Myanmar Centre for Responsible Business

Workshop on Community Engagement in the Extractives Industries

The Myanmar Centre for Responsible Business (MCRB) held a Multi-stakeholder Workshop in Yangon on 27-28 January 2015 on 'Community Engagement in the Extractives Industries in Myanmar'. More than 120 representatives from government departments, oil, gas and mining companies and civil society organisations from across Myanmar as well as international NGOs and donor organisations, participated in open and frank discussion on their experiences with community engagement in Myanmar and on the handling of grievances.

The workshop was intended as a follow-up to the sector-wide impact assessment on oil and gas published by MCRB in September 2014, which inter alia included the following recommendations:

The workshop, which was co-sponsored by the British Embassy's Bilateral Programme Fund (Prosperity), was part of MCRB's wider commitment to promote dialogue between business, government and civil society on responsible business issues.

To the government
(5) Develop and strengthen effective non-judicial grievance mechanisms and require businesses to provide operational level grievance mechanisms
(7) Adopt appropriate models of local benefits sharing from extractive projects

To oil and gas companies
(6) Communicate with stakeholders, particularly communities, to build understanding and demonstrate transparency and accountability
(7) Be prepared for negative impacts by having mechanisms that can address grievances quickly and effectively.
(8) Develop strategies for creating positive impacts at the local, regional and national level.
(9) Take collective action where appropriate to address environmental, social and human rights issues.

To civil society
(3) Encourage companies and government to engage in multi-stakeholder discussion on other extractives issues that are not part of the EITI mandate.

All presentations are available on MCRB's website, and a thumb-disk with these and other useful background documents was provided to participants.

Summary of Day 1
Creating Shared Value – Expectations and State of Play in Myanmar

Day 1 was focused on better understanding what community investment means to the various stakeholders and their respective expectations. Matthew Hedges, Deputy Head of Mission at the British Embassy kicked off with a call for the workshop to find ways to mediate relations between communities, civil society organisations, businesses and government agencies at a time of transition, and identify how working jointly investment could create sustainable shared value for all concerned.

The workshop heard presentations from:-

- Thant Zin from the **Dawei Development Association**, on community expectations and the challenges currently being faced in Myanmar, in particular concerning civil society's ability to participate in discussions and decision-making

- Phillip Essl, Sustainable Development Manager at **BG Group**, on expectations from companies when they engage in community investment projects, the need to define who should benefit and how.

- Vimaljit Kaur from **MCRB** who led a discussion on definitions of community investment, referring to good practice guidance from the International Finance Corporation (IFC)

There were also two panel discussions with comments and questions from the floor:

- on company approaches, with participation from Xavier Preel, General Manager at **TOTAL** E&P Myanmar, Anastacia (Stacey) Howe, Corporate Social Responsibility Officer at **MPRL E&P,** Jo Ferrie, Manager, Social Investment at **Woodside** Energy (Myanmar) Pte Ltd and Phillip Essl, Sustainable Development Manager at **BG Group**
- on Myanmar civil society's experience of community investment and the need for community specific approaches. This was led by Aung Kyaw Soe of **MCRB**, who was the research leader for the oil and gas SWIA. The panellists included Ye Thein Oo from **Myanmar China Pipeline Watch Committee**, Ko Thant Zin from the **Ayarwaddy West Development Association (**AWDA)

Several points were highlighted throughout the discussions in first day:-

- **the importance of understanding what Community Investment is**

Different companies and organisations use different words to describe broadly the same thing e.g. community investment, social investment, social contributions, socio-economic programme, corporate social responsibility programme (this report will use the term 'community investment'). Companies explained how:
- Community investment must be linked to the company's business operations, and is scaled and timed in accordance with the project phase
- Ideally investment is targeted to support communities in their areas of operation address their development priorities and take advantage of the opportunities created by private investment, in ways that are sustainable and support business objectives.

Two international case studies were presented:
- Since 2010, Woodside has joined with not-for profit organisation Many Rivers to support and mentor micro-enterprise development by indigenous communities in remote regions of Australia where Woodside has business interests. This project has supported business start-ups in areas such as catering and has resulted in an increase in the household income, family stability, local goods and services, the building of sustainable local economies and improved health and education.
- BG Group's Livelihood Development Project in Bolivia, where efforts were dedicated to understanding the local context, and creating a competitive advantage in already existing local economic activities through value chain development, in this case honey/beekeeping in a very poor community with very few economic alternatives. This example resonated with Myanmar CSOs who thought there was scope for companies to support Myanmar farmers with to develop added value from their crops.

Both MPRL and TOTAL explained their approach to community investment and how they sought to use it to build trust and strengthen their social licence to operate.

The companies acknowledged that as a general rule, a company should try to establish on-going engagement on its overall operations and the issues of highest concern to local stakeholders for example land acquisition *before* engaging communities on community investment.

- **the need for companies to directly engage with all communities and not just through particular groups or 'community leaders'**

  "It is vain to talk of the interest of the community, without understanding what is the interest of the individual"

  Jeremy Bentham (18th Century Philosopher)

Civil society participants highlighted communities' interest in being part of the decision making process on what kind of community investments are selected for their communities, and in greater transparency. They needed to be involved as early as possible in the decision making process, and to be able to give feedback so that investments were sustainable.

They noted that although companies with existing operations in Myanmar appeared to be engaging with the communities, certain companies were simply engaging with an elite group of community leaders who may not be representative or elected, or with local government officials who were disconnected from the needs, wants and competencies of the communities. Sometimes invitations to consultations were restricted to certain individuals. Also it was important not to discriminate between different ethnicities or engage only with the majority.

One civil society participant commented that companies were seen as pursuing their own agendas and imposing their own programmes based on what they had done in another country instead of engaging with communities on what would match their development goals.

Company participants agreed that the buy-in of the community is absolutely essential for the success of any community investment programme. They reflected on specific challenges they had faced in engaging with communities in Myanmar, and the steps they took to try to ensure that any community representatives were freely chosen by the community.

- **the role of the Government**

It was highlighted throughout the workshop that the company's role within a community was to complement and not to replace the government. Government participants acknowledged that capacity was lacking within the government. Companies were urged to work with the government to build capacities, and share knowledge.

The Government has to create and facilitate an enabling environment to encourage dialogue between communities and companies. Local authorities were urged to be transparent with information that was available to them and to facilitate dialogue between companies and communities. There was also a call from a civil society participant for government officials to be more accountable and empowered so that they could take decisions rather than always referring up (usually with no follow up).

Civil society participants called for local authorities need to play an active role in supporting civil society development. One participant commented that the government was not allowing some established CSOs like his to register and were seeking to prevent them from engaging with companies.

One government participant from MOGE encouraged companies to step in and support the government in delivering development when requested. The distinction between community investment by government and companies was not black and white. Another from a regional government encouraged the companies to engage with communities to establish their needs.

- **Building the capacity of the community so that they can better engage with companies and government**

One civil society participant noted that the fact that civil society organisations had low capacity to engage meaningfully on substantive issues concerning extractive with companies and government undermined their credibility. Furthermore, the government sometimes sought to paint them as 'insurgents' or trouble makers, rather than recognising that they were seeking to raise local and national concerns, and companies and government both sought to exclude them.

Civil society organisations want to strengthen their capacity to enable them to ask the right questions, and participate constructively in dialogue with companies and government. One option for community investment by companies would be capacity building for civil society to redress the power imbalance.

- **Community Investments should not end up burdening the community**

Companies were urged to evaluate their community investments to ensure that projects did not lead to negative impacts. Examples were given of one project where the village had been required to co-finance the installation of a water tank which many in the village felt they did not want. This had led that village to reject further community investment projects. Some projects were identified as wasted, for example a clinic built next to a cemetery which neither patients nor staff were willing to use. This was like plastic rubbish, waste of no use to anyone, rather than compost which could allow the community to grow.

Community Development Agreements

Emma Irwin, adviser to the World Bank on the Myanmar Extractives Industries Transparency Initiative (MEITI) shared experiences of Community Development Agreements and Other Models of Company-Community Commitments, and the importance of focussing as much on the relationships and processes to reach agreement as on the substance of any agreement.

Bruce Harvey, Adjunct Professor and Consultant, University of Queensland, reflected on his experience of community engagement. He stressed the importance of company and communities focusing on common interests rather than emphasising their rights, as this can lead to less conflicting and defensive positions. He noted that an economic argument can never defeat an emotional argument. Culture is central to community engagement, and you cannot explore the future without cementing and securing the present and the past. This is 'Why Cultural Heritage Matters' to communities and a Burmese language translation of a guide for companies on this is now available.

Summary of Day 2
Resolving Complaints, Disputes and Grievances

On Day 2, Professor Aung Tun Thet, Economic Advisor to the president of Myanmar and member of the Myanmar Investment Commission, gave a keynote presentation on the government's expectations of community investment and community engagement. He welcomed the workshop as an opportunity for stakeholders to work together to identify a common vision as 'the 3Cs – company, country and CSO'. He underlined the importance of achieving alignment on the national interest between all stakeholders. He also stressed the importance of proactive, forward planning approaches and risk-taking. These were not traditional Myanmar mindsets.

He stated that companies should view communities as active rights holders, not mere beneficiaries. Communities and civil society organisations should base their approach on evidence not just emotion so that they can be credible, effective and equal dialogue partners who bring the voice of the community to the table. He encouraged all stakeholders to take an open-minded and balanced rather than extreme approach giving the example of setting the minimum wage, which needed to balance the need for businesses to be competitive, make a profit and create jobs, against the needs of the workers for a living wage.

Prof Aung Tun Thet noted that the government's business is to support companies so that they can do business. That meant a transparent legal framework that allowed for a reasonable return on investment, as companies had choices about where to invest. Environmental, social and governance considerations needed to be integrated into business practices, and transparently disclosed. Myanmar's approach to development and investment needs to have human rights concerns integrated within it. Environmental risks and impacts needed to be effectively managed.

He outlined how the Myanmar Investment Commission was seeing to encourage responsible investment and a 'Better Future, Better Myanmar'. Companies coming to the MIC were being encouraged to be transparent and to sign up to the UN Global Compact, to demonstrate their commitment to respecting human rights and labour rights, the environment and anti-corruption, and report on this on an annual basis through their public 'Communication on Progress'. They were also being asked to commit to spend between 1 to 5% of their annual net profit on social/community investment/CSR, in consultation with relevant stakeholders. In practice, the magnitude of the contribution was less important than the spirit in which it is implemented. MIC wanted to see this investment embedded in their business strategy, not ad hoc philanthropy. The best example he had encountered was Unilever's partnership with the Ministry of Education on hand-washing and dental hygiene in schools, closely linked to their role as a toothpaste and soap manufacturer.

Professor Aung Tun Thet then responded to many comments and questions, particularly from civil society participants who took the opportunity to outline their particular concerns about investment.

Grievance Mechanisms

Margaret Wachenfeld from the Institute of Human Rights and Business presented on Complaints, Disputes and the Grievance Process, and then facilitated a panel discussion on complaints, disputes and grievance processes with civil society and company participants including:

- U Myat Thwin, legal adviser at Earth Rights International
- Ye Lin Myint from Dawei Development Association / Paungku.
- Agnes McLaverty, Environmental and Social Performance Manager, SHELL
- Daw Swe Swe Win Head of Socio Economic Programme, TOTAL
- Anastacia (Stacey) Howe, Corporate Social Responsibility Officer, MPRL E&P

The two civil society participants gave an account of specific cases in which communities had sought to raise grievances. In one case, concerning flooding of fields, they had not been able to establish who to contact, not least as they had not information about the nature of the joint venture and responsibilities, including whether the state was a regulator or an investor. They had sent letters to all levels of government from the President down, even including military intelligence. The company's reaction had been 'we are just here to do business'. After not even receiving an acknowledgement of their complaint from the company (other than pressure being put on community activists) they had taken the case to court. But this was time consuming and cost money and, as such, out of the question for most of the villagers. Similar problems occurred where there were grievance mechanisms but these were complicated and complaints could not be submitted in a local language.

Communities needed to know how and to whom to complain, they needed to be able to access expert advice, including from national/international civil society organisations, and complainants needed to be protected. Locally negotiated solutions should be available to communities and they should not be put under pressure to accept particular remedies.

Shell spoke on why companies had grievance mechanisms, and both TOTAL and MPRL explained in detail how their grievance mechanisms in Myanmar worked and the lessons they had learned from them. TOTAL noted that they received 10 formal grievances per year, but the majority of complaints were dealt with on the ground outside of the formal process, based on strong community-company relationships. This was the most effective approach.

MPRL's mechanism had been piloted in 3 villages since August 2014 and involved community volunteers and complaints boxes where communities had said they were comfortable lodging complaints. The Complainant was invited to tell the field team (comprising MOGE and MPRL) what they considered to be a fair remedy. 29 cases had been filed so far of which 22 were closed. The most problematic were legacy issues relating to oil wells.

Legal frameworks for community investment and engagement

Vicky Bowman presented examples of legal frameworks already existing in Myanmar in the Foreign Investment Law, Production Sharing Contacts and other rules, as well as those in other countries around compulsory CSR/community investment and reporting.

There was a discussion of what options were appropriate for Myanmar. One company welcomed the encouragement to undertake community investment but noted it should not substitute for other important activities such as the management of environmental and social impacts, and compliance with laws. The government should base its encouragement on principles, and not be prescriptive. There should be a level playing field, which could be supported through a requirement to report. The focus should not be on spending. It could be particularly damaging to have a requirement to push money through the door when institutional capacity to manage it is not strong. Misuse of funds can drive conflict including between communities. It was suggested that any plans to make community investment compulsory in Myanmar should be submitted to a full and transparent consultation to ensure companies and civil society could shape them.

MOGE noted that as community investment was a 'cost recoverable' item under the Production Sharing Contract, any spending would ultimately come from the Myanmar government's share of the investment, providing the project was developed and made a profit.

A civil society participant stressed the importance of ensuring that spending reached those it was meant to benefit. It should focus on supporting communities through skills and support for livelihoods, not infrastructure which should be the role of government. But the most important requirement was to establish the real needs of the community. Another CSO participant suggested independent organisations should implement community investment, and not government, who might use them as a political tool and there should be transparent monitoring. Another commented that although a company in their area claimed to have set aside a large amount for community spending, they had not seen evidence of that in the community. There was a lack of transparency.

One company spoke about the challenges of its community investment programme. They recognise that they needed to allocate more staff at local level to this. One problem was that the regional government wanted the benefits spread wide through the state rather than locally. They sought to only implement projects which had the village's support and consulted the elders. On complaints about school quality, they were required to follow design requirements laid down by the Ministry of Education and receive sign off from an engineer. They put contracts out to tender including to local companies, but their safety and reporting requirements made this challenging for local companies.

The workshop concluded with a reflection panel and discussion chaired by Vicky Bowman with Ma Taryar from Myanmar Alliance for Transparency and Accountability (MATA), Jo Ferrie, Woodside and Bruce Harvey. The main takeaways noted were:

On communication and transparency

- The opportunity for multistakeholder engagement offered by the workshop had been very valuable and productive
- Communities were in need of much more information about company activity; transparency was identified as the main 'ask' from civil society.
- Companies needed help in determining how best to engage more with communities
- Companies and government needed to listen to community and CSO concerns. CSOs knew that demonstrations were costly but unless they were listened to, this was their only option.
- Companies should and could help build civil society capacity to engage and ask informed questions
- Accountability was a major problem – communities and CSOs were unable to find company or government personnel willing to take responsibility

On community investment

- Both communities and government needed to shape community investment with companies
- There was also a need to manage expectations
- Too great a focus on spending whether by government, communities or companies, would distract from the real issues which were generally about company (and government, community, civil society) behaviours
- The first question to be asked of companies should not therefore be 'how much will you spend?' but 'how will you behave?' e.g. how will you….manage waste….help young people get jobs….involve local people in environmental monitoring… manage your security and relationship with the police and army….identify and protect cultural heritage?
- Questions about how much will you spend should be secondary. Furthermore more money meant more likelihood of waste or corruption

On grievances

- Those companies who were pursuing good practice such as grievance mechanisms needed to do more to educate civil society at the national level, who were mostly unaware of these (until this workshop). They also needed to encourage other companies to follow similar practices.

- Companies should consider complaints and grievances as a positive gift, an indication that the community is confident and comfortable to raise problems, and feedback on how to improve
- Grievances were most effectively addressed at the level of 'complaint' before they became formalised

Follow-up

In response to calls for specific and practical follow-up to the workshop, Vicky Bowman identified some actions which MCRB would undertake:

- An imminent press briefing to promote media coverage of these debates
- MCRB would make relevant resources available in English and Burmese through its website. Where stakeholders had particular questions or needs, MCRB could put them in touch with expert resources
- Workshop participants would be provided with contacts to enable them to stay in touch
- MCRB would engage with government on legal frameworks including the revision to the Investment Laws and encourage these to be the subject of transparent consultation
- MCRB would be available to facilitate further multistakeholder discussions on extractives at local level. Such an approach could complement the multistakeholder discussion on revenue which was intended through EITI. Other organisations such as International Alert and Integrity were interested in doing this. MCRB would welcome feedback on priority locations or subjects for discussion. One possibility might be security arrangements for extractives companies and the Voluntary Principles on Security and Human Rights, the main international standard.

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