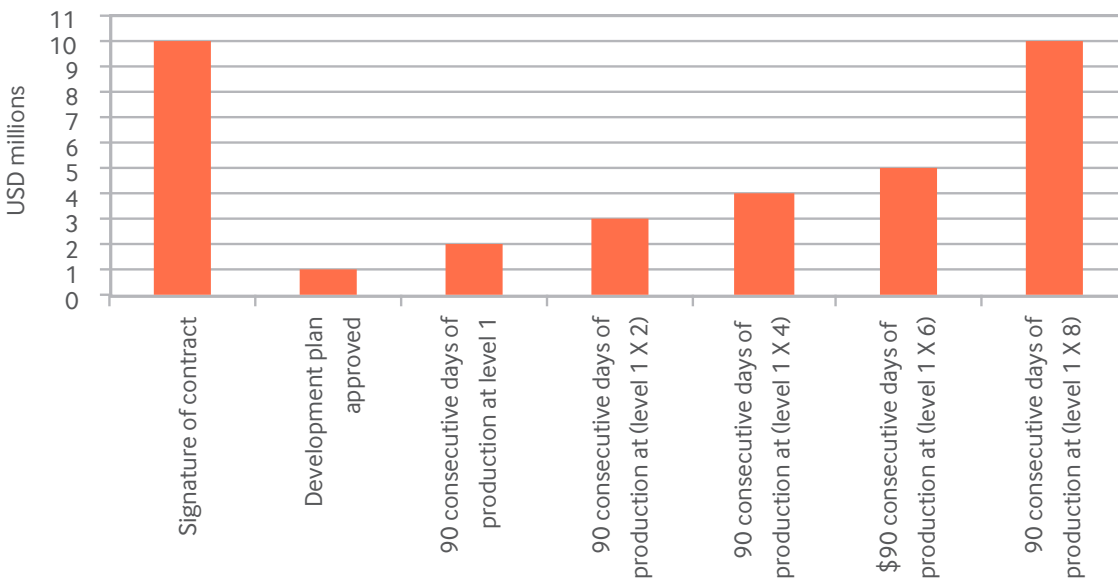
Though it has been difficult to obtain systematic information about the precise roles played by the SEEs in the mining sector, they appear to exercise less regulatory power than SEEs in the oil and gas sector. They do, however, play a role in licensing processes and the implementation of agreements.

The mining-sector SEEs do not exercise formal de jure power to award permits for large-scale and small-scale commercial mining projects. This power is vested in the Ministry of Mines. Article 6 of the Mines Law of 1994 does establish that a person or company seeking to engage in subsistence

production of minerals (including gemstones) “shall apply to the respective Mining Enterprise or to the officer authorized by the Ministry” for a permit. Article 10, in turn, empowers the “respective Mining Enterprise or the officer authorized by the Ministry” to issue such a permit. The term “subsistence” under this law is limited to production using “ordinary hand tools.”

The Ministry of Mines indicated to us that in practice, companies seeking mining exploration licenses for “large areas” have to submit applications to the ministry’s Department of Geological Survey. Companies seeking exploration licenses for “small areas” submit the applications directly to the SEE. The ministry’s Department of Mines is the body that officially issues these licenses.⁵⁰

Figure 2. Illustration of the structure of payment to MOGE of signature and production bonuses, from a mid-2000s production-sharing contract



50 Interview with officials from the Ministry of Mines, June 2014 and June 2015.

Interviews in Myanmar demonstrated that representatives of private companies and advocacy groups do not have a clear understanding of the SEEs' regulatory roles.

In order to progress from an exploration permit to a production permit, a private company must submit a feasibility study. The SEE, the Department of Mines and the Department of Geological Survey review the feasibility study and make a formal recommendation to the ministry's Executive Management Committee, which makes the final decision about whether to award the production permit.⁵¹

Ministry of Mines officials also indicated to us that the SEEs do not play a formal role in the process of overseeing compliance by commercial companies with the country's laws or the execution of their work plans. In their roles chairing the Joint Management Committees for each project, however, the SEEs are able to exercise significant influence on the execution of the projects.⁵²

Interviews in Myanmar demonstrated that representatives of private companies and advocacy groups do not have a clear understanding of the SEEs' regulatory roles as explained to us by the ministry. Significant confusion exists among these important stakeholders, who remain concerned about how SEEs operate in practice. This uncertainty could be alleviated by clearer reporting on the SEEs' activities and responsibilities, and a clearer delineation in the law.

Interviewees suggested that the military-affiliated companies, particularly UMEHL, also exercise significant *de facto* licensing power via the ability to partner with private companies to develop mines over which UMEHL holds a formal license.

Global Witness reports that these partnerships typically entitle UMEHL to a 40 percent share of production. When a project is up and running, sources told Global Witness that UMEHL plays a *de facto* oversight role, overseeing the performance of its partners.⁵³ Other sources described UMEHL's relationship with private mining companies as taking place principally via lucrative sub-contracts (a process that is discussed in more detail below). Still others suggested that, in addition to their influence through formal contracts, the tacit approval of the military-affiliated companies is essential in order for other companies to be allowed to do business in certain regions. Some interviewees indicated that projects controlled or overseen by UMEHL do not adhere to the same standards as other projects with respect to population displacement, compensation for land, or use of agricultural land for mining.

Our research indicates that procedures for managing the gold sector differ from those that apply to other minerals. According to the mines law, only local companies are permitted to extract gold (though in at least some cases foreign companies have in fact received concessions).⁵⁴ Interviews indicated that part of the fiscal regime associated with these permits is a production-sharing system wherein No. 2 Mining Enterprise receives the state's share of production in-kind—based on estimated production values—and then sells its share of gold to the central bank at an assessed market price.⁵⁵

51 Interview with officials from the Ministry of Mines, June 2014 and June 2015. Chapters IV and V of the *Mining Rules* of 1996 provide an overview of the procedures associated with obtaining large-scale and small-scale production permits.

52 Interview with officials from the Ministry of Mines, June and October 2015.

53 Global Witness, 2015, pp. 29–30, 51.

54 See, e.g., Centurion Minerals Ltd., "Centurion Receives Myanmar Mining Ministry Approval for Concessions," 12 November 2013, <http://www.centurionminerals.com/s/NewsReleases.asp?ReportID=610699>.

55 Interviews with government representatives 4 October 2014, consultations with international organizations in Myanmar.

There are myriad examples of SOEs being used as tools for patronage.

C. SUB-CONTRACTING AND MAINTENANCE OF PATRONAGE NETWORKS

i. International experience

Rulers and economic elites in many countries have used state-owned enterprises as key conduits in their efforts to maintain their positions by distributing the economic benefits of extraction to well-connected companies and individuals. SOEs are susceptible to this dynamic because they often sit at the intersection of commercial and regulatory activities; have access to large flows of revenue; manage a complex web of activities that can facilitate obfuscation; have operations and connections in various regions of a country; and have the power to award valuable contracts and sub-contracts.

There are myriad examples of SOEs being used as tools for patronage. The Petrobras scandal of 2014–2015 in Brazil provides a powerful illustration of the risks faced by even the most sophisticated SOEs in well-developed democracies. The company was revealed to have awarded billions of dollars' worth of contracts to politically connected companies that had bribed leading government officials.⁵⁶

In countries with weak institutions and/or ongoing conflicts, the risks associated with patronage can be high. The Nigerian National Petroleum Corporation, for example, has exerted influence in the conflict-prone Niger Delta region through the allocation of jobs, sub-contracts and

valuable oil importing/exporting licenses “both for individual gain and to buy support of politicians in the legislature, who in turn use the proceeds for patronage among their home constituencies.”⁵⁷ NNPC officials have also been part of a network of political, military and economic leaders that have for years worked together to illegally smuggle oil out of the country at a rate as high as hundreds of thousands of barrels per day.⁵⁸ As such, NNPC has been an important contributor to the continued instability of the Niger Delta, where powerful individuals are able to thrive in an environment of conflict and corruption.

The role of NNPC alongside other players in the Niger Delta is a potent illustration of the phenomenon that Paul Collier refers to as “doing well out of war,” wherein the powerful actors on various sides of a conflict benefit economically from an ongoing state of chaos:

“[M]arkets during civil war become disrupted. In normal circumstances the main force keeping marketing margins down, and indeed profits more generally, is competition. If there is good information and easy entry into trading, marketing margins will be driven down to the point at which traders earn no higher incomes than they would in any other activity. Civil wars make information much more costly and particular. Further, they make entry into the activity much more difficult. . . Trade becomes increasingly monopolistic, and so marketing margins increase. . .”⁵⁹

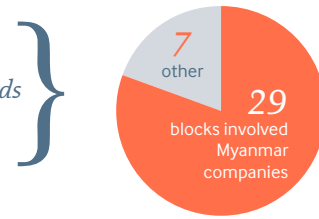
56 For a description of the Petrobras scandal, see Joe Leahy, “Top Politicians named in Petrobras scandal,” *Financial Times*, 7 March 2015, <http://www.ft.com/intl/cms/s/0/56958878-c45e-11e4-9019-00144feab7de.html#axzz3U0bWxbYj>.

57 Mark C. Thurber, Ifeywinwa M. Imelife and Patrick R.P. Heller, “NNPC and Nigeria’s Patronage Ecosystem,” in Victor et al., eds, 2012, p. 737 (citing O. Bello, “Political Patronage Dashes Bid to Reduce Diesel Price,” *Business Day*, 6 October 2008).

58 William Wallis, “Jonathan Faces Challenge to Curb Oil Theft,” *Financial Times*, 26 June 2012.

59 Paul Collier, “Doing Well Out of War: An Economic Perspective,” in Mats Berdal and David M. Malone, eds., *Greed and Grievance: Economic Agendas in Civil Wars* (Boulder, CO, USA: Lynne Reiner Publishers, 2000), 102.

Twenty-nine of the 36 blocks awarded by MOGE in the 2013-14 rounds featured a Myanmar company as a minority partner.



ii. State of play in Myanmar

We do not have systematic information on the roles that SEEs and the military-controlled companies have played in the maintenance of patronage networks in Myanmar, and it is not the goal of this piece to investigate such connections in detail. However, several public sources and a number of interviewees indicated that such connections present a major issue for the country. Greater public discussion around this topic is important if the country is to build stronger trust in the extractive sectors and move toward stabilization in conflict-affected regions.

The economic ties between the ruling junta and prominent businessmen are believed by many to have represented a significant component of the state's economic survival strategy during the period of military government. As *Forbes* reported, "Myanmar's former military rulers relied on tycoons. . . to prop up the economy. Commonly known as 'the cronies,' they became experts at circumventing sanctions and were richly rewarded by the junta, which granted concessions ranging from forestry to car imports."⁶⁰ A recent report by Global Witness provides a detailed reporting on the role that political patronage continues to play in the jade sector, and the powerful influence enjoyed by politically-connected companies.⁶¹

Many interviewees expressed a belief that the country's SEEs sit close to the center of this patronage network and serve as vehicles for the ruling government to maintain its authority. Interviewees suspect that one of the principal mechanisms that SEEs have used to exert this influence is their allocation power. By selecting the domestic companies and individuals who will be able to participate in potentially lucrative oil and mineral projects (formally, in the case of MOGE, and less formally in the mining sector), the SEEs have the potential to rank among the most important *de facto* distributors of rents in the country.

As discussed above, in their role as *de jure* and/or *de facto* licensing bodies, many SEEs choose the government's (and their own) private partners in operating groups and joint ventures. In many cases there are explicit or implicit requirements that national companies participate as partners. In the oil and gas sector, MOGE requires that foreign contractors include a local joint venture partner holding a minority interest for both onshore and shallow water block projects. In the 2011 bid round for onshore blocks, local partners are thought to have achieved ownership stakes of 5 to 15 percent in the new projects.⁶² The 2013 and 2014 bid rounds have also resulted in domestic companies holding significant economic interests in joint ventures and PSCs. According to a study conducted by Global Witness, 29 of the 36 blocks awarded by MOGE in the 2013-14 rounds featured a Myanmar company as a minority partner.⁶³

60 Jared Ferrie, "Burmese Tycoon Tay Za Under Scrutiny," *Forbes Asia*, 18 August 2014, available at <http://www.forbes.com/sites/forbesasia/2014/07/23/burmese-tycoon-tay-za-under-scrutiny/>.

61 Global Witness, 2015.

62 Chandler and Khin Cho Kyi, 2014.

63 Global Witness, *Who Are the Real Winners of Myanmar's Latest Oil and Gas Block Sales* (2014), <http://www.globalwitness.org/sites/default/files/Myanmar/MBriefingUpdated.pdf>, pp. 8 – 11.

After the principal operating group or joint venture for a particular project has formed, the SEE often plays a direct role in selecting the companies that will provide goods and services to the contractor group during the execution of the project. As in most oil-, gas- and mineral-producing countries, Myanmar seeks to promote the selection of local businesses to occupy these roles wherever possible.

A petroleum company official indicated to us that MOGE provides contractors with a list of prequalified sub-contractors from which to choose, but that the basis for eligibility to be on the list are not clear, and that MOGE has not transparently or consistently handled the contractor's own efforts to propose additional eligible sub-contractors.⁶⁴ In the mining sector the process is even more opaque—interviewees complained that there are not systematic lists or procedures to follow.

One topic that serves as a point of confusion for many interviewees was a lack of clarity in the relationship between the formal mining-sector SEEs and the military-affiliated companies such as UMEHL and MEC. Various public sources and interviewees indicate that these companies own substantial stakes in several timber and mineral companies, particularly in the gemstone and jade sectors.⁶⁵ As discussed above, they also appear to

play an important *de facto* role in the allocation of access by private companies to gemstone projects, in parallel to the ministries.⁶⁶

Reports have indicated that UMEHL has access to this kind of influence and resource base as part of a broader patronage network; ownership of the company is shared by the directorate of procurement at the war office and active and retired military officers.⁶⁷ According to the study by ASI, MDRI and the World Bank, UMEHL was created in 1990 through the consolidation of a large number of joint ventures and subsidiaries created by previous military-affiliated companies; UMEHL went on to form 77 new companies of its own between 1990 and 2007, some of them in the extractive industries. There is conflicting information about its reporting structure within the military hierarchy, and the research consulted in the ASI/MDRI/World Bank study indicated that UMEHL appears to direct its revenues to military directorates and units, as well as to active and retired military personnel, though not officially to the state treasury.⁶⁸ An EITI scoping study reports that UMEHL is “jointly owned by two military departments: the Directorate of Defence Procurement and Defence personnel (active and veteran).”⁶⁹

64 During the last round of selections, some companies complaint on not having access to the reason for not being selected (Interview 6 May 2014)

65 See, e.g., Global Witness, 2015. Global Witness says on page 40 that at the 2013 and 2014 jade emporiums, UMEHL sold jade worth \$230 million and MEC sold jade worth \$53 million. See also Myanmar Extractive Industries Transparency Initiative, *Scoping Study for the First EITI Report*, November 2015, pp. 37 – 38. UMEHL owns a stake in the Letpadaung copper project various interests in the coal, granite and limestone sectors. MEC's interests are stated to include participation in coal, gypsum, limestone and marble projects.

66 Interview conducted the 1 July 2014, http://www.wikileaks.org/plusd/cables/09RANGOON83_a.html.

67 Win Min, “Burmese Military Government: Crony Capitalism in Uniform,” *Virginia Review of Asian Studies* 6 (2004): 27 - 41.

68 Adam Smith International et al., 2015, pp. 83 - 85.

69 Myanmar Extractive Industries Transparency Initiative, *Scoping Study for the First EITI Report*, November 2015, p. 37.

A combination of commercial and non-commercial roles in one entity carries with it certain risks, most importantly the possibility for conflicts of interest and damages to performance incentives arising from the reality that SEE executives will have privileged roles as overseers of the system.

As noted above, MEC is also widely believed to exercise significant influence over the mining sector.⁷⁰ The ASI/MDRI World Bank report indicates that the company was established in 1997, within the Quartermaster General's Office, and cites Maung Aung Myoe, who refers to the company as "a government within a government."⁷¹ According to the EITI scoping study, "MEC is operated under the Ministry of Defence's Directorate of Defence Procurement (DPP), with its private shares exclusively owned by active-duty military personnel."⁷²

It was virtually impossible for us to obtain thorough information about smuggling, another component of the broader patronage ecosystem surrounding the gemstone industry. Global Witness reports that in the jade sector, "businessmen estimate that companies smuggle between 50 percent and 80 percent of jade directly to China, bypassing controls on both sides of the border."⁷³ There was significant speculation among our interviewees about the possible involvement of SEEs and the military-affiliated companies (including UMEHL and MEC) in the smuggling of jade, but a lack of consensus, which suggests that there is little understanding of the real picture among interviewees. Some suggested that the military-controlled companies sell jade at the emporium without fully accounting for it. Others

suggested that they sell some or all of their jade outside the emporium structure altogether. Others indicated that the SEEs and military-controlled companies are not actively involved in smuggling, but sometimes look the other way while their private partners smuggle.⁷⁴ Some interviewees suggested that the prevalence of smuggling is in part due to a failure (or refusal) by SEEs active in the gemstone industry to strictly enforce control over certain geographical areas where extraction takes place.

D. POLICY IMPLICATIONS OF MULTIPLICITY OF ROLES

As noted above, the combination of commercial and non-commercial roles in one entity is sometimes necessary in a country like Myanmar where there is very limited capacity, since it enables the state to concentrate administrative and human resources. But such a combination also carries with it certain risks, most importantly the possibility for conflicts of interest and damages to performance incentives arising from the reality that SEE executives will have privileged roles as overseers of the system. Considering the information we have gathered in Myanmar—and the questions we were not able to answer—as well as international experience, we observe the following:

70 Examples of publications discussing MEC's role in the mining sector include Aung Min and Toshiro Kudo, "Business Conglomerates in the Context of Myanmar's Economic Reform," in Hank Lim and Yasuhiro Yamada, eds., *Myanmar's Integration with Global Economy: Outlook and Opportunities* (Institute of Developing Economies – Japan External Trade Organization, 2014), <http://www.ide.go.jp/English/Publish/Download/Brc/13.html>, p. 154; Jennifer Loven, "Bush signs Myanmar Sanctions Bill," *USA Today*, 29 July 2008, http://usatoday30.usatoday.com/news/washington/2008-07-29-1775524742_x.htm;

71 Adam Smith International et al., 2015, p. 85.

72 Myanmar Extractive Industries Transparency Initiative, *Scoping Study for the First EITI Report* (September 2015), p. 35.

73 Global Witness, 2015, p. 36.

74 The Global Witness report offers a similar hypothesis, arguing that officials of the military companies are known to accept bribes in return for letting smuggling continue. UMEHL vigorously denied that such activity is sanctioned. Global Witness, 2015, p. 52.

The fact that MOGE is guaranteed a role in every oil project creates some disincentives for the company to develop its own competitive commercial competence.

- The lack of clarity on where the SEEs' roles begin and end poses a risk to the effective functioning of the petroleum and mineral sectors. It may be the case that significant clarity exists within the government, but even so, the lack of a clear public definition, well-grounded in a legal framework can:
 - o Make it more difficult for investors to know with whom they should engage
 - o Create opportunities for self-interested parties to benefit from confusion and take advantage of gaps in the system
 - o Perpetuate distrust among Myanmar's citizens, particularly in conflict-affected regions
- There is a risk of conflict of interest associated with SEEs' combined commercial and regulatory (including licensing) roles. MOGE's role as a participant in every project and its authority over selection of operating partners places it in the league of national oil companies in major oil producers such as Malaysia and Angola, as well as in emerging or prospective producers including Ghana (during the early years of exploration and production) and Liberia. But the fact that this arrangement guarantees MOGE a role in every oil project—i.e., MOGE does not have to compete in order to gain access to resources and influence—creates some disincentives for the company to develop its own competitive commercial competence. This makes accountability and performance incentives even more crucial.
- Ongoing conflict in Myanmar, the multiplicity of actors active in the extractive industries, the absence of clear rules, and the relative opacity of the sector (discussed in more detail below) combine to create a risk that the SEEs could contribute to the maintenance of the ecosystem in which conflict flourishes. We have no direct evidence of the SEEs or the military-affiliated companies playing an explicit role in smuggling or conflict, but their positioning within an apparent network linking public resources to the economic goals of well-connected firms is consistent with the experiences of other conflict-affected countries.
- Promoting the growth of local private enterprises is often one of the central goals of a state's SOE strategy, and in countries such as Brazil SOEs have served as catalysts of a dynamic new class of domestic companies. In an economy that has been as closed as Myanmar's, where the country is operating with a small private-sector base, some degree of familiarity between decision-makers and the "tycoon class" is inevitable. But in many countries local contracting requirements, particularly where they are characterized by heavy degrees of discretion, can contribute to the enrichment of a privileged elite without broader development benefits. Among the steps that countries have taken to reduce some risks associated with the SOE role in local content provision are:
 - o Rigorous, consistent and transparent standards for qualification of contractors and sub-contractors
 - o Regular reporting on the achievement of measurable targets for the growth of local enterprises
 - o Public disclosure of information on the beneficial ownership of key companies along the natural resource value chain.

Financial relationships between Myanmar's SEEs and the state

Having examined the roles that SEEs play in the management of Myanmar's extractive industries, we now turn to an assessment of the money they use in order to execute those roles. A critical point is that the SEEs have been entrusted with power to handle huge shares of public revenue, and their power to set their own agenda for managing that money on "commercial" terms appears to be growing.

A. INTERNATIONAL EXPERIENCE

Global experience has demonstrated that governments must strike a delicate balance in the management of revenue flows between SOEs and the state treasury. Where an SOE is given too much autonomy over managing public revenues, it risks becoming a *de facto* parallel treasury, enabling expenditure of large sums without the sorts of checks and balances associated with ordinary budget processes, and sometimes out of step with broader national development strategies. The most extreme examples of this risk worldwide include countries such as Venezuela and Angola, where national oil companies have been granted the latitude and responsibility for spending tens of billions of dollars on quasi-fiscal activities ranging from health care to construction—all outside ordinary procedures for public expenditure management. Even in less extreme cases, a decision to allow an SOE significant financial autonomy to spend on developing its core business often entails significant trade-offs in terms of other potential uses of that public revenue. Ghana, for example, has been celebrated globally for its commitment to investing its newfound petroleum revenues into growth-promoting investments. But during the first several years under its revenue management legislation, rules that allow for major revenue retention by the state-owned

Ghana National Petroleum Corporation (GNPC) resulted in the company, rather than the Ministry of Finance, making decisions about how to spend large shares of the country's petroleum earnings. GNPC retained more than 25 percent of all petroleum revenues in 2013, for example.⁷⁵

On the other hand, where the state has commercially ambitious goals for its SOEs, a revenue management system that is too restrictive can starve the companies of much-needed capital. SOEs that lack predictable access to sufficient revenue flows to consistently cover operational costs—including Nigeria's NNPC and Mexico's Pemex—have lost significant profits as a result.

There is no one-size-fits-all approach to devising rules for how an SOE pays money into the treasury—or how it receives money from the treasury via budget allocations. The right balance for Myanmar will depend on an acute assessment of needs elsewhere in the national budget, the soundness of the SOEs' strategic plans for expenditure and the accountability mechanisms impacting how effective their expenditure is likely to be.

Our global research suggests that as a government thinks about how to allocate financial control to an SOE via revenue retention, it should consider the company's commercial investment needs and operational sophistication on the one hand (i.e., the higher the degree of sophistication, the more the company will need a steady and predictable flow of revenue) and the share of revenues coming from SOE activities on the other (i.e., the more dependent a country is on revenues that pass through the hands of the SOE, the greater the risk to sound economic management when the SOE retains large shares of that revenue). See Figure 3.⁷⁶

75 Ghana Public Interest and Accountability Committee, *Report on Management of Petroleum Revenues for Year 2013*, <http://piacghana.org/2013PIACARreport.pdf>.

76 For a more detailed discussion, see Heller et al., 2014, pp. 9 - 10.

Figure 3. Determinants of SOE revenue retention

Operational sophistication/ commercial investment needs	High	I. Highest justification for SOE revenue retention (e.g., Norway)	II. High justification for SOE revenue retention, but checks and balances are of heightened importance (e.g., Malaysia)
	Low	III. Reduced justification for SOE revenue retention (e.g., Ghana, especially before production began)	IV. Lowest justification for SOE revenue retention (e.g., Congo-Brazzaville)
		Low	High

Share of total government revenues coming from SOE activities

B. STATE OF PLAY IN MYANMAR: LARGE REVENUE SHARES, INCREASING “COMMERCIALIZATION”

i. Data on all SEEs

An examination of IMF reports in conjunction with presentations by representatives of the Ministry of Finance enabled us to derive some estimates of SEE finances.⁷⁷ However, a lack of information on SEE revenue collection or fiscal transfers made it difficult to ascertain with certainty the precise earnings or transfers associated with these companies. We hope that these estimates will serve as a basis for further

discussion and clarification of the state of fiscal flows to and from the SEEs.

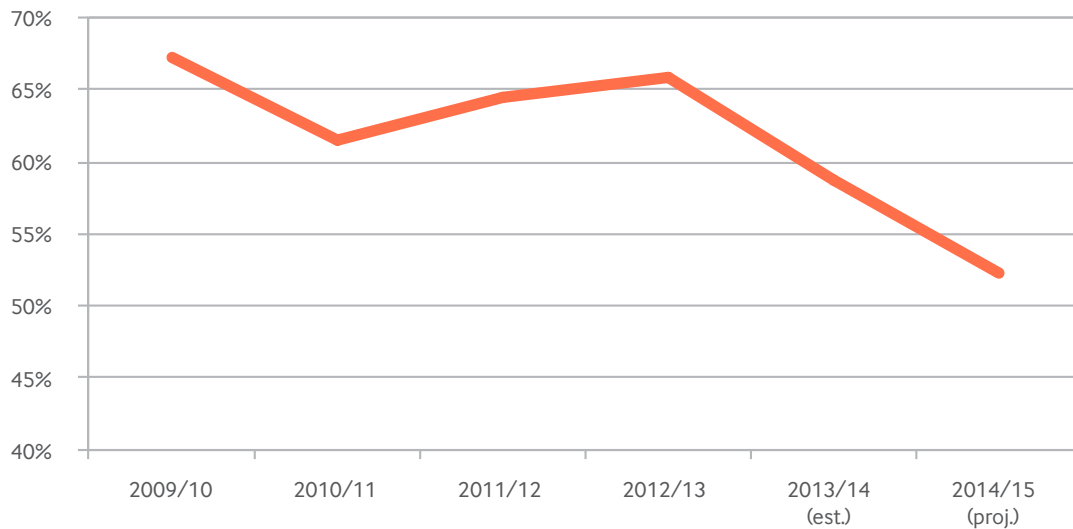
The IMF provides valuable aggregated data on the fiscal contributions of all SEEs across the economy, which include the petroleum and mining SEEs as well as enterprises in the timber, electric, financial, construction and other sectors.⁷⁸

SEE earnings represent a major share of public sector revenues, ranging from a high of 67 percent in fiscal year 2009/10 to a projected low of 52 percent in 2014/15. See figure 4.

77 Budget Department, Ministry of Finance, “The Role of the State Economic Enterprises in Myanmar Government Budget,” and Treasury Department, “The State Economic Enterprises Reform in Myanmar (fiscal perspectives),” Presentation at the Myanmar-EITI conference “Natural Resource Governance in Myanmar”, Naypyitaw, 16 October 2014.

78 IMF, *2015 Article IV Consultation*, p. 5. It is important to caveat that much of our analysis rests on estimates and projections, especially 2013/14 and 2014/15. Given the poor information quality in Myanmar, the margins of error around these numbers are high.

Figure 4. SEE receipts as a percentage of total public sector revenue



Beginning in 2012, the Myanmar government took two steps that increased SEEs' responsibility to retain revenues and make spending decisions on a commercial basis. First, the government devalued Myanmar's currency, the kyat, in April 2012, bringing it close to parity with the market rate and establishing a managed float going forward.⁷⁹ Prior to the devaluation, SEEs with earnings driven by exports would earn revenues in foreign currency but would have to convert it to kyat at the artificially inflated official rate, which served to reduce the SEEs' income. After the shift to a managed floating exchange rate, these net-exporting SEEs were able to transfer foreign exchange earnings into kyat at a level more reflective of the true market value, which

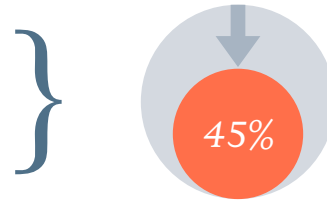
effectively gave SEEs significantly larger kyat-denominated revenues. For import-driven SEEs with net foreign exchange deficits, the effect was the opposite—their activities were no longer artificially propped up by the exchange rate, and their economic position declined.

Second, beginning in 2012, the government of Myanmar has enacted a progressive set of changes to reduce the payments that profitable SEEs are obligated to pay to the state, and to increase these companies' ability to retain revenues. Prior to fiscal year 2012/13, SEEs were required to pay all of their net profits into the State Fund Account (SFA), broken down as 30 percent income tax and 70 percent "SEE contributions."⁸⁰

79 Note that the justification for the currency reforms extended far beyond their influence on SEEs.

80 Treasury Department, 2014.

SEEs' contribution of net profits into the SFA was reduced from 100 percent to 45 percent.



Core features of current system for SEE-state fiscal flows

- SEE obligations for taxes and contributions reduced from 100 percent of net profits to 45 percent (20 percent income tax + 20 percent state contribution)
- Profitable SEEs receive budgetary allocation each year to cover all costs except for raw materials
- Profitable SEEs are able to retain all other revenues in Other Accounts. Do not need to pay for costs (except for raw materials costs) from this account

The reforms launched in 2012/13 dramatically reduced these payment obligations. SEEs continue to receive allocations each year from the budget, which are designed to cover all of their activity costs (including operational expenditures, capital costs, etc.), except for raw materials purchases. These raw materials costs are to be paid from the SEE's accounts, which can carry a balance from one year to the next.⁸¹ Government officials have indicated to us that the raw materials costs represent a relatively small share of the costs of extractive industry SEEs, meaning that the large majority of their costs are covered by the yearly budget allocations.⁸²

Once the costs have been covered, SEEs are now required to pay 45 percent of net profits into the SFA (income tax at a reduced 25 percent rate and 20 percent characterized as "state contribution.")⁸³ This is a dramatic reduction from the 100 percent previously required.

Any revenues remaining after a profitable SEE pays these taxes and contributions may be retained in the SEE's "Other Accounts" as the company's "own funds for the purpose of accumulation."⁸⁴ Money from these Other Accounts is not transferred to any other state body.⁸⁵ Several sources indicated to us that the supervising ministries (e.g., the Ministries of Energy and Mines) exercise some degree of control over the ways in which the SEEs may spend these funds, but we were not able to learn the exact nature of this control. The Ministry of Finance indicated to us that the amounts carried over in the Other Accounts must be "verified and approved by the Union Auditor General's Office," but there are limits to this oversight authority.

In keeping with the State Fund Accounts Directive, which was issued in 1989, SEEs are required to submit a summary statement of revenues and expenditures to the Ministry of Finance. But the ministry has had difficulties in obtaining complete reporting on the detailed activities and expenditures of the SEEs. This differentiates

81 Responsibility to pay for raw materials costs has been transferred progressively to the SEEs over time. Beginning in fiscal year 2012/13, SEEs were required to cover 78 percent of their raw materials expenditures from their own accounts. Beginning in 2013/14, profit-making SEEs were required to cover 100 percent of their raw materials expenditures, while loss-making SEEs were required to cover 80 percent. Beginning in 2015/16, both profit-making and loss-making SEEs will be required to cover 100 percent of their raw materials expenditures. Source: consultations with Ministry of Finance, *Union Budget Law*, 2015, 9 April 2015, Part III.

82 According to the Ministry of Finance, for example, none of MOGE's cash calls for its participation in offshore projects is characterized as raw materials expenditures. MOGE may categorize certain inputs for its onshore exploration activities, such as fuel, as raw materials costs. Source: consultations with Ministry of Finance.

83 Consultations with Ministry of Finance, Treasury Department, 2014.

84 Budget Department, Ministry of Finance, "The Role of the State Economic Enterprises in Myanmar Government Budget". Confirmed in consultations with Ministry of Finance.

85 Consultations with Ministry of Finance.

The amassing by SEEs of large revenue flows in their “Other Accounts” means that strong procedures and accountability mechanisms (governing how SEE spending decisions are made) are absolutely essential.

the SEEs from other ministries and government departments, which are required to provide a more thorough financial accounting to the Ministry of Finance. The Ministry of Finance has recently been working to develop new reporting formats which seek to alleviate this problem by providing for more detailed sharing of information on SEE income and expenditures.⁸⁶

These policy changes were closely tied to the government's stated goal of tying SEE revenue flows more closely to commercial considerations. They appear to be permitting profitable SEEs to amass large revenues in their Other Accounts, without clear limitations on what they can do with those funds. As the government has stated, the changes seek to “enable profitable SEEs to stand on [their] own foot.” Government presentations suggest that the logic involves the goals of (a) increasing incentives for efficiency and commercialization by giving company leadership more control over profits, and (b) empowering the companies to undertake more ambitious investment programs to increase their activities and reach.⁸⁷

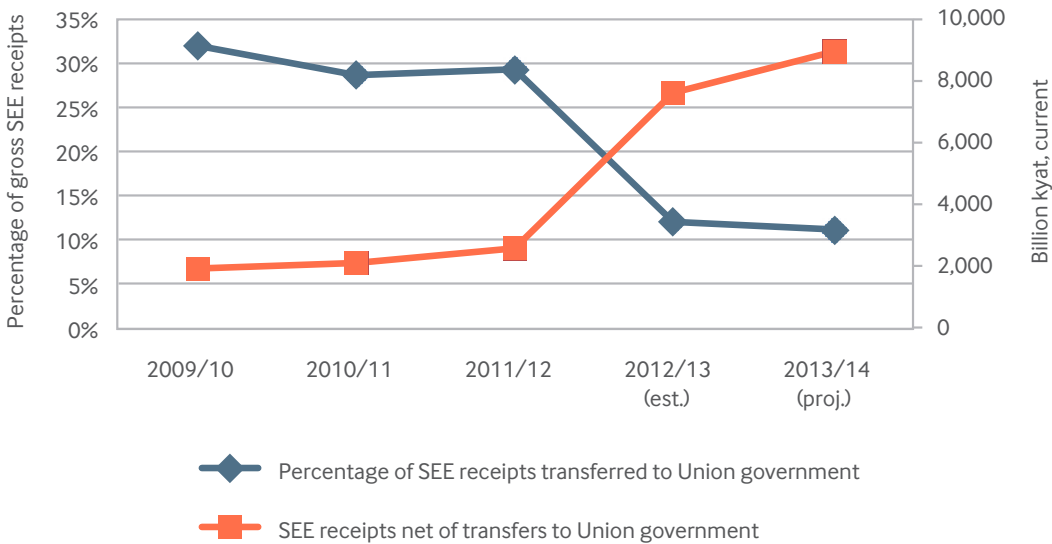
Overall, since the changes have gone into effect, Myanmar's SEEs—taken as a whole—have seen their gross revenues rise and the share of gross revenues that they transfer to the union government decline. Figure 5 illustrates the point. Myanmar's SEEs transferred 32 percent of their gross revenues to the government in 2009/10. That percentage remained roughly steady until 2012. SEE revenues rose dramatically in 2012/13, but the percentage they paid to the government dropped sharply, to an estimated 12 percent.⁸⁸ This is consistent with the government's stated policy direction toward greater commercialization, reducing the SEEs' obligation to effectively subsidize imports via the exchange rate and giving them control over larger revenues to carry out their own spending. As is discussed below, such a progression may make good sense for Myanmar's economic evolution, but it means that strong procedures and accountability mechanisms (governing how SEE spending decisions are made) are absolutely essential.

86 Consultations with government officials.

87 Treasury Department, 2014.

88 Data taken from IMF, *2013 Article IV Consultation*, p. 26 and IMF, World Economic Outlook Database (Myanmar GDP, current prices, USD billions). Second sentence should remain unchanged. The 2013 IMF Article IV report includes data on the transfers from SEEs/SOEs to the Union government, a practice that was not continued in the 2014 or 2015 Article IV reports.

Figure 5. SEE transfers to the state and revenue retention



The data underscores the size of the expenditure responsibilities entrusted to the SEEs. The IMF’s estimates indicate that in fiscal year 2012/13, the sums retained by SEEs after the payment of transfers to the central government equaled 56 percent of total public expenditure. IMF figures and the government’s own presentation projected SEE expenditure in 2013/14 to be 54 percent of total public expenditure.⁸⁹

ii. Data on oil, gas and mining SEEs

As noted above, the overall trends for all SEEs do not give a complete picture of the impact of the policy reforms on extractive-industry SEEs specifically. Broadly speaking, data suggest that oil, gas and mining SEEs are export-focused and

profitable, and thus we might expect these SEEs to have experienced the trends ascribed to that scenario above—net income benefits from the devaluation and shift to a managed float of the kyat, and control over larger revenue flows as part of commercialization strategy for profitable enterprises. We do not have systematic data on the revenues, transfers or expenditures of the oil and gas or mining sector SEEs, so this expectation cannot be confirmed. We look forward to the opportunity to discuss this hypothesis with the government and to strengthen or correct it as a result of more comprehensive information.

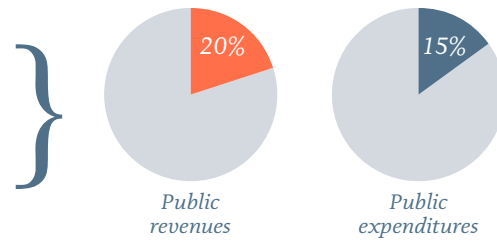
Table 2 summarizes our hypotheses about the impacts of the post-2012 policy changes on the balance sheets of the petroleum and mining SEEs.

89 Treasury Department, 2014.

Table 2. Hypotheses about the impact of policy reforms on extractive SEE cash flows

	Positive impact for SEE cash flows	Negative impact for SEE cash flows	Notes
Value of exports, in kyat	X		Because of currency devaluation and managed float, dollars earned from exports of petroleum or minerals are worth more in kyat than when the kyat value had been artificially inflated. This means that for an equivalent amount of dollars, the SEE can now purchase more in the domestic economy.
Cost of imported inputs, in kyat (e.g., equipment, foreign labor)		X	Because the kyat are worth less in dollar terms than before the devaluation, SEEs' imports are more expensive in kyat terms.
Net pre-tax income, in kyat	X		If the value of exports exceeds the value of imported inputs, the overall impact of the reforms would benefit the SEE.
Taxes (income tax and "state contribution") paid to Union government, in kyat		X	Official payments of these taxes likely increased in kyat terms (though not as a percentage of SEE revenues), mostly because pre-tax income rose.
Net after-tax income, in kyat	X		If the rise in net income likely exceeded the rise in tax payments, the overall impact of the reforms would benefit the SEE.
Retained revenue, in kyat	X		As a result both of the exchange rate reform and the changes in rules on revenue retention, the overall impact on the reforms is to enable greater revenue retention.

In the 2015/16 budget, petroleum and mineral sector SEEs were projected to collect 20 percent of total public revenues and spend 15 percent of total public expenditures



Figures provided by the Ministry of Finance provide useful snapshot of SEE revenues and expenditures. A presentation by the ministry's Budget Department features revenues collected and expected in 2012/13 and 2013/14 respectively.⁹⁰ In 2012/13, the petroleum and mineral sector SEEs accounted for roughly 29 percent of total public revenues and 15 percent of total public expenditures. For 2013/14, these figures were projected at 27 percent and 19 percent, respectively.

And figures shared with us by the ministry from the 2015/16 budget exercise project that the petroleum and mineral sector SEEs would collect 20 percent of total public revenues and spend 15 percent of total public expenditures.⁹¹

These figures enable us to formulate certain hypotheses about the overall fiscal reach of the petroleum and mining SEEs.

Table 3 provides a detailed breakdown of the percentage contributions of each SEE in 2012/13,⁹² and extrapolates from IMF data to provide an estimate of each company's revenues and expenditures in dollar terms. Three caveats are necessary:

- The government presentation that formed the source material for the table lists revenues and expenditures in percentage terms but does not make the denominator clear. We assume that the revenue figures are expressed as a percentage of total government revenue (an assumption that appears broadly consistent with the IMF data) and that expenditure

figures are expressed as a percentage of total public expenditure (an assumption which appears consistent with the presentation given by the Treasury Department in a 2014 presentation at the Myanmar-EITI conference on natural resource governance in Myanmar).

- The extrapolated revenue and expenditure figures in dollar terms are derived from a combination of figures from the Budget Department presentation (SEE receipts as percentage of public revenues/expenditures) and the IMF (public revenues/expenditures as share of GDP and total GDP). There appear to be some inconsistencies in the two data sources, as the government estimates total SEE receipts to represent 60 percent of public revenues and the IMF data would indicate an estimate of 66 percent of public revenues. Thus the numbers here in these columns should be treated as a broad estimate of the earnings of each SEE, rather than a precise figure.
- The government presentation includes no detail on the accounting definitions used in its characterization of revenues or expenditures. It does not, for example, make explicit whether payments by the SEEs to the Union government are recorded as company expenditures. (A subsequent presentation made at the EITI board meeting in Naypyitaw suggests that the government is counting tax payments and other contributions as SEE expenditures.)⁹³ Thus the column on extrapolated net cash flow should be taken only as a broad illustration.

90 Budget Department, Ministry of Finance, "The Role of the State Economic Enterprises in Myanmar Government Budget."

91 Figures shared by Ministry of Finance, September 2015, on file with authors.

92 Budget Department, Ministry of Finance, "The Role of the State Economic Enterprises in Myanmar Government Budget."

93 Treasury Department, 2014.

Table 3. Revenues and expenditures of petroleum and mineral SEEs in FY 2012/13

(A) Company	(B) Percentage of public revenues	(C) Extrapolated revenues, \$ billions	(D) Percentage of projected public expenditures	(E) Extrapolated expenditures, \$ billions (may include taxes)	(F) Extrapolated net cash flow, \$ millions, retained by SEE (C minus E)
Petroleum (Ministry of Energy)					
Myanma Oil and Gas Enterprise (MOGE)	15.84%	2.10	10.17%	1.45	655
Myanma Petrochemical Enterprise (MPE)	5.34%	0.71	1.99%	0.28	426
Myanma Petroleum Products Enterprise (MPPE)	5.22%	0.69	1.44%	0.21	488
Mining (Ministry of Mines)					
No. 1 Mining Enterprise	0.08%	0.01	0.02%	0.01	8
No. 2 Mining Enterprise	0.25%	0.03	0.23%	0.03	0
No. 3 Mining Enterprise	0.04%	0.01	0.02%	0.01	3
Myanmar Gems Enterprise	1.62%	0.21	1.13%	0.16	54
Myanmar Salt and Marine Chemical Enterprise	0.03%	0.00	0.00%	0.00	4
Myanmar Pearl Enterprise	0.04%	0.01	0.02%	0.01	3
Total	28.46%		15.02%		1,640

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

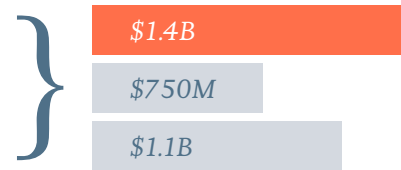


Table 3 points to several interesting findings and hypotheses, which bear further discussion:

First, MOGE is far and away the biggest collector and spender of public revenues among all SEEs. This is not surprising, given the relative size of the petroleum sector in Myanmar’s economy. To put the figures in perspective, at 2012 production levels the extrapolated MOGE revenues are equivalent to roughly \$26 per barrel of oil equivalent (BOE) produced. Extrapolated MOGE expenditures are equivalent to roughly \$18 per BOE produced.

Second, MOGE’s extrapolated expenditures (\$1.5 billion) were higher in fiscal year 2012/13 than Myanmar’s budgeted public expenditures on health (\$851 million) or education (\$908 million).⁹⁴ Note here that if the figures provided on MOGE expenditures include tax payments to government, some of the company’s spending likely contributed, through the budget, to these government health and education efforts. Even the extrapolated net cash flow to MOGE alone is equivalent to roughly 76 percent of health spending and 71 percent of education spending.

Third, the mining-sector SEEs collectively account for roughly two percent of public revenues and one percent of public expenditure.

Fourth, the extrapolated revenues of the Myanmar Gems Enterprise (\$210 million) would appear on their face to corroborate the views of several of our interviewees indicating that despite its formal role as the official exporter of all of Myanmar’s gems, the company in reality controls relatively little market share. The extrapolated earnings are equivalent to roughly 10 percent of the reported

official exports of the jade emporium.⁹⁵ Several sources indicate that military-affiliated companies such as MEC actually dominate the gems market, and that the Myanmar Gems Enterprise plays a relatively minor role.

Fifth, while the figures on extrapolated net cash flow are subject to too many uncertainties for us to be draw assured conclusions, they bear further examination. On their face, the large values in column (F) of the table—more than 70 percent of the total revenues earned by MPPE and No. 1 Mining Enterprise—appear linked with the loosening of the fiscal demands on the SEEs and the government’s stated desire to help increase SEEs’ “own fund[s] for the purpose of accumulation.” Understanding what these companies plan to do with these accumulated funds will be critical to effective public oversight. Across all oil and gas and mining SEEs, they total more than \$1.6 billion.

Myanmar’s first EITI report, which covers April 2013 – March 2014 and was released just as NRGI was finalizing this report, provides more concrete data that supports these observations. In particular, as shown in Table 4, the EITI report indicates that MOGE deposited approximately \$1.4 billion (1.3 trillion kyat) into its Other Accounts that year and the five leading upstream SEEs taken together deposited \$1.6 billion (1.5 trillion kyat) into these accounts. To put these figure in perspective, this is more than Myanmar spent in fiscal year 2013/14 on health (\$750 million) or education (\$1.1 billion) across the whole country.

The projections provided by the Ministry of Finance for fiscal year 2015/16 are not broken down at the level of individual SEEs, but they

⁹⁴ Figures on health and education expenditure derived from 2015 Article IV, p. 29..

⁹⁵ We were not able to locate precise figures for emporium sales, but *The Irrawaddy* reported sales at \$2 billion in 2013. See Kyaw Hsu Mon, “Jade Emporium Sales Soar to \$3.4 billion,” *The Irrawaddy*, 7 July 2014, <http://www.irrawaddy.org/business/jade-emporium-sales-soar-3-4bln.html>.

Table 4. Transfers by extractive industry SEEs into "Other Accounts," 2013 - 2014, per EITI report

	Transfer to Other Accounts, million kyat	Transfer to Other Accounts, \$ millions
MOGE	1,320,175	1,374
MGE	195,516	204
ME 1	2,436	3
ME 2	20,963	22
ME 3	3,563	4
Total	1,542,653	1,606

Table 5. Projected revenues and expenditures of oil, gas and mining SEEs, FY 2015/16⁹⁶

(A) Ministry	(B) Projected percentage of government revenues	(C) Projected income of SEEs, kyat millions	(D) Projected percentage of public expenditures	(E) Projected expenditures of SEEs, kyat millions	(F) Projected net cash flow, kyat millions (C minus E)	(G) Projected net cash flow, USD millions, authors' calculations at average 2015 YTD exchange rate
Energy ⁹⁷	18.74%	3,635,188	14.16%	3,259,359	375,830	301
Mining	1.65%	320,341	0.70%	160,807	159,534	128

provide a useful picture at the sector level. These figures include the government's projections in kyat terms. They broadly support the hypotheses discussed above, as illustrated by table 4.

If these government projections prove accurate, it suggests that according to the rules on fiscal flows described above, the Ministry of Energy SEEs

would add a net of more than \$300 million to their Other Accounts holdings during the current fiscal year. The Ministry of Mining SEEs would add a net of more than \$100 million. We should note that given the low prices of oil, gas and minerals on international markets across 2015, it is likely that the revenues earned by the extractive-sector SEEs have been lower in practice than was projected.

96 All figures except for those in column G are from figures shared by Ministry of Finance, September 2015, on file with authors. To make the USD estimate in column G, we took the average year-to-date exchange rate at the time of writing (30 September 2015) from <http://www.oanda.com/currency/historical-rates/>.

97 The SEEs operating under the auspices of the Ministry of Energy are MOGE, MPE and MPPE. SEEs focused on power generation operate under the auspices of the Ministry of Electric Power.

It is unclear to the public how exactly the extractive sector SEEs are managing the revenue they retain and spend.

C. POLICY IMPLICATIONS

As Myanmar proceeds with public expenditure reform and increasing commercialization of the SEEs, it is important to assess the balance between SEEs' needs for funds and the need for money to pay for other critical public programs. In light of the discussion above, available data suggest that a serious conversation is necessary within Myanmar about the rules governing SEE expenditures and SEEs' use of their retained profits. In particular, the large levels of revenue that appear to be accumulating in the accounts of the oil and gas and mining SEEs suggests that the country's officials should reflect upon whether the system derived for fiscal flows for all SEEs is appropriate for extractive industry SEEs in particular, given that:

- these enterprises tend to earn very large profits (on the basis of their control over public natural resources).
- they do not, at present, have a need for particularly sophisticated investments—their expenditures are carried out largely as a function of their role as minority partners with private companies, rather than as a result of any particular innovation on the part of the SEEs.

The information we have assembled about Myanmar suggests that MOGE sits somewhere at the intersection of Figure 3's quadrant III and quadrant IV. For context, MOGE's 16 percent share of public revenues places it significantly above the eight percent share earned by Ghana's GNPC (in a country that produces just shy of 100,000 barrels of oil per day), but below the percentages earned by countries with larger oil and gas output.⁹⁸ With respect to operational sophistication, to

date MOGE ranks on the low end of the spectrum internationally in terms of the scale or effectiveness of its commercial activities, as is discussed in more detail below. The SEEs in Myanmar's mining sector would be placed in quadrant III—they are not engaged in particularly complex or expensive commercial activity, and they control a relatively small share of the country's public revenues.

International experience has shown that countries in quadrants III and IV face significant risks when SOEs exercise *de facto* control over sums of public money not obviously commensurate with their needs or absorptive capacity. Such situations have, in many countries, contributed to these enterprises becoming vehicles for wasteful spending or corruption.⁹⁹

In light of the large impact that its SEEs have on public revenue generation and expenditure, Myanmar's citizens thus face an important question: what are these enterprises doing with the money? The level of funding should be matched to the goals and the roles of the SEEs. As is discussed above, Myanmar's SEEs are playing various roles in the management of the sector, but because of the lack of consistent information disclosure, it is unclear to the public how exactly the extractive sector SEEs are managing the revenue they retain and spend. A large proportion of it is almost certainly directed at costs incurred by ongoing operational activities, including their participation in joint ventures. As discussed above, the commercial role played by these companies is a limited one, and they are not believed to be carrying out sophisticated commercial activities on their own. In other countries, in addition to

⁹⁸ Ghana Public Interest and Accountability Committee, 2013, p. 19.

⁹⁹ Examples include Nigeria's NNPC and Angola's Sonangol.

ongoing activities that are part of existing projects, SEEs engage in significant capital investment in order to increase their operational sophistication. Statements and actions by MOGE officials have pointed to some intended new investments, and it would be valuable for MOGE or the Ministry of Energy to elaborate publicly on these plans.¹⁰⁰

SOEs in many countries also spend some share of their earnings on quasi-fiscal activities—activities that would typically be ascribed to other agencies of the state as part of its fiscal management, public expenditure or national development responsibilities, rather than being connected to the upstream oil sector directly. Examples include servicing national debt, building or maintaining infrastructure, promoting public health and education, and providing consumer fuel subsidies. Our research to date has not revealed significant quasi-fiscal activities by Myanmar's extractive industry SEEs.

The sheer size (in both dollar and percentage terms) of the revenues being earned, spent and retained by Myanmar's SEEs has important implications for governance. First, it means that as

part of the ongoing efforts at public expenditure reform, Myanmar would benefit from a thorough examination of whether the current system of major revenue retention provides the right level of fiscal control for the extractive industry SEEs, or whether it gives them outsized power over to spend and retain public money.

Second, if the current system is left in place, effective cost accounting and auditing by the state of these enterprises' activities are essential, since a decision by an SEE about how to spend its money can have a significant impact on the health of the public sector. The statements by various government officials that the Ministry of Finance has only limited power to review the accounts of SEEs suggests that further control mechanisms may be beneficial.

Third, the size of these fiscal flows underscores the critical importance of transparency, which is necessary so that citizens can understand how revenues are being generated and used, and so that they can adequately assess the performance of these enterprises as stewards of the broader economy. We turn to this question next.

100 See, e.g., "MOGE to Invite Myanma Onshore Pipeline Joint Venture Tender, closing date: 30 June 2014", <http://consult-myanmar.com/2014/06/05/moge-to-invite-myanmar-onshore-pipeline-joint-venture-tender-closing-date-30th-june-2014/>.

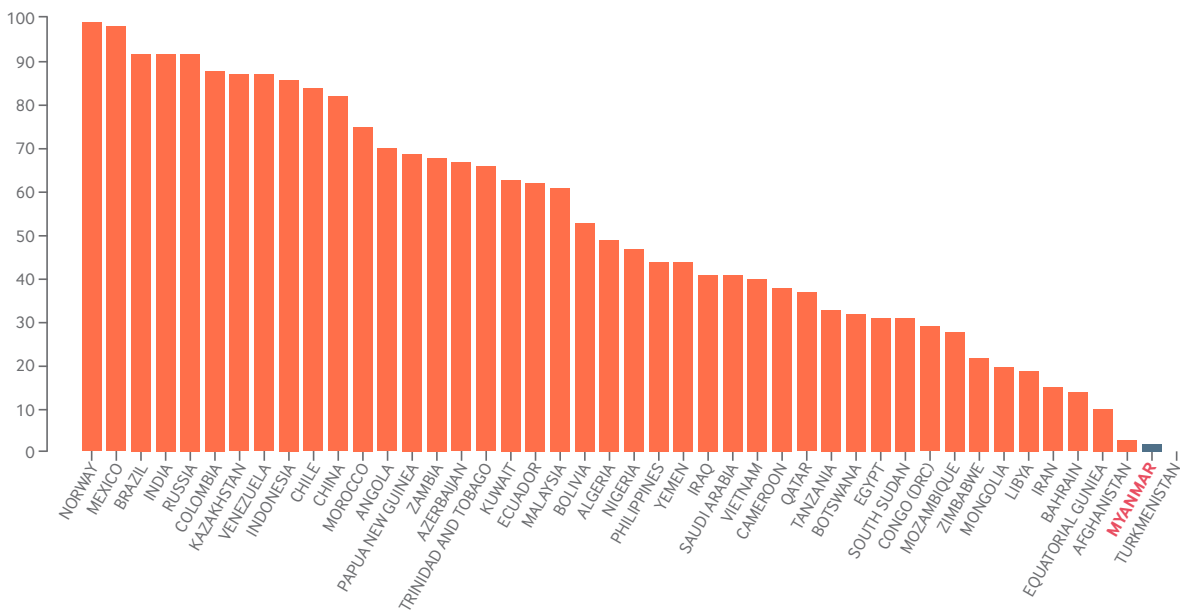
How are Myanmar's SEEs governed? Procedures for transparency and oversight

The combination of findings of the two previous sections—that extractive sector SEEs have multiple responsibilities sometimes lacking clear definition, and that they are responsible for major shares of public revenue and expenditure—suggests that strong provisions for public accountability are critical if the SEEs are to play a constructive role in long-term national development. At present, however, Myanmar's SEEs disclose very little information to the country's citizens; this significantly impedes accountability. We were also unable to find evidence of some important intra-governmental oversight mechanisms, such as procedures for SEE reporting to the ministers of mines and energy. Our global research has identified these as among the most important keys to effective performance. Nor could we find evidence of independent audits.

A. LACK OF PUBLIC INFORMATION AS AN OBSTACLE TO GOOD GOVERNANCE

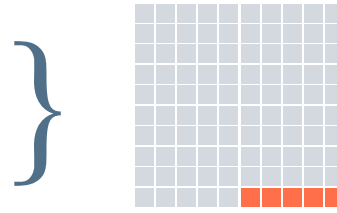
One of the major findings of our research is that Myanmar's SEEs remain opaque, with little available public information. Our research for this study has echoed the findings of NRG's 2013 Resource Governance Index—in which MOGE ranked as less transparent than 43 of the other 44 SOEs surveyed. See figure 6. (Only Turkmenistan's Turkmenengas had a lower score.)¹⁰¹ In addition to a general absence of data about Myanmar's SEEs, what few data are available are often aggregated to a degree that makes them difficult to analyze.

Figure 6. State-owned enterprise scores in the 2013 Resource Governance Index



101 Natural Resource Governance Institute, *Resource Governance Index 2013*, http://www.resourcegovernance.org/sites/default/files/rgi_2013_Eng.pdf, p. 16.

MOGE scored 5 out of 100 in reporting practices in the 2013 Resource Governance Index



As detailed in the Resource Governance Index, MOGE does not systematically disclose data on information routinely published by SOEs in many other countries, including:¹⁰²

- reserves
- production volumes
- valuation and sale prices of petroleum sold on the state's behalf
- production costs and budgets
- revenue streams collected by the company
- quasi-fiscal expenditures (expenditures made by moge)
- audits

The research behind the Resource Governance Index was conducted in 2012. Our research for this paper has revealed that MOGE has taken some meaningful steps in the interim that serve to marginally increase its transparency, including participating in EITI multi-stakeholder group meetings and publishing some information about the companies selected in the 2013 and 2014 oil bidding rounds. We also met several MOGE officials during the preparation of this report. But MOGE still does not publish regular or systematic

information on its revenues, expenditures, role in policy-making or sector monitoring, or its management structures or procedures.

Information availability also poses a challenge in Myanmar's mining sector, as is illustrated in Table 4, below. As is discussed in section II, the mining SEEs appear to play a central role in the allocation of licenses, collection of revenues and management of local content, all of which are crucial determinants of how the state benefits from mineral activities. But these companies do not provide systematic information even on the list of joint ventures they participate in, much less their revenues, expenditures, or relationships with sub-contractors.

Even where SEEs do release some information on their activities and results, many interviewees raised serious doubts about the reliability of such data.¹⁰³ For example, official government figures indicate that Myanmar sold approximately \$2.6 billion worth of jade at the country's jade emporium in 2013,¹⁰⁴ while the Central Statistics Office set the export figure for jade at \$297 million.¹⁰⁵ As noted above, for 2014 United Nations International Trade Statistics Database set the figure for precious stones to China at \$12 billion.

102 The detailed Resource Governance Index questionnaire that composed MOGE's score can be found at <http://www.resourcegovernance.org/countries/asia-pacific/myanmar/overview>.

103 The IMF has echoed these concerns vis-à-vis economic data more broadly. "Data provision has serious shortcomings that significantly hamper surveillance. Data are not provided in a timely manner, and official and independent estimates of key macroeconomic data differ widely." International Monetary Fund, Myanmar—*Staff Report for the 2014 Article IV Consultation—Informational Annex* (Washington, DC: International Monetary Fund, 2014), <http://www.imf.org/external/pubs/ft/scr/2014/cr14307.pdf>, p. 14.

104 <http://www.irrawaddy.org/business/jade-emporium-sales-soar-3-4bln.html>

105 Also the categories for these data are different, there are important discrepancies, the production of jade has officially stopped in 2011 and the jade is predominantly exported to China. For 2013/2014, the export data for jade is 920 million USD according to the Myanmar Central Statistics Office.

Table 6. Public information disclosure by largest upstream SEEs

	Myanma Oil and Gas Enterprise (MOGE)	No. 1 Mining Enterprise	No. 2 Mining Enterprise	No. 3 Mining Enterprise	Myanmar Gems Enterprise
Criteria used in the decision to extract	Documents mentioned in an interview not public	Little information available	Little information available	Little information available	Little information available
Licensing procedures and results	Some details on bidding procedures and attribution of licenses were made public in 2013 and 2014; list of license holders is publicly available.	Very partial list of licensees is available, as are basic elements from the law on procedures. More detailed information not available.	Very partial list of licensees is available, as are basic elements from the law on procedures. More detailed information not available.	Basic elements from the law on procedures are available. More detailed information not available, nor is information on licensees.	Basic elements from the law on procedures are available. More detailed information not available, nor is information on licensees.
List of participation in joint ventures	Partial list available	Very partial list available	Very partial list available	Very partial list available	Little or none available
Board composition	Little or no information available—unclear whether a formal board exists	Little or no information available—unclear whether a formal board exists	Little or no information available—unclear whether a formal board exists	Little or no information available—unclear whether a formal board exists	Little or no information available—unclear whether a formal board exists
Subcontractor selection criteria	Tender applications are sometimes published on website and in newspapers.	Tender applications are sometimes published on website.	Tender applications are sometimes published on website.	Tender applications are sometimes published on website.	Little or no information available
Cadastral information	Block list available at www.oilandgasinfrastructure.com/home/oilandgasasia/myanmar/license-blocks	Little or no information available	Little or no information available	Little or no information available	Little or no information available
Assets held by the SEE	Some very general information in presentations by staff of MOGE, but not generally available	Little or no information available	Little or no information available	Little or no information available	Little or no information available
Production figures**	Some general information in presentations and sometimes included in government Gazette and official statistics	Not directly but in presentations, not broken down by site/contract	Not directly but in presentations, not broken down by site/contract	Not directly but in presentations, not broken down by site/contract	Not directly but in presentations at emporium, not broken down by site/contract
Disaggregated financial information	Some very general information in presentations, but not generally available	Little or no information available	Little or no information available	Little or no information available	Little or no information available
ESIA	Not generally available	Not generally available	Not generally available	Not generally available	Not generally available
Revenues / expenditures	Not directly but in presentations and sometimes upon request	Not directly but in presentations and sometimes upon request	Not directly but in presentations and sometimes upon request	Not directly but in presentations and sometimes upon request	Not directly but in presentations and sometimes upon request
General administrative structure	Available	Available	Available	Available	Little or no information available

The state-affiliated companies linked to the military, such as UMEHL, present perhaps an even more worrisome picture when it comes to information disclosure. In spite of their apparent importance within the extractive industries, very little systematic information on the roles, performance, holdings or revenues of UMEHL and MEC is available, as is illustrated by table 5.

The limitations in data availability and consistency serve as a major hindrance to Myanmar's citizens' understanding of what their SEEs and the military-affiliated companies are doing and the SEEs' impact on the benefits yielded by extraction of

Myanmar's natural resources. Global research has shown that a strong regime for public disclosure of key information is an important component of the corporate governance practices of the world's most effective SOEs, including Chile's Codelco, Norway's Statoil and Colombia's Ecopetrol, all of which the Resource Governance Index found to have satisfactory performance.¹⁰⁶ These companies have incorporated a rigorous commitment to disclosure—to other government agencies, to shareholders and to the public—into their strategies for effective commercial performance.¹⁰⁷

106 Natural Resource Governance Institute, *Resource Governance Index 2013*, http://www.resourcegovernance.org/sites/default/files/rgi_2013_Eng.pdf, p. 16.

107 Note that a commitment to public disclosure is not on its own sufficient to ensure effective commercial performance without some of the other tools discussed in this paper. Several companies that disclose information comprehensively have had subpar commercial performance, including Mexico's Pemex and Indonesia's Pertamina.

Table 7. Key characteristics of military-affiliated companies

Company	Reported activities in the extractive sector	Reported ownership/leadership	Status of information availability
Myanmar Economic Corporation (MEC)	Holding corporation with 34 subsidiaries, including in gem sectors. Very little is confirmed about the nature of its activities or those of its subsidiaries.	Housed in quartermaster general's office. Company's leadership was dominated by active-duty military officials.	No systematic information about subsidiaries, activities, revenues, fiscal relationships with the state or the military, engagement with communities.
Union of Myanmar Economic Holdings (UMEHL, or UMEH)	<p>Control or participation in various companies with strong links to the extractive industries, including:¹⁰⁸</p> <ul style="list-style-type: none"> • Myanmar Ruby Enterprise • Myanmar Imperial Jade Company Ltd. • Myanmar Rubber Wood Company Ltd. • Yadana Kadeikada Company Ltd. • Myanmar Jade International Ltd. • MG Ruby Company Ltd. • Myanmar Posko Steel Company Ltd. • Myanmar Nouveau Steel Company Ltd. • Myanmar Daewoo International Ltd <p>According to the ASI/MDRI/World Bank report, "During the 20 years of SLORC/SPDC rule, the prevailing wisdom was that foreign investors had to go through UMEHL, either as a formal JV partner or as service contractors."¹⁰⁹ Min and Kudo report that during this period "most FDI in Myanmar was done through joint ventures with UMEHL," and that the company "has a monopoly in several sectors such as gems and jade," though the authors do not define specifically what such "monopoly" power entails.¹¹⁰</p>	<p>"A" Category share ownership:</p> <ul style="list-style-type: none"> • Ministry of Defense: 71 percent • Directorate of Procurement: 29 percent <p>"B" Category share ownership:</p> <ul style="list-style-type: none"> • Military units: 92 percent • Active duty military personnel: 3 percent • Retired military personnel: 3 percent • Veterans' organizations: 1 percent¹¹¹ <p>Ten-member board of directors. As of 2008, nine of the ten were active-duty military officials.¹¹²</p>	<p>No systematic information about subsidiaries, activities, revenues, fiscal relationships with the state or the military, engagement with communities.</p> <p>Slightly more information available than for MEC on some subsidiaries, shareholdings.</p>

108 "Burma: State-Owned Enterprise Demonstrates Military's Hold on Economy," Cable dated 6 February 2009, http://www.wikileaks.org/plusd/cables/09RANGOON83_a.html. Because of the lack of public information, we are unable to confirm whether these affiliations remain active.

109 Adam Smith International et al., 2015, p. 85.

110 Min and Kudo, 2014, p. 155.

111 Adam Smith International et al., 2015, p. 84.

112 Burma: State-Owned Enterprise Demonstrates Military's Hold on Economy," Cable dated 6 February 2009, http://www.wikileaks.org/plusd/cables/09RANGOON83_a.html.

B. INTERNAL GOVERNMENT OVERSIGHT

In addition to the positive incentives generated by public reporting requirements, the mechanisms that exist within government to promote effective and accountable management/oversight of SOEs have proven in many countries to be keys to effective management. Among the mechanisms that have been associated with successful performance are:

- Clear reporting procedures with ministries
- Strong, technically-oriented boards of directors that guide company strategy and oversee performance
- A consistent system for reporting to the legislature

As a result of the general absence of information, we have been unable to paint a comprehensive picture of the relationships that the Myanmar's SEEs have with other public entities. Our research suggests that many of the practices driving relationships between the SEEs and the rest of the state have been established by the evolution of experience over the years and are not precisely spelled-out within a legal framework.

Formal legal documents consulted in the conduct of this research

All SEEs:

1. State-Owned Economic Enterprises Law (1989)
2. Foreign Investment Laws of 1988, 2012

Petroleum sector:

3. Petroleum Act (1934)
4. Petroleum Rules (1937)
5. Model production sharing contracts (deep and shallow water PSCs from 2013 and onshore PSC from 2014)
6. Two additional signed production sharing contracts
7. Several presentations and analyses from government officials and legal experts on the Myanmar legal framework

Mining sector:

8. Myanmar Mines Law (1994)
9. Myanmar Gemstone Law (1995)
10. Myanmar Mines Rules (1996)

Interviews suggested that Myanmar's de facto management practices are grounded in the internal procedures of each ministry and the companies under its purview, rather than formally in legislation.

Broadly speaking, the legal framework establishes a large number of rules to govern the relationships between the SEEs (and the state more broadly) and private companies, but does significantly less to spell out the reporting relationships between the SEEs and state agencies than comparable frameworks in many oil, gas and mineral-producing countries. The State-Owned Economic Enterprises Law establishes the monopoly power of SEEs over key sectors, allowing for the possibility for the government to enter into joint ventures with private parties, but limits treatment of intra-governmental accountability to a statement that “the Government may prescribe such procedures as may be necessary, and the respective Ministries may issue such orders and directives as may be necessary” for the purpose of executing the law.¹¹³

The Petroleum Act does not provide explicit rules creating checks and balances for MOGE or the other SEEs vis-à-vis other arms of public administration. The Mines Law, Mining Rules and Gemstone Law similarly lack any explicit rules on the functioning of the SEEs or their reporting structure vis-à-vis government ministries.

In most other countries, a ministry exercises control over an SOE via several mechanisms. The ministry often has the power to make appointments of executives, determine the SOE's right to access individual oil or mineral projects, monitor or audit the SOE's performance, and/or set the overall sector strategy and rules by which the SOE must abide. Our interviews suggested that Myanmar's *de facto* management practices are grounded in the internal procedures of each ministry and the companies under its purview, rather than formally in legislation. Myanmar's SEEs exist as agencies within the ministry structure. The placement of the SEEs within the official hierarchy of the relevant ministry in Myanmar may create greater, more natural opportunities for oversight and strategic planning. (At the same time, they may increase the risk of overly bureaucratic management.)

Most oil-, gas- and mineral-rich countries also employ boards of directors to guide the strategy of the SOE and oversee its performance. As noted above, the most successful state-owned enterprises have emphasized selecting board members based on their technical competence rather than political connections, and empowering those boards to make commercial decisions. In Myanmar, we were unable to obtain information on whether the SEEs have formal boards of directors, and many interviewees expressed the view that they do not.

113 State-Owned Economic Enterprises Law (SLORC Law No. 9/89), Chapter IV(1).

The lack of a strong public understanding of the internal rules governing these enterprises makes it difficult for citizens to hold them accountable, especially in light of their huge economic importance and their assumption of a large variety of roles.

Our interviews indicated that the level of autonomy enjoyed by the heads of the enterprises varies significantly among the different SEEs. Interviewees reported that some of the larger SEEs in terms of revenue, such as MOGE or the Myanmar Gems Enterprise, have powerful voices within the ministries to which they report. Our interviews with MOGE officials confirmed that the company's reporting practices within the Ministry of Energy are not formally enshrined in articles of incorporation or other formal legal documents, but rather have been developed as a pragmatic approach over time, as the country's oil and gas sector has developed hand in hand with MOGE itself. The officials said that on a day-to-day basis, MOGE operates as a separate entity within the ministry, but that MOGE officials report on a regular basis to the Minister, via the MOGE managing director.¹¹⁴

We were unable to form a thorough picture of the decision-making structure, management processes or reporting practices governing SEEs. The lack of a strong public understanding of the internal rules

governing these enterprises makes it difficult for citizens to hold them accountable, especially in light of their huge economic importance and their assumption of a large variety of roles.

In the case of the military-affiliated companies, strong public accountability is even more unlikely given the current opacity. In UMEHL there seem to be two internal control elements in addition to the board of directors and the company executives:

- A corporate complaint office
- A central military account audit firm, which perform audits two times per year

According to our interviews, UMEHL has significant *de facto* power to grant access to private companies to participate in mineral projects (see discussion above), without formal mechanisms for oversight by civilian institutions.¹¹⁵ Interviewees suggested that UMEHL acts in this way as an extension of the military, above the civilian state embodied by ministries and SEEs.

¹¹⁴ Interviews with MOGE officials, June 2015

¹¹⁵ Interview with private sector representative, 2 July 2014, and civil society representative specialized in Kachin, 7 July 2014.

C. INDEPENDENT AUDITS

Our global research on SOEs has shown that independent audits are among the most important tools that a government can employ to manage its SOEs effectively. As is regularly demonstrated in the private sector, rigorous accounting standards that include independent audits are one of the most powerful mechanisms creating incentives for strong performance and corporate governance, as well as accountability to shareholders.¹¹⁶

The researchers for the Resource Governance Index were unable to find evidence of any independent audit of MOGE.¹¹⁷ Our interviews indicated that the influence of intra-governmental auditors has grown in the years since the research for the Resource Governance Index questionnaire was completed in 2012. Officials in both MOGE and the Ministry of Mines told us that the SEEs are subject to audits by the Auditor General's office, and that the Internal Revenue Department also has oversight responsibilities to oversee the SEEs' financial flows with respect to transactions conducted within Myanmar, though not necessarily with respect to SEEs' financial activities overseas. These audits may form an important

element of public control over the SEEs. However, virtually no public information on the results of the existing audit mechanisms is available, in contrast to several high-performing SOEs in other countries.¹¹⁸ Such control could be further strengthened by subjecting them to audits by independent private auditors. To date, according to our sources no such independent audits are performed.

As for the military-affiliated companies, according to the ASI/MDRI/World Bank study, the Office of the Auditor General "has the power to request audits from MEC but not UMEHL." The report notes, however, that "it is thought that there is an auditing department within the Directorate of Defence Industries, which has the authority to audit UMEHL."¹¹⁹

¹¹⁶ Heller et al., 2014, p. 18.

¹¹⁷ Natural Resource Governance Institute, "Myanmar," <http://www.resourcegovernance.org/countries/asia-pacific/myanmar/overview>.

¹¹⁸ Heller et al., 2014, p. 18.

¹¹⁹ Adam Smith International et al., 2015, p. 85.

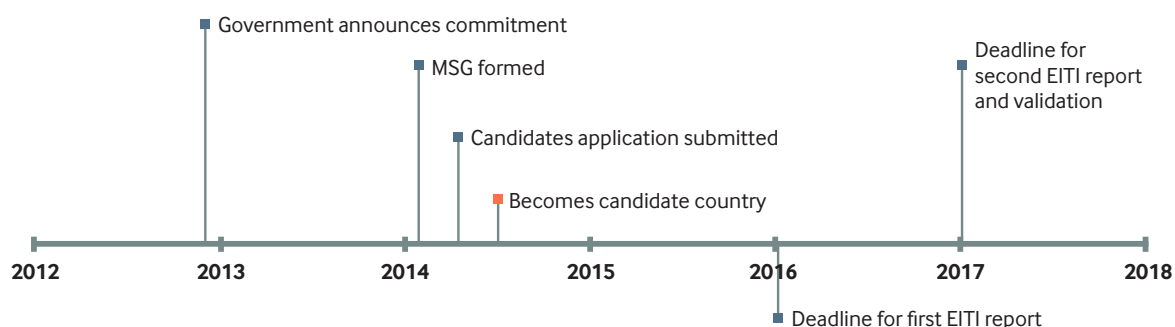
The future of SEE management

The changes taking place throughout the broader Myanmar economy are certain to have a significant impact on the SEEs in the extractive sector. A process of privatization started¹²⁰ in 1995 and has accelerated since 2010.¹²¹ The extractive industry SEEs have not been privatized, though some interviewees cited rumors of a future partial privatization of MOGE.

Beyond privatization itself, government officials seem hopeful that further opening to foreign investors and other actors systematically linked to SEEs will create strong incentives for the companies to modernize their management structures. The oil and gas bid rounds conducted in 2013 and 2014 provide a powerful example of the kinds of new international players that will now be partnering with the SEEs. MOGE's new partners will include private international oil companies such as Shell, ConocoPhillips, Chevron and British Gas, and globally oriented national oil companies including Norway's Statoil, Malaysia's Petronas and India's ONGC.

One representative of an international company whom we interviewed suggested that this opening up will present MOGE with meaningful incentives for reform, but also with increasing pressures to improve its efficiency. The interviewee indicated that when Total was the only major foreign player in Myanmar ten years ago, MOGE was sufficiently capable to keep projects moving. But as the number of sophisticated foreign companies with extensive, time-bound demands based on the PSCs grows, MOGE will need to improve decision-making efficiency and capacity to meet partners' demands, lest the sector and Myanmar's partners fail to achieve their ambitious plans for exploration and sector development.¹²²

Myanmar's EITI candidacy process



120 Tohihiro Kudo, *The Economic Transition in Myanmar After 1988* (Singapore: NUS Press, 2009), p. 45.

121 See Natasha Brereton-Fukui, "Myanmar Seeks to Privatize, with Caution," *Wall Street Journal*, 10 June 2012, <http://online.wsj.com/articles/SB10001424052702303768104577457984021267716>.

122 Interview with private sector representative, 7 April 2014.

Myanmar's participation in EITI represents a powerful opportunity to increase public understanding and oversight of the country's SEEs, which can build better trust between the SEEs and the rest of government, and with the public.

At a recent event connected to the EITI Global Board Meeting in Naypyitaw, an official from the Ministry of Finance discussed a path toward improving the competitiveness of MOGE that echoed statements made in our interviews. He indicated that the government planned for the company to begin participating in an increasing number of joint ventures focused on providing services to the oil and gas sector, beginning with seismic research. The stated strategy is that these joint ventures will allow the company to develop its competitiveness in a gradual and focused way, as it builds toward ever-more-ambitious roles in exploration and production.¹²³

This ambition to learn via concentrated exposure to private sector partners has international precedent. Angola, for example, built up the capacity of its principal SOE, Sonangol, gradually over a period of time—in a very challenging political context—via a focused emphasis on step-by-step learning from international partners.¹²⁴

But mere exposure to international actors is no guarantee of commercial performance, and history has shown that many SOEs fail to reach the state's lofty goals without consistent efforts within the SOE, including developing a culture of learning, instituting rigorous checks and balances, monitoring performance, and reporting extensively to the public.

Myanmar's participation in EITI represents a powerful opportunity to increase public understanding and oversight of the country's SEEs, which can build better trust between the SEEs and the rest of government, and with the public. The EITI standard requires Myanmar to report on the fiscal flows between the SEEs and the state, the enterprises' level of ownership in extractive ventures, and any quasi-fiscal expenditures they make. Compliance with the EITI standard—and its application to both the oil and gas and mining sectors—will be a significant step. The government and the SEEs have an opportunity to go even further than compliance with the reporting requirements, and to use EITI as a forum for the SEEs to communicate consistently (and respond to questions) on their strategies and performance, including on their decisions for managing and investing such large shares of public revenue. More broadly speaking, a rigorous application of EITI principles will help highlight areas of weakness in terms of management systems and institutional capacity, which can provide powerful information to support ongoing reforms. The first EITI report for Myanmar was released in January 2016.

¹²³ Treasury Department, 2014.

¹²⁴ Patrick R.P. Heller, "Angola's Sonangol: Dextrous Right Hand of the State," in Victor et al., eds, 2012, pp. 836–884.

Conclusions and key questions

As Myanmar moves forward in the hopes of building a more dynamic economy while also protecting the fundamental rights of its citizens, the evolution of its oil, gas and mining sector SEEs will be a crucial factor. The juxtaposition of the three major factors identified in this research—a multiplicity of roles often lacking in clear definition, significant autonomy over large revenue flows, and weak public and intra-governmental accountability mechanisms—suggests that Myanmar should examine certain potential reforms to enhance the governance of these companies and their prospects for effective performance. Because we lack significant information about the country's SEEs, our analysis has produced more questions than answers. We believe that open and concerted public dialogue around the following questions may help provide a stronger basis for public trust and generate constructive ideas from within Myanmar and from external partners:

Examination of SEE roles

- 1 What is the scope of the companies' current commercial activities, and their aspirations for future activity?
- 2 Are the SEEs' roles in licensing and sector oversight conducive to the rule of law?
- 3 What is the balance of market power and influence between the SEEs, the military-affiliated companies, and private-sector actors?
- 4 Is the role that the SEEs play in patronage networks conducive to equitable development of the country?

Financial relationships between the companies and the state

- 5 What are the SEEs spending their money on today? What are they doing with the large sums retained in their Other Accounts?
- 6 How will these investments benefit the country in the medium and long terms?
- 7 What financial risks are inherent in the government's investments in the SEEs?

Procedures for transparency and oversight

- 8 What steps can the government take to improve the reporting on SEE activities and fiscal flows, so that Myanmar's citizens have a strong understanding of how their money is being managed?
- 9 What are the most important existing intra-governmental accountability mechanisms, and how can they be enhanced to create strong incentives for SEE performance?
- 10 Can the state implement more consistent audit procedures, to ensure that SEEs are subject to rigorous benchmarking against defined goals?

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