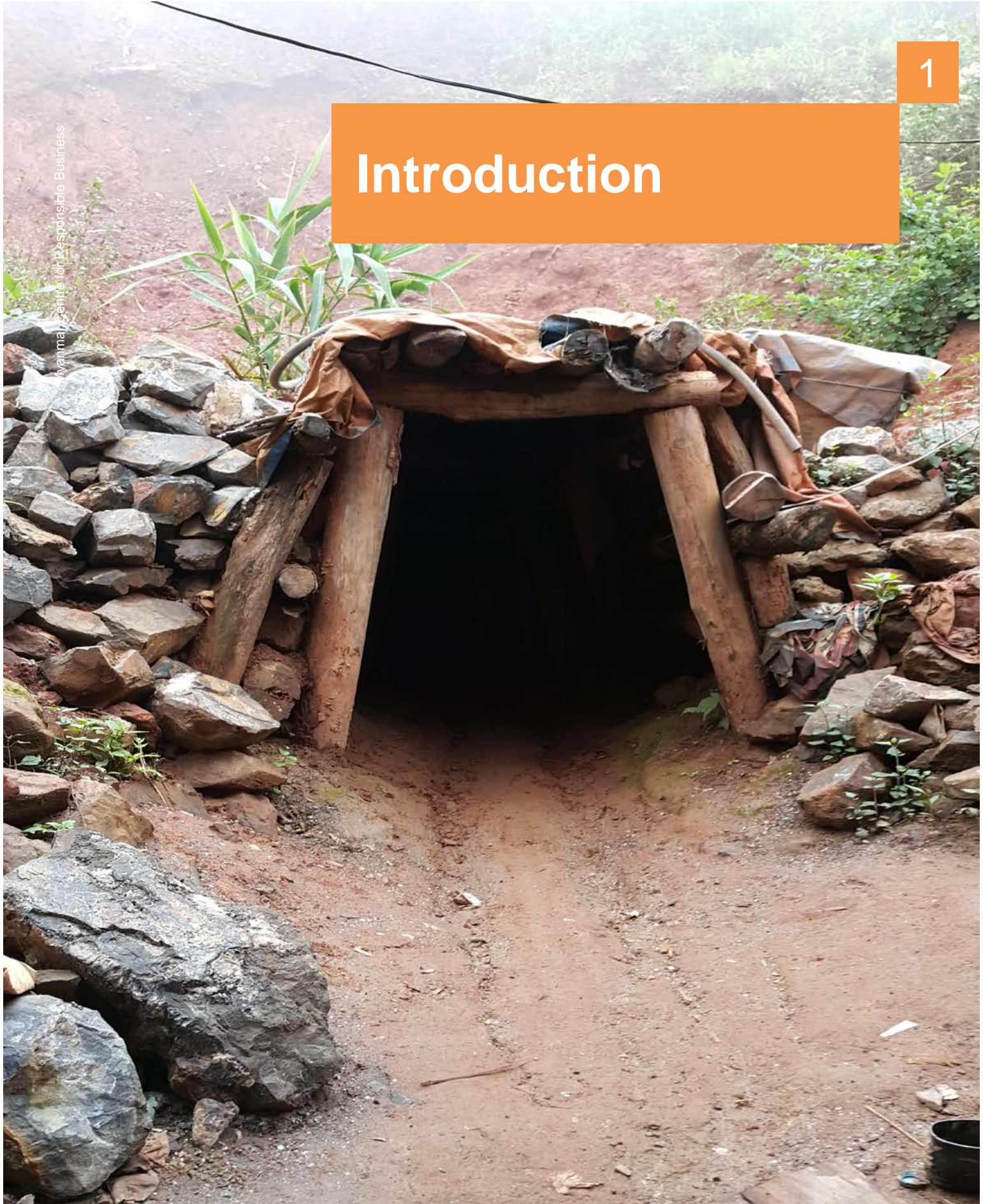


Introduction



Part 1

Introduction

In this section:

- A. Why a Sector-Wide Impact Assessment (SWIA) on Mining in Myanmar
- B. SWIA Objectives
- C. Target Audience
- D. The Reference Framework for the SWIA
- E. Expectations for Responsible Business Conduct in Myanmar
- F. SWIA Methodology
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A. Why a Sector-Wide Impact Assessment (SWIA) on Mining in Myanmar

Myanmar's national territory contains extensive mineral wealth with varied deposits throughout the country. Proven reserves span industrial minerals and stones, heavy metals, jade and gemstones, and energy sources such as coal.¹ However, the sector makes only a limited contribution to Myanmar's GDP. Although minerals have long been exploited in Myanmar, the country's overall geology remains largely unknown and its mining industry is underdeveloped. The sector is characterised by limited use of modern technology and financial investment, with local companies lacking the required capital and expertise. The Myanmar Union Government (the Government) is eager to attract foreign investors to develop this 'last mining frontier'. Myanmar has joined the Extractive Industries Transparency Initiative (EITI) and is undertaking significant legal reform. In December 2015, the 1994 Myanmar Mines Law was amended² and after significant delay, in February 2018 revised Mines Rules were adopted by Cabinet.

Following Parliamentary elections in 2010 and the start of the reform process, economic sanctions against the country were eased and foreign investment increased. After an early surge, albeit from a very low base, economic growth has slowed to 6.3% but is predicted to stay at over 7% in the period 2018-2020.³ However, following decades of isolation, authoritarian rule, ethnic conflict and economic sanctions, Myanmar – and the mining sector in particular – remains a risky destination for foreign investors. Globally, the fall in mining commodity prices has put the mining industry under pressure and investors are less inclined to develop new projects. No new mining Foreign Direct Investment (FDI) was approved in the 2016-2017⁴ financial year and it was less than 1% of FDI in 2015-2016.⁵ Even

¹ Oxford Business Group, [Myanmar's holds a diverse mix of mineral resources](#), 2016

² Valentis Resources, [2015 amended Myanmar Mines Law \[unofficial translation/comparison\]](#), 27 Jan 2016

³ www.tradingeconomics.com/myanmar/forecast

⁴ Myanmar Times, [Commit and act approach expected among investors](#), 28 April 2017

⁵ https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/fdi_yearly_by_sector.pdf

investment by Myanmar companies, as approved by Myanmar Investment Commission, has been only 1% of total investment in recent years.⁶

Currently mining is not contributing significantly to the development of Myanmar. However, when appropriately regulated, it has the potential to do so, not least through job creation and the important revenues it can generate for the State. Foreign investments complying with internationally agreed standards for responsible business can also contribute to raising the standards of business conduct in the sector, particularly by requiring or encouraging local business partners to improve their practices.

Overview of the report

This report starts with a general overview of the mining sector in Myanmar (Part 2) and the legal and policy framework (Part 3) that currently applies to the sector. Sector-level impacts, such as those relating to revenues, employment, conflict etc. are then reviewed (Part 4). Cumulative and project-level impacts (Part 5) are addressed under the following seven subheadings, including discussion of the relevant field research findings for each topic: (5.1) Community Engagement and Grievance Resolution; (5.2) Community Impacts and Development; (5.3) Land; (5.4) Labour; (5.5) Women and Children; (5.6) Conflict and Security; and (5.7) Environment and Ecosystem Services. Relevant international standards, guidance and initiatives related to each of the topics are noted at the end of each section. The particular circumstances and challenges associated with conflict-affected areas are then discussed (Part 6). The report concludes with recommendations to Government, businesses, civil society and other actors (Part 7).

B. SWIA Objectives

A Sector-Wide Impact Assessment (SWIA) is intended to sensitise government decision-makers, businesses, investors and civil society to the human rights impacts of mining; to encourage appropriate steps to prevent and mitigate the negative human rights impacts associated with the sector and to amplify positive human rights impacts through changes in law, policy, contracts, operations or other measures.

A SWIA assesses the impacts of a sector at three levels: (i) project-level; (ii) cumulative; and (iii) sector-wide. This means that the mining SWIA addresses the impacts of specific mining operations and activities on the enjoyment of human rights by workers and communities, as well as the impacts of the sector as a whole.

To facilitate responsible business conduct (RBC) in a complex environment such as Myanmar and contribute to maximising the benefits for society of business activities, the Myanmar Centre for Responsible Business (MCRB), the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) have carried out a series of SWIAs of key sectors of the Myanmar economy. Three assessments have already been

⁶ https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/mcil_0.pdf

published, focusing on the Oil and Gas,⁷ Tourism,⁸ and Information and Communication Technology sectors.⁹

C. Target Audience

This SWIA aims to:

- Provide the **Government** with analysis and targeted recommendations to shape a legal and policy framework that is conducive to protection of, and respect for, human rights in the mining sector in Myanmar, at a time of regulatory reform.
- **Inform domestic and international mining companies** currently operating in Myanmar, or looking at future investment opportunities, as well as companies involved in the global mining value chain, about the impacts of mining activities on the human rights enjoyment of workers and communities and the impacts of the mining sector on wider society; with a view to supporting companies in developing and implementing robust processes to identify, prevent and address adverse human rights impacts ('human rights due diligence').
- **Inform women and men in local communities, including subsistence miners and those working in the formal mining industry**, so that they have a better understanding of the respective duties and responsibilities of the Government and business actors. This should help them to engage in community consultation, raise grievances regarding the adverse impacts of mining activities, and share benefits through jobs and community development.
- **Enable international and local development partners to align their support** to the sector so that human rights are better protected and respected.
- **Build the capacity of ethnic armed organisations (EAOs), civil society, the National Human Rights Commission, trade unions and the media** to: participate in law and policy development relevant to the impacts of the mining sector; engage with law- and policy-makers, companies and other actors to identify, understand and address the human rights impacts of the mining sector; and to leverage international standards and approaches in their interventions.
- **Build the capacity of Myanmar researchers** to better understand international standards relevant to mining and other business activities in Myanmar and to be able to conduct human rights impact assessments (HRIA).

D. The Reference Framework for the SWIA

The SWIA particularly refers to the following international standards:

- The 2011 [United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#) which constitute the primary benchmark for the SWIA (see Box 2).
- The 2011 [Organisation for Economic Cooperation and Development \(OECD\) Guidelines for Multinational Enterprises](#) which apply to companies domiciled in an OECD country and operating in Myanmar. The human rights chapter of the Guidelines is aligned with the UN Guiding Principles.
- The 2012 [International Finance Corporation \(IFC\) Performance Standards 2007 Environmental, Health and Safety \(EHS\) Guidelines for Mining](#). The Performance

⁷ MCRB, [Sector-Wide Impact Assessment Oil and Gas](#), September 2014

⁸ MCRB, [Sector-Wide Impact Assessment Tourism](#), February 2015

⁹ MCRB, [Sector-Wide Impact Assessment ICT](#), September 2015

Standards comprise detailed standards for many topics relevant to mining operations and the EHS Guidelines are mining specific. The IFC EHS framework is designed to be applied by the private sector.

- The 2013 [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#) provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices.
- The 2015 [International Council on Mining and Metals \(ICMM\) Sustainable Development Framework](#).¹⁰

Box 2: The United Nations Guiding Principles on Business and Human Rights

The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011 and are now an authoritative global reference point on business and human rights. They are applicable to all internationally recognised human rights. Businesses must ensure that their activities do not infringe the human rights set out in the [International Bill of Human Rights](#) (comprising the 1948 [Universal Declaration on Human Rights](#), 1966 [International Covenant on Civil and Political Rights](#), and 1966 [International Covenant on Economic, Social and Cultural Rights](#)) and the principles concerning fundamental rights set out in the 1998 ILO [Declaration on Fundamental Principles and Rights at Work](#), as well as other relevant human rights instruments.¹¹ The UNGPs are intended to provide operational guidance to States and businesses for the implementation of the [‘Protect, Respect and Remedy’ Framework](#), which clarifies and articulates the complementary but distinct roles of States and businesses in protecting and respecting human rights. The Framework and UNGPs are based on three pillars:

- **The State duty to protect** rights-holders against human rights abuses by third-parties, including businesses, through effective policies, legislation, regulation and adjudication. States must prevent, investigate, punish and redress human rights abuses that occur as a result of business operations.
- **The corporate responsibility to respect human rights**, meaning that companies should avoid infringing on the human rights of others and address adverse impacts in which they are involved. To do so companies are expected to adopt a policy commitment to respect human rights and carry out ‘human rights due diligence’ (i.e. identify and assess impacts, act upon impacts identified, track and monitor performance and communicate the process and results of due diligence). Companies are also expected to provide for, or cooperate in, remediating any adverse impacts that they are involved with, including by setting up or participating in operational-level grievance mechanisms. Importantly, companies are expected to address human rights impacts that they cause or contribute to, as well as impacts related to their operations, products or services through business relationships, such as impacts caused by suppliers or business partners (see Box 3).
- **Access to effective remedy** for victims of business-related human rights abuses, through both judicial and non-judicial means, should be provided. While the State should guarantee that victims have access to both judicial and non-judicial

¹⁰ The ICMM brings together mining and metals companies, and national/regional mining associations. Member companies are required to implement and measure their performance against a set of standards.

¹¹ OHCHR, [Core International Human Rights Instruments and Their Monitoring Bodies](#)

remedies, operational-level grievance mechanisms (OGMs) that meet the effectiveness criteria outlined in Guiding Principle 31 should also be available.

Box 3: Impacts through Business Relationships

According to the UNGPs, businesses are required to consider actual and potential human rights impacts which are: *caused* by the business; impacts that the business *contributes* to; and impacts that are *directly linked* to a company's operations, products or services through business relationships, including both contractual and non-contractual relationships. This means that businesses need to identify and address adverse impacts of their local business partners or suppliers. Some examples of the different types of impacts are included below.

- A business may **cause** human rights impacts, e.g. if it discriminates in its hiring practices by not affording equal opportunity to indigenous applicants.
- A business may **contribute** to human rights impacts, e.g. if it discharges a permissible amount of pollution into the local environment which, together with discharges by other companies, causes cumulative adverse impacts on community use of ecosystem services such as water.
- A business may be **directly linked** to an impact, e.g. if it provides financial loans to a project that breaches agreed standards and causes environmental pollution, thereby impacting on the health of local communities.

E. Expectations for Responsible Business Conduct in Myanmar

Daw Aung San Suu Kyi, leader of the National League for Democracy (NLD), the current governing party, has called for responsible investment in Myanmar, as have Ministers. For example, U Myint Maung, Tanintharyi Region Minister for Natural Resources and Environmental Conservation, said “Our Chief Minister has said we will tackle all the mining issues before we give any new recommendations to applicants. If the companies already operating mines do not follow the laws, it will be difficult for new companies to get mining permits in the future.”¹² The previous administration of President U Thein Sein conducted an investment policy review of the country with the OECD. The 300+ page report from 2014 starts with a chapter on responsible business, focused on human and labour rights and how international standards for RBC can be introduced in the country (see Box 4).¹³

International companies operating in Myanmar are expected to act as industry leaders on environmental and social performance. Governments of countries where multinational enterprises are domiciled or from which they operate (‘home governments’) also play a key role in expressing and incentivising expectations for responsible corporate behaviour and then following up to ensure that the standards are applied. On 7 October 2016, the US government removed most sanctions against Myanmar, including those relating to jade and gems and the State Department’s Responsible Investment Reporting Requirement, which

¹² Myanmar Times, [Two Controversial Tin Mines Suspended in Southern Myanmar](#), 21 July 2016

¹³ OECD, [Investment Policy Reform in Myanmar](#), March 2014, pp. 49-60

had been the only explicit home country reporting requirements on businesses investing in Myanmar.¹⁴ The reporting requirements were intended to prompt US businesses entering the country to consider key risks upfront.

Box 4: Recommendations made by the OECD as part of the Myanmar Investment Policy Review Chapter on Responsible Business Conduct (RBC)¹⁵

- Ratify major international human rights, labour and environmental conventions.
- Enact and enforce domestic legislation consistent with these standards.
- Strengthen the independence and expand the mandate of the National Human Rights Commission.
- Promote revenue transparency, such as through EITI.
- Ensure that domestic enterprises, including State-owned Enterprises (SOEs), conform to the new standards of behaviour and prosecute lawbreakers.
- Expand the role of civil society (labour unions, local community organisations) to help ensure that businesses obey the law.
- Prepare sectoral master plans that include RBC (e.g. tourism).
- Provide adequate protection of property rights, including for customary land.
- Free, prior and informed consent (FPIC) for land acquisitions, relocations, etc.
- Develop grievance mechanisms and provide redress to victims.
- Work with home governments to promote respect for the UNGPs and OECD Guidelines for Multinational Enterprises. Require foreign investors receiving a permit from the Myanmar Investment Commission (MIC) to commit to these principles.

Some home countries have introduced general responsible business expectations of their companies and non-financial reporting requirements, which are not Myanmar specific but would nevertheless apply. The 2015 [Declaration of the G7 Countries](#) included a strong commitment to responsible supply chains.¹⁶ An increasing number of countries have adopted, or are currently developing, National Action Plans on Business and Human Rights setting out clearly the expectations.¹⁷

Chinese mining companies are expected to follow 2013 Chinese government guidelines that refer to environmental protection.¹⁸ These urge Chinese companies doing business abroad to respect host country environmental protection laws, religions, and customs, and ensure rights and interests of workers. They suggest that companies follow established principles and practices of international organisations and multilateral financial institutions. The China Chamber of Commerce of Metals Minerals and Chemicals Importers & Exporters (CCCMC) issued [Guidelines for Social Responsibility in Outbound Mining Investments](#) in 2014. The CCCMC is a subordinate unit of the Ministry of Commerce and represents over

¹⁴ US Department of the Treasury, Burma

¹⁵ OECD, [Investment Policy Reform in Myanmar](#), March 2014, p. 32

¹⁶ [Declaration of the G7 Countries](#), 7-8 June 2015

¹⁷ A list of all national action plans is available on the [UNOHCHR website](#)

¹⁸ [Guidelines on Environmental Protection in Foreign Investment and Cooperation](#), Chinese Ministry of Commerce & Ministry of Environmental Protection, 4 March 2013; see also IHRB, [Going Out in Search of Oil and Gas: How should Chinese companies investing abroad tackle human rights challenges?](#) 24 March 2014

6,000 company members, including the majority of Chinese mining companies investing abroad and trading mineral, metal and hydrocarbon products.

F. SWIA Methodology

Types of impacts covered

The SWIA methodology builds on established processes and procedures for environmental impact assessment (EIA) and social impact assessment (SIA), often combined and referred to as an ESIA (but in Myanmar referred to as EIA), as well as emerging practices around human rights impact assessment (HRIA). The SWIA methodology was developed by DIHR and IHRB in cooperation with MCRB.¹⁹ It has also been adapted for a SWIA of mining in Colombia by MCRB's sister organisation CREER, and IHRB.²⁰

This SWIA looks at impacts of the mining sector in terms of human rights. This can include impacts associated with working conditions, consultation and engagement, land and resettlement, the environment and water, etc., as well as impacts on wider governance issues, including transparency and corruption, and the accountability systems needed to address these impacts.

The scope of a SWIA encompasses a whole sector and involves assessing not only impacts on individuals and groups that may arise from specific business projects, but also cumulative impacts and sector-level impacts:

- **Project- or activity-level impacts:** The SWIA looks across a range of existing projects (i.e. formal mining operations) and activities (i.e. subsistence mining activities) in the mining sector in Myanmar. The findings represent common project-level impacts, recognising that impacts are often very context-specific and can be avoided or shaped by (good and bad) practices of companies and relevant local actors.
- **Cumulative impacts:** The presence of many mining projects and activities in one area may give rise to cumulative impacts on the surrounding society and the environment that are different and distinct from impacts of any single project or area of mining activity. Managing these impacts typically requires government authorities to take a leading role. The SWIA identifies activities that will likely lead to cumulative impacts and identifies options for Government as well as collective sectoral action to address these.
- **Sector-level impacts:** These are broader, country-wide impacts – positive and negative – of the sector itself on the national economy, governance and the environment and society. In order to be able to address the root cause of potential negative impacts, the SWIA includes an analysis of the relevant policy and legal frameworks that help shape business conduct and the national context that businesses and civil society need to address in order to achieve business respect for human rights. The SWIA also draws out recommendations on opportunities to improve human rights outcomes at the sector-level. A sectoral view should help stakeholders see the 'bigger picture' of potential negative impacts of projects in a whole sector, as well as potential opportunities for positive human rights outcomes, and to make choices based on a broader perspective.

¹⁹ See [MCRB website](#) for more details

²⁰ CREER and IHRB, [Sector-Wide Impact Assessment of Mining in Colombia](#), 24 June 2016

Overview of SWIA research and fieldwork

The SWIA is based on extensive desk-top research and fieldwork. The fieldwork was carried out between October 2015 and June 2016. After a period of initial training, six Myanmar field researchers investigated a total of 41 mine sites – including 11 large-scale permitted mine sites (of which one was in the exploration phase), 15 small-scale permitted mine sites, and 15 informal mining areas of various sizes – in Shan, Kayin, Kayah and Kachin States, and Bago, Sagaing, Mandalay and Tanintharyi Regions.

The data from the field research is anonymised. This is because the intention of the SWIA is to focus attention on trends in the mining sector, rather than the practices of particular companies. Anonymity is also intended to ensure the safety and security of those interviewed. The research findings should not be taken to apply to all situations, organisations, or companies interviewed. Further information on the areas visited and the number of stakeholders met with is provided in Annex A.

Bilateral meetings were also held in Yangon with various relevant stakeholders, including: representatives of Myanmar and international mining companies and mining services providers; international intergovernmental organisations; non-profit and civil society organisations (CSOs); and local and international experts on mining law and governance, mineral economics, mineral processing, subsistence mining, and environmental and health impacts relating to the SWIA commodities. Two public one-day consultations were held in Yangon in October 2016 (one in English language and one in Myanmar language) to receive stakeholder feedback on the consultation draft, which was also published on the internet.

An Advisory Group was set up to help with identifying research priorities, planning, analysis of findings, assisting with multi-stakeholder collaboration during and after the research process and publication, and to provide input on recommendations. The Advisory Group included environmental experts, civil society representatives, former government officials and mining experts.

G. Scope of Commodities: Limestone, Gold and Tin

The SWIA focuses on three commodities: **limestone**, **gold** and **tin**. The research conducted by MCRB maintained a particular focus on the mineral extraction phase, with the majority of field visits focusing on operational mine sites. A smaller number of processing sites, factories and post-closure mine sites were also visited (for a full overview of sites visited see Annex A). The criteria applied to select the three commodities included:

- Economic significance and prospects for development in the near future;
- Impacts on the enjoyment of human rights;
- Accessibility of mine sites, including security of field researchers;
- Body of existing research and possibility for MCRB to add value to existing research initiatives; and
- Ability of MCRB to influence actors in the sector to implement SWIA recommendations.

Other metals and minerals were considered but eventually not covered in the SWIA. Cathode copper makes up the largest export metal produced in Myanmar which, with nickel,

supplies China's large manufacturing economy.²¹ However, copper mining, and in particular the Letpadaung copper mine, has been the subject of several reports and wide national and international attention.²² Concerning coal, it is unclear whether the Government will proceed with coal-fired power plants. Furthermore, the thermal quality of the deposits in Myanmar is reportedly low and most coal used for power would probably be imported.²³ While there are notable deposits of lead, silver and antimony, with the Namtu and Bawdwin silver and lead mines in Shan State operative since the colonial period, these commodities are not as significant in the national economy as those chosen for the SWIA.²⁴

Myanmar is endowed with significant jade and gemstone deposits (rubies and spinels in particular). Global Witness has estimated the jade industry to be worth USD 31 billion in 2014 alone, and found the sector to be controlled by networks of military elites, drug lords and crony companies.²⁵ In view of this work, security risks, and MCRB's limited scope to engage with relevant businesses, MCRB chose not to focus on these sectors.

In contrast, there has been little research on quarrying of low-value minerals in Myanmar, most of which is undertaken for domestic consumption. Moreover, considering the construction boom in Myanmar, extraction of limestone for production of cement is likely to increase, much of it in ethnic areas. Military-affiliated companies Myanmar Economic Corporation (MEC) and Union of Myanmar Economic Holdings (UMEHL) have economic interests in the sector and provide inputs, e.g. gypsum, to the cement production process.

Gold is one of the most important mineral commodities for Myanmar and is being mined in many different locations, by subsistence miners and large companies, through a variety of techniques.²⁶ There are important alluvial as well as hard rock gold deposits throughout Myanmar, with extensive deposits still relatively easily extracted by subsistence miners.

Tin – along with tungsten, tantalum and gold – is considered to be a 'conflict mineral', for which the OECD recommends heightened due diligence. Myanmar has recently and rapidly become a leading global tin producer and a major exporter, second only to Indonesia in terms of global net exports. Most of Myanmar's tin is exported to China, an important trading partner and operator in Myanmar's mining industry.²⁷

To encompass the diversity of mining activities in these three commodities, the SWIA team selected mine sites of different sizes (from subsistence mining to large-scale industrial operations), ownership structures (State-owned, privately-owned, foreign-owned), different legal settings (formal and informal), different regional contexts (central regions of Myanmar, ethnic regions including areas partly or fully controlled by ethnic armed organisations), and different mining techniques (shaft mining, open-pit, etc.).

²¹ 2012 PowerPoint Presentation from Mining Summit, on file with MCRB.

²² Amnesty International, [Open for business? Corporate crime and abuses at Myanmar copper mine](#), 10 February 2015

²³ MCRB interviews, 2016

²⁴ MEITI, [Myanmar First EITI Report](#), December 2015

²⁵ Global Witness, [Jade: Myanmar's "Big State Secret"](#), 23 October 2015, pp. 6-7

²⁶ MEITI, [Myanmar First EITI Report](#), December 2015

²⁷ Nicholas J. Gardiner et al, [Tin mining in Myanmar: Production and Potential](#) (2015) 46:2 *Resources Policy* pp. 219-233, p. 224