



Sector-Wide Impact Assessment

Human Rights and Business Fact Sheet Community Consultation



This factsheet was compiled for the use of the Myanmar Centre for Responsible Business (MCRB) sector-wide impact assessment (SWIA) research teams, but may be of wider use in understanding the human rights risks involved in particular business issues. For more information on MCRB's SWIAs, please see www.mcrb.org.mm.

Short Summary of the Human Rights Issue

Communities should be provided information about (new) company operations in their community and should have the opportunity to ask questions and provide their opinions about those operations to the company and the local government. The company should listen to the community's opinion, consider their points raised, and explain why it will or will not take their points into account in designing the company operations. This is particularly the case where the company's operations may use community resources (like water) or pollute the environment the community relies on or use community services (like roads) or affect the community members' ability to sustain themselves (such as seeking to buy the fields where they grow crops). The consultation should happen before the company starts its operations. Communities should also have an opportunity to discuss concerns about operations with the company once operations are underway.

The "community" means everyone in the community should have the opportunity to participate in consultations – including women, minorities, youth and those marginalized (such as people with disabilities). In some communities, a village elder(s) speaks for the community, but others in the community may have different views. It is good practice for companies and the local government to hear the views of the community elder(s) as a matter of respect and to hear a wide range of community members to make sure all have had an opportunity to hear relevant information about the project and provide their views.

There are a number of different human rights issues involved in community consultations:

Access to information

Community members should have access to information about the potential changes to their community from the project in a form that they can understand – the information is presented in their language, in a way that is understandable to non-experts and explains the potential good *and* bad points about the project so people get the full picture, for example information on possible employment but also information on potential pollution. Information should be available somewhere in a place in the community so that even if people can't attend a meeting to discuss, they still can have the information.

Providing opinions and having the opinions taken into consideration

The idea of such consultations is for the company to hear the community's concerns and opinions early enough so that it can take their points into account in designing the project and is not presented with a final decision that cannot be modified. If the company or the government come to just inform the community after all the big decisions have been made then there is often little the community can do to change the project.

Consultation without intimidation

It is important that companies have these meetings in order to start to build a relationship with the community. The consultations should not take place with soldiers or police present, recognising that this has been a widespread practice in the past in Myanmar. It may be useful for the local government to participate, but not if this is for the purpose of intimidating the community so they

do not object to the project. Local governments instead should participate to hear concerns about projects they are licensing/authorising so they understand if certain restrictions or conditions must be placed on the company.

Involving a wide range of community members

Companies and the government may find it easier to simply talk to the community chief or elder and count that as consultation. It is important to respect customary arrangements of representation by ensuring that the company speaks to those designated by the community to represent them. However, it is also important to get a wide range of views, particularly because through the consultation, the company should be asking for information about the potential impacts of its operations that it may not have considered. It will get that information by talking to a wider range of community participants. Women may need to be consulted separately, and companies should try to reach out to minorities who may not be represented by majority groups in the community.

Providing an on-going “open door” to discuss concerns with the company

Once the company starts up its operations, there may be new issues that come up that cause concerns to the community (for example, trucks for the project coming through town drive too fast and endanger children). It is good practice for the company to have a contact point to listen to and address complaints from the community at the earliest time, before the situation gets worse. These are sometimes called “grievance mechanisms”. Some companies have regularly scheduled meetings with communities or check on key issues around their operations together with community members, like company use of community water or company transportation arrangements.

Right to freedom of expression and peaceful protest

Community members may disagree with a project and have the right to express their opinion in a peaceful manner. Communities also have the right to assemble peacefully to protest. Companies should not engage in or support repression of peaceful protest by local governments. Companies should use their leverage with local authorities so that peaceful protesters are not repressed, imprisoned or otherwise criminalised.

Why this is Relevant to Local and International Companies Operations

To date, there has been very little law or practice in Myanmar on community consultation. Communities did not have choices about many issues, may have been forced by the military or rebel groups to take actions they did not want to take, or had their lands confiscated without any questions. That is expected to change as Environmental Impact Assessment (EIA) procedures adopted in December 2015 (Notification 616 of 29 December 2015) require to hold “appropriate public consultation” through all phases of EIA and IEE process (articles 34, 50, 61) as well as disclose environmental impact information to civil society, local communities and other concerned stakeholders (EIA procedures, articles 38, 65). The Ministry of Environmental Conservation and Forestry (MOECAF) is planning to issue Guidelines on Community Participation in 2016. For responsible businesses, consultations are a good way to

build longer-term relationships with the people who will be its neighbours and potentially its workers for a long time and to gain acceptance from the community (this is sometimes called a “social license to operate”). This acceptance is just as important (and sometimes more important) than legal licenses/permits to operate. If communities do not want company projects in their area, they often find different ways to express their concerns – such as through complaints or protests. This situation is not useful for the company or the community.

It is relevant to ask about community consultation in order to establish whether:

- Such consultations are becoming a more regular practice in Myanmar that communities expect;
- Consultations to date seem to be carried out for the purpose of engaging with communities to improve relationships or are more just a matter of ticking a box or for show;
- Consultations are working as a local option to try to solve issues between communities and companies at the local level – before company operations do more harm and community grievances become entrenched;
- Community abilities to speak more freely and give their opinion is increasing in rural areas in Myanmar or whether intimidation remains pervasive:

Human Rights References

- Human rights law does not directly provide for a right to consultation on private sector projects. It does provide for a right to seek and receive information and a right to freedom of expression (article 19 of the International Covenant on Civil and Political Rights). It also provides for a right to take part in public affairs (article 25).
- There are special provisions for indigenous peoples (see separate fact sheet).
- International law and most national laws on environmental impact assessments related to certain private sector projects (including the forthcoming Myanmar rules on ESIAAs) provide for public consultation. This is because the environmental laws recognise that people have a right to know about what will affect them and may have relevant information that helps minimize negative environmental and social impacts. Many other international instruments, including voluntary codes of conduct require consultation with stakeholders for the same reasons.
- International human rights standards always take into account those who are most vulnerable, including those who face discrimination, to try to ensure they have equal rights. That is why there is a focus on consulting with the widest range of community members – to make sure the vulnerable members are not forgotten.