

Cumulative & Project-Level Impacts

Community Engagement and Grievance Mechanisms



Part 5.1

Community Engagement and Grievance Mechanisms

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A. National Context

Stakeholder engagement, consultation and grievance resolution are complex in Myanmar, given its recent history of repression by the Government and the military. While this is slowly changing, many communities may still be reluctant to voice their views regarding mining projects and activities. Furthermore, community consultation and engagement as part of mining operations is currently not generally practiced in the mining sector, meaning that both companies and communities are, by and large, unfamiliar with such processes. This applies to both participation in ESIA processes and ongoing community-company engagement.

Freedom of expression, assembly and association

Since the reforms began in 2011 there have been significant improvements regarding the right to freedom of expression, including loosening of restrictions on the media, and the right to peaceful assembly and the ability to stage peaceful protests.²⁷¹ Article 354 of the 2008 Constitution guarantees the rights to freedom of expression, peaceful assembly and association, albeit with significant restrictions. Exercising such rights must not contravene “community peace and tranquillity,” which permits expansive interpretations. Laws which restrict these freedoms have not been repealed and remain available to the authorities to use them to arrest and imprison people for resistance activities.²⁷² However, the

²⁷¹ E.g., in January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See, The Republic of the Union of Myanmar President’s Office, [Order No. 3/2013](#), 28 January 2013, and [Order No 2/88](#), 18 September 1988.

²⁷² These include but are not limited to the [1908 Unlawful Associations Law](#), the [1950 Emergency Provisions Act](#), and various articles of the [Penal Code](#), especially Article 505(b). For a discussion of these and other laws see, ICJ, [Myanmar: Briefing Paper on Criminal Defamation Laws](#), 2015.

Government elected in 2015, being made up of many of those who themselves were political prisoners, is less likely to make use of these provisions.

In December 2011, the 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 (in this case the township police) is still required for an assembly/procession of more than one person and the requirements for seeking such permission are onerous. Article 18 of the current Law has often been used to target activists and human rights defenders, many of whom have been arrested and imprisoned under its provisions.²⁷³ Parliament amended the Law on 19 June 2014 and these amendments reportedly oblige the authorities to now grant permission for peaceful demonstrations unless there are 'valid reasons' not to do so. Punishment for failing to seek prior permission and holding a demonstration without such permission was reduced from one year to six months.²⁷⁴ However, the amended Law still provides for the arrest and imprisonment of peaceful protesters, a provision that has been met with calls for reform by NGOs such as Human Rights Watch²⁷⁵ and Amnesty International.²⁷⁶

Furthermore, in 2016 the newly elected NLD-led Government initiated a reform to again amend the Peaceful Assembly and Peaceful Procession Bill. While this does illustrate the Government's positive intention to reform laws that may restrict human rights, concerns remain that the proposed reform is still too narrow and restrictive in scope.²⁷⁷ For example, Amnesty International noted that "the proposed amendments fall far short of bringing the Act into line with international human rights law and standards."²⁷⁸

Protests against mining projects have been suppressed in the past, with participants arrested and subjected to ill-treatment in many cases.²⁷⁹ For example, during November 2012 the police violently broke up a peaceful protest against the Letpadaung Copper Mine near Monywa, Sagaing Region.²⁸⁰ Conflicts surrounding the same mine erupted again in 2014, resulting in a woman's death caused by either police forces or the mine's security personnel.²⁸¹ In the same year, more than 50 gold miners were arrested during the police raid of a protest camp in Yamethin.²⁸² The punishments that peaceful protestors received for publicly opposing or demonstrating against mining projects were raised with Government by civil society members of the EITI Multi-Stakeholder Group in 2014. This appeared to lead to a lessening of arrests.

²⁷³ [2011 Right to Peaceful Assembly and Peaceful Procession Act](#)

²⁷⁴ DVB, [Peaceful Assembly Bill passed, now awaits President's signature](#), 19 June 2014

²⁷⁵ Human Rights Watch, [Burma: "Peaceful Assembly Law" Fails to End Repression](#)

²⁷⁶ Amnesty International, [Myanmar: Open Letter on Amending the Peaceful Assembly and Peaceful Procession Act](#), 13 May 2016

²⁷⁷ Article 19, [Myanmar: Peaceful Assembly and Peaceful Procession Bill](#), 16 May 2016, p. 3

²⁷⁸ Amnesty International, [Open Letter on Amending the Peaceful Assembly and Peaceful Procession Act in Line with International Human Rights Law and Standards](#), 12 May 2016, p. 1

²⁷⁹ 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.

²⁸⁰ Amnesty International, [Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine](#), 2015; Human Rights Watch, [Burma: Investigate Violent Crackdown on Mine Protesters](#)

²⁸¹ NPR, [1 Dead In Protest At Chinese-Backed Copper Mine In Myanmar](#)

²⁸² Ricochet, [In Myanmar's Gold Rush, Not All That Glitters Is Gold](#)

In October 2016, President Htin Kyaw signed legislation abolishing the 1950 Emergency Provisions Act, which had allowed the Government to impose seven-year prison terms for simply reading foreign newspapers or listening to mass-media broadcasters.²⁸³ U Aung Kyi Nyunt, the chairman of a panel in Parliament's upper house that helped draft the legislation, stated "We have abolished the Emergency Provisions Act because it was the tool used by military regimes to suppress political dissidents, and the law does not fit with the current situation of democratization in the country."²⁸⁴

Community consultation and the right to information

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. There is currently no freedom of information law in Myanmar, although civil society is advocating for such legislation and there is a draft bill in place.²⁸⁵ Furthermore, the field research indicated that local government does not systematically or regularly provide information to communities about business operations in their areas.

Neither the 1996 Myanmar Mines Law nor its 2015 amendment contain provisions for consultation with local communities. Pursuant to the 2015 amended Myanmar Mines Law MoM (now MoNREC) is charged with granting mining permits based on information in a feasibility study. However, the exploration activities and feasibility study do not require consultation and engagement with local communities, or an IEE/EIA process, and there is no requirement on the Ministry to consider community and civil society views when making decisions on permits. There are no provisions for community appeal regarding permitting decisions, or requirements for operational-level grievance mechanisms for large projects. Lastly, the 2015 amended Myanmar Mines Law makes no mention of permit-holder responsibility in the event of land-related conflicts or complaints.

Article 5 of the 2015 Protection of the Rights of National Races Law states that *hta-nay tain-yin-tha* (the phrase used by civil society to refer to Indigenous Peoples although not defined in the Law) "should receive complete and precise information about extractive industry projects and other business activities in their areas before project implementation so that negotiations between the groups and the Government/companies can take place." While not a formal legal requirement or framework for FPIC, Indigenous Peoples and CSOs working with them are increasingly aware of the concept.²⁸⁶

The 2015 EIA Procedure contains provisions for consultation and engagement, and requires application of international standards where resettlement and Indigenous Peoples are involved. Feedback suggests that few EIAs, even those conducted in 2016, are implementing this properly; and field research findings indicate significant challenges associated with consultation and engagement in mining EIA processes prior to 2016.

²⁸³ New York Times, [Myanmar Repeals 1950 Law Long Used to Silence Dissidents](#), 5 October 2016

²⁸⁴ Ibid

²⁸⁵ There is still currently no law. There is a draft bill – [unofficial English translation from the Commonwealth Human Rights Initiative here](#)

²⁸⁶ MCRB, [Briefing Paper: Indigenous Peoples' Rights and Business in Myanmar](#), February 2016

Access to remedy and operational-level grievance mechanisms

Overall, 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. In terms of access to judicial remedy, it is well documented that the Myanmar legal system does not reliably provide access to justice.²⁸⁷ Myanmar has no publicly available legal databases, making it difficult to understand laws, regulations, and rights. Furthermore, there is no free, government-funded legal aid system for the poor, so many cannot find adequate legal representation to help voice their grievances.²⁸⁸ In addition to its lack of legal services, the Myanmar judiciary is plagued with high rates of corruption.²⁸⁹ The NLD-led Government has committed to improve the rule of law but it will take time.

In terms of access to non-judicial remedy, it is worth noting that currently none of the laws or rules applicable to mining projects require companies to have in place operational-level grievance mechanisms, although this may become formalised through the EIA/EMP process. Since the endorsement of the UNGPs, such mechanisms have become an integral part of company human rights due diligence, in particular for large-scale projects.²⁹⁰ Furthermore, there are currently no other types of third-party non-judicial grievance mechanisms in place that might deal with mining-related complaints, such as a national contact point or ombudsman, other than the Myanmar National Human Rights Commission which is yet to fully demonstrate its capacity to play this role. Lack of access to remedy is exacerbated even further in the informal mining sector, in particular in subsistence mining areas, where workers and communities are left essentially without recourse to any type of grievance resolution. The fact that informal and subsistence mining activities are often illegal is a further barrier to accessing remedy.

Land is one of the most common sources of conflict and grievances in Myanmar. As of April 2016 there were over 6,000 outstanding complaints to the Government regarding land conflicts.²⁹¹ As outlined in Part 5.3: Land, most of the laws and regulation regarding land provide only limited and weak options for appeal of decisions or raising of grievances regarding land-related decisions. The former Parliament's Farmland Commission and the Land Utilisation Management Central Committee, the two regulatory bodies responsible for providing remedy in cases of land disputes, faced capacity issues in the face of the high volume of complaints.²⁹² When regulations and organisations do offer protection theoretically, they often fail in reality due to lack of access to legal assistance, lack of confidence and corruption in the judiciary, and time constraints.²⁹³ In the event that an individual secures access to remedy, there is still no guarantee of adequate compensation because there are no detailed regulations defining compensation levels for land, assets, or cultivation.²⁹⁴

²⁸⁷ See e.g. The Jacob Blaustein Institute for the Advancement of Human Rights, [Myanmar Rule of Law Assessment](#), March 2013

²⁸⁸ Ibid, p. 32

²⁸⁹ Ibid, p. 31

²⁹⁰ See e.g. ICMM, [Human Rights in the Mining & Metals Sector: Handling and Resolving Local Level Concerns & Grievances](#), 2009

²⁹¹ Reliefweb, [Parliamentary committee: 6,000 land confiscation complaints yet to be addressed](#), 27 April 2016

²⁹² Displacement Solutions, [Land Acquisition Law and Practice in Myanmar](#), May 2015

²⁹³ Ibid, p. 23

²⁹⁴ MCRB, [Land Briefing Paper](#), March 2015, p.13

B. Field Assessment Findings

The field research identified a number of issues associated with community consultation, engagement and grievance resolution. The following paragraphs provide an overview.

Community consultation, engagement and information sharing

Human Rights Implicated: Right to freedom of opinion and expression; right to participation

- **Limited or no community consultation and engagement by mining companies:** None of the formal mine sites visited had in place stakeholder engagement plans or formalised procedures or strategies for regular community engagement. The companies also did not have 'community relations' staff. There was no evidence of regular information sharing with communities about company activities. Overall, the field research teams observed that companies had a limited understanding of the role of community consultation and engagement. For example, at one large-scale mine site company management was of the view that there was no need to consult with the community as the company had taken over the permit/operations from a previous operator. Another company claimed that company representatives visited local communities to find out what community members wanted and what their needs were. However, there were no records kept of such engagement or meetings, and villagers reported that such meetings did not occur.
- **Ad hoc stakeholder engagement favours community leaders and elites:** Where consultation and engagement reportedly occurred, this was on an ad hoc basis and related primarily to social or philanthropic spending. Furthermore, such engagement occurred primarily through village leaders, rather than diverse community members. At one site, for example, the company reportedly consulted with the village administration and village elders on an informal basis. According to the community members interviewed at the site, the consultation by the company had taken place only with those village elders supportive of the mine project. At another site, where there had reportedly been a total of three community meetings over the last six years, these meetings had involved the village administrator, monks and the factory communications officer, but no other community members. At several other sites, it was reported that any communication between the company and communities was between company representatives and monks or village elders.
- **Stakeholder engagement requirements at the local-level are unclear and ad hoc stakeholder engagement focuses on obtaining signatures for approvals:** At several sites, it was noted that if stakeholder engagement occurred this was in the form of one-way information provision. It was often focused on obtaining the necessary signatures from villagers or village leaders for the approval of mining activities, rather than consultation and engagement of a broad spectrum of community members to genuinely obtain and respond to their views as part of the development and implementation of mining activities. Reportedly, ME-2 has a requirement in place at the state/region-level that companies must obtain signatures from village tract leaders and community leaders signalling consent to mining activities during the permitting

process.²⁹⁵ Company stakeholders reported that a requirement for consultation is sometimes also specified by township-level administrators, without clear reference to the legal or regulatory basis for such a requirement.²⁹⁶ This indicates that stakeholder engagement requirements by the government at the local-level are inconsistent and not known by stakeholders, causing confusion for both communities and companies.

Consultation for environmental and social impact assessment (EIA)

Human Rights Implicated: Right to freedom of opinion and expression; right to participation; right to free, prior, and informed consent

- **Limited stakeholder consultation and engagement in EIA processes:** Some of the sites visited had recently undertaken EIAs. While this is a positive development, the field researchers observed several shortcomings concerning consultation and engagement. For example, in an area with one large-scale operation and two small-scale operations an EIA was conducted for the small-scale operations. However, because of complex ownership and operating structures of the large-scale mine, local community members were confused about whether the EIA consultation was intended to capture issues associated with the large-scale mine or not. These types of scenarios were further complicated by the unclear owner-operator structures at some sites. While operations – and therefore the EIA – might formally be the responsibility of one particular operator, the operations might in practice be carried out by another party, creating confusion and lack of clarity for local communities about which company and/or operator would even be responsible for the EIA process for a particular site. Field research found that some EIA processes had not involved any community consultation. For example, according to the operator at one site it was not necessary to consult with local communities as part of the EIA process as the operations were being conducted on designated mining land. At another site, both the company and local communities reported that the consultant carrying out the EIA had not visited local communities as part of the process.
- **Information provided as part of EIA consultations and engagement is too technical, not timely and not in the appropriate language(s):** Even at those sites that did include consultation and engagement as part of the EIA process, several issues remained. At one site where the EIA process included two public consultations, the EIA information was provided to participants only one day before the meeting, it was too technical for participants to understand, and the consultation meeting was in Burmese language with insufficient translation into relevant local languages. The additional interviews conducted by the consultants for the EIA focussed purely on environmental, and not social, issues. The consultants only spoke to the village leaders and heads of households. These examples illustrate that the process and purpose of meaningful consultation or consideration of social impacts as part of an EIA is not currently part of the mining operator mind-set or their operational practices; nor is it a part of the skillset of EIA practitioners carrying out assessments (all EIA consultancies who had carried out EIAs at the sites visited were Myanmar consultancies).

²⁹⁵ MCRB field research, 2016

²⁹⁶ Yangon consultations, October 2016

Land-related conflicts and grievances

Human Rights Implicated: Right to freedom of opinion and expression; right to remedy

- **Land-related conflicts and grievances:** The field research identified a number of instances of land-related conflicts and grievances. Some of these were caused by the lack of clarity regarding land boundaries (see further, Part 5.3: Land). For instance, at several sites community members were charged for trespassing onto paddy land which was the subject of a dispute as to whether the land was within the mining concession or not. These cases also illustrated common issues with the legal system. At one site the villagers charged were only informed about the nature of the charges after they had already been indicted. At the same site, but in another case, a farmer who had been charged with trespassing onto paddy land was acquitted as he could prove land ownership registration. However, this was only after using extensive financial resources to attend the township court for a reportedly 20 times. Furthermore, throughout the process the farmer was reportedly subjected to police intimidation. Despite being found not guilty, the extensive expenses related to the trial were not reimbursed, leaving him destitute. At another site, the local community sent a letter to a parliamentary committee expressing grievances regarding land acquisition and compensation. Subsequently, the military invited them to a meeting to discuss their demands but the complaint was not resolved or taken further. Overall, the field research findings demonstrate that where there is some response to land-related grievances by companies or the Government, this is usually extremely slow. At several sites where grievances had been raised – regarding issues such as chemical waste in paddy fields or damage to land, crops and waterways – responses came only months or years later. At one site the company responded with a payment for such damage but did not refer to this as compensation but as a ‘donation’, thereby essentially denying accountability, to the community’s anger.

Operational-level grievance mechanisms

Human Rights Implicated: Right to remedy; right to freedom of opinion and expression

- **No operational-level grievance mechanisms in place:** None of the formal mine sites visited had a grievance mechanism in place. At one site there was a phone number provided for pit owners to contact the mine operator. However, this was not for local community members to contact the mine. The company did not keep a record of the number or types of complaints made by pit owners. Furthermore, this would not constitute a grievance mechanism according to the UNGPs, which outline eight effectiveness criteria for such mechanisms, including one on accessibility.²⁹⁷ At another site there was reportedly a company communications officer whose role included receiving complaints from local community members. However, while the company claimed that all community members knew of this process, villagers reported that they did not know about this person or their role in grievance resolution. Furthermore, the communications officer was a member of a local EAO. At another site, the company said that was not necessary to have a formal grievance mechanism in place because

²⁹⁷ [UN Guiding Principles on Business and Human Rights](#), June 2011, Principle 31

there was an informal understanding with communities that the site was open to hearing complaints.

- **Low understanding of grievance mechanisms amongst stakeholders:** Overall, the field research teams noted that communities and companies were not aware of what a grievance mechanism is, or the role of such a mechanism in community-company relations.
- **Low responsiveness and effectiveness of response where grievances are raised:** Where communities had raised grievances with companies, the responses provided did not appear to be readily forthcoming or effective. In some cases, this was exacerbated further by conflicting and unclear roles between stakeholders. For example, one company responded to communities that it could not do anything about illegal logging in the area as this was the responsibility of the Forestry Department. At another site a village leader reportedly raised complaints associated with noise (interfering with children's schooling and sleep of people in communities) with the village tract administrator. This person, however, also worked as a security guard for the company and the complaint was not taken further or resolved.
- **Grievances are not raised:** At a number of sites, communities shared grievances with the field research teams that had not been raised with the relevant companies. This indicates a lack of trust between communities and companies and that there are only limited avenues to raise complaints. Such grievances related to a whole range of issues, including land, noise, dust and pollution, compensation and more.

C. Relevant International Standards, Guidance and Initiatives

Box 13: Relevant International Standards, Guidance and Initiatives on Community Engagement and Grievance Mechanisms

International Standards:

- [ICMM Sustainable Development Framework](#)
- IFC Performance Standards and Guidance Notes:
 - [PS 1 – Assessment and Management of Environmental and Social Risks and Impacts](#)
 - [PS 4 – Community Health, Safety and Security](#)
 - [PS 5 – Land Acquisition and Involuntary Resettlement](#)
- [UN Guiding Principles on Business and Human Rights](#) (Principles 29-31)
- [UN International Bill of Human Rights and Core Human Rights Instruments](#)

Guidance on Stakeholder Engagement:

- CommDev, [A Strategic Approach to Early Stakeholder Engagement: A Good Practice Handbook for Junior Companies in the Extractive Industries](#)
- ICMM, [Community Development Toolkit](#)
- ICMM, [Understanding Company-Community Relations Toolkit](#)
- IFC, [Stakeholder Engagement - Good Practice Handbook for Companies Doing Business in Emerging Markets](#)
- OECD, [Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector](#)

- Oxfam Australia, [Free, Prior and Informed Consent Guides](#) and [Strengthening Community Understanding of Free, Prior and Informed Consent, Trainer`s Manuals](#). These two resources work together to provide practical resources for trainers to help them plan and deliver FPIC training programmes.
- Shift, [Conducting Meaningful Stakeholder Consultation in Myanmar](#)
- World Resources Institute, [Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects](#)

Guidance on Grievance Mechanisms:

- CAO, [A Guide to Designing and Implementing Grievance Mechanisms for Development Projects](#)
- ICMM, [Handling and Resolving Local Level Concerns & Grievances](#)
- IFC, [Good Practice Note: Addressing Grievances from Project-Affected Communities](#)
- IIED, [Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms](#)
- World Bank, [Stakeholder Engagement and Grievance Mechanisms](#)

International Initiatives:

- [AccessFacility.org/mechanisms/all](https://www.accessfacility.org/mechanisms/all). This is a database that allows users to explore available non-judicial grievance mechanisms by using a search engine navigated through searching mechanism type, country or industry.