

How can an Environmental Impact Assessment (EIA) contribute to responsible investment in Myanmar?

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Development
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About me

- ❑ Director of Myanmar Centre for Responsible Business (MCRB) since July 2013
- ❑ Mining company Rio Tinto: HQ lead on transparency, human rights and resource nationalism/resource curse issues
- ❑ Civil servant/Diplomat:
 - Director of Global & Economic Issues
 - UK ambassador to Myanmar 2002-2006 (and 2nd Secretary 1990-1993)
 - European Commission, Cabinet of Commission Chris Patten, External Relations
 - Press spokeswoman
- ❑ Married to artist Htein Lin



MCRB aims to provide a trusted and impartial platform for the creation of knowledge, building of capacity, undertaking of advocacy and promotion of dialogue amongst businesses, civil society, governments, experts and other stakeholders with the objective of encouraging responsible business conduct throughout Myanmar.

စီးပွားရေး အဖွဲ့အစည်းများ၊ အရပ်ဖက် အဖွဲ့အစည်းနှင့် အစိုးရ အဖွဲ့အစည်း များအကြား တာဝန်ယူမှု ရှိသော စီးပွားရေးလုပ်ငန်းများဆိုင်ရာပညာ၊ ဗဟု သုတရရှိစေရန် လည်းကောင်း၊ အရည်အသွေး မြင့်မားစေရန် လည်းကောင်း၊ နှစ်ဦး နှစ်ဖက်အကြား ဆွေးနွေးညှိနှိုင်းမှုများ ဖြစ်ပေါ်လာစေရန်နှင့် မြန်မာ နိုင်ငံတွင် တာဝန်ယူမှုရှိသော စီးပွားရေး လုပ်ငန်းများပေါ် ထွန်းလာရေး အတွက်အများ ၏ ယုံကြည်မှုကို ရရှိသော သမာသမတ်ကျသော အဖွဲ့အစည်း တစ်ရပ် ဖြစ်ပေါ် လာစေရန် လည်းကောင်း ရည်ရွယ်ဖွဲ့စည်းခဲ့ပါသည်။



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ကဏ္ဍလိုက်သက်ရောက်မှုများအား လေ့လာဆန်းစစ်ခြင်း(SWIA)

Sector Wide Impact Assessments: ရေနံနှင့် သဘာဝဓာတ်ငွေ့၊ ခရီးသွားလုပ်ငန်း၊ ICT၊ သတ္တုလုပ်ငန်း၊ ဆီအုန်း (မူကြမ်း)



What is 'responsible business'?

Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.

တာဝန်ယူမှုရှိသော စီးပွားရေးလုပ်ငန်း ဆိုသည်မှာ စံချိန်စံနှုန်း များနှင့် အညီ တာဝန်ယူမှုရှိသော လူမှုရေးနှင့် သဘာဝပတ်ဝန်းကျင်ဆိုင်ရာ ဆောင်ရွက်ချက် များကို လေးစား လိုက်နာကျင်သုံး၍ မြန်မာနိုင်ငံနှင့် လူထု၏ ရေရှည် အကျိုးစီးပွားများအတွက် ဆောင်ရွက်သော စီးပွားရေးလုပ်ငန်းလုပ်ဆောင်မှုများကို ဆိုလိုပါသည်။



Is responsible business the same as 'CSR' (corporate social responsibility)?

စီးပွားရေးလုပ်ငန်းကြီးများ၏
လူမှုရေးတာဝန်

“the responsibility of enterprises
for their impacts on society”
(EU, 2011)

“လူမှုအသိုင်းအဝိုင်းအပေါ်
စီးပွားရေးလုပ်ငန်းကြီးများ၏
သက်ရောက်မှုများအတွက်
တာဝန်ယူမှု”



Asian/Myanmar
understanding of CSR =
Donation, Philanthropy



What Does a 'Responsible Business' Do?



Obey the Law
ဥပဒေကို
လေးစားလိုက်နာခြင်း



Respect human rights
လူ့အခွင့်အရေးကို
လေးစားခြင်း



Respect the Environment
သဘာဝပတ်ဝန်းကျင်ကို
လေးစားခြင်း



Respect employees
၎င်း၏
အလုပ်သမားများကို
လေးစားခြင်း



Be transparent
ပွင့်လင်းမြင်သာမှုရှိခြင်း



Treat other businesses responsibly
အခြားစီးပွားရေးလုပ်ငန်း
များကို တဝန်ယူမှုရှိ
စွာဆက်ဆံခြင်း



Treat customers responsibly
၎င်း၏ Customer များကို
တာဝန်ယူမှုရှိစွာဖြင့်
ဆက်ဆံခြင်း



Engage stakeholders
သက်ဆိုင်သူများနှင့်
ချိတ်ဆက်ဆောင်ရွက်ခြင်း



Not pay bribes/tea money
လာဘ်ပေးလာဘ်ယူမှု/
လဖက်ရည်ဖိုး ပေးခြင်းမျိုး
မလုပ်ဆောင်ခြင်း



Pay taxes
အခွန်ဆောင်ခြင်း

Respect human rights လူ့အခွင့်အရေးကို လေးစားခြင်း

UN Guiding Principles on Business and Human Rights စီးပွားရေးနှင့် လူ့အခွင့်အရေးများဆိုင်ရာ လမ်းညွှန်အခြေခံမူများ (2011)



State duty to PROTECT human rights
နိုင်ငံတော်၏ လူ့အခွင့်အရေးများ ကာကွယ်ရန် တာဝန်

Policies မူဝါဒများ
Law and Regulation ဥပဒေ
Adjudication စည်းမျဉ်းများ
စီရင်ချက်ချခြင်း

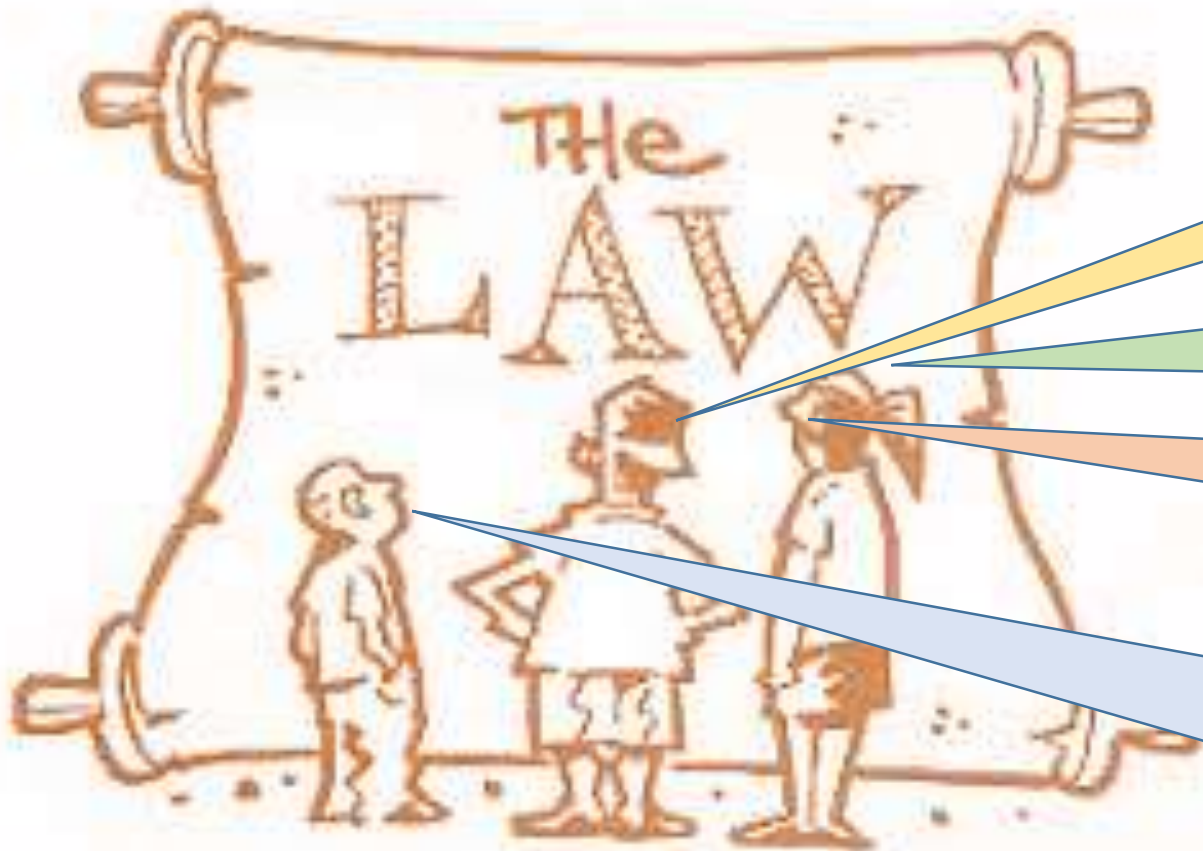
Corporate responsibility to RESPECT human rights စီးပွားရေး လုပ်ငန်းကြီးများ၏ လူ့အခွင့်အရေးများ လေးစားလိုက်နာတာ ရန် တာဝန်

Act with due diligence to avoid infringement ထိခိုက်နှစ်နာမှုများ၊ အခွင့်အရေး ချိုးဖောက်မှု များကို ရှောင်ကြဉ်ရန် ကြိုတင်ဆန်းစစ်၊ ကာကွယ်တားစီးခြင်းများလုပ်ဆောင်ရန်
Address impacts သက်ရောက်ထိခိုက်မှုများကို ဖြေရှင်းရန်

Access to REMEDY
ပြန်လည် ကောင်းမွန်အောင် ပြုပြင်ခြင်း/ ထိခိုက် နှစ်နာမှုများအား ကုစားခြင်းများကို လက်လှမ်းမီမှု

Effective access for victims ထိခိုက်နှစ်နာခဲ့သူများအတွက် ထိရောက်သောကုစားမှုကို လက်လှမ်းမီမှု
Judicial and non-judicial တရားဥပဒေ၊ တရားရုံးနှင့်ဆိုင်သော နှစ်နာချက်များ ကုစား မှု/ တရားရုံးများနှင့်မဆိုင်ဘဲ ပြင်ပ၌ နှစ်နာချက်များ ကုစားမှု

Pillar 1. Governments Must Protect Human Rights



Myanmar Companies Act (2017)
Myanmar Investment Law (2016)
and Rules (2017)

Myanmar Environmental Conservation
Law (2016), Rules (2014), Standards
(2015) and EIA Procedure (2015)

Sectoral laws: Mining, Oil and Gas,
Tourism etc

And many other laws and byelaws and
notifications on labour, disability,
ethnic nationalities, land, pesticides,
water, safety, wildlife conservation,
cultural protection etc etc..... !

Pillar 2. Companies must respect human rights

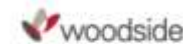
Undertake human rights due diligence

ထိခိုက်နစ်နာမှုများ၊ အခွင့်အရေး
ချိုးဖောက်မှုများကို ရှောင်ကြဉ်ရန်
ကြိုတင်ဆန်းစစ်၊

ကာကွယ်တားစီးခြင်းများလုပ်ဆောင်ရန်

Address human rights impacts

သက်ရောက်ထိခိုက်မှုများကို ဖြေရှင်းရန်



A-6 Drilling Program

Environmental Impact
Assessment

October 2016

6.1.2	Evaluation of Impacts	6-2
6.1.3	Impact Magnitude, Receptor/Resource Sensitivity and Impact Significance	6-3
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6.4	DETERMINATION OF IMPACT SIGNIFICANCE, MITIGATION MEASURES AND RESIDUAL IMPACT SIGNIFICANCE	6-13
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ENI MYANMAR :
HUMAN RIGHTS
REPORT

BLOCK RSF-5
OBSERVATIONS & OPTIONS
PAPER

EIA and human rights due diligence



- Social impacts, environmental impacts, human rights impacts, health impacts etc are interconnected
- (Environmental and Social) Impact Assessment contributes to ‘human rights due diligence’ although some companies may do a separate human rights (and conflict) impact assessment:
 - Myanmar HRIA examples: ENI, TOTAL, Nestle, Telenor, Facebook, Kirin, EDF (ongoing – Shweli 3)
- To determine social/human rights impacts, the company/consultant needs to talk and listen to people/rights-holders i.e. effective public participation
- Ongoing process = stakeholder engagement and operational grievance mechanism

Pillar 3. Access to Remedy at (government and) company level

- Company-based remedy can be called Operational(-level) Grievance Mechanism (OGM); Complaints and Grievance Mechanism; Grievance Redress Mechanism; Complaints Procedure
- OGM not specifically mentioned in EIA Procedure but Article 91(a) General Management allows the Ministry in the Environmental Compliance Certificate (ECC) to prescribe conditions concerning
 - (i) procedures and management systems to identify, control, prevent and minimise all Adverse Impacts ...
 - (iv) procedures to improve the environmental and social performance of the project
 - (vi) documentation, reporting and information disclosure procedures.
- Having an OGM is now a requirement in Myanmar Environmental Compliance Certificate (ECC)
- ECD's May 2017 Draft Guidelines on Public Participation advocate OGMs to meet eight effectiveness criteria of UN Guiding Principle 31



Operational level grievance mechanisms

လုပ်ငန်းခွင်အဆင့်၌ နစ်နာမှုတိုင်ကြားချက်များကို
ဖြေရှင်းပေးသည့် ယန္တရား

IPIECA Good Practice Survey

<https://www.myanmar-responsiblebusiness.org/my/resources/ipieca-gui>



Operational level
grievance
mechanisms
IPIECA Good Practice Survey



Effective Operational Grievance Mechanisms

ECD's May 2017 Draft Guidelines on Public Participation advocate designing a 'Complaints and Grievance Mechanism' to meet the eight effectiveness criteria of UN Guiding Principle 31.

1. Legitimate? တရားဝင်မှု၊ အများယုံကြည်လက်ခံမှု?
2. Accessible? လက်လှမ်းမီ အသုံးပြုနိုင်မှု?
3. Predictable? ကြိုတင်ခန့်မှန်းနိုင်မှု?
4. Equitable? တရားမျှတမှု?
5. Transparent? ပွင့်လင်းမြင်သာမှု
6. Rights-compatible? အခွင့်အရေးများနှင့်ကိုက်ညီမှုရှိခြင်း
7. Source of continuous learning? စဉ်ဆက်မပြတ်လေ့လာသင်ယူမှု
8. Based on engagement and dialogue ညှိနှိုင်းဆွေးနွေးခြင်းနှင့် အပြန်အလှန် တွေ့ဆုံဆွေးနွေးမှုကို အလေးထားဆောင်ရွက်ခြင်း



31 May 2017

6.5. Complaints and Grievances Mechanism

- a) The Project Proponent should indicate, in the EMP, how it will manage complaints and grievances. The Environmental Compliance Certificate may also include conditions on continuing consultations following approval of the project and on measures to deal with complaints.
- b) The Project Proponent is encouraged to establish a Complaints and Grievances Mechanism (CGM) to address grievances/complaints, including those related to environmental and social issues arising during all phases of the project's implementation.
- c) The form of the CGM should be scaled to the risks and impacts of the project and may depend on the type of project, its duration and any requirements contained in the ECC.
- d) The outcome of the CGM process should be to find solutions to complaints raised, which should include providing a remedy where there have been impacts on people or the environment.
 - (i) Remedies may include, but are not limited to, apologies, restitution of things lost (such as a job), rehabilitation of things harmed (such as restoring water sources) or financial or non-financial compensation, or guarantees of non-repetition.
 - (ii) Remedies should be accompanied by solutions to help prevent the same impacts recurring, such as changing operating procedures to eliminate pollution or to reduce the risk of worker accidents by providing better procedures or protective equipment.
 - (iii) The EMP for the project should also be reviewed and updated as a result of these remedies and solutions.

31 May 2017

- e) The CGM should be designed based on principles set out in international standards¹² as follows:
- (i) *Legitimate*: the Project Proponent should design the CGM together with the PAPs and other stakeholders (i.e. potential CGM users) as a way of building trust in the CGM, rather than just unilaterally deciding on how it will function. The Project Proponent should also hold itself accountable for fair conduct of the process.
 - (ii) *Accessible*: there should be a clear way for PAP and other stakeholders to raise a complaint to the Project Proponent, regardless of the phase of the project. There should be a contact point that is easily accessible and the CGM process should be promoted and published to the PAP in local languages and understandable terms.
 - (iii) *Predictable*: the CGM should set out clear and simple processes that will be followed to examine and deal with the complaint. This should include, at a minimum, details about who will investigate the complaint, how long it will take to reply to the complaint and what kinds of actions may be taken in response.
 - (iv) *Equitable*: the party making the complaint should have reasonable access to information and advice relevant to their complaint. The CGM should be operated to provide a fair and balanced process, recognizing that the process is not about “winning” but about finding mutually agreed solutions.

31 May 2017

- (v) *Transparent:* The CGM should keep the parties informed about the process and provide information to stakeholders about the performance of the mechanism to provide confidence that it is working. The CGM should include a public complaints register that records all complaints and grievances (both oral and written) and how issues have been resolved, except when that might put a complainant at risk.
- (vi) *Rights compatible:* Each complainant should be treated with dignity and respect. There should be no retribution to the person(s) who originated the complaint. The aim of a CGM is to resolve disputes in a way that respects the legal rights of the complainant, but does not block access to other judicial or administrative remedies if the complainant chooses this route. For complaints that are difficult to resolve or impacting a lot of people, the CGM could provide for the engagement of an independent or neutral mediator who could review the complaints and provide recommendations to the Project Proponent. If this does not resolve the dispute in a quick and fair and open manner, the complainant may bring the matter before the relevant government authorities or other administrative processes, or take the matter to court.
- (vii) *A source of learning:* The Project Proponent should use the CGM process to identify trends and patterns in complaints, learn lessons about what is not working well in its operations and take steps to prevent the repetition of the same kind of complaints in the future.
- (viii) *Based on engagement and dialogue:* The purpose of the CGM is to identify and resolve issues early, and provide a remedy where appropriate. To do that, the process should be based on reaching agreed solutions through dialogue.

Grievance Mechanism and Environmental Compliance Certificate (ECC): Ngayokekyaung Offshore Supply Base example

Part F – Grievance Mechanism:

F1 The Project Proponent shall ensure that Grievance Mechanism acceptable to the Ministry are established, to:

- i. review and document eligible complaints of Project stakeholders;
- ii. proactively address grievances;
- iii. provide the complainants with notice of the chosen mechanism/action; and
- iv. prepare periodic reports to summarize the number of complaints received and resolved, and final outcomes of the grievances and chosen actions and make these reports available to the Ministry upon request. Eligible complaints include those related to the Project, any contractor or sub-contractor, any person responsible for carrying out the Project, complaints on misuse of funds and other irregularities, and grievances due to any safeguard issues, including resettlement, environment, and gender.

Good

Grievance Mechanism and ECC: Ngayokekyaung OSB example

F2 The Project Proponent shall submit to ECD a proposed complaint and problem management mechanism or grievance redress mechanism in accordance with the Article 31 of United National Guiding Principles on Human Rights and Business.

Good, but no deadline

F3 The Project Proponent shall develop and inform regarding the Grievance Mechanism (Section 9.3.4) broadly, effectively and to make prearrangement to implement successfully close to the project area such as Nga Pu Daw and Nga Yoke Kaung and villages around the project.

Needs better phrasing – better to include in General section rather than naming villages

Grievance Mechanism and ECC: Ngayokekyaung OSB example

- F4 The Project Proponent shall resolve until satisfactory for the Low and Medium Grievances within 5 to 10 working days (this timeline is required to agree by local stakeholders).
- F5 The Project Proponent shall resolve until satisfactory for the High Grievances as soon as possible (to inform the timeline to the Griever and to obtain agreement by the Griever).
- F6 The Project Proponent shall establish and comply with the Grievance Mechanism in Figure 9.4. This shall address compliance with condition F1 of this ECC.

This is unnecessary micromanagement: we recommend that ECD reviews OGM statistics in the 6monthly monitoring report and on its site visits, and find out whether the local people are aware of and trust the OGM

Grievance Mechanism and ECC: Ngayokekyaung OSB example

- F7 The Project Proponent shall implement successfully Future Engagement Activities and disclosure (Section 9.3.5), CSR activities (Section 9.4).
- F8 The Project Proponent shall consult and respond the key concerns of project activities throughout the project as mention in Appendix G – Stakeholder Engagement; Meeting Minutes, and Materials

F7 Shouldn't mix 'CSR activities' with Grievance handling – leads to confusion

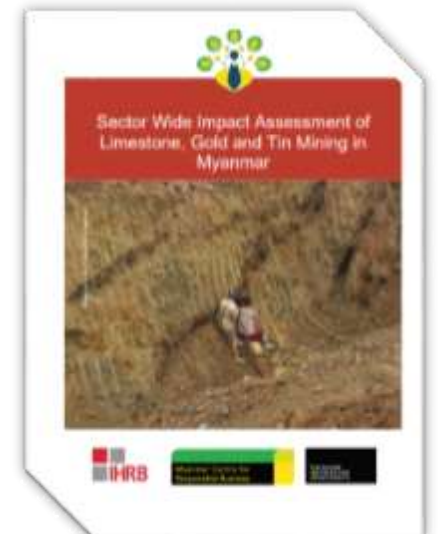
F8 Too vague – actual issues raised by stakeholders should be specified in Project-Specific Conditions in ECC

Status of operational-level grievance handling in Myanmar

- MCRB found in all SWIAs a clear lack of access to effective ways for individuals and communities to express their grievances, engage with responsible parties in the Government or to seek redress if harms have occurred
- Judicial remedy is unlikely to be available, so it is even more important for companies to have effective OGMs and for the effectiveness of these to be overseen in the EIA/EMP/ECC process.

MCRB's Sector-Wide Impact Assessment (SWIA) Research in the Mining Sector (2016-2017) in 8 areas of large-scale and artisanal gold mining, tin and limestone sectors.

- No operational-level grievance mechanisms in place
- Low understanding of grievance mechanisms amongst stakeholders
- Low responsiveness and effectiveness of response where grievances are raised
- (Or) Grievances are not raised



Some examples of Operational Grievance Mechanisms in Myanmar

MRPL Mann Field – extensive reporting and videos online

MJTD Thilawa SEZ:

- Complaints Management Procedure developed with Nippon Koei as joint SEZ MC/Myanmar Japan Thilawa Development (MJTD) Company
- Monitoring of Environmental Compliance and Management Plan (NB ECMP is not consistent with EIA Procedure)
- Separate activity by Thilawa Social Development Group (and Earthrights) to design a ‘community driven grievance mechanism

TOTAL (since 2010)

BG/Shell – temporary, for offshore seismic (OGM developed with Mont

Chevron

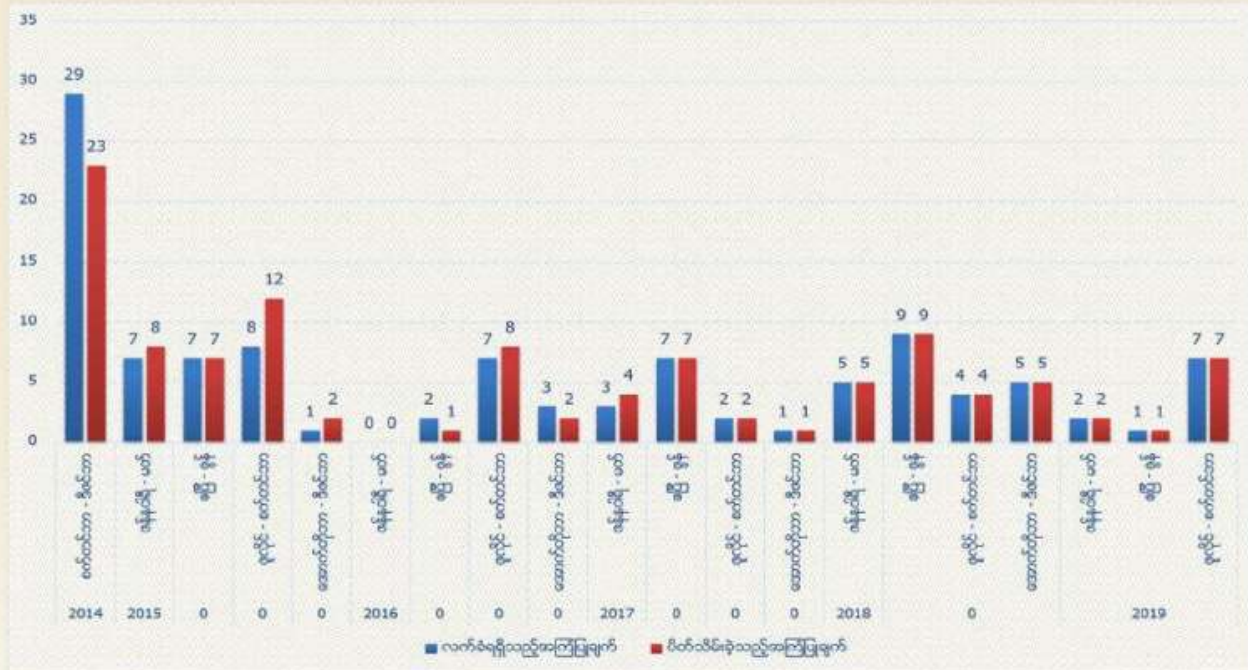
Apollo Towers

Awba pesticide factory (OGM developed with Conyat Create)



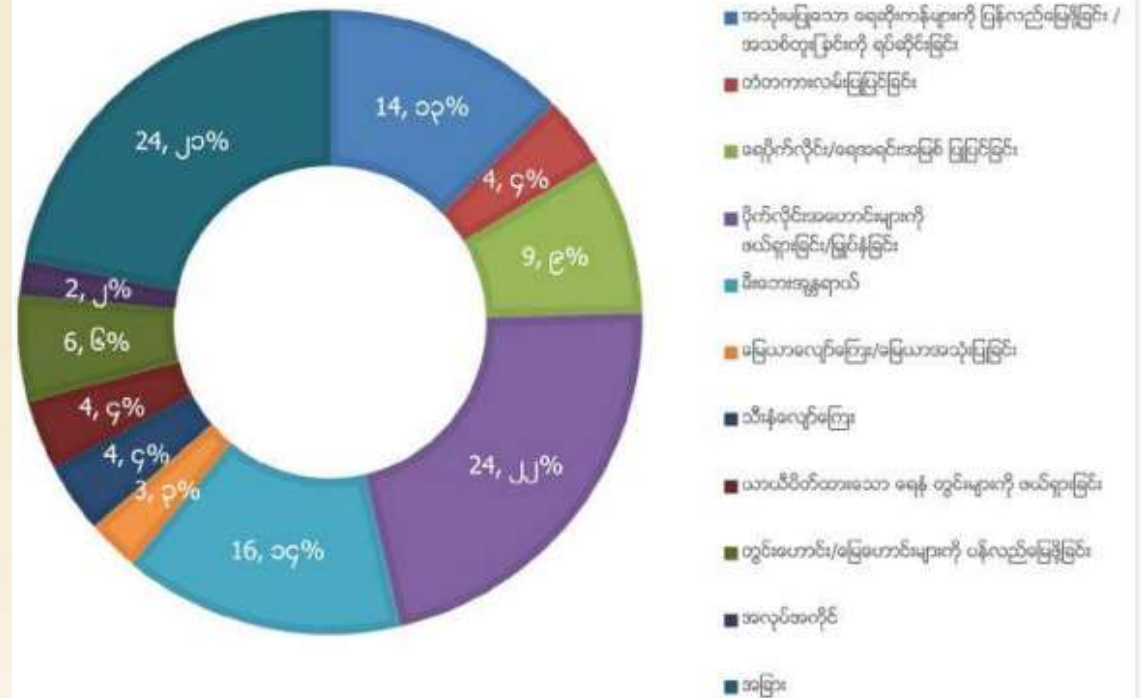
Reporting from Mann Field Grievance Mechanism

လအလိုက် ရရှိပီတိသိမ်းခဲ့သော အကြံပြုဆွေးနွေးခြင်းဖြစ်စဉ်များ (၂၀၁၄ ခုနှစ်၊ စက်တင်ဘာလ - ၂၀၁၉ ခုနှစ်၊ စက်တင်ဘာလ)



ပုံ(၃)-လအလိုက်ရရှိ၍ ပီတိသိမ်းခဲ့သော အကြံပြုဆွေးနွေးခြင်းဖြစ်စဉ်များ (၂၀၁၄ ခုနှစ်၊ စက်တင်ဘာလ - ၂၀၁၉ ခုနှစ်၊ စက်တင်ဘာလ)

အကြံပြုဆွေးနွေးချက်များကိုလက်ခံရရှိခြင်းနှင့်ဆွေးနွေးဖြေရှင်းခြင်း



ပုံ(၂) - အမျိုးအစားအလိုက်လက်ခံရရှိခဲ့သော အကြံပြုဆွေးနွေးချက်များ (၂၀၁၄ ခုနှစ်၊ စက်တင်ဘာလ - ၂၀၁၉ ခုနှစ်၊ စက်တင်ဘာလ)

Thank You!
ကျေးဇူးတင်ပါတယ်



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