

Mediation Facility Workshop Report

Inya Lake Hotel, Yangon

August 29 - 30



Objective

On August 29-30, 2016 PeaceNexus (PN) and the Myanmar Centre for Responsible Business (MCRB) hosted a ‘collaborative design’ workshop in Yangon, Myanmar, to discuss the possibility of creating an initiative that would promote dialogue and - if necessary - mediation between civil society and companies in business-related conflicts.

The workshop brought together almost fifty participants from Myanmar, Southeast Asia and Europe to share expertise, experiences and ideas that will contribute to the shaping of the initiative.

The present report summarises anonymously the discussions, which took place during the workshop.

Understanding Myanmar’s Context

The first part of the workshop was dedicated to understanding the Myanmar context, from the perspective of businesses and civil society.

The first panel discussion brought together company representatives to present their views on the challenges facing the private sector in Myanmar and the efforts that these companies have made to address these challenges, such as the setting up of grievance mechanisms and human rights policies.

Challenges that business representatives mentioned included:

- lack of adequate land policy/ deeds – this makes investing in and compensating communities and individuals for land complex and conflictual

- distrust of civil society representatives – it is difficult to identify legitimate representatives of concerned communities
- the inability to satisfy communities’ demand for justice – for example, residents use grievance mechanisms to flag issues which do not arise from a particular company’s activities
- a culture of corruption
- domestic and foreign companies have different leverage

The second panel discussion brought together civil society actors to discuss the challenges faced by communities where investments take place. These challenges revolve around land ownership - including but not limited to appropriate compensation, pollution, disregard for local livelihoods and corruption.

Challenges that civil society representatives mentioned included:

- businesses prefer to engage with local authorities rather than local civil society
- few businesses consult with communities prior to commencing activities
- corruption and bribery are commonplace; this results in pitching local authorities against local civil society representatives and residents
- inadequate and insufficient information sharing
- ‘a take’ rather than ‘a give and take’ attitude from business

The Need for an Initiative: Myanmar’s Experience

In one plenary discussion it was noted that:

- There is no facility, centre, or initiative solely dedicated to the promotion of dialogue between companies and communities.
- Current efforts are localised, ad hoc, and driven by passionate individuals - some of whom may have relevant skills and clout.
- The legal climate in Myanmar is undergoing changes that will create a more conducive environment for company –community engagement.
- There is also a widespread belief among businesses that civil society organisations ‘create’ problems within communities where investments take place.
- An initiative promoting dialogue and mediation could be an alternative route through which just solutions could be sought.

Mapping Myanmar Stakeholders and Relevant Initiatives

Workshop participants mapped out relevant stakeholders in Myanmar. These included: government and legislators, local authorities, civil society representatives, NGOs & INGOs, company CEOs and liaison officers, military figures, armed group representatives, religious leaders, teachers, translators and interpreters and affected persons. Three potential stakeholders stood out:

- Ethnic language translators - these individuals can be key in ethnic minority areas given their ability to speak the local language, Burmese and English; they serve as gatekeepers but could also serve as dialogue facilitators.
- Retired civil servants were mentioned as potential facilitators given their knowledge of local power dynamics, social and political networks. It is possible, however, that in some circumstances they would not be accepted given their links to previous governments.

- Media were mentioned as a formidable stakeholder given the media's ability to influence public opinion. The need for well informed, ethical journalists dedicated to fair reporting was mentioned as a prerogative for ensuring fair and constructive company-community engagement.

The discussions also highlighted three relevant legal-support initiatives in Myanmar:

Namati, an INGO, is in the process of creating a network of community paralegals throughout Myanmar. These individuals have experience in addressing civil grievances and representing individuals and communities before the authorities.

The International Law and Development Organisation (IDLO) has partnered with the United Nations Development Programme to create Rule of Law Centres in Mandalay, Myitkyina, Taunggyi and Yangon. These centres aim to foster the understanding of the law by the public. The British Council's MyJustice programme hopes to harness the existing centres to expand their legal services, of which mediation could be one.

The Public Legal Aid Network (PLAN), which brings together 180 organisations, which provide legal aid and services on a pro-bono basis throughout Myanmar. They do not focus on any specific area.

Financing Company-Community Initiatives: Examples from Other Countries

PeaceNexus - Morocco Trust Fund

The core idea of this intervention is the establishment of a multi-donor mechanism, including mostly company donors, which will address the challenge of how to draw on company funding while guarding a transparent and credible process that builds trust between all parties involved. The fund can be used for community training and payment of independent experts or facilitators.

The Forest Trust - Indonesia

In 2015, the Forest Trust launched the Centre for Social Excellence in Indonesia. The Centre builds the capacity of companies, government, NGOs, graduates and community leaders to manage natural and social resources more responsibly. Up to 90% of the Centre's long-term funding is provided by companies who see an interest in resolving conflicts.

The Conflict Resolution Group Foundation - The Philippines

The Conflict Resolution Group Foundation specialises in alternative dispute resolution and training of mediators. The Group has trained 3500 mediators throughout the Philippines - in the private and public sector. It has successfully advocated for alternative dispute resolution (ADR) to become policy, which it has, making ADR mandatory at all government levels. The Group has established links with the business community. The Foundation offers its services at a fee.

Community Legal Services - Bangladesh

Community Legal Services supports financially relevant NGOs in their provision of legal aid to the poor and marginalised communities in Bangladesh. It also contributes to the policy making decisions through advocacy. The programme is funded by DFID and executed by an association consisting of Maxwell Stamp PLC, the British Council and the Centre for Effective Dispute Resolution.

What could this ‘initiative’ look like

Entry Points

Participants did not agree on the best place to start, however, they agreed it should be demand-driven. One discussion group identified the mining sector as a potential starting point for engaging communities. This is because mining investments have a longer timeline creating a continuous need for company-community dialogue.

Funding

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| Donors | Donor funding remains the ‘best’ option for initial funding of dialogue and mediation activities. It is perceived as the most neutral funding option, however, it is not sustainable and may be contingent on the fulfillment of donor conditions that may render the initiative rigid. |
| Companies | Companies with community liaison programmes already invest financial and human resources into consultation, dialogue and redressing grievances. |
| Government | Government - a stakeholder in investment - could create funding for dialogue and mediation services by creating a policy advocating for this form of ADR. |
| Trust Funds | These funds can be set up with donor money in combination with other sources, e.g. private or company contributions. The interest generated by these funds could be used to fund dialogue/ mediation activities, full-time mediators, part-time community paralegals or external experts. |
| Community | Community funding is considered crucial to participation and ownership. In Myanmar this could be minimal given the economic situation. In-kind donations (e.g. food), hosting and support activities could be possible contributions by the community in lieu of money. |

Structure

The preferred structure, which emerged during the discussions was that of a network of local practitioners. While participants agreed that international expertise and experiences are valuable, they believed that it is imperative that the initiative is staffed and driven by Myanmar stakeholders. Existing paralegal and legal aid networks, such as the ones created by Namati and PLAN (see above) could be valuable candidate pools from which to recruit interested individuals in the starting phase of the initiative. Other recruitment methods, however, should be considered, such as direct recruitment of potential dialogue facilitator/ mediators from concerned communities (by vote and recommendation).

Key take-aways from workshop participants

Companies, civil society, Union government and regional authorities all need to support a dialogue/mediation facility for it to be successful.

A champion company - one that has a good track record of engaging with a community - could be identified, studied and supported in its efforts

Trust building is a long and arduous process and any initiative would need to consider this step before any dialogue or mediation activities (e.g. by providing some form of training to all stakeholders involved).

The initiative should not only focus on providing dialogue facilitation and mediation, but also on capacity building of communities, companies and relevant authorities to provide skills for dispute handling and advocacy for policy reform.

A robust and transparent monitoring plan/system should be written into the initiative to ensure that needs are met, lessons learnt are recorded, analysed and fed back.

A referral provision needs to be included in the initiative to ensure that companies/ communities who cannot resolve their differences through dialogue and/or mediation know when, how and where to take their grievances.

The sustainability of the initiative will be determined as much by the quality of its services as it will be by its supporters. Funding remains a key issue to discuss/ resolve before proceeding with the pilot.

Advocacy for policy reform needs to be undertaken as part of the initiative's activities to promote the emergence of a favourable legal environment for company-community engagement and to encourage responsible and accountable behaviour by investors. An advocacy strategy is crucial.

The initiative could learn from the Extractive Industries Transparency Initiatives (EITI) process in Myanmar, which is one of the most established multi-stakeholder initiatives to date.

Future Steps

The participants identified the following tasks as priority for future consultation.

Identification of a Precise Entry Point

- submission of ideas from concerned civil society representatives about particular cases
- support to ongoing cases (e.g. mine licensing in Shan State)
- application from a company already engaged in Myanmar or on the verge of investing

Building Capacity

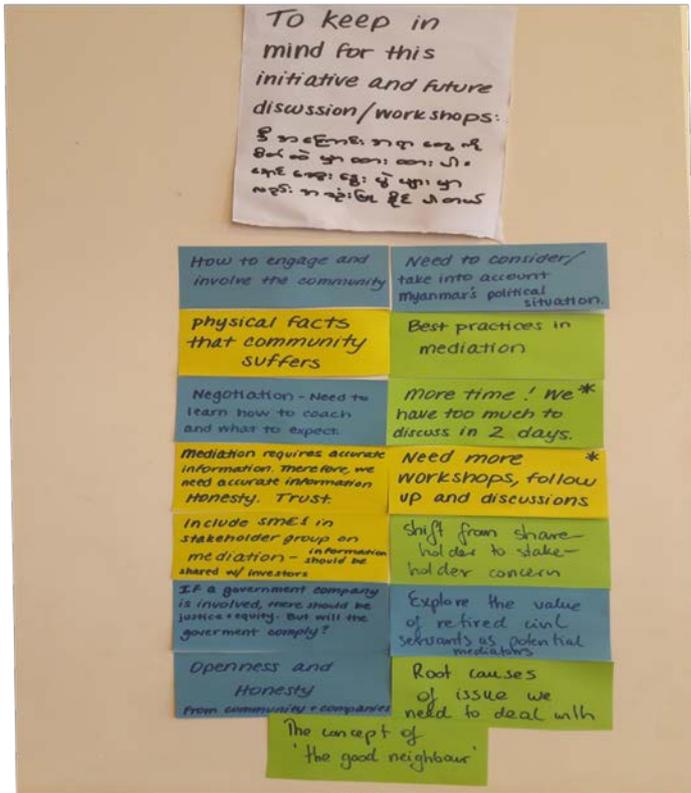
- define selection criteria for dialogue facilitators/ mediators
- identify existing strong facilitators/ mediators in line with the criteria
- provide the identified individuals with basic facilitation and dispute resolution training based on models applied in the region (Cambodia/Indonesia)
- include a design component where trainers and participants will work together to adapt the training methodology to Myanmar's context based on real life cases

Participants' Feedback

Workshop Duration

All participants agreed that the workshop did not provide enough time for detailed discussions and suggested subsequent workshops were necessary to further the initiative. It was suggested that a future workshop should last at least three days.

Workshop Agenda



The feedback on the agenda was split. While some felt that the workshop should have focused more on the sharing and learning of experiences in neighbouring countries, others felt that the focus should have been more on designing the initiative.

Workshop Participation

Participants noted that there were too few companies included in the discussion, and no representatives from the government. In future, it would be helpful to have a representative group from all backgrounds involved in the process.

Information Dissemination

Participants thought that good practice and success stories shared at the workshop should be disseminated beyond the workshop and its participants.