

## Chapter 4.9

# Stakeholder Engagement & Grievance Mechanisms





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## A. Context

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Until recently people's rights to speak freely or assemble peacefully had been forcefully suppressed for five decades. As a result, many individuals are still reluctant, even fearful, about speaking out against the Government or military in particular. Ethnic diversity, and experience of armed conflict and inter-communal violence, have resulted in significantly different perspectives on the role of the Government and business which may be difficult for outsiders to access and understand. The ability to organise NGOs to address key concerns was extremely difficult until Cyclone Nargis in May 2008, when the authorities began to tolerate the participation of civil society in humanitarian work, although CSO leaders were also arrested and imprisoned at the time. The Government has historically placed itself as the main interface between companies and communities. This approach will take time to change, but is now beginning to happen.

The country has suffered and continues to suffer an accountability deficit that will take far longer to change, starting with changing mind-sets. At the highest level, reformers in the Government have indicated their willingness to be held accountable and have taken several significant steps to join international initiatives to begin to address both international and domestic concerns. These include joining the Extractive Industries Transparency Initiative (EITI),<sup>594</sup> and initiating its application to the Open Government Partnership (See [Chapter 3](#) on Sector Impacts). Both of these initiatives require active

<sup>594</sup> [Myanmar EITI](#) is based on a number of principles including transparency and accountability. EITI membership also requires that civil society are able to operate freely and "are able to speak freely on transparency and natural resource governance issues, and ensure that the EITI contributes to public debate." EITI, "Civil Society Protocol" (1 January 2015).

engagement of a civil society that is able to speak freely. The experience of getting them launched highlights the challenges ahead in changing mind-set at all levels of Government. Those changes are important for many reasons, not least because the more formal structures for citizens and others to hold Government to account – such as a functioning independent judicial system – are very weak and will take years to address. In the meantime, the highest levels of Government need to ensure that they are sending clear and consistent signals on the importance of accountability and transparency. This, and putting in place mechanisms like the E-Governance Master Plan, may help reduce the governance gap (See [Chapter 3](#) on Sector Impacts).

## Freedom of Expression

See [Chapter 4.1](#)

## Freedom of Peaceful Assembly

In December 2011 Parliament enacted the *Law Relating to Peaceful Assembly and Peaceful Procession*, which permits peaceful assembly for the first time in several decades. However, prior permission from the Government (the Township Police) is still required for an assembly/procession of more than one person and the requirements for seeking such permission are unduly onerous. Article 18 of the law has often been used to target activists and human rights defenders, many of whom have been arrested and imprisoned under its provisions. It acted as a significant deterrent as it provided for up to one-year imprisonment for those who demonstrate without prior permission.<sup>595</sup> Parliament amended the law on 19 June 2014; new amendments now reportedly oblige the authorities to grant permission for peaceful demonstrations unless there are “valid reasons” not to do so, and punishment for failing to seek prior permission and holding a demonstration without such permission was reduced from one year to six months.<sup>596</sup> However, the amended law still provides for the arrest and imprisonment of peaceful protesters. Arrests and imprisonment of such activists increased throughout 2014 and the first half of 2015.

Protests, including against private sector projects, particularly those in the extractive industries, have been suppressed in the past, sometimes violently. The authorities continue to crack down on such protests, with participants arrested and sometimes subjected to beatings and other ill-treatment.<sup>597</sup>

<sup>595</sup> Pyidaungsu Hluttaw, [The Right to Peaceful Assembly and Peaceful Procession Act](#) (Dec. 2011).

Requirements include an application form submitted at least five days in advance; the biographies of assembly leaders and speakers; the purpose, route, and content of chants; approximate number of attendees, amongst other things. See Chapter 3, 4.

<sup>596</sup> DVB, [“Peaceful Assembly Bill passed, now awaits President’s signature”](#) (19 June 2014).

<sup>597</sup> Norwegian Council on Ethics, Pension Fund Global, [“Recommendation on the exclusion of Daewoo International Corporation, Oil and Natural Gas Corporation Ltd., GAIL India and Korea Gas Corporation from the investment universe of the Government Pension Fund Global”](#) (2012). See also the [2013 Recommendation](#) concerning the post-construction phase of the project.

## Freedom of Association

A network of civil society and community-based organisations is active at both the national and local levels, including many ethnic minority-based groups. In the aftermath of Cyclone Nargis, Myanmar CSOs greatly expanded and organised as they worked to help survivors. They have remained a significant positive force in the country and have been able to engage with the Government to some extent. Since 2011 Myanmar civil society groups have had more freedom to organise and have taken that opportunity to increase their activities to help people claim their rights, including those affecting local communities.

An early draft of the *Association Registration Law* required all groups to be formally registered, with severe penalties for failing to do so. CSOs raised this as a key concern, with the EITI CSO group asking for clarification before agreeing to participate in EITI. The law was adopted in July 2014 with this provision removed. It retains another provision of concern to CSOs, which requires groups who do decide to register to do so at township, state or national level, thereby potentially restricting their area of operation.<sup>598</sup> The website of the International Centre for Not-for-Profit Law (ICNL) provides information on laws relating to Myanmar civil society.<sup>599</sup>

## Corruption

Myanmar ranks 156th out of 175th on Transparency International's Corruption Perception Index. In December 2012 the President announced that the Government would tackle pervasive corruption in its ranks,<sup>600</sup> and ratified the UN Convention against Corruption (UNCAC).<sup>601</sup> An Anti-Corruption Law was enacted on 7 August 2013 by the legislature although the President's Office submitted comments highlighting weaknesses and inconsistencies with UNCAC.<sup>602</sup> The law is to be implemented by the recently established Anti-Corruption Commission appointed in February 2014. The Commission comprises 15 members, five of who are appointed by the President, with another five each appointed by the speakers of both houses. However MPs have raised concerns that the Commission is not effective, noting in September 2014 that it had only dealt with three out of 533 cases.<sup>603</sup>

While it is encouraging that the Myanmar Government has acknowledged the problem of widespread corruption and begun to take steps to address the issue, it remains a major risk for companies investing in Myanmar. Given the home state anti-corruption laws that apply to many of the larger international ICT companies and the significant fines for violations, this will be an on-going issue, as it will take time for corruption to be

<sup>598</sup> DVB, "[Activists relay worries of draft association law to parliament](#)" (5 June 2014).

<sup>599</sup> ICNL, "[NGO Law Monitor: Myanmar \(Burma\)](#)" (accessed 25 July 2014).

<sup>600</sup> [Third phase of reform tackles govt corruption, President says](#), *The Irrawaddy*, 26 December 2012.

<sup>601</sup> [United Nations Convention against Corruption Signature and Ratification Status as of 2 April 2014](#), United Nations Office on Drugs and Crime (accessed 15 July 2014).

<sup>602</sup> The Republic of the Union of Myanmar President's Office, "[Press Release on the Promulgation of Anti-Corruption Law](#)" (8 August 2013). The Law incorporates provisions that are in certain respects narrower than those used in the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention). The definition of "bribe" incorporated in the law is narrower than that used in the OECD Convention. Further, Myanmar's anti-corruption law does not include provisions that address accounting and record-keeping standards.

<sup>603</sup> The Irrawaddy, "[MPs Voice Doubts Over Burma's Anti-Corruption Commission](#)" (24 September 2014).

significantly reduced in all levels of the Myanmar Government. Speaking out publicly about tackling corruption is an important contribution businesses can make towards this.

## Lack of Transparency

Interactions between the Government and the people of Myanmar have been marked by a lack of transparency on the part of the authorities, including about business operations. Recently the Government has begun to take limited steps to improve transparency through Government-controlled media and the President's and Ministry websites.<sup>604</sup> For example the Ministry of Labour, Employment, and Social Security publishes the text of recent laws and provides information about benefits.<sup>605</sup> However, there is currently no freedom of information (FoI) law in Myanmar. Civil society is advocating for FoI legislation, and the Open Myanmar Initiative (OMI), a consortium of CSOs, is conducting research and convening discussions on such a law.<sup>606</sup> Local government generally does not provide relevant information to communities about business operations in their areas, as revealed by SWIA field assessments in the ICT, tourism, and oil and gas sectors. (See [Chapter 4.1](#) on Freedom of Expression).

## Accountability: Judicial and Non-Judicial Mechanisms

The previous Government was characterised by a lack of accountability for human rights violations and violations of international humanitarian law. Those who dared complain about the authorities or companies were at risk of reprisals, including arrest, torture, and imprisonment. Since the reform process began in 2011, there has been a marked increase in calls by communities to provide redress for abuses, particularly around “land grabs” and labour rights. The Government's response has been at times contradictory, which may be partially explained by the different levels of Government involved in responses, at the Union and local levels. The President has repeatedly exhorted all levels of Government to be more accountable, but at the local level, and indeed in some Union Ministries, such accountability is still absent. The lack of clarity may also be due to tensions between reformers in the Myanmar Government and its more conservative elements.

Both the EITI and the Open Government Partnership include independent, third party checks on whether the Government is meeting its obligations to promote more open civil society that can hold the Government to account. This external, third party review can provide an important avenue for civil society to raise concerns.

Arrests of peaceful protestors increased during 2014, and in March 2015 police beat and arrested student demonstrators in Letpadan, Bago Region. The Myanmar National Human Rights Commission has called for prosecution of the security forces involved.<sup>607</sup> It is not known whether the government – which is currently prosecuting the beaten students – will follow up.

<sup>604</sup> See for example: [Republic of the Union of Myanmar President's Office](#) and [Myanmar Ministry of Home Affairs](#).

<sup>605</sup> See: [Myanmar Ministry of Labour, Employment and Social Security](#).

<sup>606</sup> Eleven Media, “[Rights group pushing for freedom of information law](#)” (last accessed August 2015).

<sup>607</sup> “[Rights Commission urges action against the police](#)” Myanmar Times, 14 September 2015

With respect to the judiciary, reforming the rule of law in Myanmar has been a major focus of President U Thein Sein's administration. The Government's "*Framework for Economic and Social Reforms*" notes "*the lack of effectiveness and predictability of the judiciary*".<sup>608</sup> The judicial system is widely considered to be "*under-resourced, politically influenced and lacking in independence*".<sup>609</sup> However, reform will take a long time, and substantial resources – and not least – changes in attitude to the rule of law, starting from the bottom up, with attention to legal education. The legal education system has been eroded by decades of under-investment, and the legal profession greatly constrained by long-term political restrictions, leading to a major shortage of lawyers taking up cases.<sup>610</sup>

Judicial independence in Myanmar to date has been essentially non-existent,<sup>611</sup> with judges accustomed to acting "*as administrators rather than arbiters, basing decisions on state policy, instead of legal reasoning and the application of precedent*".<sup>612</sup> While there are basic principles of separation of powers provided by the Constitution, it is not complete. A 2013 report by the parliamentary Rule of Law and Stability Committee, led by Daw Aung San Suu Kyi, found "*continued intervention by administrative officials in the judicial system*".<sup>613</sup> This indicates that structural changes will be required to put in place a rigorous separation of powers. There is no Ministry of Justice.

Systemic corruption in the administration of justice is a major concern, manifesting itself through bribes, delays, and obstructions,<sup>614</sup> with a widespread local perception that the courts in Myanmar are corrupt and unfair.<sup>615</sup> As a result, many would "*[resort] instead to local-level dispute resolution mechanisms they perceive to be more reliable, accessible and affordable*".<sup>616</sup> These local-level mechanisms generally involve village leaders and/or elders' councils. Although the village leader has an obligation to inform the police about serious crimes, smaller issues and petty crimes can be settled by the village leader and/or the elders' council, a small group of respected men in a village. If one party to the problem does not agree with the solution reached, they can take the matter to the township level, but this rarely happens because it is seen as being too expensive, considering both the administrative legal costs and bribes that would have to be paid.

There is currently little in the form of a legal aid system in Myanmar, making it impossible for many to afford the time and cost commitments of using the court system. In conflict areas, the issue may be taken to the administration of the controlling armed group.<sup>617</sup> In addition to the courts, other bodies responsible for the administration of justice, including

<sup>608</sup> Government of Myanmar, "[Framework for Economic and Social Reform - Policy Priorities for 2012-2015 towards the Long-Term Goals of the National Comprehensive Development Plan \(FESR\)](#)" (January 2013), para 116

<sup>609</sup> OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014), pg. 27.

<sup>610</sup> See: International Commission of Jurists (ICJ), "[Right to Counsel: The Independence of Lawyers in Myanmar](#)", (Dec 2013)

<sup>611</sup> Human Rights Resource Centre, "[Rule of Law for Human Rights in ASEAN: A Baseline Study](#)" (May 2011), pg. 163, citing Asian Legal Resource Centre, Amnesty International, "[Myanmar: No Law At All – Human Rights Violations under Military Rule](#)" (1992).

<sup>612</sup> International Bar Association's Human Rights Institute, "[The Rule of Law in Myanmar: Challenges and Prospects](#)" (Dec 2012), pg. 56.

<sup>613</sup> The Irrawaddy, "[Interference in Judicial System Harming Burmese People: Lawmakers](#)" (14 August 2013).

<sup>614</sup> ICJ, "[Right to Counsel: The Independence of Lawyers in Myanmar](#)", (Dec 2013)

<sup>615</sup> See: USIP, "[Burma/Myanmar Rule of Law Trip Report](#)" (June 2013), pg. 5 and 34.

<sup>616</sup> Ibid, pg. 5.

<sup>617</sup> Ibid.



the police, lack the training and capacity to enforce the rule of law (though the EU has been providing training to improve the human rights performance of Myanmar's police).<sup>618</sup>

The Government has also taken a number of actions to provide non-judicial grievance mechanisms to the public in the absence of a fully functioning judiciary (see Table 40 below). However, these mechanisms are already overloaded with complaints and hindered by limited mandates. Since the reform process began, these committees and the Myanmar National Human Rights Commission have received thousands of complaints from the public about abuses at the hands of the Government and military, but, as noted above, many of these people still await a resolution to their problems.

Many businesses commonly seek to incorporate safeguards into their investment contracts by ensuring access to international – rather than domestic – arbitration tribunals in the event of an investment dispute.<sup>619</sup> Myanmar acceded to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards in April 2013, which entered into force July 2013.<sup>620</sup> This solidifies the ability of foreign investors to submit disputes with Myanmar Government and commercial partners to international arbitration. The Myanmar legislature is now reportedly considering a new law based on the 1985 *UNCITRAL Model Law on International Commercial Arbitration* to replace the 1944 Arbitration Act, which would enable Myanmar courts to recognise and enforce international arbitral awards.<sup>621</sup>

An equivalent assurance of access to remedies for most Myanmar people affected by private sector operations is still a practical impossibility. Accountability in Myanmar is a new phenomenon and one that will take time to become established. Given the inefficiencies and acknowledged corruption in the judiciary and the inability of even the ad hoc commissions to resolve complaints, there is a clear lack of access to effective avenues for individuals and communities to express their grievances, engage with responsible parties in the Government or to seek redress if harms have occurred – especially at the local level.

**Table 40: Existing Non-Judicial Grievance Mechanisms in Myanmar**

- Daw Aung San Suu Kyi was appointed to head up a new **parliamentary Rule of Law and Stability Committee** formed in August 2012 to serve as a mechanism for the general public to lodge complaints about Government departments. In one month it received over 10,000 complaint letters regarding courts within the Yangon Division alone.<sup>622</sup>
- The **President's Office** opened a **public access portal** for people to submit opinions and complaints directly to the President.<sup>623</sup>
- A non-judicial **labour dispute settlement system** to resolve disputes between

<sup>618</sup> EU Delegation to Myanmar, "[EU Crowd Management Training Supports Reform of Myanmar Police Force](#)" (Feb 2014).

<sup>619</sup> More recently, the EU and Myanmar have begun discussions on an investor-state dispute settlement mechanism with Myanmar. See for example: Herbert Smith Freehills, "[Myanmar and the European Union to enter into an investment protection agreement](#)" (13 March 2014).

<sup>620</sup> [New York Convention on the Recognition of Foreign Arbitral Awards](#) (1958) (last accessed August 2015).

<sup>621</sup> Singapore International Arbitration Blog, "[Draft Arbitration Bill in Myanmar](#)" (June 2014).

<sup>622</sup> Regarding the various bodies noted, see further: Hnin Wut Yee, "[Business & Human Rights in ASEAN – A baseline study: Myanmar chapter](#)" (April 2013).

<sup>623</sup> Government of Myanmar, "[FESR - Policy Priorities for 2012-2015 towards the Long-Term Goals of the National Comprehensive Development Plan](#)" (January 2013), para 114.

employers and workers is in place, involving requiring workplaces to establish Workplace Coordination Committees, but implementation is still weak due to lack of adequate knowledge about the newly enacted labour laws.

- There are a number of mechanisms to hear land disputes, including a **parliamentary committee on land confiscation inquiry**, but without a mandate to give binding decisions. (See [Chapter 4.7](#) on Land)
- The **Myanmar National Human Rights Commission (MNHRC)** was established in September 2011, but the *MNHRC Law* was only enacted on 28 March 2014. The MNHRC has a broad mandate of promoting and monitoring compliance with human rights. It is empowered to investigate complaints and contact the concerned person, company or Government department and can recommend action. It can also make its recommendations public. It can undertake inquiries and will prepare an annual report to the President and Parliament. It is also mandated to consult different stakeholders including CSOs. The President selects members after proposals by a selection board. While the law provides that proposed members should have expertise or knowledge in different areas relevant to human rights including from civil society, it does not guarantee pluralism, nor a total independence from the Executive, in accordance with the Paris Principles.<sup>624</sup> It received over 1700 complaints in its first 6 months of operation, a majority of which involved land grabs.
- The **ILO and Myanmar Government have agreed a complaints mechanism** to allow victims of forced labour an opportunity to seek redress/remedies from Government authorities in full confidence that no retaliatory action will be taken against them.<sup>625</sup> The October 2013 report by the Myanmar Liaison Officer notes an increasing number of complaints about forced labour in association with land confiscation, with people either losing their livelihoods completely or being required to work on land which they have traditionally occupied.<sup>626</sup>

## B. Field Assessment Findings

### Engagement and Remedy on Privacy Issues

**Human Rights Implicated:** Right to privacy; Right to freedom of expression and opinion; Right to take part in cultural life and to benefit from scientific progress; Right to take part in the conduct of public affairs; Right to information

#### Field Assessment Findings

- **Lack of awareness of privacy concerns among users:** Users on social media were observed sharing sensitive personal data including bank statements and checks for donations or even more sensitive information about health status without appropriate protections. Users reported being unaware of how to configure privacy settings in their social media accounts. Users also reported being unaware of how to report on content on social media.
- **Lack of policies or clear communication of policies:** Data retention policies were absent, or in some cases not clearly communicated to the customer/user even when internally present (e.g. 5 years for retention of customer data on paper).

<sup>624</sup> OHCHR, "[OHCHR and NHRIs](#)" (last accessed August 2015).

<sup>625</sup> ILO, "[Forced Labour Complaint Mechanism](#)" (last accessed August 2015).

<sup>626</sup> Section 6, ILO, "[Update on the operation of the complaint mechanism in Myanmar, report of the ILO Liaison Officer to ILO Governing body](#)" (319th Session, Geneva, 16-31 October 2013), GB.319/INS/INF/2.



- See [Chapter 4.3](#) on Privacy

### Engagement on Freedom of Expression and Opinion

**Human Rights Implicated:** Right to freedom of expression and opinion; Right to take part in cultural life and to benefit from scientific progress; Right to participate in public life

#### Field Assessment Findings

- See [Chapter 4.1](#) on Freedom of Expression
- See [Chapter 4.2](#) on Hate Speech

### Engagement with Workers

**Human Rights Implicated:** Right to freedom of association; Right to freedom of peaceful assembly; Right to form and join trade unions and the right to strike; Right to just and favourable conditions of work; Right to freedom of expression and opinion

#### Field Assessment Findings

- There was a general **lack of worker-management engagement** in most companies across the ICT value chain, and only a few companies provided grievance mechanisms through which workers could raise complaints regarding their jobs and seek a resolution.
- **At fibre factories, workers were unaware of their basic association and collective bargaining rights**, for example understanding there must be a minimum of 30 members in a union. They did not feel the company would allow it even if it was acceptable under national law, and were concerned that joining a political party could also affect their jobs.
- **Awareness of rights to wages and benefits varied considerably.** Many workers admitted to a **very low level of understanding of their rights** vis-à-vis employers or the Government. There was also little to no information regarding labour rights or working conditions shared proactively by most companies with their workers, which will be important as a number of new labour laws, such as the *Minimum Wage Law* have recently come into force.
- See [Chapter 4.6](#) on Labour.

### Grievance Mechanisms for Workers

**Human Rights Implicated:** Right to freedom of association; Right to freedom of peaceful assembly; Right to form and join trade unions and the right to strike; Right to just and favourable conditions of work; Right to freedom of expression and opinion

#### Field Assessment Findings

- **Unskilled workers tended not to raise workplace and employment related complaints**, such as unpaid or inadequate wages, poor health and safety (H&S) standards, or barriers to unionising because they were relieved to have a job at all.
- Workers at fibre factories were able to raise complaints at meetings or anonymously through a letter box system, but **issues previously raised, such as deductions from daily wages and bonuses had failed to be addressed.**
- **Language barriers** were a commonly reported problem between managers and workers. Researchers heard that workers were often unsure whether any complaints or issues they raised were properly reported to the managers responsible.

- See [Chapter 4.6](#) on Labour.

## Engagement on Land Issues

**Human Rights Implicated:** Right to an adequate standard of living; Rights of minorities; Right to freedom of expression and opinion; Right to take part in cultural life and to benefit from scientific progress; Right to take part in the conduct of public affairs; Right to information

### Field Assessment Findings

- There were numerous cases where individuals and communities claimed there was **no participation in informed consultation** about land acquisitions or tower or fibre projects using land in immediate proximity to their homes.
- In cases where there was prior informed consultation and participation, it was predominantly **only with the land owner/user and the (two to four) immediate neighbours** who, under the land acquisition process, were needed to sign consent forms. The wider community surrounded the tower were not believed to have been consulted. In many of those cases, **those asked to sign agreements were unclear of their purpose or content.**
- There were **very few cases** found where any ICT company or Myanmar Government had done **wider community consultation regarding the network rollout**, land needs and plans, and the ways in which the rollout would affect their lives and livelihoods, positively or negatively.
- In many cases, community members:
  - received **no prior information about the intention to acquire their land or land near their homes**, only understanding the reason was to build a tower or lay the cable line once it became apparent during construction or digging
  - were **not consulted** or given an opportunity to become informed about the **broader project of building the network**. Instead, information was given only with respect to the land registration process (see Due Process below) and compensation
  - were given **no choices** or opportunity to negotiate about the plot of land or restrictions on land use
  - often **did not know for which telecom operator** the tower construction company was building, or the cable line was being dug
  - were **not given any information to make contact or complain** either with the cable laying company, tower construction company or telecom operator
  - Commonly raised community concerns included:
    - **not knowing which company was involved** in the construction (whether fibre cable or tower).
    - **not having a company contact** in cases of issues or emergencies.
    - not being provided basic information on the safety of the tower, including:
      - whether the tower could withstand earthquakes or severe weather
      - whether they would be subjected to unsafe levels of radiation from the tower
      - whether they would be electrocuted by the tower during rain showers
    - **noise from generators powering the towers** causing a disturbance, headaches, and small cracks in walls/floors.
    - **tower sites being fenced in but not locked**, compelling villagers to “guard” the site to ensure children or others do not wander in.
- See [Chapter 4.7](#) on Land

## Access to Remedy for Land Grievances

**Human Rights Implicated:** Right to an effective remedy; Right to take part in the conduct of public affairs; Right to information

### Field Assessment Findings

- As mentioned above, there were **regular reports of communities and land owners not knowing which company was responsible** for fibre cable digging or tower construction, including whom to contact in cases of emergency or grievance.
- **Cases of noise disturbance from generators powering towers were generally resolved**, in some cases by the village administrator.
- Some communities complained of **damage by the company of roads**, as well as of company-provided road repairs that failed to restore the quality of the road prior to the company's use.
- See [Chapter 4.7](#) on Land

## Conflict Areas

**Human Rights Implicated:** Right to life, liberty and security of the person; Right to just and favourable conditions of work; Right to take part in the conduct of public affairs; Right to information

### Field Assessment Findings

- There were some cases in which companies attempted to negotiate access with non-state armed groups (NSAGs) to areas to lay fibre cables. **In some cases a fee was paid for this access.**
- Researchers received reports of cases of operational delays, where local groups, including armed groups, **blocked access to sites, due to lack of consultation at the site level.** While some consultation with local leaders may have been undertaken, this may not have been communicated to or accepted by all stakeholders.
- Researchers observed **fire-arms being carried by NSAGs** present during roll-out in ceasefire areas. While researchers neither observed nor heard reports of shots being fired, the presence of fire-arms is a risk to the civilian population and to workers.
- Researchers also received reports from workers that they were aware that in the past landmines **may have been planted around infrastructure in conflict areas.** This led workers to avoid walking through certain areas. The measures companies took to protect their workers in such circumstances were unclear.
- See [Chapter 4.10](#) on Conflict and Security



### Myanmar Good Practice Examples:

- The Myanmar Centre for Responsible Business convened a stakeholder consultation at the request of an ICT company operating in the sector to discuss potential human rights risks for their forthcoming operations.<sup>627</sup>
- From 4 November to 2 December 2013, MCIT issued a call for public comments on “*Proposed Rules for Telecommunications Sector Relating to Licensing, Access and Interconnection, Spectrum, Numbering, and Competition*”. Responses by 21 organisations<sup>628</sup> (including private sector companies, civil society organisations, and foreign governments) were posted online at [www.myanmarpublicconsultation.com](http://www.myanmarpublicconsultation.com). This may have been the first online consultation by the Myanmar Government. Unfortunately the website is now defunct and the consultation documents and responses are no longer publicly available.
- On 21 May 2015 one of the telecoms operators held its first public sustainability seminar in Yangon, outlining human rights risks and ongoing compliance initiatives. The event was held with two-way translation.
- In March 2015, MCIT held a public forum in Yangon, focused on the health impacts on Myanmar mobile networks, with the support of the mobile industry association and one of the network providers. Research was presented focusing on international protection limits compared to radiation levels at base stations in Yangon and Mandalay. Findings showed that EMF radiation levels were far below acceptable limits set by the World Health Organisation (WHO). MCIT also produced an information brochure, including information on EMF radiation and international standards in Burmese. While the session and production of the brochure are positive steps, plans around translating the brochure into ethnic languages are unclear. This is especially important given the current geographic focus of the national telecommunications rollout. It is also unclear whose responsibility it is to distribute the brochure.
- One company has reported that their Code of Conduct covers human rights and also has a Myanmar-specific statement on human rights due diligence requirements. They have established a community outreach program with State Liaison Officers to act as a link between ethnic groups and the company, and a local hotline to which people may report grievances related to sustainability issues.<sup>629</sup>

<sup>627</sup> MCRB, “[MCRB facilitates discussion between Ericsson and civil society groups](#)” (25 July 2014).

<sup>628</sup> Companies that responded were Aether Company, Apollo Towers Myanmar Ltd, AVP Viom Networks, Digicel Myanmar Tower Company, Ericsson, Frontiir, GSMA, KDDI, LIRNEasia, Pan Asia Majestic Eagle Ltd, Ooredoo, Orange, Redlink, SingTel, SK Telecom, Telenor, VDB Loi, YTP. Others responding were MIDO and the US Government. See MCRB’s submission: MCRB “[Proposed Rules for the Telecommunications Sector](#)” (4 December 2013).

<sup>629</sup> See further: Telenor, “[Response by Telenor: Myanmar Foreign Investment Tracking Project](#)”, Business & Human Rights Resource Centre (last accessed September 2015).

## C. Recommendations for ICT Companies on Stakeholder Engagement and Grievance Mechanisms

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### Stakeholder Engagement

- **Build relationships with stakeholders:** In the ICT sector, many of the stakeholders are also potential customers. Companies in the ICT value chain should have an even greater incentive to get stakeholder consultation right from the start, whether it is with communities where services are being introduced (including on-line communities) or with individuals. Since many stakeholders will not be familiar with ICTs, there is a need for basic awareness raising of ICT users on the main issues that could affect them such as data protection (see [Chapter 4.3](#) on Privacy), protecting identity online (see [Chapter 4.1](#) on Freedom of Expression) and appropriate behaviour (see [Chapter 4.2](#) on Hate Speech).
- **Do not rely on Government to provide public information:** Field research indicated very little Government engagement with local communities. This means it is left to companies to inform local communities about forthcoming changes in telecommunications services, about network roll out in their area, and about forthcoming construction of this network, while keeping local government involved and informed.
- **Engage with ('offline') communities independently to build trust:** Appropriate engagement from the start matters because it: i) demonstrates respect for the community, who have experienced either neglect or reprisals until very recently; ii) is a process for providing information to and receiving information from users or communities relevant to operations; iii) enables users or communities to raise concerns and grievances; and iv) helps both companies and users or communities to understand one another's needs and expectations. There is still a high level of fear and distrust of Government and the military particularly in ethnic minority areas, given the history of human rights violations linked to the military. Companies should seek to consult communities as far as possible without the presence of military or police, and with minimal presence of local civilian authorities, so as to encourage open discussion. In some cases, trusted intermediaries may be required.
- **Engage effectively with online communities:** The growing availability of ICTs in Myanmar provides the opportunity for ICT companies (and others) to use social media, interactions through their websites, and text messaging to interact with stakeholders in a way that was not previously possible. Given the lack of online experience among the general population, companies will need to provide clear and accessible guidance, including what action is expected of stakeholders and how stakeholder views will be considered and reflected. Advertisements in official government newspapers should not be used as the sole means to publicise consultations. They are rarely read.
- **Protect the identity of those consulted where they may be at risk:** For online and offline consultation, companies will need to be concerned about the safety and security of those participating in the consultation and provide accurate information to participants about any risks of surveillance in participating in the consultations. Companies must also be particularly sensitive to undermining or exposing human rights defenders, especially land rights activists, to potential arrest and imprisonment, and respect anonymity if this is required.
- **Engage meaningfully on network rollout:** The ICT network's physical footprint is individually small, but extensive when repeated multiple times at tower sites or along hundreds of kilometres of cable trenches. It ultimately affects a significant number of individuals. It is therefore important for the network providers and their contractors

(such as tower companies and fibre cable digging companies) to have robust stakeholder engagement procedures that are grounded in a concept of respect for rights holders. This should be backed up with training to ensure that site hunters understand the core concepts of treating stakeholders fairly. With such a large number of stakeholders to deal with, and the race to construct infrastructure to meet licensing targets, there is a clear risk of stakeholders being treated only as one more item in a long checklist. While many interactions with stakeholders will be routine, the lack of awareness of many stakeholders of even what the network rollout activities are all about, much less their rights, makes many of the stakeholders, particularly in rural areas, at risk of unfair practices. This is an area where the tensions could arise between commercial pressures on tower companies and fibre laying companies to meet time targets and good practice on stakeholder engagement and even on respecting rights. While the fee companies pay for access to land for infrastructure varies according to a number of factors including assessed damages to crops, or overall disruption by workers on site, the procedures should be consistent, transparent and accessible to stakeholders and in particular those with whom companies are negotiating. See [Chapter 4.7](#) on Land for further information.

- **Provide accurate, accessible and timely information:** Companies should be prepared to engage with stakeholders with a very low level of literacy, scientific knowledge or understanding. They should be prepared to respond in a way that is simple, accurate, balanced and understandable in local languages. This includes health and safety issues (whether the tower could withstand earthquakes or severe weather; concerns about unsafe levels of radiation from the tower (see below); concerns about being electrocuted by the tower during rain showers); information about which companies are involved in the tower site and where future questions or concerns should be directed. They should also provide clear explanations to potential customers about potential costs (such as for roaming), privacy, etc.
- **Require and monitor engagement carried out by business partners:** Sub-contractors are often the first ‘face’ of forthcoming operations for the rollout of the network, sales of SIM cards or sales of other ICT equipment or services. Many of these will be local companies, including very small shops. Most companies operating in Myanmar, local and foreign, are unfamiliar with the concept of stakeholder engagement, including opening their business up to receiving complaints directly from workers and local communities through grievance mechanisms. Sub-contractors, particularly in construction, will need training and incentives/ disincentives to develop positive relationships with local communities from the earliest phase of roll-out.
- **Engage constructively with civil society:** Local and international civil society organisations provide necessary support to local communities to hold government and companies to account. Companies are encouraged to engage openly with civil society and community based groups to understand their concerns and provide accurate and timely information. They should model behaviour about the right to freedom of expression that demonstrates support for the right, both in law and in practice. Dealing with criticism through constructive engagement should encourage the authorities to do the same, rather than accusing civil society groups of “*stirring up opposition*”, or even arresting them<sup>630</sup>. When there are arrests or violence in connection with a company’s operations that violate human rights, companies should raise the issue with the Government, whether quietly or publicly, individually or collectively, to express their concerns.

<sup>630</sup> See OHCHR, “[Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst](#)” A/HRC/28/63 (29 December 2014), reporting on risks faced by land and environmental activists around some extractive projects.



- See also [Chapter 4.10](#) on Conflict and Security concerning **stakeholder engagement in conflict areas**.

## Accountability and Grievance Mechanisms

- **Provide alternative avenues to express concerns, including through operational level grievance mechanisms:** Accessing remedies in Myanmar is very difficult if not impossible in many cases. There is – with good cause – little or no faith that the judicial system can currently deliver effective remedies. The frustration over lack of access to effective remedy for real or perceived damages to livelihoods can increase tensions between communities and ICT companies and their sub-contractors. Operational level grievance mechanisms – i.e. processes that allow concerns to be raised and remedied at the operational level, rather than at far away headquarters – are therefore even more important in Myanmar, where there are: few other outlets to resolve concerns<sup>631</sup>. Additional Myanmar factors include unresolved legacy issues; emerging opportunities to express concerns openly; a lack of experience in local Government in addressing complaints constructively and effectively; and in some cases a lack of organisations in communities with the experience and expertise to assist in moderating and mediating between the private sector and communities. In addition, there is frequent community frustration with buck-passing between a bewildering array of contractors and sub-contractors without a core focal point for engagement and grievances.
- **Make operational level grievance mechanisms part of a broader community engagement strategy.** This should start by developing the mechanism with input from stakeholders wherever possible. Using lessons learned from the grievance process can improve ongoing engagement with communities and avoid repeating activities that have led to previous grievances. A grievance process can help companies better understand how ICT activities are being perceived and impacting, positively or negatively, on local communities, acting as an ‘early warning’ system.
- **Pay attention to language and literacy:** Given the variations in literacy in communities and among workers and users, there should be ways of expressing views and complaints that do not rely on reading/writing and are available to speakers of ethnic minority languages. Technical lectures to communities should be avoided.
- **Make grievance mechanisms accessible and understandable:** The field research indicated that except in a limited number of cases when some fibre companies had posted emergency contact numbers on landmarks along the cable path, communities had no information on who to turn to with concerns about telecommunications infrastructure e.g. noise, safety etc. Once the infrastructure is installed, it should include contact phone numbers on the infrastructure so that local villagers are able to contact the responsible company if they have concerns about the equipment. There should then be a process in place behind the contact numbers to ensure that the complaints are addressed. Grievance mechanisms should be implemented according to the criteria established in the UN Guiding Principles on Business and Human

<sup>631</sup> MCRB recently held workshops on grievance mechanisms and community engagement. See MCRB, [“MCRB Holds Workshop for Business on Operational Grievance Mechanisms”](#) (16 June 2015) and [“Community Engagement by Extractive Companies is Essential for Success in Myanmar”](#) (2 February 2015). See also the companies that have reported on their operations in Myanmar, some of which report that they have put specific operational level grievance mechanisms in place; Business and Human Rights Resource Centre, [“Myanmar Foreign Investment Tracking Project”](#), *ICT Sector* (last accessed September 2015).

Rights.<sup>632</sup> Good practice guidance specifically for the ICT sector is available (see section D).

- **Make online grievance mechanisms secure:** Considering the large number of potentially impacted rights holders in the ICT sector, an online grievance mechanism or reporting system accessible in the local language may be the best channel. Due to the potential vulnerability of impacted stakeholders wanting to report a violation to the company, it is important that any online grievance mechanism receives and transmits information securely. In order to build and maintain trust, companies should commit adequate resources to receiving, evaluating and responding to complaints submitted through a grievance mechanism.
- **Access to other mechanisms:** Operational-level grievance mechanisms should not impede access to other remedies, judicial or non-judicial. Additional remedy options are expected to continue to evolve in Myanmar, given the focus by the Government and donors on improving the rule of law in the country.

**Table 41: Grievance Mechanisms for the ICT Sector**

Existing grievance mechanisms in the ICT sector are predominantly internal corporate mechanisms, such as ‘whistleblowing’ systems aimed at remedying issues of labour violations, or issues arising in the supply chain, such as the use of conflict minerals. Corporate grievance mechanisms addressing violations of freedom of expression or privacy are underdeveloped, if they exist at all. Some industry initiatives, such as the Telecommunications Industry Dialogue, are reportedly still in the stages of examining options for implementing relevant grievance mechanisms.<sup>633</sup>

In the past decade, access to remedy for negative impacts involving ICT companies has usually been judicial rather than non-judicial. There have been court cases involving [Yahoo! in China](#), [IBM in South Africa](#), [Cisco in China](#) and [AT&T in the USA](#). The Yahoo! case, which centred on the company handing over details of users who had posted pro-democracy material and were subsequently arrested and jailed, was one of the catalysts for the establishment of the Global Network Initiative (GNI).

The events of the 2011 ‘Arab Spring’ and the 2013 revelations of mass surveillance by secret services worldwide changed the landscape of legal cases brought against ICT companies for human rights abuses, now focused more in recent years on the sale of surveillance technology and associated negative impacts on human rights. There is currently one case being considered by French courts over the sale of surveillance technology to Libya, where the company is accused of complicity in torture.<sup>634</sup> A verdict which goes against the company could result in the company being blacklisted or ordered to pay substantial fines.

Privacy groups have utilised other avenues to raise complaints associated with the sale or use of surveillance technology, such as the OECD National Contact Points.<sup>635</sup>

<sup>632</sup> See OHCHR, “[UN Guiding Principles on Business and Human Rights](#)” (2011), Principle 31.

<sup>633</sup> See Telecommunications Industry Dialogue Guiding Principles in [English](#) and [Burmese](#)

<sup>634</sup> FIDH, “[The Amesys Case: the victims anxious to see tangible progress](#)” (11 February 2015).

<sup>635</sup> See the complaints brought by Privacy International regarding the sale of surveillance technology to Bahrain: OECD Watch, “[Privacy International et al. vs. Gamma International](#)” (last accessed September 2015). See also the involvement of 6 telecommunication companies associated with the Tempora programme (where UK secret services allegedly tapped undersea fiber optic cables coming into the UK with the permission of the companies that owned them): OECD Watch, “[Issue: HR violations facilitated by 6 UK telecom companies](#)” (last accessed September 2015).

However, such complaints focus on the implementation of the OECD Multinational Guidelines and do not result in sanctions or fines against the company.

## D. Relevant International Standards and Guidance on Stakeholder Engagement and Grievance Mechanisms

### Relevant International Standards:

- [UN Guiding Principles on Business & Human Rights](#) (especially Principles 29-31)
- IFC: [PS 1 – Assessment and Management of Environmental and Social Risks and Impacts](#)

### Guidance on Stakeholder Engagement:

- European Commission, "[ICT Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)"
- IFC, "[Stakeholder Engagement – Good Practice Handbook for Companies Doing Business in Emerging Markets](#)"
- Shift, "[Conducting Meaningful Stakeholder Consultation in Myanmar](#)"

### Guidance on Grievance Mechanisms:

- European Commission, "[ICT Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)", particularly part 3.VI
- IFC, "[Good Practice Note: Addressing Grievances from Project-Affected Communities](#)"
- Access, "[The Forgotten Pillar: The Telco Remedy Plan](#)"
- European Union Agency for Fundamental Rights (FRA) "[Access to Data Protection Remedies in EU Member States](#)"
- FRA, Ongoing Project: "[National Intelligence Authorities and Surveillance in the EU: Fundamental Rights Safeguards and Remedies](#)"