

Myanmar Centre for Responsible Business— A Pioneering Country-Based Initiative

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I. INTRODUCTION

Founded in 2013 by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR), the Myanmar Centre for Responsible Business (MCRB) in Yangon has become an important neutral platform in the country's emerging political economy. The Centre was established after assessing local needs through consultation with Myanmar and international stakeholders. It is believed to be the first such organization of its kind—one which is not only dedicated solely to human rights and business based on international standards and best practice, but is also fully operational in one specific country, creating a safe space for dialogue among businesses, civil society, and the government. The Centre has been funded by contributions from development and foreign policy budgets from the governments of the UK, Denmark, Norway, Netherlands, Switzerland and Ireland.

MCRB draws on both Myanmar and international expertise in its work. Seven of its ten core staff (as of January 2016) are Myanmar nationals, with backgrounds in business and human rights, civil society advocacy in the extractives, journalism, and the private sector. IHRB and DIHR provide expertise on international standards and links to international networks.

MCRB defines 'responsible business' as 'business activities that work for the long-term interests of Myanmar and all its people'. It has focused on responsible business conduct (RBC), rather than 'CSR', and has also sought to shift the focus of the Myanmar government and businesses (particularly Myanmar and Asian) away from 'CSR spending' to company behaviour.

A. Taking Advantage of the Right Conditions in Myanmar ...

Since the reform process began in Myanmar during 2011, the climate for responsible business has improved and the authorities now tolerate a greater degree of political and

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civil society activity. The November 2015 elections were generally regarded as free and fair, with some notable exceptions.¹ Reformers in the government have begun to liberalize the economy; recognize the relevance of human rights to business; and support the concept of responsible business. One such example is Myanmar's candidacy for the Extractives Industry Transparency Initiative (EITI), with Myanmar's first report submitted in January 2016.²

Other improvements include the adoption of new Environmental Impact Procedures;³ new labour laws which *inter alia* permit independent trade unions for the first time in 50 years; and ongoing and much-needed reform of the legal framework governing land rights, particularly for smallholder farmers.⁴

Western governments have, since 2012, suspended or lifted most economic sanctions. This has encouraged their companies to enter the market, and permitted international financial institutions such as the World Bank Group to expand or initiate operations. However, human rights risks identified at the beginning of the reform process⁵ remain, including arbitrary acquisition of land, denial of freedom of expression, imprisonment of land and labour rights activists, and concerns over complicity risks of potential business partners.

These changes have offered opportunities for MCRB. Three years on, the initial premise of a 'neutral' Centre to build knowledge, capacity and dialogue between local and international businesses, the government, and civil society remains valid. The Centre has evolved to respond to the rapidly changing environment. There have been fewer planned 'convenings', not least as Yangon and the capital Naypyidaw host too many externally driven workshops. MCRB now places more emphasis on making individual connections between businesses and civil society groups; media commentary; and rapid advocacy and policy advice to a government which has rushed through an extensive regulatory reform agenda generally lacking proper stakeholder consultation.

B. ... and the Right Conditions Globally

Governments, intergovernmental organizations, civil society and businesses themselves have increasingly recognized the importance of human rights to sustainable business operations. As a result, the UN, the International Finance Corporation (IFC), the Asian Development Bank (ADB) and industry associations among others have developed a range of initiatives, tools and principles to address the human rights challenges businesses face. These include but are not limited to the UN Guiding Principles on Business and Human Rights (UNGPs) adopted unanimously by the Human Rights Council in 2011, the IFC Performance Standards (2012), and ADB environmental and

¹ These include the disenfranchisement of hundreds of thousands of people, most notably the vast majority of Muslims in Rakhine State who self-identify as Rohingya.

² Myanmar EITI, <http://www.meiti.org/> (accessed 6 February 2016).

³ Environmental Conservation Dept, Myanmar Ministry of Environmental Conservation and Forests, www.ecd.gov.mm/?q=policy (accessed 6 February 2016).

⁴ MCRB, 'Land Briefing Paper', (March 2015), <http://www.myanmar-responsiblebusiness.org/pdf/2015-04-02-LAND-Briefing.pdf> (accessed 6 February 2016).

⁵ IHRB, 'Occasional Paper: Responsible Business in Myanmar – the Human Rights Dimension', (17 September 2012), <http://www.ihrb.org/publications/reports/responsible-investment-myanmar.html> (accessed 6 February 2016).

social safeguards. MCRB has been a pioneer in encouraging the application of the UNGPs to the business environment in Myanmar, and advocated that businesses and governments should refer to IFC Performance Standards and EHS Guidelines in the absence of domestic law and safeguards.

II. INITIAL OUTCOMES

Soon after MCRB was established, the Directorate of Investment and Companies Administration (DICA) asked MCRB to help them identify ‘a responsible business’, something which appears to have no standard definition. MCRB developed a short training course for its new staff on the various international standards and initiatives such as the UNGPs as well as sector-specific codes and initiatives including the Ethical Trading Initiative and the Voluntary Principles, and reporting initiatives such as GRI and the UN Global Compact. MCRB also suggested DICA staff should focus on researching the sustainability commitments of each company and its track record.

MCRB suggestions concerning government expectations of responsible business activity have already been adopted by the Thilawa Special Economic Zone (see below) in their Notice 4/2015 to investors.⁶

A. Sector-Wide Impact Assessments

Based on a methodology developed jointly by IHRB and DIHR, MCRB has conducted the first ever human rights-focused sectoral impact assessment, termed a Sector Wide Impact Assessment (SWIA). Four sectors were chosen: Oil and Gas; Tourism; ICT; and Mining, based on the probability of these industries’ potential growth and impacts in Myanmar.⁷

While human rights impact assessments are typically commissioned voluntarily by companies for a specific project and generally not made public (unlike environmental and social impact assessments conducted for statutory reasons), the SWIA covers an entire industry sector in Myanmar. Instead of taking the policy and regulatory framework as fixed—as a project level impact assessment would do—a SWIA analyses these and provides detailed recommendations to companies, government, and civil society on how to adapt them to reduce adverse human rights impacts.

The SWIA process, and MCRB’s role as a facilitator of dialogue, has served to initiate contacts among civil society, company and government stakeholders in the different sectors, and promoted follow-up action on community participation in tourism, grievance mechanisms, and the EIA process. One positive outcome of advocacy to government which followed on from research for the Oil and Gas SWIA was improvement in the language of Production Sharing Agreements (PSCs) signed between the government and companies during 2015. They now make explicit the need for compliance with international standards such as the IFC Performance Standards (2012) and the World Bank Group Environmental, Health and Safety Guidelines for Offshore Oil & Gas Development (2007).

⁶ Republic of the Union of Myanmar, ‘Notice to Ensure the Responsible Investment in the Thilawa SEZ’ (7 August 2015), <http://www.myanmarthilawa.gov.mm/sites/default/files/Responsible%20business.pdf> (accessed 6 February 2016).

⁷ MCRB, SWIAs, <http://www.myanmar-responsiblebusiness.org> (accessed 6 February 2016). The Oil and Gas, Tourism, and ICT SWIAs have been published; the Mining SWIA will be published in late 2016.

B. Promoting Transparency and Accountability

While foreign investors, particularly large multinationals from Western countries, entering Myanmar since 2012 have generally done so with a full suite of social performance and human rights and business integrity policies, such an approach was almost completely absent among Myanmar companies in 2013.

To incentivize Myanmar companies to consider and adopt such policies, MCRB chose to appeal to their competitive instincts, drawing on the methodology of Transparency International's 'Transparency in Corporate Reporting' (TRAC) surveys.⁸ In 2014 MCRB surveyed the websites—where they existed—of the largest 60 Myanmar companies (based on their position in the government's taxpayer lists). MCRB rated the companies on the basis of their published information on anti-corruption policies and practices, and organizational transparency. MCRB also rated them on information concerning labour, land, human rights, the environment, health and safety commitments, since these were close to MCRB's mandate and also of concern to civil society stakeholders who were consulted on the approach.

The resulting report, titled *Transparency in Myanmar Enterprises (TiME) or Pwint Thit Sa* (Burmese for 'new openings/buds'), analyzed the companies' websites on the basis of 35 questions, and then ranked them.⁹ While these surveys only assess company transparency based on what is published on their websites (where they exist), and do not measure actual performance, they have proved to be a valuable learning tool for Myanmar companies to help them understand what transparency means in practice. Moreover they led to a year-on-year improvement in transparency for the top scoring companies when the second study was undertaken (of 100 companies) in 2015.

To assist companies in developing and implementing human rights and business integrity policies and practices, MCRB has offered Myanmar companies free workshops, with presentations and discussion from civil society and business speakers. Workshop topics have included developing a human rights policy; human rights reporting (in cooperation with a Yangon consultation by the RAFI project); and operational grievance mechanisms (OGM). All presentation materials are subsequently published on MCRB's website.

Where possible, MCRB has identified good practice by local companies which can be shared with others, to encourage Myanmar companies to see good practice as something that they can achieve alongside multinational companies. The Operational-level Grievance Mechanism (OGM) workshop in June 2015 featured a presentation by Myanmar Petroleum Resources Ltd (MPRL) E & P Pte Ltd on how they had designed and operated their grievance mechanism at an oil field in central Myanmar. This OGM, which is based on a network of village-based volunteers, includes community training and information in the form of cartoons, key performance indicators for resolving complaints, and monitoring and reporting.¹⁰

⁸ Transparency International, 'Transparency in Corporate Reporting 2014, Assessing the World's Largest Companies', http://issuu.com/transparencyinternational/docs/2014_transparencyincorporatereport?e=2496456/9997410 (accessed 6 February 2016).

⁹ See MCRB, '*Pwint Thit Sa Project/TiME*', <http://www.myanmar-responsiblebusiness.org/pwint-thit-sa/> (accessed 6 February 2016).

¹⁰ Myanmar Petroleum Resources Limited, 'How companies respond to complaints and grievances – MPRL E & P Perspectives', (3 June 2015), available at <http://www.myanmar-responsiblebusiness.org/news/workshop-developing-effective-grievance-mechanism.html> (accessed 6 February 2016).

C. Engagement with Asian Companies

One of the main priorities for MCRB has been to engage with Asian companies which generally have a longer track record in Myanmar than other multinationals, particularly Chinese, Japanese, Korean, Singaporean, Thai, and Indian businesses.

MCRB has put most effort into outreach to Chinese business, with the help of the Chinese Embassy in Yangon. This engagement has been assisted by recent RBC codes for overseas investment issued by the Chinese government. Since language is often a barrier for Chinese businesses, MCRB has recruited Chinese-speaking staff. MCRB has sought to include Chinese companies in business focused and multi-stakeholder workshops, including on OGM. Some of these companies are now using MCRB as a sounding board for advice.

D. Special Economic Zones

Japanese companies and the Japanese government have increased investment since 2012, taking a lead on infrastructure, most notably in the Thilawa Special Economic Zone (SEZ) near Yangon. The Thilawa project is the first SEZ to be developed in Myanmar, with ownership shared between the Japanese International Cooperation Agency (JICA, a Japanese Government department) and a consortium of Japanese companies and the Myanmar Government and a consortium of Myanmar companies.

The SEZ is the subject of human rights legacy issues. The Myanmar authorities expropriated farmland during 1997–98 to develop an industrial zone which never materialized. Consequently farmers remained on the land, but when the SEZ project was established they were resettled and the land definitively expropriated. In addition to unresolved questions about due process, the initial resettlement resulted in substandard accommodation and adverse impacts on livelihoods, health and other rights of the project affected persons. The problems were documented by a local community group together with Earthrights International (ERI) and Physicians for Human Rights,¹¹ and a complaint submitted to the JICA Examiner (or ombudsman).

MCRB worked with the main protagonists to establish a multi-stakeholder advisory group (MSAG) comprising the SEZ Management Committee, the project developer, investor companies, members of the affected community, interested NGOs and JICA. The MSAG, chaired by MCRB, provides the opportunity for the community members and ERI to discuss with government and companies how to design an operational grievance mechanism that meets the needs of the affected communities.¹²

Given that the Myanmar government is proceeding with plans to develop further Special Economic Zones, the MSAG approach may offer lessons learned for addressing grievances.

¹¹ Physicians for Human Rights, 'A Foreseeable Disaster in Burma, Forced Displacement in Thilawa Special Economic Zone, (November 2014), <http://physiciansforhumanrights.org/library/reports/a-foreseeable-disaster-in-burma.html> (accessed 6 February 2016).

¹² MCRB, 'Background note, United Nations Forum on Business and Human Rights – Thilawa Special Economic Zone (SEZ), Myanmar, (November 2015), <http://www.myanmar-responsiblebusiness.org/pdf/2015-11-Background-Note-UN-Forum-on-Business-and-Human-Rights.pdf> (accessed 6 February 2016) and Jonathan Kaufman and Katherine McDonnell, ERI, 'Community Driven Operational Grievance Mechanisms' (2016), 1 *Business and Human Rights Journal*, 127.

E. Supporting Regulatory Reform

Hundreds of laws have been passed by the post-2010 Parliament, many of them relating to business, and others are in preparation for the new NLD-dominated Parliament which takes office in 2016.

The government's approach to consultation on these laws has been patchy. The most systematic consultation has occurred when the government has received technical assistance from development partners who are, able to resource the government to undertake it, and are more responsive to complaints about lack of transparency.

MCRB has provided inputs to relevant draft laws as well as encouraging business and civil society groups to do the same, and working with them where appropriate.¹³ MCRB has provided detailed analysis and suggestions on the draft Myanmar Investment Law and the Companies Act, both of which await the new Parliament, resulting in improvements in the subsequent drafts on responsible business conduct and corporate accountability. MCRB will continue its advocacy on these and other laws when the next parliament takes them up. All consultation inputs are published on the MCRB website.

III. CONCLUSIONS

A midterm review of MCRB undertaken by independent consultants published in October 2015 characterized its achievements as exercising 'an influence out of all proportion to its small size'. The review noted that future challenges include sustaining the current level of effectiveness and ensuring local ownership of MCRB.¹⁴

A number of factors have contributed to MCRB's success:

A. An International Consensus

- The unanimous adoption by the UN Human Rights Council of the 2011 UN Guiding Principles—MCRB's core agenda—enabled the Centre to refer to these without being challenged on whether their application was appropriate in a country like Myanmar. Large companies investing in Myanmar generally had an explicit commitment to the UNGPs and a human rights policy. Myanmar stakeholders eager to learn about international standards could recognize in the UNGPs a framework that fitted Myanmar's situation.

B. A Reforming Government

- The Myanmar government publicly stated its commitment to encouraging responsible investment. This was reiterated by the National League for Democracy (NLD) leader Daw Aung San Suu Kyi. Such commitments facilitated MCRB's entry into the country and helped it gain support from key Ministries for the SWIAs.

¹³ MCRB Submissions, <http://www.myanmar-responsiblebusiness.org/tags.html?tag=submissions> (accessed 6 February 2016).

¹⁴ Pierre Robert, John Bray, Kyi Kyi Sein, 'Myanmar Centre for Responsible Business Mid Term Review', page 3, (October 2015), <http://myanmar-responsiblebusiness.org/pdf/2015-10-MCRB-Mid-Term-Review.pdf> (accessed 6 February 2016).

C. Increased Freedom of Expression and Association

- Civil society and community-based organizations (CSOs and CBOs) had been active for many years under military rule in Myanmar, but their focus had mostly been humanitarian, social and cultural rather than advocacy and human rights. Since 2012, both the media and CSOs/CBOs have enjoyed more freedom of expression, and the government has shown more willingness to engage and involve them in policy-making for example in land policy.
- The number of CSOs focused on business and human rights issues has also grown, many of them brought together by nationwide networks such as the Myanmar Alliance for Transparency and Accountability, working on extractives and EITI, and the Myanmar Green Network. These CSOs perform a useful ‘watchdog’ function complementary to MCRB’s standards-based advocacy. MCRB has generally not positioned itself as a name and shame organization, to enable it to perform a neutral intermediary role.
- MCRB has been able to use greater freedom of expression to publish its findings, and advocate for reforms, including through the media. It has also supported CSOs help them to understand and use human rights and business frameworks and international standards, and to practice effective advocacy with business and government

D. Some Persuasive Case Studies

- MCRB’s entry into the country was preceded by two clear examples of how a company failing to engage with stakeholders, respect human rights or address grievances could lose money, involving Chinese companies investing in the Myitson dam and the Letpadaung copper mine.¹⁵ MCRB could point to these company experiences as demonstrating a clear business case for effective human rights due diligence.

E. Increased Interest from Careful and Cautious Investors

- Following the lifting of sanctions and boycotts, companies particularly from the West became interested in exploring Myanmar’s potential. Many of them have sought advice from MCRB on high-risk issues, such as land, labour and ethnic rights, and have used MCRB’s publications including its briefing papers on Land and on Indigenous Peoples.
- The high-risk nature of the country also encourages companies to share lessons learned with one another and take active steps to encourage good practice. One example is the MCRB and ILO hosting of a quarterly peer-to-peer sharing of challenges with multinationals subject to the OECD Guidelines on Responsible Business Conduct.

¹⁵ Amnesty International, ‘Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine’, (10 February 2015), <https://www.amnesty.org/en/documents/asa16/0003/2015/en/> (accessed 6 February 2016).

F. A Myanmar Expert and ‘Tri-sector Athlete’¹⁶ as Director

- Director Vicky Bowman’s two decades of Myanmar experience, including Burmese language fluency and close links with civil society, and experience in diplomacy, government, and mining have allowed the Centre access, particularly to government and business, which would be difficult for most NGOs working in Yangon’s increasingly crowded space.

G. Donor Support

- Since 2012, donors have both significantly increased their in-country programmes and recognized the importance of responsible and inclusive investment to poverty alleviation in Myanmar.

H. An Absence of Trust

- Decades of dictatorship, human rights abuses, failed socialism, and cronyism had left Myanmar with a significant lack of trust among its people, government and business. Indeed MCRB itself received feedback in its early days that it was viewed with suspicion by civil society organizations.
- Perversely, the need to address this lack of trust has offered MCRB an opportunity to be one of the few, or perhaps only organization with the positioning, knowledge, and skills to play a bridging role, using an agenda defined by international standards rather than personal history. Most of the CSOs who were initially suspicious have come to recognize that MCRB has a useful role to play.

These eight factors have contributed to the impact which MCRB has had in Myanmar. It has successfully positioned itself between the three main protagonists—government, business, and civil society, including trade unions—as a neutral but values-driven organization with an expert knowledge of responsible business. We believe that the MCRB model could work elsewhere, particularly in other similarly ‘new’ investment destinations such as Iran to guide the country to inclusive and rights-respecting growth.

¹⁶ A phrase coined by Professor Joseph Nye of Harvard Kennedy School to describe someone who is able and experienced in business, government and the social sector.