

Project-Level Impacts

Stakeholder Engagement & Grievance Mechanisms



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A. National Context

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Until recently citizens' rights to speak freely had been forcefully suppressed for 50 years and as a result many individuals are still reluctant, even fearful, about speaking out against the Government or military in particular. That is beginning to change. The Government has historically placed itself as the main interface between companies and communities and this approach will take time to change. Ethnic diversity, and experience of armed conflict and inter-communal violence provide different perspectives which may be difficult for outsiders to access and understand.

Freedom of Expression and Assembly

Since the reform process began in 2011 there have been significant improvements in the rights to freedom of expression, including loosening of restrictions on the media, and in peaceful assembly and the ability to stage peaceful protests.¹⁹⁹ The right to speak out is guaranteed by the 2008 Constitution, but with significant restrictions. Article 354 of the Constitution guarantees the rights to freedom of expression, peaceful assembly, and association; however exercising such rights must not contravene "community peace and tranquillity", which permits expansive interpretations that require only a low threshold for justifying infringements to the guaranteed right.²⁰⁰ Moreover, many laws which greatly restrict these freedoms have not been repealed and the authorities continue to use them to arrest and imprison people for their peaceful activities. These include but are not limited to the 1908 Unlawful Associations Law; the 1950 Emergency Provisions Act; the 1975 State Protection Law, and various articles of the Penal Code, especially Article 505(b).²⁰¹ While the vast majority of political prisoners have been released, dozens still remain behind bars and others are at risk of arrest and imprisonment under these and

¹⁹⁹ 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](#)".

²⁰⁰ Legal Background paper commissioned for IHRB.

²⁰¹ For a discussion of these and other laws, see Amnesty International, "[Justice on Trial](#)" (July 2003).

other laws. Among those still detained are many land activists, especially farmers who have struggled against land grabs.²⁰²

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 unduly onerous. Moreover, 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. In addition, Article 18 of the law acts as a significant deterrent as it provided for up to one-year imprisonment for those who demonstrate without prior permission.²⁰³ 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.²⁰⁴ However, the amended law still provides for the arrest and imprisonment of peaceful protesters.

Protests, including against private sector projects, particularly in the extractive industries, have been suppressed in the past, sometimes violently, and continue to be, with participants arrested and subjected to ill-treatment.²⁰⁵ Non-governmental organisations have reported on arrests and detentions of people protesting against the Shwe Gas Pipeline in Rakhine State during 2009 and also as recently as May 2013.²⁰⁶ In another notable example, during November 2012 the police violently broke up a peaceful protest against the Letpadaung Copper Mine near Monywa, Sagaing Region.²⁰⁷ The punishments that peaceful protesters have received for publicly opposing or demonstrating against extractives projects was raised with Government by civil society members of the emerging EITI multi-stakeholder group, and appears to have led to a lessening of arrests.²⁰⁸

Media censorship has been relaxed and since August 2012, for the first time in 50 years, there has been no pre-publication press censorship. Independent Myanmar media report regularly on criticism of the Government by civil society; demonstrations protesting against land grabs by the military and businesses; and environmental concerns. However, reporting on corruption or the military remains problematic, as shown by the arrests of journalists as recent as July 2014, some of whom were sentenced to years of hard labour

²⁰² Myanmar Times “[Despite Amnesty, Political Prisoners Remain](#)” (17 January 2014).

²⁰³ 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 etc, Chapter 3, 4.

²⁰⁴ DVB, “[Peaceful Assembly Bill passed, now awaits President’s signature](#)” (19 June 2014).

²⁰⁵ 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.

²⁰⁶ Amnesty International “[Annual Report 2010: Myanmar country entry](#)” (2010); Earthrights International, “[The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy](#)” (March 2011); Human Rights Watch, “[Burma: China-led Oil, Gas Projects Spark Arrests](#)” (11 May 2013).

²⁰⁷ Human Rights Watch, “[Burma: Investigate Violent Crackdown on Mine Protesters](#)” (1 December 2012).

²⁰⁸ MEITI, “[Final Candidacy Application](#)” (2014), p. 13.

for their reporting.²⁰⁹ Moreover, some arbitrary media laws remain on the books, including the 2004 Electronics Transaction Act. And although pre-publication censorship has been abolished, media outlets must submit their publications to the Ministry of Information after the fact.²¹⁰ The Media Law and the Printers and Publishers Regulation Bill were passed in March 2014. The vague provisions of the latter law and broad powers of a Registrar to grant or revoke publishing licenses, lead to fears of press self-censorship.²¹¹

Freedom of Association

A vibrant and resourceful 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 in May 2008, 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 been granted a greater degree of latitude by the Government and have taken that opportunity to increase their activities to help people claim their rights, including those affecting local communities.

Under EITI Requirement 1.3, the Government must commit to ensuring that civil society and companies face no obstacles to participation; refrain from restricting public debate on EITI; and respect the “fundamental rights” of civil society and companies engaged in EITI. The application noted that MEITI members have the right to communicate freely with one another, and that this was happening in practice. The draft Association Registration Law originally required all groups to be formally registered, with severe penalties for failing to do so. This was raised as a key concern and which the EITI CSO group wanted clarified 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.²¹² The website of the International Centre for Not-for-Profit Law (ICNL) provides information on laws relating to Myanmar civil society.²¹³

Corruption, Lack of Transparency and Accountability

Corruption and the lack of transparency are long-entrenched problems in Myanmar in both the Government, including the judiciary, and in business. While the Union Government has acknowledged the problem of corruption and begun to take steps to address it (see [Part 3](#) for a discussion on steps taken on corruption), it remains a major risk for companies investing in Myanmar, as it will take some time for corruption to be significantly reduced in all levels of Government. For example Coca-Cola’s report to the US State Department on its Myanmar operations noted the challenges with regard to corruption and bribery in Myanmar, and outlined the steps it is taking to combat such practices there.²¹⁴

²⁰⁹ See for example, The Irrawaddy, “[Burma Resorting to Police State Tactics’ in Unity Trial: US Official](#)” (17 July 2014).

²¹⁰ Committee to Protect Journalists, “[Burma falters, backtracks on press freedom](#)” (13 June 2013).

²¹¹ The Irrawaddy, “[Burma Clampdown Gathers Pace as Legislation Passed](#)” (17 March 2014).

²¹² DVB, “[Activists relay worries of draft association law to parliament](#)” (5 June 2014).

²¹³ ICNL, “[NGO Law Monitor: Myanmar \(Burma\)](#)” (accessed 25 July 2014).

²¹⁴ The Coca Cola Company, “[Responsible Investment in Myanmar](#)” (Dec. 2013).

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 steps to improve transparency through Government-controlled media and the President's and Ministry websites.²¹⁵ For example the Ministry of Labour, Employment, and Social Security publishes the text of recent laws and provides information about benefits;²¹⁶ and the Directorate of Investment and Company Administration's (DICA) website which contains a Myanmar Investment Guide and a list of proposals approved by the Investment Commission has recently been upgraded.²¹⁷ However, there is currently no freedom of information law in Myanmar, although civil society is advocating for such legislation. Local Government generally does not provide crucial information to communities about business operations in their areas, as revealed by the SWIA field assessments.

The previous Government was characterised by a lack of accountability for human rights violations and violations of international humanitarian law. Those who dared to make complaints 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 contradictory, which may be partially explained by the different levels of government involved in responses. As highlighted above, protesters, particularly those involved in land disputes, are still being arrested and charged for peaceful activities by local authorities. On the other hand the Union Government has responded by forming investigative bodies to deal with complaints; but without giving them powers to resolve complaints, for example on land disputes (See [Part 2.C](#) for more information on non-judicial mechanisms). For high profile incidents, the authorities have also established ad hoc commissions to deal with individual incidents, some of which have criticised the security forces. After March 2014 mob violence against international humanitarian organisations led to the evacuation of scores of aid workers from Rakhine State, the Government appointed a body to investigate the situation, which found that the security forces' response to the violence had been "sluggish".²¹⁸ A Government-appointed commission on the November 2012 Letpadaung protests also criticised the security forces' violent response, including the use of phosphorous smoke bombs.²¹⁹

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. Since the reform process began, these committees and the Myanmar National Human Rights Commission have received many hundreds of

²¹⁵ See for example: <http://www.president-office.gov.mm/en/> and <http://www.modins.net/myanmarinfo/ministry/home.htm>

²¹⁶ See: <http://www.mol.gov.mm/en/>

²¹⁷ See: <http://dica.x-aas.net/dica/permitted-investment-company>

²¹⁸ The Republic of the Union of Myanmar President's Office, "Union Government to fully Protect aid groups in Rakhine State" (8 April 2014). Available at: <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-peace-and-stability/id-3552>

²¹⁹ Charltons Law Firm, "[Letpadaung Investigation Commission Issues Final Report](#)", Issue 3 (19 April 2013).

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.

Stakeholder Engagement in Conflict-Affected Areas

There are particular challenges in conducting effective consultations in conflict-affected areas. It is important to understand the dynamics of the conflict and the key stakeholders that need to be consulted, through a conflict mapping and stakeholder analysis. This is important in identifying who is representative of constituencies in the area (but whose voices may not always be heard, such as women's groups or marginalised communities), as well as key power holders (who may not always be representative). In some cases – for example, armed group leaders – contacts may have to be established through a trusted third party, who can provide a channel of communication and/or convene meetings. In conflict contexts in particular, consultations with key stakeholders should be seen as a relationship-building exercise more than an information-collection exercise. In such areas, direct consultations with communities may be more difficult – access may be constrained, contact with communities may be mediated by a conflict party, people may be reluctant to speak openly, and if handled poorly the consultation process could put communities at risk.

In areas where there are inter-communal tensions and violence, such as parts of Rakhine State, similar challenges exist. In some cases, one community may even object in principle to consultations with another community, due to concerns that this may give legitimacy to that community and its viewpoints. Such situations need to be handled with great delicacy, and require a detailed understanding of local dynamics; local authorities are often not neutral. (See further [Part 6](#) on Region-Specific Conflict Considerations in Rakhine and Tanintharyi & Mon)

B. Key Human Rights Implications for the O&G Sector

Meaningful Engagement

- **Long-term engagement:** In such a high-risk environment as Myanmar, it is all the more important to engage with local communities early, regularly and meaningfully. Engagement clearly indicates a more in-depth and longer-term relationship with local communities than a one-time consultation around an ESIA for example. Local and foreign O&G companies may operate within communities for the next twenty to thirty years, if and when moving from exploration into development and production phases for onshore operations, and for on-shore facilities of offshore operations. Appropriate engagement from the start of that relationship matters because it: i) demonstrates respect for the community, where they have experienced either neglect or reprisals for complaining until very recently; ii) is a process for providing information to and receiving information from communities relevant to operations; iii) enables communities to raise concerns and grievances; and iv) helps both companies and communities to understand needs and expectations.
- **Independent engagement:** The formal duty to consult its citizens rests with the Government, which will play a role in implementation of mandated consultations, such as under the forthcoming ESIA regulations. A clear agreement with MOECAP, MOGE,

local government, and companies about who has responsibility for what aspect of the E(S)IA consultations and how they are made transparent will also be important. However, given the long-standing distrust between local communities and the Government and MOGE, they should not be the only conduit for engagement between local communities and O&G operators and sub-contractors. There is still a high level of fear and distrust among rural populations. Given the militarisation in parts of the country around some O&G facilities and the history of human rights abuses linked to the military in connection with some O&G facilities, the presence of military, police, or local authorities during consultations could significantly undermine open and active participation and the credibility of the consultation exercise. While changes in attitude and political reforms will take some time to filter down to local authorities, companies cannot move equally as slowly in adapting to the changes. Companies should seek to meet communities without the presence of the Government and military. In areas where there is a long legacy of mistrust between communities and the local government or companies, trusted intermediaries may be required. Companies must also be particularly sensitive to undermining or exposing human rights or land defenders to potential arrest and imprisonment

- **Engagement by business partners:** Sub-contractors are often the earliest “face” of forthcoming operations and often have a large footprint in the local community. 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 will need training and incentives/ disincentives from the earliest phase of exploration to develop a positive interface with local communities.
- **Constructive engagement:** Some Government and company officials have been observed referring negatively to the emergence of “activists” and others with “political motives” as “stirring up opposition” from the locals. However, this reflects newly empowered local communities making use of new freedoms of expression and peaceful assembly, and local and international groups working with them, to hold companies to account for negative impacts. Companies are encouraged to engage openly with these groups to understand their concerns and provide accurate information about the company’s approach and model behavior towards freedom of expression that demonstrates support for the right in law and in practice. Dealing with criticism through constructive engagement rather than unhelpful labeling, or worse, through actively undermining individuals or groups or through violence or through putting them at risk of arrest,²²⁰ will demonstrate to authorities alternative mechanisms for dealing with dissent. Where there are arrests or violence in connection with a company’s operations that violate these rights, companies will be expected to raise the issue with the Government, quietly or publicly, individually or collectively, to express their concerns.
- **MEITI as an additional outlet:** The Myanmar Extractive Industries Transparency Initiative (MEITI) multi-stakeholder group also provides a forum for companies to engage with key civil society groups working on extractives issues.²²¹

²²⁰ See the recent [report of the UN Special Rapporteur on the Situation of Human Rights Defenders](#), reporting on risks faced by land and environmental activists around some extractive projects.

²²¹ See the [Myanmar EITI website](#) for more information.

- **Engagement in conflict affected areas:** In areas where non-state armed groups operate, it is critical to engage with them and the ethnic civil society groups operating in their areas. Most of these groups have bilateral ceasefire agreements with the Government that authorise them to travel freely within the country (without arms) and meet with whomever they want. It is important to recognise that some of these groups have areas of political influence and authority that are far wider than the limited territory over which they have military control. It is also important to recognise that most ethnic border areas have never historically come under the administrative control of the central state. The larger armed groups run parallel administrations, from health and education through to land registration, forestry and revenue collection. As the de facto authority in their areas, their agreement is necessary for any activities to take place. With regard to community consultations in these areas, it should not be assumed that the armed group is representative of the views of all communities, and in some cases relations may be coercive; experienced third party facilitators will need to be engaged to ensure that effective community consultations can take place in an atmosphere where people will be safe and confident to speak freely – something that the presence of either Government or armed group representatives might hamper.

Accountability and Grievance Mechanisms

- **Establishing operational level grievance mechanisms:** Even where operations are managed well, communities are likely to have concerns about environmental, social and human rights performance. International human rights standards require access to remedy for harms, and international good practice recognises that engaging with communities early and resolving concerns (real and perceived) effectively is an essential part of operating successfully. Accessing remedies in Myanmar is very difficult if not impossible in many cases, and there is – with good cause – little or no faith that the judicial system can currently deliver this. The frustration over lack of access to effective remedy for real or perceived damages to livelihoods can increase tensions between communities and O&G operators or 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; numerous unresolved legacy issues in the sector; new opportunities to express those concerns openly; a lack of experience among 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 evident frustration with what can be a bewildering array of contractors and sub-contractors without a core focal point for engagement and grievances. At present, such grievance mechanisms are largely absent or misunderstood.
- **Effective operational level grievance mechanisms:** Such grievance mechanisms should be implemented according to the criteria established in the UN Guiding Principles on Business and Human Rights²²² and the increasing availability of good practice guidance specifically for the O&G sector (see Box 16 below). Operational level grievance mechanisms should be a part of a broader community engagement

²²² See [UN Guiding Principle 31](#).

strategy, using lessons learned from dealing with grievances to improve ongoing engagement with communities and on-going operations to avoid repeating activities that have been addressed through the mechanism and led to grievances in the first place. A grievance process can help companies better understand how O&G activities are being perceived and impacting, positively or negatively, on local communities, acting as an “early warning” system.

- **Literacy considerations:** Given the variations in literacy in communities, there should be ways of expressing views and complaints that do not rely on reading/writing and are available to speakers of ethnic languages.
- **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.

C. Field Assessment Findings

Stakeholder Engagement	
Human Rights Implicated: Right to freedom of opinion and expression	
Field Assessment Findings	
■	Communities were rarely consulted or provided information prior to the decision to develop an O&G project in their area (see further in the <i>Land Issues Project-Level Impact Summary</i>). Many communities reported that they only heard of O&G projects once construction had begun, sometimes just on the outside of the community. There were cases of company and Government surveyors walking through community villages and fields but not providing any information on the purpose of their activities when asked nor reporting back to communities with results (both before and during operations). Communities felt that if data was being collected about them, they should at least be informed of the purpose and results.
■	Given that there is little to no discussion with communities about which areas of their land would be used, there is a high risk of failing to identify, value and where possible avoid areas of particular cultural relevance to local communities that may not be apparent to surveyors.
■	Communities have had very little opportunity to provide input into O&G project planning , nor were they informed about the systems companies may have in place to avoid impacts and receive complaints.
■	There are different practices amongst operators and their sub-contractors when it comes to engaging communities. Some companies take an ad hoc approach or assign this issue to their CSR departments (often HQ-based). Other companies have set up specific village focal points for engagements and complaints, composed of local authorities, village heads and representatives, designated village representatives and company staff (see Myanmar Good Practice Example below).
■	A key challenge within Myanmar involves requirements for Government permission and/or involvement in order to engage communities directly ,

although practice varies among different operating locations. Some companies report they are unable to approach communities at all and instead have to communicate with Government or MOGE representatives as the interface while others have regular, direct engagement with communities.

- **One company was noted by communities as particularly inaccessible** to communities and the public when a local impact or problem arises, and does not provide a complaints telephone number or office location to which to direct enquiries.

Grievance Mechanisms

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

Field Assessment Findings

- It was commonly reported that **communities are reticent to complain**, especially to the Government or MOGE, or do not do so because they **think nothing would change**.
- **Few companies had grievance mechanisms**. There might be a contact to take complaints, but not always. Sometimes those responsible for community relations were **stationed in Yangon, leading to clear physical barriers for communities** to interact with such contacts. **Communities complained repeatedly of being sent from local authorities, to MOGE, to companies and back to the authorities without resolution**.
 - There were observed cases of damage to community crops or drinking ponds being compensated following community grievances to the company and resolved in a mutually acceptable manner.
 - Some companies had or were establishing focal points in local communities to act as a conduit for complaints and to help resolve complaints.
 - The growth of mobile telephony, internet access and use of social media provides a further channel for companies to engage with communities in addition to face to face contact to receive complaints, provide information and to report incidents to communities. Companies are increasingly developing dedicated webpages for environmental and social information to provide quick access to information.
- Some are hesitant to accept any compensation offered (e.g. for land, for impacts to water supply, etc) out of fear and mistrust that such acceptance would mean they were prohibited from raising issues or grievances in the future.
- There were a **few cases reported of local communities using the local courts** – and even with some success – but this was generally a mistrusted and little used route. There was one reported case of local corruption being adjudicated and enforced in the local courts, in support of local communities and unimpeded by local authorities or companies.

Myanmar Good Practice Example:

- Some companies have set up specific **village focal points or groups for**

engagements and complaints, composed of local authorities, village heads and representatives, designated village representatives and company staff, which meet regularly and proactively seek and facilitate regular community engagement.

Box 16: Relevant International Standards and Guidance on Engaging with Stakeholders, Grievance Mechanisms, and Linked Initiatives in Myanmar

Relevant International Standards:

- IFC:
 - [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](#) (especially Principles 29-31)

Relevant Guidance on Stakeholder Engagement:

- European Commission, [“Oil & Gas 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”](#)
- IPIECA, [“Community Engagement”](#) (web page)
- Shift, [“Conducting Meaningful Stakeholder Consultation in Myanmar”](#)
- World Resources Institute, [“Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects”](#)

Relevant Guidance on Grievance Mechanisms:

- European Commission, [“Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights”](#), particularly part 3.VI
- IIED, [“Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms”](#)
- IFC, [“Good Practice Note: Addressing Grievances from Project-Affected Communities”](#)
- IPIECA, [“Community Grievance Mechanism Toolbox”](#)

Myanmar Initiatives Linked to the O&G Sector:

- UK Aid, [Civil Society Strengthening Programme](#) [GB-1-202393]
- ActionAid, [Project supporting local organisations through intensive training and deployment of ‘change-makers’ \(youth leaders\) in target communities](#)