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COMMENTS FOR THE NEW WORLD BANK PROGRAMME IN MYANMAR

August 2014

This document is the first submission by Global Witness to the World Bank's consultations on the Systematic Country Diagnostic and the Country Partnership Framework for Myanmar. The comments below are based on more than 20 years of research and analysis to combat natural resource-related conflict and corruption, and associated environmental and human rights abuse. Global Witness has worked in Myanmar since 2000, focusing for the first nine years on management of the country's forest sector. Currently, we are working to address the negative impacts of large-scale land concessions in Myanmar as part of a Mekong-wide programme. We are also working to strengthen management of Myanmar's valuable oil, gas and mining industries including by advising on the country's engagement in the Extractive Industries Transparency Initiative (EITI). Global Witness' work was a key catalyst in the establishment of the EITI, and we continue to sit on the international EITI board as an alternate member. We were previously nominated for the Nobel Peace Prize for our work on conflict diamonds, and in March 2014, we were awarded the TED Prize and the Skoll Prize for Social Entrepreneurship.

As the World Bank finalises its Systematic Country Diagnostic (SCD) and develops the Country Partnership Framework (CPF) for Myanmar, it is crucial that it gives priority to strengthening governance of the natural resources which drive the country's economy and upon which the livelihoods of Myanmar's people depend. Over five decades of military rule, management of Myanmar's natural riches became a black box. High levels of associated corruption and conflict served to deprive the population of the benefits of these resources, perpetuating instead hardship, inequality and local grievances. If the World Bank is to meet its objectives of eliminating extreme poverty and boosting shared prosperity in Myanmar, it is vital that the corruption and mismanagement which have dogged the country's natural resource sector for so long are frankly analysed and fully addressed.

At the international level, the World Bank has taken a strong public stance against corruption. President Jim Kim has declared that "[i]n the developing world, corruption is public enemy number one" and pledged that that the World Bank would "never tolerate corruption, and [would] do all in our power to build upon our strong fight against it." The Bank's updated Anti-Corruption Strategy states that a focus on governance and anti-corruption should be "[embedded] in Bank-wide sector strategies, in country assistance strategies, in country sector programs and at the project level". Through the Myanmar SCD and CPF process, the Bank has the opportunity to put these commitments into practice. In doing so, it can establish the foundation for a country programme that makes a meaningful and positive change to the lives of the Myanmar people, and sets an important precedent for the Bank's engagement in other fragile and conflict-affected states.

World Bank engagement in Myanmar's extractive industries and land sector

Key recommendations

- Support an EITI process which is based on a frank review of corruption risks in Myanmar, which generates the information needed to tackle these risks and which incorporates EITI best practice including the publication of contracts and of the ultimate beneficial owners of companies;
- Embed EITI best practice principles within laws, regulations and contracts for the extractive industries, including project level revenue reporting and the publication of contracts and beneficial owners;
- Carry out a comprehensive assessment of land governance issues in Myanmar consistent with the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries; and
- Support a robust national land policy which ensures transparency around all land investments and legally protects smallholders, including through the recognition of collective and customary land rights.

Each natural resource sector has its own context and specific challenges that must be considered and incorporated within the SCD and CPF processes. With regards to the crucially significant sectors of the extractive industries and land, Global Witness makes following detailed comments and recommendations:

(1) Oil, gas and minerals:

The extractive industries generate substantial revenues, and account for the lion's share of Myanmar's export earnings. They include jadeite worth an estimated US\$6-9 billion per year, offshore gas deposits with an annual value of US\$2-3 billion, as well as rubies, oil, gold and other metals and gems. Only a fraction of oil, gas and mineral revenues appears to reach official government accounts. This raises serious concerns over who is really profiting and what the implications may be for the prospects for democracy and peace. Ordinary Myanmar citizens see little benefit from their country's under-the-ground wealth, with one in four living in extreme poverty. The environmental and social harm caused by controversial extractive industry projects has caused public protests and widespread opposition in recent years.

There is now an opportunity to change this dynamic. President Thein Sein's government has pledged to reform Myanmar's oil, gas and mining sector to make it transparent and accountable. The country became a candidate for the global transparency standard, the EITI, in July 2014, and is now beginning to implement its EITI commitments with the support of the World Bank and other donors. At the same time, Myanmar is currently reviewing and revising the laws and regulations which govern its extractive industries. It is in the process of agreeing contract terms for a series of major oil and gas blocks sold off in the past 12 months. In light of these developments and opportunities, Global Witness recommends that:

- The SCD includes a frank and comprehensive review of past and present processes to:
 - evaluate potential extractive industry concession benefits and costs before green lighting them for exploration or exploitation;
 - evaluate bidding companies, allocate concessions and negotiate concession agreements;
 - manage and oversee the implementation of concession agreements; and
 - manage and oversee revenue flows into official accounts and subsequent expenditure.
- The SCD review specifically considers:
 - incidents of corruption or serious mismanagement, including details of 'disappearing revenues' where financial flows from extractive projects cannot be tracked beyond a particular point;
 - gaps and weaknesses within the legal framework for the extractive industries;
 - the additional safeguards needed to take account of environmental and human rights risks and to protect against associated corruption and conflict;
 - obstacles to independent scrutiny of the management of extractive industry projects by third parties such as civil society, local populations, the media, parliament and anti-corruption institutions;
 - the steps needed to remove these obstacles including transparency measures and protections against legal, physical and political threats for independent voices; and
 - timing of major developments within the oil, gas and mining sector including:
 - revisions and additions to relevant laws, regulations, standards and guidance;
 - the award and negotiation of new concession agreements;
 - consideration of when and how transparency and good governance measures can be incorporated within the above.
- The CPF, as a priority, addresses the governance, environmental, social and human rights risks and loopholes identified through the SCD. It should seek to enhance transparency by targeting obstacles to publication and dissemination of key information. The CPF should include further analysis of such risks and mitigation measures as they relate to specific World Bank engagement, which should inform the choice and design of the lending instrument.
- The CPF promotes and supports an EITI process which generates the information needed to tackle the corruption risks identified. It should incorporate the latest EITI recommendations and best

practice principles including the publication of contracts and of ultimate beneficial owners of companies which bid for, manage and finance extractive industry projects.

- The CPF focuses on embedding good governance measures including EITI best practice principles into the legal framework for Myanmar's oil, gas and mining sectors. Laws, regulations and contracts should incorporate measures such as:
 - project-level reporting of revenues;
 - transparency of contracts;
 - publication of the ultimate beneficial ownership of licence holders; and
 - protections for those providing independent oversight including civil society and the media.
- The CPF aims to promote transparency and good governance across the value chain of resource management including:
 - enabling extractive revenues to be tracked through to the budget; and
 - supporting equitable expenditure of resource revenues.
- The CPF includes direct engagement by the World Bank in building the capacity and technical knowledge of oversight actors such as the legislature, law enforcement, audit and anti-corruption institutions, the media, civil society and, where appropriate, local community groups directly affected by extractive industry projects.

(2) Land:

Agriculture currently contributes about one third of the country's GDP and 15% of total export earnings, and employs over 60% of the nation's labour force, according to government data. However, land confiscations for agribusiness and other large-scale development projects have been on the rise since the late 2000s, with a total of nearly two million acres allocated to the private sector by the then military government. By 2013, approximately 5.2m acres of land had been allocated to agribusiness concessions, mainly to Burmese companies - an increase of 160% since 2011.

Over the last few years, several key laws have been passed as part of the agrarian transformation from rural subsistence farming to an industrial cash-crop economy. However, these new laws have been criticised for further undermining those who do not have land use titles – the majority of Myanmar's population – by leaving them at risk of losing their land to agricultural and development concessions. The laws also potentially benefit the private sector, particularly large foreign investors, at the expense of the country's smallholder farmers.

These land confiscations have led to increasing protests by farming communities across the country who do not have secure tenure of their land. A culture of secrecy surrounding the allocation of land concessions has further fuelled concerns that Myanmar's natural wealth continues to be looted by members of the military, political and business elite.

As with the extractives industry, however, there is now an opportunity to change this dynamic. The Myanmar government has initiated a process to develop a national land policy - a step strongly welcomed by Global Witness and other members of civil society. This process provides a critical opportunity to both reform and align the current laws governing land concessions in Myanmar. It can also provide a clear and robust overarching framework for identifying and protecting land and resource rights, including the recognition of existing customary and communal tenure systems. If done well, such a policy framework could halt further land confiscations, enable the resolution of current disputes and provide future protection against such risks. In light of these developments and opportunities, Global Witness recommends that:

- The SDC includes a comprehensive assessment of land governance issues through a Land Governance Assessment Framework (LGAF). Specifically this should:
 - be founded on an evidence-based baseline of the national land sector in order to track real progress;

- be based on a broad, participatory dialogue between the government and wider stakeholders, including civil society; and
 - be guided by frameworks of indicators based on global experience of 'good' land governance and consistent with the UN Voluntary Guidelines on Responsible Governance of Tenure of Land, Forests and Fisheries.
- The SDC review specifically considers:
 - gaps and weaknesses within the legal framework for the land sector, and the identification of additional safeguards needed to take account of environmental and human rights risks and to protect against corruption and conflict;
 - an in-depth review of past and current corruption cases related to the land sector and an in-depth review of cases in which land investments are helping fuel conflict;
 - the lack of transparency around the allocation and management of large-scale land investments and the measures needed to address this; and
 - the needs and rights of smallholder farmers and the technical and institutional reforms needed to both promote and protect their rights as well as boost the productivity and quality of the agricultural sector.
 - The CPF, as a priority, strengthens land governance through the loopholes identified through the SCD. The World Bank should actively engage in the development of a national land policy to ensure that:
 - it reforms and strengthens the current laws governing land concessions;
 - provides economic and social benefits for smallholder farmers;
 - secures tenure rights (particularly customary and communal land rights);
 - puts a stop to further land confiscations; and
 - the Voluntary Guidelines on the Responsible Governance of Tenure should be considered the minimum baseline for Myanmar's national land policy.
 - The CPF promotes and supports a participatory national land-use planning process in line with the national land policy in order to develop a formal framework that guides decisions about existing and future land allocation, use, management and protection. This should include the recognition of collective and customary land and user rights.
 - The CPF focuses on strengthening the governance around large-scale land concessions, specifically ensuring:
 - transparency around the allocation and management of all land investments;
 - the adoption in law and practice of free, prior and informed consent of all affected communities;
 - establish legal and judicial recourse for the protection of land and user rights; and
 - ensure that all land acquisitions only proceed if they offer compensation to affected communities in line with international standards.
 - The CPF promotes and supports institutional reform which supports smallholders through technology and knowledge transfer, access to markets and other extension services.