

Responsible Investment, Economic Reform And Peace-Building in Myanmar

Current activities by Myanmar Centre for Responsible Business, and future opportunities¹

This paper highlights specific challenges relating to business in areas affected by conflict; identifies the potential for Myanmar's current regulatory framework to promote responsible investment and local community participation; outlines MCRB's current activities which could be considered to be supporting peace-building in Myanmar; and identifies future opportunities for MCRB engagement.

1 INVESTMENT IN MYANMAR IN AREAS AFFECTED BY CONFLICT

As in other conflict-affected countries, economic interests, many of them illegal and criminal, and disputes over land and control of natural resources, are intertwined with conflict in Myanmar, complicating peace processes. Ethnic armed groups, and local Tatmadaw personnel have business interests or conduct rent-seeking activities, particularly in mining and logging. The extraction of natural resources is often carried out at the expense of the local populations who rely on the ecosystems services of intact forests and rivers, as well as land under customary titles which has often be granted to others under the Virgin Fallow and Vacant (VfV) Land Law. The absence of demarcated territory for the Union and for ethnic armed groups leads not only to conflict over the resource, but also to multiple levels of rent-seeking from security forces and civilian authorities in contested areas. At the same time, there is rarely effective regulation by any of these authorities of environmental and social impacts. There is no system for effective revenue and benefits sharing².

For many years, the investments in these areas were informal. Businesses were unlicensed by Yangon/Naypyidaw, or even in some cases by the local ethnic armed groups (although possibly approved by individuals in them) and rarely held to account for poor practices. The investors, whether Myanmar or foreign (mostly cross-border Chinese and Thai, with some Indian investment) were unconcerned by responsible business practices or obtaining a 'social licence to operate'. They addressed any local difficulties by paying off local armed groups, community leaders, or communities. With licenses uncertain or short-term, and the ever present risk of a change in security and control, the approach was to grab as much resource as quickly as possible.

The main exceptions to this informality were the two oil/gas pipeline routes in Tanintharyi and cross-country from Kyaukphyu to Muse, and the planned hydropower dams on the Ayeyarwady and Thanlwin rivers, all of which were subject to central licensing, but are sited in contested territory, some with active fighting. An investor's ability to pursue these investments was dependent on military control of the area, and suppression of opposition to the projects through censorship and imprisonment of

¹ Internal Working Paper, not for citation.

² See also Section 3.3 of 'The Contested Areas of Myanmar', Asia Foundation, forthcoming 17 October 2017.

human rights defenders. These projects were planned and pursued by the investors without effective consideration of impacts on local populations, lacked robust and transparent Environmental Impact Assessments (EIA). The investors are still dealing with the legacies of this approach today.

This picture began to change in 2011, when nationwide opposition to the Myitson dam, followed by its suspension, demonstrated the effectiveness of public protest against investments. Furthermore the reform process brought some new opportunities for peace, with the Thein Sein government renegotiating ceasefires and initiating a new peace process with some of the many ethnic based armed groups. However in other parts of the country such as Kachin and Shan States, and Rakhine, ceasefires have broken down and fighting and human rights abuses of civilians intensified.

Post-2011 economic reforms have also led to increased interest of larger foreign investors from OECD countries, although the majority of investment has been concentrated in cities and in particular Yangon. In mining, the poor policy and legal framework has dissuaded all but the bravest foreign juniors. The offshore Rakhine/Ayeyarwady or Central Myanmar location and early stage exploration of the most prospective **oil and gas** blocks makes this sector less exposed to local ethnic-based conflict, at least at present, but any development onshore, including of new pipelines may change this.

Tourism predominantly involves Myanmar investors, whose approach to responsible business conduct varies. In tourism destinations which are contested ethnic areas, such as Hsipaw, protection payments by restaurants and hotels/guesthouses to ethnic armed groups are common. However, it is the **telecoms** sector, with contractual obligations to achieve geographical targets for network coverage, which is currently most directly exposed to the challenges of operating responsibly in contested areas as it builds out a network of towers and fibre-optic cable in the absence of agreed arrangements for local licensing or revenue-sharing for telecoms operations.

2 PERMITTING AND REGULATION OF INVESTMENT IN CONFLICTED AFFECTED AREAS

In principle, Myanmar legislation concerning investment all applies country-wide. This includes the 2016 Myanmar Investment Law, 2012 Environmental Conservation Law, and bye-laws and standards including the 2015 Environmental Impact Assessment (EIA) Procedure, tax and labour laws, cultural heritage protection, sectoral laws on mining, telecommunications, tourism, agriculture and land etc. In practice, even where permitting takes place formally in Naypyidaw, enforcement is lax. This is a problem not unique to ethnic areas. There is lack of law enforcement in accessible urban and Bamar areas due to limitations on government resources, capacity or corruption. But in contested areas under mixed authority, this is further complicated by access, security and contested authority between government officials and ethnic armed organisations (EAOs).

Even where permits are issued in Naypyidaw for investment in contested and ceasefire areas, the investor is unlikely to see complete central government control on the

ground. Investors – or those whose leased land they use - will also find they need to negotiate with, and potentially acquire permits from and/or pay, local armed groups. From the perspective of business, this is seen as ‘protection money’ or ‘extortion’. From the perspective of the ethnic armed organisation (EAO), a ‘tax’ on commercial activity in ‘their’ territory, which may even come with a receipt. Some companies have sought instead to subcontract to the companies affiliated to local EAOs, so as to demonstrate a commitment to creating local economic benefit, but this has had mixed success for a variety of reasons.

Generally, despite ‘investor grievance procedures’ now in the Myanmar Investment Law (which need to be further developed), investors in these situations will find central government will be unable to assist them with any disputes. Anecdotal experience from companies suggests that officials are unable to help, or informally advise the company to fix the problem by giving money to disaffected communities, EAOs or paramilitaries. These are not sustainable or appropriate solutions, particularly where the EAO is regarded as an Unlawful Association by government in the case of some non-signatory groups.

For many foreign companies, bound by their own codes of conduct or home country legal obligations which forbid payments of this nature that lack a legal basis, this makes operation in contested areas impossible. Consequently those investors most committed to responsible business practice will avoid investment in these areas until nationally approved legal arrangements are found for revenue sharing and local taxation, as well as other ‘interim arrangements’ envisaged in the peace process.

On the other hand, in some border areas, companies operate without any connection to central government. This is most visible in the Wa Self-Administered Division, where the extensive and well-documented tin exports take place despite there being no tin mines licensed according to the Ministry of Mines in Naypyidaw. This was evident in the disclosures in the first EITI report, in which no mines in the Wa SAD were mentioned. (Unlike States/Regions, SADs and SARs do not have delegated powers to issue even small-scale mining licences) Yunnan Tin, the Chinese refinery, when questioned about the legality of raw material they refine, in the context of ‘conflict tin’, referred to it having ‘export approval from ‘Ministry of Commerce of Myanmar Federal Government (sic)’.

3 OPPORTUNITIES IN EXISTING INVESTMENT LEGISLATION FOR GREATER LOCAL DECISION-MAKING AND REVENUE-RAISING

MCRB’s Sector-Wide Impact Assessment (SWIA) research found that local communities are often only aware of a permit having been granted for investment in their area when the fences go up or the bulldozers or soil testing engineers or EIA consultants arrive. Decisions have historically been taken over the heads of the community, authorised either by central government, or the local armed organisation.

Furthermore, companies, at least in the pre-2010 era, were actively discouraged from local consultation and communication, and told to leave this to government. This

suited most of the investors at the time, but has created a legacy of mistrust from which some are struggling to recover.

A number of pieces of legislation adopted since 2011 should strengthen local decision-making and regulation, and lead to improvements in early consultation, and also provide state/region governments with greater delegated powers of taxation and decision-making. These include:

3.1 2015 PROTECTION OF THE RIGHTS OF NATIONAL RACES LAW

Under Article 5 of the Law *'hta-nay tain-yin-tha'*³ *should receive complete and precise information about extractive industry projects and other business activities in their areas before project implementation so that negotiations between the groups and the Government/companies can take place.'*

Such negotiations, at pre-project, pre-EIA phase, could be the basis for agreement between the investor and locally communities on project design to reduce negative impacts, as well as benefit-sharing, which might include the negotiation of a formal Community Development Agreement or equivalent. To date these provisions have not been used. Bye-laws are under discussion between government and ethnic rights organisations.

3.2 2016 MYANMAR INVESTMENT LAW (MIL) AND 2017 RULES (MIR)

Art 61 of the MIR reinforces the above requirement by requiring the Myanmar Investment Commission (MIC) to:

'Consult with other Authorities as necessary or desirable in the conduct of the assessment of a Proposal, and all such Authorities shall be required to make relevant personnel and other resources available. Where the Investment may be subject to the Law on the Rights of Protection of Ethnic Nationalities 2015, the Commission will consider any specific consultations that may be required with the relevant State or Regional Government or other stakeholders as part of the assessment process or in connection with any conditions to be included in the Permit.'

Further consultation and disclosure of investment plans should happen as a result of the requirement for certain types of project to obtain an MIC Permit. For example, where investments are classified as 'strategic' MIR (Art 3). This includes projects of more than \$1 million in border and conflict-affected regions, or those which make use of significant areas of land. An MIC permit is also required under MIR Art 5 where a Project will have significant environmental or community impacts such that they either require an EIA, are in a protected or environmentally area, involve impacting on land use rights of >100 people (including but not limited to requiring resettlement), or where there is a land-related dispute.

³ *hta-nay tain-yin-tha* is often used by CSOs working on ethnic rights to denote Indigenous Peoples in the context of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention 169, and IFC Performance Standard 7. However other translations, including the apparent government preference for use in forthcoming byelaws, is to translate this as 'locally based/born (ta-ne) national race' rather than 'Indigenous' in the sense of UNDRIP.

Wherever MIC Permits are required, in addition to the consultation requirements mentioned above, there is a requirement for public disclosure of details about the proposal including its nature and location (Article 36c, 38 and 45 of MIR). This should be the opportunity for more information, media reporting and public debate about the merits of the proposed investment, which can be taken into account by the MIC. There are also annual reporting requirements for permitted projects, to include details about local stakeholder engagement and grievance handling. However to date, these provisions of the MIL/MIR have not been fully implemented

Finally, concerning delegated decision-making, under MIL 24(h) and the MIR, there has been delegation of some powers to State/Region level for approval of <\$5 million investment projects. The threshold means that it is likely that these will mostly relate to 'Endorsements' for > 1 year leases by foreign investors e.g. for hotels.

3.3 2015 ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE

The EIA Procedure requires stakeholder consultation at national and local level, including of project-affected peoples, at several stages in the preparation of an EIA. Draft Guidelines on Public Participation are under preparation, which include guidance on consultation for projects in ethnic and conflict areas.

Effectively implemented, EIAs should provide for several opportunities for local communities and organisations, including EAOs to shape and improve projects to reduce negative impacts. There are also requirements for regular monitoring reports to be published, including details of grievances received and how they have been handled. Again, to date, these are not being effectively implemented by government or companies, or used by stakeholders.

3.4 JULY 2015 AMENDMENTS TO THE CONSTITUTION

The little known amendments in Law 45/2015 widened the range of legislative and taxation powers devolved to States and Regions through additions to Schedules 2 and 5 of the 2008 Myanmar Constitution.

These amendments added the right to regulate, and corresponding powers concerning the right to tax, certain investment activities including tourism, small-scale mining and oil/gas, and some fisheries, agriculture, and forestry, as well as take measures for environmental conservation, provided these are 'in accordance with the law enacted by the Union'. There is therefore unused potential for delegated powers for local investment management, permitting, taxation, consultation and decision-making, in recent laws. If the Constitution is amended as part of the peace process, these laws, and all other existing laws, will remain in place unless otherwise revoked.

Some of this delegation of powers relating to investment and small-scale mining has been taken up in the respective 2016 Investment Law and 2015 Amended Mining Law, and are partly reflected in the draft Tourism Law. However these existing powers appear to be little known by those involved in the peace process. MCRB has been told that this may be because they are viewed negatively by those who are opposed on principle to the 2008 Constitution and distrust central government. Also these Schedules delegate powers only to State/Regional governments (and not even in most

cases to the six ethnic-based self-administered zones/divisions – as recognised in the Note to Economy Principle 1 of the Pyidaungsu Accord). They grant no powers to EAOs, who do not yet have any recognised, demarcated territory where their economic or governance authority is recognised by Naypyidaw.

4 INVESTMENT AND ECONOMIC ISSUES IN THE PEACE PROCESS

There is very little reference to investment or business in the National Ceasefire Agreement, other than Article 25 which covers ‘**Tasks to be implemented during the interim period**’. This says that:

25 a) The Ethnic Armed Organizations that are signatories to this agreement have been responsible in their relevant capacities, for development and security in their respective areas. During the period of signing ceasefire and political dialogue, we shall carry out the following programs and projects in coordination with each other in said areas.

- (1) Projects concerning the health, education and **socio-economic development** of civilians*
- (2) **Environmental conservation***
- (3) Efforts to preserve and promote ethnic culture, language, and literature*
- (4) Matters regarding peace and stability, and the maintenance of **rule of law** in the said areas*
- (5) Receiving aid from donor agencies both inside and outside the country for regional development and capacity-building projects*
- (6) Eradication of illicit drugs.*

25 b). Planning of projects that may have a major impact on civilians living in ceasefire areas shall be undertaken in consultation with local communities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard procedures⁴ and coordinated with relevant the Ethnic Armed Organizations for implementation.

25 c). The government and the individual Ethnic Armed Organizations shall coordinate the implementation of tasks that are specific to the areas of the respective Ethnic Armed Organization.

The Joint Monitoring Committee for the National Ceasefire Agreement does not focus on business. However, business-related problems such as the negative impacts of specific investments in ceasefire areas such as mining and quarrying, have been submitted to civilian members of the local Ceasefire Monitoring Committees.

Under the NLD Government, two of the five multistakeholder Work Committees (15 members including government, EAO and political parties) established under the Union Peace Dialogue Joint Committee concern investment, namely the Work Committees on Economic Affairs⁵, and on Land and Natural Environmental Affairs. These were reflected in the structure of the Pyidaungsu Accord (see below).

Since December 2016, funding of the peace process has been overseen by the Joint Coordinating Body (JCB), chaired by State Counsellor Aung San Suu Kyi, and made up of eight government and eight EAO representatives, with the chairperson holding the deciding vote. Support is to be allocated across four fields—ceasefires, negotiation and dialogue, peace-supporting development, and the peace-making process of the National Reconciliation and Peace Center.

⁴ Despite the reference, [the EITI 2016 Standard, and the 12 EITI Principles](#) do not provide a meaningful framework for managing investment projects in contested areas in Myanmar

⁵ Chaired by U Hla Maung Shwe of the Peace Commission, includes U Aung Naing Oo DG DICA

A separate Paungsie Facility (formerly the Peace Support Fund) is focussed on projects connected to, but outside the peace process, to promote social cohesion. This can include building cohesion through business activity.

Pyidaungsu Accord: Agreed Principles for the Economy

1. Effective implementation of a market economy:
 - a) To draw up and promulgate policies, laws, by-laws, rules and regulations at every level such as Union, States/Regions and Self-administered Division/Zones to effectively implement a market economy.
Note: For such policies, laws, by-laws, rules and regulations to be issued by the authorities of Self-administered Divisions/Zones, enabling laws are required.
 - b) In the implementation of the above-mentioned policies, laws and by-laws to develop the private sector, the alleviation of poverty, raising living standards, reducing inequality and sustainable development should be prioritised.
 - c) Economic activities which negatively impact on the public interest should be outlawed.
2. Laws should be promulgated to prevent economic monopolies by individuals or organisations.
3. Action should be taken to ensure equal opportunities for economic development in the respective Union, States/Regions, and Self-administered Divisions/ Zones.
4. The national budget and tax revenue should be allocated equitably between the Union, States/Regions and Self-administered Divisions/ Zones in accordance with the Constitution
5. Responsibility for economic planning should be allocated between the Union Government, State/Region Governments and the authorities of Self-administered Divisions/Zones in accordance with the Constitution.
6. The short-term, medium-term and long-term economic plans for the country should be undertaken with full transparency, accountability and responsibility.

Pyidaungsu Accord: Agreed Principles for Regional Development

1. Regional Comprehensive Development Plans for the development of human resources and socioeconomic development should be drawn up and implemented on the basis of coordination between the Union, States/Regions and Self-administered Divisions/ Zones.
Note: These should not be in contravention of Union level policies and laws.
2. Appropriate programmes and incentives to attract domestic and international investment should be developed and implemented in accordance with the law to promote the socioeconomic development of States, Regions and Self-Administered Divisions/ Zones.

Agreed Principles for the Land and Natural Environment

1. There shall be a people-centred land policy that is balanced and supports sustainable development for the whole country.
2. It shall be based on equity and justice.
3. Policies should aim to reduce central control.
4. In drawing up the policy, human rights principles, international standards, and democratic and federal principles should be included
5. Policies on land issues should be transparent and clear.
6. In establishing and implementing policies for agricultural development, the preferences of the local people shall be prioritised and the basic needs of farmers shall be fulfilled.

Ownership Rights

7. All citizens have the right to own and manage their land in accordance with the land law. Women and men shall have equal rights

Management Rights

8. Women and men have equal rights to manage the land ownership matters in accordance with the law.
9. Where the rights to land are not used for the reason originally given within a specified period, the state can recover the land and transfer it to a person who intends to make use of it.

Safeguards

10. All efforts shall be made to prevent damage to social, cultural, historical heritage and sacred sites of ethnic nationalities and to the natural environment.

4.1 THE PYIDAUNGSU ACCORD AND BUSINESS

The 37 Principles of the 29 May 2017 Pyidaungsu Accord (see MCRB translation above) which are relevant to business include six on the economy, two on regional development and ten on land and environment. Many of these principles reflect existing laws, and would not require a change to existing law and policy as it exists on paper to bring it in line with the principles. Nor is constitutional change required. Rather the challenges are in implementation and enforcement. The principles pick up on a number of weaknesses of implementation and enforcement which MCRB has also identified in the course of its SWIAs. They are generally consistent with MCRB's recommendations and advocacy for improvement the climate for responsible investment.

4.2 THE GAP BETWEEN THE PEACE DIALOGUE AND ECONOMIC REFORM

Myanmar's triple transition of peace process, democratic reforms and economic reforms are taking place in silos. It is particularly widely recognised that there is insufficient connection between those working on the peace process and those working on investment, regulation and economic development. This is true of government officials, development partners, EAOs, political parties and CSOs.

Currently, the main – possibly only - connections between the peace and economic silos appear to be achieved through the presence of relevant senior government officials from economic departments (e.g. DICA Director General) in the Working Groups of the Union Peace Dialogue Joint Committee. Otherwise, it is unclear how far the participants in the Peace Dialogue are familiar with existing national legal and policy frameworks for investment, or how they could be used or adapted to build peace.

The adoption of the Pyidaungsu Accord offers the opportunity for Peace Dialogue participants to discuss the details of ongoing economic reform, particularly in the Working Groups on the Economy, and Land/Natural Environment. There is an opportunity to ensure that the outputs of the Peace Dialogue accurately reflect the existing legal framework, and for the Dialogue to recommend improvements to ensure that ongoing reforms to business regulation are conflict-sensitive. This could help to support the 'convergence agenda' being promoted in some other areas of the peace process whereby national and EAO administrations coordinate share decision-making (see 25 c) of the NCA)⁶.

4.2.1 Making business regulation more conflict sensitive

All Myanmar laws, including those related to business, apply in principle throughout the country. They will also remain in place unless otherwise revoked even if the 2008 Constitution is amended or replaced, unless found to be unconstitutional

There is a general lack of transparency and consultation on regulation, both for existing laws/bye-laws and the preparation of new laws in draft. There have been a few notable exceptions such as the Myanmar Investment Law which was subject to four or five rounds of public consultation on Myanmar and Burmese drafts, leading to the inclusion

⁶ See also p63, Asia Foundation *ibid*.

of stronger provisions on transparency and consultation including of ethnic nationalities.

Generally however, the process for adopting regulation in Myanmar is characterised by draft laws which are not shared in the course of drafting, hurried Parliamentary processes, unpublished or uncommunicated directives, and absence of effective business inputs into law-making.

The problems of this opaque process for adopting and reforming laws, which have been well-diagnosed in the work on Private Sector Development, not only contribute to the weakness of the investment climate more generally, but also to a lack of effective regulation in more remote and conflict-affected areas. Even in Yangon, few businesses, and even government officials, are fully familiar with business-related regulation, particularly recent reforms such as the introduction of EIA requirements, but the problem is significantly greater in remote areas.

Furthermore, officials in Ministries drafting regulations appear to view issues related to ethnic conflict as too controversial and beyond their responsibility. Neither the Ministry of Ethnic Affairs, nor the Myanmar National Human Rights Commission appear to make meaningful inputs on protection of ethnic nationality rights or other human rights issues in any internal consultation on draft laws.

This failure to address conflict and ethnic rights within national-level regulation for business is reinforced by an apparent unwillingness by EAOs and ethnic civil society organisations working with them to take up the limited opportunities there are to shape laws, as well as individual projects via the EIA process. Even in the rare cases where there are adequate public consultations on legal reform and environmental assessments, EAOs and ethnic CSOs are reluctant, or do not have the capacity, to engage. This reluctance appears to come from a mistrust of Naypyidaw-led regulation and initiatives, on the grounds that this is seen as acquiescing to an extension of central authority. But it means they forego the opportunity to shape projects, processes and laws which may outlast any conclusion to the peace process, in ways which could be used to protect their interests.

4.3 BUSINESS INVOLVEMENT IN THE PEACE DIALOGUE

There have been some attempts to involve business in peacebuilding. For example, the concept of 'Business for Peace' (B4P) has been introduced into Myanmar by the local UN Global Compact (UNGC) Network chaired by Dr Aung Tun Thet.

The UNGC at global level suggests that by joining Business for Peace⁷, companies will be able to:

- *Better identify and manage business risks and opportunities while reducing operational costs*
- *Engage in public-private dialogue to establish local priorities and implement projects*
- *Align business strategies and operations with good practice from across the globe*
- *Share best and emerging practices and learn from the experiences of peers*
- *Demonstrate leadership and receive recognition for advancing practical solutions*

⁷ <https://www.unglobalcompact.org/take-action/action/peace>

Companies who join Business for Peace commit to:

- *Paying heightened attention to the implementation of the UN Global Compact Ten Principles in high-risk and conflict-affected areas*
- *Take action to advance peace, either individually or in collaboration with others*
- *Annually communicate on progress*

A memorandum 'for businesses to participate in the peace process' was signed between the UNGC Local network and the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) on 3 April. The Memorandum includes making a commitment to responsible business, including by joining the UNGC⁸, and seeking to create job opportunities in underdeveloped regions, seeking to achieve and maintain peace in the workplace, and cooperation. The initiative was publicly welcomed by the State Counsellor (letter of appreciation from National Reconciliation and Peace Centre (NRPC) of 13 May 2017). However the UMFCCI is perceived by EAOs and others in ethnic areas as a Yangon and Bamar-dominated organisation.

If businesses actively apply the principles of the UNGC, including non-discrimination, respect for human rights, and combatting corruption, this should contribute to peace and nation-building. However the agenda needs to have substance and be sensitive to local contexts if it is to make a real difference. It would also be helpful for the agenda to address the practical challenges outlined for businesses seeking to operate responsibly in a conflict affected area, such as unclear accountability, and pressure to make payments to EAOs or other groups.

5 RELEVANT MCRB ACTIVITIES TO DATE

Peace, conflict, and ethnicity have been an integral part of MCRB's work on responsible business since its establishment in 2013. They are integral to the four interlinked lines of action in MCRB's 2016-2018 Strategy:

- **Knowledge:** MCRB contributes to establishing a shared understanding of the facts, needs and priorities concerning responsible business and business and human rights in Myanmar; Specifically conflict analysis and advice is included in MCRB knowledge products such as SWIAs and Briefing Papers, drawing on conflict expertise.
- **Advocacy:** using this knowledge as a basis for providing specific advice to business and government, such as strengthening attention to ethnic minorities and conflict-sensitive business practices in Myanmar's legal framework. When **encouraging human rights due diligence** by business, MCRB has highlighted the need for businesses to take a conflict sensitive approach to investments in all areas and ensure that their investment does not exacerbate conflicts in the region and instead contributes to local development. MCRB has also highlighted the need to take particular account of the potential vulnerabilities of **ethnic minorities and**

⁸ After a peak of around 330 members, UNGC membership in Myanmar currently stands at 243 members. Companies are expelled from the UNGC after two years if they fail to publish a Communication on Progress. The drop-out rate may further increase as the business model for the UNGC changes on 1 January 2018 to include a subscription fee for many companies wishing to remain members, which will allow access to UNGC knowledge resources.

indigenous peoples, and ensure that they are not overlooked in the course of investment and instead, their rights are specifically taken into account.

- **Capacity:** increasing awareness and acceptance of responsible business conduct, and increase stakeholders' capacity to fulfil their respective roles and responsibilities. This includes building the capability of businesses to work in ethnic minority areas, and to provide an inclusive workplace
- **Dialogue:** bringing parties together to establish mutual expectations and accountability for the implementation of responsible business practices, and builds bridges particularly between business and local civil society organisations.

Transparency is the underpinning enabler for all of these processes, and a fundamental principle for the way MCRB works, is also important for successfully addressing conflict caused by business.

5.1 PAST AND ONGOING MCRB ACTIVITIES RELEVANT TO BUSINESS AND PEACE

5.1.1 Sector-Wide Impact Assessments (SWIAs)

MCRB has incorporated the issues of conflict, peace and ethnicity into all of its [SWIAs](#) to date. With the support of Peace Nexus, MCRB engaged a well-known conflict expert to brief the SWIA teams for their field work, debrief the teams on their return and prepared relevant chapters or reviews of the conflict chapters for the SWIAs. The oil and gas, tourism, ICT, and mining SWIAs all highlight particular risks faced by ethnic minority communities and has chapters on conflict and security, and on post-conflict areas including Tanintharyi Region, and Mon and Kayin States. These chapters explore the implications for both business and these communities of investing and operating in these regions. The SWIAs also provide specific recommendations to companies when investing in conflict or post-conflict ethnic minority areas. Conflict sensitivity, including mapping and engaging with EAOs and linked CSOs, is an important part of the work on oil palm.

5.1.2 Briefing Papers

MCRB's Briefing Paper series addresses cross-cutting human rights concerns for businesses operating in Myanmar many of them directly related to conflict. MCRB Briefing Paper series provides an outline of international standards and good practices, Myanmar law, and local context on particular issues, and conclude with detailed and practical recommendations to companies. Briefing Papers have been published on:

- [Land](#) (April 2015) covers ethnic minority land rights, including communal and customary land tenure, and post-conflict situations where businesses have begun to seek new investment. This is currently being updated (publication early 2018).
- [Indigenous Peoples](#) (February 2016) focuses on the rights of those ethnic minorities who can be considered to be indigenous peoples, particularly the right to Free Prior and Informed Consent (FPIC) for any project affecting their land, resources, or heritage.
- [Children's Rights](#) (May 2017) provides guidance to business based on the UNGC/UNICEF/Save the Children Children's Rights and Business Principles, all of which are relevant to conflict-affected areas. In particular CBRP8 covers

security arrangements and CBRP9 Emergencies, and business' role in respecting children's rights.

- [Discrimination](#) (Sept 2017) covers societal and governmental discrimination against ethnic and religious minorities *inter alia*, which has contributed to armed conflict and inter-communal violence. This covers all forms of discrimination, and not just religious – indeed we would encourage businesses to approach the issue with their employees through a wider discrimination lens. But there are some specifics on religious and ethnic discrimination. One purpose of this Briefing Paper which was planned a year ago, was to remind companies to think about discrimination before the situation became tense e.g. through discussing adopting and promulgating company policies, values and training and role-modelling diversity.

5.1.3 Advocacy on the Legal Framework

Conflict-relevant advocacy by MCRB intended to help strengthen an approach to responsible business conduct, and conflict-sensitive business conduct includes:

- Extensive comments on the **Myanmar Investment Law** (October 2016) and **Myanmar Investment Rules** (March 2017) to strengthen the references to responsible investment, to bring the law in line with the Environmental Conservation Law/Rules, and successfully advocating for the inclusion of a reference in the Rules to Article 5 of the 2015 Protection of the Rights of National Races Law (the need to negotiate with ta-ne tain-yin-tha – see above), and for greater transparency concerning public consultation, publication of investment proposals/summaries prior to decision, and annual sustainability reports. MCRB also supported the requirement for MIC permits for companies operating in conflict and/or border areas and in indigenous peoples' territories
- MCRB is currently providing input concerning Article 5 into the byelaws of the **Protection of the Rights of National Races Law 2015**
- During 2016/2017 MCRB assisted the Ministry of Natural Resources and **Environmental Conservation (MONREC) and the Vermont Law School in drafting the Environmental Impact Assessment (EIA) Public Participation Guidelines**. MCRB input provides *inter alia* guidance to companies on how they should conduct public participation on EIA in areas affected by conflict, establish grievance mechanism and incorporate the rights of Indigenous Peoples. Similar feedback has MCRB has undertaken other work on EIA such as EIA sectoral guidelines.
- MCRB was involved in the Advisory Group of the IFC's **Strategic Environment Assessment (SEA) of Hydropower** and inputs into the ESIA Guidelines which the IFC is undertaking in parallel, together with future work on community benefits agreements for hydropower and has encouraged ethnic groups to engage with these. Hnin Wut Yee has also published a policy paper on women's participation in hydropower in Shan State as part of a regional research project.
- Other MCRB advocacy with a conflict dimension includes work on the **Special Economic Zones (SEZs)**, the **Universal Service Strategy for telecommunications**, **artisanal oil and mining**, and the draft **Tourism Law**, including rules on tourist accommodation which are likely to exclude local small

business (MCRB included this as a case study in the BIF/CDA Conflict Sensitivity Toolkit for Tourism).

MCRB has also spoke on panels on business and conflict such as that organised by the British Chamber of Commerce on in 2017, and has addressed these issues in other speaking/media engagements.

5.1.4 Capacity building

MCRB has held many workshops for local companies on responsible business which contribute to their understanding of the various elements of the UN Global Compact (human rights, labour rights, environment and corruption), and to the B4P agenda. These include workshops on Responsible Business 101, human rights policies, grievance mechanisms, corruption as well as sectoral workshops and dialogues such as on tourism, the extractives, and community relations and safety in the telecoms sector (October 2016). Some workshops have taken place in regions and states, including Tanintharyi, Karen and Rakhine.

Many of MCRB's 1:1 meetings with business address conflict issues as part of the need to do human rights due diligence, depending on the company concerned and the location of its activities.

MCRB has also funded the Myanmar Business Coalition on Aid to establish offices in Sittwe (Rakhine) and Dawei (Tanintharyi) to work on responsible business issues with SMEs and has made these two states the focus of its capacity building for companies, government and civil society.

Workshops and training sessions on issues relevant to peace-building such as EIA and community investment have also been arranged for government and civil society organisations, or MCRB has provided speakers for training sessions organised by others.

5.1.5 Dialogue

The dialogues organised by MCRB are intended to promote multistakeholder discussion, greater mutual understanding and reduce conflict. These have included discussions in specific sectors such as good practice for engagement between oil and gas companies and communities, and also in specific locations such as multistakeholder discussions on sustainable tourism in Ngapali, and Tanintharyi archipelago. These are attended by a variety of business, government and civil society stakeholders. The continuous dialogue on Thilawa SEZ has also served to improve understanding between stakeholders and provided lessons for both this SEZ and others. MCRB have also provided expertise for multistakeholder dialogues organised by others, particularly related to mining, and SEZs.

5.2 ENGAGEMENT WITH STAKEHOLDERS IN THE PEACE PROCESS

MCRB has had no formal engagement with peace process mechanisms, and only limited engagement with the main players outside of the process, including a few government officials. Engagement with ethnic armed organisations has been at local level (e.g. in Karen, Tanintharyi and Kachin) in the context of field research, particularly for the Mining Sector-Wide Impact Assessment. Most contacts have been with international NGOs, and to a lesser extent with civil society organisations involved in

issue-based dialogues in the Civil Society Forum for Peace to whom MCRB has offered to be a resource on ‘business/investment and peace’, one of their thematic issues.

MCRB recently met the Danish Institute for Political Development (DIPD) who are supporting the political party group of the Union Peace Dialogue Joint Committee (UPDJC). They will develop proposals and principles in the economic sector in advance of the next Panglong Conference. The upcoming technical advisory and dialogue session, due to take place in mid-October 2017, will target the 23 political parties represented in the UPDJC group, including chairpersons, senior parliamentarians and other senior party leaders, with technical expert presentations and discussions. DIPD are interested in MCRB participating as resource people on the topics relating to national economic policy, foreign investment, taxation and sharing of tax revenues, matters related to regional development and banking and monetary policies which are those outlined in the political dialogue framework and are supposed to be discussed during the Union Peace Conferences.

6 FUTURE WORK/ADDITIONAL ACTIVITIES

In addition to continuing with many of the activities outlined above, we have been giving further thought to what we can do to support peace-building.

6.1.1 The Business for Peace agenda and UMFCCI

MCRB could engage with UMFCCI on the implementation of the B4P MoU. One possibility to explore is training for business on issues related to inclusive workplaces, including responsible use of social media, to follow-up on MCRB’s briefing paper on Combatting Discrimination. However such activities are likely to be limited to Yangon and possible some other urban centres.

6.1.2 The regulatory agenda

MCRB will continue to ensure its input into the regulatory agenda reflects any relevant issues related to ethnic rights and conflict sensitivity. MCRB will encourage government officials to recognise these dynamics, and ethnic/peace stakeholders to engage in consultations on the regulatory and policy agenda, particularly concerning the rights of ethnic nationalities and indigenous peoples. Forthcoming laws include the Tourism Law, and the Mining Regulations, as well as sectoral guidelines for EIAs, and comments on individual EIAs and projects.

6.1.3 Peace Dialogue stakeholders

MCRB will seek further contacts with stakeholder in the Peace Dialogue to see whether there is interesting in learning more about existing business regulation, and that in the pipeline or in need of reform. This includes reaching out to CSOs working with EAOs such as Shalom and the Ethnic Nationalities Affairs Center (ENAC).

In addition to building awareness and understanding of relevant legislative, permitting and regulatory processes such as EIA and the new Investment Law, MCRB can also share good (and bad) practice on responsible business issues such as operational grievance mechanisms, community investment, creating shared value and ‘CSR’ spending, and community development/benefit-sharing agreements.

The follow-up to the mining sector-wide impact assessment offers opportunities to include EAOs and other ethnic stakeholders in multistakeholder dialogues on sustainable mining practices on commodities with a conflict element such as artisanal mining, and limestone in Kayin State.

6.1.4 Voluntary Principles on Security and Human Rights (VPs)

Myanmar is one of three countries (the others being Ghana and Nigeria) selected in 2016 to have a 'pilot in-country implementation working group' for the Voluntary Principles on Security and Human Rights⁹ (VPs). The members of the three VP pillars who are present in Myanmar are:

Government	Australia, Canada, The Netherlands, Norway, Switzerland, United Kingdom, United States
Companies	Chevron, PanAust, Shell, Statoil, Total, Woodside Energy. Freeport-McMoRan Inc. also has an interest but no in country presence,
NGOs	CDA Collaborative Learning Projects, Human Rights Watch, International Alert, Pact, Search for Common Ground

Discussions are underway as to what this means in practice, which could include a scoping study supported by Peace Nexus. The VPs are relevant not only to the extractives sector, but also the telecoms sector whose rollout of their fibre and tower network in remote areas brings them most in contact with conflict affected areas and EAOs, and raises security issues for the business and potential for conflict with local community. MCRB has offered to be a local secretariat to a local VPs working group if demand and a useful agenda is identified.

MCRB, October 2017

⁹ <http://www.voluntaryprinciples.org/>