

Shift

Putting Principles into Practice



Conducting Meaningful Stakeholder Consultation in Myanmar

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Shift

Shift is an independent, non-profit center for business and human rights practice. It is staffed by a team that was centrally involved in shaping and writing the UN Guiding Principles on Business and Human Rights, and is chaired by the author of the Guiding Principles, Professor John Ruggie.

Shift provides the expert knowledge and guidance for businesses and governments to put the UN Guiding Principles into practice. Based on lessons from this work, Shift develops public guidance materials to support improved practices for the respect and protection of human rights globally.

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Executive Summary

A large number of western companies from a wide range of sectors are now seeking to operate in Myanmar and can bring a number of substantial benefits to Burmese citizens. At the same time, Myanmar is only recently emerging from years of military rule that were characterized by extensive human rights violations, weak rule of law, corruption, and decades of civil war in Myanmar's ethnic states. In this context, companies face significant risks of causing, contributing to, or being linked to negative human rights impacts in Myanmar. The UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in June 2011, provide guidance on how meaningful consultation with potentially affected groups and other relevant stakeholders can assist companies, both to gauge and mitigate their risk of involvement with human rights impacts.

Shift compiled this report to assist companies that are considering operating, or are already operating, in Myanmar as they structure their stakeholder engagement process. Shift conducted community consultations and interviews with representatives of non-governmental organizations, networks of organizations, think tanks, and other civil society organizations, as well as entrepreneurs, Embassies and development agencies in Myanmar and on the Myanmar/Thai border. The questions asked were designed to (1) enable a survey of stakeholder viewpoints relating to the entry of companies into Myanmar, and (2) elaborate on the elements for companies to consider when structuring a stakeholder engagement strategy. A number of recurring themes emerged from the answers provided.

High Expectations: Interviewees have high expectations of the benefits that companies can bring to Myanmar. Not only do they look to companies to create jobs and decrease the level of poverty, they also hope that companies can assist in ensuring that Myanmar's recent economic and political reforms pave the way for a peaceful future, founded on respect for human rights and fundamental freedoms, by all and for all. Interviewees further observed that the entry of new companies can be an opportunity to set higher standards for corporate conduct than those imposed under current laws, which were deemed to be inadequate, weak and poorly-enforced.

Significant Fear: Interviewees expressed significant fear of being taken advantage of as the country opens up to the outside world. Interviewees remarked that they have yet to see benefits resulting from the presence of companies. Moving forward, they would like to see companies establish a 'win-win' situation, where corporate operations benefit both the companies and the people of Myanmar generally, rather than a select few within the country. Interviewees further feared that companies would structure their operations in Myanmar without an accurate understanding of the situation on the ground. They emphasized how fragile and complex the recent economic and political reforms are.

Interviewees noted with concern the increase in land grabbing. In particular, the mere anticipation of business is leading unscrupulous powerful individuals as well as crony-led companies to grab land, which they plan in turn to sell to companies at a profit in the future. They feared that companies would perpetuate low labor standards and contribute to environmental degradation. Interviewees also requested that companies make an extra effort to prevent violent crackdowns

against protestors, and urged companies to recall that freedom of expression and peaceful assembly is very new in Myanmar and that its limits are currently being tested by local communities. Interviewees expressed concern that new companies may wipe out their small farming businesses or favor one group of Burmese over others. A large number of interviewees remarked that companies will have to hold themselves to a higher standard than the current laws and regulations.

Regional Differences: Interviewees from ethnic states remarked that companies are not welcome in the ethnic states until the ceasefire agreements are stable, peace agreements have been concluded and political dialogue has been achieved. The interviewees noted that the stakes are high in the current context. They fear that companies will upset the ongoing democratic reform process that is still seen as extremely fragile. Interviewees further noted that change has yet to trickle through outside of the larger cities of Yangon, Naypyidaw and Mandalay.

Shifting Civil Society Scene: Interviewees emphasized that stakeholder consultation in a country emerging from decades of military rule is necessarily complex. They underlined that the long history of opposition to the military regime makes the situation especially polarizing and that the role of civil society, including community-based organizations and non-governmental organizations, was shifting considerably.

Determining Stakeholders to Engage With: Interviewees highlighted a large number of organizations that could assist companies in understanding the specific context in their area of operation, identifying who to speak with, and providing guidance on how to tailor stakeholder engagement so that it is meaningful in that area. The stakeholders identified included the government and the political opposition, international actors, local networks and sector-specific organizations working, for instance, on land, labor, the environment, gender, and special economic zones. Interviewees highlighted the added complexity of meaningful consultation in ethnic states characterized by years of armed conflict, poor living conditions, and negative experience with corporate engagement. They identified a number of community-based organizations, issue-specific civil society organizations, and youth and student organizations that can assist companies in structuring their stakeholder engagement in these ethnic states, once political dialogue has been achieved.

Expectations of Meaningful Consultation: Interviewees expected companies to proceed with genuine, meaningful consultation and provided suggestions for how companies can conduct grassroots stakeholder consultation which involves: (1) transparency and understanding in a public education phase, (2) inclusion in a public dialogue phase, and (3) integration of community concerns in a feedback phase. They saw these phases as key for companies to provide a 'win-win' situation which benefits both the companies and the Burmese people at large.

1. Introduction

1.1 PURPOSE OF REPORT

Myanmar provides a wealth of business opportunities.¹ It has vast natural resources, including oil and gas; coals and minerals such as gold; gemstones including rubies and jade; arable land; forest products, including teak and rubber; and freshwater and marine resources. It is strategically placed in the Association of South East Asian Nations (ASEAN) region, with neighboring countries such as China, India, and Thailand that are on a rapid path of development. It has untapped potential, with a population of an estimated 60 million individuals, most of whom lack access to numerous services, including reliable electricity, financial services, and cell phone and internet connection. Further, it has a young labor force and is developing rapidly in response to recent political and economic reforms that have, in turn, enabled western companies to enter the country after years of sanctions.

A large number of western companies from a wide range of sectors, including the extractive, financial, information and communications technology and agribusiness sectors, are now seeking to operate in Myanmar. Companies can bring a number of substantial benefits to Burmese people, such as decent and healthy employment opportunities, higher levels of income, access to new technologies, and sustainable economic development. At the same time, Myanmar is only recently emerging from years of military rule that were characterized by extensive human rights violations, weak rule of law, corruption, and decades of civil war in Myanmar's ethnic states. In this context, companies face significant risks of causing, contributing to, or being linked to negative human rights impacts in Myanmar.² It is therefore particularly important that companies identify and address their human rights risks before they begin operations in Myanmar, and on an on-going basis thereafter.

The UN Guiding Principles on Business and Human Rights (the "Guiding Principles") were authored by Shift's chair – the former Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie – and endorsed by the UN Human Rights Council in June

¹ In 1989, the military government of Burma renamed the country Myanmar. Most opposition groups rejected this change as undemocratic. For further information, see Martin Smith, *Burma (Myanmar): The Time for Change*, Minority Rights Group International (May 2002) at 13, available at <http://www.minorityrights.org/?lid=1022>. This report will refer to the country as Myanmar and the population of Myanmar as Burmese.

² For further information on some of the risks companies currently operating and considering investment in Myanmar may face, see The Institute for Human Rights and Business, *Responsible Investment in Myanmar: The Human Rights Dimension* (Occasional Paper Series Paper Number 1, September 2012), available at <http://www.ihrb.org/pdf/Occasional-Paper-1-Burma-Myanmar-FINAL.pdf>.

2011.³ They establish the authoritative global reference point on the respective roles of business and governments for ensuring business respect for human rights. In particular, the Guiding Principles underline that meaningful consultation with potentially affected groups and other relevant stakeholders can assist companies to gauge and mitigate their risk of involvement with human rights impacts, either through their own activities or as a result of their business relationships. Further, the Guiding Principles note that the need for stakeholder engagement is heightened where a company's operations or operating context – as in Myanmar – pose significant risk to human rights.

Just as the importance of conducting meaningful consultation with stakeholders increases in high-risk operating contexts, so too does the complexity involved in structuring such consultations. Accordingly, Shift has compiled this report to assist companies that are considering operating, or are already operating, in Myanmar as they design their stakeholder engagement process. The implementation of an effective stakeholder engagement strategy will provide important inputs into companies' human rights risk assessment, prioritization and mitigation activities, which in turn will help them ensure that they respect human rights throughout their operations in the country.

This introduction sets out the methodology used to compile the report and the Guiding Principles' approach to stakeholder engagement. The remainder of the report is divided into three further parts. Section 2 sets out a brief overview of recent history in Myanmar to provide the context in which the views summarized in this report should be understood. Section 3 provides a survey of stakeholder viewpoints relating to the entry of companies into Myanmar, as of the date of this report. These viewpoints are intended to provide a backdrop for stakeholder engagement strategies designed and conducted by companies for their operations in Myanmar. Section 4 elaborates on a range of elements to consider when structuring stakeholder consultation and selecting community representatives to engage with. The report concludes with the key recurring themes that emerged from the answers provided to Shift's questions.

1.2 METHODOLOGY

This report is based on approximately 100 interviews with a range of individuals that took place in January and February 2013. The interviewees included representatives of non-governmental organizations ("NGOs"), networks of organizations, think tanks, and other civil society organizations ("CSOs"), as well as entrepreneurs, Embassies and development agencies. The community consultations conducted in villages surrounding Mandalay included men and women working in sugarcane plantations, bee farms, livestock, basket weaving, steel production, textile production,

³ UN Special Representative on Business and Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc No. A/HRC/17/31 (March 2011), available at: <http://www.shiftproject.org/publication/guiding-principles-business-and-human-rights-implementing-united-nations-protect-respect>. Further guidance is provided in Office of the UN High Commissioner for Human Rights, The Corporate Responsibility to Respect Human Rights: An Interpretative Guide (November 2011), available at: <http://www.shiftproject.org/publication/corporate-responsibility-respect-human-rights-interpretive-guide>. These documents have been translated into Burmese and will be publicly available on Spectrum's website (to be launched in the near future).

trading in jade and industry zones, as well as representatives from networks of lawyers, facilitator networks with the International Labor Organization, and new trade union leaders. The questions asked are in [Annex A](#) and the organizations interviewed are listed in [Annex B](#).

Shift's interviews in Myanmar took place in Yangon and Mandalay, and community consultations were held in villages around Mandalay. Interviews also took place on the Myanmar/Thai border in Chiang Mai and Mat Sot, as well as in Bangkok, Thailand. At the time of Shift's visit to Myanmar, restrictions on travel hindered access to certain regions and ethnic states. Accordingly, Shift sought as much as possible to bring in voices from those areas through interviews with organizations that focus on their issues and concerns, coupled with a review of literature from human rights organizations based in those areas. However, in light of these restrictions, Shift was only able to conduct community consultations around Mandalay and a number of ethnic nationalities were not interviewed.

The questions asked were designed to be open-ended, in order to avoid leading interviewees in any particular direction. Where the interviews were conducted in Burmese, some of the nuances of the answers may have been lost in translation or may, to a certain degree, reflect the interpreter's own views on the important elements of response to highlight. In the majority of the cases, the interpreters used were recommended by the interviewees and therefore trusted by them. Although this report provides a snapshot of interviewees' views with regard to the entry of companies into Myanmar, as well as their views on stakeholder engagement, the situation is rapidly changing on the ground and viewpoints and organizations will change with time.

1.3 THE UN GUIDING PRINCIPLES

1.3.1 Overview of the UN Guiding Principles

The Guiding Principles have become the authoritative global reference point for companies seeking to respect human rights throughout their operations. In June 2011, following six years of multi-stakeholder consultation and research, the UN Human Rights Council unanimously endorsed the Guiding Principles authored by Shift's Chair and former Special Representative of the Secretary-General for Business and Human Rights, Professor John Ruggie. The Guiding Principles have been incorporated or reflected in other global standards, such as the OECD Guidelines for Multinational Enterprises, the ISO 26000 Guidance Standard on Social Responsibility, the revised Sustainability Framework and Performance Standards of the International Finance Corporation, and the European Commission's 2011 Communication on Corporate Social Responsibility.

In addition, the Guiding Principles have specifically been referred to as the standard to follow on human rights for companies seeking to operate in Myanmar. When suspending the sanctions it had previously imposed on the government of Myanmar, the European Union in April 2012 noted that it expected European companies to explore trade and investment opportunities in a way that

was consistent with the Guiding Principles.⁴ Similarly, the United States government eased its restrictions on doing business in Myanmar, in place since 1997, and will require that US companies investing more than \$500,000 in Myanmar or working with the state-owned energy company Myanma Oil and Gas Enterprise report on their human rights policies and procedures, and refers companies to the Guiding Principles for further information on human rights principles and practices as well as grievance processes.⁵

The UN Guiding Principles apply to all companies regardless of their size, sector, location, ownership and structure (Guiding Principle 14). The corporate responsibility to respect human rights, as set out in the Guiding Principles, requires businesses to know and show that they are respecting human rights throughout their operations. ‘Respecting’ human rights means not infringing on the human rights of others and addressing any impacts on human rights with which the company is involved (Guiding Principle 11). The Guiding Principles describe both the extent and the limits of what can reasonably be expected of companies as they seek to meet this standard. They require that companies have in place the following policies and processes:

1. A high-level **policy** commitment to respect human rights, supported by operational-level policies, processes, training and incentive structures that embed the company’s commitment across the entire organization (Guiding Principle 16).
2. Human rights **due diligence** (Guiding Principle 17), consisting of:
 - a. **Assessing** the actual and potential impacts on human rights that arise from the company’s own activities and through its business relationships (Guiding Principle 18);
 - b. **Integrating** the findings from these assessments into the company’s decision-making processes and acting to prevent or mitigate adverse impacts (Guiding Principle 19);
 - c. **Tracking** the effectiveness of the efforts to address human rights impacts (Guiding Principle 20); and
 - d. **Communicating** these efforts to relevant stakeholders in an appropriate fashion (Guiding Principle 21).
3. Providing, or cooperating in, legitimate processes to **remediate** human rights harms that the company has caused or contributed to, including through operational-level grievance mechanisms (Guiding Principles 22, 29 and 31).

⁴ Council of the European Union, Council conclusions on Burma/Myanmar, 3159th Foreign Affairs Council meeting Luxembourg (23 April 2012), available at http://eeas.europa.eu/myanmar/docs/council_conclusions_april_2012_en.pdf.

⁵ The U.S. Department of State, Reporting Requirements on Responsible Investment in Burma (revised and updated on February 2013), available at <http://www.humanrights.gov/wp-content/uploads/2013/02/Burma-Reporting-Requirements.pdf>.

1.3.2 The UN Guiding Principles and Stakeholder Engagement

Stakeholder engagement is a cross cutting theme throughout the Guiding Principles. Further, the need for stakeholder engagement is heightened where the nature of business operations or operating contexts pose significant risk to human rights. The following outlines the role and types of stakeholder engagement referred to in the Guiding Principles, which help companies to know and show that they are respecting human rights throughout their operations.

Human Rights Policy Commitment: Companies are to actively communicate their policy commitment to respect human rights to potentially affected stakeholders when their operations carry significant human rights risks (Commentary to Guiding Principle 16).

Human Rights Due Diligence – Assessing Impacts: The process of assessing actual and potential human rights impacts should wherever possible involve meaningful consultation with potentially affected groups. This direct form of consultation can help companies fully understand their potential human rights impacts. It should take into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, companies should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society (Guiding Principle 18 and its Commentary).

Human Rights Due Diligence – Tracking Performance: After integrating the findings from their impact assessments across relevant internal functions and processes, companies need to track the effectiveness of their response to adverse human rights impacts. This tracking should draw on feedback from both internal and external sources, including affected stakeholders. In addition, companies are to make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization (Guiding Principles 19 and 20 and their Commentary).

Human Rights Due Diligence – Communicating Performance: The Guiding Principles provide that companies should be prepared to communicate their human rights impacts externally, particularly when concerns are raised by or on behalf of affected stakeholders. The information reported should be accessible by the companies' intended audiences and not pose risks to affected stakeholders. Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders and formal public reports (Guiding Principle 21 and its Commentary).

Issues of Context: In complex situations, such as where the domestic context makes it impossible for companies to meet their responsibility to respect fully or where there is a risk of causing or contributing to gross human rights abuses, the Guiding Principles advise companies not only to draw on expertise within the company, but also to consult externally with credible, independent experts, including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives (Guiding Principle 23 and its Commentary).

Remediation: To make it possible for grievances to be addressed early and remediated directly, companies should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be negatively impacted. These non-judicial grievance mechanisms dealing with business-related human rights harms are typically administered by companies, alone or in collaboration with others, including relevant stakeholders. They can be an important complement to – though not substitute for – wider stakeholder engagement, and can provide important feedback on the effectiveness of the company’s human rights due diligence from those directly affected (Guiding Principle 29 and its Commentary).

Stakeholders play an important role in testing the effectiveness of non-judicial grievance mechanisms. In particular, stakeholder groups that will use the grievance mechanism should trust it, know about and be able to access it. Operational-level grievance mechanisms in particular should involve the stakeholder groups for whose use they are intended in their design and performance, and focus on dialogue as the means to address and resolve grievances (Guiding Principle 31 and its Commentary).

2. OVERVIEW OF MYANMAR

This section provides a brief overview of Myanmar by describing its recent history, as well as the specific history of non-Burman ethnic nationalities living in ethnic states where most of Myanmar’s abundant natural resources are located. This section is intended to provide the context in which the views summarized in this report should be understood. Excellent resources exist for companies to learn about the detail and the nuances of Myanmar’s history and human rights situation, a number of which are listed in [Annex C](#).

2.1 RECENT HISTORY

Since General Ne Win’s coup d’état in 1962, Myanmar has been governed by successive authoritarian military regimes, each characterized by significant political repression and discrimination against ethnic minorities. The human rights violations committed under the military, or the *tatmadaw* in Burmese, are well documented and include forced labor, arbitrary detention and imprisonment, torture, extrajudicial killings, rape, and the use of child soldiers. By the late 1980s, after years of economic mismanagement, Myanmar had declined to the status of Least Developed Country at the United Nations, reflecting its extreme poverty.

The dire economic crisis came to a head in 1987 when the government cancelled certain currency notes, essentially wiping out numerous savings overnight. This in turn triggered student protests, with protestors calling for democracy. In September 1988, the military cracked down on the protestors, resulting in an estimated 3,000 deaths, with numerous others injured, imprisoned or fleeing the country. Although the government then promised new elections, when the opposition party won the elections by a landslide, the election results were never implemented. Instead, the government strengthened its hold on power. Myanmar became increasingly isolated from the West and dependent on economic and political ties with China. The reports of severe human rights abuse continued. In 2007, the Burmese led by Buddhist monks protested again, triggered by a massive increase in fuel prices. These protests were again met with violence.

In May 2008, a week after Cyclone Nargis had devastated the Irrawaddy Delta and amid reports of far-reaching fraud and intimidation, the government submitted its new Constitution for approval by referendum. This is Myanmar's current Constitution. It guarantees the military 25% of the seats in Parliament and a veto power over constitutional amendments. Further, the Commander-in-Chief can exercise State sovereign power during a "state of emergency," and legal action cannot be taken against the military for its actions during this emergency.⁶

In November 2010, general elections were held in accordance with the new Constitution. These elections were deemed neither free nor fair, with instances of vote-buying, intimidation, cancellation of elections in many ethnic areas, and the exclusion of Myanmar's primary opposition political party, the National League for Democracy ("NLD"), who decided to boycott the elections as most of the NLD leaders were barred from participating. President Thein Sein from the Union Solidarity and Development Party ("USDP"), the former Prime Minister who had recently retired from the position of military commander, was elected and sworn in in March 2011. Since then, President Thein Sein's semi-civilian government has initiated a number of political and economic reforms to open Myanmar up to the outside world. These measures have included:

- Releasing hundreds of political prisoners;
- Dismantling monopolies, for instance, in vehicles and telecommunications;
- Removing restrictions on the media;
- Creating a National Human Rights Commission to consider complaints relating to acts which take place after 5 September 2011;
- Removing names from the immigration black-list, allowing certain freedom fighters and activists to return to the country;
- Passing a number of new laws, including relating to labor, land, peaceful assembly, foreign direct investment, and special economic zones;
- Allowing opposition political parties to run in the 2012 parliamentary by-elections, resulting in the NLD, led by Daw Aung Sun Suu Kyi, winning 43 out of the 45 seats on offer; and
- A pledge by President Thein Sein to eradicate forced labor by 2015.

In response to these changes, a number of governments, including those in the European Union, the United States, Australia, Norway and Switzerland, removed or suspended the sanctions they had previously imposed on Myanmar. The International Labour Organization eased its measures against Myanmar, and the World Bank has approved the resumption of aid.

Recent indicators provide a snapshot of Myanmar. Transparency International's Corruption Perception Index 2012 places Myanmar as the fifth most corrupt country in the world. It is placed

⁶ State Peace and Development Council, Constitution of the Republic of the Union of Myanmar (2008), available at http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf.

172 out of 176, just above Sudan, Afghanistan, North Korea and Somalia.⁷ Myanmar is placed 149 out of 186 countries in the 2013 Human Development Index ranking, which measures education, health, and income dimensions.⁸ Finally, in Myanmar's first official national study on income and employment released in January 2013, the Myanmar Parliament reported that the unemployment rate was approximately 37 percent, with more than one-quarter of the country's estimated 60 million people living in dire poverty.⁹

2.2 NON-BURMAN ETHNIC NATIONALITIES

Myanmar is an ethnically diverse country. It has an estimated population of 60 million persons, with an official 135 ethnic nationalities.¹⁰ It is divided into 21 administrative subdivisions: seven regions, seven ethnic states, five self-administered zones, one self-administered division, and one Union territory. The seven regions are Ayeyarwady Region, Bago Region, Magway Region, Mandalay Region, Sagaing Region, Tanintharyi Region and Yangon Region. The seven ethnic states – which border Thailand, China, India, and Bangladesh – are Chin State, Kachin State, Kayah State (formerly Karenni State), Kayin State (formerly Karen State), Mon State, Rakhine State (formerly Arakan State) and Shan State. Annex D provides a map of Myanmar.

Myanmar's largest ethnic group – the Burmans – represent around two-thirds of the population, and live primarily in Myanmar's regions located in the center of the country. Myanmar's non-Burman ethnic nationalities comprise the remaining third of Myanmar's population, and live primarily in the ethnic states of their name, although some live in the regions where the majority population is Burman. Each ethnic state is commonly home to a predominant ethnic group as well as a wide range of other ethnic groups. For example, the Akha, Danu, Intha, Kachin, Kokang, Lahu, Palaung, Pao and Wa all live with the Shan in Shan State. Further, a number of groups are deprived of citizenship under Myanmar's 1982 Citizenship Law, including most Burmese of Indian or Chinese descent, as well as the Rohingya Muslims.¹¹

The relationship between these non-Burman ethnic nationalities and the central authorities has long been complex. In February 1947, a year before independence from the United Kingdom, Myanmar's independence hero Aung San agreed the Panglong Agreement with the Shan, Kachin, Chin and Karenni ethnic groups, which would have guaranteed ethnic minority rights within the

⁷ Transparency International, Corruption Perceptions Index 2012, available at <http://www.transparency.org/cpi2012/results>.

⁸ UNDP, 2013 Human Development Report (March 2013), available at http://hdr.undp.org/en/media/HDR_2013_EN_complete.pdf

⁹ Eleven Myanmar, Myanmar Unemployment Rate Near 40 Percent (January 24, 2013), available at <http://www.elevenmyanmar.com/business/2230-myanmar-unemployment-rate-near-40-percent-study->

¹⁰ This is based on an estimate, as updated statistics are unavailable. See, for instance, Asian Development Bank, Myanmar, available at <http://www.adb.org/countries/myanmar/main>. The last full census was undertaken in 1931, and a partial census was undertaken in 1983. A nationwide census is planned in 2014, to precede the 2015 elections.

¹¹ UN High Commissioner for Refugees, Burma Citizenship Law of 15 October 1982, available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b4f71b>.

Union of Burma. Since independence, however, ongoing conflict has been taking place in Myanmar's ethnic states. Many ethnic groups have taken up arms demanding independence or greater autonomy from the central government, including greater control over Myanmar's natural resources which are primarily located in ethnic states. Decades of warfare have brought with them numerous human rights abuses, including forced labor, rape, torture, extrajudicial killings, the use of child soldiers and the laying of mines; and have uprooted a large number of families from their homes. Although the primary conflict has been between the military and the non-state armed groups, there has also been fighting between various non-state groups. The border areas have in parallel been the scene of illicit drug production, widespread prostitution, and an alarming spread of HIV/AIDS.

Starting in 1989, a number of ceasefire agreements were agreed with the non-state armed groups to suspend the fighting while a political settlement was reached. To date, ten out of eleven ceasefire agreements have been signed. The situation in a number of these ethnic states remains fragile, and in some areas fighting is ongoing. Since June 2011, when the military's previous ceasefire agreement with the Kachin Independence Organization ("KIO") collapsed, fighting has been taking place in the Kachin State and northern Shan State. Further, in June 2012, widespread violence erupted in Rakhine State between the Buddhist Rakhine and the Rohingya Muslims, resulting in mass displacement of Rohingyas, as well as Buddhist Rakhines who had been living in Muslim neighborhoods.

3. STAKEHOLDER VIEWS RELATING TO COMPANIES

This section summarizes the viewpoints heard from interviewees on potential corporate activities in Myanmar. It does not assess the likelihood that the concerns raised will materialize in practice, nor does it analyze the severity of the human rights impacts that might result. Rather it provides the responses received by the interviewees to the following questions:

1. **Benefits.** What do you see as the key benefits of new companies operating in Myanmar?
2. **Concerns.** What are your key concerns with regard to new companies operating in Myanmar?
3. **Regional Differences.** How do these concerns vary (if at all) depending on the region?
4. **Sectors.** What industries are you familiar with? What do you see as opportunities in these industries? Are there industries that raise specific concern for you?

Subsection 3.1 summarizes the responses received on the benefits of corporate activity while subsection 3.2 summarizes the interviewees' concerns. The responses to the questions regarding regional differences and sectors highlighted concerns and therefore have been included in subsection 3.2. The answers provided are informed by the interviewees' personal history under Myanmar's prior military regime, as well as their experience with companies operating in Myanmar to date.

3.1 OPPORTUNITIES

When asked about the opportunities that new companies entering Myanmar could provide, interviewees tended to enumerate their concerns instead. Interviewees remarked however that recent developments allowed them to discuss freely these questions in a way that would not have been possible two years ago. When interviewees did express what they saw as the benefits, job creation was the primary opportunity listed.

3.1.1 Job Creation

Interviewees were eager for jobs. Many remarked that the Burmese had been cut off from the world for a long time and, as a result, lacked the skills necessary to compete in the global market. Labor-intensive sectors, such as manufacturing and agriculture, would enable Myanmar to compete with their neighbors from the ASEAN region that are providing labor to international companies. Interviewees wanted to build their skills, and also welcomed the opportunity to improve their working conditions. In particular they desired increased wages, suitable working hours and respect for rest days. One interviewee noted, “if we are paid decent wages and treated decently, we will stay quiet and not protest.”

3.1.2 Economic Development

Interviewees also welcomed the positive economic development that companies could bring to Myanmar. Examples provided included the development of infrastructure (such as roads and ports) as well as access to electricity, clean water, and information and communications technology. Interviewees noted that they hoped that the presence of international companies in Myanmar would place pressure on the government to reduce the number of power cuts and improve public infrastructure and public services. In addition, interviewees hoped that the entry of companies would in turn promote local business development by, for instance, decreasing the cost of insurance and the high interest rates that local businesses are faced with.

3.1.3 Strengthen the Democratic Process

Interviewees further noted that new companies entering Myanmar could assist in strengthening the ongoing democratic process as these companies would now have a stake in Myanmar’s democracy and could contribute to its development. As emphasized by one interviewee, “we have had very little contact with the outside world in 50 years.” Accordingly, the fact that companies and their staff are entering Myanmar is seen as providing two opportunities for democracy and human rights. First, these foreigners can assist the Burmese in learning about the democratic standards that exist in other countries. Second, these foreigners now know about Myanmar’s repressive history, have a stake in Myanmar’s future, and can assist in holding the government to account if it does not implement political reforms in a meaningful manner.

3.1.4 Set Standards for Corporate Conduct

Some interviewees also observed that the entry of new companies in Myanmar can be an opportunity to set standards for corporate conduct. As further described in subsection 3.2.1 below, interviewees remarked that, to date, they had had a number of negative experiences with companies operating in Myanmar. Interviewees hoped that new companies coming in would raise the bar on corporate conduct and follow higher standards than those imposed under current laws,

which were deemed to be inadequate, weak and poorly-enforced. By way of example, one interviewee noted that the recent protests at the Letpadaung copper mine provided an opportunity in that the investigation commission led by Daw Aung San Suu Kyi could set standards for future corporate operations with regard to environmental and social impacts.¹² Several other interviewees noted that since the current legal framework does not provide guidance on how companies should structure their relationship with local communities, companies coming in could lead by example on how to do this.

3.2 CONCERNS

A range of concerns was expressed with regard to companies operating in Myanmar.

3.2.1 Investment to the Detriment of the People

The leading concern, expressed systematically by all interviewees, was that new companies coming in might operate to the detriment of the Burmese people. Interviewees remarked that they have yet to see benefits resulting from the presence of companies, but that moving forward, they would like to see companies establish a ‘win-win’ situation, where corporate operations benefit both the companies and the people of Myanmar generally, rather than a select few within the country.

Although this concern was put forward by interviewees from the heartland as well as from ethnic states, it was taken a step further by those of non-Burman ethnicity. Interviewees from ethnic states noted that companies are not welcome in these states until the ceasefire agreements are stable, peace agreements have been concluded and political dialogue has been achieved. Some noted that they would nonetheless welcome companies providing social services in a non-discriminatory fashion, such as healthcare, sanitation and education.

The interviewees noted that the stakes are high in the current context. They fear that companies will upset the ongoing democratic reform process that is still seen as extremely fragile. If new investment coming in strengthens the military, there is concern that the military will cling to power, its ability to wipe out resistance will be strengthened, and democracy will be delayed. Interviewees of non-Burman ethnicity in particular fear that the government will use ceasefires as a short-term measure to enable investment into the ethnic states with benefit to the central government and the military, and then drop the negotiations regarding regional autonomy once they have secured their commercial objectives, leaving the states without their political objectives or the economic benefits from investment.

¹² This investigation commission’s report has since been completed and was released to the public on March 12, 2013. See The Irrawaddy, Burma Police Used Phosphorus at Mine Protest, Official Report Confirms (March 12, 2013), available at <http://www.irrawaddy.org/archives/29039>. The report was largely rejected by local villagers as it was viewed as prioritizing foreign investors’ interests over the villagers’ rights to their arable land. See, for example, The Economist, Property and The Lady (March 30, 2013), available at <http://www.economist.com/news/finance-and-economics/21574465-property-rights-and-economic-growth-may-not-always-go-together-property-and>.

A number of interviewees remarked that they had called on the government to implement a moratorium on investment in the ethnic states until political dialogue has advanced. Interviewees noted with concern the recent increase in corporate activities such as mining, logging, infrastructure and plantations that had occurred in ethnic states since the ceasefire agreements had been signed, without any resulting benefit to the surrounding communities. Interviewees further noted that fighting is ongoing in certain ethnic areas, and the situation remains highly militarized in others, and remarked that these areas therefore cannot be ready for investment.

Interviewees gave a number of reasons why they thought that new companies coming in would operate to the detriment of the Burmese people:

Crony-led Companies: Interviewees highlighted that, to date, investment from companies has primarily benefited the military as well as ‘crony-led’ companies, i.e., companies aligned with and cooperating closely with the military regime. Interviewees remarked that the only way to do business previously in Myanmar was to be corrupt and/or have strong connections with the top military leadership. Accordingly, these crony-led companies are the only businesses that currently have the capacity, skills and resources to conduct business in Myanmar on a large scale. Interviewees fear that new companies coming in will further strengthen these crony-led companies by partnering with them. They noted that there is no accountability for prior crimes and that there has not been much transparency to date in awarding contracts. Interviewees asked that new companies take the time to work with small companies operated by villagers, even if this takes longer and demands more resources than working with larger companies.

Resource Distribution: Interviewees noted that revenue from taxation has not, to date, been redistributed to the communities living in proximity to the corporate activity. To the contrary, they noted that too often local communities bear the brunt of corporate activity, including increased militarization and environmental degradation, without seeing any benefits. Some interviewees have been calling for increased financial resources to be provided to elected local councils for the benefit of local communities. Other interviewees have been petitioning the national and state governments to increase the transparency of corporate proceedings. Interviewees commented that companies will be strengthening the military and central authorities by paying taxes, which makes it all the more important for them to address other potential negative impacts they may have on the ground.

The Military: Interviewees stressed that the presence of international companies has commonly been accompanied by increased militarization, especially in ethnic states where control has been disputed between the military and non-state armed groups. For instance, some reported that the military has used the pretext of providing security to a company’s property as a means to enter villages, or has accompanied a company conducting assessments and has remained to issue orders to villagers on how they are to support that company. The adverse consequences on the villagers’ livelihoods include increased physical security threats, limits on their freedom of movement through military checkpoints, land grabbing and forced labor. Interviewees remarked that companies commonly do not see themselves as responsible for the military’s actions, but that the military’s presence is often directly linked to the companies’ operations. Stakeholders also

noted that companies sometimes have no choice but to partner, directly or indirectly, with the military if they wish to operate.

Prior Experience: Many interviewees noted that they have yet to see a company's operations benefit the surrounding communities. Too often, the benefits are provided to those living in larger cities within Myanmar or to Myanmar's neighboring countries. The following lists some of the examples provided, both from the heartland as well as from ethnic states, of how international companies are believed to have operated to the detriment of the local communities in the past:

- Agribusiness in Mandalay Region: Agribusiness companies have in the past deprived small farmers of their livelihoods. Rather than partnering with local agricultural businesses, they have driven them off their lands;
- Mining in central Myanmar and Kachin State: Mining companies have restricted the operations of small-scale miners. For instance, it was noted that the presence of large mining companies has either led the government to prohibit small-scale mining or to request that these small-scale miners pay large amounts of money to continue mining alongside the larger company;
- Tourism in the Yangon Region: Tourism companies are viewed as squeezing out the smaller companies that wish to benefit from the influx of tourists. For instance, one local jade trader noted that tourism was benefiting wealthy cronies rather than local salesmen since tourists choose to buy their jade in large hotels rather than locally;
- Hydropower in Kachin State: Energy companies export electricity produced by hydropower dams for external consumption, whereas the surrounding communities do not have regular access to electricity and instead pay the price of damage to surrounding rivers; and
- Oil and Gas in Shan State: Some oil and gas companies have in the past opened the door for the military to control villages under pretext of providing security to the companies' infrastructure, which in turn significantly hinders the villagers' access to their sources of livelihood.

3.2.2 The Nuances of Political Reform

Interviewees' second largest concern was that companies might structure their operations in Myanmar without an accurate understanding of the situation on the ground. Although interviewees welcomed the recent changes as a stepping stone to a better future, they cautioned companies to remember that the country has been affected by decades of armed conflict and widespread human rights abuse. Interviewees warned that the political reforms are still very recent and fragile, and that those welcoming companies into Myanmar may be doing so at the expense of describing the complexities involved. One interviewee noted, "although we welcome the changes, they are occurring too quickly – things are going wrong, there are still lots of problems, and we have a limited period of time to address them all." Interviewees urged companies to grasp the nuances of

political reform in Myanmar, and provided a number of examples of areas in which the situation is more complex than may appear:

Rule of Law: Interviewees remarked that there is currently no mechanism in place for the State to ensure the respect, protection and promotion of human rights. The military has benefited from an ingrained culture of impunity for decades and those who are responsible for human rights abuse are not being held to account. Interviewees emphasized that the judiciary has been eroded, the people do not trust the courts, and in some areas there is no court system at all. One interviewee observed that “it may be difficult for companies to imagine what it means for villagers to have no recourse whatsoever.” Interviewees noted that they have yet to see the courts used to challenge the government or limit the use of power by the regime.

Poverty: Interviewees emphasized that Myanmar is extremely poor and lacks a middle class. They noted a significant difference between the richer ‘cronies’ and the remaining Burmese population that has been excluded from economic opportunities. A comment that was repeated several times was “we want to be middle class, and not poor.”

Media: Although interviewees welcomed the opening up of the media, some remarked that it may be difficult for companies to get an accurate picture of the situation in Myanmar through the media as it will take time before fully independent and objective journalism is achieved. Some interviewees remarked that media outlets remain either pro-government or pro-opposition and are learning how to report on local grievances in a more balanced fashion. In addition, media freedom remains limited in a number of ethnic states. Some interviewees noted that confidence in freedom of expression should not be exaggerated, as surveillance continues.

Capacity: Interviewees noted the severe lack of capacity in the country to embrace and build on the recent economic and political changes, which is compounded by the pace at which these changes are taking place. Interviewees frequently referred to “a steep learning curve,” both within the government as well as civil society organizations. Interviewees recalled that dealing with responsible investment is new for both government officials and civil society representatives, who are still learning how to move forward in this area. In addition, there are considerable demands on individuals’ time, both within government and non-governmental organizations, as a result of the significant increase in companies, diplomatic missions and organizations visiting Myanmar.

The Military: A number of interviewees noted that the military remains in power, despite public pronouncements that may lead outsiders to believe the contrary. Interviewees pointed to the continued fighting in Kachin and northern Shan States, despite the President’s assurance that the fighting would stop. Some also highlighted the use of white phosphorous, a military munition typically reserved for warfare, by the police in the crackdown on the Letpadaung copper mine, which they saw as evidence that the military remains in control. A number of interviewees from ethnic states in particular noted that “the military still has control and power, so how can a democracy be taking place?”

Political Prisoners: Interviewees noted that the outside world knew about the recent release of political prisoners, but that over 200 political prisoners remained in prison and that those that have

been released are subject to numerous restrictions. For instance, they do not have freedom of movement since their passports have not been returned, nor do they have freedom to exercise their professions as their professional licenses have not been restored. Further, a few interviewees noted that some former political prisoners remain stigmatized in society as they retain a criminal record.

Internally Displaced Persons, Refugees and Migrant Workers: Interviewees noted the existence of a considerable number of internally displaced persons within Myanmar, as well as refugees and migrant workers outside the country, particularly in Thailand. There will be a need to integrate these Burmese back into society when they return to their lands, which should be taken into account as companies consider operations in Myanmar.

Regional Differences: Numerous interviewees highlighted the difference between the cities of Yangon, Mandalay, and Naypyidaw – where changes can be felt to a certain degree, and particularly in the new freedom to voice dissent – and the rest of Myanmar, where change has yet to trickle through. Some remarked that this is compounded by the fact that it is difficult for the majority of the Burmese to travel around Myanmar: it is expensive to travel, there is a lack of transportation, and military checkpoints remain in many parts of the country. Comments included “there is no real change for us; maybe there will be after 2015,” and “people are confused, they hear about democracy but at the same time they see fighting.”

3.2.3 Intensification of Land Grabbing

Interviewees noted that land grabbing is prevalent throughout Myanmar,¹³ and is increasing as Myanmar opens up to new companies, in combination with the signing of ceasefire agreements that allows access to land previously controlled by non-state armed groups. Interviewees saw the existence of the Parliamentary Land Investigation Committee, which started investigating complaints in September 2012, as evidence that the government had recognized land grabbing as an issue. Some interviewees referred to ‘Free, Prior and Informed Consent’ as the standard that should be followed, but remarked that they had yet to see this in practice. Interviewees mentioned that land grabbing is not restricted to ethnic states, but is also occurring in central Myanmar as well as in cities such as Yangon and Mandalay. A large number of villagers expressed concern about the lack of information regarding which land was classified by the government as “agricultural land.” They noted that this lack of information prevents them from lobbying effectively against the grabbing of agricultural land.

Interviewees noted that land grabbing is considerably more complex than companies initially imagine, and that there are a number of elements for companies to consider:

¹³ Land grabbing in Myanmar is described as the situation where “the locals are left with no choice but to relinquish control over their land, often under pressure by local authorities, which ends up in the hands of more powerful elites (both local, from upper and lower Myanmar, and foreign).” Paung Ku and Transnational Institute, Land Grabbing in Dawei (Myanmar/Burma): a (Inter)National Human Rights Concern at 3 (September 2012), available at http://www.tni.org/sites/www.tni.org/files/download/dawei_land_grab.pdf. See Annex D for further resources on land grabbing relevant to other regions and ethnic states.

Direct and Indirect Land Grabs: Traditional land grabbing occurs when villagers are ejected from their land without compensation and, at times, notification, by those more powerful. The individual conducting the grabbing varies (e.g., army-backed company, local official etc.) and the method varies (e.g., it is argued that the prior owner does not hold registered title, title to land is procured through corruption, etc.). Interviewees noted that indirect land grabbing is increasing: the mere anticipation of business is leading unscrupulous powerful individuals as well as crony-led companies to grab land, which they plan in turn to sell to companies at a profit in the future. This places an extra burden on companies to examine the chain of ownership. Interviewees noted that although land grabbing typically occurs for larger projects (such as mining, logging, and agribusiness), land grabbing can also occur for small parcels of land that are strategically placed, such as those that may be used for the construction of radio base towers by information and communications technology companies.

Lack of Capacity for Informed Decisions: Interviewees underscored that villagers are currently ill-equipped to assess the long-term impact of the purchase of land on their livelihoods and, accordingly, do not have the capacity to provide informed consent. Interviewees provided examples where villagers had wanted the government or companies to take their land so that they could receive a lump sum of money, but that after the money ran out, they had become bound to work on the land that had previously belonged to them or were forced to flee elsewhere for work, either to larger cities or across the border to China or Thailand.

Corruption: Interviewees gave examples of situations where companies had provided adequate compensation to communities, but different amounts had reached each village, depending on the extent of corruption in each. They noted that this corruption can be carried out by a range of actors, including local government officials, land registration units or local groups claiming to represent the community. By way of example, the local officials responsible for distributing the payment can take advantage of the fact that few people know the exact size of their land to siphon off a portion of it for their benefit, and receive the corresponding compensation.

Flawed Legal Framework: Interviewees cautioned that the current legal framework relating to land is considerably flawed and that some companies rely on this to access land. For instance, current legislation allows companies to take land that is fallow, thereby disregarding the community's practice of rotational agriculture. Interviewees referred to the Vacant, Fallow and Virgin Land Management Act of March 30, 2012 as the framework that would allow this to be done legally. Further, national land law does not address customary land rights and usage, nor does it address the situation where communities have been in armed conflict with the government and their rights to land have de facto been administered by non-state armed groups.

Flawed Consultation: Interviewees provided examples of companies that had claimed to have engaged in consultations with communities resulting in their free, prior and informed consent to the sale of land, but where the consultations were flawed. For instance, they observed that villagers often feel coerced to accept the terms provided by the company due to the presence of military, local government, or non-state armed group officials who have previously agreed to the sale of land.

Flawed Compensation: Interviewees provided examples of companies that had promised a number of items in exchange for land, such as new residences and new plots of land for farming. However, after the villagers had moved, they realized that they have been misled: the farmland was not ready to be cultivated, the houses were of poor quality, and/or the new plot of land was not in a suitable location.

3.2.4 Labor Conditions

Interviewees were keen to ensure that they were paid a minimum wage and provided safe and healthy working conditions, adequate health care, and rest days. Interviewees noted that they wished their skills to increase and were ready to work hard to enable this to happen. Some voiced concern that the companies would “give up” on Burmese workers as it would take some time to train them to the same working standards as their neighbors in other ASEAN countries. Two interviewees further noted that there could be an increase in forced labor to build infrastructure used by companies if fighting continues in the ethnic areas, given the strong connection in the past between forced labor and the presence of the military in villages.

3.2.5 Environmental Concerns

A large number of interviewees expressed concern that corporate activities might contribute to environmental degradation, which could in turn negatively impact people’s health and well-being. Interviewees noted that the sectors that posed the most concern were the oil and gas, mining, hydropower, forestry, fishing and agribusiness sectors. Interviewees provided numerous examples that they had seen of environmental damage caused by corporate activities. They noted that there is very weak protection of the environment under the current legal framework. One interviewee nonetheless welcomed a new governmental measure that would prohibit the exporting of timber as a raw material from Myanmar and hoped this could reduce de-forestation.¹⁴

Many interviewees were concerned about the development of special economic zones, and the negative consequences of air and water pollution and the degradation of the coast associated with their development. Several interviewees were outraged at the former Thai Prime Minister’s comments that certain industries are located in Dawei because they are not suitable to be located in Thailand, and questioned why it was acceptable to pollute Myanmar more than Thailand.¹⁵ In particular, interviewees noted with concern the petrochemical industrial development in Dawei Special Economic Zone in Tanintharyi Region, the Special Economic Zone of the deep-water port of Thilawa in Yangon Region, and the Kyaukphyu Special Economic Zone in Rakhine State.

¹⁴ For further information on this governmental measure, see William Boot, Timber Export Ban Needs Forestry Reform, *The Irrawaddy* (Nov. 6, 2012), available at <http://www.irrawaddy.org/archives/18107> (describing “[t]he Burmese government’s plan to completely ban the export of timber in 2014 in a bid to stop the destruction of the country’s forests and their unique wildlife.”)

¹⁵ International Herald Tribune, An Industrial Project That Could Change Myanmar (Nov. 26, 2010), available at <http://www.nytimes.com/2010/11/27/world/asia/27iht-myanmar.html?pagewanted=all>.

3.2.6 Crackdowns on Protestors

The halting of the Myitsone dam project in Kachin State was seen as a success story as it was the first time people were able to express their disapproval publicly, and the first time that the government took this disagreement into account. Interviewees however were concerned that the government's reaction to the Letpadaung copper mine protests was too harsh. They noted that protestors' demands may at times appear unrealistic, but urged companies to recall that freedom of expression and peaceful assembly is very new in Myanmar and that its limits are currently being tested by local communities. Interviewees noted that when villagers protest a corporate activity, they may in part be protesting the actual project and in part expressing their frustration about how much they have lost in the past.

One interviewee observed, "we have lacked a voice for nearly 60 years. We are only allowed to talk back to the government within the past year. This freedom to express disagreement is new." Some interviewees noted that, because of this, "anything can happen" and it is difficult to predict what may trigger community protests. They noted that protests could be triggered by something the company sees as unjustified, such as the taking of a small parcel of land in exchange for valid compensation, as protests about corporate activities may be used as a way of getting an agenda item onto the media's radar screen. Whether or not companies agree with the protestors' demands, however, they will need to make an extra effort to prevent violent crackdowns, similar to the one in Monywa on the protestors of the Letpadaung copper mine. Interviewees asked for patience as communities express their voice for the first time.

3.2.7 Destruction of Local Farmers' Livelihoods

A number of interviewees recalled that Myanmar is predominantly an agricultural society, with around 70% of the population using land for their livelihoods. Those at the village level expressed concern that the new businesses, such as large-scale agribusinesses, would wipe out their small farming businesses. Their fear was heightened with the passage of the Foreign Direct Investment Law in November 2012, seen by many as an invitation for more companies to come in, without the necessary safeguards in place to protect the population's livelihoods. A related concern is that the country might lose its focus on agriculture through these economic changes. A few interviewees noted that Myanmar's specialty, as compared to other neighboring countries, is agriculture, and that Myanmar should be seeking to build its agricultural products for export to neighboring markets.

3.2.8 No Protective Legal Framework

As noted above in sections 3.2.3 and 3.2.5 on land grabbing and environmental concerns, the lack of a protective legal framework was generally referred to in each interview. A large number of interviewees remarked that companies will have to hold themselves to a higher standard than the current laws and regulations. Failing this, some noted that although companies may be able to operate today, they will have problems in the future as villagers gain their voice and the legal framework is strengthened. As noted above, interviewees felt that the legal framework on land legalizes land grabbing and does not provide for adequate local consultation; and that

environmental laws are inconsistent with international standards in safeguarding Myanmar's environment. At the same time, interviewees welcomed the recent changes to Myanmar's labor laws, although a few remarked that it was unclear how employers would implement these changes in practice.

3.2.9 Discrimination

Discrimination was a cross-cutting theme in the interviews. Interviewees were concerned that economic development would favor one group of Burmese over others. For instance, specific ethnic groups were worried about being discriminated against for the benefit of the Burman majority. With regard to women's rights, a number of women interviewees from Yangon noted that they felt that their rights were generally well respected by men, especially when compared with neighboring countries. They did note however the situation would be different for women located elsewhere, and that women in the borderlands have suffered considerably more abuse than those living in the heartland of Myanmar. This was confirmed by the interviews with women from non-Burman ethnic nationalities, who noted that particular attention was needed to ensure that they participate in the economic development brought by companies.

4. STAKEHOLDER ENGAGEMENT

This section summarizes responses received from interviewees relating to stakeholder engagement. The interviewees responded to the following questions:

1. **Stakeholders.** Who are the key representatives of stakeholders that you believe companies should be engaging with to discuss concerns?
2. **Methods of Engagement.** What are the best methods for companies to engage with stakeholders at the local level and what kinds of challenges may companies face in this community engagement?
3. **Expectations.** What are your expectations with regard to what companies should be doing while operating in Myanmar to ensure they respect human rights?

Subsection 4.1 describes key considerations for understanding the civil society landscape in Myanmar highlighted by interviewees as they responded to these questions, subsection 4.2 provides an overview of the types of organizations that interviewees suggested companies could usefully speak with as part of designing and conducting their stakeholder engagement, and subsection 4.3 summarizes the expectations interviewees had with regard to methods of engagement.

4.1 CONSIDERATIONS FOR UNDERSTANDING THE CIVIL SOCIETY SCENE IN MYANMAR

Interviewees noted the existence of a vibrant network of civil society organizations that companies can engage with as they move forward in Myanmar. At the same time, interviewees emphasized that stakeholder engagement in a country emerging from decades of military rule is necessarily complex. When crafting its stakeholder engagement strategy, interviewees noted that a company

should be aware of the divisions that exist within the opposition, as well as the manner in which the role of civil society is shifting in Myanmar.

4.1.1 Divisions within the Opposition

The long history of opposition to the military regime – since 1962 and more intensely since 1988 – makes the situation especially polarizing in Myanmar. The groups that have been advocating for decades for democracy and human rights have not always been aligned in opinion on strategy and tactics. Similarly, non-Burman ethnic nationalities have held different positions, for instance, on whether to engage in armed conflict, whether to align with other ethnic nationalities, and whether to contest state-run elections. As one interviewee noted, “we have a divided society, where people do not trust each other.” This was reflected in the interviews, where interviewees held contrasting viewpoints on the merits of engaging with certain organizations. Some interviewees noted that a number of organizations have similar objectives, and yet do not necessarily engage in constructive dialogue. In some instances, it’s a case of “you are either with me, or you are against me.”

In addition, the recent political changes have to a certain degree accentuated the differences between groups, and in particular those groups operating inside and those operating outside of Myanmar. Some organizations have always operated inside of Myanmar, others have recently returned to Myanmar, while others continue to operate abroad, many of which are increasing their activities in Myanmar. Interviewees held different views regarding those groups that had adopted a different approach to their own. For instance, some interviewees noted that the groups operating outside of Myanmar may not be as realistic in their demands and as open to constructive dialogue. Others noted that external groups have an extensive network throughout the country after operating for years underground, and that they continue to represent marginalized voices that may not be accorded importance in Yangon and Naypyidaw, and will likely be the most vocal in expressing concerns moving forward.

Interviewees noted that these complexities are often lost on companies that adopt a simplistic approach to the identification of stakeholder groups. In particular, interviewees noted that companies tend to assume they have heard the ‘opposition voice’ when they consult with the largest opposition political party, the NLD. Further, companies tend to assume that they have heard the ‘ethnic voice’ when they consult with the largest non-state armed group in that area. Interviewees noted that sometimes company employees will not themselves travel in advance to the places the company will operate in, and will resort instead to speaking to those individuals that are easily accessible, rather than taking the time to understand the range of community voices that exist in each place.

Interviewees emphasized that companies can inadvertently do considerable harm if they do not engage with the right groups and their representatives. Interviewees provided examples where companies and organizations, through flawed consultation, had splintered communities and organizations, and divided non-state armed groups. There is a competition for attention and resources; and external consultation can further divide groups that are fragile.

4.1.2 Shifting Role of Civil Society

Interviewees noted that the role of civil society, including community-based organizations and non-governmental organizations, was shifting considerably. Civil society organizations are not new in Myanmar: a number of them have been operating for years on the border and underground; and a large number have been operating as service delivery providers, especially after Cyclone Nargis devastated the Irrawaddy Delta. What is new, however, is the role that these organizations can play. They can now act increasingly as watchdogs for society by publicly challenging the government. Interviewees noted that the political changes had happened quickly and it was confusing for a number of them to know which role they should play to further Myanmar's political process. As one interviewee noted, "our 2012-2015 strategy was already out of date by January 2013 due to the fast pace of the changes." Interviewees noted that some in Myanmar have yet to shift their mindset from regarding NGOs as groups of volunteers delivering aid on the ground to professional staff playing a strategic role.

In addition, interviewees noted that a considerable number of new organizations are being created throughout Myanmar to build on the newfound freedom of expression and freedom to organize. Interviewees mentioned, for instance, that students, workers, and farmers were organizing into new movements, and village stabilization units and village committees were being strengthened. They underlined that because of the difficulties involved with registering as a non-governmental organization (cost, paperwork, etc.), registration should not be a criterion for assessing the legitimacy or representativeness of a group. Some interviewees noted that they saw NGOs as more formal groups, and community-based organizations and other civil society organizations as more informal. They added that both are important for companies to consider.

Interviewees underscored that networks of organizations are starting to be created, but that these remain fragile for a number of reasons. It is expensive to travel between villages, making it more difficult for villagers to coordinate amongst themselves. Some interviewees further noted that section 17/1 of the 1908 Unlawful Association Act continues to prohibit individuals from supporting groups the government considers 'illegal', and people are unsure which groups would fit into this category in light of the recent political changes. Finally, some interviewees noted that the new competition for international attention and resources can work against groups associating together.

Interviewees emphasized that engaging with companies is new and that a number of individuals and organizations have never done so, and are not considering doing so at this point in time. At the same time, interviewees remarked that a number of international and development organizations are building the capacity of local groups to engage in Myanmar's political process, and that this can in turn assist these groups in engaging with companies in the future. Further, some organizations, such as EarthRights International, are starting to build the capacity of local groups to engage with companies directly.

4.2 PROCESS FOR DETERMINING STAKEHOLDERS TO ENGAGE WITH

The stakeholders each company will engage with will differ depending on the geographic location, as well as the scale and the scope of the company's business operations. For instance, a company intending to explore for oil and gas in a range of ethnic states will have a different engagement strategy and engage with different stakeholders than a company establishing a manufacturing plant in a Burmese city in one of the seven regions. There are existing databases that list non-governmental organizations and other civil society organizations, such as those maintained by the Myanmar Information Management Unit of the United Nations and the Local Resource Centre.¹⁶ This section complements these databases by listing the organizations mentioned by interviewees as being able to assist companies in crafting stakeholder engagement. The information provided about each organization mentioned is from publicly available information, supplemented by the interviews. Shift has not verified the activities of each organization mentioned here and does not take a position one way or the other on any organization. Rather, this subsection reflects the views of interviewees as to which organizations could assist the company in understanding the specific context of the area of operation, identifying whom to speak with there, and provide guidance on how to tailor stakeholder engagement so that it is meaningful in that area.

4.2.1 The Government and Political Opposition

Interviewees noted that companies will commonly already be engaging with the government as well as the NLD as they enter Myanmar. In addition, interviewees noted that companies could consider consulting with Members of Parliament who have specific expertise in the sector in question. For instance, in the oil and gas sector, there are four to five Members of Parliament who are regarded as experts in this field to consult with, regardless of their political affiliation. Interviewees further highlighted that although government power is highly centralized, it will be important to engage with the state assemblies and townships in the areas where investment is contemplated. In some state assemblies, ethnic representatives may be present through their political parties; in others, the ethnic political parties will have boycotted the elections.

4.2.2 International Actors

Interviewees highlighted that the following international actors can be helpful at the outset of the process of identification of stakeholders:

- Embassies and their development branches, such as *USAID* for the United States and the United Kingdom's *Department for International Development* ("DfID"), are aware of the politics and have their networks on the ground.
- International Non-Governmental Organizations, and especially those that have been using a partnership approach rather than self-implementing their projects, have networks and

¹⁶ See The Myanmar Information Management Unit, Contact Lists of Humanitarian Partners in Myanmar, available at http://themimu.info/Contact_Lists/index.php; see also, The Local Resource Centre, Local NGO, available at <http://www.lrcmyanmar.org/en/ngoprofiles/Local%20NGO>; The Local Resource Centre, International NGO, available at <http://www.lrcmyanmar.org/en/ngoprofiles/International%20NGO>; The Local Resource Centre, NGO Networks, available at <http://www.lrcmyanmar.org/en/ngoprofiles/NGO%20Networks>; and The Local Resource Centre, Donors, available at <http://www.lrcmyanmar.org/en/ngoprofiles/Donar>.

partners in the areas where they have projects. Examples provided included *Swissaid*, *Danchurch Aid*, and *Oxfam GB*. Further, some of these may have a specific mandate to help companies of the same nationality invest responsibly. *Norwegian People's Aid* (“NPA”), for instance, has such a mandate for Norwegian companies.

- International Organizations, such as the *World Bank*, the *Asian Development Bank* and *United Nations Development Programme (UNDP)*, have projects on the ground, which some interviewees noted included establishing consultative planning processes to connect communities with local government.
- The *Institute for Human Rights and Business* is establishing a Centre for Responsible Business in Yangon which will assist companies in understanding the types of adverse human rights impacts they can be linked with. The Centre will also serve as an information centre and forum for Myanmar business, civil society and government, as well as international businesses.

4.2.3 Local Networks

The following organizations and programs were consistently mentioned as those with the most extensive local networks at the grassroots level. Interviewees noted that these organizations could assist companies in identifying local community representatives and/or in structuring dialogue between groups. Other interviewees highlighted that there is an issue of security within networks and that these organizations may not be ready to open up their networks:

- *Paung Ku* works on strengthening civil society networks throughout Myanmar. It provides grants to a number of small community-based organizations and civil society organizations at the grassroots level, and works on building their capacity in order to enhance advocacy between these groups and policy actors. Paung Ku also works on strengthening networks, and creating new ones.¹⁷
- The *Local Resource Centre* (“LRC”) shifted its focus in 2010 from disaster response to the holistic development of civil society organizations. The LRC works on building the capacity of CSOs and provides space and opportunities for CSOs to engage in dialogue with each other. It also conducts research on specific topics related to CSOs, and produces annual directories of Myanmar NGOs, international NGOs and NGO networks.¹⁸
- *Pyoe Pin* is a program that supports local organizations and individuals around Myanmar in the areas of service provision, environment, economy and rule of law.¹⁹

¹⁷ See Australian Government AusAID, Paung Ku Project Proposal 2011-12 (Burma), available at <http://www.ausaid.gov.au/Publications/Pages/Paung-Ku-Project-Proposal-2011-12-Burma.aspx>. The consortium members of Paung Ku are CARE Myanmar, HIV/AIDS Alliance, Metta Foundation, Burnet Institute, KDN, World Concern Myanmar, Save the Children, Swissaid, Norwegian People's Aid, Oxfam GB and GRET.

¹⁸ The Local Resource Centre, About LRC, available at <http://lrcmyanmar.org/en/about-lrc>

¹⁹ The Local Resource Centre, Pyoe Pin Programme, available at <http://lrcmyanmar.org/en/ngo-donor-profiles/pyoe-pin-programme>.

- *Loka Ahlinn* works with various community groups and organizations on community development and capacity building activities.²⁰

4.2.4 Sector-Specific Organizations

The interviewees noted the following as examples of sector-specific organizations that companies can approach, depending on their area of operation:

- **Land:** The *Land Core Group* works on supporting the rights of smallholder farmers to enable their meaningful contribution to agricultural economic development. The members of the Land Core Group are organizations that have their own networks on the ground. This group uses its knowledge of practices on the ground to influence the development of national land policy. It is a thematic group of the *Food Security Working Group*, which is comprised of organizations working on addressing food security in Myanmar.²¹
- **Labor:** The *International Labour Organization* (“ILO”) in Myanmar has a particular focus on eliminating forced labor, and provided significant input into the drafting of the new labor law.²² Other organizations active on labor rights include the *Federation of Trade Unions – Burma* (“FTUB”).²³
- **Environment/ Sustainable Development:**
 - *ECODEV* brings together a range of professionals around Myanmar to promote environmental governance. This includes, for instance, the empowerment of grassroots communities to secure land tenure and evidence-based research for effective advocacy.²⁴
 - *Spectrum* is a sustainable development knowledge network which works on establishing mechanisms to enhance the framework for national development in Myanmar via constructive engagement on environmental, sustainable development and natural resource management matters.²⁵

²⁰ The Local Resource Centre, Loka Ahlinn, available at <http://lrcmyanmar.org/en/ngo-donor-profiles/loka-ahlinn>.

²¹ The Myanmar Times, Pro-poor land program unveiled (July 2, 2012), available at <http://www.mmtimes.com/2012/news/633/news63304.html>; see also The Burma Environmental Working Group, *Burma’s Environment: People, Problems, Policies* (June 2011) at 29, available at <http://www.bewg.org/pubs/finish/4/34>.

²² International Labour Organization, ILO in Myanmar, available at <http://www.ilo.org/yangon/country/lang--en/index.htm>.

²³ Federation of Trade Unions – Burma, About FTUB, available at <http://federationoftradeunionsburma.blogspot.fr/p/about-ftub.html>.

²⁴ The Burma Environmental Working Group, *Burma’s Environment: People, Problems, Policies* (June 2011) at 28, available at <http://www.bewg.org/pubs/finish/4/34>.

²⁵ This is based on information provided by an interviewee.

- *Myanmar Green Network* brings together environmental activists to challenge the government and companies when they fail to live up to their mandate to safeguard the environment.²⁶
- *The Burma Environmental Working Group* (“BEWG”) brings together the following ethnic environmental and social organizations:²⁷
 - *Arakan Oil Watch* – working on monitoring the activities of multinational oil and gas projects and their human rights, environmental and financial impacts in Rakhine State.²⁸
 - *Bridging Rural Integrated Development and Grassroots Empowerment* (“BRIDGE”) – working with rural communities impacted by political and socio-economic change in Kachin State to strengthen their capacities to manage their own natural resources.²⁹
 - *EarthRights International* (“ERI”) – working on empowering young leaders with the skills and knowledge necessary to work in their communities and with affected community groups to prevent human rights and environmental abuses associated with large-scale natural resource projects.³⁰
 - *Kachin Development Networking Group* (“KDNG”) – working on maintaining the integrity of land and forest in Kachin State, and empowering indigenous people by providing awareness on human rights, environmental issues and indigenous rights.³¹
 - *The Karen Environmental and Social Action Network* (“KESAN”) – working on empowering and educating communities and local institutions to revitalize existing indigenous knowledge and practices for increased livelihood security in Karen and Kachin States and in areas along the Thai-Burmese border.³²

²⁶ This is based on information provided by an interviewee.

²⁷ The Burma Environmental Working Group, Vision/ Mission, available at <http://www.bewg.org/en/about-bewg>.

²⁸ Arakan Oil Watch, Our Mission, available at <http://arakanoilwatch.org/2012/04/what-is-arakan-oil-watch/>.

²⁹ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>.

³⁰ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>; see also EarthRights International, About EarthRights International, available at <http://www.earthrights.org/about>.

³¹ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>; see also Kachin Development Networking Group, About KDNG, available at <http://www.kdng.org/about.html>

³² The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>; see also Karen Environmental and Social Action Network, About, available at <http://www.kesan.asia/index.php/about>.

- *The Lahu National Development Organization (“LNDO”)* – working on protecting the livelihoods and lands of Lahu and Akha peoples and increasing understanding among the local ethnic nationalities about human rights, democracy, federalism, community development, and health issues.³³
- *Network for Environmental and Economic Development (“NEED”)* – working on training community leaders on economically, environmentally, and socially sustainable ideas, including topics of land rights, foreign direct investment, and community development.³⁴
- *The Pa’O Youth Organization (“PYO”)* – working on educating communities in the Shan State on the environmental and social impacts of mining projects.³⁵
- *Shan Sapawa Environmental Organization* – working on empowering Shan communities to protect their rights and livelihoods and preserve their natural resources, and to expose the destruction of the environment and human rights violations.³⁶
- *The Shwe Gas Movement* – working on human rights, environmental justice and revenue transparency in the oil and gas sector.³⁷
- A number of other environmental organizations exist, including:
 - The *Burma Rivers Network* – working to protect the rights of communities negatively impacted by large-scale river development, in particular by promoting meaningful public participation in decision-making.³⁸

³³ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>.

³⁴ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>; see also NEED-Burma, Who We Are, available at <http://www.need-burma.org/index.php/about/mission>.

³⁵ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>; see also Pa’O Youth Organization, About PYO, available at <http://www.paohyouth.org>.

³⁶ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>.

³⁷ The Burma Environmental Working Group, Member Organizations, available at <http://www.bewg.org/en/bewgs-members>; see also Shwe Gas Movement, About, available at <http://www.shwe.org/shwe-proect-basics/executive-summary/>.

³⁸ Burma Rivers Network, About Us, available at <http://www.burmariversnetwork.org/about-us.html>.

- The *Arakan Rivers Network* – working on informing local and international communities about the impacts of corporate projects along rivers in Rakhine State.³⁹
- *Karenni Evergreen* – working on promoting environmental awareness among Karenni communities, focusing mainly on the impacts of development projects such as dams, deforestation and mining on the environment.⁴⁰
- **Gender:** Organizations working specifically on gender issues exist. Some of them, such as the Myanmar Women's Affairs Federation, are more closely associated with the government than others. Interviewees noted that it will be necessary to engage with gender-specific organizations based outside of Yangon. Organizations mentioned included:
 - The *Women's League of Burma* – headquartered in Thailand and bringing together various women's ethnic minority organizations fighting for democracy and the protection of women's human rights in Myanmar.⁴¹
 - The *Gender Equality Network* ("GEN") – an inter-agency network of civil society organizations working on promoting gender equality and women's rights throughout Myanmar.⁴²
 - *NGO Gender Group* – working on promoting gender equality in Myanmar through collaboration, facilitation, capacity building initiatives and networking with multiple civil society organizations.⁴³
 - *Gender and Development Initiative Myanmar* ("GDI") – an NGO working on promoting gender equality.⁴⁴

³⁹ Arakan Rivers Network, Background of Arakan Rivers Network (ARN), available at http://www.arakanrivers.net/?page_id=25.

⁴⁰ EarthRights Alumni, Karenni Evergreen, available at <http://www.earthrightsalumni.org/content/karenni-evergreen>.

⁴¹ Women's League of Burma, About us, available at <http://womenofburma.org/aboutus/>.

⁴² Local Resource Centre, Gender Equality Network (GEN – formerly the Women's Protection Technical Working Group), available at <http://lrcmyanmar.org/en/ngo-donor-profiles/gender-equality-network-gen-%E2%80%93-formerly-women%E2%80%99s-protection-technical-working-group>

⁴³ Local Resource Centre, NGO Gender Group (NGO GG), available at <http://lrcmyanmar.org/en/ngo-donor-profiles/ngo-gender-group-ngo-gg>.

⁴⁴ Gender and Development Initiative in Myanmar, NewsLetter Issue No. 1 (January 2011), available at <http://myanmarnetwork.org/assets/files/GDI%20Newsletter%20January%202010.pdf>.

- A range of gender-specific organizations working on the empowerment of women from ethnic states exist, including the *Karen Women Organization*,⁴⁵ the *Kachin Women's Association Thailand*,⁴⁶ the *Lahu Women's Organization*,⁴⁷ the *Palaung Women's Organization*,⁴⁸ and the *Burmese Women's Union*.⁴⁹
- **Special Economic Zones:** Networks of community-based organizations are organizing themselves to coordinate opposition to specific special economic zones. For instance, the *Dawei Development Association* (“DDA”) is comprised of civil society organizations working on community protection around the Dawei Special Economic Zone.⁵⁰ Interviewees noted that companies investing in such special economic zones should seek out these networks.

4.2.5 Ethnic Representatives

Interviewees emphasized that companies should not operate in ethnic states until political dialogue has been achieved (see section 3.2.1 above). They therefore noted that it was too soon to be engaging with ethnic representatives. Interviewees further highlighted the added complexity of meaningful consultation in ethnic states, characterized by years of armed conflict, poor living conditions, and negative experience with corporate engagement. Understanding which groups exist, how they operate, who they represent, and how they are viewed by the community takes time and will be informed by the knowledge gained from discussions with organizations such as those noted above. Interviewees noted that the relevant organizations will vary. For instance, in some areas, the community may value the views of the non-state armed group, whereas in others, this group is viewed as acting in its own self-interest. The interviewees highlighted the following elements for companies to consider when the ethnic states are ready for foreign investment:

- Interviewees noted that companies should be seeking to engage with **community-based organizations**, of which a large number exist working on a wide range of activities, including educational, cultural and social services purposes. The *Metta Development Foundation* works on assisting communities in distress and is expanding its work from assisting the Kachins to assisting the Burmese in other regions of Myanmar. As another example, the *Ethnic Community Development Forum* (“ECDF”) brings together representatives from eight ethnic community development organizations seeking to

⁴⁵ The Karen Women Organization, Karen Women Organization – Who We Are, available at <http://karenwomen.org/about/>

⁴⁶ Kachin Women's Association Thailand, About us, available at <http://www.kachinwomen.com/about-us.html>.

⁴⁷ EarthRights Alumni, Lahu Women's Organization, available at <http://www.earthrightsalumni.org/content/lahu-womens-organization>.

⁴⁸ Palaung Women's Organization, About Us, available at <http://eng.palaungwomen.com/index.php/about-us>.

⁴⁹ Burmese Women's Union, About Us, available at <http://www.burmesewomensunion.org/index.php/about-us>.

⁵⁰ Dawei Development Association, available at <http://www.ddamyanmar.com/?cat=38>.

promote inter-ethnic cooperation and increased awareness of national issues.⁵¹ The eight community development organizations are the *All Arakan Students' and Youths' Congress* (“AASYC”), the *Karen Office of Relief and Development* (“KORD”), the *Karenni Social Welfare and Development Center* (“KSWDC”), the *Kachin Development Networking Group* (“KDNG”), the *Delta Community Development Network* (“DCDN”), the *Network for Chin Community Development* (“NCCD”), the *Shan Relief and Development Committee* (“SRDC”), and the *Mon Relief and Development Committee* (“MRDC”). The interviewees highlighted that many community-based organizations exist, depending on the specific region the company is seeking to operate in.

- **Human rights documentation organizations** have been documenting the human rights abuses taking place in specific regions for decades. Some interviewees noted that although they do not purport to speak for the communities, they have insight into what is happening and extensive networks in the region of interest. These organizations include the *Karen Human Rights Group*,⁵² the *Human Rights Foundation of Monland*,⁵³ and the *Chin Human Rights Organization*.⁵⁴ The *Network for Human Rights Documentation – Burma* (“ND-Burma”) assists Myanmar human rights organizations to collaborate on the human rights documentation process.⁵⁵
- Interviewees noted the wide range of **issue-specific civil society organizations** which are working on particular topics, such as the protection of rivers, the environment and local communities. A number of these are listed above in subsection 4.2.4.
- Interviewees noted the importance in these ethnic states of **youth and student organizations** that bring together youth and students working to improve the lives of their community. These include the *Ta'ang Students and Youth Organization* (“TSYO”),⁵⁶ the *All Arakan Students' and Youths' Congress* (“AASYC”),⁵⁷ the *Pa'O Youth Organization*,⁵⁸ and *The All Kachin Student and Youth Union* (“AKSYU”).

⁵¹ Ethnic Community Development Forum (Burma), About the Ethnic Community Development Forum (ECDF), available at

http://www.ecdfburma.org/index.php?option=com_content&view=category&layout=blog&id=48&Itemid=78.

⁵² Karen Human Rights Group, About KHRG, available at <http://khr.org/about.html>.

⁵³ The official website of Human Rights Foundation of Monland, about, available at <http://rehmonnya.org/about>.

⁵⁴ Chin Human Rights Organization, About us, available at <http://www.chro.ca/about-us.html>.

⁵⁵ Network for Human Rights Documentation – Burma, About Us, available at <http://www.nd-burma.org>.

⁵⁶ Ta'ang Students and Youth Organization, ABOUT US, available at <http://www.palaungland.org/eng/aboutus.html>.

⁵⁷ Ethnic Community Development Forum (Burma), All Arakan Students' and Youths' Congress, available at http://www.ecdfburma.org/index.php?option=com_content&view=category&id=38&layout=blog&Itemid=86; see also All Arakan Students' and Youths' Congress, About AASYC, available at http://www.aasyc.org/?page_id=612.

⁵⁸ Pa'O Youth Organization, About PYO, available at <http://www.paohyouth.org>.

- A range of **gender-specific organizations** exist in the ethnic states, some of which are listed in subsection 4.2.4 above.
- Interviewees noted that companies have tended to engage with **ethnic political parties and non-state armed groups**. Their reputation and representativeness will vary widely region by region. Interviewees noted that there will typically be several political parties per ethnic state, some of which have boycotted elections to date.⁵⁹ They also highlighted the large number of non-state armed groups, many of which have been fighting for many years.⁶⁰ Interviewees noted that at times, the line is blurred between whether an individual works for an ethnic civil society organization, an ethnic political party or an ethnic non-state armed group. For instance, the head of a CSO can also be involved in politics for his or her ethnic nationality. Some interviewees mentioned the recent **umbrella alliance** called the *United Nationalities Federal Council* (“UNFC”) created in February 2011 among 11 armed, ceasefire and political groups. The UNFC’s purpose is to work for a better recognition of the ethnic armed groups, for ethnic equality, rights and self-determination, and for a genuine democratic federal Union of Burma.⁶¹
- Finally, interviewees remarked that a number of organizations are conducting **training** to build the capacity of local organizations, and in the process have created extensive networks of civil society organizations in the ethnic states. This includes trainings conducted by *EarthRights International* (mentioned above) and the *Human Rights Education Institute of Burma*, which provides human rights training and advocacy programs for grassroots organizations and community leaders.⁶²

⁵⁹ For instance, in Rakhine State, political parties include the Rakhine Nationalities Development Party (“RNDP”), the Arakan League for Democracy (“ALD”), the Union of Myanmar National Force Arakan State Party, and the National Democratic Party for Development. In Shan State, political parties include the Shan Nationalities League for Democracy (“SNLD”), the Shan Nationalities Democratic Party (“SNDP”), the Kokang Democracy and Unity Party, the Wa National Unity Party, the Lahu National Development Party, and the Palaung State Liberation Front (“PSLF”). In Karen State, political parties include the Karen National Union (“KNU”), Kayin People’s Party, Karen State Democracy and Development Party, Plone-Swor Democratic Party, and Kayin Democratic Party.

⁶⁰ To name a few, these include the Kachin Independence Organisation in Kachin State; the Mon National Liberation Army (“MNLA”) in Mon State; the Karen National Liberation Army (“KNLA”) and the Democratic Karen Buddhist Army (“DKBA”) in Karen State; the United Wa State Army (“UWSA”), the Shan State Army, and the Palaung State Liberation Army in Shan State; the Chin National Army in Chin State; and the Arakan Liberation Party (“ALP”), Arakan Army and the Rohingya National Army (“RNA”) in Rakhine State.

⁶¹ Burma Partnership, United Nationalities Federal Council Annual Meeting Statement (January 10, 2013, available at <http://www.burmapartnership.org/2013/01/united-nationalities-federal-council-annual-meeting-statement/>). The UNFC’s current members are the Kachin Independence Organisation, the Karen National Union, the New Mon State Party, the Shan State Progress Party, the Karenni National Progressive Party, the Chin National Front, the Palaung State Liberation Front, the Lahu Democratic Union, the Arakan National Council, the Wa National Organisation, and the Pa’O National Liberation Organisation.

⁶² Human Rights Education Institute of Burma, About Us, available at http://www.hreib.com/index.php?option=com_content&view=article&id=24&Itemid=439.

4.2.6 Other

Interviewees mentioned that the following groups of stakeholders should also be important for companies structuring stakeholder engagement:

- **Religious Groups:** A number of interviewees noted the importance of Buddhist monks' views as they represent the local people. Church groups should also be consulted. For instance, the *Judson Research Center of the Myanmar Institute of Theology* is working on promoting theological education and Christian-Buddhist dialogue in Myanmar.
- **The Media:** Some interviewees noted that journalists would have extensive knowledge of what was happening on the ground; whereas other interviewees commented that their knowledge may be one-sided.
- **Local Businesses:** Interviewees noted that many villagers are themselves local business owners and that they can be consulted in that capacity. A number also noted that The *Union of Myanmar Federation of Chambers of Commerce and Industry ("UMFCCI")*, which brings together larger business associations, is working on corporate social responsibility issues.
- **Other Organizations:** Interviewees mentioned a number of other organizations that can assist in providing information and research and are themselves working on similar topics. For instance, *Burma Partnership* is a network of organizations throughout the Asia-Pacific region, advocating for and mobilizing a movement for democracy and human rights in Burma.⁶³ The *Myanmar Development Resource Institute – Centre for Economic and Social Development ("MDRI – CESD")* serves as a source of policy analysis for the government. *Myanmar Egress* is working on state-building through constructive collaboration between the government and civil society organizations.⁶⁴

4.3 STRUCTURING MEANINGFUL CONSULTATION

This section describes the responses received from interviewees on what they saw as the best methods for companies to engage with stakeholders, the kinds of challenges they anticipated companies would face, and their expectations with regard to what companies should be doing. The consistent response was "engagement is difficult because it has never been done before." Interviewees remarked that history tells companies what not to do, but that there is no precedent

⁶³ Burma Partnership, About Us, available at <http://www.burmapartnership.org/aboutus/>. The Burma Partnership Working Group includes the following (1) Burmese alliance organizations (Forum for Democracy in Burma (FDB); Nationalities Youth Forum (NYF); and Students and Youth Congress of Burma (SYCB)), (2) regional solidarity networks (Alternative ASEAN Network on Burma (Altsean-Burma); Asian Forum for Human Rights and Development (Forum-Asia); and Asia Pacific Solidarity Coalition (APSOC)), and (3) national solidarity coalitions (Solidaritas Indonesia untuk Burma (Indonesian Solidarity for Burma) (SIB); Free Burma Coalition-Philippines (FBC-Philippines); Burma Campaign Korea (BCK); Hong Kong Coalition for a Free Burma (HKCFB); and People's Forum on Burma (PFB) (Japan)).

⁶⁴ Myanmar Egress, About Myanmar Egress, available at <http://www.myanmaregress.org/about.html>.

for what meaningful consultation looks like. At the same time, interviewees commented that there is an expectation that companies be genuine in the engagement they conduct, as demonstrated by the protests triggered around the Myitsone dam and the Letpadaung copper mine. They stressed the expectation that companies understand the context before crafting a grassroots engagement strategy.

4.3.1 Understanding the Context

Understanding Myanmar’s History and Politics: Interviewees noted that it will be important for companies to understand Myanmar’s history of oppression, as this past experience makes consultation complicated. They emphasized that the population has been living in fear for decades, that the memories of abuse are still very recent, and that many will simply not speak if a government or military representative is in the room. They underscored that human rights violations are still continuing in a number of areas. They noted that companies have tended to disregard this reality of human rights abuse, by, for instance, requiring villagers to register their names with the local government authorities to confirm their support for a project. A few interviewees remarked that in light of this long history of repression, “we can’t expect too much from consultations”, while one person observed that “this should not be used as a pretext not to move forward with them.” Interviewees further emphasized the importance of understanding current politics in Myanmar, which will influence how stakeholders react to foreign investment.

Understanding the History of Corporate Engagement: In addition, interviewees remarked that it will be important for companies to understand the history of business operations, and the engagement surrounding them, in the regions where they are seeking to operate. This history will inform how communities react to the proposed business activities, and should be taken into account as companies structure engagement. For instance, in some areas, the non-state armed group will have sought to speak on behalf of the community, in others corruption will have been the primary obstacle to meaningful consultation, and in others, military officials will have been tasked with tracking agreement to the project.

Understanding Burmese Culture: Interviewees further recommended that, in structuring their engagement, companies seek to understand the Burmese culture. For instance, interviewees noted each ethnic group will have its specific culture. Interviewees noted that the organizations operating in ethnic states can assist companies in knowing the “do’s and don’ts” for each area.

4.3.2 Grassroots Approach

Interviewees noted that companies have been adopting a “top down approach”, where they discuss the planned corporate activities with the local authorities in their places of operation, at the state/region and township levels. The “bottom up” approach – or grassroots approach – is the piece that they consider has often been missing to date. Some companies have not engaged with affected communities at all, or they have in a flawed manner.

Interviewees noted that meaningful consultation by companies is all the more important since the government is not imposing transparency on companies and history shows that the government and non-state armed groups typically fail in providing meaningful avenues for engagement. They

commented that although there is no requirement for conducting genuine engagement, the communities increasingly expect it. The guidance provided by interviewees on how to conduct grassroots stakeholder engagement can be synthesized into three steps: (1) transparency and understanding in a public education phase, (2) inclusion in a public dialogue phase, and (3) integration of community concerns in a feedback phase.

Step 1: Transparency and Understanding in a Public Education Phase: Interviewees noted that it was important for companies to first provide information, in layman's terms, to communities so as to educate them about their planned business operations. Interviewees highlighted that the key concept here is "understanding", not "informing."

- When: Information on the company and its activities should be circulated as early as possible, and in any event before the business project is agreed upon. Interviewees noted that consultation is meaningless if the information is circulated once the terms of the project are already agreed or the operations have already started.
- To Whom and How: This information should be circulated widely to all potentially affected communities. Companies can do this by providing the information to national and local media groups as well as posting information in public spaces, such as tea houses.
- Information: Interviewees asked that companies "put themselves in the shoes of the villagers" as they compile the information for circulation. They noted that it will take a few years to have a strong local community that can understand these projects and have the capacity to engage in a meaningful fashion. In the meantime, the burden is on the company to provide the tools to the local communities so that they can understand, including:
 - *Providing information about the company.* Interviewees observed that companies tend to assume the community knows what it does, where it comes from, and how it operates, but that this is seldom the case.
 - *Describing the activities in a non-technical manner.* Interviewees remarked that many corporate projects, such as the building of a hydropower dam, are technical and are not easily understood at the village-level.
 - *Describing the potential adverse impacts of the corporate activities.* The information needs to enable communities to take decisions, and this goes beyond listing the benefits from the corporate activities to describing potential negative impacts in a reader-friendly manner.
 - *Describing the long-term risks of selling land, if applicable.* Ensuring the communities have access to advice on the long-term implications of selling their land would also be important.

Step 2: Inclusion in a Public Dialogue Phase: Once communities have been educated about the project, the company should engage in dialogue with the affected communities. As one

interviewee remarked, “losing land can mean losing life so it’s important to take the time to listen and discuss.” Interviewees also had a number of recommendations on how to do this:

- When: This public dialogue should take place at the time of planning the project so that it is genuine. Interviewees noted that too often this dialogue phase takes place when the company has already decided upon its project.
- To Whom and How: The public dialogue should capture all of those who will be affected by the company’s activities. Accordingly, the public dialogue should be publicized widely, and could include notices in public places (tea houses, market places, etc.) and in the media. The dialogue should be held in places communities are accustomed to, such as tea houses and other public places, rather than hotels.
- Information:
 - Interviewees remarked that the *information provided in the public education phase* (described above) should also be provided during this public dialogue phase. They further noted that companies should consider during the dialogue the lack of capacity, at present, at the village level to make informed decisions.
 - Interviewees further cautioned companies to pay *attention to select the right interpreters*, since these individuals are ultimately the people who the villagers will be hearing and interpreters will have their own background and views.
 - Interviewees reflected that the dialogue should *focus on the potential negative impacts of the project on the community*, rather than the company’s corporate social responsibility projects.
 - Interviewees noted that companies commonly discuss building schools or clinics, but that this may not be what is needed in that specific village. This dialogue phase should be structured so as to *obtain feedback from the community* on the project.
 - Interviewees commented that companies should also describe the ongoing process they have to *hear grievances from the villagers, before and throughout the companies’ operations*. This operational-level grievance mechanism should be set up at the outset, before companies start their operations. Interviewees commented that this is especially important in Myanmar as there are no other mechanisms to voice dissent, and the lack of an alternative to get one’s voice heard explains why protests are becoming so frequent.
- How: Interviewees provided a number of considerations for structuring this public dialogue phase:
 - *Town hall-type consultations are not necessarily appropriate* in light of Myanmar’s history of repression. In addition, villagers are not used to voicing their concerns and there is a strong hierarchy where people will not feel comfortable speaking out in the presence of others. In addition, there is a cultural tendency not to lose face and not to publicly convey

criticism. It will be important for companies to consider the differences in this regard with what they may have seen in Yangon, where people can speak out more freely now.

- One suggestion for proceeding was to organize *small dialogue sessions between those from similar professions and backgrounds* (e.g., all farmers or women from one village, the smaller minority nationalities that co-exist with the larger minority group, etc.). This process can help ensure dialogue takes place more freely. These small dialogue sessions could be followed by larger dialogues, in which villagers can discuss face to face.

- At the same time, some interviewees highlighted that in ethnic states, it may be especially important to bring the whole community together immediately in one town hall-type meeting to *show that the company is not dealing with groups separately*. Interviewees observed that some communities have become polarized and have experience of companies not dealing with all of the community. Separate meetings with specific groups to engage in more meaningful dialogue could take place subsequently.

-Interviewees remarked that companies can know the best model to follow for the specific community by consulting with a range of individuals, such as teachers, civil society organization representatives, the village chief and political party members, bearing in mind that each person may have their own agenda. Surveys on the ground can also assist companies in knowing which is the preferable method for that community.

Step 3 – Integration of Community Concerns in a Feedback Phase: Interviewees highlighted that the third step of consultation – adapting the company’s operations to reflect the views heard – is typically missing. They underlined that if companies wish to conduct meaningful consultation, they should be willing to revise the project terms in response to the feedback received from the community. They noted that they view the objective of the consultation not as merely explaining the project, but revising it as needed to satisfy the affected communities. This third step demonstrates that the company is genuine in its wish to provide a “win-win” situation to the Burmese people.

In particular, interviewees expressed the view that companies planning to buy land for their business operations should:

- Consider providing access to alternative methods of gaining adequate livelihoods, such as offering vocational training for specific jobs, in addition to providing monetary compensation for land.
- Structure land payments so that funds are transferred directly to the recipients through community-based organizations. The funds should not be transferred through local authorities, land registries or other entities that could be prone to corruption.
- Recognize traditional land rights as well as communal land rights, and not insist on legal rights over land. They should ensure that those carrying out the compensation process do the same.

- Not use the law to legitimize land grabbing (for instance, by claiming ownership over fallow land).
- Put in place grievance mechanisms so that villagers have a place to go to voice concerns with the land purchases as necessary.

CONCLUSION

To conclude, a number of recurring themes emerged from the answers provided to Shift's questions.

First, interviewees have **high expectations** of the benefits that companies can bring to Myanmar. Not only do they look to companies to create jobs and decrease the level of poverty, they also hope that companies can assist in ensuring that Myanmar's recent economic and political reforms pave the way for a peaceful future, founded on respect for human rights and fundamental freedoms, by all and for all.

Second, interviewees have **significant fear** of being taken advantage of as the country opens up to the outside world: they fear that their lands will be taken from them, their environment degraded, and their livelihoods destroyed. They apprehend, based on past experience, that companies will be unwilling or unable to provide benefits to all affected stakeholders.

Third, although Myanmar is one country, there are significant **regional differences** for companies to consider, including the distinct wish of non-Burman ethnic nationalities that companies stay away from operating in ethnic states which are currently in political negotiations with the government.

Finally, while interviewees are acutely aware that engagement in Myanmar is complex, they expect companies to **proceed with genuine, meaningful consultation**. This is seen as the key for companies to get it right and provide a 'win-win' situation which benefits both the companies and the Burmese people at large. In the words of one interviewee, "patience will lead to success in engagement."

Annex A: Questions Asked During Stakeholder Consultations

The questions asked during Shift's interviews in Myanmar and Thailand were as follows:

1. **Benefits.** What do you see as the key benefits of new companies operating in Myanmar?
2. **Concerns.** What are your key concerns with regard to new companies operating in Myanmar?
3. **Regional Differences.** How do these concerns vary (if at all) depending on the region?
4. **Sectors.** What industries are you familiar with? What do you see as opportunities in these industries? Are there industries that raise specific concern for you?
5. **Stakeholders.** Who are the key representatives of stakeholders that you believe companies should be engaging with to discuss these concerns?
6. **Methods of Engagement.** What are the best methods for companies to engage with stakeholders at the local level and what kinds of challenges may companies face in this community engagement?
7. **Expectations.** What are your expectations with regard to what companies should be doing while operating in Myanmar to ensure they respect human rights?

Annex B: List of Interviewees

- '88 Generation Students
- Alternative ASEAN Network on Burma ("ALTSEAN")
- Arakan Oil Watch
- Arakan League for Democracy
- Assistance Association for Political Prisoners ("AAPP")
- Burma Point
- Burma Environmental Working Group ("BEWG")
- Burma Partnership
- Burma Rivers Network
- D Wave
- EarthRights International
- Ethnic Communities Development Forum ("ECDF")
- Federation of Trade Unions-Burma ("FTUB")
- Institute for Human Rights and Business
- International Federation for Human Rights ("FIDH")
- Food Security Working Group
- Karen Environmental and Social Action Network ("KESAN")
- Karen Human Rights Group
- Karen Rivers Watch
- Land Core Group
- Local Resource Centre
- Myanmar Development Resource Institute – Centre for Economic and Social Development ("MDRI – CESD")
- Myanmar Egress
- Myanmar Peace Center
- Myanmar Women Entrepreneurs' Association
- National Council for the Union of Burma ("NCUB")
- National League for Democracy ("NLD")
- Network for Environment and Economic Development ("NEED")
- Norwegian People's Aid ("NPA")

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- Office of the United Nations, Myanmar Information Management Unit
- Pa’O National Liberation Organization (“PNLO”)
- Paung Ku
- Spectrum
- Ta’ang Students and Youth Organization (“TSYO”)
- United Nations Development Programme (“UNDP”)
- UK Embassy and DfID
- United Nationalities Federal Council (“UNFC”)
- The US Embassy and USAID

Annex C: Resources on Myanmar

This annex lists some of the resources which describe Myanmar's history and human rights situation. The resources are listed in alphabetical order, based on the name of the author or organization. This list is far from exhaustive: readers are encouraged to review the materials issued by the organizations documenting the human rights situation in their particular areas of focus, many of which are not listed here.

- Alternative ASEAN Network on Burma, ALTSEAN-Burma Bulletins, available at <http://www.altsean.org/Reports.php>.
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- International Crisis Group, Myanmar: Storm Clouds on the Horizon, Asia Report N°238 (12 November 2012), available at <http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/238-myanmar-storm-clouds-on-the-horizon.pdf>. For further reports by the International Crisis Group, see <http://www.crisisgroup.org/en/regions/asia/south-east-asia/myanmar.aspx>.
- International Human Rights Clinic at Harvard Law School, Crimes in Burma (2009), available at <http://www.law.harvard.edu/programs/hrp/documents/Crimes-in-Burma.pdf>.
- Karen Human Rights Group, Losing Ground: Land conflicts and collective action in eastern Myanmar (March 2013), available at <http://www.khrg.org/khrg2013/LosingGroundKHRG-March2013-FullText.pdf>. For further reports by the Karen Human Rights Group, see <http://khrg.org/reports/comprehensive/index.php>.
- Local Resource Centre, Bridging the Gap Between Donor Community and Local Organizations in Myanmar (Nov. 2012), available at <http://www.lrcmyanmar.org/en/resources/bridging-gap-between-donor-community-and-local-organizations-myanmar>. For further reports by the Local Resource Centre, see <http://www.lrcmyanmar.org/en/ouresources/Research%20%26%20Advocacy>.
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- Paung Ku and Transnational Institute, Land Grabbing in Dawei (Myanmar/Burma): a (Inter)National Human Rights Concern (September 2012), available at http://www.tni.org/sites/www.tni.org/files/download/dawei_land_grab.pdf.
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Annex D: Map of Myanmar

