

**Dialogue, Opportunities and Risks in
Business-to-Community and Business-to-Business
Relationships in Myanmar/Burma**

*A report of two multi-stakeholder workshops on
responsible investment*

APRIL 2013

Note: Simultaneous translation was provided at each workshop. A translation of this report will be published in due course. Both workshops were held under Chatham House Rules, where participants can use the information received, but neither the identity nor affiliation of the speakers or participants can be revealed. The [Agendas](#) for each workshop can be found at the end of this report.

Building a Dialogue for Responsible Investment in Myanmar/Burma: Business-to-Community Relationships 11 December 2012

The Business-to-Community workshop focussed three key areas: the international experience of developing good practice in business-community relations; the key challenges for land in Myanmar; and key challenges for labour. The workshop featured a session introducing the UN Guiding Principles for Business and Human Rights, as well a session on the soon-to-be established Myanmar Centre for Responsible Business (MCRB) in Yangon, a joint project of the Institute for Human Rights and Business and the Danish Institute for Human Rights.

Panel 1 – New opportunities, new challenges for responsible investment in Myanmar

The first session focused on the overarching opportunities and challenges presented by the rapid opening up of the Myanmar economy since early 2011. The Government has introduced a series of political and economic reforms in the hope of fostering the economic development and integration into the global economy necessary to lift millions out of poverty. A new Foreign Investment Law has been enacted, and investment and trade liberalisation policies have been applied to areas as diverse as energy, agriculture and consumer goods. The Government has committed to joining the Extractives Industries Transparency Initiative (EITI), and the Myanmar local network of the UN Global Compact has already swelled to over 100 members in its short existence. The Government has also expressed its commitment to the UN Guiding Principles on Business and Human Rights.

Awareness raising in-country of the challenges and opportunities arising as a result of Myanmar's re-emergence was seen as a crucial measure going forward. While human rights have not traditionally been a familiar language to business, they are also unfamiliar and potentially confusing to most of the people of Myanmar.

The Government, civil society and local businesses of Myanmar want investment into the country to be responsible, leading to broad-based growth, and skills and technology transfer. Yet speakers remarked that recent episodes such as the protest demonstrations against the Monywa copper mine and the security forces' violent response suck energy from the reform's momentum. The country faces challenging long-term obstacles in meeting its reform goals even without such tragic events impeding the fragile process. A complex land ownership and tenure system makes it difficult for local farmers to understand their rights, heightening their vulnerability and overwhelming local authorities. The new Myanmar Government faces extremely high expectations to achieving a complete reform of the entire country in the shortest time possible. The one-year old Myanmar National Human Rights Commission is already inundated with claims – a large proportion concerning business activities – but its remit is only advisory, leaving cases to be decided directly by the President's office and raising concerns around the legitimacy of the complaints process and bottlenecks in processing.

Awareness raising in-country of the challenges and opportunities arising as a result of Myanmar's re-emergence was seen by participants as a crucial measure going forward. While human rights have not traditionally been a familiar language to business, they are also unfamiliar and potentially confusing to most people in Myanmar. Speakers stressed that businesses need to reach out to all levels of the populations potentially affected by any planned activities and seek their informed consent.

Presentation – The UN Guiding Principles on Business and Human Rights

This session provided a brief presentation on the UN Guiding Principles on Business and Human Rights as a ready framework for businesses to develop internal policies and processes to ensure that their conduct is consistent with international human rights standards.

The speaker began with a brief explanation of the UN *Protect, Respect and Remedy* Framework on Business and Human Rights and its three pillars: I) that states have a duty to protect people from human rights abuses caused by or involving non-state actors, including business; II) that companies have a responsibility to respect human rights, i.e. not infringe on the human rights of people and to demonstrate this commitment through on-going due diligence processes; and III) if something goes wrong, that victims must have access to adequate, fair, effective remedies, judicial and non-judicial. It was stressed that the UN *Protect, Respect and Remedy* Framework and UN Guiding Principles on Business and Human Rights are not a compliance mechanism, but a risk management tool to prevent and mitigate potential and actual negative impacts to human rights. While simple and uncontroversial, it is the first international standard with broad global consensus to provide clarity as to what responsible business practices mean and how they relate to states' duty to protect human rights. The six-year mandate of the UN Special Representative involving global consultations and development of the Guiding Principles was therefore a process of norm setting in the international human rights system, which has high levels of consensus amongst all stakeholders.

Principles 1-10 and 25-31 of the UN Guiding Principles on Business and Human Rights¹ help states think through the implications of their duty to protect against and remediate human rights abuses involving business in their territories and jurisdictions. This involves steps to address, prevent, investigate, and prosecute abuses through effective policies, legislation, regulations and adjudication. It also involves providing clear expectations and effective guidance to business on how to respect human rights.

Guiding Principles 11-24 and 29-31 provide the basis for businesses to develop internal policies and processes to 'know and show' that their conduct is consistent with international human rights standards and remediates harms that may occur. These principles provide a baseline expectation of all companies large and small to respect all internationally recognized human rights. It is an active, forward-looking standard calling for companies to make public their policy commitment to human rights, operate an on-going human rights due diligence process of assessing actual and potential impacts, act on and integrate into the business the findings from those assessments, track company responses to identified risks and impacts, communicate appropriately and publicly on these efforts, and remediate any harms that do occur.

According to the UN Guiding Principles, the three ways in which a company's responsibility for adverse human rights impact may be triggered, are: through *causing* an adverse impact; *contributing* to an adverse impact; and where an adverse impact is *directly linked* to a company's products, operations or services through their business relationships. Each is important but has different implications for what is an appropriate response – whether prevention, mitigation, remediation or using leverage with business partners and others involved – to ensure that the harm is addressed and does not occur again. Engagement with stakeholders is a key component of the human rights due diligence process, both in identifying and assessing risks and impacts, and in developing appropriate remediation measures. The Guiding Principles also inform company responses beyond compliance with each country's national laws, affirming that in all contexts businesses should comply with applicable laws and respect internationally recognized human rights, and in the face of conflicting requirements companies should seek ways to honour the principles of internationally recognized human rights.

The UN Protect, Respect and Remedy Framework and UN Guiding Principles on Business and Human Rights are not a compliance mechanism, but a risk management tool to prevent and mitigate potential and actual negative impacts to human rights. This is the first international standard with broad global consensus to provide clarity as to what responsible business practices mean and how they relate to states' duty to protect

¹ The UN Framework and Guiding Principles refer to the three-pillar framework: governments to protect human rights; companies to respect human rights; and the need for remedies when things go wrong. The UN Guiding Principles operationalize the Protect, Respect and Remedy framework and were adopted by consensus by the UN Human Rights Council in June 2011.

Panel 2 – Key Challenges: Labour Rights

As part of its economic and political reforms, the Myanmar Government has expressed its determination to end the practice of forced labour. A new labour law also permits independent trade unions. This session discussed the implication of these changes for Myanmar's workers and the companies seeking to employ them.

The people of Myanmar, after living under an authoritarian government for twenty years, have become some of the best risk managers in the world.

The session began by reflecting on the speed of change in the country, exemplified in the roughly 340 new enterprise-based labour organisations and trade unions already formed under the Labour Organization Law (2011). In addition to the new Labour Organization Law, the Settlement of Labour Dispute Law (2012) has been adopted. The Myanmar Parliament is currently considering an Employment and Skills Training Law, a Minimum Wage Law, an Occupational Health and Safety Law, and a Minimum Conditions of Employment Law. The automatic abolition of laws enacted before 2008 that contravene the 2008 Constitution was noted with concern. In particular, so called 'good laws' in place before 2008 that may contravene the new Constitution in technical terms would be abolished rather than amended through a gradual process.

The labour market, and its reform, is just one small aspect of national policy however. Caution was expressed around raising the bar higher in Myanmar than in other countries around the world. It was again noted that the reform was working from a low base, with very few local stakeholders aware of what economic and political changes mean for their rights. This reflects the need not only for policy change, but also cultural change. The people of Myanmar, after living under an authoritarian government for decades, have become some of the best risk managers in the world. This is currently reflected in a low level of trust in the changes taking place, with a fear that they are not genuine or will not last. Moreover, local employers' major concern is that foreign investors will come in and absorb all of their skilled staff. It was therefore seen as crucial for foreign investors not to concentrate on the policy level alone, but work with local businesses on the ground on macro-economic employment challenges, skills development and basic standards of employment.

At the same time, the local International Labour Organization (ILO) complaints mechanism on forced labour is receiving more complaints than ever before. This reflects a confidence in the people of Myanmar in exercising their rights. The ILO has also reported a reduction in the use of forced labour in practice. Not only are the top levels of Government involved, but the Judge Advocate General, Supreme Court, and even the Tatmadaw (Myanmar army) are engaged in the process. Moreover, the on-going peace processes were raised as the key enabler of rights realization and therefore responsible business. If peace processes fail, then there may be a dangerous scenario of a semi-democratic, semi-developed central Myanmar, with civil wars going on around it in the seven ethnic minority states. Similarly, constitutional reform was raised as a key issue of which business should be aware.

Panel 3 – International experiences of developing good practice in business-to-community relations

International experiences have shown that grievance mechanisms must be fit for purpose in terms of size and complexity. One operation impacting numerous indigenous communities and hundreds of individuals can cost half a million US dollars in software alone, compared to a smaller operation with a grievance mechanism able to be managed almost entirely through an Excel spreadsheet.

This session highlighted corporate practices in other regions to engage local communities in ways that mitigate the risk of conflict, as well as ways in which companies can appropriately engage local stakeholders in handling community grievances.

The discussion began with a presentation of an international mining company's tool to assess socio-economic impacts in its global operations. This tool is comprised of seven steps: 1) Profile the company and its operation to the local community; 2) Develop local stakeholder engagement through a range of means (e.g. questionnaires through to grievance procedures); 3) Assess and prioritize impacts and issues; 4) Improve social performance through relationship management; 5) Deliver enhanced socio-economic benefits (e.g. from local procurement through to supporting community health); 6) Develop a social management plan; 7) Report back to stakeholders internally and externally. Access to jobs and training, access to land and livelihoods, balance and distribution of social

investment, and rivalries between stakeholder groups were discussed as some common themes found in the tool's application around the world. The company reported that the tool starts a dialogue and moves from words in a policy to implementation on the ground.

Discussion then turned to operations around areas of conflict and some of the drivers that can support stability and peace. Within conflict settings around the world, companies can affect different levels of conflict at different phases. Addressing contextual challenges therefore depends on the level of conflict and the timing of investment and intervention. Companies need to consider this within the different levels of action they are able to take, for example making contracts contingent on certain obligations; project managers on the ground working at the micro-level of inter-community dynamics; or utilizing bargaining power at the macro-level, with authorities looking to attract foreign investment. Indirect impacts were seen to be just as important as direct impacts. Communities express expectations often in a very different language than what is used in international human rights law. It is important to understand how local communities define equitable rights, i.e. how they are being impacted and how they expect to be impacted. For businesses this changes the traditional lens of stakeholder engagement from risk assessment to on-going partnership. This stakeholder engagement should be leveraged and feedback translated beyond the CSR or Sustainability departments across the breadth of their operations, using authoritative internal guidance and incentive and accountability structures.

Grievance mechanisms (GM) specifically were discussed as a crucial bridge between company policies and ground-level action. When considered broadly (i.e. when a community identifies that an action or activity from a company, whether real or perceived, causes harm or disadvantage, how they communicate that to a company and how the companies deals with it), there are many ways to 'get it right'. There are a number of enabling factors a GM needs to have in place first, for example those sought through a strong engagement process. Moreover, international experience has shown that GMs must be fit for purpose in terms of size and complexity. One operation impacting numerous indigenous communities and hundreds of individuals can cost half a million US dollars in software alone, compared to a smaller operation where a GM can be managed almost entirely through an Excel spreadsheet. Clear boundaries on what a GM can and cannot do are crucial. For example a GM cannot replace the judicial process, and if there is already a high level of conflict in an area, then a dispute resolution mechanism independent of a company is needed. GMs need to be accessible and transparent, with no danger of retaliation to a community and the ability to seek alternatives if grievances are not being resolved. A high number of grievances was seen as a "positive problem", indicating it has been designed appropriately and communities are finding it useable.

The discussion closed with a series of concluding questions to be considered in the Myanmar context, including: What are the boundaries for a company's GM in the peace process? How can and should the complex and convoluted interface between accountability of investors and government be navigated? What level of fear of retaliation should companies anticipate in providing security to utilize their GMs? If the companies involved in the Monywa mine protest had used a process similar to the kind discussed at the workshop, would a different outcome have occurred?

Panel 4 – Key challenges in business-to-community relationships: Acquisition and use of land in Myanmar

In this session experts discussed what business must know about processes regarding land acquisition and use in Myanmar, and how to seek free, prior, informed consultation and consent of affected communities. Any business that begins operations will require land – for factories, plants, offices, or retail operations. Acquiring or using land can be a difficult process in any country. Myanmar has recently passed new land laws, but many people in rural areas practice shifting cultivation, treating land as communal property, which is not currently a recognized form of ownership under Myanmar law. Because of this predominant practice of customary land ownership, many farmers are not even aware when their land has been 'purchased' by others. Moreover, previously hidden 'land grabs' and evictions are now beginning to be publicly reported, a new phenomenon within the country.

Myanmar has recently passed new land laws, but many people in rural areas practice shifting cultivation, treating land as communal property, which is not currently a recognized form of ownership under Myanmar law. Because of this predominant practice of customary land ownership, many farmers are not even aware when their land has been 'purchased'.

About three-quarters of the Myanmar population is involved in farming, and most farmers are small holders. Smallholder farmers make up one-third of the national GDP and fifteen percent of total export earnings, employing 60% of the workforce. As such, discussants noted an ‘ignore them and beware’ warning to investors. Discussants recommended that investing companies need to understand Myanmar and the large amount of land taken for infrastructure, export processing zones (EPZ), extractive industries and industrial agriculture in the past few decades. The primary resource sought in Myanmar is land, with the stated goal of the Ministry of Agriculture’s Thirty Year Plan (2000-2030) to convert ten million acres of land into large-scale export-oriented plantations. Land cases being reported to the Myanmar National Human Rights Commission are currently sent to the President’s Office for final decision. Those considered difficult to resolve quickly are referred to a newly formed Parliamentary Commission established to look into complaints made after 1989. Concerns were raised around lack of sustainability of such a process, inefficiency in case resolution, and the limitation of cases to only those made after 1989, with any made previous to that date left unaddressed.

With over twenty different Government institutions involved in land management and numerous technical categories of land, each with varying legal ownership implications and requirements, major concerns were shared amongst participants around national and local authorities’ capacity to manage land tenure processes. Moreover, there is a lack of current accurate maps across the country, with different ministries using different maps and identifying different boundaries, dramatically heightening the risk of conflicts over ownership. This confusion may be increased by a general lack of farmers’ understanding of how to navigate the legal and regulatory requirements. It was noted that baseline studies have so far been missing from most business projects in Myanmar, impeding quality future planning.

Companies need to talk to not just land ministries, but all potentially affected people, on the ground, and triangulate the information received to arrive at an informed opinion of the status of the potential land acquisition. Companies cannot assume a process of negotiation with an average Myanmar landowner will be equal, as the farmer will often lack access to all the information relevant to any ownership question.

The issue of free, prior and informed consent (FPIC) was noted as perhaps one of the topics of highest interest to public and civil society groups in Myanmar. A recurring concern reflecting discussants’ experience in working with communities often revolved around poor consultation and a lack of acknowledgment of cultural heritage. A core principle of projects and operations should be “delivering the greatest social and economic benefits for the Myanmar people, ensuring their understanding of every decision at every step.” Companies need to talk not only to land ministries, but also to all potentially affected people on the ground, and triangulate the information received to arrive at an informed opinion of the status of the potential land acquisition. Companies should recognize the power imbalance inherent in any process of negotiation with an average Myanmar landowner, where the farmer will often lack access to all the information relevant to any ownership question. Further, it must be acknowledged and accepted that farmers have a right to say no to a purchase, even if that is not always enshrined in law.

Panel 5 – Looking ahead: The role of a Centre for Responsible Business supporting responsible investment in Myanmar

The IHRB and the Danish Institute for Human Rights (DIHR) are in the process of establishing a Centre for Responsible Business to be based in Yangon, as a hub of knowledge, capacity building and dialogue on responsible investment in Myanmar. This session provided an opportunity for participants to share their suggestions for the Centre’s remit and scope of activities. Suggestions made at both the 11 and 14 December workshops have been compiled together below under the Panel 6 section of the Business-to-Business Relationships workshop summary.

**Responsible Investment in Myanmar:
Opportunities & Risks in Business-to-Business Relationships
14 December 2012**

The Business-to-Business workshop focused on: key challenges in conducting due diligence, with international companies sharing their experiences from other countries and contexts; local experts presented on labour rights in the workplace in Myanmar; a case study on a community dispute at a copper mine was presented; and a presentation from an ethnic minority leader was also given on Myanmar's peace process. As with the first workshop, this workshop on also featured a session on the UN Guiding Principles for Business and Human Rights, as well as on the soon-to-be established Myanmar Centre for Responsible Business (MCRB) in Yangon, a joint project of the Institute for Human Rights and Business and the Danish Institute for Human Rights.

Panel 1 – The Importance of new, responsible investment in Myanmar

Sharing the words of UN Secretary-General Ban Ki-moon that 'business needs to give practical meaning and reach to the values and principles that connect cultures and people everywhere', speakers stressed that Myanmar was not poor in ideas, thoughts and values.

Similar to the first panel of the Business-to-Community Relationships workshop, the first session opened with overarching reflections on the importance of responsible investment in Myanmar. Speakers stressed that while the country may be re-opening to the global economy for the first time in decades, the Myanmar Government, officials and people have followed international developments and responsible investment, so this is not a new concept to them. The keynote speaker explained that investment scrutinized by the Myanmar Investment Committee will adhere to the basic principles of human rights and good governance, while seeking the right balance between an investor-friendly environment and social responsibility. Being a late-comer to the emergence of the Asian region's investment potential in one sense was seen as an advantage, with Myanmar able to reflect on and learn from the lessons of Vietnam, China, Cambodia and other neighbours as to

incentives and assurances being offered to business. Sharing the words of UN Secretary-General Ban Ki-moon that 'business needs to give practical meaning and reach to the values and principles that connect cultures and people everywhere', the speaker stressed that Myanmar was not poor in ideas, thoughts and values.

In addition to the launch of the Myanmar UN Global Compact Network last year, the keynote speaker affirmed Myanmar's commitment to the Universal Declaration of Human Rights and ILO core conventions. Stressing that these and other commitments were not blue- or green-washing, the UN Guiding Principles on Business and Human Rights were viewed as concrete affirmation that there is no longer a question about whether businesses should behave responsibly, but how. A multi-stakeholder approach among business, Governments, NGOs and the people of Myanmar working together was called for. Transparency not just of business, but also the Myanmar Government was seen as another key factor to continued reform and growth. The media, consumer groups and the nascent Consumer Protection Agency will all be important components to transparency, raising consumers' awareness of responsible and irresponsible companies and informing their choices.

Panel 2 – An Important Framework for Responsible investment: The UN Guiding Principles on Business and Human Rights

An identical presentation on the UN Guiding Principles on Business and Human Rights given at the 11 December workshop was also presented at the 14 December workshop. For the purposes of space in this report it has not been re-summarised here – please see above for a summary of that presentation.

A second speaker then provided a perspective on why businesses should undertake human rights due diligence, what are some of the more difficult issues that may be encountered in the due diligence process, and what lawyers' roles are in the process. The expectation that businesses will carry out human rights due diligence is becoming increasingly universal, with the example given of the 44 governments adhering to the OECD Guidelines

for Multinational Enterprises, who also voted to include a new human rights chapter aligned to the UN Guiding Principles. In addition, national external reporting obligations are increasingly requiring human rights due diligence for compliance. Commercial partners including banks, other funders and shareholders are increasingly expecting human rights due diligence to be undertaken to ensure the soundness of their investments. Human rights due diligence may also assist in reducing the risk of litigation and allegations of human rights abuse. Responsible business practices – looking after workers and the community – can also reduce political risk.

Understanding applicable legal requirements can be very difficult. International human rights law imposes obligations on governments and does not provide a comprehensive code which business enterprises can look to in order to determine how to conduct their activities.

It was stressed that human rights are not the same thing as human expectations. While this does not mean expectations can be ignored, it is also important to understand what the law requires. Understanding the applicable legal requirements can be very difficult in countries like Myanmar. International human rights law imposes obligations on governments and does not provide a comprehensive code which business enterprises can look to in order to determine how to conduct their activities. Governments do not always agree as to how international agreements relating to human rights should be implemented in domestic law. In addition, governments may fail to properly implement their international obligations. Dealing with human rights issues as a business

can be particularly challenging when local law is essentially silent as to how the rights in question are to be protected. It can be very challenging to conduct human rights due diligence in relation to the operations of potential commercial partners or in supply chains, particularly where other enterprises lack internal policies and processes relating to human rights and are not familiar with relevant international standards.

Lawyers could therefore assist in defining the scope of human rights due diligence exercises by reference to applicable laws and standards. Involving legal counsel also assists in identifying legal issues which may become problematic if a transaction proceeds or to advise on issues which are relevant to the process of due diligence. While this may also help to ensure that the information collected remains confidential and that it is subject to legal privilege, participants stressed the need for the legal profession as a whole to better support human rights due diligence and stakeholder engagement processes on the basis of maximum stakeholder engagement and transparency as opposed to maximum confidentiality.

Panel 3 – From the outside looking in: Lessons learned on entering new markets responsibly

The first speaker's presentation strongly encouraged Myanmar to sign the *New York Convention on Foreign Arbitral Awards*, which has been signed by 148 other countries – one of the most widely signed, and therefore enforceable, international treaties.² It was noted that no arbitral award has ever been enforced in Myanmar, and the new *Foreign Investment Law* still requires detailed regulations to clarify how it will work in practice. These were presented as longer-term developments. In the immediate term, signing the *New York Convention* and, in tandem, training twenty to thirty of Myanmar's judges in fairly dealing with foreign arbitral awards was seen as crucial to moving from foreign investors' initial scoping to committed investment by providing an alternative means for dispute resolution. At the same time, a warning was noted regarding whether Myanmar should be signing up to a range of new Bilateral Investment Treaties (BITs) with other nations, which allow fair and equitable treatment, prevent expropriation of assets, and provide protection and security against differential treatment. While these are standard measures taken by nations to encourage investment, such treaties can also be abused and there has been a huge level of growth in cases over the past 15 years brought to the International Centre for the Settlement of Investment Disputes (ICSID) and other arbitral forums by corporations with well-funded legal teams against some sovereign states which do not have sufficient resources to devote in responding, making the process less well-matched. As such, the *New York Convention* and training for judges and lawyers in Myanmar were reiterated as the immediate priority.

² In March 2013 the Myanmar parliament agreed to accede to the *New York Convention*.

The second speaker's presentation affirmed the earlier point regarding certainty around the implementation of the new Foreign Investment Law, emphasizing the need for stability and sustainability of the investment – noting that without that clarity and security investors will be hesitant to commit to large scale investment, particularly in the extractive sector. The speaker noted that large extractive companies' investments are premised around having large, long-life reserves, otherwise there is no business proposition to take to their Board. Such investors will therefore be asking questions around what the country's fiscal policies are and what is the level of political stability and institutional capability to uphold rule of law. Sustainability considerations are also of relevance and whether new investors can actually apply their business principles and standards in the country. Thereafter, a risk profile for the potential activity is undertaken. The perspectives of a large extractives company were considered including the array of best practice considerations needed to turn business principles into practice in Myanmar, starting with business conduct and the critical issues of transparency and good governance. On the social side, human rights impact assessments, free, prior and informed consultation and consent and social investment were seen as leading practices. On the environmental side, application of environmental standards, environmental impact assessments, use of best available technologies and environmental solutions avoiding or minimizing impact set the standard. On the people side, safety is paramount, with a goal of zero injuries and fatalities and providing training for contractors and communities.

In the immediate term, signing the New York Convention and, in tandem, training twenty to thirty of Myanmar's judges in fairly dealing with foreign arbitral awards was seen as crucial to progressing foreign investors' initial scoping into committed investment by providing an alternative means for dispute resolution. At the same time, a warning was heeded regarding whether Myanmar should be signing up to a range of new Bilateral Investment Treaties (BITs)

The final speaker discussed the tensions between the interests of private investors and the rights of any government to organize the policies of the state. The general structure of the Myanmar Government's regulatory procedures was discussed, starting with establishing any private entity, permission for which is granted by the line Ministry in the form of a license or contract. Any land use requires a lease from the Government, or approval by the Government, if received from a private party. Many other contracts – whether production sharing agreements for resource exploration/production to power purchase agreements for the sale of electricity, to licenses for services – require permission from the relevant line Ministry. It was noted that the Myanmar Government had more clearly defined what an 'investment' was within its new Foreign Investment Law along the lines of a standard provision within a bilateral investment treaty and considered this the first clear indication of the Government's willingness to use an international standard of protection for investors.

Panel 4 – Key Issues for the Due Diligence Process for Responsible Investment in Myanmar

Noting the incredible hunger for knowledge in Myanmar's young population, speakers discussed the role that incoming investors can play in building a modern industrial relations system which underpins economic development, including: endeavoring to increase the employment opportunities of the local populations, providing training to improve the skills deficit, respecting minimum ages of work, and maintaining the highest standards of health and safety on a participative basis under the new Factories Act.

This session explored some of the key challenges around labour rights, community engagement, and ethnic minority perspectives that companies face in Myanmar. The first speaker opened by noting that with two new labour laws now in place, Myanmar is suddenly a very different legal labour environment. Independent labour organizations are now legal for the first time in 50 years. There are now rights for workers to form unions, bargain collectively, and take strike action, but employers still retain very powerful rights to manage businesses and dismiss workers subject to payment and/or compensation. Executive Committees of labour organizations are charged with representing the interests of workers, rather than more political activities. On the employers' side there is a responsibility to recognize that organizations have been formed and to engage constructively with organizations' leaders.

While the recent changes in legislation are strongly welcomed, a 50-year legacy of lack of protection of worker rights presents a major educational challenge. Freedom of association and collective bargaining are very new concepts for most Myanmar people and local employers. For example, when running through the five stages of the new labour laws' escalation procedures with a local Burmese group, the discussion centred around, in their

view, a sixth unwritten step of taking the complaint to the President's office should they be unhappy with any arbitration decision. This illustrates the basic capacity building needed to engrain the legitimacy of the process in the Myanmar population (rather than going to the highest office in Government for any and every dispute).

Myanmar has many labour opportunities in front of it, with 50% of its workforce under 30 years old. Noting the incredible hunger for knowledge in Myanmar's young population, participants considered the role that incoming investors can play in building a modern industrial relations system that underpins economic development, including: endeavouring to increase the employment opportunities of the local populations; providing training to improve the skills deficit; respecting minimum ages of work; and maintaining the highest standards of health and safety on a participative basis under the new *Factories Act*.

Participants also heard initial findings from an organization's recent field visit to the Letpadaung copper mine in Monywa, which in late November 2012 had been the site of a protest that ended in the use of extreme violent force by the security forces against the protesters. The organization's main recommendations from the initial findings centred on the need for meaningful and genuine engagement with local communities affected by developments to avoid escalation into major grievances. The next speaker further discussed issues of dispute from the perspective of ethnic minorities, noting that there are twelve internally displaced person (IDP) camps around Myanmar's borders, where most human rights abuses in the country occur due to the lack of rule of law. The distinction between civilians and fighters is blurred, so everyone is afraid of everyone and as a consequence, arming themselves in the process. Ethnic minorities lack electricity, transportation, and suffer from daily discrimination, making it very difficult for them to enjoy the same opportunities as the majority Burman (Bamar) population. The path forward should address the root cause of the internal armed conflicts, rather than addressing symptoms issue by issue. The Government's efforts to set up a Myanmar Peace Centre was seen as a welcome contribution, but the speaker noted that a sustainable peace would most effectively be achieved through constitutional change to a federal structure based on inclusion and consent.

The impact of corruption on conflict was also discussed, with rural communities noting that many mining companies operate without clarity around the permit process. With a low awareness of their own rights, local people in the rural ethnic areas are afraid to go to courts and government departments out of concern that they will be required to pay 'tea money' to staff to get any answers or issues addressed. This is compounded by the general lack of identification and other legal documents among rural people from ethnic minorities, who do not generally travel very far beyond their communities. This will lead to future problems, for example with the planned 2014 census. Businesses were encouraged to bring opportunities to ethnic minority Myanmar people, first by advocating for political dialogue among government, the different ethnic parties, and the military. Invested assets cannot be securely guaranteed in a country suffering from intermittent peace between armed groups due to unaddressed feelings of inequality and discriminatory treatment.

Businesses were encouraged to bring opportunities to ethnic Myanmar people, first by advocating for a political dialogue among government, the different ethnic parties, and the military. Invested assets cannot be securely guaranteed in a country suffering from intermittent peace between armed groups due to unaddressed feelings of inequality and discriminatory treatment.

Panel 5 – The application of due diligence in practice: Challenges and Lessons in Selected Sectors

The first speaker discussed Myanmar's tourism history, noting that tourism is an important foreign exchange earner for the country. Due to high levels of poverty, many people do not know where or when their next meal will come from. As such, the state of responsible investment into Myanmar must be defined as a wide-ranging, inclusive benefit to the Myanmar population. It was stated that the country's state of development is still at its beginning, and the environment is not very supportive, with engrained corruption, illegal border trade and a lively black market. Education is extremely basic and requires concerted efforts to ensure reform. The speaker explained that expectations for taking on such investment risk therefore naturally meant investors expect higher rewards. Responsible investment, in order to truly succeed, required awareness raising of the 'good things', i.e. the right behaviour – what good labour relations, transparent corporate governance and robust due diligence really look like in practice. The speaker concluded by emphasising the importance of seeking to meet the highest standards possible while understanding local relevance at all times.

The next speaker discussed the history of Myanmar's extractive industry. It was noted that exemplary conduct with regard to human rights begins at the workplace, by treating employees with respect. Companies must focus on their contractors and all those with whom they work, including associates, partners, suppliers, and so on. The importance of obtaining a strong working knowledge of the local culture, environment, the legal framework and intent of Myanmar laws was emphasised, before seeking to implement human rights standards. In Myanmar this would in particular require strong support, assistance and knowledge sharing from international extractives companies to support their local contractors, most of whom are not well versed in international standards and laws.

Building relations based on trust and respect among all extractive companies' stakeholders was seen as key, including by seeking feedback and input from people in the areas of extractives operations. In Myanmar, if villagers don't trust the process, they will never voluntarily report a grievance. As such, patience was required, alongside demonstrated practice that grievances would be supported and resolved. Confidentiality was imperative to that process of trust building. The speaker noted that the private security providers their company used were unarmed, recruited from local villages and then trained. For investors in the oil sector, partnering with Myanmar's national oil company is compulsory, so a strong, regular and open dialogue among all extractives partners is essential. All requests from Myanmar's armed forces must be recorded and assessed, and no logistics support to the armed forces should be provided by extractives companies – only humanitarian assistance. Grievance mechanisms should be set up from the very beginning of any extractive project, to ensure impacts are proactively avoided and mitigated to prevent escalation and to provide a continuous source of information on the effectiveness of any company's human rights risk management systems.

Panel 6 – Looking ahead: The role of a Centre for responsible business in Myanmar

The IHRB and the Danish Institute for Human Rights are in the process of establishing a Centre for Responsible Business to be based in Yangon, as a hub of knowledge, capacity building and dialogue on responsible investment in Myanmar. IHRB staff briefly presented the initial plans envisioned for the planned Centre, which will seek to help build capacity and share knowledge for international and domestic investors, national and local Government, parliamentarians and civil society organizations, in order to fulfil their respective roles as envisaged in the UN Guiding Principles on Business and Human Rights.

The floor was then opened to hear participants' suggestions for what the priorities, services and outputs of any future Centre on Responsible Business in Myanmar should be. Suggestions were wide-ranging, including:

- Providing training to local organizations regarding land rights;
- Providing stakeholder consultation training to company staff involved in the land acquisition process;
- Providing mediation services to mitigate small disputes and prevent escalation;
- Working with the Myanmar Government to require all domestic and international businesses to consult with the Centre before investing;
- Developing pre-selection criteria of what constitutes a responsible company for government ministries to use, as well as provide criteria around standard setting, e.g. around environmental impact assessments;
- Storing and sharing information which independent and credible human rights organizations are documenting;
- Advising small local businesses on what to expect from the opening of the economy to international investors;
- Reaching out to Chinese and other Asian investors in particular, who have a different understanding of corporate social responsibility and risk;
- Advising on responsible investment in border areas between Myanmar and Bangladesh in particular;
- Considering tourism as a key pillar of the Centre, in anticipation of the National Tourism Master Plan to be released in early 2013;
- Supporting and promoting responsible investment by domestic businesses in particular.

IHRB noted the suggestions, and said it would consider these as the work plan for the Centre is developed, and key staff appointments made in 2013.

AGENDAS

Chatrium Hotel Royal Lake, Yangon, Myanmar

Building a Dialogue for Responsible Investment in Myanmar: Business-to-Community Relationships

11 December 2012

09:00) Panel 1 – New opportunities, new challenges for responsible investment in Myanmar

10:15) Presentation – An Important Framework for Responsible investment: The UN Guiding Principles on Business and Human Rights

10:30) *Tea/coffee*

10:45) Panel 2 – Key challenges in business-to-community relationships: Labour rights in Myanmar

11:50) Panel 3 – International experience of developing good practice in business-to-community relations

13:30) *Lunch*

14:30) Panel 4 – Key challenges in business-to-community relationships: Acquisition and use of land in Myanmar

16:00) *Tea/coffee*

16:30) Panel 5 – Looking ahead: The role of a Resource Centre supporting responsible investment in Myanmar

17:30) *Close*

Responsible Investment in Myanmar: Opportunities and Risks in Business-to-Business Relationships

14 December 2012

09:00) Panel 1 – The Importance of new, responsible investment in Myanmar

09:45) Panel 2 – An Important Framework for Responsible investment: The UN Guiding Principles on Business and Human Rights

11:00) *Tea/Coffee*

11:15) Panel 3 – From the outside looking in: Lessons learned on entering new markets responsibly

13:00) *Lunch*

14:00) Panel 4 – Key Issues for the Due Diligence Process for Responsible Investment in Myanmar

15:30) *Tea/Coffee*

15:45) Panel 5 – The application of due diligence in practice: Challenges and Lessons in Selected Sectors

16:45) Panel 6 – Looking ahead: The role of a Resource Centre supporting responsible investment in Myanmar

17:30) *Close*