



Submission to the United Nations Human Rights Council

Universal Periodic Review Session 23: Myanmar

March 2015

In Resolution 17/4 of 6 July 2011, the United Nations (UN) Human Rights Council endorsed Guiding Principles for implementation of the UN Protect, Respect and Remedy Framework on Business and Human Rights (UN Guiding Principles). In order to encourage constructive dialogue on private sector-related issues in the UN Human Rights Council Universal Periodic Review Process, this submission addresses the extent to which the Government of Myanmar is complying with its duty to protect against human rights abuses caused by or involving private sector actors and seeking to promote policies and practices consistent with the UN Guiding Principles throughout the country.

The information below draws on IHRB's research in Myanmar, most notably the Oil and Gas Sector Wide Impact Assessment¹ published in September 2014 in association with the Myanmar Centre for Responsible Business.²

The submission is organised as follows:

Part I addresses Myanmar's relevant law and policy positions relating to business and human rights.

Part II addresses issues requiring further action.

Part III offers recommendations in particular areas of concern for follow-up action.

I. Myanmar's relevant law and policy positions relating to business and human rights

Myanmar embarked on a major political and economic reform process after the Government elected in November 2010 took power in March 2011. Since then, developments include legal and policy reform on investment, land, and labour issues; the release of hundreds of political prisoners and the Government's greater tolerance for freedom of expression; and an opening up of the country to foreign businesses and international financial institutions.

¹ Available at: <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

² www.myanmar-responsiblebusiness.org

The Government's Framework for Economic and Social Reform (FESR) sets out macroeconomic policy priorities for 2012 – 2015, to promote *inter alia* inclusive growth, stability, and poverty reduction, with the primary objective of contributing towards people centred development.³ However, the reform process has not included ratification of key UN human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Law and policy relating to labour

Myanmar has ratified three out of the eight International Labour Organization (ILO) Fundamental Labour Conventions: Convention No. 29, Forced Labour; Convention No. 87, Freedom of Association and Protection of the Right to Organize; and Convention No. 182, the Worst Forms of Child Labour.⁴ Myanmar has not ratified ILO Convention No. 169 on Indigenous and Tribal Peoples.

Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth, but the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited. The provisions of the 2011 Labour Organization Law allow the establishment of independent trade unions for the first time in 50 years. The 2012 Settlement of Labour Dispute Law provides for disputes resolution institutions and mechanisms. Other key labour laws recently enacted are the Social Security Law (2012) and the Minimum Wage Act (2013), although they are not yet fully implemented and the minimum wage rate has not yet been established.⁵

Myanmar acceded to the UN Convention against All Forms of Discrimination against Women (CEDAW) in July 1997. However, the 2008 Constitution does not include an effective constitutional guarantee of substantive equality; Article 350 of the 2008 Constitution guarantees that women have the enforceable right to the "same rights and salaries" as that received by men "in respect of similar work." The use of the term "similar work" will not achieve the same equalities outcome as the principle of equal pay for work of equal value used in CEDAW.⁶

The Government has made a public commitment to end forced labour of civilians by 2015, which has been a widespread problem for several decades, with the authorities forcing people to work for the military and on infrastructure projects. The ILO has welcomed a decrease in forced labour, but noted that the practice is continuing in some areas. A 2013 ILO report noted the increase in the number of complaints about forced labour in

³ The Framework for Economic and Social Reforms, <http://www.eaber.org/sites/default/files/FESR%20Official%20Version%20-%20Green%20Cover.pdf>.

⁴ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103159

⁵ Myanmar Oil and Gas Sector Wide Impact Assessment, p 115 and 117, Institute for Human Rights and Business (IHRB), Myanmar Centre for Responsible Business (MCRB), and the Danish Institute for Human Rights (DIHR), September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>.

⁶ Myanmar Oil and Gas Sector Wide Impact Assessment, pp 142 -143, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

association with land expropriations, with people either losing their livelihoods or being forced to work on land which they had traditionally occupied.⁷

Child labour is also widespread⁸, although the Government has stated that it will work to eliminate the worst forms of child labour since its ratification of ILO Convention No. 182 in December 2013.⁹ The Government acceded to the UN Convention on the Rights of the Child in 1991. The minimum age for the employment of children is set at 13 years, which is in line with international standards for light work, but not in line with the international standard of 15 years for regular work.¹⁰ The 1993 Child Law classifies children between the age of 14 and 17 as youths, and allows them to engage in “light duties”. However, the term “light duties” is not defined.¹¹

Law and policy relating to land

The 2008 Constitution provides that the State is the ultimate owner of land, but also provides for ownership and protection of private land property rights. Under the 1894 Land Acquisition Act, the Government has wide discretion to expropriate land “in the interests of the public” or even if “likely to prove useful to the public”. The 1894 Land Acquisition Act permits expropriation because the Government “is or was bound” to provide land under an agreement with a company, without any additional requirement of public interest. The 2012 Vacant, Fallow and Virgin Lands Management Law provides for a complicated registration process of land which the Government may classify as unused, but in fact may have long been occupied by people, which could lead to traditional land users losing their land to more powerful interests. The 2012 Farmland Law also provides for a complicated registration process for farmland, which can then be sold or otherwise transferred, which may tempt poor farmers to sell their land, potentially leaving them landless and without a livelihood.¹²

The Government has recognized the need for legal and policy reform of the cumbersome land regime, characterized by insecure land tenure for smallholder farmers (a large part of the population); lack of clarity about land use rights; outdated maps and confusion about different categories of land; and complicated land registration processes. Consultation on a new draft National Land Policy issued in October 2014 is ongoing, with the goal of a new overarching land law. However, it is not clear how the new policy and law will resolve current and past land expropriation.¹³

⁷ ILO, “Update on the operation of the complaint mechanism in Myanmar”, report of the ILO Liaison Officer to ILO Governing body”, 319th Session, Geneva, (16-31 October 2013), GB.319/INS/INF/2, Section 6, http://www.ilo.org/gb/GBSessions/GB319/ins/WCMS_222546/lang--en/index.htm.

⁸ Myanmar Oil and Gas Sector Wide Impact Assessment, p 39, pp 116 - 117, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

⁹ “Govt to Start Child Labor Elimination Policy in December”, the Irrawaddy, 18 July 2014, <http://www.irrawaddy.org/burma/govt-start-child-labor-elimination-policy-december.html>.

¹⁰ Freedom House, “The Global State of Workers’ Rights – Burma”, (31 August 2010) <http://www.refworld.org/docid/4d4fc805c.html>.

¹¹ US Department of State, “2013 Country reports on Human Rights practices, Burma, 2013 Human Rights Report”, <http://www.state.gov/documents/organization/220394.pdf>.

¹² Myanmar Oil and Gas Sector Wide Impact Assessment, pp 102 - 104, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

¹³ Land Briefing, Myanmar Centre for Responsible Business, publication forthcoming.

Other laws relating to business and human rights

The 2012 Foreign Investment Law (FIL) and the 2013 Citizens Investment Law govern investment, but the two laws are currently being redrafted to create a single law for all investors. The FIL provides for a set of incentives and prohibitions for investors who choose to apply for the optional investment permit with the Myanmar Investment Commission (MIC); the main motivation for such an application is that it allows foreigners to lease land for more than a year. The FIL supports international human rights standards by requiring the hiring and training of local workers; and requiring environmental and social impact assessments for some activities, but there is a lack of requirements for transparency in disclosing information about investment projects.¹⁴

The 2012 Environmental Protection Law is only a framework law, and must be complemented with more detailed laws and regulations. It does not stipulate whether and how infringements of the law are punishable. However, it does require the Ministry of Environment, Conservation and Forestry to establish a system for Environmental Impact Assessment (EIA). The Government has drafted EIA procedures, which have not yet been adopted.¹⁵

II. Issues requiring further action

A range of important issues in the sphere of business and human rights in Myanmar require further attention. Among them is further protection of labour rights; the resolution of land disputes and landlessness; the protection of ethnic and religious minorities from discrimination and violence; and the need for increased access to remedy, including an independent judiciary.

Labour rights

There are currently over 1,500 trade unions in Myanmar, mostly at the enterprise level, and most of them in the manufacturing sector. There have been a number of strikes of workers for higher pay in factories. Some workers have been dismissed for union activities.¹⁶

Child labour is widespread and visible throughout Myanmar in various sectors, including in teashops and construction. Children also end up as beggars on the streets, bus and railway stations and at tourist attractions. One survey found that one third of child labourers worked as street vendors.¹⁷ Children are frequently victims of economic exploitation, as employers generally pay them less despite their high contribution of labour.¹⁸

¹⁴ Myanmar Oil and Gas Sector Wide Impact Assessment, pp 41 - 44, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>.

¹⁵ Myanmar Oil and Gas Sector Wide Impact Assessment, p 58, 68, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

¹⁶ "Burma's industrial relations at a crossroads", DVB, 30 August 2014, <https://www.dvb.no/news/burmas-industrial-relations-at-a-crossroads-burma-myanmar/43596>.

¹⁷ UNICEF, "Situation Analysis of Children" (2012), p 116, http://www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf.

¹⁸ Child Rights Forum of Burma, "CRC Shadow Report Burma", (29 April 2011), http://www2.ohchr.org/english/bodies/crc/docs/ngos/Myanmar_CRFB_CRC.pdf.

Discrimination against women and girls in education and the workplace is widespread. Female students must receive higher marks in exams to enter engineering and medicine university studies than their male counterparts. Women often do not receive equal pay for work of equal value. Although the law guarantees equality between men and women, enforcement is weak and women are under-represented in government and in most traditionally male occupations.¹⁹

Land rights

Customary land use and ownership of land is a widespread and longstanding practice; yet current laws do not adequately recognize customary land tenure. Many rural people do not have sufficient documentation of the land they have traditionally used and are therefore at risk of having their land taken. Land expropriations and indebtedness have over several decades led to landlessness amongst the population.

Since the recent reform process began, there have been widespread public protests against land expropriations, including many undertaken by the Government for the private sector. Large-scale land allocation to the private sector has increased significantly in the past decade.²⁰ While some of these land takings are new, many of them originate in land expropriations under the previous military government. Some land in Myanmar has been returned to farmers and others since the reform process began. However, there are still tens of thousands of rural people who have lost their land due to expropriation. Moreover, since 2014 arrests and imprisonment of people protesting against land expropriations and other issues have increased, particularly in rural areas but also in cities.²¹

Ethnic and religious minorities

Ethnic minorities make up an estimated 30% of the population, and ethnic minority areas have a long history of armed conflict between ethnic minority armed groups and the central Government. Ethnic minority grievances have centred on a lack of self-governance and resource sharing with the central Government; discrimination and marginalisation; religious freedom; and lack of education in ethnic minority languages. Hundreds of thousands of ethnic minority civilians have been displaced in eastern and northern Myanmar as a result of armed conflict.

Ceasefires have been agreed with most of the ethnic minority armed groups, but fighting continues in the north of the country. More land is now available for commercial interests in ceasefire areas, some of which are linked to the central Government and the military. Ethnic minority armed groups also have business interests in their territories. At the same time, these areas are highly militarized, increasing risks of land expropriations by various armed groups.²² The concept of free, prior and informed consent from indigenous peoples for the use of their land and resources is increasingly understood among civil society. However,

¹⁹ Myanmar Oil and Gas Sector Wide Impact Assessment, p 121, 143, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

²⁰ OECD, "OECD Investment Policy Reviews: Myanmar 2014" (March 2014), pg. 324, <http://www.oecd.org/daf/inv/investment-policy/Myanmar-IPR-2014.pdf>.

²¹ For an example of a protestor sentenced for peacefully demonstrating about land confiscations, see "Urgent Action, Further Sentences for Protestor in Yangon", Amnesty International, 18 September 2014.

²² See "Losing Ground", Karen Human Rights Group, March 2013, <http://www.khrg.org/sites/default/files/losinggroundkhrg-march2013-fulltext.pdf>.

there is no legal or policy framework to extend and realise that right for the indigenous people in Myanmar.

Anti-Muslim sentiment and discrimination are widespread, with outbreaks of violence against Muslims in Rakhine State but also in central Myanmar. Inter-communal violence between Buddhists and the Muslim Rohingya minority broke out in Rakhine State during 2012. Almost 140,000 people, most of them Muslims, are still displaced there in very poor conditions amidst continued unrest. Rohingyas face longstanding restrictions on their movement, which prevent them from travelling in search of work.²³ Muslims face discrimination in hiring and in the workplace. Other religious minorities including Christians also face discrimination and marginalisation.

Access to remedy

The judicial system is under-resourced and lacking in independence from the executive branch of the Government. The administration of justice is subject to systemic corruption, through bribes, delays, and obstructions.²⁴ There is very little access to legal aid, making it impossible for many to afford the time and money to use the court system. The police currently lack the training and capacity to enforce the rule of law.

The Government has set up non-judicial grievance mechanisms for the public, but these are overloaded with complaints and restricted by limited mandates. The parliamentary Rule of Law and Stability Committee was formed in August 2012 for the public to lodge complaints about Government departments. A non-judicial labour dispute settlement system to resolve disputes between workers and employers is in place, but implementation is still weak due to lack of adequate knowledge about newly-enacted labour laws and labour rights in general. The ILO and the Government have agreed a complaints mechanism to allow victims of forced labour to seek redress/remedies from the authorities.²⁵

In September 2011, President Thein Sein established the Myanmar National Human Rights Commission (MNHRC), and in March 2014 the Parliament passed the Myanmar National Human Rights Commission Law. Its mandate includes receiving, verifying and investigating complaints of human rights violations and submitting reports to the President (Chapter V).²⁶ While the law provides that proposed members should have expertise or knowledge in human rights issues, it does not guarantee total independence from the Executive, which suggests the Commission is not fully compliant with the Paris Principles. The MNHRC has received hundreds of complaints, most of them about land expropriations.²⁷ In January 2015, the Commission issued a report on the security forces' handling of a December 2014 protest demonstration at the Letpadaung Copper Mine when one woman was shot dead, finding that the security forces had not followed step-by-step procedures to disperse

²³ Myanmar Oil and Gas Sector Wide Impact Assessment, pp 180, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

²⁴ See "Right to Counsel: The Independence of Lawyers in Myanmar", International Commission of Jurists, December 2013, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/12/MYANMAR-Right-to-Counsel-electronic.pdf>.

²⁵ Myanmar Oil and Gas Sector Wide Impact Assessment, pp 36 - 39, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

²⁶ The Myanmar National Human Rights Commission, <http://www.mnhrc.org.mm/en/about/mnhrc-laws/>.

²⁷ Myanmar Oil and Gas Sector Wide Impact Assessment, p 38, IHRB, MCRB, DIHR, September 2014, <http://www.ihrb.org/publications/reports/myanmar-oil-gas-swia.html>

demonstrators; and recommending an investigation and “due action taken against” responsible police.²⁸

The Parliament’s Farmland Investigation Commission, established in July 2012, has a mandate to accept complaints about land disputes and expropriations from the public and raise these with the Government. In September 2014, the Commission presented a report to Parliament, citing many layers of bureaucracy as the main cause of extreme delays in returning land to farmers, which had been taken by the Government.²⁹ The Commission has reportedly presented more than 11,000 complaints about land expropriation to the Government, but only a few hundred cases have been resolved.³⁰

Company operational level grievance mechanisms – i.e. processes that allow concerns among communities and workers to be raised and remedied at the operational level (rather than at faraway headquarters) before they escalate into full-scale human rights crises – are particularly important in Myanmar where access to remedy is weak. Some companies have established grievance mechanisms in Myanmar³¹, but many other companies have not done so.

III. Recommendations

The following recommendations are made to the Government of Myanmar in relation to the above concerns:

1. Ratify and implement the remaining five of the eight Fundamental Labour Conventions of the International Labour Organization (ILO). Ratify ILO Convention No. 169 on Indigenous and Tribal Peoples.
2. Ratify and implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
3. Strengthen the protection of workers involved in trade union activities to ensure that they do not face discrimination or dismissal by employers. Ensure that women receive equal pay for equal work and remove discriminatory requirements for women in the educational system.
4. Ensure that land reform, including the draft National Land Policy and any new land legislation, fully recognizes customary land tenure rights throughout the country and provides a mechanism for resolving on-going and past land expropriations.

²⁸ “Myanmar National Human Rights Commission Press Statement on the inquiry of riots on 22nd December 2014 at Latpadaungtaung Copper Mine Project in Salingyi Township, 15 January 2015, unofficial translation, <http://www.mnhrc.org.mm/en/2015/01/myanmar-national-human-rights-commission-press-statement-on-the-inquiry-of-riots-of-22nd-december-2014-at-latpadaungtaung-copper-mine-project-in-salingyi-township/>

²⁹ “‘Colonial style’ red tape blamed for delay in returning seized land”, Democratic Voice of Burma, 23 September 2014, <https://www.dvb.no/news/colonial-style-red-tape-blamed-for-delay-in-returning-seized-land-burma-myanmar/44391>.

³⁰ “Government accused of misleading parliament on land returns”, Myanmar Times, 20 February 2015, <http://www.mmtimes.com/index.php/national-news/13185-govt-accused-of-misleading-mps-on-land-returns.html>.

³¹ See for example The Coca Cola Company, December 2013, <http://photos.state.gov/libraries/burma/895/pdf/TCCCStateDepartmentResponsibleInvestment%20in%20MyanmarReport121213.pdf>.

5. Permit people to peacefully protest against land expropriations and other issues and ensure that they are not arbitrarily arrested for such activities.
6. Ensure that public security forces are trained in the use of arms and in protocols concerning proportionality of force, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
7. Protect ethnic and religious minorities from discrimination in law and practice, including in the workplace.
8. Ensure that ethnic and religious minorities who have been displaced by armed conflict and inter-communal violence do not lose their claims or rights to land they have traditionally occupied.
9. Require companies to establish operational grievance mechanisms to hear complaints from their workforce and from communities where they operate.
10. Include requirements for companies to assess social and human rights impacts as part of any Environmental (and Social) Impact Assessments conducted.
11. Amend laws that permit Government a wide latitude in acquiring land for use by private businesses by requiring the preparation of an expropriation law that provides for expropriation and involuntary resettlement only in cases of necessary, proportionate, narrowly construed public interest with procedural safeguards.