



Foreign direct investment in Myanmar:

What impact on human rights?

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Executive summary

Myanmar presents opportunities to build an inclusive economic system, but continues to be plagued by serious human rights challenges. The government is emerging from five decades of military rule and isolation, undertaking halting and partial reforms towards democracy, peace and a modern economy. With the beginning of reforms in 2011, Western governments lifted most of the economic sanctions and many foreign companies have taken advantage of the new business environment, the low-cost labour, abundant natural resources, geographic position, and over 50 million potential domestic consumers. During the 2014-2015 fiscal year, foreign direct investment reached a record US\$8 billion.

Last year saw a rapid increase in oil and gas projects with the award of 16 onshore and 20 offshore blocks in the space of 12 months. The prospect of cheap labour is also leading the garment industry grow rapidly. Total garment exports were valued at about US\$1.6 billion in 2014. Already, a number of European and American companies have established a supply-chain in Myanmar, and many others are considering doing so. Myanmar has also seen an unprecedented growth in international tourist arrivals and the tourism industry is becoming one of the fastest growing areas of the economy. This report focuses on the foreign investment in these three sectors (oil and gas, garments, and tourism) – the most significant ones today. It then assesses the human rights risks of multinational companies operating in Myanmar, particularly in the area of labour rights, land rights and conflict and security.

Reforms remain fragile. Widespread corruption and the absence of rule of law, arbitrary arrests, and the lack of an independent judiciary continue. Armed conflicts persist in areas of Kachin and Shan States. The situation of the Rohingya minority has deteriorated further. The evolving domestic legal framework still lags behind international standards, and the government lacks the capacity to implement new legislation. The investment surge is intensifying land confiscation and violence. There are widespread reports of land grabbing linked to the development of infrastructure projects, the establishment of industrial zones, agriculture concessions, and resource extraction projects. In 2012, the government started a process to formulate a new Land Law, but the current framework leaves workers vulnerable to forced evictions, expropriation without proper compensation. Hydropower projects such as the Myitsone and the Salween River dams, extractive projects such as the Shwe Gas project and the Monywa copper mine (comprising the Letpadaung mine)

and the establishment of Special Economic Zones, including the Dawei, the Kyaukphyu and Thilawa, have all been associated with tensions between local communities and investors over land confiscations and displacement, with little or no compensation. Protests are growing in number across the country and are often met with intimidation, the excessive use force, and arbitrary arrests and detentions.

With the passage of new labour laws in 2012, the formation of trade unions and the exercise of the right to strike were legally allowed for the first time in 50 years. In 2012, the Confederation of Trade Unions Myanmar (CTUM) was allowed to return to the country after decades in exile. It has established an office in Yangon and was registered as the first nationwide confederation in July 2015. Workers and employers are, however, still learning about their rights under the new legal framework. Collective bargaining is growing, but still relatively rare. Poor implementation of the law means that, in practice, employers can and do discriminate against workers who seek to exercise their newfound rights without consequence. Striking workers and labour activists are dismissed by employers. The procedures established by the law on the Settlement of labour Disputes has not provided adequate protection for workers and is considered to be dysfunctional.

Workers are paid extremely low wages. To meet basic living needs, they are often forced to work excessive overtime. In June, the government announced a new minimum wage of 3,600 kyats per day for enterprises employing 15 or more workers– a compromise between the 4,000 kyats advocated by the unions and the 2,500 kyats urged by business. The wage is still among the lowest in the region – on par with Bangladesh. Even then, the garment manufacturers association threatened to close around 100 factories if the minimum wage was introduced at that rate (and a few have in fact closed). The new wage rate is an improvement, though still below a wage on which a worker can meet his or her basic needs. It remains to be seen whether the new rate will be paid, and whether the government will effectively enforce it. The large influx of foreign money and consequent pressure to keep wages low and increase productivity levels combined with a weak regulatory framework risk exacerbating labour and union rights abuses.

There are serious risks that Myanmar's natural resources and labour will only benefit privileged domestic interests and foreign companies, while disadvantaged communities will suffer the negative impacts of poorly regulated business

Methodology

The findings and recommendations of this report are based on research and interviews conducted from December 2014 to April 2015 in Yangon, Myanmar. The report principally draws from information provided by the CTUM, an ITUC-affiliated union, and other local trade unions, several local and international civil society organisations, the ILO and other intergovernmental organisations, governmental bodies, companies and the media.

The sections that profile some of the major multinational enterprises operating in the garment, extractive and tourism sectors are based principally on responses provided by over 60 companies to the Business & Human Rights Resource Centre's project on tracking foreign investment in Myanmar.¹ Enterprises were asked, among other things, to disclose

information on the nature of their investment in Myanmar, including the geographic areas and communities they will affect, whether they have Myanmar-specific policies to prevent their business activities from causing or contributing to adverse impacts on human rights, and whether they have consulted with workers and unions in carrying out due diligence. Based on each company's sector, companies were also asked specific questions, for example about their supply chains, their grievance mechanisms, or about policies on freedom of association and collective bargaining, workplace health and safety, living wages, child labour, land rights, and resettlement. The report focuses on enterprises based in the European Union and the United States which are investing in Myanmar – either as a direct investment, like in the tourism or extractive sectors, or with a supply chain in Myanmar, such as international apparel brands.

Background

After President Thein Sein came to office in 2011, initial reforms – the release of hundreds of political prisoners, the passage of laws easing media restrictions, the promotion of foreign investment, the amendment of labour laws and the promise of free and fair elections in 2015 – prompted “Western” governments to lift most of the political and economic sanctions imposed on Myanmar.

Despite some positive developments, reforms are far from complete and appear fragile. Last November, opposition leader Daw Aung San Suu Kyi sought to temper any “over-optimism” over Myanmar's reform process and said that the country had not made any real reforms in the last two years.² On the 2014 Fragile States Index, Myanmar is still ranked among the countries under “alert”.³ Recent submissions to the Universal Periodic Review – scheduled for Myanmar in November 2015 – point to the lack of progress and that most of the government's human rights commitments, especially in the area of independence of the judiciary, the resolution of armed conflict, and protection of land rights, have not been met.⁴ The dissatisfaction on the current state of reforms was explained at the EU Parliament last November when it received civil society testimony in the context of its negotiation of a bilateral investment treaty – something then EU Trade Commissioner Karel de Gucht claimed “could become an important accelerator for the reform process in Myanmar.”⁵

As the world watches Myanmar's reforms, whether real or perceived, there is growing scepticism among civil society about their impact on the lives of ordinary people. Poverty is endemic. The investment surge is intensifying land confiscation and violence, particularly in ethnic areas and for the development of industrial zones, agricultural plantations, and Special Economic Zones (SEZs). Especially in the context of the general elections scheduled for November 8th, pros-

ecution of human rights defenders and land rights activists continue as a worrying trend. In the foreword to a recent report, Tomás Ojea Quintana, the former Special Rapporteur on the situation of human rights in Myanmar, alerted of the growing trend to constrain and suppress the rights and freedoms of those who work for the observance of human rights in Myanmar:

“In political terms, the most dramatic consequence of this recrudescence of persecution is to exclude civil society from the debate about the new political, social and economic framework to be established in Myanmar.”⁶

So long as these problems persist, it is unlikely that business operations can contribute fully to the government's goal of inclusive and sustainable development.

Trends in foreign investment in Myanmar

Since 2012, with the removal of economic sanctions in place since the late 90s, multinational companies' interest in investing in Myanmar dramatically rose. Business opportunities are obvious: cheap labour, abundant natural resources, underdeveloped tourism, proximity to a fast-growing economic region, unique geographic position between China and India, and over 50 million potential domestic consumers. Major corporations from the EU and the US, as well as Asia, have announced their intention to return to Myanmar or, to invest for the first time, and many have already done so. Foreign Direct Investment (FDI) inflows are growing and increasingly diversifying by country and by sector. The Department of Investment and Company Administration (DICA) is overwhelmed with visiting delegations of potential investors, and the Myanmar Investment Commission (MIC), which gives permits to foreign companies, is facing growing demands.

To get a sense of the pace of change in economic activity, from 1988 to 2012, only 477 foreign companies invested in Myanmar, with a total FDI of US\$4.1 billion. In the past year alone those figures have doubled. During the 2014-2015 fiscal year, foreign direct investment reached a record US\$8, and 895 companies coming from 38 countries have already invested in the country.⁷ In this fiscal year, growth was estimated at 7.7 percent and it is likely to continue. Government figures show an astounding US\$2.2 billion worth of foreign direct investment in April, the first month of this fiscal year – 2 billion of which is in the oil and gas industry.⁸ The 2015 Asian Development Outlook forecast growth to accelerate to 8.3 percent in 2015 and 2016.⁹ The Asian Development Bank (ADB) expects Myanmar to experience some of the region's fastest growth rate of 7 to 8 percent per year in the coming decade. The country "could become one of the next rising stars in Asia if it can successfully leverage its rich endowments...for economic development and growth", according to the bank.¹⁰ The government's National Planning Act, approved by President Thein Sein in April, surpassed even the most optimistic expectations and estimates an economic growth of 9.3 percent for 2015-16.¹¹

China has long been a key player in the Myanmar economy and has topped the list of foreign investors for decades. While overall China still represents the biggest investor, for this fiscal year that place has been, at least on paper, overtaken by Singapore, which also has the highest number of companies investing in Myanmar (154 companies). Singapore-listed companies comprise more than half of the investment volume in 2014-2015, with a combined total of US\$4.2 billion.¹² This is not, however, a reflection only of Singaporean investments, as companies from different countries are based there for tax reasons. Media reported that the large volume of investment channelled through Singapore is partially the result of attempts by some US-listed

companies to bypass remaining economic sanctions and US sanctions against "crony" businessmen linked to the military past abuses.¹³ The UK tops the list of Western foreign investors, followed by the Netherlands, France and Canada.¹⁴

Foreign investment as March 2015: 10 top countries¹⁵

COUNTRY	NUMBER OF COMPANIES	US\$ BILLION
CHINA	94	14.7
THAILAND	84	10.2
SINGAPORE	154	8.8
HONG KONG	102	7.1
UK	80	4.0
SOUTH KOREA	113	7.3
MALAYSIA	50	1.6
VIETNAM	8	0.7
THE NETHERLANDS	11	0.5
FRANCE	4	0.5

Energy, oil & gas

The energy, oil and gas sectors are still the main driver of foreign investment in Myanmar with US\$3.2 billion in FDI for 2014-2015.¹⁶ In April alone, government figures show that US\$ 2 billion in foreign direct investment were allocated to the industry.¹⁷ There are 141 oil and gas registered foreign companies, including new investors from Western countries. BG Group (UK), Chevron (USA), Eni (Italy), and Shell (Netherlands) are among the new awarded on onshore and offshore blocks, while Total (France) continues to operate the Yadana gas fields.¹⁸

Manufacturing

Manufacturing represents the third largest sector and the first in terms of number of registered foreign companies (476 companies). The sector is growing fast and attracted US\$1.5 billion of FDI in 2014-2015. On average, every week in 2014 a new factory opened in Myanmar.¹⁹ With workers earning among the lowest wages in all of Asia, manufacturers, especially in the garment sector, based in other parts of the regions where wages have been on the rise are looking to relocate to Myanmar. Many top international apparel brands including Adidas Group (Germany), Gap (USA), H&M (Sweden), Marks and Spencer (UK) and Primark (UK) now source their products from factories in Myanmar.²⁰

Telecoms

The telecommunications sector saw foreign investment rise to US\$ 1.6 billion in 2014-2015 with the granting in 2014 of licenses to Telenor (Norway) and Ooredoo (Qatar) to provide telecoms services in Myanmar.²¹

Real estate, tourism & hotels

Real estate and tourism and hotels were the fourth and fifth sector receiving most FDI in 2014-2015, with US\$780 million and US\$357 million respectively. Growth in the sector was boosted by a surge in tourist arrivals from 2 million in 2013 to over 3 million in 2014. Hilton Worldwide (USA), Accor (France), Kempinski Hotels (Switzerland) and Starwood Hotels & Resorts Worldwide (USA) are all managing hotels in Myanmar.²²

Foreign investment as March 2015: 10 top sectors²³

SECTOR	NUMBER OF COMPANIES	US\$ BILLION
ENERGY	8	19.3
OIL & GAS	141	17.5
MANUFACTURING	467	5.4
TELECOMMUNICATIONS	28	3.1
MINING	70	2.8
REAL ESTATE	29	2.2
HOTEL & TOURISM	57	2.1
LIVESTOCK & FISHERIES	34	0.4
AGRICULTURE	17	0.2
INDUSTRIAL ESTATE	3	0.1

See Annex I for a full list of foreign companies investing in Myanmar.

Myanmar legal and judicial framework

The current legal framework in Myanmar is the product of its colonial past, the post-independence military rule, and the reforms undertaken since 2011. The result is a unique combination of customary family law, codified British common law, and the new. Half of the 800 laws in Myanmar, including the existing Penal Code, were enacted and implemented by the British in colonial India between 1885 and 1948. Some key laws relevant to business and human rights, such as the Land Acquisition Act or the Company Act, date back to those times. During the military rule that followed independence in 1948, other laws were enacted, but mostly in the form of martial decrees without public consultation and in breach of international standards. Despite Myanmar being a common law country, however, jurisprudence has not been developed and legal precedents have not been used since the 1950s.²⁴ The main body of law is the “Burma Code”, whose general provisions apply when there is no law regulating a particular matter, and which has not been updated since 1954.²⁵

In 2008, the Myanmar government adopted a new constitution, which provides enforceable guarantees for a number of rights and freedoms. Some, however, include limitations contrary to international human rights standards. For example, citizens have the right to freedom of expression, assembly and association if not contrary to “law and order, community peace and tranquillity, or public order and morality”.²⁶ What constitutes morality is not defined. Some rights are granted to all persons, while others to “citizens” only – including the right of non-discrimination, freedom of movement, of expression, of assembly and association, the right to property, health, education, just and fair conditions of work, and privacy.

Existing law	Draft law
Constitution (2008)	
Foreign Investment Law (2012)	Investment Law
Myanmar Citizens Investment Law (2013)	
Farmland Law (2012)	
Land Acquisition Act (1894)	
Vacant, Fallow and Virgin Land Law (2012)	
	Land Use Policy
Labour Organization Law (2011)	
Settlement of Labour Dispute Law (2012)	
Minimum Wage Law (2013)	
Social Security Law (2012)	
Factory Act (1951)	Occupational Health and Safety Act, Factory Act Amendment Bill
Special Economic Zone Law (2014)	
Company Act (1914)	Company Act
Environment Policy (1994)	
Environmental Conservation Law (2012)	Environmental Impact Assessment Procedures

The Foreign Investment Law (2012)

The 2012 Foreign Investment Law (FIL) sets out the regulatory framework for investment that is not 100% owned by Myanmar citizens.³² The OECD considered the enactment of the law “a milestone towards a more open and secure legal environment for investment.”³³ The FIL and the Foreign Investment Rules (FIR) set out incentives for foreign companies and joint ventures to apply for an investment permit issued by the Myanmar Investment Commission (MIC).³⁴ Benefits for companies with a MIC-issued permit include tax exemptions and long-term use or lease of land with terms of up to 50 years. The Directorate of Investment and Company Administration (DICA), with the assistance of the World Bank’s International Finance Corporation, is drafting a new investment law, which will replace the FIL and the 2013 Myanmar Citizen Investment Law. After pressure from civil society organisations, DICA opened the process to public consultation – the IFC had previously consulted only private sector actors, selected parliamentarians and some government departments. The draft provides expansive investment protections that do not require corresponding responsibilities on investors and equivalent protective measures for the people of Myanmar. The draft law removes all of the public interest elements for both foreign and domestic investors, and contains no reference to international human rights law. In particular, it does not include provisions with respect to environmental damages caused by projects and land use.³⁵ Further, the draft law gives investors the right to challenge new policies or laws in domestic courts and possibly in international arbitration. It entitles foreign investors to full compensation if Myanmar government regulations impact their profits. In effect, investors’ interests become legally protected, while the people of Myanmar must rely on the underdeveloped and dysfunctional domestic legal system.³⁶

“Establishing a legal and regulatory framework for investment provides important momentum to building a functioning judiciary in Myanmar. Under the draft Investment Law, however, the foreign investor is able to choose the venue in which to adjudicate the rights granted by the law,” said Daniel Aguirre, International Legal Adviser of the International Commission of Jurists (ICJ) Myanmar office. *“Granting foreign investors access to extrajudicial grievance mechanisms and international dispute resolution mechanisms reduces the impetus to reform and develop the national legal system.”*

International human rights commitments

Myanmar has yet to become a party to most of the international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention Against Torture and five of the eight fundamental ILO Conventions. In July the government signed the International Covenant on Economic, Social and Cultural Rights.

Core UN Treaties

International Covenant on Civil and Political Rights (ICCPR) (1976)	NOT SIGNED
First Optional Protocol to the ICCPR (1976)	NOT SIGNED
Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (1991)	NOT SIGNED
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976)	SIGNED IN 2015
Optional Protocol to the ICESCR	NOT SIGNED
International Convention on the Elimination of All Forms of Racial Discrimination (1969)	NOT SIGNED
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981)	SIGNED IN 1997
Optional Protocol to the CEDAW (2000)	NOT SIGNED
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987)	NOT SIGNED
Optional Protocol to the CAT (2006)	NOT SIGNED
Convention on the Rights of the Child (CRC) (1990)	SIGNED IN 1991
Optional Protocol to the CRC on the involvement of children in armed conflict (2002)	NOT SIGNED
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2002)	SIGNED IN 2012
Optional Protocol to the CRC on a communications procedures (adopted in 2011)	NOT SIGNED
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2003)	NOT SIGNED
Convention on the Rights of Persons with Disabilities (2008)	SIGNED IN 2001
Optional Protocol to Convention on the Rights of Persons with Disabilities (2008)	NOT SIGNED
International Convention for the Protection of All Persons from Enforced Disappearance (adopted 2007)	NOT SIGNED

Fundamental ILO Conventions	
Forced Labour (n°29) (1932)	RATIFIED IN 1955
Freedom of Association and Protection of the Right to Organize (n°87) (1950)	RATIFIED IN 1955
Right to Organize and Collective bargaining (n°98) (1951)	NOT RATIFIED
Equal Remuneration (n°100) (1953)	NOT RATIFIED
Abolition of Forced Labour (n°105) (1959)	NOT RATIFIED
Discrimination (Employment and Occupation) (n°111) (1960)	NOT RATIFIED
Minimum Age (n°138) (1976)	NOT RATIFIED
Worst Forms of Child Labour (n°182) (2000)	RATIFIED IN 2013

Access to remedy

The Myanmar government has for a long time lacked accountability for human rights violations and failed to provide access to effective remedy for victims of human rights abuses, including when perpetrated in association with business activities. Since the reform process began in 2011, there has been increase in calls by civil society organisations to provide redress for corporate human rights abuses, particularly in relation to land grabs and forced relocation, environmental damages, and labour rights abuses. The government's response has been poor. The government has formed the Myanmar National Human Rights Commission, a number of parliamentary committees and investigative bodies to deal with complaints and, for high profile incidents, ad hoc commissions to deal with individual incidents. These bodies, however, lack real powers to resolve disputes and have proved ineffective. The judicial system remains weak, and human rights defenders and protesters, particularly those involved in land disputes, are still being arrested and charged for peaceful activities.³⁷

Under President Thein Sein, the government has recognised “the lack of effectiveness and predictability of the judiciary”⁴⁰ and started a process of judicial reforms. The 2015-2017 strategic plan adopted by the Supreme Court identified as priorities enhancing public trust in the judicial system and public access to justice, and adjudicating cases fairly and speedily.

Myanmar National Human Rights Commission

The Myanmar National Human Rights Commission (MNHRC) was established in 2011 by presidential edict with the mandate “to promoting and safeguarding the fundamental rights of citizens.”³⁸ It was created through an executive order and as such lacks independence from the president. The presidential edict establishing the MNHRC contained a list of members, but said nothing about its composition, procedures, funding, or the ways in which its responsibilities were to be discharged. Three years later, in May 2014, the Myanmar National Commission law was enacted.³⁹ The law, however, does not guarantee independence from the government and in particular, the president's office, and the selection process does not include adequate consultation with civil society. The Commission's legal basis, therefore, diverges from the Paris Principles and as a consequence the MNHRC is not accredited to work independently with the UN Human Rights Council.

Significant obstacles, however, remain. The Myanmar judicial system lacks impartiality, independence, and accountability. This is due to the control of the executive over courts, and systemic corruption in the administration of justice resulting in delays, obstructions, and the unfair dismissal of cases submitted by poor and politically disempowered people.⁴¹ The Constitution states the separation of legislative, executive and judicial powers, but this exists only on paper. The President has a broad power to appoint the judges of the Constitutional Tribunal, the Supreme Court, and the high courts. There is no Ministry of Justice. Judicial independence is undermined by the executive power's undue influence and interference, especially so in politically sensitive cases; judges render decisions based on orders coming from government and military officials.⁴² In addition, the cost and length of judicial processes and the legal aid system make it practically impossible for many human rights victims to access formal judicial remedies. As a result of the corruption and lack of independence of the judicial system, victims of human rights abuses rarely go to courts, but are referred instead to more accessible religious institutions and local level dispute resolution mechanisms, such as village leaders and elders' councils.⁴³

Key human rights impacts

Relevant lessons can be drawn from an earlier attempt in the late 1980s to open up the country to foreign investment. Investments by multinational companies, often in joint ventures with military-owned companies, especially in the extractive and energy sectors, provided little benefits to local populations and were often involved in human rights abuses, mostly as a result of land clearance and resettlement by the government and the provision of security services by the military. Human rights violations included forced labour, land confiscation and forced evictions, harassment and intimidation, arbitrary detention and torture. These allegations led to consumer and shareholder boycotts for foreign investors associated with such projects, as well as lawsuits in home or third country jurisdictions – such as the landmark cases against Total and Unocal before courts in the US, France and Belgium. Faced with reputational risks and increasingly restrictive sanctions by Western governments, several investors ultimately withdrew from Myanmar or abandoned plans to invest.⁴⁴

The opening of the market again in 2012 led to many civil society organisations warning that history could repeat itself. Human Rights Watch, for example, commented that new investments moving into Myanmar risked contributing to rights abuses and undermine any reform.⁴⁵ Freedom House argued that there was “a direct correlation between foreign investment and human rights abuse in Burma, particularly in the resource-rich ethnic minority areas”.⁴⁶ Of course, the context at both the national and the international levels is different from what it was 25 years ago. Home governments and companies are more aware of the risks of investing in weak governance zones.⁴⁷

There have been significant changes in international expectations of what constitutes responsible business behaviour. The UN ‘Protect, Respect Remedy Framework for Business and Human Rights and the UN Guiding Principles on Business and human rights have changed thinking about business behaviour and ‘corporate social responsibility’. Among the most important ideas is that the roles of the state and of business enterprises are different and independent of each other. States cannot use the power of business as an excuse to not do their duty to protect human rights. Businesses cannot use the failure of the state to protect as an excuse to avoid their responsibility to respect human rights. Many of the most important instruments and initiatives have been revised and updated in the light of the UN Framework and the UN Guiding Principles for Business and Human Rights. Of particular note is the OECD Guidelines for Multinational Enterprises which now incorporates all of the most important concepts in the UN Framework and the UN Guiding Principles.

The international framework related to states’ obligation to protect human rights against corporate abuses is stronger, with the adoption of the Maastricht Principles on Extraterritorial obligations of states in the area of economic, social and cultural rights, and General Comment 16 on state obligations in relation to business impacts on the rights of the child.

Reports on how business activities in Myanmar are linked to serious rights abuses – including violence, land grabs and labour-related abuses – come out on a regular basis. Yang-hee Lee, the current Special Rapporteur on the situation of human rights in Myanmar, submitted her report to the Human Rights Council in November 2014 saying she was “struck” by the information received regarding the impact of large-scale development projects, particularly on vulnerable groups, such as the rural poor, displaced persons and returnees, ethnic communities and children, as well as women in vulnerable situations.⁴⁸

Amnesty International recently issued a report alleging that foreign mining companies have profited from – and in some cases colluded with – the government in serious human rights abuses and illegal activity around the Monywa copper mine complex, now operated by Chinese company Wanbao.⁴⁹ Community and nationwide protests sparked by allegations of land confiscations and environmental harm in connection with the mine led to suspension of operations, violence, and costly and significant reputational harms for the companies involved. A recent Al Jazeera documentary showed evidence that child labour continues in Myanmar, with children working in shops and factories for long hours and meagre wages.⁵⁰ Also recently, around 200 workers protested against a local subsidiary of Total over significant job losses and low compensation in an offshore gas project that has been in operation for more than a decade.⁵¹ Prosecution of human rights defenders and land rights activists continue as a recent report by the Assistance Association for Political Prisoners and Burma Partnership show.⁵²

An area of major concern involves land acquisition for large-scale investment projects. Land rights are not well established and populations living or working on the land have protested over forced evictions, loss of livelihoods, inadequate consultation and compensation. These cases are usually linked with agribusiness, hydropower, extractives, and the development of special economic zones. For example, the development of the Thilawa Special Economic Zone, an industrial complex near Yangon managed by the Japan International Cooperation Agency (JAICA), has already displaced thousands of residents to substandard relocation areas.⁵³ Protests and formal complaints against JAICA have not changed the government and investors’ direction, and the newest Kyaukphyu Special Economic Zone, being developed on an island off Rakhine State, is now displacing local communities without proper compensation.⁵⁴ The ADB is optimistic instead, and in relation to “risks that may limit [Myanmar] progress”, it says that “[l]uckily, lessons of economic growth and development are abundant in Asia” citing China, Indonesia, Malaysia, Thailand, Vietnam, and Cambodia as examples.⁵⁵ From a human rights perspective, those are exactly the models of development struggles with limited ability to endorse responsible investment that Myanmar should not follow.

Labour

For roughly 50 years, independent trade unions were prohibited, strikes were banned, employment protections limited and forced labour pervasive. Myanmar has begun to update its labour laws. In 2012, the Labour Organisation Law and the Labour Dispute Settlement Law came into force; workers were at last allowed to organise and form trade unions and undertake lawful industrial action.⁵⁶ However, poor implementation of these laws mean that, in practice, employers who choose to discriminate against workers who seek to exercise their rights can do so with impunity. Workers and labour activists are threatened, intimidated or dismissed by employers.⁵⁷

The increasing use of temporary workers and labour contractors, as well as inadequate enforcement by government of new laws, risks replacing military-extracted forced labour with new forms of labour exploitation.⁵⁸ Additionally, extremely low wages and poor working conditions can contribute to industrial and civil unrest – particularly if workers perceive that they are not benefitting from foreign investment or rapid economic growth. Workers are frequently required to work in excess of the number of hours legally permitted and wages are low. Myanmar is ranked in several indexes as one of the lowest cost economies in the world. But the cost-competitive labour market is blighted with social and compliance risks.

Trade union rights still violated

As noted above, new labour laws were adopted in 2012. In September 2012, the CTUM (formerly the Federation of Trade Unions Burma) and its leaders were allowed to return to the country after decades in exile and to continue their trade union activity.⁵⁹ CTUM General Secretary Maung Maung established an office in Yangon and now the Confederation counts over 630 affiliated unions with 44,886 members, the largest trade union confederation in the country.⁶⁰ It was registered as the first (and still only) nationwide confederation in July 2015. There are currently about 1,500 trade unions in Myanmar, mostly at the enterprise level, and most of them in the agriculture and manufacturing sector.⁶¹ The rapid opening of industries in Myanmar comes at the time when workers are becoming permitted for the first time in decades to form legally recognised trade unions, to collectively bargain and to strike. However, obstacles to the exercise of these human rights are numerous.

Freedom of Association

The new laws, while a meaningful improvement over the previous ban on union activity, contain several elements restricting union activity, in contravention of ILO Conventions Nos. 87 and 98. For example, Article 4(a) of the Labour Organizations Law requires both a minimum of 30 workers to form a basic labour organisation in the same trade or activity as well as a recommendation of 10 per cent of the workers. In large enterprises, this two-pronged requirement could require a minimum initial membership of several hundred workers.⁶²

Articles 4(b)-(e) sets out how trade union organisational structures are to be formed. The law authorises “basic” level unions, township level unions, regional or state level unions, federations and confederations. The law fixes requirements

for the amount of support that every higher level of organisation must have from the next lower level of organisation. With the exception of confederations, each level must have support of at least 10% of all trade union organisations at the next lower level. Confederations must be supported by at least 20 per cent of the existing national federations. At all levels, unions can only organise members in the same trade or activity. The terms “trade or activity” have also been interpreted narrowly, prohibiting workers in similar occupations from belonging to the same union. These restrictions are inconsistent with the basic principles of freedom of association.⁶³ The government must adopt a law which allows workers to set up organisations as they choose.

While Article 44(d) of the Labour Organizations Law prohibits dismissal of a worker for membership in a union for the exercise of trade union activities or a strike, it does not clearly prohibit other forms of discrimination or retaliation (such as forced transfers, a common problem).⁶⁴ Also, the law does not provide clear protection to workers seeking to form a trade union. Nor does it prohibit discrimination in hiring (e.g., blacklisting).⁶⁵ The law must clearly prohibit all forms of anti-union discrimination and apply this prohibition at all stages. The law should also provide additional protection from dismissal for union founders and leaders.⁶⁶

The penalties for employer violations of the Labour Organizations Law and Settlement of Labour Disputes Law are far too low. In the Labour Organizations Law, if an employer undertook an illegal lockout in a public utility or dismissed a worker for membership in a labour organisation, the exercise of organisational activities or undertaking a legal strike, among other offenses, the employer could face a fine between 0 and 100,000 kyats (68 Euros). It is also possible that in place of the fine, or in addition to it, the employer could face up to one year imprisonment. While imprisonment could be dissuasive, the law allows for the government to impose a fine only, which even at its maximum level is extremely low. No employer has received a penalty of imprisonment under the law.⁶⁷

In addition to the legislative changes, there remain serious problems with the application and enforcement of the law. Though required to act on a registration application within 30 days, registrars can take significantly longer, or invent new requirements not found in the law or rules.

The CTUM also reports that workers lack knowledge on the role of trade unions, trade unions’ lack of resources, training and understanding of the laws, and trade union leaders’ lack capacity in industrial negotiations and collective bargaining.⁶⁸

“The majority of workers still don’t understand the responsibilities of the unions, their members and the executives,” said Maung Maung, CTUM Secretary General.

Collective Bargaining and Dispute settlement

The Settlement of Labour Disputes Law refers to collective bargaining but in fact does not provide for the requisites for collective bargaining. The law contains no provisions on the 1) Duty to Bargain in Good Faith; 2) Period for Bargaining; 3) First Contract Arbitration; 4) Levels of Negotiation; 5) Extension of Collective Agreements; 6) Registration of Collective Agreements; and 7) Enforcement of Collective Agreements.

Chapters VIII and IX of the Settlement of Labour Dispute Law do not provide a clear statement that failure to respect an order of the arbitration council is prohibited. This is a constant problem, especially with regard to orders of reinstatement.

An employer who violates the law faces fines between no more than 30,000 kyats (20 Euros) (illegal lockout) and a minimum of 100,000 kyats (68 Euros) (failure to negotiate and coordinate regarding a complaint; altering the conditions of service of a worker involved in a dispute; failing to abide by an agreement concluded before the conciliation body; failing to produce documents or to appear before an arbitration body or tribunal). While the law provides that the penalty could exceed 100,000 kyats, it would have to be significantly higher to have a dissuasive effect. We have yet to see dissuasive penalties applied. The law must be amended to penalise with dissuasive fines and/or other penalties (imprisonment), including for the failure of the employer to respect arbitration awards.⁶⁹

While enforcement of decisions made by arbitration and conciliation bodies is proving difficult due to a lack of legal provisions that enforce good faith bargaining, there is also a distrust of the bodies themselves. The formation of the Workplace Coordinating Committee and the Conciliation Body, the instruments for collective bargaining, are usually unknown to most worker organisations, who do not know when or where they have been founded or by whom. The dispute resolution procedures are not effective in providing the necessary remedies. Further, agreements reached between employers and workers through the conciliation process are not always respected and are not enforced as binding agreements.

Both representatives from unions and employers agree that more education and willingness to negotiate is needed on both sides. Employers, especially factory owners, are still accustomed to old ways of dealing with workers' dissent, and workers and unions lack education about how to engage in negotiations under the new legal framework. This has resulted in clashes and in retaliation against union leaders with the dismissal of labour representatives and workers for their union activities.⁷¹

"Retaliation against union leaders in both the severity and frequency we are seeing is a huge obstacle to industrial peace," Christopher Land-Kazlauskas, ILO Chief Adviser for the Freedom of Association project. *"If the government can't make this illegal or put in place penalties that will keep employers from doing that, what is going to make a worker want to negotiate?"*

"The main issue is understanding the need for negotiation – on both sides," said Maung Maung. *"We do have a big gap in*

knowledge in negotiation and industrial relations, both from the workers and the owners' side".

Retaliation against workers is common.⁷² Examples include the arrest of twelve trade union leaders for a strike at the Chinese-owned Lucky Treasure woodcutting factory in Sink-kaing, Mandalay; retaliation against workers at the Taw Win embroidery factory, despite an arbitration council ruled in favour of the workers' request for increased wages; and dismissal of union leaders at the ADK garment factory in Yangon and Aung Sein Factory in Mandalay.⁷³

Right to Strike

Strike actions were illegal in Myanmar until 2012, though wildcat strikes were a growing phenomenon in industrial zones in prior years to protest extremely low wages. Since 2012, workers have gone on strike testing their new rights and demanding better wages and conditions. The Department of Labour Relations has recorded 447 protests and strike actions in the garment sector between 2012 and 2014.⁷⁴ Examples include strikes of workers at 90 garment factories in the Hlaing Thar Yar industrial zone in Yangon, demanding better working conditions and occupational health and safety standards.⁷⁵ Another wave of strikes over wages took place from February 2015 at the Shwepyithar industrial zone outside Yangon.

There are a number of barriers to lawful strike actions. The law states that "a majority" must approve of strike actions before they can be carried out, though it is unclear on whether this clause refers to the majority of workers or the majority of those voting.⁷⁷ The ILO has been clear that an absolute majority could risk seriously limiting the right to strike.⁷⁸ Article 40 of the Settlement of Labour Dispute law also prohibits lockouts or strikes without first proceeding through the steps of the dispute resolution mechanisms (negotiation, conciliation, and arbitration through the arbitration body). This limits strike action to industrial disputes only. By prohibiting all strikes over issues not subject to dispute settlement procedures, such as sympathy strikes, protest strikes, strikes over economic and social policy, etc., the law runs afoul of Convention 87. The right to strike over non-industrial disputes is well established through ILO jurisprudence.⁷⁹

The law also requires trade unions to provide information on the date, place, time, period and number of participants in the strike, which is an excessive and time-consuming requirement. Strikes that do not comply with these requirements are considered illegal. Strikes are also illegal if they interfere with essential services including water, electricity, fire, health, and telecommunications.⁸⁰ This definition also includes services that could be "reclassified" from non-essential to essential services, if deemed to "exceed a certain duration" that causes "disproportionate damage". It is unclear how non-essential services can be reclassified as essential leaving the door open for a range of services being arbitrarily reclassified as essential in order to restrict strike actions.⁸¹

Forced labour declining, but still a risk

Forced labour has declined but it has not been eradicated. Under the military regime, the use of forced labour of civilians by the *tatmadaw* (the Myanmar army) was widespread, including in the construction of roads and infrastructure, in agriculture and in logging activities, and in connection with extractive operations and gas pipelines.⁸² In 1997, the ILO established a Commission of Inquiry to investigate allegations of forced labour in Myanmar. The Commission found “widespread and systematic use” of forced labour by the authorities and made a set of recommendations, which the government ignored.⁸³ In 2000, the ILO imposed restrictions on Myanmar for failing to comply with the Commission’s recommendations, including the suspension of technical co-operation. Those restrictions were lifted in 2012 following the commitment of President Thein Sein to eliminate forced labour by 2015, and the passing of new legislation that criminalises forced labour.⁸⁴

In 2012, the Villages Act and the Towns Act was amended, which brings the definition of forced labour into line with ILO Convention 29, though the Constitution remains to be amended in this regard. The adequacy of the penal sanctions as to civilian perpetrators (one-year maximum) may still be too low. The ILO and the government adopted in June 2012 a joint strategy to ensure that the government fully complied with the Commission of Inquiry’s recommendations by the end of 2015. The forced labour previously associated with military operations has declined. However, Myanmar will miss the 2015 target, as a report submitted by the ILO to the March 2015 Governing Body explained that many aspects of the joint strategy had yet to be implemented.⁸⁵ In 2015, complaints against the military concerning portering of military equipment does continue in areas where there is continuing armed conflict between the army and ethnic groups and in the Rakhine state. Further, in some cases local authorities have been securing labour for public works projects which results in forced labour. Complaints concerning forced labour in connection to land acquisition and confiscation have increased; this is particularly troubling given the fact that lands sales will likely continue as more foreign capital enters the country. Recently, forced labour was reported in areas near the Shwe gas pipeline and the Kanbaw to Myaing Kalay gas pipeline projects.⁸⁶ In the agriculture sector, following land confiscations for large agribusiness investments, farmers belonging to ethnic communities are forced to work on plantations with little or no salary.⁸⁷ Internal trafficking, with the purpose of forced labour, is also reported in palm oil and rubber plantations in Kawthaung, Tanintharyi Region.⁸⁸

Impunity for those responsible for forced labour remains high. Normally disciplinary sanctions are imposed, such as demotions or suspension.⁸⁹ In its March 2015 report, the ILO noted that the lack of accountability is particularly serious. The report stated that there have been 274 prosecutions of military personnel in total. However, in March 2014, there had been 258 – meaning there had been a mere 16 new prosecutions over the previous year. This appears to be a serious drop in new prosecutions and may signal a lack of will to continue prosecutions. Those up the chain of command (officers) have largely avoided sanction of any kind. The US Department of State reported that corruption of law

enforcement officials hampered the implementation of the law and that cases of forced labour perpetuated by the military were not prosecuted or judged in civil courts due to the influence of the military over the judiciary and the police.⁹⁰

Companies need to remain aware of the risk of being involved in forced labour abuses, given it was a common practice for decades, and flaws in the current legal framework and its enforcement. Companies also need to pay attention to the working conditions of temporary or irregular workers, often engaged through a third party. These low-skilled and low-paid manual labour workers are often directly linked to situations of exploitation.

Child labour is common

Child labour remains common in Myanmar. Recent statistics and exact data on the number of children employed and in which sectors is missing, but child labour incidence is reported in construction, agriculture, fishery, food processing, light manufacturing factories, in the extractive and energy industries, as well as in services and the informal economy (i.e., shops, teashops and restaurants, domestic work and delivering snacks, street vendors, beggars, tour guides and waste collectors).⁹¹ The ILO is now in the process of gathering statistics and estimates that (in 2012) over 10 per cent of children were engaged in work, while UNICEF reported that up to 18 per cent of children aged 10 to 14 from poor households were working.⁹² Maplecroft, a risk analysis firm, ranks Myanmar’s child labour problem as the third worst in the world in its 2014 Child Labour Index – only better than Eritrea and Somalia.⁹³

Gender plays a role: boys work as waiters at teashops and at constructions sites while girls work as cleaners, domestic helpers or in factories. In 2013, the Associated Press reported that Rohingya children, as young as 10 years old, were working in the construction sector, earning as little as 1,000 kyat (US\$1) per eight-hour work day collecting and carrying rocks.⁹⁴ In March, an Al Jazeera documentary showed evidence that child labour continues, with long working hours and meagre wages, and that with more shops and restaurants opening in the cities and more people with disposable income, the problem is worsening.⁹⁵

Children from poor families especially in rural areas come to shops and factories in cities to supplement family incomes; sometimes they are the breadwinners of the family. Lack of education alternative opportunities for children is another major issue. There is also a problem of law awareness and enforcement. In 2013, Myanmar ratified the ILO Convention 182 on the Worst Forms of Child Labour, and reportedly Labour Ministry officials have been receiving training on how to carry out a survey on child labour and are going to form a committee to implement the convention. There are some gaps and contradictions with laws regulating child labour. The ILO Minimum Age Convention (No. 138) has not been ratified. The minimum age for the employment is set at 13 years, which is in line with international standard in relation to light work, but not in relation to regular work (which is set at 15 years). The 1993 Child Law classifies children aged 14 to 17 as “youths” and allows them to engage in “light duties” for four hours per day, but it does not define what types of work

constitute light duty.⁹⁶ Further, ascertaining youths' and children's age is in practice difficult. The rate of birth registration in rural areas is only 64 per cent and often children use fake ID cards, and in most cases they work without a contract. It is also difficult to check, especially in subcontracted factories, that underage children work not more than four hours per day and perform only light duties. The ILO focuses on combating the worst forms of child labour, particularly in agriculture as the work is likely to harm their health and safety.⁹⁷

International brands sourcing from local factories can contribute to or be linked with child labour. The prevalence and general acceptance of child labour in Myanmar must be a factor in due diligence. The Ministry of Labour said that the government is considering raising the minimum working age to 14 and it is negotiating with business owners to provide to their youngest employees an education, vocational training and health care.⁹⁸

Few companies are seriously considering ways to address this issue.⁹⁹ Telenor provides a rare positive example. In 2014, after conducting more than 700 unannounced health and safety inspections on companies and subcontractors building transmission towers, Telenor uncovered cases of children of different ages working in potentially hazardous construction jobs. Telenor removed all children from the building sites, but offered to some of the 15- to 18-year-olds other jobs, such as office work. In addition, Telenor provides non-formal education to children working in Telenor-branded teashops, which also sell Telenor SIM cards.¹⁰⁰

It is too early to say if there is a difference in the incidence of child labour in factories depending on whether the factory exports abroad. But overall, from the responses received by Business & Human Rights Resource Centre, it looks that at least on paper, Western companies are aware of the risks of child labour, even if not all have done their proper due diligence and have a Myanmar-tailored child labour policy.

Coca-Cola said its policy in Myanmar is to hire workers 18 years of age or older. International brands that now have a supply-chain in Myanmar (i.e., Adidas, Gap, H&M, Primark) are also aware of their reputational risks in relation to child labour and are taking some steps to avoid it and are engaging with stakeholders and the ILO. According to its report to the US Department of State, audits conducted at the two factories supplying Gap in Myanmar did not find evidence of child labour, but they found that "some personnel files did not contain proof of age verification" and that "some age verification documents...showed signs of manipulation".¹⁰¹

"It can be difficult for US companies in Myanmar to avoid child labour", said Machut Shishak, economic and commercial affairs officer at the US Embassy in Yangon. "Certainly not directly, US companies aren't going to violate international best practice or local laws, for that matter. However, US companies have to do a lot of due diligence to figure out where in the supply chain there might be child labour."

Basic wages do not meet living wages

Even with the newly proposed minimum wage of 3,600 kyats (about US\$ 3.20) per day (see below), Myanmar is the world's newest low-cost manufacturing hub, with workers earning among the lowest wages in Asia. Myanmar was recently named one of the five best countries in the world for cheap labour by the Labour Costs Index. In spite of the risks of exploitative labour practices, the prospect of cheap labour will attract more investors, especially in the textile and garment sectors.

Before the introduction of the new minimum wage, basic salaries were as low as 30,000 kyat (US\$30) per month, which means workers lived in extreme poverty on one dollar per day.¹⁰² But take-home pay rises significantly - to between 60,000 kyat (US\$60) for a general labourer to 150,000 kyat (US\$150) for a skilled worker - with the addition of overtime,

New Minimum Wage-

The government passed a new Minimum Wage Law in 2013, but set the level of the minimum wage in June 2015 after collecting data collection on current wages, the size of the workforce and labourers' living standards. Tripartite discussions between the Ministry of Labour, workers' representatives and factory owners revealed wide differences of opinion. Workers organisations demanded 4,000 kyats (US\$4) or an 8-hour work day, excluding welfare benefits, overtime and bonus payments, while employers demanded a 2,500 kyat minimum wage for an 8-hour work day.¹⁰⁴ In June, the government announced a minimum wage of 3,600 kyats (about US\$3.20) per day following a year of consultations between unions, government and employers. Both unions, including the ITUC, and employers criticised the proposal. Local unions call for higher pay - 4,000 kyats (about USD\$3.50) per day - while employers say that the proposed minimum wage is unsustainable for business: they say they cannot afford more than US\$2.2 per day. Several Chinese and South Korean garment manufacturers threatened to close down their factories if the proposed minimum wage is set. The Myanmar Garment Manufacturers Association (MGMA) also signalled its opposition to the proposed wage.¹⁰⁵

International Labour Day 2015 was marked by thousands of workers marching demanding a fair minimum wage.¹⁰⁶ Trade unions reacted angrily to threats by manufacturing companies to close their factories. Sharan Burrow, ITUC General Secretary, said, "The new minimum wage will still leave workers and their dependents just above the global severe poverty line of US\$1.25 per person, and many will still struggle to make ends meet. Now, just like the American Chamber of Commerce's global campaign to undermine minimum wages and decent work, some companies in Myanmar are trying to stop workers getting even that basic level of income in order to survive. This is yet another example of the corrupt supply chain business model which impoverishes workers while shovelling more money into the pockets of the richest few."¹⁰⁷

and bonuses for performance and attendance. As a result, in order to meet living wages, workers in practice are forced to work long hours of overtime and work on their day off; the average working day is nearly 11 hours. Days off are very few, and maternity leave and sick leave are almost unheard of.¹⁰³

Hundreds of workers at several factories in industrial zones have held wage-related strikes since 2012 – for example, at the Korean Master Sport Shoe factory; at the Yes candy factory and at a wig factory in Hlaing Thar Yar industrial zone in Yangon; at a garment factory in Dagon Seikkan township and at the Aung ceramic tile factory in Shwepyitha township Yangon; at the Inlay shoe factory in Bago; and at the Taw Win embroidery factory.¹⁰⁸ Following disputes in the garment sector, including due to low wages, the Ministry of Labour decided in 2012 to set a temporarily minimum wage at 56,000 kyat (US\$56) per month.¹⁰⁹ In February, more than 2,000 garment workers protested outside a factory producing for E-Land, a South Korean conglomerate that is also the largest women's apparel retailer in China. The workers were arrested on the pretext they did not have a permit for the demonstration.¹¹⁰

Long working hours and forced overtime major issues

The Factories Act provides for eight working hours per day and 44 hours per week in factories and 48 in shops; it allows a maximum of 12 hours per week of overtime.¹¹¹ In practice, because the basic salary does not meet living wages, workers are forced to work overtime in order to collect bonus payments. Overtime should be paid at a double rate by law but in practice this is rarely the case. The result is that factory workers normally worked 11 to 12 hours per day, six or even seven days a week, which means over 20 hours of overtime per week – way above the legal limit.¹¹² Overtime beyond the legal limit is also common in the oil and gas and in the tourism sector.

Yangon's hlaing thar yar industrial zone

Workers in Yangon's industrial zones work in unsafe, hot, overcrowded factories, typically for around 11 hours per day, six days per week. Hlaing Thar Yar is the biggest of those industrial zones in terms of number of factories, number of employees, and area covered. A system of bonus pay for punctuality and non-absence and a meagre daily wage leaves most workers to work overtime to meet basic needs, aggravated by the need to repay debts with pay-day-lenders. The living conditions around the industrial zones are squalid. Being Hlaing Thar Yar, the first and biggest industrial zone, it is seen as a sort of employment practices' model, thus spreading the extremely low basic wage systems to other sectors, as well as teashops, restaurants and shops.¹¹³

Occupational Health & Safety lacks regulation

The government is drafting a new Occupational Health and Safety Act, a much needed law considering that current occupational health and safety regulations date back to the 1950s. The new law was expected to be passed at the end of 2014 but was delayed. It is reportedly going to be passed just before the November 2015 elections.¹¹⁴ With the 2013 Myanmar National Building Code, which includes provisions to enhance safety and reduce disaster risk in the construction sector, the government managed a first attempt at regulating the sector.

According to the latest available data reported by the Ministry of Labour, 28 fatal and 36 serious accidents were recorded from 2009 to 2010.¹¹⁵ These figures, however, are out of date and are not indicative of actual conditions. Underreporting is widespread, and exacerbated by the small number of government labour inspectors who are assigned to workplace safety and health.¹¹⁶ Reports from civil society organisations describe a general picture of poor health and safety conditions across all sectors. For example, the ADB reported that poor air quality resulted in respiratory diseases among workers in mining and manufacturing.¹¹⁷ The collapse of a gold mine in Kalaw, Shan State, following heavy rains in 2013 resulted in the death of 36 people, and last January at least four miners died after a rockslide at a jade mine in Hpakant, Kachin State.¹¹⁸ The Myanmar Centre for Responsible Business noted that subcontractors of oil and gas companies work with few health and safety protections.¹¹⁹ Poor health and safety procedures and a general lack of training were also reported in the tourism sector and for factory workers who work with little lighting, overcrowded facilities and unsafe machinery.¹²⁰ In June, two construction workers died and dozens were injured in a collapse at a building site of a Mandalay luxury hotel managed by Accor.¹²¹ While the new health and safety law is being drafted, currently there are no limits set for workers' exposure to noise, chemicals, dust or vibration in factories.

Given the lack of regulation and inspection and that workers are poorly trained and not always provided with the proper health and safety equipment, companies have a responsibility to monitor occupational health and safety practices among their subcontractors and suppliers.¹²²

Workplace discrimination continues

Discrimination and marginalisation towards religious minorities, women, people with disabilities, and lesbian, gay, bisexual and transgender people is common in the workplace. Despite Myanmar's having ratified the CEDAW Convention, in practice the majority of pregnant women are denied the enjoyment of this right. Typically in the majority of factories women are not paid during their maternity leave and are not reintegrated in the same position when they come back to work.¹²³ Often women do not receive equal pay for work of equal value.¹²⁴ Sexual minorities also face discrimination in employment, including denial of promotion and dismissal, and the societal attitude is worsened by legislation such as, for example, the Penal Code, which criminalises homosexuality establishing a maximum penalty of life imprisonment.¹²⁵

Land

Land is a complex challenge for companies investing in Myanmar. Claims that new investment will alleviate poverty have been undermined by reports of widespread land grabbing, as people depending on farmland and forests for their livelihood, which represent about three-quarters of the population (especially in ethnic minority areas) are thrown out of their land to make way for new large-scale investment projects.¹²⁶ Land confiscation without adequate consultation and compensation is facilitated by the lack of formal land titles and the lack of legal recognition of customary land tenure.

Flaws in the Legal Framework

In 2012, the government started a process to formulate a new National Land Policy and Land Law, which they expect to finalise at some point in 2015. The current land framework is characterised by overlapping and contradicting old and new laws and regulations that leads to confusion and loopholes exploited to confiscate land without compensation. The OECD notes that land tenure remains insecure for most smallholder farmers due to a complex and long registration process resulting in low land registration rates, rigid land classifications that do not reflect the reality of existing land use, lack of recognition of customary land use rights, weak protection of registered land use rights, inefficient land administration, and active promotion of large-scale land allocations without adequate safeguards.¹²⁷ In a recent briefing paper, the Myanmar Centre for Responsible Business said that although the government has taken some steps to address land issues, new land laws risk facilitating the acquisition of land by businesses at the expense of small scale farmers and customary land users; for example, in the agricultural sector, some of the new policies benefit large scale land acquisitions for agribusiness rather than promoting small-scale farming.¹²⁸

Key laws regulating land rights are the Land Acquisition Act (1894), the Farmland Law (2012), and the Vacant, Fallow and Virgin Land Law (2012).¹²⁹ Flaws in these laws combined with Article 37 of the Constitution, which provides that the government is the “ultimate owner of all lands” and natural resources, and section 29 of the Farmland Law, which allows the government to confiscate land on the basis of national interest. This is combined with the fact that the vast majority of land users have no titles to the land that they occupy and cultivate and the lack of legal recognition of customary land tenure, leaves people vulnerable to forced evictions, expropriation without proper compensation and loss of livelihood, with limited access to effective remedies.

The Land Acquisition Act provides that the government can carry out land acquisitions for a company when the acquisition is “likely to prove useful to the public”.¹³⁰ The law does provide for compensation, but with only limited safeguards and no provisions concerning resettlement. The lack of requirement to notify owners or users of the land means that they are often unaware of their land being taken and they are not able to lodge an objection.¹³¹

The Farmland Law allows the government to repossess farmland “in the interests of the state or the public”, with no further procedural or substantive restrictions.¹³² The law provides for

compensation for land acquired by the state under compulsory acquisition, but little or no compensation is normally paid. The law does not provide for objection procedures or judicial review to the acquisition or compensation. The Farmland Law requires that users of agricultural land register their land and obtain a land use certificate. But the land registration process is inefficient and with complicated requirements, exposing farmers failing to comply with these provisions to state confiscation. In effect, the government may declare land vacant while in reality it is not, which results in large numbers of landless people; at least one quarter of farmers are landless agricultural labourers in Myanmar.¹³³ In addition, the law does not recognise traditional upland shifting cultivation (taungya) – 40 per cent of farming in Myanmar – and shifting cultivators cannot apply for land use certificates under the rule that requires farmers not to leave the land without documented reasons. The land used for shifting cultivations can, therefore, be regarded as “vacant, fallow and virgin land” and be subject to land concessions to investors under the Vacant, Fallow and Virgin Law.¹³⁴ The law gives the Central Committee the right to repossess such land for the “implementation of basic infrastructure projects, or special projects required in the interest of the state”.¹³⁵ The combination of the Farmland and the Vacant, Fallow and Virgin laws and rules means that the government has wide discretion to use the land in the way it wishes for public interests, without possibility of effective administrative or judicial review of land confiscation and resettlement.

The government is now drafting the National Land Use Policy. In October 2014, it released the first draft for public consultation; in May 2015, the sixth and currently last draft was released.¹³⁶ After a total of seven rounds of consultations, the land policy is expected to be finalised in 2015 and will form the basis for the country’s first Land Law. During the consultations, the drafts were criticised as the approach to land use was framed in purely economic rather than social terms. The draft, for example, is silent on how to deal with past confiscation of land and landlessness and it is not clear if compensation in cases of resettlement would also include restoration of livelihoods, which international standards, such as the Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries, and Forests call for as part of any resettlement process.¹³⁷ Ethnic groups are also worried that customary land rights and dispute resolutions practices are not adequately addressed.

Impact of investment

Forced eviction without proper compensation in Myanmar dates back to the nationalisation in the 1960s, when the military government and linked business widely confiscated land.¹³⁸ Land confiscation, forced displacement and forced resettlement without informed consent or adequate compensation by the government, the military, and companies continue today. Since the reform process began, there has been increased reporting of protests against land grabs, with villagers being deprived of compensation for expropriation, receiving reduced payment for land, or being denied any ownership.¹³⁹

In 2012, the then-UN Special Rapporteur Tomás Ojea Quintana predicted that “Given the expected wave of privatisations and the increase in foreign investment, along with

accelerated economic development, there is likely to be an increase in land confiscations, development-induced displacement...”¹⁴⁰ The current Special Rapporteur Yanghee Lee recently confirmed that land rights issues, in particular land-grabbing and land confiscation and forced eviction as well as the prosecution against who protest against those issues, remain a major challenge.¹⁴¹ Last January, the military reportedly apologised for previous land confiscations, pledged to stop the practice, and said it would begin to return some of the land. Still, tens of thousands of rural people who have lost their land are awaiting compensation. Consultation and compensation are frequently absent or inadequate and in many cases the land seizures are arbitrary. A recent report by the Karen Human Rights Group indicates that Karen areas of southeast Myanmar continue to face widespread land confiscation and displacement due to natural resource extraction and development projects undertaken or facilitated by civil and military government authorities, armed groups and private investors.¹⁴²

With the increase in the level of economic activity, as foreign companies investing in Myanmar access more land, either acquiring or using it, as well as invest in export processing zones and tourism complexes, the trend of land grabs may accelerate. The number and intensity of local land and livelihood conflicts is increasing in areas where land has been assigned – mostly for infrastructure projects, establishment of industrial zones, agriculture concessions, and resource extraction projects – without recognising local communities’ statutory and customary land rights.¹⁴³

The rate of conversion of forests for agricultural development is unprecedented. Between 2010 and 2013, land area allocated for large-scale private agriculture concessions increased by 170 per cent. The number and intensity of local land and livelihood conflicts have increased in parallel with the increase in the government allocations of agribusiness concessions. In a recent report, Global Witness described how the military, political and business cronies conspired to confiscate land from ethnic-minority villagers in order to establish commercial rubber plantations.¹⁴⁴ The ILO also reported an increased number of forced labour complaints related to land confiscation, where people having traditionally occupied land were forced to work on it after it was expropriated and converted.¹⁴⁵ In conflict-affected areas, the land rights situation has additional complexities. These areas are not included in the national cadastre, or are considered vacant, fallow and virgin land by default.¹⁴⁶ Since the ceasefire in Kayin State, land confiscations by companies increased, as land formerly occupied by displaced populations was classified as “vacant”.¹⁴⁷ Hydropower projects such as the Myitsone and the Salween River dams, extractive project such as the Shwe Gas project and the Monywa copper mine (comprising the Letpadaung mine) have all been associated with tensions between local communities and investors over land confiscations and displacement, with little or no compensation.¹⁴⁸ Land confiscations have also been linked to the establishment of Special Economic Zones (SEZs), including the Dawei, the Kyaukpyu and Thilawa Special Economic Zones.¹⁴⁹

Special Economic Zones

THILAWA SEZ

Planned to be built on 2,400 hectares of farmland 23km southeast of Yangon and to be operational by the end of 2015, the Thilawa Special Economic Zone (SEZ) consists of an industrial zone with factories, a port, and a power plant. It is being constructed under a Memorandum of Cooperation signed in 2012 between the governments of Myanmar and Japan, supported by the Japan International Cooperation Agency (JICA) in a joint venture with a special purpose company, Myanmar Japan Thilawa Development (MJTD), and with Japan’s Marubeni, Mitsubishi and Sumitomo. Also participating is a consortium of nine local companies headed by Dagon, which is owned by U Win Aung, a businessman who was removed from the US list of sanctions only in April 2015. Over 80 households, or over 300 villagers, have already been relocated and thousands more will have to move during future phases of the project, without consultation or adequate compensation, to substandard housing, reduced livelihood opportunities and worsening access to essential services such as education, clean water and sanitation. The government failed to properly notify affected communities or provide adequate compensation for relocation. In June 2014, Thilawa residents filed a complaint to JICA over the compensation and relocation and pressed for it to apply its own guidelines effectively. Under Myanmar laws and JICA’s Guidelines, the residents are entitled to adequate compensation for land and lost assets, livelihood opportunities including replacement land and adequate financial and other assistance to develop new sustainable livelihoods, and proper consultation in planning the project and their relocation. The investigators’ report acknowledged some negative impacts, but absolved JICA of any fault or non-compliance with their guidelines.¹⁵⁰ At the end of April, the Thilawa SEZ Management Committee announced that 41 companies have already signed to occupy the 400-hectare initial phase, with eight of them starting operations in late June and the others by the end of the year.¹⁵¹ It must be noted the presence in Thilawa of the American aluminium can company BallCorp, which expects to supply to Coca-Cola, and in that case it would be bound by its no land grab policy.¹⁵²

Special Economic Zones

DAWEI SEZ

After a number of delays, in June two Thai construction companies – Dawei Development (a subsidiary of Italian-Thai Development) and Rojana Industrial Park – signed an agreement with the Myanmar government to start developing the first phase of the Dawei SEZ. The project first started in 2008, but was suspended. The first phase of the project will be completed over the next two years, will involve an area of over 200 square km and affect 20 to 36 villages with populations of 22,000 to 43,000 as well as tens of thousands of acres of farmland. Large areas of farmland have already been confiscated and destroyed to build the initial infrastructures, and already 20,000 villagers and farmers have been forcibly displaced to make way for future industries such as food processing and agricultural industries, and garment factories. Rights groups led by Dawei Development Association are calling on the Myanmar and Thai governments to ensure international environmental and social protections, and avoid involuntary resettlement.¹⁵³ The Tavoyan Women's Union also calls for the immediate cancellation of the project:

“Our main finding...is that women's lives are getting more difficult due to the project...almost all the women interviewed have lost sources of income since the project began, due to land confiscation, destruction of farmlands and restricted access to the coast.”¹⁵⁴

KYAKPHYU SEZ

Kyaukphyu is the newest SEZ in Myanmar, on an island off Rakhine State. It is crucial for a Chinese business corridor, and China National Petroleum Corporation has installed a natural gas pipeline connecting the offshore Shwe gas field with China's Yunnan province. The Burmese government has awarded a consortium of five companies led by Singapore's CPG Corporation to consult on the Kyaukphyu SEZ, which will include a deep-sea port, industrial zone, residential developments, dams and reservoirs. The SEZ's reported goal is to become a “mini Singapore”. Civil society organisations have reported that the development of the SEZ is already displacing local communities without proper compensation and accountability for loss of land and livelihoods.¹⁵⁵ Investors have also been criticised for their lack of transparency by the International Commission of Jurists, which has asked them information related to their environmental impact assessments, environmental management plans and financial audit reports, but received no responses.¹⁵⁶

The military also has a record of engaging in unlawful use of force against local residents in the context of clearing land and providing security for business projects. This level of collusion, and the accompanying violations of land tenure and human rights, should be of serious concern to investors. Companies investing in Myanmar will find it difficult to estab-

lish who owns land or has customary use rights, who should be consulted, and how to obtain free, prior informed consent. Given the lack of clarity on ownership, the high levels of shifting cultivation in some areas, and the high levels of landlessness, there are clear risks of operations impacting people without any compensatory measures.¹⁵⁷

LACK OF ACCESS TO REMEDY, PROSECUTION OF LAND RIGHTS ACTIVISTS & PROTESTORS

In land dispute cases, people lack access to effective remedies. As a result, farmer-led protests are growing in number across the country. Forcibly evicted communities are now challenging thousands of past and recent land concessions. Regional governments have received more than 6,000 complaints related to land rights issues, but have investigated only 300.

The 2012 Farmland Law provides that farm management bodies, not tribunals, should address disputes regarding allocation or use of farmland. Similarly, vacant lands legislation provides neither procedures for appeals to land acquisition or compensation, nor judicial review of the decisions of the Central Committee for the Management of Vacant, Fallow and Virgin Lands.¹⁵⁸ There are three administrative bodies that hear land dispute cases, but without the power to issue binding decisions.¹⁵⁹ The majority of complaints received by the National Human Rights Commission concerned land expropriations, but the Commission reportedly failed to conduct independent and effective investigations into the cases received.¹⁶⁰

Since the beginning of the reforms in 2011, communities have begun to resist forced eviction, land confiscation and major development projects, but were subject to intimidation, prosecution, excessive force, and charged with trespass and obstruction, attracting harsh prison sentences and arbitrary arrests and detentions.¹⁶¹ For example, people protesting the Shwe Gas pipeline in Rakhine State have been met with arrest and detention. In 2012, the police violently suppressed peaceful protests against the Letpadaung copper mine leading to dozens people injured, including monks, due to the use of white phosphorous grenades.¹⁶² In July, at least 56 farmers were sentenced to prison terms for their involvement in peaceful protests in Sagaing Region.¹⁶³ Land rights defenders have also been targeted for helping local farmers protest against large-scale projects. In June, land rights activist and National League for Democracy (NLD) member San Tun was killed – he had been active in supporting villagers challenging land confiscation. In April, the Observatory for the Protection of Human Rights Defenders reported the detention and sentencing of Thein Aung Myint, a human rights activist, member of the Movement for Democracy Current Force (MDCF), a community-based organisation that campaigns against land-grabbing.¹⁶⁴ And in July the Observatory reported the killing of Mr. Johnny, a land and farmers' rights defender in Karen State.¹⁶⁵ Special Rapporteur Lee stated that the police used excessive force against demonstrators protesting forced evictions, land expropriations and the environmental impacts of large-scale development projects.¹⁶⁶

“In the light of allegations regarding the excessive use of force by the police, as well as the arbitrary arrest and pros-

ecution of those peacefully protesting forced evictions and land confiscations, a change in the response to public protests on land issues is needed, as well as in the handling of complaints received by various bodies,” said Special Rapporteur Yanghee Lee.

Conflict and security

Myanmar has been in a state of civil war since independence in 1948. Armed conflict between dozens of ethnic minority armed groups and the Bamar-dominated military government is centred on minority groups’ demands for autonomy, but fuelled by competition over natural resources. From 2011, the government started negotiating bilateral ceasefire agreements, and a nationwide peace process with 16 ethnic armed groups is under negotiation. Though the August 2014 deadline for signing it has not been met. In July the government held further negotiations where they managed to finalise an agreement on ten of the 13 amendments to the draft proposed by the ethnic armed groups. Two of the three remaining points concern natural resources and infrastructure management, while the other relates to security sector reforms.¹⁶⁷ The government promised it would consider the ethnic groups’ demand for the establishment of a federal union, but it retracted its promise shortly after. As a result, ethnic groups remain distrustful about the genuine commitment of the government’s engagement in the peace process, and have indicated they will not proceed with the signing of a nationwide ceasefire accord until they have political guarantees. Conflict in Kachin State is ongoing, after a 17-year-long bilateral ceasefire between the government and the Kachin Independence Army (KIA) broke in 2011 when the military attacked the rebel group near a disputed hydropower dam site.¹⁶⁸ Confrontations in northern Kachin State have actually intensified since June 2013 and the conflict has restarted in the Kogan region of Shan State. The ongoing conflicts in Kachin and Shan States have displaced approximately 100,000 people, while almost 400,000 people remain internally displaced in Myanmar due to the conflict, and there are over 500,000 Burmese refugees and asylum seekers in other countries.¹⁶⁹

Conflict has inhibited economic development in ethnic border areas, and poverty rates in these areas are higher; for example, 73 percent of the population in Chin State lives below the poverty line. Myanmar’s natural resources are, however, concentrated in these conflict-afflicted ethnic minority areas, which are rich in minerals and gems, hydropower, natural gas deposits, and hardwoods.¹⁷⁰ Development projects have long stoked the ethnic tensions and military conflicts in Myanmar, and new foreign investment is affecting the peace resolution process. For decades, extractive operations have been linked with ethnic conflict, and the risk continues as oil and gas pipelines pass through areas with a history of conflict, characterised by high levels of militarisation with large numbers of tatmadaw troops, militias, and armed ethnic groups. Land and resource management are common causes of conflict, as ethnic armed groups perceive their communities are not benefitting from development projects. The desire of ethnic minority groups for more control over and benefit from natural resources in their areas is in fact one of the key drivers of conflict.¹⁷¹ Some groups are increasingly calling for

a more equitable sharing of revenue. For example, Rakhine State has called for a 50-50 split of revenue with the government, while Chin State has called for “equitable sharing” of the revenues obtained from the natural resources. The World Bank has been criticised for rushing a loan of US\$440 million to the government to implement development projects, including in conflict areas, with little public consultation and information.¹⁷² Further, Chinese and Japanese-led development projects have often contributed to ethnic conflicts and are continuing to do so.

“Dams, pipelines and mines, often financed by China, have been used as a wartime tool to encroach on ethnic lands and dominate local populations,” said Matthew Smith, Executive Director of Fortify Rights.

The conflict that restarted in 2011 between the KIA and the military near the Taping hydropower dam (operated by China Datang Corporation) is one such example. Following negotiations among the company, the KIA and the army, China Datang Corporation paid the KIA US\$2.4 million to move ahead with the project, and agreed to divert some electricity to KIA territory, but refused to make it official with a contract. Shortly after, the army attacked nearby KIA outposts, breaking the 17-year-long ceasefire. The fighting then spread to northern Shan State, where the army moved in to “secure” territory for the construction of oil and gas pipelines operated by China National Petroleum Corporation (CNPC).¹⁷³ On their end, Japan and the JICA have development plans for large areas of Karen and Mon States in southeast Myanmar, site of the world’s longest-running civil war between the army and the Karen ethnic group.¹⁷⁴

Land grabs risks have also increased as ceasefires have made land more available to commercial interests, but these areas are poorly governed and highly militarised.¹⁷⁵ Since the ceasefire in Kayin State, for example, land confiscations by companies have increased, as land from which residents have been displaced has been classified as “vacated”.¹⁷⁶ Local populations are asking the government and investors to allow Myanmar to resolve its conflicts before rushing in for profit. For example, communities in Shan State urged the Myanmar government and foreign investors to stop plans to build large dams on rivers in Shan State, where conflict is escalating. Of the 43 large dams planned in Myanmar, over half are to be built on rivers in conflict-affected areas Shan State, including four on the Salween such as the Mong Ton dam in areas under the control of Shan and Wa armies and the Kunlong dam in the Kokang region, where fighting has intensified since February. Activists fear that the dam projects are threatening the tentative ceasefire between the government and the minority groups.¹⁷⁷ Local NGOs have also asked the government to halt the Asia highway project in Karen State. They say that outbreak of heavy fighting along the newly completed highway from Myawaddy to Kawkaik demonstrates how large-scale development, when implemented before a permanent ceasefire and political agreement, exacerbates conflict, undermines the peace process, and jeopardises the safety of civilians.¹⁷⁸

“The peace process underway in Burma is the single most important issue in the country’s development,” said Paul Sein Twa, Director of the Karen Environmental and Social Action Network (KESAN). *“Building big dams in a civil war zone can only undermine peace and breed conflict, derailing the nascent emergence of the country from more than a half century of dictatorship.”*

Companies should not invest in large-scale development projects in Myanmar’s conflict areas until durable peace agreements are established. When investing, companies have to develop a clear understanding of the ethnic dimensions and be alert of the potential of exacerbating conflict through their presence. In particular, the existence of active conflicts in a number of oil and gas and hydropower areas means that companies need to pay particular attention to human rights risks associated with security protection by the tatmadaw.¹⁷⁹

Mongton dam

The Mongton dam is the largest of six planned hydro-power dams planned along the Salween River in Shan State. If completed, it would be Myanmar’s largest hydroelectric project and would produce more than 7,000 megawatts of electricity, nearly all of it for export to China and Thailand. The US\$6 billion project involves three Chinese companies, China Three Gorges Corporation, China Southern Power Grid and Sinohydro, as well as the Electricity Generating Authority of Thailand (EGAT) and Myanmar’s Ministry of Electric Power and local conglomerate the International Group of Entrepreneurs, owned by the sons of Union Solidarity and Development Party lawmaker Aung Thaung, who was placed on a US Treasury blacklist last October. The project is drawing fierce opposition from ethnic Shan community groups and environmentalists, who say it will flood 640 sq km of farmland and villages while tens of thousands of ethnic people are likely to lose their homes. In addition, Shan State residents say the project would worsen the conflicts between the Myanmar military and ethnic groups in Shan state. Villagers and 122 civil society organisations that have formed the Save the Salween organization have held protests against the Australian company Snowy Mountains Engineering Corporation (SMEC), which has been tasked with assessing the potential environmental and social impact of the dam. They say SMEC is helping to push the project ahead without proper public consultation. Business & Human Rights Resource Centre invited SMEC to respond to allegations, and the company did so saying that it has tried to engage with local civil society organisations on numerous occasions, with limited success.¹⁸⁰

Companies' human rights responsibility

The responsibility to protect human rights, including the human rights of workers, rests with the government of Myanmar. However, the legacy of fifty years of military rule and continued internal conflict still weight heavily on its ability to do so. The government's well-documented failure to fulfil its human rights obligations does not change the responsibility of multinational companies and the duty of their home governments.

There is an international consensus over the responsibility of business to respect human rights. The clearest expression of this consensus is in the UN 'Protect, Respect, Remedy' Framework adopted by the UN Human Rights Council in 2008 and in the Guiding Principles on Business and Human Rights adopted in 2010. The consensus is that the responsibility to respect human rights applies to all business everywhere and includes all of the internationally recognised human rights.

The concepts in the UN Framework and the UN Guiding Principles on Business and Human Rights are reflected or referenced in industry-specific initiatives. Two such initiatives are the Extractive Industries Transparency Initiative (EITI), to which Myanmar has become a candidate country in July 2014, and the Myanmar Garment Manufacturers Association's Code of Conduct adopted in January 2015.

Responsible business conduct means complying with national laws, even where these are poorly enforced. But companies should not assume that compliance with national law is enough to meet their responsibility to respect human rights. The business responsibility to respect human rights is independent of the state duty to protect human rights.

"Foreign companies investing in Myanmar need to be aware that the government is failing to regulate business activities and fulfil its duty to protect human rights. Companies cannot limit themselves to respecting these inadequate national laws," said Daniel Aguirre, of the International Commission of Jurists in Yangon. "Instead, they should use their influence to push the government to adopt human rights law and set a level playing field."¹⁸¹

The UN Guiding Principles and the OECD Guidelines require companies to respect all internationally recognised human rights, avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.¹⁸² In addition to reaffirming existing state obligations, the Guiding Principles make clear that all companies bear an independent responsibility to respect human rights. Doing so requires several affirmative steps, including developing policy commitment to respect human rights and undertaking human rights due diligence to "identify, prevent, mitigate, and account" human rights impacts.¹⁸³

Due diligence involves companies conducting assessments of actual or potential adverse human rights impacts, integrating the findings of these assessments into their relevant functions and processes and taking actions where the business is causing or contributing to adverse human rights impacts or where such adverse impacts are linked to their activities. Businesses must track and monitor the effectiveness of how these adverse impacts are addressed and must be prepared to account for how they address these adverse impacts. In cases where the business has caused or contributed to adverse impacts, it must be prepared to provide for, or to cooperate in, their remediation.

According to the Guiding Principles, "[t]he corporate responsibility to respect is a global standard of expected conduct for all business enterprises wherever they operate" and exists "independently of States' abilities and/or willingness to fulfil their own human rights obligations".¹⁸⁴

"Foreign investment into Myanmar is essential for economic development and growth, but it cannot happen at any cost. Investors and local companies need to consider the social impacts of their joint ventures – how to minimise risks and how best to ensure that investments are sustainable in social and not just economic terms," said John Morrison, Executive Director of the Institute for Human Rights and Business.

Additionally, the home governments of corporations can and should regulate the behaviour of corporations overseas to ensure that international standards are respected. The US government has already taken a lead on promoting responsible investment by issuing the "Reporting Requirements on Responsible Investment in Burma", which require US companies to report annually and publically on, among other things, their business operations in Burma, payments to government entities and their human rights, worker rights, anti-corruption and environmental policies and procedures.¹⁸⁵ Unfortunately, the US policy does not require a company to have a due diligence policy and, if it does carry out due diligence, the results are not required to be made public. The Department of the Treasury also continues to publish and update the Specially Designated Nationals and Blocked Persons List (SDN List), which is a list of persons whose property and interests in property are blocked. In general, US persons are prohibited from dealing with persons listed on the SDN List, and all property in which any blocked person has an interest is blocked if it is in the United States or in the possession or control of a US person, wherever located.¹⁸⁶

This is, however, the only example of home country regulation on businesses investing in Myanmar. In lifting its sanctions on Myanmar, the EU recognised that EU corporations should uphold the highest standards of corporate responsibility when they trade with or invest in Burma. On June 15, 2012, then Commissioners Catherine Ashton and Karel DeGucht, in calling for the reinstatement of GSP, noted that

“responsible investment and bilateral trade [are] crucial elements for helping the country recover and flourish.”¹⁸⁷ This statement echoes the April 23, 2012 Council statement that future trade and investment activity by European businesses in Burma/Myanmar should “promot[e] the practice of the highest standards of integrity and corporate social responsibility”,¹⁸⁸ referring specifically to the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the EU’s CSR strategy for 2011-2014. To date, however, the EU has yet to give practical effect to these important statements.¹⁸⁹ In May 2013, the European Parliament voted on a resolution concerning business and human rights in Burma as a companion to legislation reauthorising GSP for Myanmar. The EU should replicate or, better, improve upon the US reporting requirements.

Human rights due diligence

Under the UN Guiding Principles and the OECD Guidelines, due diligence is an essential to the corporate responsibility to respect human rights, and is the process a company must take to identify, prevent and address actual and potential adverse human rights impacts.¹⁹⁰ In order to do so, companies need to assess human rights impacts, to integrate and act upon relevant findings, to track the adequacy and effectiveness of their responses, and to openly communicate as to how impacts have been addressed. Due diligence also includes “meaningful consultations with potentially affected groups or other relevant stakeholders”.¹⁹¹ The Myanmar Environmental Impact Assessment Procedures also require updates to environmental and social impact assessments as operations or situations change.¹⁹²

What constitutes due diligence is determined by the likelihood and severity of adverse impacts on human rights that the company might cause, contribute to or be linked with. Because situations and operations change, due diligence should be an ongoing activity carried out particularly when operations change phases.¹⁹³

“Companies that conduct due diligence to mitigate risks of investing in Myanmar can protect their business and shareholders while helping to promote reform, but company policies and performance vary widely,” said EIRIS Conflict Risk Network Director Kathy Mulvey.¹⁹⁴

Engagement & Consultation

Companies should be engaged with the local communities that are directly or indirectly affected by the company’s activities. In areas where armed groups operate, it is critical to engage with local communities such as the ethnic civil society groups operating in such areas.¹⁹⁵ The Myanmar’s Framework for Economic and Social Reform proposes a number of ways to mitigate social and environmental impacts of natural resources exploitation, including early consultations with stakeholders, public consultations, and specific attention to guidelines concerning resettlement, relocation and compensation.¹⁹⁶

“It is essential that...relevant information about development projects be made widely available and accessible, and that the communities concerned be able to participate actively, freely and meaningfully in the assessment and analysis, design and planning, implementation, monitoring and evaluation of such projects,” said UN Special Rapporteur Yanghee Lee.¹⁹⁷

Workers’ Human Rights

Companies will need to undertake human rights due diligence to ensure the human rights of workers they and their suppliers hire are protected. Given the incomplete regulation and the lack of inspection and enforcement, companies must exercise due diligence with respect to the labour practices of their suppliers and sub-contractors including their health and safety practices and the human rights of workers to form or join trade unions and to bargain collectively.

Due diligence for the right to form or join a trade union involves identifying and preventing anti-union policies and practices as well as mitigating the adverse impacts on the exercise of this right by other business activities and decisions such as changes in operations. Due diligence for the right to bargain collectively recognises that business enterprises must be prepared to bargain under a wider range of structures in countries where the law and practice does not provide a well-defined framework for bargaining. Industrial relations, a system which requires both trade unions and collective bargaining, can play important roles in both due diligence and in the remediation of adverse human rights impacts.¹⁹⁸

Myanmar Garment Manufacturers Association code of conduct

In February, the Myanmar Garment Manufacturers Association (MGMA), which represents 300 member companies, published the country’s first ever code of conduct, with the aims to provide a benchmark for responsible and ethical practices for its growing textile and apparel industry. According to the code, member companies should “observe all applicable national laws, rules and regulations in force. In areas not or only weakly regulated by national law, the Companies strive to act according to the values and principles laid down in this Code”. It adds, “It is the responsibility of private enterprise to take all possible and economically feasible measures within their sphere of influence to assume their responsibility to respect human rights.”¹⁹⁹

SMART Myanmar project

SMART Myanmar project is an EU-funded initiative to promote and support sustainable production of garments “made in Myanmar”, and to improve the competitiveness of small and medium enterprises in this sector.²⁰⁰

Land Policies

Any approach to land use and acquisition should recognise customary land rights, which requires detailed due diligence, with direct consultation with villagers and local authorities. Key elements of a responsible investment strategy related to land are free, prior and informed consent involving all affected parties and an independent grievance mechanism to hear complaints and settle disputes, both lacking under the requirements of the national framework.²⁰¹ Given the history of land confiscation in Myanmar and the flaws in the current land regime analysed above, foreign companies will have to make additional efforts to guarantee they obtain consent for use or acquisition of land through a fully consultative process and without force. In areas of conflict or inter-communal violence, companies need to carry out careful due diligence on the provenance of any land they may need to use, since displaced populations should be entitled to return to their homes.²⁰²

Given that compensation for land confiscation is uncommon, companies should seek to minimise their impact, for example by returning land when it is no longer used, and seeking alternatives to acquisition, such as leasing. Due diligence is also required to ensure there is no direct link through the acquisition or use of land that may have been confiscated or unlawfully expropriated by the military or military-linked businesses.²⁰³ Companies should disclose plans for consultation for impacted residents, resettlement, and compensation.²⁰⁴ Given the lack of guidance on voluntary or involuntary resettlement, companies should consult and encourage implementation of guidance on land acquisition, such as the IFC Performance Standards and the FAO Voluntary Guidelines for land tenure.²⁰⁵ In April, the Myanmar Centre for Responsible Business published a briefing paper on land issues in Myanmar intended to assist business investing in Myanmar on how to conduct due diligence on land and to understand the current landscape from a responsible business perspective.²⁰⁶

Conflict Areas, links with Military-Owned Companies and “Cronies”

Particular attention is required when doing business in Myanmar's conflict-affected areas or when dealings with the military and their companies. While US laws prohibit companies incorporated in the US from making investments with the military and any entities in which the military owns a stake of 50 per cent or more, the EU does not impose such restrictions²⁰⁷ Given the history of human rights violations perpetuated by the military and the lack of awareness of human rights standards and training of the military, companies need to be particularly cautious to ensure that their security arrangements respect human rights. This should include background checks to rule out previous links to human rights violations as well as training on human rights.²⁰⁸ The International Code of Conduct for Private Security Service Providers (ICoC), the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones and the Voluntary Principles on Security and Human Rights all provide relevant additional guidance security and human rights.

Transparency and disclosure

As global pressure grows on businesses to be more transparent, increased disclosure on how business addresses human rights impacts can lead to increased human rights awareness and allow greater scrutiny by civil society. The UN Guiding Principles stress that “in meeting their duty to protect, states should encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.”²⁰⁹ The OECD Guidelines also state that businesses should disclose “material information... whose omission or misstatement could influence the economic decisions taken by users of information” and that such disclosure may also cover information about their subcontractors and suppliers or joint venture partners.²¹⁰ Reporting requirements may vary based on the size and nature of business operations, with higher levels of disclosure expected from larger or multinational companies.

A 2014 survey conducted by Myanmar Centre for Responsible Business (MCRB) on 35 local companies reported that only one company made its financial report publicly available and only one company published its tax payments.²¹¹ In July, the MCRB launched its second Transparency in Myanmar Enterprises report. The study compares the websites of 100 of the largest Myanmar companies and scores them on what they say on their corporate governance and business practices, particularly concerning anti-corruption, transparency, and human rights, health, safety and the environment. This second report shows that the top companies that performed best in 2014 continue to be the most transparent in 2015, but that 39 of the 100 companies surveyed have no website, and scored zero.²¹²

“I think that whole question of corporate transparency is a big challenge because I know a lot of companies that are coming in from outside are having real problems finding partners who they feel comfortable with,” said Vicky Bowman, Director of the Myanmar Centre for Responsible Business. “While I don’t think that international companies are necessarily going to hold it against companies for behaving in noncompliant ways in the past, they need to be confident that they’re going to be compliant in the future. That’s one reason why we find international companies support MCRB’s Transparency in Myanmar Enterprises/Pwint Thit Sa report which encourages Myanmar companies to adopt publish and implement codes of conduct and other commitments to respect human rights. Its reinforcing the same messages they are passing to their partners”²¹³

Too many foreign companies investing in Myanmar are not being transparent enough in disclosing the risk of causing or contributing to human rights abuses. The Business & Human Rights Resource Centre asked 120 foreign companies of different sectors, sizes and home countries, investing or operating in Myanmar, “Do you have policies and procedures in place to prevent your business activities or investment from contributing to human rights abuses and social conflict in Myanmar?” Just over half of the companies responded, and only a quarter provided relevant information on their human rights policies and due diligence efforts in Myanmar.

The International Commission of Jurists (ICJ) also asked investors and developers for the public disclosure of information relating to the Dawei and Kyaukphyu Special Economic Zones, two of Myanmar's largest economic development projects.²¹⁴ The ICJ asked for information regarding environmental impact assessments, environmental management plans, and financial audit reports, but received no substantive responses. The inability of most companies to disclose their human rights commitments is worrying. Foreign companies are entering a country in transition, where their responsibilities toward people and communities are extensive, and where enhanced human rights due diligence and transparency are especially important in taking a leadership role and influencing local partners.

Disclosure of an international brand's global supply chain (a list of all authorised production sites) is especially important as it improves accountability by allowing advocacy groups and other organisations to monitor labour practices in companies' supplier and subcontractor factories. But of the companies contacted by Business & Human Rights Resource Centre, only two brands (Adidas and H&M) publicly disclosed their global suppliers' list and provided the names and locations of their production sites in Myanmar.

The 66 responses received by Business & Human Rights Resource Centre are a step forward in corporate human rights transparency. The responding companies – by both what they say and don't say – open themselves to heightened public scrutiny and constructive discussion. Some responses set standards and provide useful guidance, raising the global bar on corporate transparency and disclosure on human rights issues. For example, Telenor and Ericsson disclosed their human rights impact assessment and their policies on privacy rights and responsible supply chain management. BG Group explained its cross-functional approach to implementing its human rights policy; Adidas and Coca-Cola detailed not only their due diligence process prior to sourcing from Myanmar but also their ongoing engagement efforts. Transparency is an indicator of responsible business practices and a good first step. Of course, there is a need to move from policies to practice and reality on the ground. The more important work of checking policies against actual practice remains to be done, as companies' human rights commitments do not necessarily reflect their actual practices.²¹⁵

“Foreign companies operating and investing in Myanmar must take practical steps to ensure that they are not involved in human rights abuses, and must use their influence to promote respect for rights among local partners and suppliers,” said Bobbie Sta. Maria, Southeast Asia Researcher at Business & Human Rights Resource Centre. *“Publicly engaging companies about their human rights commitments is an important first step. While it does not necessarily reflect the companies' actual practices, it encourages them to ensure that human rights considerations are written into business plans, and provides affected stakeholders with a starting point for meaningful engagement.”*²¹⁶

Governments should ensure effective monitoring of the accuracy and quality of the information submitted, and should consider assigning to a regulatory body independent verification of reports and sanctions for non-compliance.

Some companies now face regulatory requirements to report annually on their material risks. Generally, these requirements concern risks to the enterprise of interest to investors and not risks to rights-holders that may be adversely affected by the enterprise. Enterprises are increasingly being required to report on environmental, social and governance issues that include adverse impacts on others. Sometimes, requirements involving non-financial disclosure for listed companies apply to specific sectors or to investments in specific countries, like the US reporting requirements related to investments in Myanmar.

The European Parliament proposed annual reporting requirements on company due diligence processes for EU companies investing in Myanmar. The reporting should include impact assessments, remediation plans and disclosure of business operations and relations, including supply chains within Myanmar.²¹⁷ The Trades Union Congress, a federation of UK unions, suggested the establishment of a Commission for Responsible and Accountable Investment for EU investors in Myanmar.²¹⁸ EU companies that agree to join the Commission would have to undertake credible human rights due diligence process, and the Commission would then issue an annual report on their compliance with the UN Guiding Principles. Beside these proposals, the US requirements are currently the only example of home country mandatory requirements on companies investing in Myanmar.

The US Burma Reporting Requirement

With the easing of sanctions in 2012, the US government authorised new investment in Myanmar. As part of the investment licence, it issued the “Burma Reporting Requirements for Responsible Investment”,²¹⁹ which establish two separate requirements:

- 1) Any US national (natural or legal person), who has entered a new investment with the Myanmar Oil and Gas Enterprise (MOGE) must notify the US Department of State; and
- 2) Any US national whose total investment in Myanmar exceeds US\$500,000 must submit an annual report on policies and procedures with respect to human rights, workers’ rights, environmental stewardship, and land acquisition.

The US government aims to use this information to evaluate the impacts of US investment and ensure that it is in line with US foreign policy goals to promote human rights, democracy, and reforms in Myanmar. It also aims to provide transparency for civil society organisations monitoring investment in Myanmar. Full compliance with the Reporting Requirements is imperative for enabling government and civil society groups to engage US companies. Compliance presumes full disclosure, which should include disclosing the names of local partners, subsidiaries, and subcontractors, explaining the locations and nature of business in Myanmar, and providing other details such as the number of employees in Myanmar and the location of land used or purchased.²²⁰

“In the past, the absence of transparency and publicly available information with respect to foreign investment activities in Burma has contributed to corruption and misuse of public funds, the erosion of public trust, and social unrest, particularly in ethnic minority areas, which led to further human rights abuses and repression by the government and military,” stated the US Department of State, “Public disclosure of information therefore will help new US investment promote transparency and support government reform, a key US foreign policy objective in Burma”.²²¹

In 2014, the US Campaign for Burma released the Report Card, which categorises US companies based on their compliance with the Reporting Requirements and their activities on the ground. Of six companies, only Coca-Cola was considered a responsible investor because it submitted a thorough report detailing its due diligence processes, provided copies of its policies and procedures, publicly disclosed all of its findings, and revealed both successes and areas for improvement in its business conduct.²²² The US Campaign for Burma is now working at the second round of Report Cards.

In June, eleven institutional investors, asset owners and asset managers sent joint letters to Caterpillar, Chevron and Hilton Worldwide urging the three companies to submit comprehensive and timely reports pursuant to the Reporting Requirements. According to EIRIS Conflict Risk Network’s research, Caterpillar, Chevron and Hilton began doing new business in Myanmar following the 2012 relaxation of US sanctions, but none of them has submitted a report or provided an explanation for its failure to do so. In the letters, investors told the companies that, “In addition to any risks stemming from failure to comply with the US Government reporting requirements, the information contained in these reports is valuable....We strongly encourage you to comply with these requirements in order to provide your investors with the information they need to evaluate your decision to engage in economic activity in Burma/Myanmar.”²²³

Leverage and business relationships

The Guiding Principles make clear that business’ responsibility to respect human rights encompasses not only the adverse human rights impacts they are directly causing or contributing to by their own activities, but also adverse impacts by their business relationships. Multinational enterprises are required to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.²²⁴ Business relationships include relationships with business partners, entities in a company’s value chain, for example subsidiaries and suppliers. Likewise, the OECD Guidelines ask multinational companies to encourage business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct.²²⁵ Companies should also use their “leverage”, their advantage that gives them power to

influence. In the context of the Guiding Principles, it refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.²²⁶

Multinational companies operating in a high-risk environment such as Myanmar have a particular responsibility to influence that operating environment. Where appropriate, this includes engaging with the government to encourage it to apply international standards. Throughout all stages of investment, companies should make their home governments aware of issues they confront in Myanmar and seek a coordinated approach, both within the industry and on the part of their home governments, to press for human rights compliant practices. International companies investing and operating in Myanmar are expected to act as industry leaders on human rights performance. Myanmar “offers a golden opportunity to make responsible business investment a common practice for all,” said the Institute for Human Rights and Business.²²⁷

“[W]hat about the multinational companies now exploiting – or poised to exploit – an economy that could quadruple in the next 20 years? Do they have a role to play? There may not be any legal requirement compelling foreign companies to abandon the Burmese market, but surely there is some moral obligation to take a public stand against the persecution of the Rohingya.” says Michael Kourabas *“Should... international corporate behemoths not stand up and loudly criticize the Burmese government for its persecution of the Rohingya, threatening to once again leave the country if the government does not improve?”*²²⁸

Local Partners

Multinational companies need to be careful in selecting their local partners. National laws often require foreign companies to operate through local partnerships, but almost all local companies have some relationship with the military, which has always played a large role in Myanmar’s economy. Some of the largest Myanmar companies operating across almost all sectors are also the most controversial. The military is deeply involved in the economy through its two holding companies, Union of Myanmar Economic Holdings Limited (UMEHL) and Myanmar Economic Corporation (MEC), both of which remain on the US sanctions list. Any business activity involving UMEHL or MEC involves the risk of being directly linked to human rights abuses. The largest Myanmar company is the military-owned Myanma Oil and Gas Enterprises (MOGE), which has been associated with human rights abuses in the past – and which currently operates in partnership with major foreign oil and gas companies. Other large companies are run by “cronies”, businessmen close to the military, or by former government officials. Some of them continue to be on the US list of Specially Designated Nationals (SDN).²²⁹ In April, the US government lifted those sanctions against one of the prominent “cronies”, U Win Aung and his two companies, Dagon International and Dagon Timber. The move prompted Myanmar officials and the business community to hope for additional influx of US investment as well as the removal from the list of other businessmen linked to the former military regime – such as, for example, U Zaw Zaw and his Max Myanmar business empire.²³⁰

Beyond the US list, investors should scrutinise potential partners, and avoid forming business relationships with partners against whom there are credible allegations of human rights abuses and complicity in violations committed by the military. Finding the right business relationships in Myanmar is a complex challenge. The risk is that businessmen with close ties to the military, associated with human rights abuses, are the best placed to benefit from new foreign investment in Myanmar. Foreign business alliances with them would serve to reinforce Myanmar’s pro-military business elite rather than help create opportunities for the emergence of new private sector actors that could support broad-based economic development.²³¹

“Who will do the deal with the Military-owned dominant beer company with 80% market share...Will it be SAB Miller or their Japanese or Thai competitors?”, asks John Morrison of the Institute for Human Rights and Business. *“Whichever, we need to be drawing a clear red line about the unacceptability of making responsible business claims when a business partner has guns, blocks effective community consultation, and lacks transparency and accountability.”*²³²

Due diligence on local partners is then particularly important, prior to entering Myanmar and throughout the life of the partnership. Companies need to carry out careful due diligence on the background, ownership, policies and practices of potential business partners. Businesses need to undertake human rights impact assessments prior to entering Myanmar to identify and address adverse impacts of their local business partners, and structure their entry and business partnerships to minimise the risk of contributing to abuses. If a company enters Myanmar with a joint venture partner, the company should secure the same commitment to transparency and human rights due diligence from business partners by contractual agreement. Local companies need support in meeting a wider range of contracting requirements – for example, around working conditions and occupational health and safety. Companies should put in place specific contractual requirements and relevant incentives and disincentives with business partners supplying goods and services to prompt respect for relevant international standards. In negotiating terms of entry, for example, companies should incorporate reference to human rights commitments and secure contractual safeguards for labour rights. Contracts should also include mechanisms for oversight and monitoring of compliance with human rights policies.²³³

In June 2015, Coca-Cola released an updated report under the US Reporting Requirements.²³⁴ In the report, Coca-Cola disclosed ties with the controversial jade industry: the director of Coca-Cola Myanmar’s partner, Pinya Beverages Myanmar, is also the director of the Xie Family Company, active in the domestic jade business – which is linked to corruption and rights abuses and banned to export to the US under industry-wide sanctions. The disclosure came after Global Witness had alerted Coca-Cola of the link. According to Global Witness, this shows the limitations of private due diligence in Myanmar.²³⁵

In particular, international apparel brands have a responsibility for the working conditions in supplier and subcontractor factories. They should demand that the Myanmar government apply and enforce international labour standards. The statement that international brands have sent to the Myanmar government supporting calls to apply the minimum wage across all sectors is an important example of the active role they can play to influence the government. Even more important all international business must not seek abrogation of international labour standards or of human rights either in law or in practice from the government.

“The message that international apparel brands send to government is important,” said Vicky Bowman, Director of the Myanmar Centre for Responsible Business. *“For example, H&M recently issued a statement on the labour situation in Myanmar which not only supported the early introduction of the minimum wage but also took the opportunity to highlight the importance of peaceful resolution of worker protests and the need to protect rather than harass workers representatives. ‘H&M noted that when violence is used by public or private sector security forces to curtail workers’ peaceful protests, this is likely to be more of a deterrent to companies considering sourcing from Myanmar than the strikes themselves, and will have a significant negative impact on Myanmar’s reputation. Similarly, where workers representatives are detained or dismissed for striking, this will also*

*have a negative impact on Myanmar's reputation and will be a factor which investors consider'. In the present climate for trade unionists in Myanmar, it is good to see a brand highlighting the problems faced by human rights defenders and the need for government to protect them."*²³⁶

Grievance mechanisms

In addition to the responsibility of the state, companies also have responsibilities to provide remedies. The Guiding Principles establish that both states and companies have responsibility to guarantee effective remedy for victims of human rights violations and that "[w]here business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their reme-

diation through legitimate processes".²³⁷ Non-state-based mechanisms include company-based grievance mechanisms designed to help facilitate resolutions of disputes. Corporations are required to "establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted."²³⁸ Operational-level mechanisms should also be based on engagement and dialogue: consulting the rights holders and groups, for whose use they are intended, on their design and performance, and focusing on dialogue as the means to address and resolve grievances.²³⁹ Given the lack of effective state-based remedies, operational level grievance mechanisms, established according to criteria in the Guiding Principles, are even more important in Myanmar. At present, such grievance mechanisms are largely absent.²⁴⁰

Garment sector: Company profiles

Private garment factories were re-established in Myanmar in 1994, after 30 years of government control with the nationalisation of the sector in 1964. By 2000, manufactured garments accounted for 85 percent of total exports – 54 percent of which went to the US. The economic sanctions imposed by the US in 2003 had a dramatic impact, resulting in the closing of many factories. The Myanmar Garment Manufacturers' Association (MGMA) claimed some 85,000 factory workers lost their jobs. After the sanctions, most of the garment factories catered to the domestic market, with some exporting to China, South Korea, and to Japan, which replaced the US as the main export markets.²⁴¹

Unsurprisingly, the garment industry made a significant comeback after the lifting of sanctions. The sector now employs an estimated 200,000 workers, 90 per cent of whom are women. The work is distributed in about 200 factories, mostly located in Yangon and nearby industrial zones and in Mandalay, Bago Patheingyi and the Thilawa SEZ.²⁴² Yangon's 14 industrial zones provide the hub of Myanmar's manufacturing facilities and are the centre for most labour-intensive industries such as garments and footwear. They provide a cheap workforce and proximity to the main port of Myanmar for exports, as well as the biggest market for domestic sales. One of those, Hlaing Thar Yar, is the biggest industrial zone in the country in terms of the number of factories, number of workers, and area.²⁴³ With the recent reinstatement of the GSP+ trade preferences for exports to the EU, the interest from European companies to purchase from Myanmar is steadily rising. Exports from garment manufactures to the EU doubled in 2014, while total exports were valued at about US\$1.5 billion.²⁴⁴

With the increase in foreign direct investment, the garment industry is set to grow substantially over the next few years. Garment and textile exports are expected to become crucial for the Myanmar economy, and the industry is the main

source of non-agrarian employment, particularly for women. Unless labour standards are improved, however, this rapid growth risks exacerbating existing problems in the industry. Sweatshop labour conditions and health and safety violations are common where no union is present, with little lighting, overcrowded facilities, unsafe machinery, and poor air quality resulting in respiratory diseases.²⁴⁵ Forced overtime is pervasive. Workers are subject to long working hours beyond legal limits, for seven days a week, for extremely low wages. To meet living wages, workers are in practice forced to work over time, for which they are not paid appropriately. They are often penalised when they are sick by a wage deduction. Many workers feel unable to refuse overtime work without risking retaliation by management. There are an insufficient number of labour inspectors.

For example, workers at the Inlay shoe factory in Bago reported managers physically abusing them. Repression against union activities is also common. Union activists are usually transferred to separate them from co-workers and workers are instructed not to contact outside organisations. At the Taw Win embroidery factory, for example, workers formed a union and went on strike over very low wages. The employer retaliated by finding minor reasons to discipline the workers involved in the action and claimed that the union was not legitimate because of its association with the CTUM.²⁴⁶

The frequency and intensity of labour disputes in the garment sector, mostly related to low wages, continues to rise. Following a wave of strikes by garment workers in the Hlaing Thar Yar industrial zone in 2012, the Ministry of Labour set a temporarily minimum wage of 50,000 kyat (US\$50) per month.²⁴⁷ The Department of Labour recorded 447 strikes in the garment sector between 2012 and 2014.²⁴⁸

SHWE PYI THAR industrial zones strikes

A wave of strikes in the garment sector took place at the beginning of 2015 and continued for months. In January, about 2,000 workers of Red Stone, Costec, E Land Myanmar, Ford Glory and Tai Yi garment and shoe factories, located in the Shwe Pyi Thar and Hlaing Thar Yar industrial zones, went on strike. Demands varied between the factories, but all groups sought a 30,000 kyat (US\$30) monthly pay increase – from 50,000 kyat, up to 80,000 kyat (US\$80). Workers also demanded the introduction of a set, fair minimum wage, enforcement action against employers that break the law, and compensation during the negotiation period. The factories, which are owned by Chinese and South Korean companies, rejected the demands and offered 62,000 kyats. Four rounds of negotiations between the government, employers and employees representatives failed to produce an agreement, and finally the government sent police forces to close down the strike camps. This resulted in violence between the police and striking workers. After the government action, some workers returned to work, but about 600 workers from the Costec and Ford Glory factories remained on strike. In March, the police arrested 20 of them and charged 14 with rioting, punishable by up to two years in prison.

This strike provided an example of the problems in the Settlement of Labour Dispute Law as well as in the inexperience of workers, employers and government to resolve the dispute. The Labour Ministry issued a statement warning of legal actions against those who continue to protest and “harm peace and rule of law,” or incite unrest, while the Myanmar Garment Manufacturers Association said the workers were disrupting factory operations and claimed the workers’ actions were “unlawful”. The Ministry also mentioned that factory owners had demanded that the government provide protection to their factories.²⁴⁹

“Laws that were enacted ... cannot protect the workers. Not only are workers losing their rights but owners are also having problems too. These laws cannot solve [disputes] or protect both sides from losses...For example, [workers] have the right to demand a salary increase, but how should they go about doing it? It’s possible they could break the law if they do it the wrong way,” said Ko Aung Thu of MTUF. “Even though there are problems with the law, we would like both sides to obey it and to negotiate. If not, things could get worse”.

While skill levels are low now, Myanmar could soon be competing with low-cost countries like Bangladesh and Cambodia, long favourites of garment producers. Each day brings reports of manufacturers in other parts of Asia, where wages have been on the rise, looking to relocate to Myanmar, including in the country’s rapidly expanding industrial zones. Adidas Group (Germany), Gap (USA), H&M (Sweden), Marks & Spencer (UK) and Primark (UK) already have factories in Myanmar producing their garments. Other international brands are considering a supply-chain in the country. Last January, the SMART Myanmar project, a sustainable garments initiative, organised a trade mission to Myanmar during which a delegation of 17 European clothing and textile companies interested in a Myanmar supply-chain, based largely in Germany, Denmark, the Netherlands, Sweden and the UK, visited local factories.²⁵⁰

There is a perception among Myanmar government officials and the business community that Western companies are more ethical and ensure the rights of workers.

“US garment firms are very concerned with labour rights. Normally, US garment companies check the working environment of factories and other labour suppliers before they give the green light for trade,” said Myint Soe of the MGMA.

²⁵¹

Western companies are saying the right words; they are cautious about Myanmar, and are aware of the reputational risks they face if something goes wrong. The majority of them have some human rights policies and codes of conduct in place. Asian companies often do not, or do not disclose their commitments. For example, while 76 per cent and 68 per cent respectively of the companies based in Europe and

in the US (from different sectors, including manufacturing) responded to Business & Human Rights Resource Centre questions about their human rights policies, only 35 per cent of companies based in Asia did so.

However, Western investment does not guarantee the rights of the workers in these factories..²⁵²

“Western buyers in the garment industries are just taking advantage of the low wages of their suppliers paying the same meagre wages as the other factories,” said Bent Gehrt of Workers Rights Consortium. *“In the garment industry it is the responsibility of the purchaser to pay higher wages and help[in] setting wage to living wage. If an international brand pays more, it will set a standard for other factories. There will be a competition for workers and they will demand better pay at other factories.”*

“Asian companies investing in Burma aren’t run by worse or greedier people than [Western companies] are. They’re just operating under a different risk calculus,” writes Michael Baab of the Danish Institute of Human Rights *“American firms putting more than \$500,000 into the country are required to publicly report their land acquisitions, payments to local officials, and security arrangements. If they get busted doing something heinous, they’ll end up on front pages. Developing-country multinationals don’t have these pressures.”*²⁵³

In June, the government announced a minimum wage of 3,600 kyats (about US\$3.20) for all sectors.²⁵⁴ While local unions called for higher pay, employers say that the proposed minimum wage is unsustainable for business. Several Chinese and South Korean garment manufacturers threatened to close down their factories if the proposed minimum

wage is set at that rate. The Myanmar Garment Manufacturers Association (MGMA) also signalled its opposition to the proposed wage.²⁵⁵ On 15 July, Ethical Trade Initiative (ETI) on behalf of its member companies (including Gap, H&M, Marks & Spencer and Primark) and the Fair Labour Association (FLA) and 17 of its affiliated companies (including Adidas) sent a letter to the Myanmar government supporting international calls for the proposed minimum wage to apply to the garment sector.²⁵⁶ These statements are evidence that international brands can play an important role in influencing the Myanmar government.

Some major international brands with a supply-chain in Myanmar

ADIDAS GROUP	GERMANY
GAP	US
HONEYS	JAPAN
H&M	SWEDEN
MARKS & SPENCER	UK
MG GROUP	THAILAND
PRIMARK	UK

Business & Human Rights Resource Centre asked five major international apparel brands based in the EU or the US with a supply-chain in Myanmar about their human rights policies and practices. After the government proposed a new minimum wage in June, Business & Human Rights Resource Centre contacted the brands again and asked for a statement on their position on minimum wage in Myanmar and whether the factories they are sourcing from are opposed to the proposed minimum wage. The companies are profiled according to the responses received in relation to:

- Myanmar-specific human rights policies, including specific labour rights policies, position on minimum wage, and due diligence efforts, as well as mitigation and remediation measures;
- Disclosure of suppliers' list in Myanmar; and
- Engagement with stakeholders, including consultation with workers and unions at factories in Myanmar prior to the start of and during the suppliers' operations and outcome.

All five companies responded, but while Adidas Group, H&M and Primark provided detailed information to all questions, Gap referred Business & Human Rights Resource Centre to the company's report to the US Department of State under the Burma Reporting Requirements, while Marks & Spencer only provided a general statement. Only two brands (Adidas and H&M) publicly disclosed their global suppliers' list (a list of all authorised production sites) and provided the names and locations of their production sites in Myanmar. Disclosure improves accountability by allowing advocacy groups and other stakeholders to monitor labour practices in companies' supplier and subcontractor factories. Adidas first started disclosing its supplier list to NGOs and academics in 2001 and moved to a public disclosure system in 2007, which is updated twice every year. H&M publicly disclosed its supplier list for the first time in 2013 and updates it an-

nually. In their responses to Business & Human Rights Resource Centre, both Adidas and H&M disclosed the names and locations of their suppliers in Myanmar. Other brands with a supply-chain in Myanmar, including Gap, Marks and Spencer and Primark have not disclosed their suppliers. In a recent statement to Human Rights Watch (for a report on the garment sector in Cambodia), Marks and Spencer said that the company had launched new transparency commitments in 2014 and that it "will publish an annual list of all...active clothing manufacturers" by 2016.²⁵⁷ In its report to the US Department of State, Gap said that the brand is examining the implication of such disclosure for its business. In relation to the proposed minimum wage, all companies responded and informed they have sent joint letters to the government supporting the adoption of a minimum wage across all sectors.²⁵⁸

While they distanced themselves from factories owners threatening to close, as well as proposals to have a two-tier system with a different wage for the garment sector, they declined to endorse a specific rate or support the higher rate called for by workers and unions. Adidas, Gap, H&M and Marks & Spencer sent individual responses, while Primark referred us to the statement by the Ethical Trade Initiative (ETI). H&M also released a statement not only supporting the minimum wage across all sectors, but also the respect of freedom of association and collective bargaining in the garment sector. Adidas is the only company that said that the wages they are paying to workers in their factories are already above the proposed minimum wage.

All companies provided some information about their human rights policies and due diligence efforts, but while Adidas, Gap and H&M have developed Myanmar-tailored policies and strategies, Marks & Spencer and Primark only mentioned compliance with their general human rights policy or code of conduct. Further, the strength of such policies varies. For example, Adidas is the only company that said it has developed specific guidance for their suppliers on land acquisition and development of industrial sites. H&M is the only company that specifically mentioned the adoption of a fair living wage policy. Disclosure of potential problems found during labour inspection and audits, as well as remediation measures and grievance mechanisms, is also important not only to increase the company's transparency, but also to facilitate engagement with stakeholders. For example, in its report to the US Department of State, Gap disclosed the results of audits at its factories and remediation measures taken after some labour rights violations were found.

In relation to engagement and consultation, all international brands have conducted some form of engagement prior starting the sourcing from Myanmar, including meeting with unions. Adidas, for example, conducted stakeholders' engagement for two years before starting a supply-chain in Myanmar. H&M, Marks & Spencer, Gap and Primark also conducted meetings and visits with stakeholders, mainly facilitated by Business for Social Responsibility (BSR).

"Some international brands come to meet us before starting to source from Myanmar," said Maung Maung, CTUM Secretary General, "but then once they started operations they do not keep meeting with us, and unions do not know about what is happening."

Given the complex environment in Myanmar, international brands need to engage regularly with the government, to understand new laws and the rapidly developing administrative systems, as well as with trade unions and numerous civil society groups. They should also disclose the names and locations of the factories they are sourcing from in Myanmar, the results of audits and inspections and potential mitigation and remediation processes. International brands have a critical role in promoting respect for workers' rights throughout the supply chain in Myanmar, and they should use their leverage to pressure the government to improve working conditions and wages at factories in Myanmar.

Adidas (Germany)

Shortly after the lifting of international trade sanctions, Adidas Group started considering the possibility of moving some of its production to Myanmar.²⁵⁹ In 2013, Adidas' responsible business policy still listed Myanmar among the countries where the company did not do business because of human rights concerns.²⁶⁰ In February 2015, Adidas published its updated Global Factory List – a list of all factories that manufacture products for Adidas. The list for the first time included factories in Myanmar.²⁶¹ In its response to Business & Human Rights Resource Centre, Adidas disclosed information about its supply-chain. Adidas said that currently it has one supplier, who has recently established a footwear manufacturing plant employing 313 workers. The factory is located in Anawyahtar Industrial Zone, Hlaing Thar Yar township, Yangon. Adidas said that other strategic business partners and licensees are exploring the possibility of establishing manufacturing operations in the country and that once operational, new manufacturing facilities will be included in its publicly available supplier lists, which are updated twice every year.²⁶²

Based on Adidas' own and other sources, the company engaged with civil society groups, international human rights organisations, the ILO, local trade associations and the Myanmar government, including the Ministry of Labour. Adidas said that it called on the Myanmar government to update their regulations to match its standards. For example, it suggested to the government to consolidate the many dispersed sources of law into a single publication. The company says that it is working with the ILO's office in Yangon and the Myanmar Garment Manufacturing Association on ways to lift the overall standards in the garment sector. As a result of its engagement, Adidas has developed specific guidance for their suppliers on land acquisition and the development of industrial sites.

"[W]e conducted a two-year review and extensive stakeholder engagements (with the ILO, government agencies, and local NGOs) prior to allowing the sourcing of goods from the country," said Adidas. "We also set up the necessary procedural checks to ensure that our business partners' activities will not contribute to human rights impacts."

According to Adidas, its commitment "to set the bar higher" led to a lengthy process of examining and strengthening its policies and approaches to ensure that it was protecting the rights and interests of local stakeholders in Myanmar. Adidas said that it is committed to upholding the OECD Guidelines, including the need to support and ensure the respect for human rights in its global supply chain, and that it is fully

committed to improving social and environmental standards in the garment sector in Myanmar. In its response to Business & Human Rights Resource Centre, Adidas provided detailed information about Myanmar-tailored human rights policies and due diligence efforts:

"For Myanmar, supplementary procedures apply. These require our suppliers to commission an independent party to review any proposed land acquisition, and consider community impacts, including displacement and livelihood issues. All suppliers must undertake the required due diligence to show that any local business associates (joint venture partners, etc.) are not included in the US government's restricted persons list (SDN). And independent structural engineering assessments are mandatory for all buildings, given the weak permitting system operating in the country."

In relation to land use or acquisition, Adidas said that if land needs to be acquired for the construction of a factory, the company would carry out social impact assessments and community-level consultation with those currently occupying and owning the land. Adidas, however, has not made public its internal checklists and supplementary guidelines on land acquisition for Myanmar – Adidas said that these have been shared with the US government.

In relation to labour standards, Adidas provided evidence of due diligence efforts, such as verifying labour, safety and environmental conditions at the prospective factory site, which was done through audits. According to the company, it is now running capacity-building programmes to familiarise the factories with labour standards and the need to respect freedom of association, including guidance on industrial relations and the handling of strikes. Adidas has also translated its Workplace Standards into Burmese to ensure that suppliers are incorporating them into their induction training for new employees. Based on Adidas' policies and its response to Business & Human Rights Resource Centre, there is also evidence that Adidas is going beyond compliance with national laws. For example, until new health and safety requirements are in place, Adidas is requiring its suppliers to meet the Adidas' Health and Safety Standards, which follow international standards. Adidas said that if existing buildings are purchased, or leased, it would require building safety checks are mandatory, and that all newly constructed buildings would need structural engineering certificates issued by independent engineering firms. Adidas said that in the absence of an official minimum wage for Myanmar, it requires its suppliers "to set wages against the prevailing industry wage for export factories in the sector". This, however, in practice means that workers would probably still receive a basic salary below living wage.²⁶³

In relation to wages, Adidas said that the basic wages its footwear suppliers are paying to their workers "are already above the government's proposed minimum wage, so the new minimum wage should not materially affect them." It added, that its "general position as a company is that we fully support the development of a legal minimum wage in Myanmar and have met with government on several occasions to encourage the development of a robust minimum wage-setting mechanism for the country."²⁶⁴

Gap (USA)

Gap was the first US retailer sourcing apparel in Myanmar. It is currently sourcing finished outerwear, including jackets and vests for its Old Navy and Banana Republic Factory brands from two independently owned factories in Yangon. Over the past year, Gap has tripled the quantity of orders but has no immediate plans to open other factories. Gap did not disclose its list of suppliers. It replied to Business & Human Rights Resource Centre, but it did not respond in full to the list of questions, referring instead to its 2014 report “Responsible Sourcing in Myanmar”, based on the US government’s Responsible Investment Reporting Requirements.²⁶⁵

According to the report, which was submitted on a voluntary basis, Gap conducted stakeholder consultations prior to entering Myanmar and it is continuing doing so.

“[W]e have engaged in extensive, ongoing consultations with key stakeholders across sectors to understand how human rights issues and the local operating environment in Myanmar impact and may be affected by our business. These consultations have involved in-person meetings and sustained dialogue with civil society and worker organizations in Myanmar, U.S. government agencies, the ILO and international NGOs with specialized expertise in Myanmar.”

In 2013, Gap formed a steering committee of senior executives that developed a plan on how to conduct human rights due diligence in Myanmar. According to Gap, its due diligence, risk assessment and mitigation efforts in Myanmar have been informed by the Guiding Principles, the OECD Guidelines and other international standards, and Gap’s approach in Myanmar has involved ensuring appropriate policies are in place, assessing risks to workers, taking action to mitigate and prevent risks and reporting on its progress.²⁶⁶

According to the report, before approving each factory for sourcing and initiating production, Gap contracted with third-party auditors to confirm that the factory met basic labour rights and working conditions, fire safety and structural safety, and achieved an acceptable level of initial compliance with Gap’s code of conduct. The initial audits conducted at the two subcontracting factories in November 2013 identified a number of cases of noncompliance with Gap’s Code of Vendor Conduct. The assessment reported regular overtime work beyond legal limits and inconsistent payment at premium rate. Working hours exceeded the permitted limit of 60 total hours (including overtime), and workers were not permitted to rest one day in seven. The audit also reported that workers did not wear safety equipment when handling cleaning chemicals and that workplace ventilation was inadequate.²⁶⁷ Gap said it has a “zero tolerance policy when it comes to child labour”. According to its report, audits conducted at the two factories did not find evidence of child labour but they found that “some personnel files did not contain proof of age verification” and that “some age verification documents...showed signs of manipulation”.²⁶⁸

After the audits, according to Gap, both sub-contracted factories adopted grievance policies and procedures and trained workers on grievance channels. A formal written grievance procedure for workers was introduced and an investigation process and dedicated committee for addressing

grievances was created. The company conducted training for employees on wage policies and eradicated payroll deductions and punitive fines from workers’ salaries. Gap said that it continued to work with factory management, workers and experts, including the ILO, to improve compliance and working conditions at each facility. These efforts include, for example, full factory audits by an independent third-party on a quarterly basis, development of corrective action plans, and training for management and workers to mitigate and prevent future issues. The company conducted training on the use of personal protective equipment and procedures for segregating hazardous chemicals and formed maintenance teams to conduct regular checks for electrical and chemical issues. The company also installed exhaust fans in factories for better air circulation, conducted fire safety and on-site fire protection assessments, created alternative exit routes for fire safety and posted additional exit signs. As a result of these changes, according to the report, one factory successfully resolved its key compliance issues by the third full evaluation in June 2014, while the other factory made considerable progress in improving working conditions and factory safety, “though a limited number of key issues remain to be resolved”.²⁶⁹

“These improvements are encouraging, especially considering how new many of the practices and more rigorous standards are for these factories and the garment industry in Myanmar. Nevertheless we recognize that sustained compliance often takes time to achieve, as management and workers go through an adjustment period to become familiar with new policies and procedures and change customary behaviours. We are committed to helping our approved factories maintain and improve their performance. Going forward we are continuing to actively engage management to implement policies and programs that embed sustainable social compliance and continuous improvement into factories’ operations.”

In relation to wages Gap said:

“While the workers in the factories do not directly work for Gap Inc. or our brands, we encourage suppliers to pay competitive wages to their employees. We also require that they provide compensation for any overtime hours worked, all of which must be voluntary. We have been an active supporter in the establishment of a minimum wage in Myanmar. We support efforts to raise the quality of life for garment workers, so that these women and men cannot only ensure their basic needs are met but also begin to build better lives for themselves. The minimum wage should be reconsidered through an annual review mechanism, which is inclusive of key stakeholders, and is aimed at laying the foundation for a vibrant tripartite industrial relations and wage level negotiations process based on transparency, inclusiveness and peaceful negotiation.”²⁷⁰

H&M (Sweden)

H&M placed test orders from factories in Myanmar in 2013, officially started sourcing in 2014 and opened an office in Yangon in early 2015. H&M publicly discloses the name of locations of all factories that make products for any brand within the H&M Group. The list includes also processing factories that may be subcontracted by its suppliers to perform specific tasks, such as printing or washing. H&M sent a full response to Business & Human Rights Resource Centre and provided names and locations of its three manufacturing factories in Myanmar (Hung Kiu Garment in Bago, and Myanmar Century Liaoyuan Knitted Wear and Myanmar Jiale Fashion in Hlaing Thar Yar, Yangon) and one processing factory (Myanmar Pada Laundry also in Hlaing Thar Yar).²⁷¹ Other sources, however, report that H&M is working with 14 local factories.²⁷²

H&M provided evidence that before entering Myanmar it conducted a risk analysis with stakeholders, both locally and internationally. According to H&M, it conducted in-country consultations through the Business for Social Responsibility (BSR) working group and met with trade unions, civil society organisations, NGOs and government representatives. Outcomes of these consultations were the creation of the BSR Responsible Sourcing Principles and H&M's Sustainability Strategy for Myanmar. H&M said that it is in close collaboration with workers' unions and creates places where employers and workers' representatives can meet and discuss priority issues, and that the H&M office in Yangon is currently setting a plan for industrial relations.²⁷³

"H&M continues to work with BSR Working Group and BSR to mitigate current and future risks in Myanmar, engage the government with one voice, and build the capacity of local suppliers to meet international brand standards."

According to H&M, the company performed audits and capacity-building with its suppliers and has an audit programme to monitor its suppliers and follow-up on grievances. H&M said that it created a minimum level for its suppliers consisting of defined social and environmental factors, and defined a higher level to be reached within one year. Fundamental labour rights, the elimination of forced labour and child labour, freedom of association and non-discrimination form part of H&M minimum requirements before starting the sourcing from a supplier. In 2013, H&M implemented a Fair Living Wage strategy, with the aim that by 2018, H&M strategic suppliers should have well-functioning payment structures in place as to be enabling them to pay their employees a fair living wage.²⁷⁴

In a statement, H&M said that it attaches high importance to freedom of association and the peaceful resolution of conflict:

Ideally this should lead to social dialogue between employers and worker representatives in which issues can be constructively resolved and in which more broadly – according to ILO Convention C. 98 – Right to Organize and Collective Bargaining can ensue. Occasionally – whenever issues cannot be resolved – workers may choose to go on strike or protest. We attach great importance to the peaceful resolution of worker protests. When violence is used by public

or private sector security forces to curtail workers' peaceful protests, this is likely to be more of a deterrent to companies considering sourcing from Myanmar than the strikes themselves, and will have a significant negative impact on Myanmar's reputation. Similarly, where workers representatives are detained or dismissed for striking, this will also have a negative impact on Myanmar's reputation and will be a factor which investors consider.²⁷⁵

In relation to wages H&M said:

*"H&M has met with the Ministry of Labour in Myanmar and expressed our expectations about set minimum wage levels and annual review mechanisms to ensure that workers receive a fair wage. Together with Gap Inc. and N Brown Group plc, we have sent a joint letter, urging the Government to set a negotiated minimum wage level that is uniform across all industries as well as annual reviews of the minimum wage. Our role as a brand and buyer is not to set or recommend the level of wages. Our approach is that wages should be negotiated between the parties on the labour market. We require our suppliers to pay their employees the wages and overtime remuneration to which they are legally entitled, and check that they do so. We are well aware that the opportunities for employees to negotiate are limited in many countries, including Myanmar. That is why we are developing projects and programs which have the aim of strengthening employees' rights and their ability to negotiate on their own behalf on their terms and conditions through trade unions or other elected employee representatives."*²⁷⁶

In a statement on its website, H&M further elaborated that it advises that the government set a uniform level across all industries in compliance with the ILO Minimum Wage Fixing Convention: "If the garment industry wage levels are lower than other industries, it will not be able to attract and retain a skilled labour force, which it needs to develop and grow into a thriving economic driver." It also recommended that the minimum wage should be reconsidered through an annual review mechanism, "which is inclusive of key stakeholders, and is aimed at laying the foundation for a vibrant tripartite industrial relations and wage level negotiations process based on transparency, inclusiveness and peaceful negotiation."²⁷⁷ Commenting on this statement, Vicky Bowman, Director of the Myanmar Centre for Responsible Business, said that the message that international apparel brands send to government is important: H&M "not only supported the early introduction of the minimum wage but also took the opportunity to highlight the importance of peaceful resolution of worker protests and the need to protect rather than harass workers representatives...In the present climate for trade unionists in Myanmar, it is good to see a brand highlighting the problems faced by human rights defenders and the need for government to protect them."²⁷⁸

Marks & Spencer (UK)

In December 2014, Marks & Spencer confirmed it was examining the potential for sourcing from Myanmar, although the company believed the country lacked a suitable audit framework and sophisticated human resource management systems.²⁷⁹ In October a legal consulting firm had already published on its website that Prosperity Knitwear Myanmar, a Hong Kong-based company, has invested US\$5.5 million

(with US\$45 million more budgeted for 2015) to establish a garment production facility in the Thilawa industrial zone to produce sweaters for Marks & Spencer.²⁸⁰ The factory employs 200 people. This information is not confirmed by Marks & Spencer, which did not provide individual responses to Business & Human Rights Resource Centre's questions and did not disclose its list of suppliers. It only provided the following statement:

"Our sourcing from Myanmar is limited to a handful of factories that are owned and operated by suppliers we have established relationships with in other countries. We have also joined the BSR (the responsible business network) working group in Myanmar to support the textile's industry's development in the country...[A]ll our suppliers, wherever they are in the world, as a condition of doing business with us, must adhere to our Global Sourcing Principles."²⁸¹

In relation to wages Marks & Spencer said:

*"We are part of the BSR Myanmar working group and as such support the letter sent to the Minister for Labour Employment and Social Security and Chair of National Committee on the Minimum Wage from the group calling on the Government to enact a minimum wage level that is uniform across all industries."*²⁸²

Marks & Spencer did not provide enough evidence that it conducted proper due diligence efforts prior to entering in Myanmar or that it has adopted specific human rights policies targeted to the challenges of operating in Myanmar. Marks & Spencer should develop such policies and publicly disclose them. Particular attention should be given to health and safety standards and fair living wage strategy. If Marks & Spencer has conducted any audits or inspections, it should disclose its results and its remediation measures. As a first step it should disclose the names and locations of its suppliers. If the information that one of its suppliers is located in the Thilawa special economic zone is true, Marks & Spencer should be particularly cautious, as the development of the area has been linked with allegations of forced evictions without proper compensation. Although this specific factory has not been linked with any human rights abuses, Marks & Spencer should adopt a land policy and should develop specific guidance for their suppliers on land acquisition and development of industrial sites. Evidence of stakeholder engagement is also limited. While joining the BSR working group is a good first step, Marks & Spencer should engage with local civil society and consult with workers and unions. Marks & Spencer should endorse the proposed wage at least and ideally the higher wage, which unions and workers are calling for.

Primark (UK)

Primark responded to Business & Human Rights Resource Centre, but it did not disclose the names and locations of its supplier factories in Myanmar – it only said that it "is producing small orders from Myanmar (Yangon and Bago) in a select group of factories".²⁸³ Primark said it undertook due diligence process, although it did not provide details of such efforts or the outcome of its assessments.

"Primark undertook a due diligence process prior to entering the Myanmar market to assess potential and actual risk within the proposed supply chain. We continue to monitor the situation in Myanmar, and are proactively engaged with a broad range of stakeholders, including the ILO, trade unions, and labour rights groups, on the challenges of sourcing from Myanmar."

Primark provided information about its general labour rights policies and code of conduct and due diligence efforts, but there is no evidence it has developed any Myanmar-tailored strategies. Primark said that compliance with its Supplier Code of Conduct on ethical standards forms part of the Terms and Conditions of Trade and that all manufacturing sites are audited against this code prior to approval for production, and then are monitored on a regular basis. In relation to wages, Primark did not provide any specific statement, but only referred to the statement by the Ethical Trade Initiative (ETI).

In relation to consultation and engagement, according to Primark, workers' consultation is mandated within their supplier audit and monitoring programme. It said that information attained through worker consultation is treated in confidence, and forms a critical part of the audit findings. Primark, however, did not disclose any relevant information about the outcome of such consultations, findings of the audits and grievance mechanisms.

"As part of our wider due diligence process, we have engaged with key stakeholders including with labour rights groups and trade unions, either directly or through the Business for Social Responsibility (BSR) Myanmar Responsible Sourcing working group."

Despite Primark's engagement in due diligence efforts and stakeholder engagement prior to entering Myanmar, the limited information provided does not show evidence that it has adopted specific human rights policies targeted to the challenges of operating in Myanmar. In addition to its Supplier Code of Conduct, Primark should adopt targeted policies, including on health and safety standards and a fair living wage strategy. Primark should also disclose information on the results of its audits and outcomes of consultation, as well as the names and locations of its suppliers in Myanmar. Primark should endorse the proposed wage at least and ideally the higher wage, which unions and workers are calling for.

OIL & GAS, EXTRACTIVE SECTOR: COMPANY PROFILES

Myanmar has a long history in the extractive sector, with oil exports beginning as early as 1853. Following the 1962 coup, the sector was nationalised until 1988, when the State Law and Order Restoration Council allowed for international joint ventures and production sharing contracts. Links with human rights violations began during this first period of liberalisation. Foreign companies, in partnership with state-owned or military controlled enterprises, were involved in land grabs, forced labour and torture, mostly as a result of land confiscation and resettlement forced by the government and the provision of security services by the military. Due to such human rights violations and the economic sanctions imposed by Western governments, from the late 1990s, few Western companies were left in Myanmar; Asian companies acquired a number of blocks in their absence. The few Western companies left faced, and are still facing, boycott campaigns and opposition by local and international NGOs. Recently, for example, an Amnesty International report accused Rio Tinto (UK) and Ivanhoe Mines (Canada, now Turquoise Hill Resources) of breaching economic sanctions by making assets

available to the military-owned Union of Myanmar Economic Holdings (UMEH) and their involvement in the controversial Monywa copper mine project.²⁸⁴ The Shwe Gas project, the Myitsone Dam, the Monywa copper mine (which include the Letpadaung mine) and the Salween River Hydropower Project have all been recently associated with tensions between local communities and investors over land confiscations and other human rights abuses.

Shwe Gas project

The Shwe Gas project is a large-scale natural gas project in Rakhine State being developed by a joint venture between Myanmar Oil and Gas Enterprise (MOGE), Daewoo International and Korea Gas Corporation (KOGAS) and ONGC Videsh and GAIL of India. Chinese state-owned company China National Petroleum Corporation (CNPC) signed a deal for the sale and transport of the Shwe gas through 1,200 Km overland gas pipelines from Rakhine State to Northern Shan State and into Yunnan province in China. Local and international organisations such as the Shwe Gas Movement and Earth Rights International (ERI), as well as the UN Special Rapporteur, have reported human rights violations by the government during the construction phase, including use of forced labour and torture. Rakhine State is characterised by a high poverty rate and ongoing inter-communal violence, while ethnic armed conflict continues in Northern Shan State. Fighting in this area is related, at least in part, to the government's efforts to secure the pipeline route. In 2008, ERI and other NGOs filed a complaint before the South Korea OECD National Contact Point (NCP) alleging breaches of the OECD Guidelines by Daewoo and KOGAS in relation to the companies' gas project operations. The complainants alleged severe and widespread human rights abuses, including forced relocation, forced labour and violence perpetrated against local communities by the army, which secure the project. They also said that the companies did not disclose information to local communities about the project, and did not conduct environmental impact assessments. The Korean NCP, however, rejected the complaint saying that the general situation in Myanmar and specifically around the Shwe Project does not merit an investigation or arbitration between the companies and the complainants. The NGOs criticised the decision.²⁹¹ In June, 150 farmers protested against Daewoo for its role in an ongoing dispute concerning land near the Shwe gas project.²⁹²

"If Daewoo and KOGAS were to genuinely conform to the Guidelines, the Shwe Project would have to be postponed, which evidently is against the priorities of both the companies and the ministry," said Matthew Smith, Burma Project Coordinator at Earth Rights International, "These companies and the Korean government are now on notice that negative social and environmental impacts from this project have begun, and are likely to continue and accelerate if this project moves forward. These companies bear responsibility for these abuses, and the Korean government is failing in their obligations under the OECD guidelines to prevent these harms. The blood of the people of Burma will be on their hands."

"Villagers have been threatened and families forced to accept compensation, and people protesting have been arrested and detained," said Shwe Gas Movement Director Wong Ong.

Leptadaung copper mine

The Monywa mine project, in Sagaing region, includes the Sabetaung, the Kyisintaung and the Letpadaung copper mines. The Leptadaung mine is now operated by the Chinese company Myanmar Wanbao, a subsidiary of NORINCO, in partnership with the military-owned conglomerate Union of Myanmar Economic Holdings (UMEH). Since the beginning, the project has been characterised by serious human rights abuses and lack of transparency. Over the years, thousands of people have been forcibly evicted by the government with the knowledge, and in some cases the participation, of foreign companies. Between 2011 and 2014, a number of forced evictions were carried out, and thousands more people are at risk of evictions as Wanbao continues to develop the mine. Environmental impacts have been poorly assessed and managed, with implications for the health and livelihoods of people living near the mine. More recently, the Leptadaung copper mine was the site of violent encounters between security forces and local activists protesting against land grabs and environmental issues. A violent crackdown by the police in 2012 seriously injured over 100 people, including monks, due to the use of white phosphorus grenades. Another encounter last December between protesters and police resulted in the killing of a woman. In March, a group of monks filed criminal and civil charges against the Home Minister who ordered the crackdown and the police, but the case was rejected on grounds that the officials were operating in good faith.

In response to the public outcry for action after the crackdown of protesters, in 2012 the government formed the Laptadaung Inquiry Commission, a parliamentary ad hoc commission headed by Aung San Suu Kyi, and which was mandated to investigate whether the project was being implemented in accordance with international standards. The Commission released its report in 2013 and recommended that the project continue, but asked Wanbao for restitution of part of the land confiscated, increased compensation and issuance of an Environmental Impact Assessment. Local communities met the report findings with strong criticisms for failing to demand punishment of police involved in the violent crackdown and to protect people who do not wish to give up their land. In 2014, the Myanmar National Human Rights Commission formed an inquiry team to investigate the conduct of the riot police during the December 2014. The Commission concluded that the police did not follow the procedures properly and recommended pursuing a manslaughter case and reviewing the security activities related to the mining operations. So far, however, the authorities have been reluctant to investigate. Small outbursts outside the Chinese embassy in Yangon have continued. In May, six of the protesters were arrested and charged to four and half years in prison. The International Commission of Jurists condemned the unfair trial,²⁸⁵ while Amnesty International called for the immediate release.²⁸⁶

In June, Wanbao published the final version of its Environmental and Social Impact Assessment (ESIA), after the approval by the Ministry of Environmental Conservation and Forestry (MOECF).²⁸⁷ The ESIA concludes that “*the development of the Letpadaung Copper Project will have a limited and acceptable impact on the environment when compared to the benefit that the community and the nation may derive from the project, provided the management measures described in the ESIA document are implemented.*” The ESIA also outlines Wanbao’s commitment to local laws as well as international standards on law enforcement in securing its operations. In the assessment, the company agreed to develop a security plan in order to prevent or mitigate any threats identified in its risk assessment. “*The objective of the security plan will be to ensure that security is deployed in a way that respects and protects human dignity and human rights, avoids creating conflict and addresses security threats in as peaceful a way as possible.*” The company has committed, in line with international standards, to ensuring that force is used only as a last resort where necessary to proportionately mitigate risks identified in the company’s risk assessment. It has agreed to provide the necessary training for security in this regard. Its ESIA states that government security services protecting its operations must respect international guidelines on the use of force. Wanbao has also committed to conducting due diligence on all security providers in order “to avoid retaining the services of any group or individual that has previously been responsible for violations of human rights or humanitarian law”. Wanbao must demonstrate that it has undertaken the remedial measures outlined in its ESIA and create an effective community complaints mechanism. The establishment of this mechanism is important in Myanmar, where the police and judiciary are often unwilling or unable to address these issues.²⁸⁸

With the approval of the Environmental and Social Impact Assessment, there is now a high risk that Wanbao will resume operations to take over land for the project and forcibly evict 196 families who have refused to move and thousands of villagers whose land has not yet been taken over by the company.²⁸⁹ In August, seven people were temporarily detained after a confrontation with Wanbao when they demanded that the company take responsibility for the inundation of their village after the recent floods.²⁹⁰

After the removal of most sanctions in 2012, foreign investment in the oil and gas and extractive sectors increased significantly, and although investment patterns are now diversifying by sector, the industry is expected to remain a major contributor to the country's economy.²⁹³ There are now 101 blocks demarcated for oil and gas operations – 53 for onshore and 48 for offshore. Significant natural gas deposits are present off the coasts of Rakhine and Mon States and the Tanintharyi and Ayeyarwady Regions.²⁹⁴ From 2011 to 2013, the Ministry of Energy (MoE) opened bidding for 37 onshore blocks, 11 shallow-water and 19 deep-water blocks; 2013-2014 saw the award of 16 onshore and 20 offshore blocks in the space of 12 months.²⁹⁵ For onshore and shallow-water blocks, foreign bidders have to partner with at least one of the 145 Myanmar nationally owned companies. The Myanmar Oil and Gas Enterprise (MOGE) has the exclusive right to carry out all oil and gas operations with private contractors, and holds the contractual right to receive payment of royalties, bonuses and profits.²⁹⁶

Some major multinational oil & gas, extractive companies in Myanmar

AGGREKO	UK
APR ENERGY	US
ASIA PACIFIC MINING	HONG KONG
BASHNEFT JSOC	RUSSIA
BERLANGA	SINGAPORE
BG GROUP	UK
CANADIAN FORESIGHT	CANADA
CENTURION MINERALS	CANADA
CHEVRON	US
CHINA POWER INVESTMENT (CPI)	CHINA
CNPC	CHINA
CONOCOPHILIPS	US
DAEWOO	SOUTH KOREA
ENI	ITALY
EUMERALLA	AUSTRALIA
GAS AUTHORITY OF INDIA	INDIA
GENERAL ELECTRIC	US
GREEN EARTH POWER	THAILAND
KOGAS	SOUTH KOREA
MERCATOR PETROLEUM	INDIA
NORTHQUEST	CANADA
OFFSHORE OIL ENGINEERING	CHINA
OIL INDIA	INDIA
OLIMAX	INDIA
ONGC VIDESH	INDIA
OPHIR ENERGY	UK
PACIFIC HUNT ENERGY	SINGAPORE
PTTEP	THAILAND

PETROLEUM EXPLORATION PVT	PAKISTAN
PETRONAS	MALAYSIA
PETROVIETNAM	VIETNAM
PT TIMAH	INDONESIA
SEMBCORP	SINGAPORE
SHELL	NETHERLANDS
STATOIL	NORWAY
TAP OIL	AUSTRALIA
TOTAL	FRANCE
TRANSCONTINENTAL GROUP	AUSTRALIA
WANBAO (PART OF NORINCO)	CHINA
WOODSIDE	AUSTRALIA

The human rights risks of oil and gas, extractive and hydro-power operations remain daunting, especially in the areas of conflict and security, complicity with the government, land confiscation and lack of transparency. In 2014, Global Witness surveyed the 47 winners (foreign and local companies) of the 2013 and 2014 oil and gas blocks for details on their beneficial owners – 18 of them did not declare their ownership.²⁹⁷ The 2014 Resource Governance Index gave Myanmar a “failing” score of 4, ranking last out of 58 countries.²⁹⁸

The government has taken some steps towards increasing transparency in extractive industries. It has publicly advertised tenders of the most recent onshore and offshore bidding rounds in English, but the selection criteria and decision-making remain obscure. Myanmar has also become a candidate country to the Extractive Industries Transparency Initiative (EITI). A number of pressing issues remain, however, unaddressed – in particular, the lack of national standards to regulate the environmental, social and human rights impacts of extractive operations. The ADB also highlighted the lack of legal requirements for environmental and social safeguards for energy infrastructure as a deficiency.²⁹⁹ Calling for “stricter requirements for environmental and social impact assessments”, the Myanmar’s Framework for Economic and Social Reform recognises that there will be “unavoidable trade-offs” for natural resource projects.³⁰⁰

At the moment, local communities are paying the trade-off price, as many investments in the extractive and energy sectors have led to conflicts between local communities and companies over land confiscation without consultation and adequate compensation, forced relocation, exacerbation of conflicts, and environmental impacts.³⁰¹ In May 2015, hundreds of residents in Rakhine State protested against a Korean-owned coal fired plant, concerned about environmental damage and impact on health.³⁰² In addition, workers in the extractive sectors face a number of problems, including respiratory diseases due to low air quality, poor health and safety conditions, and long working hours for low wages below living wage.³⁰³ Myanmar lacks a modern mining law, which makes the issue of land use by a company unclear.

Business & Human Rights Resource Centre asked 33 major multinational oil and gas and extractive companies to respond to a list of questions about their human rights policies

and practices. Of those, 17 (just over 51 percent) responded.³⁰⁴ The sections below profile five of the major multinational oil and gas companies based in the EU and in the US (BG Group, Chevron, Eni, Shell and Total) according to the responses received in relation to:

- Transparency and disclosure;
- Myanmar-specific human rights policies, due diligence efforts, including on land and environment, and mitigation measures and grievance mechanisms; and
- Environmental and social impact assessments and stakeholder engagement and consultations.

All five companies responded, but while BG Group, Eni and Total provided detailed information to all questions, Shell referred Business & Human Rights Resource Centre to a previous response about its human rights policies, while Chevron only provided a general statement. While BG, Eni and Total have developed Myanmar-tailored policies and strategies, Chevron and Shell only mentioned compliance with their general human rights policy or codes of conduct. Further, the strength of such policies varies. For example, BG is the only company that said it has developed specific policies on land acquisition and involuntary resettlement, beyond compliance with national laws. BG, Eni and Total mentioned grievance mechanisms or whistle-blowing protection for workers. Disclosure of potential problems found during impact assessments, as well as remediation measures and grievance mechanisms, is also important not only to increase the company’s transparency, but also to facilitate engagement with stakeholders. BG provided information on its environmental and social impact assessments undertaken prior the starting of their operations in Myanmar, including the impact of its offshore operation on fishing communities in Rakhine State, on the level of risk of child labour, and potential remediation measures. Total also mentioned the assessments carried out by CDA, an independent organisation. Both BG and Eni also provided information about their security arrangements and steps to ensure respect of international standards – for example in reference to the Voluntary Principles on security and human rights. Total is the only company that mentioned using its leverage to pressure business partners complying with international standards, although there are concerns about the labour practices of PTTEP, one of its business

partners. Chevron and Shell did not disclose any relevant information about Myanmar-targeted policies, impact assessment, consultations, or grievance mechanisms. BG and Total conducted some form of engagement with local communities, while Chevron, Eni and Shell did not provide any information. Given the complex environment in Myanmar, multinational oil companies need to engage regularly with the government and local communities to understand and address the risks of their operations, especially when in areas of conflict or violence. They should also disclose the results of audits and inspections and potential mitigation and remediation processes.

BG Group (UK)

In March 2014, BG Group was awarded four blocks (AD-2, A-4, AD-5, A-7) of frontier acreage in the Rakhine Basin, offshore western Myanmar. BG operates blocks A-4 and AD-2, holding 45 per cent and 55 per cent of those licences respectively. BG also holds 45 per cent of A-7 and AD-5, which are operated by Woodside Energy.³⁰⁵ BG is due to start seismic testing by November 2015. Initial drilling, if they find oil or gas, would start in two years' time. By then, BG will probably be owned by Shell. BG sent a full response to Business & Human Rights Resource Centre providing information on its investment and operations.³⁰⁶

In its response BG says that it takes a cross-functional approach to implementing its human rights policy in Myanmar, with specific framework for environmental management, land acquisition and relocation.

"Where our activities may require land acquisition and involuntary resettlement...we commit to following international standards, specifically IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement. BG Group commits to avoiding, or if unavoidable, minimising involuntary resettlement wherever possible. Where involuntary resettlement is unavoidable, a Resettlement Action Plan (RAP) is developed, managed and independently reviewed by internationally recognised RAP experts..."

According to BG, the resettlement action plan is informed through a participatory methodology including a detailed census and asset inventory process and outlines an inbuilt project-specific mechanism for monitoring, evaluation and reporting performance during and after the resettlement.

In relation to policies and procedures to prevent and mitigate conflict in the areas where BG operated, the company said that prior to commencing any on-the-ground activity, it assesses the socio-economic context of the proposed area of operation followed by a social impact assessment. According to BG, these assessments are conducted in a participatory manner with ongoing consultation with local communities and other stakeholders.

"This enables us to identify what conflict dynamics exist, how their operations may impact or be impacted by these dynamics, and what measures it can take to mitigate risks related to conflict."

Potential mitigation measures identified by BG include establishing multiple channels for ongoing community en-

gagement, avoidance and re-design of some activities including location of sites and infrastructure, timing of when certain activities are conducted, putting in place local workforce and hire policies and practices to minimise triggers for conflict, information distribution, and social investment to help address some of the root causes of conflict.

Specifically to Myanmar, BG said that it commissioned a third-party human rights impact assessment prior to undertaking any type of activity, to develop a broad understanding of human rights risks in Myanmar and how these risks could play out in the context of an offshore oil and gas development. BG concluded that an enhanced process of human rights due diligence, including the application of the Voluntary Principles on Security and Human Rights, would be needed to manage human rights risks. BG has engaged with the Institute for Human Rights and Business and the Myanmar Centre for Responsible Business, which have conducted Sector Wide Impact Assessment of the oil and gas industry in Myanmar.

To support their planned offshore seismic operations, BG is currently conducting an environmental and social impact assessment (ESIA) and an integrated human rights impact assessment. This ESIA is for the seismic stage. BG indicated they would then conduct another ESIA for the drilling phase, if this starts. BG and its partners committed to a 3D seismic acquisition programme in each block, which is expected to begin in 2015 following the ESIA. As the planned data acquisition program will be acquired in an area of interest lying at least 50 km from the mainland, BG said that it appears unlikely, from their initial engagement, that local fishing communities in Rakhine State will be directly impacted.

"The ESIA will assess and ground-test these assumptions and describe in further detail the nature of local fishing activities and any potential impact our activity might have."

During meetings with Business & Human Rights Resource Centre and other international NGOs, including Oxfam, BG indicated that it would publish the ESIA in 2015. BG also said it would hold meetings with local civil society organisations following the release of the ESIA report to share the findings. In relation to the human rights impact assessment, BG indicated it is hesitant about making this public due to concerns about damaging their relationship with the government and endangering human rights defenders and that it would be "quasi-transparent" on this given the sensitivities of the report findings. In a previous response to Business & Human Rights Resource Centre, BG had said "Often the NGO community advocates for human rights impact assessments to be made public. However this could cause negative repercussions on victims of human rights abuses, and also compromise the company's ability to engage with government constructively on these issues."³⁰⁷

BG also said that where there is credible risk of conflict or human rights abuse by public or private security providers, the company must conduct an assessment based on the Voluntary Principles on Security and Human Rights.

"Following a risk assessment, our businesses create VP-SHR implementation plans which outline the actions to be taken to manage any identified risk of human rights abuse"

by public and/or private security providers. We have strong processes in place for monitoring the implementation of our VPSHR plans including a formal process of twice yearly reporting on implementation progress.”

BG has a number of specific policies on labour rights. According to BG, forced or child labour was identified as a low-risk issue in its direct workforce, but there remains a potential for risk within the supply chain. BG said that it put in place additional requirements for contracts where there is risk of forced or child labour. BG said that it does not tolerate or condone harassment, bullying or victimisation and encourages people to raise concerns if they believe they have experienced or witnessed others being subjected to unacceptable behaviour. All employees and contractors have access to a confidential, independently operated grievance mechanism where they can seek resolution for any complaints. BG said that it recognises the right of its employees to join unions or other collective organisations and are committed to working effectively with such bodies, and has strict health and safety requirements, mandatory for workers and contractors.

“All our businesses must develop a risk register to identify key risks and describe how they are managed. These are reviewed quarterly to ensure they are robust and up to date... We set a number of key performance indicators (KPIs) to assess and measure safety performance, both in terms of personal safety and asset integrity – the safe design, operation and maintenance of our facilities.”

BG indicated it has conducted a number of community consultations. Before starting the ESIA they met with international and local NGOs, including local NGOs working on fisheries. They also reached out to Oxfam in Myanmar to learn about the humanitarian situation and responsible investment in Rakhine State. BG conducted community information sessions in fishing villages in Rakhine State. For example, BG informed villagers and fishermen about the BG boats that would conduct the seismic surveys and that while the BG Group boats are doing the surveying fishermen would not be able to access that area. Some stakeholders raised concerns that rather than aiming at obtaining consent those consultations were rather information sessions about BG’s seismic operations with a questions-and-answers session. BG also said that during the community information sessions they provided a phone number for people to contact in case of any grievance. BG also suggested that people would be able to access local grievance mechanisms by raising issues with the Ministry of Fisheries and township level. BG however acknowledged that this process may not be adequate for all communities, as some may not feel comfortable in raising grievance with the local government.

Information submitted by BG and obtained by stakeholders suggests that the company has undertaken due diligence efforts prior to the starting of operations in Myanmar, that it has in place human rights policies, including mitigation and remediation measures and that it is developing environmental and social impacts assessment in consultation with local communities. BG showed signs of genuine engagement, and the company has been transparent in disclosing information about its operations and its practices. Beside those policy commitments, however, the reality on the ground may be different, especially when operating in complex con-

flict-affected areas. In particular, we encourage BG not to be overly optimistic about the low impacts of its operations on the environment and local peoples’ livelihood in Rakhine State. Villagers have already expressed concerns about being excluded from their fishing areas during BG seismic surveys, and they are concerned about potential oil spills if BG starts extracting oil.

Chevron (USA)

Chevron’s Myanmar Subsidiary, Unocal Myanmar Offshore, announced in March 2014 that it was granted exploration rights in a block located offshore Myanmar, in the Rakhine Basin.³⁰⁸ A year later, in March 2015, Unocal Myanmar Offshore entered into a Production Sharing Contract (PSC) with Myanmar Oil & Gas Enterprise (MOGE). The new PSC area, block A-5, lies 200 km offshore northwest of Yangon. Unocal Myanmar Offshore will be the operator of the blocks with a 99 per cent interest. Royal Marine Engineering, a Myanmar-based company, will hold the remaining interest in the blocks. In addition to block A-5, Chevron has a 28.3 per cent non-operated interest in a PSC for the production of natural gas from the Yadana and Sein fields, within blocks M-5 and M-6, in the Andaman Sea. The company also has a 28.3 per cent non-operated interest in a pipeline company that transports most of the natural gas to the Myanmar-Thailand border for delivery to power plants in Thailand.³⁰⁹

“We are pleased to have reached this milestone,” said Scott Neal, President of Unocal Myanmar Offshore. “This agreement expands our partnership with MOGE and Myanmar. We have a 20-year history in Myanmar and we look forward to supporting the continued development of the nation’s energy sector through our exploration program.”

Chevron did not respond to the questions of Business & Human Rights Resource Centre, but only sent the following statement: “If new business commences, Chevron will comply with all applicable Department of State Responsible Investment Reporting Requirements.”³¹⁰ Chevron did not respond to Global Witness either. In addition, Chevron has not submitted a report to the US government pursuant to the Burma Responsible Investment Reporting Requirements. In June, eleven institutional investors, asset owners and asset managers sent a joint letter to Chevron urging the company to submit a comprehensive and timely report.³¹¹ Business & Human Rights Resource Centre also wrote to Chevron asking for a response. Chevron sent a response, where it said “Chevron is committed to carrying out our business in a manner that respects human rights....Chevron intends to fully comply with the US Government’s Burma Responsible Investment Reporting Requirements.”³¹²

Chevron did not provide any evidence of human rights and environmental policies designed to minimise its human rights impacts in Myanmar. Nor did it show any sign of due diligence efforts. It did not disclose any information related to environmental and social impact assessment. The lack of transparency and engagement of Chevron is worrying, especially considering its “20-year history in Myanmar”. Chevron should adopt specific human rights and environmental policies including on pressing issues such as land use and relocation, and union rights. It should conduct proper independent environmental impact assessments and disclose

them. Chevron should also be cautious in monitoring the operations of its partner, military-owned MOGE, which has opaque accounts, and should use enhanced due diligence to avoid the risk of being associated with human rights abuses. Chevron should start consultation with local communities in the areas of its operations and engage with stakeholders, including local and international NGOs. Finally, it should adopt proper remediation measures and operational-level grievance mechanisms and disclose them publicly.

Eni (Italy)

In July 2014, Eni signed two Production Sharing Contracts (PSCs) for two onshore blocks (RSF-5 and PSC-K). Block RSF-5 lies in the Salin Basin about 500 km north of Yangon, and block PSC-K is in the Pegu Yoma-Sittaung Basin, in central Myanmar. The blocks are operated through a joint venture between Eni, with a 90 per cent participating interest through Eni Myanmar, and the Myanmar Production and Exploration Company with a 10 per cent.³¹³ In March 2015, Eni signed two additional PSCs for offshore blocks MD-2, located in the southern part of the Bay of Bengal in the Rakhine Basin, about 135 km from the coast, west of the Yadana field, and MD-4, situated in the Moattama-South Andaman Basin, nearly 230 km from the coast, and west of the Yetagun gas field.³¹⁴ Eni sent a full response to Business & Human Rights Resource Centre.

Eni said that its regulatory system explicitly requires the company to undertake to respect internationally recognised human rights as part of its activities and that it promote respect as part of activities contracted out to, or conducted with, partners and by its stakeholders. Eni also provided information on stakeholder engagement, impact assessment and grievance mechanism:

“The Management System Guideline (MSG) ‘Stakeholder Engagement and Community Relations’ regulates the community relations sub-process in order to manage relationships with the local communities residing in a specific territory in which Eni operates, including responses to their demands, and generate value in the territory through projects for local sustainable development. The MSG gives indications on how to effectively and proactively involve stakeholders, analyse the context and assess social impact at the local level, apply tools for consulting with the community and involving it (i.e., grievance mechanism), plan, manage and measure community investment, so that local reporting can be performed.”

“Eni identifies and assesses the environmental, social, economic and cultural impacts generated by its activities, including those on the indigenous peoples, ensuring their mitigation and implementing improvement processes.”

As for its Myanmar operations, Eni said that it has initiated an environmental and social impact assessment that also analyses conflict issues, in line with both contractual and Myanmar legislative requirements and international best practice. In terms of security activities, Eni says it has taken preventive and defensive measures suitable to minimise the impact and the likelihood of adverse events occurring, in compliance with international standards. Eni said that it includes clauses related to human rights protection in contracts with security services providers, and carries out training courses

also involving representatives of public security forces.³¹⁵

Eni has a company-wide whistle-blowing procedure that allows employees, members of corporate bodies or third parties to forward complaints relating to problems in the internal control system (compliance with law and corporate policies, guidelines or procedures, financial reporting, etc...) or other violations of the code of ethics (issues involving ethical conduct, mobbing, harassment).

Information submitted by Eni and obtained by stakeholders suggests that the company has in place solid human rights policies, including mitigation and remediation measures and that it is developing environmental and social impacts assessments. Eni, however, did not provide specific information about strategies on land rights and resettlement, labour rights and the environment among other human rights risks, developed particularly for Myanmar – instead it only referred to its general policies and sustainability framework. Eni has been transparent in disclosing information about its operations and its practices, but it did not provide adequate information on due diligence efforts prior starting of operations in Myanmar, regular consultation with local communities and engagements with local stakeholders. Eni should disclose its environmental and social impact assessment and engage with local communities and organisations to address possible challenges.

Shell (Netherlands)

In February, Shell and its Japanese partner Mitsui Oil Exploration Company (MOECO) signed exploration and production sharing contracts with Myanma Oil and Gas Enterprise of Myanmar (MOGE) for three deep-water blocks. Under the agreements, Shell will assess the potential of deep-water blocks AD-9 and AD-11 in the Rakhine Basin and MD-5 in the Thanintharyi Basin. Shell is the operator and has a 90 per cent interest in the three contracts with MOECO holding the remaining 10 per cent.³¹⁶

Shell had not sent a response to Global Witness in relation to beneficial ownership and it did not send a full response to the questionnaire of Business & Human Rights Resource Centre. It referred to a previous response under the Action Platform project, providing general information about its human rights policies, code of conduct and other policies in the areas of human resources, security, contracting and procurement, and social performance.³¹⁷ In its response Shell said:

“We focus on four areas across Shell’s activities where respect for human rights is especially critical to the way we operate: communities, labour, supply chains and security... We seek to work with contractors and suppliers who contribute to sustainable development and are economically, environmentally and socially responsible. The Shell Supplier Principles provide a simple and consistent framework of our expectations for all our suppliers. The Shell General Business Principles are designed to ensure that our employees respect the human rights related to their activities and seek business partners and suppliers to observe standards similar to our own. Our Code of Conduct informs staff how to apply our Business Principles, including respect for the human rights of our employees and support for human rights in line with the legitimate role of business.”

Shell said that it also provides more intensive training in operational areas that have poor human rights records. There is, however, no mention of Myanmar. In relation to the company's approach to the engagement of stakeholders, Shell says that it carries out impact assessments before making any major change to an existing operation or starting a new project.

"This includes listening to the local community as part of considering potential positive and negative effects of a project and we can adapt its design if appropriate. At every review stage of the project we consider environmental, social and health impacts and mitigations – in consultation with local communities – as we decide how, or whether to, move ahead. We aim to encourage economic and social development while mitigating (potential) negative impacts of our operations. The benefits we bring to local people can include jobs, capacity building, technology, contracting and business opportunities, ecosystem restoration and social investment."

Despite Shell having provided information about its general human rights policies and code of conducts, it did not provide evidence of human rights and environmental policies specifically designed to minimise its human rights impacts in Myanmar. It did not show any sign of due diligence efforts carried out before starting its operations in the country and it did not disclose any information related to environmental and social impact assessment, stakeholder engagements and consultation or grievance mechanisms. Shell should adopt specific human rights and environmental policies including on pressing issues such as land use and relocation, and union rights. It should conduct proper independent environmental impacts assessments and disclose them. Shell should also be cautious in monitoring the operations of its partner, military-owned MOGE, which has opaque accounts, and should use enhanced due diligence to avoid the risk of being associated with human rights abuses. Shell should start consultation with local communities in the areas of its operations and engage with stakeholders, including local and international NGOs. Finally, it should adopt proper remediation measures and operational-level grievance mechanisms and disclose them publicly.

Total (France)

Total has been present in Myanmar since 1992. In the past, the company has been associated with serious human rights violations, including forced labour and torture. Total E&P Myanmar (TEPM) operates the Yadana gas field under a Production Sharing Contract with a 31.2 per cent interest.³¹⁸ Other participants in the project are Chevron (28.3 per cent), Petroleum Authority of Thailand-Exploration & Production (PTTEP, 25.5 per cent) and Myanma Oil and Gas Enterprise (MOGE, 15 per cent). The Yadana gas field is located in the Andaman Sea, approximately 60 km south of the Irrawaddy Delta. Most of the 410-km Yadana gas pipeline lies offshore, with 63 km onshore in southern Myanmar. In 2012, TEPM also acquired a 40 per cent interest in the PSC covering the offshore Block M-11 in the Martaban basin. PTTEP, Thailand's national oil company, is the operator of that block. Further, in March 2014, TEPM won the award for a deep-water block in the Tanintharyi Offshore Area. Total sent a full response to Business & Human Rights Resource Centre.³¹⁹ In its response Total said:

"Total ensures that its operations contribute to the economic and social development of host countries, and in particular local communities. We respect the rights of communities by identifying, preventing and mitigating impacts in particular on their environment and way of life and, where appropriate, by providing remedy. We also seek to establish dialogue and lasting relationships with these communities at a very early stage...Total's activities are guided by the following priority business principles: commitment to the highest levels of safety and security in our operations as well as protecting health and the environment; compliance with the highest integrity standards, in particular by preventing corruption, fraud and anti-competitive practices; respect for internationally recognised human rights standards."

Total provided evidence of having policies and procedures in place both at the group level and specifically in Myanmar. In particular, those policies address working conditions, non-discrimination, freedom of association and collective bargaining, as well as the protection of health and safety and the environment. Total said that its code of conduct provides for the design and implementation of effective remediation processes in particular towards vulnerable groups.

"Further, it commits to respect the rights of communities by identifying, preventing and mitigating impacts in particular on their environment and way of life and, where appropriate, by providing remedy...Total pays special attention to the rights of local communities in the countries where we work, including property rights. We ensure that properties are acquired through a transparent process in accordance with applicable local and international laws and that land owners are fairly compensated for any loss caused directly by our operations."

Total said TEPM works towards making other businesses working on its behalf in Myanmar, including partners, contractors, service providers to comply with Total business principles.

"TEPM establishes mutual understanding with communities in the vicinity of their projects. We have created Village Communication Committees to foster dialogue with the local communities. TEPM contributes to the development of local communities through local employment opportunities, training, capacity building and other initiatives to improve living standards in the project area, focusing on priorities such as public health, education, economic development and improved infrastructure."

The communities close to the onshore pipeline region, comprising 33 villages and home to about 50,000 people, are covered by Total Myanmar's Socio-Economic Programme. TEPM has also an accessible grievance mechanism process in Myanmar to address complaints and other issues that could potentially give rise to conflicts.

Total said that it has undertaken human rights training of TEPM employees and stakeholders in Myanmar in collaboration with the Danish Institute of Human Rights. The UK-based independent consulting firm, GoodCorporation, has also conducted ethical assessment of Total operations in Myanmar. Further, the Collaborative for Development Action (CDA), a US non-profit organisation that specialises in

issues related to the management of projects in conflict and post-conflict environments, has issued independent reports on Total operations in Myanmar.³²⁰ CDA has engaged with Total over a period of 12 years, visiting the Yadana pipeline seven times between 2002 and 2014. Its latest report examines the interaction between the corporate operations and the lives of people in the Yadana pipeline area, and assesses the role of TEPM.³²¹ CDA visited eight villages (four of the 33 villages that participate in Yadana's Socio-Economic Program, two villages considered "non-company villages", since their geographical location is outside the region where TEPM operates, and two villages in which socio-economic programming is provided by PTTEP or Petronas).

According to CDA, community members said that incidents of forced labour in the pipeline area were nearly obsolete. CDA did not hear allegations of forced labour during visits to the communities in the pipeline area. There were a few claims regarding forced labour and human trafficking practices occurring on the Thai-side of the border, but no accusations of forced labour or portering on the Myanmar side of the border. Those who spoke with CDA, however, felt that the region has not yet reached a durable change regarding the forced labour issue. Several community members and international experts suggest that there is a real concern that such human rights issues may re-emerge quickly if there is a collapse in the ceasefire agreements.

Concerns regarding the historical legacy of land acquisition and use were raised on a number of fronts. First, with regard to the large amount of land acquired by the military during the construction phase of the Yadana project in 1995, and the lack of compensation to local landowners. Secondly, complaints have emerged regarding the acquisition of land by PTTEP during the construction phase of the Zawtika project. Finally, as the government, with funding and support from TEPM and the other operators, works to develop a nature conservatory in the eastern portion of the pipeline area, questions have arisen about the procurement of local farmland during this process.

*"Land use – subsistence farming versus commercial plantations – in the nature conservation area, 'buffer zone,' and surrounding areas has been an area of concern for local farmers worried about losing their livelihood. An advocacy group operating in the region suggested that the Myanmar Government has driven the development of the nature conservation, with little input or communication with the local population, which has further generated confusion regarding land use, access to conservation lands, and any future acquisition."*³²²

Information submitted by Total and obtained by stakeholders, including the DIHR and CDA, suggest that the company has in place solid human rights policies, including mitigation and remediation measures and that it is developing environmental and social impacts assessment in consultation with local communities. Over the years, Total has improved its engagement with local communities, and the company has been transparent in disclosing information about its operations and its practices. Given, however, the legacy of human rights abuses, including forced labour and land confiscation, in association with the Yadana pipeline, we encourage Total to continuously monitor the operations of its sub-con-

tractors. CDA concluded that while Total has established a positive relationship with its stakeholders and working relationship as a "good neighbour", expanding expectations of local people, coupled with their new-found freedom to demonstrate and express dissent, means Total would need a considered approach to engaging on sustainable, long-term forward-looking development with local communities. The findings of CDA report suggest that Total would need to institute a more rigorous approach to its sustainable strategy and a broader engagement with all of its stakeholders in order to maintain and advance its responsible business reputation. Total said that it works towards making its business partners comply with Total business principles. Recently, however, PTTEP, one of its business partners, has accused of unfair working practices and discrimination against Myanmar workers.³²³ Total should use its leverage to ensure its partners comply with international human rights standards.

Tourism sector: Company profiles

Until 2011, Myanmar's tourism sector barely existed as a result of a 15-year tourism boycott called for by opposition groups, complicated and restrictive tourist visas requirements, limited places reachable without prior permission, and few transport and hotel options. In 2011, Aung San Suu Kyi released a statement to lift the tourism boycott and to "welcome visitors who are keen to promote the welfare of the common people and the conservation of the environment and to acquire an insight into the cultural, political and social life of the country while enjoying a happy and fulfilling holiday in Burma."

With the beginning of reforms, the end of the tourism boycott, the government's steps to ease tourist visas (now it is possible to apply online for a tourist visa on arrival) and a longer list of permitted areas for tourists without prior permission, the country has seen in the last three years an unprecedented growth in international tourist arrivals. Visitor numbers surpassed one million in 2012 and reached three million in 2014.³²⁴ The total number of foreign tourists visiting between 2013 and 2020 is projected to be at least 20.4 million, and 29.2 million domestic tourists. The tourism industry is becoming one of the fastest growing areas of the economy, and has been identified a priority sector in the government's Export Strategy, with an income rise in 2013 of more than 70 per cent compared with the previous year (US\$926 million in 2013 versus US\$534 million in 2012 and US\$319 million in 2011).

In three years Myanmar has undergone a transformation from an isolated country to the newest exotic destination and the unexploited potential in the sector is vast. The Mergui archipelago, for example, comprises 800 unspoiled islands in the Andaman sea, with currently only one hotel. The government has already announced that it will give the green light to build new hotels by the end of the year.³²⁵ The rapid change and development in the sector, however, risks negative impacts on the environment, the culture and the livelihoods of local people. Some of Myanmar's most popular places, such as Bagan and Inle Lake, are already under environmental and social pressure from increased tourism. There is also need for destination management plans with the participation of local groups as well as improving health and safety procedures and training. Working hours regulations are rarely implemented and workers consistently work more than the legal limit of 48 hours per week – in some cases hotel and cruise ship staff work up to 16 hours per day, seven days a week, and tour guides and drivers work up to 18 hours.³²⁶

Land use is a pressing issue. The Myanmar Centre for Responsible Business conducted a tourism sector-wide impact assessment, where it highlights the risk of tourism-connected land grabs.³²⁷ The government has a legacy of land confiscation for tourism development projects – for example, in

the early 1990s land had been seized by the military for the construction of Mandalay International Airport. The current main driver of such risks is the government plans for "hotel zones", large areas cleared and divided into plots for hotel construction. The government is planning hotel zones in Yangon, Mandalay, Bagan (there are now five zones), Taunggyi, Chaungtha, Inle Lake, Rakhine, Mawlamyine, the Golden Triangle, Bago, Ngwesaung and Nay Pyi Taw (there are now three zones), and recently four new hotel zones were announced in Ngapali, 11 more in Yangon, Mandalay and Tanintharyi, and one in Chin State at Natmataung.³²⁸ It is not clear the reason for tourism development through hotel zones, which mirror the development of military camps. While the government's 2013 Tourism Master Plan³²⁹ recognises the importance of "zoning" in tourism destinations to address land-use issues, in fact several disputes have already arisen between communities and investors over compensation and loss of livelihoods as large areas of land have been compulsorily acquired and taken out of agricultural use for hotel zone development. At Inle Lake, for example, the creation of a hotel zone has caused conflict with the community, and farmers who protested against inadequate compensation for their land were charged for obstruction.³³⁰

Tada Oo hotel zone

The Tada Oo hotel zone, by the Ayeyarwady River about 40 km south of Mandalay, is planned to include 100 foreign owned and 192 locally owned hotels, totalling 10,000 rooms. It was officially inaugurated in January. It took the Myanmar Tourism Development, the developers of the hotel zone, more than two years to negotiate with villagers over land acquisition, but still not all farmers have agreed to sell and some are worried they will lose their livelihoods, and that their land will be confiscated without compensation.³³¹

Labour rights violations and poor health and safety are also a problem. For example, in June two construction workers were killed and dozens injured when part of a luxury Pullman hotel being built in Mandalay collapsed.³³² Workers and unions say Bagan Hotel River View management is harassing and discriminating against union members and officers.³³³

Foreign investment in the sector is still limited, with just a handful of international hotel chains currently operating hotels, mostly in Yangon, Nay Pyi Taw and Ngapali beach. International hotel groups investing in tourism in Myanmar do so either in a joint venture with a local partner or as wholly foreign-owned companies, but work with local contractors and suppliers, in particular for transportation, cleaning and laun-

dry, security, catering and gardening. Accor (France), Hilton (US) and Kempinski are already managing hotels in Yangon, Nay Pyi Taw, Inle Lake and Ngapali beach. Starwood Hotels & Resorts Worldwide (US) has been the latest global chain to announce its market debut in Myanmar with the signing of the Sheraton Yangon Hotel at the end of May.³³⁴

Some international hotel groups in Myanmar

ACCOR	FRANCE
HILTON WORLDWIDE	US
KEMPINSKI HOTELS	SWITZERLAND
STARWOOD HOTELS & RESORTS	US

Business & Human Rights Resource Centre asked three international hotel groups (Accor, Hilton Worldwide and Kempinski Hotels) to respond to questions related to their human rights policies and practices in Myanmar. The three hotel groups replied, but none of them provided a satisfactory response. None of the hotel chains provided any information about their Myanmar-specific human rights policies, or engagement with stakeholders, including consultation with workers and unions at factories in Myanmar prior to the start of the operations. Kempinski, for example, declined to respond to the questions saying it “cannot comment on any politically related questions”. The lack of policies to address specific land acquisition and use issues is especially worrying. Accor, for example, says that it does not have a land policy, “as we do not own the property/land”. As the tourism sector continues to expand in Myanmar, international groups managing hotels in the country need to engage in proper consultations with local communities and organisations, develop and implement Myanmar-targeted policies on pressing issues such as land and labour rights, carry out and disclose due diligence efforts as well as mitigation and remediation measures.

Accor (France)

Accor manages three hotels in Myanmar: the Lake Garden in Nay Pyi Taw, the Novotel Inle Lake Myat Min and, just opened at the beginning of April, the Novotel Yangon Max.

“We are thrilled and proud that Novotel Yangon Max is Accor’s first hotel in Yangon in over a decade,” said Patrick Basset, Accor Chief Operating Officer. “As Accor’s third hotel in Myanmar, the hotel reflects the continued expansion of business and tourism in the region and the growing demand for internationally recognised hotel brands with high service standards.”

In its response to Business & Human Rights Resource Centre, Accor said that it is contracted by the owners of these hotels to manage the operations, sales, and marketing and distribution aspects of the hotels. Accor did not disclose specific human rights policies for Myanmar, but only said that in general it complies with the principles of the Universal Declaration of Human Rights and the ILO’s fundamental conventions, as stated in the Accor’s Ethics and CSR Charter, which also cover freedom of association and collective bargaining, workplace health and safety, child labour, forced labour, anti-discrimination, and environment.

In relation to land rights and relocation policies, Accor said that the question is non-applicable, “as we do not own the property/land”. In relation to living wages policies, Accor also said that the question is non-applicable, without further explanation. Asked about consultation with workers and unions before the start or during their operations in Myanmar, Accor only said: “Our employee contracts and hotel rules and regulations have been supervised by a legal advisor and the labour head officer from the Ministry of Labour”.³³⁵

As one of the few international hotel groups operating in Myanmar, Accor’s lack of specific human rights policies and due diligence efforts in Myanmar is worrying. In particular, we encourage Accor to develop a policy in consultation with local stakeholders about land use and acquisition. Because the three hotels that Accor manages obviously use areas of land (even if they do not own it) and given the high risk of tourism-related land grabs in the country, Accor needs to develop and implement a proper land acquisition and use policy for its Myanmar operations. Likewise, we encourage Accor to develop and implement a fair living wage policy after consultation with workers and unions. Accor should start to actively engage with communities in the areas where it manages hotels as well as with unions, and local and international organisations.

Accor should also improve safety conditions at building site for new hotels. In June, two construction workers were killed and dozens were injured after a collapse at the building site of a luxury Pullman hotel in Mandalay.³³⁶

Kempinski Hotels (Switzerland)

In 2014, Kempinski entered a deal with Kanbawza Group of Companies to manage the Kempinski Nay Pyi Taw hotel, which opened in September 2014, just before the ASEAN Summit. It is one of the most luxurious hotels in the capital and has already seen among its guests President Obama.³³⁷ The property is fully owned by Kanbawza, which was originally working with US chain Marriott on the project until Marriott pulled out of the deal reportedly due to a dispute related to quality control.³³⁸

Kempinski is now developing a second property in Myanmar, Kempinski Yangon, scheduled to open in late 2016 or 2017. Flying Tiger Engineering, a local company, won a tender in 2012 to turn the Small Claims Court on Strand Road into a five-star hotel with 239 rooms managed by Kempinski. Since the beginning, the project has proved controversial and has been the subject of protests by local lawyers, who say the development is inappropriate for an important historic building and who raised questions about the transparency of the tender. Since 2013, the Lawyers’ Network has lodged three complaints against the Myanmar Investment Commission and Flying Tiger. The Yangon court has rejected the first two applications, apparently without giving reasoning, and the third, filed in April, is pending.³³⁹

Kempinski did not provide a full response to Business & Human Rights Resource Centre’s questions, but only the following statement:

“Kempinski Hotels is a private company that strictly manages hotels on behalf of their owners in destinations around the world...[A]s such we cannot comment on any politically related questions in the countries we operate in but...we strictly abide with international laws and regulations, and follow best industry practices in all markets.”³⁴⁰

Kempinski’s lack of transparency and engagement raises concerns. We encourage Kempinski to respond as questions related to the disclosure of human rights policies and commitments are not “politically related questions”. As one of the few international hotel groups operating in Myanmar, Kempinski’s lack of specific human rights policies and due diligence efforts in Myanmar is worrying. In particular, we encourage Kempinski to develop a policy in consultation with local stakeholders about land use and acquisition. Kempinski should start to actively engage with communities in the areas where manage its hotels as well as with unions, and local and international organisations. In particular it should carry out consultations with communities, including local lawyers worried about the cultural impacts of the development of its new hotel in Yangon.

Hilton Worldwide (USA)

Hilton currently manages two hotels in Myanmar: Hilton Nay Pyi Taw and Hilton Ngapali beach resort. Hilton did not provide a full response to Business & Human Rights Resource Centre, but in a statement said:

“Hilton Worldwide complies with the employment and labour laws in every country and region in which we operate. We support the fundamental human rights for all people, as stated in our Code of Conduct. The Code applies to all Team Members at our corporate offices as well as our owned and

managed properties worldwide, ensuring a globally consistent culture of integrity.”³⁴¹

Specifically on Myanmar it said that:

“As we expand our operations in Myanmar, we are committed to contributing toward Myanmar’s growing travel and tourism sector, as well as its social and economic progress. We recognize the global hospitality industry’s significant potential to advance responsible business operations in Myanmar.”

Hilton has not submitted a report to the US government pursuant to the Burma Responsible Investment Reporting Requirements. In June, eleven institutional investors, asset owners and asset managers sent a joint letter to Hilton urging the company to submit a comprehensive and timely report.³⁴² Business & Human Rights Resource Centre also wrote to Hilton asking for a response. Hilton said that it is in the process of reviewing the requirements.³⁴³

As one of the few international hotel groups operating in Myanmar, Hilton’s lack of specific human rights policies and due diligence efforts in Myanmar is worrying. If Hilton wants to contribute to the social and economic progress of Myanmar, it should first develop a human rights and environmental policy in consultation with local stakeholders about land use and acquisition, and develop and implement a fair living wage policy after consultation with workers and unions. Hilton should start to actively engage with communities in the areas where it manages hotels as well as with unions, and local and international organizations.

Evaluation and recommendations

In Myanmar investors are exposed to a complex business environment, and responsible business requires due diligence to fully understand the direct and indirect impacts business activities have on human rights. Foreign companies are entering a country in transition, where their responsibilities toward people and communities are extensive, and where enhanced human rights due diligence and transparency are especially important in taking a leadership role and influencing local partners. Too many foreign companies investing in Myanmar, however, are not doing enough.

The five international apparel brands contacted provided information about their human rights policies and due diligence efforts, but while Adidas, Gap and H&M have developed Myanmar-tailored policies and strategies, Marks & Spencer and Primark only mentioned compliance with their general human rights policy or code of conduct. Disclosure of suppliers' names and locations as well as potential problems found during labour inspection and audits, as well as remediation measures and grievance mechanisms, is also important not only to increase the company's transparency, but also to facilitate engagement with stakeholders. For example, in its report to the US Department of State, Gap disclosed the results of audits at its factories and remediation measures taken after some labour rights violations were found. Only two brands (Adidas and H&M) publicly disclosed their global suppliers' list (a list of all authorised production sites) and provided the names and locations of their production sites in Myanmar. Disclosure improves accountability by allowing trade unions and other stakeholders to monitor labour rights in companies' supplier and subcontractor factories. In their responses to Business & Human Rights Resource Centre, both Adidas and H&M disclosed the names and locations of their suppliers in Myanmar. Other brands with a supply chain in Myanmar, including Gap, Marks and Spencer and Primark, did not. While all brands have sent statements in support of the application of the minimum wage across all sectors, Adidas is the only company that mentioned the basic salaries at its factories are above the minimum wage. H&M has also provided a positive model in releasing statements not only in support of the minimum wage, but also for freedom of association and the peaceful resolution of industrial conflicts. In the oil and gas sector, all five multinational companies contacted responded, but while BG Group, Eni and Total provided detailed information to all questions, Shell referred to a previous response about its human rights policies, while Chevron only provided a general statement. Of the three international hotel groups, only Accor responded to the specific questions about its operations in Myanmar.

Further, the strength of such policies varies. For example, Adidas is the only international brand that said it has developed specific guidance for their suppliers on land acquisition and development of industrial sites. BG is the only oil company that said it has developed specific policies on land acquisition

and involuntary resettlement, beyond compliance with national laws. H&M is the only company that specifically mentioned the adoption of a fair living wage policy. While BG, Eni and Total have developed Myanmar-tailored policies and strategies, Chevron and Shell only mentioned compliance with their general human rights policy or codes of conduct. BG, Eni and Total mentioned grievance mechanisms or whistle-blowing protection for workers. BG provided information on its environmental and social impact assessments undertaken prior to the starting of their operations in Myanmar, some initial assessments for example of the impact of its offshore operation on fishing communities in Rakhine State, or the level of risk of child labour, and potential remediation measures. Total also mentioned the assessments carried out by CDA, an independent organisation, which provided information of some of the challenges the company faces and therefore basis for engagement. Both BG and Eni also provided information about their security arrangements and steps to ensure respect of international standards, for example, in reference to the Voluntary Principles on security and human rights.

Of the three international hotel groups (Accor, Hilton Worldwide and Kempinski Hotels), none of them provided a satisfactory response. None of the hotel chains provided any information about their Myanmar-specific human rights policies, or engagement with stakeholders, including consultation with workers and unions at factories in Myanmar prior to the start of the operations. Kempinski in particular declined to respond to the questions saying it "cannot comment on any politically related questions".

In relation to engagement and consultation, all international brands have conducted some form of engagement prior to starting the sourcing from Myanmar, including meeting with labour groups and unions. Adidas, for example, conducted stakeholder engagement for two years before starting a supply-chain in Myanmar. H&M, Marks & Spencer, Gap and Primark also conducted meetings and visits with stakeholders, mainly facilitated by Business for Social Responsibility (BSR). Unions however, are unsure about their level of commitment and communications have been discontinuous. Chevron and Shell did not disclose any relevant information about Myanmar-targeted policies, impact assessment, consultations, or grievance mechanisms. BG and Total conducted some form of engagement with local communities, while Chevron, Eni and Shell did not provide any information. Total is the only company that mentioned using its leverage to pressure business partners complying with international standards – although there are concerns about the labour practices of PTTEP, one its business partners.

Of course, this report is only aims to identify risks and evaluate policies. Whether such policies are being fully implemented will require constant monitoring by trade unions, communities and local and international organisations.

Recommendations

Due diligence means companies need to assess human rights impacts, to integrate and act upon relevant findings, to track the adequacy and effectiveness of their responses, and to openly communicate as to how impacts have been addressed. Companies of different sizes, in different sectors, and in different operating environments should tailor their due diligence processes to the nature and context of operations and the likelihood severity of adverse human impacts, and because situations and operations change, due diligence should be an ongoing activity carried out particularly when operations change phases. The corporate responsibility also involves responding to societal expectations communicated, for example, by trade unions, workers, NGOs, or by local communities or by trade unions. In a high-risk environment such as Myanmar, it is important to engage with local communities regularly and meaningfully. In areas where armed groups operate, it is critical to engage with them and the ethnic civil society groups operating in such areas. Finally, companies should establish grievance mechanisms designed to provide remedy and to facilitate resolutions of disputes for individuals and communities who may be adversely impacted by their operations. Given the lack to effective state-based remedies, operational level grievance mechanisms are even more important in Myanmar. They should also disclose the results of audits and inspections and potential mitigation and remediation processes and use their leverage to pressure the government to apply international standards and improve working conditions in Myanmar.

Particular attention is required when doing business in Myanmar's conflict-affected areas or when dealing with the military and their companies. Companies need to engage regularly with the government and local communities to understand and address the risks of their operations in areas of conflict or violence to avoid exacerbating these problems. Given the history of human rights violations perpetuated by the military and the lack of awareness of human rights standards and training of the military, companies need to be particularly cautious to ensure that their security arrangements respect human rights. This should include background checks to rule out previous links to human rights violations, as well as training on human rights. Companies should not invest in large-scale development projects in Myanmar's conflict areas until durable peace agreements are established. When investing, companies have to develop a clear understanding of the ethnic dimensions and be alert of the potential of exacerbating conflict through their presence. In particular, the existence of active conflicts in a number of oil and gas and hydropower areas means that companies need to pay particular attention to human rights risks associated with security protection by the military. The International Code of Conduct for Private Security Service Providers (ICoC), the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones and the Voluntary Principles on Security and Human Rights provide relevant additional guidance on security and human rights. Multinational companies operating in Myanmar have a particular responsibility to influence that operating environment. Where appropriate, this includes engaging with the government to encourage it to apply international standards. International companies investing and operating in Myanmar are expected to act as industry leaders on human rights performance and compliance.

Multinational companies need to be careful in selecting their local partners. The risk is that businessmen with close ties to the military, associated with human rights abuses, are the best placed to benefit from new foreign investment in Myanmar. Investors should scrutinise potential partners, and avoid forming business relationships with partners against whom there are credible allegations of human rights abuses and complicity in violations committed by the military. Due diligence on local partners is then particularly important, prior to entering Myanmar and throughout the life of the partnership. Businesses need to undertake human rights impact assessments prior to entering Myanmar to identify and address adverse impacts of their local business partners, and structure their entry and business partnerships to minimise the risk of contributing to abuses. Companies need to carry out careful due diligence on the background, ownership, policies and practices of potential business partners. If a company enters Myanmar with a joint venture partner, the company should secure the same commitment to human rights due diligence from business partners by contractual agreement. Local companies need support in meeting a wider range of contracting requirements, for example, around working conditions and occupational health and safety. Companies should put in place specific contractual requirements and relevant incentives and disincentives with business partners supplying goods and services to prompt respect for relevant international standards. In negotiating terms of entry, for example, companies should incorporate reference to human rights commitments and secure contractual safeguards for labour rights. Contracts should also include mechanisms for oversight and monitoring of compliance with human rights policies.

Given the many new labour laws, that independent trade unions have only recently restarted their activities, and the only nascent awareness and understanding of the right to freedom of association and collective bargaining, companies should ensure that their workers are aware of and able to exercise their rights, providing relevant information and explanation to employees and workers on their labour rights, and engage constructively with trade unions where workers choose to establish them. Companies need to remain aware of the risk to be involved in forced labour abuses, given it was a common practice for decades, and flaws in the current legal framework and its enforcement. Companies also need to pay attention to the working conditions of temporary or irregular workers, often engaged through a third party. These low-skilled and low-paid manual labour workers are often directly linked to situations of exploitation. Given the prevalence of child labour in Myanmar and the difficulties of validating age, companies should be alert to the possibility of child labour being used in supplying products or services. Besides the constant monitoring to avoid the worst forms of child labour, and to prevent children below 13 from working, a further problem companies need to address is what to do with children who are already at work. The challenge is when a case of child labour results in dismissal and the child seeks work in another factory or sector, possibly even in worse conditions, instead of being able to access meaningful remediation. Companies should provide help and support; children, for example, can be placed in a different job, but in practice few companies are seriously considering ways to address this issue. Given the lack of regulation and inspection and that workers are poorly trained and not used

to wear health and safety equipment, companies to provide proper training and carry out constant monitoring of occupational health and safety procedures among their sub-contractors and suppliers. Companies will have to undertake human rights due diligence to ensure the rights of workers they and their suppliers hire are protected, and that no one is forced to work against his or her will or exploited. In particular, international apparel brands have a responsibility to ensure decent working conditions in supplier and subcontractor factories. They play an important role in demanding that labour conditions meet international standards and in applying pressure on the Myanmar government to enforce labour standards. It is important the message that companies send to the government. As an example, international apparel brands, either individually or as an association, could set a living wage strategy, and prepare a statement on their position on wages, or on the right to strike.

Any policy on land use and acquisition should recognise customary land tenure rights, which requires consultation with villagers and local authorities, recognition of free, prior and informed consent and an independent grievance mechanism to hear complaints and settle disputes, elements lacking under national laws. Given the history of land confiscation in Myanmar and the flaws in the current land regime, foreign companies will have to make additional efforts to guarantee they obtain consent for use or acquisition of land through a fully consultative process. Given that compensation for land confiscation is uncommon, companies should minimise their impact, for example by returning land when it is no longer used, and seeking alternatives to acquisition. Due diligence is also required to ensure there is no direct link through the acquisition or use of land that may have been unlawfully expropriated by the military or “crony” businesses. Companies should also disclose plans for consultation for impacted residents, resettlement, and compensation. Given the lack of guidance on voluntary or involuntary resettlement, companies should consult and encourage implementation of guidance on land acquisition, such as the IFC Performance Standards, the FAO Voluntary Guidelines for land tenure.

To the Myanmar Government

Legal Reforms

1. Ratify main international human rights, labour and environmental treaties, including the remaining five of the eight Fundamental Labour Conventions of the ILO, and the International Covenant on Civil and Political Rights and enact and enforce domestic legislation consistent with those international standards;
2. In particular, develop a comprehensive labour law framework in line with international labour standards; review, in consultation with unions and the ILO, the Labour Organization Law and the Settlement of Labour Dispute and amend provisions that violate or fail to give effect to ILO Convention Nos. 87 and 98.
3. Repeal all repressive laws that undermine freedom of expression and association, including the Unlawful Associations Act, the State Protection Act and the Emergency Provisions Act;
4. Draft the Foreign Investment Law in compliance with Myanmar’s obligations under international human rights and environmental laws;
5. Ensure that the draft National Land Policy recognises customary land tenure rights and provides mechanisms for resolving land expropriations;
6. Replace the 1894 Land Acquisition Act Develop with a new law on the expropriation of property for public purposes based in international standards;
7. Amend laws that permit the government wide power in acquiring land for use by companies by providing for expropriation and involuntary resettlement only in cases of necessary and proportionate public interest with procedural safeguards;
8. Adopt and implement the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests;
9. Adopt the standard of Free, Prior and Informed Consent as defined in the UN Declaration on the Rights of Indigenous Peoples; and
10. Enact and enforce legislation that makes it compulsory for business enterprises to assess the environmental and social impacts of their activities on human rights and to publicly disclose the results.

Administrative & Judicial Reforms

1. Strengthen the independence and expand the mandate of the Myanmar Human Rights Commission and ensure that it is fully independent, effective, adequately resourced, and adheres to the Paris Principles;
2. Develop and strengthen effective judicial and non-judicial remedies for victims of business-related human rights abuse;
3. Require companies to establish operational-level grievance mechanisms;
4. Establish effective legal and judicial recourse mechanisms for the protection of land rights;
5. End land acquisitions that do not offer compensation to affected communities in line with international standards, and end the military’s involvement in land confiscation;
6. Permit people to peacefully protest against land expropriations and ensure that they are not arbitrarily arrested for such activities;
7. Eliminate the criminalisation of protests under the Law Relating to Peaceful Assembly and Peaceful Procession;
8. End reprisals and the use of force against human rights defenders, in particular those who promote corporate respect for human rights and protest major development projects and associated land grabs;
9. Ensure a prompt, independent and impartial investigation into all violations against human rights defenders;
10. Strengthen the protection of workers involved in trade union activities to ensure that they do not face discrimination or dismissal by employers;
11. Increase the number and improve labour inspection methods;
12. Regularly disclose the number of factories inspected, violations found, and enforcement actions taken;

13. Regularly disclose the names and locations of all registered garment factories;
14. Regularly disclose the names of all international apparel brands sourcing from Myanmar;
15. Strengthen the social and human rights requirements in the Environmental and Social Impact Assessment Procedures; and
16. Hold companies accountable for their environmental, social and human rights performance.

Security Sector Reforms

1. Undertake security sector reforms, and discipline or prosecute, as appropriate, members of the security forces responsible for excessive use of force; and
2. 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.

Cooperation & Public Participations

1. Work with home governments to promote respect for the UN Guiding Principles and the OECD Guidelines;
2. Raise awareness of relevant regulatory and policy frameworks;
3. Expand the role of civil society to help ensure corporate respect for human rights;
4. Ensure wide consultation on minimum wage with unions and introduce a minimum wage that is sufficient for workers to meet their needs;
5. Work with the ILO, unions and advocacy groups to promote education and sustainable solutions to underlying causes of child labour;
6. Encourage the participation of local communities in project development; and
7. Guarantee the free, prior and informed consultation of communities affected by economic and development projects.

To home Governments

1. Regulate the human rights conduct of companies operating in Myanmar, such as requiring companies to respect human rights and undertake human rights due diligence;
2. Express expectations for companies domiciled in the country and investing in Myanmar, including expectations that they should apply the UN Guiding Principles and the OECD Guidelines;
3. Mandate public reporting requirements for companies domiciled in the country on their operations in Myanmar, including the publication of social and environmental impact assessments, contract transparency, and disclosure of payments made to the government of Myanmar;
4. Prohibit any business engaging directly or indirectly with individuals or entities linked to serious human rights abuses, including the military;

5. Ensure investment and free-trade agreements negotiated with the government of Myanmar are coherent with each country's international obligations and make reference to the UN Guiding Principles;
6. Support the Myanmar government, for example in its EITI process, for the introduction of an effective environmental and social impact assessment, and to strengthen its inspection capacity for labour and environmental protection;
7. Encourage companies to apply the IFC Performance Standards and WBG Environmental, Health and Safety Guidelines in the absence of Myanmar laws providing for higher standards; and
8. Enact legislation to require international apparel companies domiciled in the country to periodically disclose and update the names of their global suppliers and sub-contractors.

EU member-countries should also:

1. Incorporate the 2014 EU Directive on disclosure of non-financial and diversity information into national law; and
2. Introduce mandatory disclosure requirements and incorporate elements of the US government's Burma Reporting Requirements on Responsible Investment.

To foreign companies

Due Diligence and Human Rights Impact Assessments

1. Carry out ongoing due diligence during the course of operations, as set out in the UN Guiding Principles and the OECD Guidelines;
2. Carry out and disclose the process and results of human rights impact assessments of their activities, as well as those of their business partners in Myanmar, prior to, during, and after their operations;
3. Disclose any measures taken to prevent, mitigate and address adverse human rights impacts; and
4. Embed human rights commitments into company operational policies and procedures and business relationships, including through relevant contractual requirements.

Engagement & Consultation

1. Take account of local complexities and legacies when assessing the impacts operations may have, and integrate and act on these findings;
2. Invest in ongoing and meaningful engagement with stakeholders, particularly workers and communities, to build understanding and demonstrate transparency and accountability;
3. Communicate human rights commitments within the company and to business partners, and make it publicly available;
4. Take advice on how to engage with relevant ethnic armed groups, civil society groups, and other community leaders;

5. Monitor and track responses to risks and impacts, involving workers and communities; and
6. Ensure that the due diligence process includes consultations with potentially affected rights-holders and civil society groups in Myanmar.

Grievance Mechanisms

1. Put in place operational-level mechanisms to provide early remedy for adverse impacts on human rights that may be caused, contributed to by the company.;
2. Collaborate with legitimate and effective remedy mechanisms for victims of human rights abuses that may be linked to the company's operations or its business relationships;
3. Ensure that operational level grievance mechanisms do not preclude access to any judicial or other non-judicial mechanisms. Ensure that grievance mechanisms are not used to undermine the role of trade unions or to discourage workers from forming or joining trade unions.;
4. Prevent retaliation against complainants inside and outside the company; and
5. Establish a transparent and effective local dispute-resolution mechanism, accessible to all villagers affected by the company's operations in local ethnic languages.

Business Partners

1. Carry out due diligence on potential and existing business relationships;
2. Avoid business relationships with individuals or companies that have been connected to human rights abuses;
3. Vet potential business partners to ensure they are not implicated in human rights abuses, and secure a commitment to human rights policies from partners.

Leverage

1. Encourage the government to require all local and foreign companies to meet the same environmental, social and human rights standards; and
2. Approach the government regarding training for police and military on applying international human rights standards.

Labour Policies

1. Adopt and implement a policy to respect international labour standards in the company's operations and requiring its suppliers to abide by the same standards;
2. Require all business partners and suppliers to refrain from undertaking any actions that would have the effect of discouraging workers from forming or joining trade unions.
3. Require all business partners to not avoid any genuine opportunity to collectively bargain with their workforce;
4. Disclose the name and location of all authorized production units on a regular basis and when the unit was last subject of a workplace inspection.;

5. Require suppliers to provide a living wage;
6. Collaborate with local organisations, government officials, the ILO, NGOs, and unions to eliminate child labour in garment factories ;
7. Conduct regular and meaningful health and safety inspections of workplaces;
8. Pressure the Myanmar government to adopt and implement international labour standards; and
9. Provide supports and capacity building assistance to the newly formed labour unions.

Land Policies

1. Conduct due diligence to address human rights concerns that may arise from land acquisitions, and disclose plans for consultation for impacted residents, resettlement, and compensation;
2. Conduct consultation processes in line with the FAO Voluntary Guidelines on land tenure;
3. Adopt a policy of respecting the right of communities to free, prior, and informed consent to corporate operations;
4. Adopt a policy of due diligence around land acquisition that includes research and identification of customary land users;
5. Adopt a policy of opposing involuntary resettlement and providing adequate and fairly-negotiated compensation to communities for land acquired;
6. Adopt a policy of outreach and engagement of any affected community, including marginalised groups and ethnic minorities;
7. Create an effective community grievance mechanism that includes complainants' right to remedy;
8. Call for the government to develop laws and practices to address the issue of land titling;
9. Report on land acquired and compensation provided;
10. Ensure that land investments and company operations do not undermine land tenure; and
11. Conduct due diligence to ensure that supply chains and investment chains are free from harms associated with land tenure.

Security & Conflict Issues Policies

1. Integrate consideration of conflict issues into all phases of operations;
2. Recognise the importance of land issues in exacerbating conflict, or building peace;
3. Approach the government regarding training for police and military on applying international human rights and humanitarian standards;
4. Adopt the Voluntary Principles on Security and Human Rights and report on their implementation.

To investors

1. Undertake due diligence on government and private sector projects to ensure that projects or funding do not directly or indirectly support human rights violations;
2. Assessing the human rights risks of each activity prior to project approval and throughout the life of the project, identify measures to avoid or mitigate risks, and supervise the projects including through independent third-party reporting when risks are identified;
3. Conduct due diligence on portfolio companies regarding their policies, systems, reporting and responses to specific human rights challenges in Myanmar;
4. Urge companies doing business in Myanmar to report on how they manage risks and impacts associated with investments and operations in the country; and
5. Engage with companies in Myanmar to ensure that they meet international standards on responsible business conduct relevant to their business in Myanmar.

Annex

LIST OF MAJOR FOREIGN COMPANIES INVESTING IN MYANMAR

Company Name	Sector	Country HQ
A.I. Capital	Finance & banking	Vietnam
Aberdeen Asset Management	Finance & banking	USA
Accor	Tourism	France
ACE INA International	Insurance	Switzerland
ACO Investment Group	Finance & banking	USA
adidas	Manufacturing; Footwear	Germany
Aggreko	Energy	UK
All Nippon Airways	Airline	Japan
American International Assurance (AIA)	Insurance	Hong Kong
Andritz Hydro	Construction; Dam-building	Austria
ANZ Group	Finance & banking	Australia
Apex Geoservices	Construction; Engineering	Ireland
Apollo Towers	Telecom	USA
APR Energy	Energy	USA
Asahi	Food & beverage	Japan
Asia Pacific Mining	Mining	Hong Kong
Asiatech Energy	Energy	Singapore
AST Modular (part of Schneider Electric)	Information & communications technology	France
Ayala Land	Real estate; Property development	Philippines
Ball	Manufacturing; Packaging	USA
Bangkok Bank	Finance & banking	Thailand
Bank of Tokyo-Mitsubishi UFJ	Finance & banking	Japan
Bashneft JSOC	Oil & gas	Russia
Berlanga	Oil & gas	Singapore
BG Group	Oil & gas	UK
BMW Group Asia	Distribution; Automobile	Germany
Boeing	Transport; Aircraft	USA
British American Tobacco	Agriculture; Tobacco	UK
British International School	Education	UK
Brunei National Petroleum	Oil & gas	Brunei
Canadian Foresight Group	Oil & gas	Canada
Calvin Klein	Clothing & textile	USA
CAOG	Oil & gas	Luxembourg
Capital Group of Companies	Finance & banking	USA
Carlsberg	Food & beverage	Denmark
Casio	Technology & electronics	Japan
Centurion Minerals	Extractive	Canada
Changi Airport Planner	Construction	
Charoen Pokphand Group	Agriculture	Thailand

Chevron	Oil & gas	USA
China Power Investment (CPI)	Energy	China
Cisco	Information & communications technology	USA
Clipper Holdings	Construction; Engineering	USA
Coca-Cola	Manufacturing; Food & beverage	USA
Colgate-Palmolive	Manufacturing	USA
ConocoPhillips	Oil & gas	USA
Daewoo	Oil & gas	South Korea
DBS Bank	Finance & banking	Singapore
DiethelmKellerSiberHegner (DKSH)	Auditing, consulting & accounting	Switzerland
Dulwich College International	Education	UK
Electricity Generating Authority of Thailand	Energy	Thailand
Eni	Oil & gas	Italy
Ericsson	Technology, telecom & electronics	Sweden
Ernst & Young	Auditing, consulting & accounting	UK
Eumeralla	Mining	Australia
Festo	Technology, telecom & electronics	Germany
Ford	Manufacturing & distribution; Automobile	USA
Four Rivers	Real estate; Property development	USA
Fuji Xerox (joint venture between Fuji Photo Film and Xerox)	Technology, telecom & electronics	Japan
Gap	Manufacturing; Clothing & textile	USA
Gas Authority of India (GAIL)	Oil & gas	India
General Electric	Energy	USA
General Motors	Distribution; Automobile	USA
Geopetrol	Oil & gas	Switzerland
Globe Telecom	Technology, telecom & electronics	USA
Golden City	Real Estate	Singapore
Green Earth Power	Energy	Thailand
H&M	Clothing & textile	Sweden
HAGL Group	Construction	Vietnam
Hanel DTT	Technology, telecom & electronics	Vietnam
Harrow International Management Services	Education	UK
Heineken	Manufacturing; Food & beverage	Netherlands
Heritage Line	Tourism	Vietnam
Hilton Worldwide	Tourism	USA
Honeys	Clothing & textile	Japan
Huawei Technologies	Technology, telecom & electronics	China
Imaspro	Pesticide	Malaysia
Industrial & Commercial Bank of China	Finance & banking	China
ING Bank	Finance & banking	Netherlands
Ital-Thai	Construction	Thailand
Itochu	Trading	Japan
LG Electronics (part of LG Group)	Technology, telecom & electronics	South Korea
Jack Wolfskin	Clothing & textile	Germany
JALUX	Airport operator	Japan
Jaguar Land Rover	Distribution; Automobile	UK

JGC	Construction; Engineering	Japan
Kempinski Hotels	Tourism	Switzerland
KFC (part of Yum! Brands)	Food & beverage	USA
KOGAS	Oil & gas	South Korea
Lafarge	Construction	France
LLC (joint venture TSS Tokyo Water & Toyo Engineering)	Construction	Japan
L'Occitane	Beauty	France
Lotte Chilsung	Food & beverage	South Korea
Lotteria	Restaurant	South Korea
Malayan Banking	Finance & banking	Malaysia
Mango	Clothing & textile	Spain
Manila Water	Water	Philippines
Manulife Financial Life Insurance	Insurance	Canada
Marks & Spencer	Clothing & textile	UK
Marubeni	Trading	Japan
Mazda Motor	Manufacturing & Distribution; Automobile	Japan
MC Group	Clothing & textile	Thailand
Mercator Petroleum (part of Mercator)	Oil & gas	India
Mercedes Benz (part of Daimler)	Automobile	Germany
Meinhardt Engineering	Engineering	
Microsoft	Information & communications technology	USA
Mitsubishi Corporation	Conglomerate	Japan
Mitsubishi Motors	Automobile	Japan
Mitsubishi UFJ Financial Group	Finance & banking	Japan
Mitsui Oil Exploration (part of Mitsui)	Oil & gas	Japan
Mitsui Trading	Trading	Japan
Mitsui Sumitomo Insurance	Insurance	UK
Mizuho Bank	Finance & banking	Japan
Nestle	Food & beverage	Switzerland
Nippon Yusen	Transport; Shipping	Japan
Nissan	Manufacturing & Distribution; Automobile	Japan
Offshore Oil Engineering	Oil & gas	China
Oil India	Oil & gas	India
Oilmax	Oil & gas	India
ONGC Videsh	Oil & gas	India
Ooredoo	Technology, telecom & electronics	Qatar
Ophir Energy	Oil & gas	UK
Oversea-Chinese Banking (OCBC)	Finance & banking	Singapore
Pacific Hunt Energy	Oil & gas	Singapore
Pana Harrison	Insurance	Singapore
Panasonic	Technology, telecom & electronics	Japan
Parkson	Retail	Malaysia
Pepsico	Food & beverage	USA
Petroleum Authority of Thailand Exploration and Production (PTTEP)	Oil & gas	Thailand
Petroleum Exploration PVT	Oil & gas	Pakistan

Petronas	Oil & gas	Malaysia
Petrovietnam Exploration Production	Oil & gas	Vietnam
Philips	Technology, telecom & electronics	Netherlands
Poema Insurance	Insurance	
PricewaterhouseCoopers	Auditing, consulting & accounting	UK
Primark	Clothing & textile	UK
Procter & Gamble (P&G)	Manufacturing	USA
Prosperity Knitwear	Manufacturing; Clothing & textile	Hong Kong
Proximity Designs	Design	USA
Prudential	Insurance	UK
PT Timah	Extractive	Indonesia
Reebonz	Luxury goods	Singapore
Reliance Industries	Manufacturing	India
ROC Oil	Oil & gas	Australia
Rolls Royce	Automobile	UK
SABMiller	Food & beverage	UK
Samsung	Technology, telecom & electronics	South Korea
Sembcorp Utilities	Oil & gas	Singapore
Shell	Oil & gas	Netherlands
Siam Cement	Construction	Thailand
Siam Commercial Bank	Finance & banking	Thailand
Sinohydro	Construction; Dam-building	China
Sinotech Engineering	Engineering	Taiwan
Siren E&P	Oil & gas	UK
Sompo Japan Insurance	Insurance	Japan
Standard Chartered Bank	Finance & banking	UK
Statoil	Oil & gas	Norway
Sumitomo	Conglomerate	Japan
Sumitomo Mitsui Banking	Finance & banking	Japan
Suzuki	Automobile	Japan
SyQic	Technology, telecom & electronics	UK
Taiwan Electrical and Electronic Manufactures Association	Manufacturing	Taiwan
Taiyo-Life Insurance	Insurance	
Tan Chong Motor	Automobile	Malaysia
Tap Oil	Oil & gas	Australia
Telenor	Technology, telecom & electronics	Norway
Tesco	Food & beverage	UK
ThaiBev	Food & beverage	Thailand
The Great Eastern Life Assurance	Insurance	
Tillman Global Holdings	Technology, telecom & electronics	USA
Tokio Marine & Nichido Fire Insurance	Insurance	Japan
Total	Oil & gas	France
Toyota	Automobile	Japan
TPG	Finance & banking	USA
Transcontinental Group	Oil & gas	Australia
Unilever	Manufacturing	UK

United Overseas Bank (UOB)	Finance & banking	Singapore
Visa	Finance & banking	USA
Volkswagen	Automobile	Germany
Wanbao (part of Norinco)	Mining	China
Western Union	Finance & banking	USA
Wills	Insurance	
Wilmar	Agriculture	Singapore
Woodside Petroleum	Oil & gas	Australia
Xerox	Technology, telecom & electronics	Japan
Yoma Development Group (part of Yoma Strategic Holdings)	Construction	Singapore
Yongnam Holdings	Construction	Singapore
Young Holloman	Construction	USA

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