Cumulative & Project-Level Impacts

Conflict and Security

Myanmar Centre for Responsible Business
**A. National Context**

A significant part of Myanmar’s mineral wealth, and of its natural resources generally, is located in the borderlands, where ethnic conflict has been frequent. If such resources are not governed effectively, natural resource wealth may exacerbate conflict and undermine sustainable development.

Insecurity surrounds individual mine sites and the mining sector as a whole in Myanmar. This takes the form of armed conflict between ethnic groups and State security forces in mineral-rich border areas; and the governance (and intimidation) of civilian populations by armed groups, including the management of large, informal mining areas. In central areas of the country, with the progressive opening of Myanmar’s political and economic system, community protests against impacts of mine sites and ancillary infrastructure, such as power plants fuelling cement factories, have been observed throughout the country. This has included violations such as Myanmar police officers using white phosphorus to quell a peaceful community protest against the Letpadaung mine in Sagaing Region in 2012, and the death of civilian protester Daw Khin Win at the same site in 2014.\(^{420}\)

**Ethnic armed conflict**

Armed conflict between ethnic minority armed opposition groups in the border areas and the central Bamar-dominated Government broke out shortly after independence in 1948.\(^{421}\) In its decades-long counter-insurgency campaigns against various ethnic minority armed

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\(^{420}\) Amnesty International, *Open for Business*, 2015

\(^{421}\) Simultaneously, armed conflict began between the Government and the Burma Communist Party.
opposition groups, the Myanmar army has committed a wide range of human rights violations and violations of international humanitarian law. As troops entered ethnic minority villages, they used civilians for forced labour (particularly portering), requisitioned food and supplies, killed and tortured civilians, and forcibly displaced them. Armed ethnic minority opposition groups have also committed abuses, although to a lesser degree. Ethnic grievances have centered on these abuses, as well as the lack of self-governance and resource sharing with the central Government, discrimination and marginalisation, lack of freedom of religion, and lack of education in ethnic minority languages.

Conflict and isolation has greatly inhibited economic development in already impoverished ethnic border areas. For example, 73% of the population in Chin State lives below the poverty line, 44% in Rakhine State (though the World Bank’s reinterpretation of the data suggests a rate of 77.9%) and 33% in Shan State. The national poverty rate is 26% (the World Bank’s 2014 reinterpretation of the data recalculated this to 37.5%).

**The Nationwide Ceasefire Agreement (NCA)**

The NCA between the Union Government and eight EAOs was signed in October 2015; ten other groups declined to sign. The NCA aimed to consolidate 15 bilateral ceasefires and introduced a political roadmap and set of principles for the subsequent stage of the peace process, ‘political dialogue’. It also provided for a mechanism to jointly monitor and address ceasefire violations, which incorporates civilian monitors. A key concern and preoccupation of EAOs – including those signatories to the NCA, those who hold bilateral ceasefire agreements but did not sign the NCA, and those still currently fighting government forces – is the need for a fair agreement on how to manage the natural resources held within their territory. The NLD Government has convened two summits under its 21st Century Panglong Initiative in 2016 and 2017 but continued peace talks remain difficult for a variety of reasons. However two further groups, the Mon and Lahu, signed the NCA in February 2018, bringing the total number of signatories to 10.

Article 25(a) of the NCA also recognises for a transitional period, the *de facto* authority of armed groups in their respective – but undefined – areas, including in the areas of social and economic development. Signatories commit to work together to jointly achieve better development outcomes related to civilian health and education, environmental conservation, the preservation of ethnic cultures, and eradicate illicit drug use.

While the NCA does not mention resource sharing or the devolution of resource governance, it states that the Union Government and the individual EAO shall coordinate the implementation of tasks which are specific to the areas of the respective ethnic group in a joint manner. This may be understood as giving the EAOs greater influence over

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422 For a full discussion of the human rights situation in the counter-insurgency context, see reports from Amnesty International from 1988 – 2008, Human Rights Watch and the OHCHR Reports of the Special Rapporteur on the situation of human rights in Myanmar


424 *2015 Nationwide Ceasefire Agreement*


426 *Fresh fighting another setback to the peace process*, VOA 10 January 2018

427 *Analysis: A Win for the Peace Commission as Mon and Lahu groups sign the NCA*, Irrawaddy, 13 Feb 2018
policies that affect their respective areas of influence, not just the areas that they have military control over. Article 25(b) of the NCA states that where projects may have a major impact on civilians living in ceasefire areas, their planning should be undertaken in consultation with local communities in accordance with the EITI Standard (sic).

**EAO governance of mining activities**

During the field research, MCRB observed the resource management practices of more than 10 different EAOs as well as the Union national armed forces. The approaches EAOs took to mining governance were mixed, ranging from sophisticated and systematic rules and requirements, to ad hoc approaches. Overall, EAO governance tended to focus more on fiscal arrangements than environmental and social safeguards. However, as illustrated in Box 24, there were some systematic approaches, where EAOs clearly included environmental and social aspects in their natural resources governance practices.

**Box 24: Karen National Union (KNU) Mining Licensing Rules and Regulations**

The Karen National Union (KNU) has a number of rules and regulations that apply in the KNU-controlled areas. These include rules applicable to individuals and companies that hold a mine permit granted by the KNU. Points relevant to the management of environmental, social and human rights aspects include:

- Before initiating gold extraction activities, the permit-holder shall report to the relevant township administration office and shall extract the mineral only within the permitted/defined area;
- If other mineral resources or ancient heritage objects are found on the concession, the permit-holder shall inform the KNU Mining Department immediately;
- The permit-holder must submit a report stating the names, ages, NRC numbers and addresses of all workers employed to the KNU township administration office;
- If serious injuries or fatalities occur, the permit-holder shall inform the KNU Mining Department. Compensation must be paid by the permit-holder in accordance with labour compensation rules stipulated by KNU;
- The permit-holder must receive prior approval from the relevant KNU forestry department where any trees are to be cut on forest land;
- Any trees cut from the concession must be purchased at a price set by the KNU forestry department;
- During production, all commitments made to implement the necessary environmental conservation and protection measures, and measures preventing fire and environmental pollution, must be carried out systematically;
- The permit-holder shall pay tax to the KNU township mining committee; and
- In cases of violation of the rules, penalties will be imposed.

**Conflict minerals**

A 2015 report by the NGO Global Witness estimated that Myanmar’s jade industry may have been worth up to USD 31 billion in 2014 alone. According to the report, this sum,
equivalent to nearly half the GDP for the whole country, is currently funding conflict groups and actors, particularly in Kachin State, rather than contributing to local and national development.

While research has linked Myanmar’s jade trade to conflict and corruption, there is less clarity on the links between other minerals and conflict. Significant amounts of tin are being produced in the autonomous United Wa State Army (UWSA)-controlled enclave in Shan State, although the exact amounts are not known. There are no licences issued by Naypyidaw for the area. The production originating from this area is thought to be transported directly to refineries in China.430

Industrial minerals are generally thought to have a lesser impact on, and weaker link to, conflict situations than conventional ‘conflict minerals’ such as gold, tin and tungsten. Metals with a higher value-to-weight ratio, such as limestone, are not as easy to exploit and smuggle.431 Even so, the use of limestone products (CaO) as part of the cyanidation process for processing gold ore may mean that the exploitation of the mineral is still, ultimately, one part of a revenue stream which contributes to funding armed conflict. The limestone quarrying sector is also growing in certain post-conflict areas, particularly the karst mountains of Karen and Mon States, often with the involvement of companies linked to EAOs.432

Military-affiliated companies UMEHL and MEC are formally involved in the limestone/cement industry and tin mining, as well as other mining commodities not covered in this SWIA.433

**Legal framework relevant to illegal mining, trespassing and peaceful protests**

The 2015 amended Myanmar Mines Law sharpened penalties for subsistence miners found to be operating without a formal mine permit, resulting in longer prison terms and larger fines (see Part 2: Mining in Myanmar). In addition, the Mines Law includes provisions on trespassing onto mine concession land.

Myanmar’s criminal defamation laws were also observed to have led to violations of basic rights at more than one site visited. According to the International Commission of Jurists, the prospect of arrests, detentions, criminal trials and prison time related to the fact that defamation is a criminal, not a civil, offence in Myanmar could chill the exercise of free expression of opinion and exchange of information. In addition, the risks of violations are amplified by the fact that the Myanmar judiciary currently struggles to adjudicate such criminal defamation cases with impartiality and competence.434

Section 143 of the Penal Code pertains to unlawful assembly, section 145 to joining or continuing in unlawful assembly, and section 147 to rioting. As such, the Myanmar Penal

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432 Karen villagers pray for mountain’s protection, Karen News 29 March 2016
Code limits the right to protest. This provision was also previously applied to charge around 70 students for protesting against the operations of the Chinese-owned Wanbao Company at the Letpadaung site.435

B. Field Assessment Findings

Conflict and security related themes from the field research are outlined below.

Company-community conflict and influence of armed groups

**Human Rights Implicated:** Right to life, liberty and security of person; right to freedom of expression and information; right to freedom of assembly and association

- **Company-community conflict:** At the majority of sites visited, community members reported that there had been no company-community conflict. This was in spite of frequent reports of land seizures and community landlessness related to company operations, environmental damage and low levels of local community employment at mining companies. Company management often maintained good relationships with village leaders and elders, which appeared to contribute to maintaining peaceful relationships with communities at-large. However, at several sites, especially in villages located near large-scale mines, community members reported that they felt village leaders had too close a relationship to company management, sometimes to the point of favouring interests of the company over those of the wider community. Village leaders also often personally benefitted financially from such relationships. Mining companies were found to have aligned themselves with EAOs to gain access to mining land in conflict-affected areas. At one site, villagers reported feeling intimidated by the company due its ties with EAOs. At one large-scale processing site, the company had bought the land on which the factory was built directly from an EAO. Local communities claimed that the land that was confiscated was previously farmland.

- **Control and presence of EAOs and/or the military:** More than half of the sites visited were either entirely or partially controlled by EAOs and/or had substantial military presence in the form of military-affiliated mining companies. This created fear of these entities amongst local community members. It also reinforced a culture of commercial-EAO alliances that made villagers hesitant to voice dissent for fear of reprisal. The field research found that this also created barriers to the effective implementation of grievance mechanisms and community participation and consultation. Several instances were reported of villagers being threatened by members of armed groups. MCRB field research included visits to military-affiliated and operated companies. Near such sites, community members reported being unable to protest against, or otherwise voice dissent with regard to, company operations, due to company ties with the Myanmar army. Such concerns were especially pronounced amongst stakeholders belonging to ethnic minority groups.

- **Mine workers are unable to report concerns or disagreement with their employers:** In areas where Myanmar military troops were stationed or EAOs were active, mine workers reported that they were unable to report concerns or disagreement with their employers as such actors interacted with and protected the interests of

companies. Company representatives also indicated that they complied with the requests of armed actors out of fear of reprisals.

- **Communities are frightened of military-affiliated companies operating in joint venture partnerships with ME-2:** In one area a gold mining company operating in a joint venture with ME-2 had polluted the community water source. Villagers reported that they preferred moving away from their homes rather than raise a complaint about the pollution, which had led to illness in the community. They said this was due to a fear of ME-2, as the enterprise often recruited security staff from the Myanmar army. Community members were scared of violent reprisals if they voiced grievances. At this specific site, the security staff on-site included five soldiers who, according to community stakeholders, had intimidated local villagers living near the mine and processing sites. At another site, community stakeholders reported not understanding the relationship between operator and regulator ME-2 and the military-affiliated companies with which it operates in mining joint ventures. Small-scale companies operating in this area reported confusion about contractual relations and the split in responsibilities between mining SOEs and military-affiliated companies, pointing to a need for greater transparency as well as a clearer delineation of the responsibilities of the mining SOEs.

- **Community protests against large-scale mining companies centre on grievances over environmental damage:** In Myanmar, protesters have to apply for prior authorisation to hold a lawful public protest. MCRB field research found examples where prior authorisation was given by the township police as well as examples where such authorisation was not granted. In one case, police authorisation was given for a community affected by environmental damage caused by a mining company to organise a protest during which approximately three hundred community members participated. Community members reported that during the protest, company representatives were present and shouted at protest participants and took photos of them, but did not engage with protesters’ demands. Demands included the remediation of adverse impacts on community drinking water and demands for the systematic disposal of mine waste. In most cases, community members reported that companies had not responded to the demands made during protests.

**Community insecurity near mine sites**

- **Human Rights Implicated:** Right to freedom of expression and information; right to freedom of assembly and association; right to freedom from torture, cruel, inhuman and degrading treatment or punishment

- **Drug use leading to increased insecurity of the person – especially pronounced for vulnerable groups – and elevated levels of crime:** MCRB field research included visits to several areas plagued by high levels of drug abuse. In one such location, community members reported having apprehended and ‘arrested’ at least ten individual drug users over a two-year period. These ‘community arrests’ of drug users were reportedly carried out because community members had been unable to arrest the drug dealers. Following a community arrest, the apprehended person is handed over to the police. One village indicated that in one year, four residents were arrested, charged and sentenced for drug use, though the exact grounds on which this occurred could not be determined. As numbers of both drug users and dealers increase, community members reported that it was increasingly harder to carry out such community arrests,
especially as the price of drugs such as ya-ba (methamphetamines) and heroin had decreased. In one village tract visited, reportedly 30% of villagers were drug users and community representatives indicated that drug use had begun at the time of mining activity in the area, and increased concurrently. Many villagers were members of a minority ethnic group and the area was reportedly plagued by suicides.

- **Few reports of violent crime linked to company operations or staff:** In many communities which had experienced a large influx of migrant mine workers, there were tensions between locals and migrants, but reportedly this rarely escalated into violence. At such sites, community members reported increased incidents of theft in the area since the arrival of migrant workers. At a few sites, increased incomes related to mine labour had reportedly led to increased levels of discretionary spending, the opening of karaoke bars and more drinking of alcohol and drug consumption. In one location near a large-scale mine site, women reported feeling less safe due to the influx of male migrant workers and the recent assault of a local woman. This led the women to travel in groups to fetch water and firewood.

**Conflict between formal mining operations and informal subsistence miners**

**Human Rights Implicated:** Right to freedom of expression and information; right to freedom of assembly and association; right to freedom from torture, cruel, inhuman and degrading treatment or punishment

- **Theft of mineral concentrate creates security risks for mine staff, children and subsistence miners:** In Myanmar, tin is processed more effectively during the rainy season when water supplies do not limit companies’ ability to concentrate the ore. MCRB field research indicated that the large stockpiles which had been accumulated in the lead-up to this time led to increased rates of theft of tin concentrate near some large-scale mine sites. The operations manager of one tin mining company reported to have requested additional help from the township police department during the rainy season for this reason. Children aged 13-14 were found to have trespassed onto mine sites of large-scale mines to steal tin concentrate. At one mine, the ME-2 production monitor stationed at the mine requested the mine company security staff to not report underage trespassers to the police, due to their young age. This company instead instituted a policy whereby children had to sign a note admitting to having trespassed and attempted theft and promising not to do so again in the future. If the same children were to attempt to trespass onto the site again, however, a police report would be made. One subsistence tin miner who had been allowed to mine on the main company site in a subcontracting agreement with the company was arrested after being found to operate outside of the agreed-upon area, thereby having trespassed. The miner reported having been subject to threats and intimidation by police while being held in custody at the district court. According to the subsistence miner, the mining company was exerting pressure on the district judge to increase her sentence and to force the miner to reveal the names of other subsistence miners operating illegally on the company concession area. MCRB research found several accounts of the apprehension and arrest of children at gold mine sites. At one mine, two boys aged 13-14 trespassed onto the mine concession to sort through mine waste still containing recoverable gold. The children were apprehended by mine security staff, which according to community interviews were recruited from ‘local gangsters’. The boys were brought to the police station where
they were arrested. They were subsequently charged with theft and sentenced to one year and six months in prison, respectively. According to community members, the boys were serving their prison sentences at a regular facility housing adult prisoners, rather than a juvenile detention centre.

- **Raidson subsistence miners:** In areas with many informal subsistence miners, the township GAD was found to work in collaboration with other government agencies, including the police and ME-2, to conduct raids on subsistence miners. Stakeholders, including ME-2 staff working in a regional office, indicated that such raids were only effective at apprehending the most vulnerable groups of subsistence miners as larger-scale operators working informally were never found on the site at the time of the raid. Stakeholders attributed this to more powerful miners having been tipped off in advance by the authorities. Tools would be confiscated from poor subsistence miners and excavators might be confiscated from small-scale informal operations, but according to stakeholder interviews, machinery belonging to miners with state/region and/or Union-level connection would not be confiscated, and no fines imposed. By contrast, mines inspections, as opposed to raids on informal mines, are carried out only at mines holding permits. This is because the inspector, employed with DoM, will choose sites for inspection from a list of mines holding permits. According to industry stakeholder interviews, conducting inspections at permitted mines often entails Department staff knowingly travelling past several mines identified as not holding mine permits. The management at one large-scale site visited reported that the ME-2 mines production monitor receives a monthly bribe. In one township visited by MCRB field researchers there were several hundred informal miners but only three policemen. Field research findings indicated that a similar ratio can be found in many townships where informal mining is widespread. This illustrates the significant challenges related to the enforcement of permitting regulations, even in areas without EAO involvement in the informal mining sector.

**Illicit payments and trading flows**

**Human Rights Implicated:** Right to property; right to life, liberty and security of person

- **Insecurity of tenure and lack of access to public services is particularly prevalent in conflict-affected or post-conflict areas:** Some MCRB field research was carried out in villages in areas affected by ethnic armed conflict, where the inability of central government agencies to access locations controlled by EAOs had resulted in these villages not being 'gazetted' by the Ministry of Home Affairs, even following ceasefire agreements between armed groups and the Union Government. The lack of official gazetting led to such villages not receiving the same public services as other communities, since government agencies usually only provide services to gazetted villages. Lack of access to healthcare and primary education were cited as key concerns by community members. In two such villages, both subsistence mining communities, villagers had funded and organised schooling themselves as no access to public education was provided.

- **Unofficial taxes levied on subsistence and small-scale mine operations in at least three regions:** In these areas, there were no violent confrontations between the armed groups, miners and community members. In some areas, unofficial payments were standardised and informal taxes were paid according to the size of the operation, the
profits or production generated and the use of excavators and other machinery. In one of these states, miners were taxed on their mining activity and villagers were also asked to pay taxes on their homes and for owning a car or motorbike. In several areas, EAOs reportedly charged miners in a haphazard way, with fees and payment structures varying from year to year.

- **EAO management of mining activities in their area**: The field research found that in some areas EAOs took a systematic approach to managing mining activities (Box 24), whereas in other areas this did not appear to be the case. In one subsistence mining area controlled by an EAO, villagers had recommended to the EAO that they should establish an environmental management wing of the organisation. The villagers’ logic was that if the EAO were to impose taxes on miners in the area, some of this income should be redirected to address some of the adverse impacts of the mining activities. In this area, government agencies were not able to inspect mines or environmental conditions due to EAO control. In another state, it was found that the local EAO awarded its own mine permits and calculated a mine tax based on the size of the permitted plot. There appeared to be no systematic management or assessment prior to granting such a permit and if a group of informal miners was already mining a plot, the EAO might grant them a retroactive permit for the area and subsequently tax their activity.

- **In areas outside government control, adverse impacts of mining, including environmental damage, occur undetected**: Where EAOs were active and exercising *de facto* control, Myanmar police reported being unable to enforce any Union-level regulation of the mining industry. Mining generates an important revenue stream for EAOs and this contributes to corruption of public officials. The functioning of border checkpoints was similarly undermined by corruption, with state authorities receiving illicit payments and EAOs exerting control over commodity flows through these points.

### Security forces

**Human Rights Implicated**: Right to freedom from arbitrary arrest; right to freedom from torture, cruel, inhuman and degrading treatment or punishment; right to just and favourable conditions of work

- **Arbitrary arrests and detention**: According to interviews conducted by MCRB, violations by security forces occurring in the context of mining operations included cases of arbitrary arrests and detention, including the incarceration of children with adults and irregular trial proceedings. At the judicial level, security officers enforced Myanmar laws which limit the right to public protest. This affected communities impacted by environmental damage, and loss of land and livelihoods. There were also cases of criminal defamation levied against community members who wrote about mining-induced environmental damage, and many accounts of threats to community members challenging land seizures by companies.

- **Some companies rely on public security forces - the Myanmar military and/or police – to provide security for their operations**: Security staff at company operations frequently included retired and active military personnel, police officers, and members of EAOs. Public security provision was observed both in and outside of ethnic regions and areas, and such security staff were not always provided in response to the presence of EAOs. One company employed someone who had previously worked in security investigations for the military. Employing members of public security forces in
a private function while they are still publicly employed may jeopardise their impartiality and contribute to corruption risks. Where the security function at a company was organised via a subcontractor, the subcontracting party was always the Myanmar military, police or an EAO. Although they exist in Myanmar, no private security providers were encountered at any of the sites visited.

- **Limited planning and professionalisation of the security function in companies:** At the majority of sites visited, security staff were recruited from local communities. At nearly all sites, security staff were not given training and no site had a security management plan in place. There were accounts of security staff being drunk during working hours. As a professional group, labour conditions, rights, benefits and protections of security staff were found to be especially precarious at nearly all sites. No female security staff were encountered at any site.

C. Relevant International Standards, Guidance & Initiatives

**Box 25: International Standards, Guidance & Initiatives on Security and Conflict in the Context of Mining**

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<td>ICMM Sustainable Development Framework</td>
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<td>IFC Performance Standards and Guidance Notes:</td>
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<td>- <strong>PS 1 - Assessment and Management of Environmental and Social Risks and Impacts</strong></td>
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<td>- <strong>PS 4 - Community Health, Safety and Security</strong></td>
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<td>International Code of Conduct for Private Security Service Providers</td>
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<td>The Voluntary Principles on Security and Human Rights</td>
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<td>UN Guiding Principles on Business and Human Rights</td>
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<td>UN International Bill of Human Rights and Core Human Rights Instruments</td>
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<td>World Gold Council Conflict-Free Gold Standard</td>
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<td>Communities and Small-Scale Mining, World Bank, CommDev (2009), <em>Mining Together: Large-Scale Mining meets Artisanal Mining (Guide for Action)</em></td>
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<td>IHRB, <em>From Red to Green Flags: The Corporate Responsibility to Respect Human Rights in High-Risk Countries.</em></td>
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<tr>
<td>OECD, <em>Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.</em></td>
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<td>OECD, <em>Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.</em></td>
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<td>UN Global Compact, <em>Business for Peace.</em></td>
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<tr>
<td>UN Global Compact, <em>Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors.</em></td>
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UNDP, Women and Natural Resources
World Vision Canada, Preventing Conflict in Exploration: A Toolkit for Explorers and Developers.
Geneva Center for Democratic Control of Armed Forces and the International Committee of the Red Cross, Addressing.

Initiatives:
European Union, Crowd Management Training of Myanmar Police Force programme. This is a programme aimed at improving the human rights performance of the Myanmar Police Force and initiate the development of a police service that both respects and protects democratic rights of citizens.
ICMM, Research on Company-Community Conflict. ICMM undertook research which focused on reported incidents of company-community conflict between 2002-2013 in order to gain more knowledge of trends related to conflict between companies and communities.
ICMM Seminar, The Challenges of Security Provision and Respecting Human Rights when Mining in Conflict or High Risk Countries. This is an audio seminar available online.
UN Global Compact, Responsible Business Advancing Peace: Examples from Companies, Investors and Global Compact Local Networks. This document presents case study examples of how companies, investors and Global Compact Local Networks have used the ‘Guidance on Responsible Business in Conflict-Affected and High-Risk Areas’.
Geneva Center for Democratic Control of Armed Forces and the International Committee of the Red Cross, Knowledge Hub. A free-access website collecting guidance documents and practical tools in support to implementation of good practices on security and human rights challenges.