

The Potential for the EITI to Bring Transparency to the Forestry Sector in Myanmar

Sunlight Is the Best Disinfectant

Myanmar has chosen to include forestry in the Extractive Industry Transparency Initiative (EITI). Although reporting and contract disclosure will be a challenge, if the EITI can increase transparency, it can help inform public debate and drive future reform.

The more people understand, the harder it is for the sector to be corrupt.

In 2015, the Government of Myanmar began to open its books on how much revenue it collects from oil, gas, and mining, and published the information through the *Extractive Industries Transparency Initiative* (EITI). This year, Myanmar has chosen to include revenues generated by the country's vast forests. This briefing examines the benefits (and challenges) that reporting forestry within the EITI can provide Myanmar.

Since the EITI began in 2003, more than 50 countries have published annual reports that cover key information from the extractives sector including contracts, production, and more than \$2 trillion in tax payments. In 2009 Liberia elected to include forestry. Until this year, no other country had taken this bold step. Myanmar now has.

The *Myanmar EITI* (MEITI) published its first [report](#)¹ covering payments made in 2013-2014 from oil, gas, and some mining companies. The second report will cover 2014-2016. The aim is to include forestry in this report, filling in gaps going back to 2013.

The Role of EITI in Generating Democratic Governance of Natural Resources

The EITI assumes that transparency facilitates greater scrutiny, and thus, accountability. Under the EITI, countries must publish information related to contracts, production, operating costs, and revenues generated. Such comprehensive public reporting allows oversight by parliamentary committees, communities, civil society, etc. Anyone can access data to estimate the amount of revenue that *should have been* collected by government and then compare it to what *was actually* reported as collected. Ultimately, this can catalyze a more informed debate by citizens regarding the rational use of their natural resources. The more people know, the harder it is to be corrupt—hence the metaphor: “sunlight is the best disinfectant.”

The EITI was originally set up to cover the lucrative oil, gas, and mining sectors that often drive corruption and have even fueled violent conflict. In Liberia, the forestry sector also played such a role. Consequently, when Liberia joined the EITI, it chose to include forestry. Liberia's EITI disclosures, including public access to contracts, enabled civil society monitoring that led to the exposure of corruption around the issuing of logging permits in community-claimed forests. Ultimately, this led to the conviction of the head of the forestry authority and his deputies [on charges of economic sabotage](#).²

Exposing such corruption should lead to reform. Illegal logging and illicit trade thrive under unclear legal frameworks that are hard to enforce. Responsible private-sector actors flee chaos and uncertainty, which threatens long term investments and undermines planning. Moreover, in chaos—for example, when the fees and taxes to be paid are not clear—corrupt officials can extort operators. Informed by the EITI's public reporting, proponents for change can begin to draft the elements for reform and diverse coalitions can develop demanding such change.

¹ Myanmar Extractive Industries Transparency Initiative (MEITI), *EITI Report for the Period April 2013 - March 2014: Oil, Gas, and Mining Sectors* (Yangon, Myanmar, 2015). https://eiti.org/sites/default/files/documents/fy2013-2014_myanmar_eiti_report.pdf

² *The Inquirer*, “Convicted FDA EX-MD, Others Given 72-HR. Ultimatum” (September 1, 2015). <http://monroviainquirer.com/2015/09/01/convicted-fda-ex-md-others-given-72-hr-ultimatum/>.

This reform can take many forms. Laws and regulations may need to change and institutions need strengthening. Citizens should demand not only environmental and social safeguards, but that the appropriate revenue is collected and then spent responsibly to ensure sustainable development.

Challenges: This rosy picture presupposes that the EITI will work. But if reporting is not accurate and complete, then the EITI cannot deliver and its promise will go unrealized. In the worst case, the EITI will just be another initiative that appears useful but is really just a stalling tactic that perpetuates business as usual. Thus, the onus is on the MEITI to maximize the success of forestry reporting.

Myanmar EITI Reporting

The Multi-Stakeholder Group (MSG) that governs the MEITI oversees the publication of an annual report on all aspects related to the management of the country's extractive sectors. To obtain this data, individual companies³ and the government (including Myanmar's state-owned economic enterprises [SEEs]) must independently report all payments to government. An administrator will then reconcile their reports and report any discrepancy. According to the EITI's global standard, the public report must contain a comprehensive disclosure of taxes, fees, and other revenue collected by national and sub-national governments, as well as other related data, including:

- A register of all licenses and contracts in the extractives sector, including information on:
 - beneficial ownership;
 - maps at a useful scale that show the location of the licensed areas; and,
 - state participation in the sector (e.g., state-owned economic enterprises and joint ventures);
- Data on the value and volume of production, sale, and export; disaggregated by operator and commodity;
- Data on the allocation of government revenue, including audit reports; and,
- Data on social and economic spending by operators on communities.

MEITI's Reporting on Forestry

To determine how best Myanmar can comply with the EITI's global standard, the MEITI MSG has contracted Moore Stephens to first conduct a "scoping study" and then complete reporting on forestry for 2013-2016. This scoping study will examine the context in which the forestry sector operates in Myanmar, including an analysis of the legislative framework and the institutions required to implement this framework.

The scoping study is critical. It will shape the forestry report, and both will help ensure that the forestry sector is well-governed and capable of safeguarding social and environmental issues, while contributing to sustainable development. Undoubtedly, the scoping study will encounter challenges. Much of the information needed is not available due to:

- Decades of civil war, especially in the forest-rich states/regions along Myanmar's borders.
- Weak forest management, especially the SEE Myanma Timber Enterprise (MTE) that manages harvesting. Reform has been complicated by the (as yet incomplete) transition from decades of military rule.
- Illegal extraction and smuggling of timber over Myanmar's borders.
- Weak oversight by civil society. In December 2016, a journalist investigating illegal logging was found [murdered](#).⁴
- Overall, there remains endemic corruption throughout the supply chain.

Difficulty assessing the value of informal markets. MEITI has already dealt with similar complications for the other extractive sectors. The first MEITI report for oil, gas, and mining included only a fraction of the total amount in trade. As an example, the report included an officially reported total of \$380 million in revenue generated by the gemstone sector, even though [independent estimates](#)⁵ of illegal border trade with China put revenue at more than \$8 billion (and as high as \$32 billion) per year (see Figure 1). If correct, then at least 95 percent of the trade was not covered in the MEITI report.

Given this under-reporting, the gemstone sector appeared to contribute only 15 percent of the total revenue to government reported from the oil, gas, and mining sectors. However, in a report prepared by the Myanmar Natural Resources Governance Institute (NRGI), they note that the production value "is not as insignificant as these numbers suggest. The low value is partly the result of the EITI report's limited scope, which only covers 53 percent of gemstone

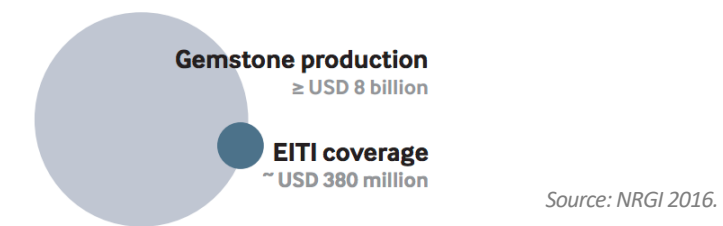
³ Company reporting is limited to only those that make "material" payments to government (where "material" is defined by the MSG). The government, however, must report all payments, by all companies whether they are material or immaterial in size.

⁴ Environmental Investigation Agency, "Another Victim of Illegal Logging and Forest Crime?" (London: EIA, 2016). <https://eia-international.org/another-victim-illegal-logging-forest-crime>.

⁵ Natural Resources Governance Institute, "What is in Myanmar's First EITI Report?" (2016). https://resourcegovernance.org/sites/default/files/documents/myanmar_eiti_cheat_sheet.pdf.

companies selling at the annual [government auction]. It also reflects widespread illegal activity in the mining sector, which prevents the government from collecting taxes.”

Figure 1. Estimate of Annual Gemstone Production in Myanmar vs. the Amount Covered in the 2013-14 MEITI Report



There is evidence that mining revenues, especially from gemstones, could be even greater than oil and gas if taxes were effectively levied. For example, China reported importing almost \$12 billion in precious stones from Myanmar in 2014. Had this trade paid the commercial tax on gemstone exports (30 percent), then this tax alone would have generated more money for government than all the revenue reportedly paid by oil, gas, and other mining companies, combined.

Revenue is collected, but where does it go? In addition to the difficulty in evaluating the total amount of revenue collected by government, the MEITI’s first report found it difficult to track where it goes. NRGi concluded that even for the revenue collected, “less than half of the money received from oil, gas and mining companies made it into the Union budget.” Since 2012, the SEEs⁶ that collect revenue from the natural resource sector have been allowed to keep revenues in separate accounts with limited oversight. “How the enterprises manage these funds is not disclosed to Myanmar citizens or to their elected representatives.” The missing money—approximately half of the money received—is “kept by state-owned economic enterprises (SEEs) in off-budget ‘other accounts.’”

MEITI’s forestry reporting may face all these problems. The Myanmar Timber Enterprise (MTE) is the SEE that has the exclusive license to harvest trees from natural forests. Although Myanmar has one of the world’s highest deforestation rates (at 2 million ha per year), basic information, such as the volume of timber produced, is likely unreliable. For example, in 2015, FAO reported that Myanmar produced more than 44 million m³ of round wood, although little (6 million m³) was apparently for industry and even less (375,000 m³) was reported as exported. In contrast, the Environmental Investigation Agency estimated more than 900,000 m³ was smuggled into China, worth more than half a billion dollars.⁷ Analyses of the forestry sector in Myanmar conclude that “the overall high level of risk of corruption and issues with timber throughout the supply chain means sourcing low risk timber from Myanmar is basically impossible.”⁸

What the Forestry Reporting Will Need to Evaluate

It is essential that the scoping study and the final forestry report illuminate key questions relating to the size of the timber trade, the legal framework, the amount of revenue collected, and the institutional framework that binds it all together.

Estimating the value of Myanmar’s forestry trade. The reporting will need to draw together production and trade data, cross-referenced with reports from consumer countries. Given that so much of the trade is likely smuggled, this information must be supplemented with expert interviews to portray the sector accurately, including its informal and illegal activities. It is one thing to report government revenue collected, it is another to understand what *should have been* paid.

Understanding the legal framework for Myanmar’s forestry trade. Another major responsibility is to help clarify the legal framework. The report will need to include an accurate description of the processes for licensing logging, transport, processing, and sale (including export). The report should also publish a schedule of all fees and taxes.

Understanding the institutional framework for Myanmar’s forestry trade. Legislative clarity is only enforceable if there is institutional clarity, and so an additional responsibility is to understand the mandates, jurisdictions, and roles of those responsible for the management, harvesting, and sale of timber products, and the levy and collection of associated revenues. Like Myanmar’s other SEEs, the MTE has faced criticism from both the private sector and civil society about the

⁶ Natural Resources Governance Institute, “Gilded Gatekeepers: Myanmar’s State-Owned Oil, Gas, and Mining Enterprises” (2016). <https://resourcegovernance.org/analysis-tools/publications/gilded-gatekeepers-myanmars-state-owned-oil-gas-and-mining-enterprises>

⁷ Environmental Investigation Agency., *Organised Chaos: The Illicit Overland Timber Trade Between Myanmar and China* (London: EIA, 2015). https://content.eia-global.org/assets/2015/09/Organised_Chaos.pdf

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role they play and about their lack of conformity to Myanmar law, much less international standards.

A [recent report](#)⁹ noted that during the period of military rule the “MTE became a far bigger organisation than the Forest Department and many of the seniors are members of the military. Since MTE senior staff exercise significant discretionary power in awarding subcontracts and managing timber flows and timber sales, it can be a highly lucrative opportunity for corrupt practice.”

Providing clarity on the role of the MTE will be a clear sign of the new government’s commitment to improving forest governance and fairness towards the private sector. To do this, the scoping study and forestry report will need to clarify not just the legal framework, but institutional responsibilities for implementation, including SEEs. Understanding the institutional framework will also help the MEITI ensure that the appropriate entities complete the required reporting for the forestry report.

Summary

At present, the lack of transparency in the forestry sector prevents a clear understanding of its current status. Corruption and fraud likely foster loopholes in the legal framework and/or a lack of capacity in the vital institutions tasked with regulating the sector for the maximum benefit of its national citizenry, as opposed to the benefit of a small elite. The scoping study and forestry report should take advantage of their analytical power to include an analysis of current gaps in forestry’s management regime, and make recommendations on how Myanmar can best close these gaps.

As stated at the outset of this briefing, one of the benefits of the EITI is the role the initiative can play in catalyzing and reinforcing reform, including the harmonization of legislation and the improvement of institutional management—all of which should help increase revenue collection by government, as well as improving accountability overall. Ultimately, MEITI reporting should produce comprehensive, comprehensible, and publically accessible reports that, when actively promoted, can contribute to the public debate about the role of the forest sector as Myanmar transitions to more democratic forms of governance under a federalist model. While reporting on the forest sector won’t be easy, having an established initiative like the MEITI will help by establishing regular platforms for multi-stakeholder discussions and capacity building. Moreover, because the oil, gas, and mining sectors already report—albeit incompletely—this will put further pressure on the government, MTE, and the private sector—all of which are on the MEITI’s MSG—to report.

As NRGi summarized about Myanmar’s first EITI report: it allowed “stakeholders unprecedented insight into the natural resource sector. EITI data can support advocacy for reformed and responsible governance of [natural resources] – such as improved accountability for state-owned economic enterprise revenues, greater oversight..., or stronger rules regarding disclosure of contracts and beneficial owners. While working to address remaining knowledge gaps in its next EITI report, Myanmar’s new government should also focus on putting this powerful information into the hands of stakeholders and citizens.”

Once the MEITI forestry report is complete, civil society must take the information and use it to help ensure that government is collecting all the revenue it is due, as well as pushing for greater reform. Forestry can play a critical role in the further development of Myanmar, in both its contribution to the economy/employment and in its direct contribution to the Union budget. The MEITI has a clear role in helping build that momentum.

⁹ Thorsten Treue, Oliver Springate-Baginski, and Kyaw Htun, *Legally and Illegally Logged Out: Extent and Drivers of Deforestation & Forest Degradation in Myanmar* (2016). http://www.burmalibrary.org/docs22/Final_Extent_and_Drivers_of_deforestation_and_Forest_Degradation_in_Myanmar.pdf