

Myanmar In-Country Working Group Activity Report for 2021

Summary

At the start of 2021, the following members of the Voluntary Principles Initiative (VPI) were present in Myanmar:

- **Corporate:** Chevron, Total, Woodside Energy, PanAust , ENI (Engaged), Yara (Engaged, 2021)
- **Government (Embassies):** Australia, Canada, Netherlands, Norway, Switzerland, UK, USA
- **Civil Society:** Human Rights Watch, International Alert, Pact, Search for Common Ground
- **Observers:** IFC; ICRC; Institute for Human Rights and Business (IHRB) through Myanmar Centre for Responsible Business (MCRB), of which it was a co-founder.

In 2021 and 2022, the In-Country Working Group (ICWG) comprising the above organisations (with EDF as an observer company) met only twice (both times online due to COVID) on 18 January 2021 and 9 February 2022.

No specific outreach or advocacy on the VPSHR took place in 2021. However, the baseline assessment on the private security sector begun in 2020 with supplementary funding from the Voluntary Principles Association was updated and completed, and published on 17 February 2022.¹

After the military coup on 1 February 2021, many ICWG members reprioritised activity, and relocated staff out of Myanmar. The coup also resulted in suspension of all non-essential contact with the military authorities and bodies connected to them, such as the Human Rights Commission.

In January 2022, the most active corporate members, TOTAL, Chevron and Woodside, announced their intention to withdraw from Myanmar. In view of the lack of critical mass of VPI corporate or civil society members remaining in Myanmar at the 8th Working Group meeting on 9 February 2022, a decision was taken to end the group in its current form. Work on security and human rights will continue as part of wider MCRB activity with business and civil society, particularly Myanmar companies. It will build in particular on the findings of the PSC study. It will emphasise the increased importance of heightened human rights due diligence relating to security and human rights risks beyond extractives, including in industrial zones, shopping centres and banking. The VPSHR will be a reference point for this, along with other international standards such as the UN Guiding Principles and the work of ICoCA.

MCRB will maintain contact with the VPI Secretariat, seek their guidance on any areas of VPI expertise, and remain connected to the wider network of country level groups with an interest in security and human rights, and is available as a source of advice for any VPI stakeholder with an interest in Myanmar.

¹ <https://www.myanmar-responsiblebusiness.org/news/private-security-companies.html>

This is therefore the final report of the Myanmar ICWG, covering 2021, and the first two months of 2022, as well as the background to the decision to wind up the ICWG. It has been prepared by Myanmar Centre for Responsible Business, Myanmar VPSHR Secretariat, and approved by the ICWG.

Activities in 2021-2022

The 7th ICWG meeting was held online on 21 January 2021, co-chaired by Australia and TOTAL, and attended by 31 participants from embassies, companies, and international organisations. The [annual report for 2019 and 2020](#) was agreed.

Private security companies report

Participants discussed the draft report on the private security sector in Myanmar, undertaken with expert support from Niels Huby of RVN Myanmar. It was explained that the report was structured as a human rights risk assessment (HRRRA) to assist PSCs (and clients) to undertake their own HRRRA and adapt it to their circumstances, drawing on relevant local conflict analyses.

Three groups of human rights risks were analysed in the assessment.

1. Substantive questions relating to internal control and policies
2. Substantive questions relating to prohibitions contained in the International Code of Conduct (ICoC)
3. Other risks

PSCs are expected to complete assessments of the first two sets of risks as part of their membership and certification applications for the ICoC Association, and if they seek certification under ISO 18788.

Each risk is covered by examining the Myanmar and international legal and normative framework, reflecting findings from stakeholder interviews, and identifying recommendations.

Other risks are those that are important in the Myanmar context but not included in the ICoC. These include militarisation of investment projects in contested areas; the risk of deputation of PSCs; labour rights; and relations with communities.

The ICWG discussed next steps in stakeholder consultation.

At the January 2021 ICWG, participants also raised topical issues, shared updates on their field studies and risk assessments, and discussed the need for greater exchange between Myanmar/foreign organisations working on conflict/peace and companies investing in conflict affected areas.

Activities after the 1 February 2021 Military Takeover

ICWG company members **ENI, TOTAL, Unocal Myanmar (Chevron), Woodside** and **Yara** joined around 230 multinational and Myanmar companies in signing the [19 February 2021 statement by Concerned Businesses Operating in Myanmar](#) facilitated by MCRB. This stated:

Our companies, as investors in Myanmar, have watched with growing and deep concern the developments in Myanmar since the declaration of a state of emergency on 1st February.

Through our investments, operations, local partnerships and products, we support over a hundred thousand local jobs. The safety, security and wellbeing of our employees and those employed by our suppliers remains our primary concern. In recent days, we have sought to adapt our operations to ensure the safety of our employees and the provision of essential services to the Myanmar people – whether food and drink, electricity, telecommunications, financial services, logistics, healthcare or manufacturing - while respecting the individual rights to freedom of expression of our employees and the people of Myanmar.

As investors, we inhabit a ‘shared space’ with the people of Myanmar, including civil society organisations, in which we all benefit from respect for human rights, democracy and fundamental freedoms – including freedom of expression and association - and the rule of law. The rule of law, respect for human rights, and the unrestricted flow of information all contribute to a stable business environment.

We have always sought to operate in Myanmar transparently, and in line with core ILO Conventions and the UN Guiding Principles on Business and Human Rights. This includes undertaking ongoing human rights and wider business integrity due diligence, and complying with applicable sanctions, as well as the US Foreign Corrupt Practices Act (FCPA), the UK Anti-Bribery Act and Myanmar anti-bribery laws.

We will also continue to work hand in hand with local business partners which share the same approach. We believe our business presence, practices, and advocacy for a level playing field for all businesses, and our commitment to international human rights standards contribute in a significant way to the journey of openness and democracy in Myanmar.

We remain committed to our employees and to the people of Myanmar. We hope to see a swift resolution of the current situation based on dialogue and reconciliation in accordance with the will and interests of the people of Myanmar.

For the remainder of 2021, MCRB maintained contact with many ICWG members individually and collectively as part of wider discussions around responsible business and heightened human rights due diligence, including discussions co-hosted with the International Labour Organisation, and relevant international Chambers of Commerce.

MCRB also updated the draft report on private security companies, to take into account stakeholder comments, and to reflect the changed situation since 1 February. MCRB re-interviewed some companies and local CSOs to discuss developments relevant to private security, and incorporated media reports.

A new section on **data protection and privacy risks** was added. This contains the first analysis of regulation and responsible business practice concerning use by companies in Myanmar of closed-circuit TV (CCTV) which has become more relevant since 1 February 2021.

The report was originally intended to include recommendations to government and parliament to introduce specific regulation for the sector, drawing on international frameworks for PSC governance. However, in the absence of accountable civilian government or elected parliament to pursue regulation,

recommendations included in the final report focus solely on companies, clients of PSCs, PSCs themselves or companies with significant in-house security. The assessment nonetheless identifies relevant frameworks which could be drawn on, should Myanmar return to democratically elected civilian rule.

The report was finalized and published in English on 17 February 2022, with a Myanmar version following shortly afterwards.

[Decision to wind-up the In-Country Working Group](#)

On 9 February 2022, the ICWG met for the 8th time. It approved the PSC report and discussed how work on security and human rights in Myanmar could be taken forward in view of the departure of the most active corporate members. MCRB as Secretariat provided a Discussion Paper setting out the history and current situation of the ICWG, and making recommendations for the future.

[History of the Steering Committee/ICWG](#)

In 2016, Myanmar was identified by the [Voluntary Principles Initiative \(VPI\)](#) as one of three countries (with Ghana and Nigeria) for an **In-country Pilot Implementation Group**, now renamed **In-Country Working Group (ICWG)**. This was primarily due to the presence of a number of VPI member oil and gas companies (and a few mining companies), most of whom entered Myanmar in 2013/4. In 2016, VPI company members with Myanmar interests included Chevron, Shell, Total, Woodside Energy, Conoco Philips, Equinor (formerly Statoil), ENI (engaged member) and from the mining sector, PanAust and Freeport.

MCRB and International Alert, with the agreement of the other VPI members with in-country presence, and financial support from PeaceNexus, commissioned a scoping study in February-March 2018 by Asia Conflict and Security (ACAS) Consulting Ltd to look at the added value of the VPSHR in Myanmar, and potential activities for an in-country Working Group. The final report² found value in an in-country WG undertaking three areas of activity:

1. Share lessons learnt and good practice;
2. Support Myanmar and regional (predominantly Asian) companies to use the VPSHR in their operations; and
3. Help define shared responses by companies to local level challenges on VPSHR-related issues.

Based on the report's recommendations, a Steering Committee for in-country implementation was established on 18 May 2018 at a meeting attended by 16 VPI members and observers. This comprises in-country VPI members. EDF, although not a member of the VPI, was invited to join in 2020, as part of the Steering Committee's wish to reach out to companies in the extractives and other sectors (e.g. hydropower, telecoms) and other interested parties committed to VPSHR principles. Initially, due to concerns about the potential for dilution/reputation risks if membership of the group was expanded to non-VPI members, the decision in 2018 was to identify the group as a 'Steering Committee' rather than an 'In-Country Working Group' which was perceived as requiring wider, and more local stakeholder membership. Furthermore, there was initially reluctance from VPI member companies to expand membership of the Steering Committee/ICWG to companies (international or Myanmar) which had not

² www.myanmar-responsiblebusiness.org/dialogues/voluntary-principles/steering-committee.html

made a commitment to the VPSHR, particularly if the Group were to fulfil the role of providing a safe space for sensitive discussions. Meetings did indeed offer the opportunity for discussions on sensitive issues, particularly those related to Rakhine State (where some companies had offshore exploration), and the way in which Myanmar's regulatory framework for mining exploration drove rather than reduced conflict.

However on 21 January 2021, the Steering Committee agreed to rename itself the In-Country Working Group to align with guidance in the December 2020: **Framework Partnership for ICWGs from the VPI Secretariat**.

Activities 2018-2020

VPI members held meetings with company, government and civil society stakeholders to raise awareness of the VPSHR. Details are available on MCRB's website in an [area dedicated to the VPSHR](#), which includes Annual Reports for 2018, and 2019-2020.

MCRB translated VPSHR material. It sought to incorporate the VPSHR into other business and human rights activities in Myanmar, and encourage other ICWG members to do so.

In 2020, with additional (\$25,000) funding from the Voluntary Principles Association (VPA), and under the guidance of the ICWG, MCRB embarked on a study of the private security company sector (see above).

Co-chairs

TOTAL co-chaired the Steering Committee/ICWG from 2018-2022.

Government co-chairs have rotated with the VPI Chair: 2018-9 UK Embassy; 2019-20 Swiss Embassy; 2020-21 Australian Embassy; 2021-2022 Canadian Embassy.

Secretariat and resourcing

Myanmar Centre for Responsible Business (MCRB) agreed to provide a Secretariat to support the establishment of the Group, initially until end 2019. The secretariat role was extended into 2020/2021. Resourcing of secretariat tasks (which in any case cost little) was undertaken by MCRB without additional funding, given that four of the seven VP government members with an in-country presence fund MCRB (UK, Netherlands, Norway, Switzerland).

MCRB represented the ICWG at the 2019 VPI Plenary in person, and online in 2020 and 2021 and prepared two activity [reports](#), for 2018, and for 2019-2020. MCRB has also built links with the International Code of Conduct Association (ICoCA) which MCRB joined as a civil society member and drawn on its expertise.

MCRB maintained links with the VPI Secretariat, and sought to operate within the December 2020 '**Framework Partnership between the Voluntary Principles Initiative (VPI) and the In-Country Working Groups (ICWGs)**'. This encourages the VPI Secretariat (in Ottawa) to strengthen the network between all ICWGs, identifies the possibility of core and project funding, and identifies 'mutual expectations' between the Secretariat and VPI-supported ICWGs. Expectations of ICWGs include:

- Quarterly meetings (or other frequency as decided by a vote of ICWG members) for which minutes are kept reporting on attendance, topics discussed, any decisions and next steps agreed, such as action items and who will action them.

- Production of annual work plans, including relevant KPIs, agreed-to by all stakeholder groups in the ICWG against which progress can be measured and presented in an annual report.
- When possible, longer-term strategic planning documents such a two- or three-year strategy with longer-term goals.
- Strong multi-stakeholder participation and engagement from all pillars, including affected communities, women, and vulnerable groups, as appropriate.
- Meeting conditions or reporting requirements as specified in any funding agreements, including interim and final reports.
- Sharing of lessons learned on VPs implementation, particularly on complex problems which may benefit other ICWGs and VPI members.
- When receiving funding, VPI Working Groups must meet additional requirements including:
 - Naming a chair - or chair and co-chair - of the group, in accordance with the “Term of Reference for In-Country Implementation Working Groups”, including a description of the process for selecting them.
 - Identifying a suitable legal entity to receive and steward VPA managing money on behalf of the working group, which should be in compliance with national laws and able to meet international standards

Challenges

While the expectations placed upon ICWGs are modest, experience in Myanmar, both before and since the 1 February 2021 coup, has demonstrated a number of challenges preventing the continuation of an ICWG in the form envisaged in the Framework Partnership. These include the ability to meet regularly, and adopt and follow a workplan in the light of the unpredictable situation and limited in country resources and interest for many ICWG members. Above all, the challenges relate to multistakeholder participation.

Government participation

Initially government participation was addressed through the involvement of Embassies in the ICWG, including as rotating co-chair, although lack of Embassy expertise and staff turnover meant that their role was limited. Most Embassy staff were unaware of the VPSHR, and it was not a part of their Myanmar programming.

In 2018, the ICWG considered how to involve the **Myanmar government**, particularly given the physical and psychological distance between Yangon (where companies and NGOs are based) and Naypyidaw, the seat of government. Problems encountered included:

- **Lack of interest from ministries:** The Myanmar government between 2012 and 2021 was overloaded with engagement by the international community and lacked resources to engage, particularly where there was no technical assistance on offer. There was no interest from the energy ministry (although they had engaged in 2016 in a specific discussion around offshore seismic and refugee boats). Encouraging Myanmar to formally join the VPI carried a number of risks and was never pursued.
- In a [VPSHR workshop held in November 2018 in Naypyidaw](#), the state-owned mining enterprises showed some interest, particularly on security/human rights issues related to artisanal mining in jade and gold. However, there is only one VPI mining company in Myanmar, and with minimal in-country presence or security expertise. This meant that the ICWG was less able to engage on mining topics.

The Myanmar National Human Rights Commission a quasi-governmental body, showed interest, but lacked credibility with NGO stakeholders.

- **Reluctance by company/NGO ICWG members to engage with government:** Some contacts with Myanmar government stakeholders e.g. military and police, were politically sensitive and institutionally challenging for VPI members, even prior to 1 February 2021.
- Since 1 February 2021, all stakeholders are avoiding any unnecessary contact with the military government, and not engaging in advocacy, particularly on new regulation.

There was therefore little productive engagement with the Myanmar government. Individual ICWG members, and in particular MCRB, nonetheless took any opportunity to make VPSHR-related inputs into relevant elements of the Myanmar government's agenda e.g. Environmental Impact Assessment, extractives regulation etc.

Civil society participation

International NGO VPI members were able to participate in the ICWG and other meetings, but security and human rights was not always part of their Myanmar programme. Engagement with local civil society organisations including in a [workshop in February 2019](#) showed that their priorities concerning the extractives were not around security arrangements. Rather they related to wider negative human rights issues on land and the environment and lack of local benefits. While the ICWG sought to engage with the local Extractives Industries Transparency Initiative (EITI), this did not bear fruit.

Since 1 February 2021, both Myanmar CSOs and international NGOs have faced a range of risks including safety and funding and departure of international staff from Myanmar, making engagement difficult.

Company participation

Although companies conducted outreach to their oil and gas peers (PTTEP, Posco and smaller companies) in 2018-2019, there was little interest from them in participating in a human rights initiative which their headquarters were not a part of. International companies in the mining sector (mostly Chinese) were difficult to access. Myanmar companies, while interested in certain issues, were generally not present in Yangon. A few non-extractives non-VPI international companies such as EDF participated in the ICWG as observers.

Even prior to 2021, several of the original oil and gas companies had exited Myanmar for commercial reasons. Since 1 February 2021, most others have paused operations and most have now decided to withdraw.

The wider security and human rights agenda

Even in 2019, it was clear that the VPI, with its membership primarily drawn from the extractives sector, was – in Myanmar at least - too narrow a scope for effective multistakeholder activity that could support companies with security operations to respect human rights.

Similar debates about scope and membership have been taking place in other ICWGs and in the VPI at global level. The VPI is itself about to embark on an overall organizational and strategic evaluation of the VPI and provide recommendations regarding the future of the Initiative.

It was this, and developments in Myanmar government oversight of private security companies, which led the ICWG to embark on the private security company (PSC) sectoral assessment in 2020, the only

substantive activity during the pandemic. The PSC assessment has demonstrated that approaching the security and human rights agenda through the lens of effective private security provision increases its relevance to a wider range of companies, including Myanmar companies in banking, retail and manufacturing. A range of companies showed interest in working on better management of their human risks related to security arrangements. The assessment also showed the gap in policy, regulation, and knowledge of the private security sector in Myanmar.

Since 1 February 2021, the human rights risks associated with private security have significantly increased. This therefore makes the PSC assessment, and its recommendations timely. It will be a useful basis for future engagement with companies and civil society groups.

However, a wider focus does not fit easily into the VPI ICWG membership and approach. The current conflict affects the security arrangements of mainstream companies in urban areas, such as shopping malls to banks, whose experiences are not normally considered in the VPI. Furthermore, branding these discussions on security and human rights as connected to the VPI, which is a membership initiative which no Myanmar companies and few multinationals in Myanmar are members of, creates confusion in the minds of potential participants as to whether they should participate. It also revives the continued questions over governance and membership of the ICWG i.e. what is the 'group', and should non-VPI members be a part of the core group, or will this dilute the focus or inhibit discussion?

As the political and business landscape evolves, MCRB is discussing with UNDP, Chambers of Commerce, labour organisations, CSO and a range of others on how to effectively structure its work on business and human rights in support of awareness and implementation of the UN Guiding Principles on Business and Human Rights. One aim is to have platforms open to all companies with an interest in business and human rights regardless of their current company performance. Such platforms are intended to support heightened human rights due diligence by companies, and dialogue with stakeholders. Security and human rights risks will be a priority topic.

Taking into account the current situation, MCRB, as the Myanmar ICWG Secretariat, proposed to the ICWG:

- publish the assessment on private security companies, promote its findings and recommendations with relevant partners
- wind up the local VPI In-Country Working Group (ICWG) in its current form
- maintain the existing VPSHR documentation and historic activity of the ICWG on the MCRB website and ensure that all documents are also stored by the VPI Secretariat
- reconstitute company-civil society discussion on security and human rights as part of wider MCRB work on business and human rights; and invite VPI member companies and NGOs to participate and share their expertise in these platforms
- maintain contacts with the VPI Secretariat, seek their guidance on any areas of VPI expertise, and remain part of a wider network of country level groups with an interest in security and human rights, but not a formally designated VPI ICWG

These recommendations were approved by the in-Country Working Group on 9 February 2022.