

Myanmar Centre for
Responsible Business



PWINT THIT SA PROJECT
Transparency in Myanmar Enterprises



Pwint Thit Sa Project

Transparency in Myanmar Enterprises

Third Report | 2016

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The Pwint Thit Sa/TiME report is intended to encourage increased transparency by Myanmar businesses. It was inspired by Transparency International's Transparency in Corporate Reporting study.

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Myanmar Centre for Responsible Business (MCRB) is a Yangon-based initiative between the UK-based [Institute of Human Rights and Business](#), and the [Danish Institute for Human Rights](#).

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The Centre was established to provide an effective and legitimate platform for the creation of knowledge, capacity and dialogue concerning responsible business in Myanmar, based on local needs and international standards, which results in more responsible business practices. It is a neutral platform working with businesses, civil society and government.

MCRB's UN Global Compact Communication on Engagement was published in August 2016 and outlines its activities according to the 10 Principles of the UNGC which is joined in 2014. See www.myanmar-responsiblebusiness.org/news/first-ungc-coe.html for further details.

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EXECUTIVE SUMMARY

Myanmar Centre for Responsible Business has published its third Pwint Thit Sa/Transparency in Myanmar Enterprises (TiME) report which uses 35 questions to assess the corporate websites of 100 large Myanmar companies for information on anti-corruption programmes, organisational transparency, and human rights and health, safety and environment (HSE).

The top scoring companies in 2016 are First Myanmar Investment (FMI) which this year has been scored separately to SPA, Serge Pun and Associates (SPA) and Max Myanmar. The top ten to fifteen most transparent companies in 2016 are for the most part the same as those who were most transparent in 2015, with only minor changes in order, but overall improvements in score. Amongst the leading companies, particular areas of improvement include publication of financial data, grievance mechanisms, and environmental and social impact assessments.

Many companies still do not have websites (34% of those surveyed) or even where they do, the websites are not fully functioning or publish little to no data relating to corporate governance (around 45%).

Recommendations are made to Myanmar companies, government, the Myanmar Parliament, institutional investors, civil society and the media.

DEVELOPMENTS SINCE THE 2015 REPORT

MCRB published its first Pwint Thit Sa/Transparency in Myanmar Enterprises (TiME) report in July 2014¹. The objective was to incentivise greater publication of information on the part of Myanmar companies by publicly recognising them for their transparency.

Two years later, Myanmar companies have made some notable improvements in transparency. However suspicion about cronyism and corruption continues to cloud the Myanmar business sector. This remains a concern for both domestic stakeholders and international stakeholders such as business and governments or international financial institutions who are seeking to invest in, and trade, with Myanmar.

Myanmar's scores on corruption in the World Bank's Enterprise Survey (data from 2014)² show that on certain transactions such as getting an operating or an import licence, obtaining an electrical connection or in meetings with tax officials, corruption in Myanmar is significantly higher than the Asia-Pacific average. The same is true of bribery incidence and depth³.

1 www.myanmar-responsiblebusiness.org/news/first-pwint-thit-sa-time-report.html

2 <http://www.enterprisesurveys.org/data/exploreeconomies/2014/myanmar>

3 Bribery incidence is the percent of firms experiencing at least one bribe payment request during 6 transactions dealing with utilities access, permits, licences, and taxes. Bribery depth is the percentage of transactions (out of 6 transactions dealing with utilities access, permits, licences, and taxes) where a gift or informal payment was requested.

Amongst the leading companies, particular areas of improvement include publication of financial data.

Amongst the Myanmar populace, there is a widespread – if exaggerated – belief that any company which succeeded during the 1988-2010 era did so through corrupt practices and cronyism. Members of the Myanmar Alliance for Transparency and Accountability (MATA), a civil society organisation established in 2014 with a particular focus on the extractives, have expressed concerns that companies who invest in Myanmar should not establish business links with those they consider ‘cronies’, and their families unless those individuals/companies take steps to redress past wrongs and adopt transparent and responsible business practices⁴.

A notable development since the publication of the previous report has been the formation of a new government under the National League for Democracy (NLD) following Myanmar’s historic 2015 elections. Among the NLD’s first priorities upon taking power was to address bribery and corruption. This included publishing new guidelines on the acceptance of gifts by public servants.⁵ These guidelines—which allow gifts up to a certain threshold in some cases (25,000 kyats or around \$20, a reduction from 300,000 kyats under the previous government) and forbid them outright in others—represent an important step toward reinforcing responsible business conduct in Myanmar, establishing a level playing field for businesses, and winning the confidence of local stakeholders and international investors.

To back up the reform, in an unusual warning, the President’s Office announced that an unnamed media company, which media speculation identified as Skynet, part of Shwe Thanlwin Group, had attempted to make a gift of 5 million kyats to a member of the President’s Office during the Thingyan Water Festival in April 2016⁶.

Nonetheless, while the NLD has demonstrated its interest in combatting the acceptance of bribes of civil servants, further steps will need to be taken by the government if companies are to be punishable for offering bribes to civil servants, including reform of the anti-corruption law to make companies liable for offering bribes. Both companies and parties, including the NLD, also need to be more transparent concerning donations in cash and kind from business to political parties⁷.

4 Myanmar Centre for Responsible Business, October 2014, [Briefing paper on CSOs and extractives industries](#)

5 ‘NLD cracks down on nepotism’, Myanmar Times, 27 April 2016

6 [President’s Office Calls Out Media Company For Alleged Govt Bribe](#), Irrawaddy, 20 April 2016

7 ‘A fine line between FOC and Corruption’, Op-Ed by Vicky Bowman, Myanmar Times, 12 January 2016

CURRENT OPPORTUNITIES FOR GOVERNMENT ACTION

Transparency, including on the part of business, is essential if ongoing significant economic and political reforms in Myanmar are to be successful and win public trust. Political leaders have stated their commitment to transparency⁸. The Myanmar government has already taken some concrete steps to promote more transparency about business. This includes the Top 1000 commercial and income taxpayers lists produced by Myanmar's Internal Revenue Department. These lists have created a virtuous competition among Myanmar companies to demonstrate that they are good taxpayers. Other transparency initiatives undertaken by the previous government include Myanmar's candidacy for the Extractives Industries Transparency Initiative (currently stalled pending the appointment of a new 'champion' by the new government)⁹, its interest in the Open Government Partnership, and some - but by no means all - government tendering processes¹⁰.

REGULATORY REFORM

Several ongoing legal reforms are also expected to increase company transparency. The reform to the Myanmar Companies Law by the Directorate of Investment and Companies Administration (DICA) with support from the Asian Development Bank¹¹ is expected to modernize company transparency requirements for example by requiring some non-financial reporting. Reporting on non-financial risks is increasingly becoming either a requirement or is being encouraged by many jurisdictions, including many stock exchanges. Article 261(b) of the June 2016 draft of the Companies Law envisages an annual Director's Report which 'must include a fair review of the company's business, including a description of the company's primary business, an analysis of the company's performance during the year, a description of risks and uncertainties facing the company and any other matters which may be prescribed'. The option exists to make the content of such reporting more explicit as some jurisdictions have done¹².

8 In 2013, President Thein Sein [stated his government's commitment](#) to promote transparent business procedures, build investor confidence and promote responsible investment in Myanmar. Daw Aung San Suu Kyi has also [highlighted the importance of transparency](#): "Without transparency there can be no accountability. And unless there's transparency we can never tell whether these investments are going to benefit the people or just the already privileged few"

9 www.myanmareiti.org

10 The most frequently cited Myanmar example of tendering best practice is the 2013 mobile telephone licence tendering, conducted with support of the World Bank. Poor practice particularly occurs in the allocation of government land for real estate development.

11 Asian Development Bank [TA 47268-001: Strengthening Institutions for a Better Investment Climate](#).

12 For examples, the 2014 EU non-financial reporting directive requires companies to disclose in their management report, information on policies, risks and outcomes as regards environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors.

YANGON STOCK EXCHANGE

The drafting of a consolidated Myanmar Investment Law also offers opportunities to increase transparency and accountability. For example, MCRB has proposed that the Government could introduce a requirement for companies receiving a Myanmar Investment Commission (MIC) Permit to put in place effective, operational grievance mechanisms and submit an annual sustainability report to the Commission covering this and other material issues¹³.

The Yangon Stock Exchange (YSX) was launched in March 2016 and also offers the opportunity to increase company transparency. YSX is a partnership between Japanese investment bank Daiwa Securities Group and majority-owner Myanmar Economic Bank (MEB), which was recently removed from the U.S. sanctions list.

On 25 March, FMI, the top-rated company in Pwint Thit Sa 2016, became the first company to list on the exchange. Myanmar Thilawa Special Economic Zone (SEZ) Holdings Public Ltd listed on 20 May, and ranks 18 in Pwint Thit Sa 2016, and Myanmar Citizens Bank listed 12 August and ranks 27 (scored prior to listing). Other companies expected to list include First Private Bank, Myanmar Agribusiness Corporation Limited (MAPCO) and Great Hor Kham—all of which are reviewed in this year's Pwint Thit Sa Report. The forthcoming Myanmar Companies Law is expected to enable joint ventures to list on the YSX and also allow foreign investors to purchase shares in listed companies.¹⁴

Current YSX reporting provisions are limited. Notification 2/2015 Article 5 (a) requires the inclusion in the listing Prospectus of a '*vi* business overview including the performance of the company's business, the principal activities and principal markets, the principal risks and uncertainties facing the company, material contracts, research and development, etc'¹⁵. The three companies listed to date have interpreted this in a limited way, with no reporting of material stakeholder risk. This is particularly surprising, given the material risks related to achieving successful land acquisition and resettlement in Thilawa Special Economic Zone. Continuous Disclosure provisions only require notifications in the case of disaster or a lawsuit¹⁶.

The new Securities and Exchange Commission of Myanmar (SECM) has been charged with developing auditing and corporate governance standards for listed companies in line with regional and international standards. Publication of such documents would already improve reporting for several of the Myanmar companies currently planning to list.

13 www.myanmar-responsiblebusiness.org/further-proposals-draft-myanmar-investment-law.html

14 [Yangon stock exchange to open to foreign investors](http://www.myanmar-times.com/2016/03/01/yanmar-stock-exchange-to-open-to-foreign-investors/), Myanmar Times, 1 June 2016

15 https://ysx-mm.com/wp-content/uploads/2016/03/n_en_092015_01.pdf (English) and https://ysx-mm.com/wp-content/uploads/2015/12/n_mm_092015_01.pdf (Myanmar)

16 https://ysx-mm.com/wp-content/uploads/2016/03/n_en_022016_01.pdf

Sustainability guidelines could be further step for the YSX in coming years. In June, the Singapore Exchange (SGX) introduced sustainability reporting, which will require listed companies to publish annual reports covering environmental, social and governance (ESG) factors, sustainability targets and relevant policies.

CORRUPTION

The new Parliament has highlighted the need to address corruption. While in the main this requires government leadership, building on the initial steps taken by the new government outlined above, the current Myanmar legal regime concerning corruption is still not completely in line with Myanmar's obligations under the UN Convention Against Corruption (UNCAC) to address private sector corruption.

The UN Office of Drugs and Crime (UNODC) is supporting Myanmar's Anti-Corruption Commission (ACC), with the first review of UNCAC implementation which is overdue.¹⁷ This is expected to identify specific gaps in its legal and enforcement frameworks in comparison to the provisions of the UNCAC and how to address them. In particular, Article 26 of UNCAC requires that Myanmar establishes liability of legal persons for participation in corruption offences, whereas Myanmar's Anti-Corruption Law (2013), Penal Code and Myanmar Commercial Act (1914) appear to suggest that both domestic and foreign firms based in Myanmar are not liable for participating in corruption offences.

There are also no penalties or sanctions (i.e. dissolution, debarment from public contracts, significantly higher monetary penalties for legal persons, etc) are specifically targeted at firms which are involved in corruption. However, despite the absence of legal sanctions, there is nothing to stop Myanmar companies from getting ahead of future legislative changes and introduce effective anti-corruption programmes.

ENVIRONMENTAL IMPACT ASSESSMENT

On 29 December 2015, the government published an Environmental Impact Assessment (EIA) Procedure requiring timely public consultation and publication of Environmental Impact Assessments (which include social impacts). The procedures state that assessments are to be made public to civil society, local communities, and other stakeholders (Article 38 for IEEs, Article 65 for EIAs) no later than fifteen days after submission to the Ministry.

The Government plans to develop Myanmar guidelines for public participation, which will be complementary to regional guidelines currently being developed under a process led by Mekong Partnership for the Environment¹⁸.

¹⁷ <http://frontiermyanmar.net/en/features/cleaning-up-corruption-nlds-battle>

¹⁸ In February 2016 MCRB and MPE cohosted a discussion with companies on lessons learned on public participation in the EIA process <http://www.myanmar->

However, proper implementation and enforcement of the procedures is critical. A survey of oil and gas companies by MCRB in March 2016 found that around half had not published the Initial Environmental Examinations (IEEs) or EIAs; this was, however, the best performing sector for disclosure¹⁹. Only a few Myanmar companies reviewed for the 2016 TiME report had published EIAs (although it is likely that few had undertaken any).

Other regulatory opportunities to improve transparency could involve government procurement processes (see above) or publication of natural resources contracts (particularly oil and gas, mining, hydropower), an option that can be pursued as part of the Myanmar EITI.

responsiblebusiness.org/news/pointers-for-public-participation-environmental-impact-assessment.html

¹⁹ www.myanmar-responsiblebusiness.org/news/mixed-picture-disclosure-environmental-impact-assessments.html

PERSPECTIVES FROM STAKEHOLDERS ON COMPANY TRANSPARENCY

PERSPECTIVES FROM INTERNATIONAL INVESTORS

The previous TiME reports have been picked up with interest by those in the international community who wanted to know more about Myanmar's companies, both businesses and governments²⁰. In meetings with MCRB, foreign investors and their consultants – and not only those from the West – were keen to know how actual or potential local partners performed on transparency, and whether they had in place commitments to business integrity, health, safety and environment (HSE) practices and respect for human rights.

Myanmar companies require above-average legal due diligence on the part of potential business partners, not least as a consequence of previous sanctions regimes, and the still extant US list of Specially Designated Nationals (SDN)²¹ which contains some Myanmar individuals and companies. Even where companies are not named in lists, they may raise red flags in routine due diligence on account of their connections to military or 'politically exposed persons'²², accusations of corrupt practices and human rights abuses.

The ADB's support to DICA on the Companies Act includes support to establish an online company registry, and DICA has already taken steps towards this by undertaking a process to purge the register of dormant companies. Although there are still doubts about whether the data is comprehensive, the new DICA website includes enhanced Company Search facilities with details of Directors names and ID numbers²³.

www.opencorporates.com has taken DICA information further by creating hyperlinks between companies with the same Directors.

Any company doing business in Myanmar, particularly if they come from North America or Europe, faces exceptional scrutiny of their operations to a degree which they would not face for investments in Laos, Cambodia, or Vietnam. This is an incentive to undertake human rights due diligence in line with the UN Guiding Principles on Business and Human Rights²⁴ and many have done so.

To encourage responsible investment, the US government introduced reporting requirements for its citizens investing in Myanmar²⁵.

20 The [2014 TiME/Pwint Thitsa report](#) has been downloaded almost 1,000 times and over 2,000 copies distributed.

21 www.treasury.gov/resource-center/sanctions/Programs/pages/burma.aspx. One company/individual (Dagon/U Win Aung) was removed from US SDN list in period of this report.

22 A politically exposed person (PEP) is defined in guidance from the OECD's Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function.

23 www.dica.gov.mm/en/company-search

24 www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

25 The US Reporting Requirements state that, "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

The threshold for investments to report was raised from \$500,000 to \$5 million in 2016, and all investments in oil and gas. By August 2016, 49 reports had been published, some of which contain useful information about the due diligence steps US companies are taking when investing in and trading with Myanmar²⁶.

In putting together Section 3 of the TiME questionnaire, MCRB took the content of US Reporting Requirements into account. The US government has also encouraged Myanmar companies, including those on the SDN list and seeking to be removed, to adopt similar transparency about their operations. Other legislative requirements on foreign companies are trending towards a requirement to publish information about the human rights impact of their activities, including the activities of their business partners.

For example, the UK's Modern Slavery Act of 2015 requires businesses to publish an annual slavery and human trafficking statement reporting the steps - if any - the company has taken to ensure that slavery and human trafficking are not taking place in its own business and any of its supply chains²⁷. For example, this could include whether there are labour broker fees leading to debt bondage or retention of workers' identity documents. Myanmar companies who can publicly demonstrate that they are managing these risks will have a competitive advantage when it comes to attracting foreign business partners who are subject to these type of requirements in their home jurisdictions.

**PERSPECTIVES
FROM CIVIL
SOCIETY
ORGANISATIONS**

MCRB has presented the 2015 TiME report at many meetings with civil society organisations and human rights defenders, and seeks feedback from CSOs on their progress engaging with Myanmar companies. CSOs repeatedly tell MCRB that one of the main challenges of pursuing company accountability is finding company staff willing to take responsibility for receiving and acting on grievances and engaging with stakeholders. This is particularly challenging for joint ventures with government where the company tends to 'pass the buck' to the Ministry or the local authorities who pass it back.

Furthermore, few Myanmar companies have established a function charged with responding to the concerns of external stakeholders (which where it exists might be termed Community, Public, External or Corporate Relations or Sustainability). Those that have put resources into this have tended to be the best performing companies in the TiME transparency index. They have also often brought in foreign advisers to establish the function and draw on good international practice.

human rights abuses and repression by the government and military. Public disclosure of information therefore will help new U.S. investment promote transparency and support government reform, a key U.S. foreign policy objective in Burma".

26 <http://burma.usembassy.gov/reporting-requirements.html>

27 www.legislation.gov.uk/ukpga/2015/30/section/54/enacted

PERSPECTIVES FROM MYANMAR BUSINESSES

There is a clear business case for Myanmar company transparency which Myanmar companies are beginning to recognise. As of August 2016 there were 354 Myanmar businesses now enrolled in the UN Global Compact²⁸ and several such as Shwetaung and KMD have published quality annual Communications on Progress (COPs).

These businesses have recognised the value of aligning with an international standard for responsible business (the 10 Principles of the UN Global Compact). They are also communicating transparently on their responsible business activities related to those ten principles i.e. human rights, labour rights, environment and corruption. This is a step change from the traditional 'CSR' communication of Myanmar companies featuring photographs of philanthropic donations.

A number of the leading companies who were recognised in previous reports as having the most transparent websites were keen to publicise their position in the Index. Indeed some smaller companies not included in the Pwint Thit Sa report have since asked MCRB if they too can be included in the scoring, as they see the opportunity such recognition gives for increasing the chances of partnership with foreign businesses and investors (see above). In 2016 MCRB launched a voluntary 'Mini Pwint Thit Sa' benchmarking process for medium-sized companies²⁹.

Nicolas Delange of sustainability consultancy Yever undertook a similar study in 2016 of a wider range of Myanmar companies and particularly those who are UN Global Compact members, and obtained similar findings to TiME. Differences in the findings are generally accounted for by a greater focus on corporate reporting and management in the Yever study, and a different approach to marking Groups and subsidiaries.

Furthermore, there is an internal business case. A website – and a Facebook page - is also a vital tool for any company to engage, inform and motivate its own staff. Mobile phone and internet penetration in Myanmar has increased from 7% to nearly 50% since 2012. Staff who can easily access up to date information about the company's approach to responsible business on a website are more likely to be able to apply that approach in their work. They will also be better ambassadors for the company with external stakeholders. The opportunity to work for a company with a reputation for transparency should also encourage recruitment and retention, a significant problem reported by many Myanmar companies. The company should also see more accurate media reporting of its activities if information is easily available.

Since publishing the first TiME report in 2014, MCRB has offered to support any Myanmar companies - not only the 100 featured in this report - who want to improve their performance in the areas covered by the TiME report.

28 www.unglobalcompact.org/what-is-gc/participants

29 www.myanmar-responsiblebusiness.org/pwint-thit-sa/mini.html

Workshops were held on anti-corruption (September 2014 and March 2016)³⁰ human rights policies (October 2014 and September 2016) and human rights reporting (November 2014)³¹ and grievance mechanisms (June 2015)³². All presentations from these workshops are available on MCRB's website.

In the present Myanmar environment, the 35 questions against which websites are assessed set a high benchmark for local companies. It is a benchmark which many established companies in the region would not achieve. It is therefore all the more commendable that a small group of Myanmar companies continue to make great efforts to be transparent.

As mentioned above, greater business transparency is about more than company websites. It requires activity by business, government and civil society stakeholders, including the media. MCRB has made recommendations to companies, government, investors and media and civil society organisations to enhance this (see 'Recommendations' below).

30 www.myanmar-responsiblebusiness.org/news/workshop-anti-corruption-programmes.html. This workshop was accompanied by the distribution of a Burmese translation of Transparency International's 'Business Principles for Countering Bribery' (SMEs edition)

31 www.myanmar-responsiblebusiness.org/news/pwint-thit-follow-up-mcrb-workshops.html

32 www.myanmar-responsiblebusiness.org/news/workshop-developing-effective-grievance-mechanism.html

PROJECT RATIONALE AND METHODOLOGY

The first Pwint Thit Sa/TiME study of 60 large companies' websites was inspired by Transparency International's 'Transparency in Corporate Reporting – Assessing the World's Largest Companies' TRAC report³³. The Transparency in Corporate Reporting methodology depends on assessing the information which companies publish on their websites. The three areas examined are anti-corruption programmes (ACP), organizational transparency (OT) and country-by-country reporting of key financial information including tax. Only information which is published on the internet and available widely is scored for the purposes of the report.

MCRB adapted this methodology to suit Myanmar conditions. Myanmar companies are not multinational and therefore do not pay tax in different jurisdictions; and Myanmar stakeholders are particularly concerned about land, human rights, and HSE issues. As a result, the three categories chosen for TiME were:

- 1.** Anti-corruption Programmes (ACP): Reporting on anti-corruption shows how committed a company is to combat corruption within its business and its supply chain.
- 2.** Organizational Transparency (OT): this is a fundamental indicator of how transparent a company is regarding its size, structure and business ventures.
- 3.** Human Rights, Health, Safety and Environment (HSE): Disclosing policies in these areas and reporting on their implementation shows how committed a business is to protecting its workers, protecting the environment, and preventing breaches of human rights.

MCRB developed a set of 35 questions in 2014 against which websites were scored. The questions drew on the TRAC methodology for the first two categories, ACP and OT. The third category was developed by drawing on the US Reporting Requirements for Myanmar, the Global Reporting Initiative (GRI)³⁴, the Human Rights Reporting and Assurance Frameworks Initiative (RAFI)³⁵ and other expert input.

The 35 questions used to score websites in 2015 were broadly unchanged in 2016 (see Annex). The only exceptions included the combination of questions 20 and 21 (on countries of incorporation and operation, respectively) into one, and the inclusion of a new question (21 new) about disclosure of directors and executive management.

Some adjustments have been made to the scoring schedule, which are discussed in the Scoring section below.

33 <http://gateway.transparency.org/tools/detail/310> © Transparency International. All Rights Reserved. For more information, visit www.transparency.org.

34 www.globalreporting.org

35 www.shiftproject.org/project/human-rights-reporting-and-assurance-frameworks-initiative-rafi

COMPANY SELECTION

As with the previous report, this study included 100 Myanmar companies. MCRB selected these companies from those who paid significant commercial and/or income tax, based on the top 1,000 tax payers lists published by Internal Revenue Department for the 2014/2015 fiscal year.

There is some change in the list of top taxpayers from year to year, however roughly two-thirds of the 100 companies reviewed in this report were also featured in the 2015 study. Additionally, half a dozen companies were included who, while not major tax payers in 2014/2015, have a significant role in the Myanmar economy. For example, Myanmar Thilawa SEZ Holdings was included as one of the two initial listings on the new Yangon Stock Exchange.

GROUPS

There is inconsistent usage of the word 'Group' in Myanmar. Some 'Groups' have a clear legal structure with subsidiary companies. Others consist of a loose alliance of companies who may be presented publicly as a Group but have no overarching legal entity.

Where companies had a common major shareholder but operated in different sectors, and it appeared that they were managed and accounted for as separate entities, or their senior management requested this, this year's report assesses them separately³⁶.

However given the lack of transparency concerning Groups and their structures, and lack of feedback from some companies when approached for clarity about company organisational structures, the approach taken by this year's report to identifying a Group for assessment may not be totally consistent. MCRB will seek to refine it in future as more information about company structure becomes available.

SUBSIDIARIES WITH WEBSITES

Subsidiary companies were generally grouped under their parent company or Group. As in 2015, the Group's website was used as a primary reference for website review, and in instances where a Group website did not exist subsidiary websites were taken into account.

Where relevant information was found, any points applicable to these websites were calculated on a pro rata basis, on the assumption that the other subsidiaries were **not** applying these policies. However, in 2016 this had very little impact on the scoring of companies.³⁷

36 Companies assessed separately for this reason were Max Group and Aya Bank (common shareholder U Zaw Zaw) and the companies with significant ownership by U Thein Tun, namely Myanmar Gold Star, Tun Foundation Bank, and Myanmar Consolidated Media (which owns Myanmar Times).

37 Subsidiary websites contributed to the overall score of Eden Group (Eden Hotels).

CONTACT WITH COMPANIES

Companies were contacted at several stages. Hard-copy introductory letters were mailed to the head office of each company in March, and also emailed to those with a contact email address or where individuals in the company were personally known to MCRB. The letters informed the companies of the research MCRB was commencing and provided deadlines for each phase of the project.

After desktop research on company websites, preliminary scores were sent out to companies in mid-June, with scoring guidance. Companies were informed that scores would be based on website content as of the end of July. They were encouraged to engage with MCRB to clarify issues, let us know if public information had been missed, and update and expand on websites.

We were, as in 2015, hampered in our ability to communicate with some companies due to the absence of a website, let alone one with reliable contact information. Even where companies had a website, it appeared that information about the Pwint Thit Sa project was not reaching appropriate managers for response, in some cases because there was no corporate function to handle such an initiative.

However roughly twenty companies³⁸ were either contacted personally by MCRB staff, or contacted MCRB on receiving the letters. Several companies significantly updated their websites in response.

REALITY CHECKS

It remains the case that the main methodological weakness of this research is that it should not be taken as a measure of the company's **performance** on health, safety and the environment (HSE), human rights and anti-corruption. It only measures the amount of published information on each company's website.

MCRB has not been able to check the accuracy of that published information or make an assessment of how the company applies its stated policies and standards internally and externally. However, we start from the assumption that companies who address these issues on their websites and have such policies recognise their importance.

Also, where a company is transparent about its activities and commitments, this strengthens the ability of its stakeholders and civil society groups to hold them to account against those commitments and recognise where they are performing in line with them, which should in turn drive better performance on the ground.

Nonetheless, to address concerns that companies might be developing and

38 AYA bank, City Mart Holdings Limited, Htoo, KBZ, Myanmar Awba, Max Myanmar, MPRL, Parami Energy, SPA, Shwe Taung, SMART, UPG, Zawgyi Premier, Dagon Group of Companies, Kayay Trading, Min Zar Ni Group of Companies, FMI, Myan Shwe Pyi Tractors, Great Hor Kham Public Co. Ltd., Ya Thar Cho Industries, Shwe Than Lwin Group of Companies, International Beverages Trading Co. Ltd. (IBTC), UMEHL.

publishing attractive HQ policies but without rollout of behaviour in practice, MCRB has taken two measures. First, as with the 2015 study, we reviewed media reports and other public criticism of companies during the past year. As far as possible, these were sent to companies in July to invite them to comment or address the points raised on their websites. A summary of these is included in the Annex. Second, this year we updated the scoring schedule for several questions in order to place greater emphasis on reporting on implementation of policies. More on this is provided in the following section.

Finally, we excluded from scoring what appeared to be an obvious attempt to rig the system and achieve scores by publishing cut and paste policies with no connection to company activity.

On this point, research revealed the presence of a www.yuzanagroup.com website which contained only a Code of Ethics, Human rights Policy, and Land Development Policy, but no data about the company's activities, nor even an HQ address. Attempts to contact Yuzana Group to explore the provenance of this website were unsuccessful. Indeed MCRB has been unable to contact the company over the three years of conducting this survey. The information on the website was therefore disregarded.

SCORING

The scoring methodology adopts that of Transparency International's TRAC report. For the 35 questions, each question was given 1, 0.5, or 0 depending on the extent of information provided on the websites (see Annex). If a question was not relevant to the organization, it was given N/A and not considered when calculating the scores.

To standardise the score to a maximum of 10, the overall score was obtained by calculating an average of the scores derived for each section, which was then re-scaled between 0-10, similar to the methodology of Transparency International. The higher the score for each section, the more relevant information was published on the official website of the company.

In 2016 MCRB made minor changes to the scoring schedule to allow for differentiation of the most transparent companies and 'raise the bar' slightly. This year we adjusted the scoring benchmarks for several questions in order to reflect the higher standard to which some companies aspire, and encourage provision of corporate governance information in Burmese.

The scoring rubric was changed for ten of 35 questions, half of which pertained to Human Rights, HSE and Land. The revisions focused on extending company policies to include suppliers and contractors, reporting in the implementation of company policies, or otherwise providing details on practices that companies claim to have in place. The adjustments were made in line with international standards for transparency in business, particularly the G4 Global Reporting Guidelines of the Global Reporting

Initiative (GRI). In six other cases, a requirement was added that company policies be made available in Burmese. In all cases, adjustments were made to the higher 1-point benchmark, while in some cases additional changes were made to the lower 0.5-point benchmark.

For any given company in this report, an increase or decrease in score from 2015 to 2016 will consequently be a product of both changes in that company's transparency and changes to the scoring rubric.

However, to the extent possible revisions were made in such a way as to impact companies evenly. For example, revisions focused on questions where a large number of companies performed well in previous years. Ultimately, while the scoring revisions have had a slight impact on reducing overall scores, MCRB is confident that it has had little impact on the relative ranking of companies.

RESULTS

Overall, those companies who were most transparent in 2015 made further disclosures in 2016. In fact, the Top Ten companies were unchanged except for the inclusion of First Myanmar Incorporated (FMI), which listed in March 2016, and was scored for the first time this year.

For the most part, these top companies maintained their positions relative to one another. Those companies such as City Mart, Shwe Taung and Parami whose ranking slipped in 2016 have not reduced their transparency. Indeed they too have generally improved. But other companies, such as SMART and AYA Bank, have made greater efforts and improved their relative position.

The most transparent companies of those surveyed in the 2016 TiME report are FMI, Serge Pun and Associates (SPA), Max Myanmar Group. These top-performing companies—who in the case of SPA and Max topped the list in the 2015 TiME report—excelled relative to other large Myanmar companies on nearly all areas of transparency.

Although SPA and Max Myanmar entered 2016 with a head start on other companies in the Top Ten, they nonetheless also continued to improve transparency.

In the 2016 TiME study, as in previous years, a top tier of around fifteen companies stood out among the rest as being more transparent, and have improved on last year. These companies outperformed other Myanmar companies surveyed, although they include a wide ranges of scores as high as 9.32 (FMI) and as low as 2.51 (Zawgyi Premier). What distinguishes the lower scoring companies in this category from those who barely score at all are that they publish one or more company policies related to employment or corruption. Generally they provide more details on the organizational structure of their business interests. More details on their particular strengths are presented in the sections below.

A second tier of about forty companies includes a number of large companies who have taken little or no action to improve transparency in the last twelve months. A number of these companies have international partners, such as IBTC (Heineken), Myanmar Gold Star (Carlsberg), Myanmar Distribution Group (Nestle), and Sein Wut Hmon (BAT) or investment from international finance organisation such as the IFC (Myanmar Oriental Bank, Awba). To pass these international companies' due diligence and establish a partnership, the Myanmar company would have almost certainly be required to adopt commitments and controls on anti-corruption, so they should be able to publicise what these are, beyond making general claims to good governance.

Also among this group are three companies expected to list shortly on the YSX—MAPCO, Great Hor Kham, and First Private Bank—which continue to provide few specific corporate governance details on their respective websites. The military-owned enterprise, Myanmar Economic Corporation,

Company Name	Website	2016 Position	2015 Position
FIRST MYANMAR INVESTMENT (FMI)	fmi.com.mm	1	NA
SERGE PUN & ASSOCIATES (SPA)	spa-myanmar.com	2	1
MAX MYANMAR GROUP	maxmyanmargroup.com	3	2
SMART TECHNICAL SERVICES	smartmyanmargroup.com	4	5
MPRL E&P GROUP	mprlexp.com	5	8
AYA BANK (FORMERLY AYAWADDY BANK)	ayabank.com	6	9
KBZ GROUP	kbzgroup.com.mm	7	3
CITY MART HOLDING COMPANY	cmhl.com.mm	8	4
PARAMI ENERGY GROUP	parami.com	9	6
DAGON GROUP	dagon-group.com	10	10
SHWE TAUNG GROUP	shwetaunggroup.com	11	7
ASIA WORLD	asiaworldcompany.com	12	12
GREAT HOR KHAM PUBLIC COMPANY	greathorkham.com	13	NA
HTOO GROUP	htoo.com	14	41
ZAWGYI PREMIER	zawgyipremier.com	15	43
UNITED PAINT GROUP (UPG)	upgpaint.com	16	19
MAPCO	mapco.com.mm	17	NA
MYANMAR THILAWA SEZ HOLDINGS	mtshmyanmar.com	18	NA
YOUNG INVESTMENT GROUP	yigmm.com	19	NA
UMG GROUP	umgmyanmar.com	20	NA
SEIN WUT HMON	swh.com.mm	20	26
A1 GROUP	a1companies.biz	22	33
SUPREME GROUP	supremegroupcompanies.com	22	NA
TAHMOENYE CHAN THAR GROUP	tahmoehnyechanthar-group.com	22	NA
CAPITAL DIAMOND STAR	cdsg.com.mm	25	16
MYANMAR CONSOLIDATED MEDIA HOLDINGS	mmtimes.com	25	40
MYANMAR CITIZEN BANK	mcb.com.mm	27	14
NEW DAY ENERGY	newdayenergymm.com	27	32
MYAN SHWE PYI LTD	mshpcat.com.mm	27	21
APEX OIL & GAS PUBLIC COMPANY	apexgasnoil.com	30	22
T.Z.T.M GROUP	tztmgroup.com	30	28
DAWN (AH YONE OO) CONSTRUCTION	ahyoneoo.com	30	20
OK GROUP	ukyufamily.com	30	47
MYANMAR AWBA GROUP	awba-group.com	34	37
MYANMAR GOLDEN STAR (MGS)	mgsgroup.net	34	18
TAW WIN FAMILY	tawwinfamily.com	34	NW

Anti-Corruption	Organisational Transparency	Health, Safety, Environment and Human Rights	Total Score	UNGC Member	Media Report
2.82	3.33	3.17	9.32	√	
2.82	2.92	3.17	8.91	√	
3.08	2.41	3	8.49	"Max Energy, Max Myanmar Hotels, Max Highway Co, Shwe Yang Pya Agriculture	√
2.95	2.78	1.83	7.56	√	
2.44	1.67	2.83	6.94	√	
2.56	2.33	2	6.89	√	
2.56	2.64	1.67	6.87	√	
2.56	1.85	2	6.41	√	
2.31	2.04	1.67	6.02	√	
2.18	1.48	0.83	4.49	√	
2.5	1.11	0.83	3.99	√	
2.44	0.37	0.67	3.48	√	
1.92	1.39	0	3.31		
0.9	1.3	0.67	2.87	Htoo Foundation, AGD Bank	
0.51	2	0	2.51		
0.77	1	0.17	1.94	√	
0.13	1.53	0	1.66		
0.64	1	0	1.64	√	
0	1.11	0.17	1.28		
0	1.11	0	1.11		
0	1.11	0	1.11		
0	0.93	0	0.93		
0	0.93	0	0.93		
0	0.93	0	0.93		
0	0.74	0	0.74		√
0	0.74	0	0.74		
0	0.67	0	0.67		
0	0.67	0	0.67		
0	0.67	0	0.67		
0	0.56	0	0.56		
0	0.56	0	0.56		
0	0.56	0	0.56		
0	0.56	0	0.56		
0	0.37	0	0.37	√	
0	0.37	0	0.37		
0	0.37	0	0.37		

Company Name	Website	2016 Position	2015 Position
EXCELLENT FORTUNE	efdgroup.com	34	NA
GOLDEN KEY (MIKKO GROUP)	mikkogroup.biz	34	13
FORTUNE INTERNATIONAL	fortune-myanmar.com	34	NA
INTERNATIONAL BEVERAGES TRADING (IBTC)	ibtcgroup.com	34	45
AA GROUP (PACIFIC AA GROUP)	pacific-aa.com	41	51
NEW GOLDEN GATE (1991)	agribizmm.com	41	60
YATHAR CHO INDUSTRIES	yummyyanmar.com	41	50
NAING GROUP	nainggroupcapital.com	41	38
KMA GROUP OF COMPANIES	kmagroup.net	45	17
ACE GROUP OF COMPANIES	acegroupmm.com	46	25
THIRAWMANI GROUP OF COMPANIES	thirawmani.com	46	NA
AYEYAR HINTHAR	ayeyarhinthar.com	46	NA
MYANMAR ECONOMIC CORPORATION	mecwebsite.com	46	NW
FIRST PRIVATE BANK	firstprivatebank.com.mm	50	NW
MYANMAR ORIENTAL BANK (MOB)	mobmyanmar.com	50	31
UNION OF MYANMAR ECONOMIC HOLDINGS (UMEHL)	myawaddytrade.com	50	53
MYANMAR DISTRIBUTION GROUP	myanmardistributiongroup.com	50	23
ELITE TECH	elitetech-group.com	50	NA
AUNG KAN BO TRADING	aungkanbo.com	50	44
EDEN GROUP	mabbank.com	50	52
EVER SUNNY INDUSTRIES (ESI) FOOD	esifood.com	50	56
RUBY DRAGON GROUP OF COMPANIES	rubydragongroup.com	50	NW
ELEVEN MEDIA GROUP	elevenmyanmar.com	50	29
MYAT EAINDRAY GROUP	democrystal.com/myateaindray	50	NA
GOOD BROTHERS	gbs.com.mm	50	NA
KHA YAY TRADING	khayaytrading.com	50	NA
MIN ZARNI	minzarnigroup.com	50	NA
SHWE THAN LWIN	skynetdth.com	50	NW
YUZANA	www.yuzanagroup.com	50	55
SIN PHYU KYUN	sinphyukyun.com	50	NA
Companies Surveyed Who Do Not Have a Website:			
Asia Energy Trading	Ben Hur Trading	Bhome Yaung Chi	
Global Myanmar Trading	Gold Uni Investment	Information Technology Central Services	
LM Jewellery	Lin Htet Aung Gems	Mya Gae Trading	
Pinya Manufacturing	Pyae Phyو Tun	Sein Ngwe Mya	
Shwe Gaung Gaung Gems	Shwe Me	Six Winner Brothers	
Win Lei Yadana	Win Pine Kyaw Trading Enterprise	Xie Family	

entered into this category this year, with the establishment of a website on its assets - replicating information previously only available in hard copy - but lacking governance information. Myanmar's other military-owned company, Union of Myanmar Economic Holdings was again scored pro rata for Myawadi Trading's website which has negligible corporate governance information.

Other organisations, despite being known to operate as a conglomerate, lacked a Group website. The sites for Myanmar Apex Bank (MAB) and Eden Resorts, parts of Eden Group (a Hilton partner) appear intended for marketing purposes only and lack corporate governance information; the same is true for Shwe Thanlwin (Skynet news).

In general, media companies, who should be expected to be leading the way in terms of publishing information continue to perform poorly in the TiME report. Shwe Thanlwin has yet to establish a Group website, while Myanmar Consolidated Media and Eleven only publish a small amount of corporate information.

A third tier of companies had a website but with no meaningful information, so scored zero. This included Yuzana Group (see above). The site was either Under Construction (Ruby Dragon), non-functioning (Sin-phyu-kyun) or only contained 'Ipsem Dolor' text (Myat Eindray).

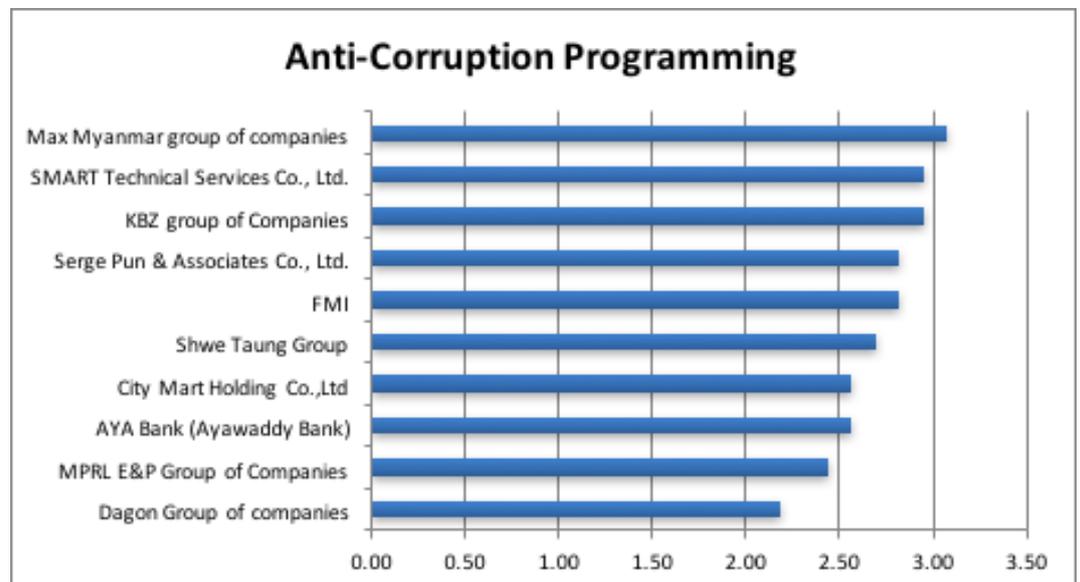
The bottom tier consists of 34 of the 100 companies assessed in 2016 who had no website (a slight improvement on the 39 in 2015 who had no website). Many of these are jade and gems companies who feature in the Top 100 by virtue of their appearance on the tax payers list. This group also includes some Myanmar partners of international companies such as Pinya Manufacturing (Coca-Cola), and IGE (Petronas).

For some companies, websites and corporate governance information continue to be published in English only. Lack of updated Burmese language websites raises questions for communication with their main stakeholders, as well as employee awareness of and understanding of policies. As noted above, in 2016 a Burmese language requirement was added for six questions related to company policies. This year, the most transparent companies showed some improvement in providing Burmese-language policies.³⁹

³⁹ Thirteen companies now publish either an anti-corruption policy or employee code of conduct in Burmese, including FMI, SPA Group, Max Myanmar, KBZ, SMART, MPRL E&P, AYA Bank, City Mart, Shwe Taung Group, Dagon Group of Companies, Great Hor Kham, Asia World, Parami, Htoo Group, and United Paint Group.

PERFORMANCE BY SECTION

ANTI-CORRUPTION PROGRAMMING (ACP)



Only 18 of 66 companies reported on ACP, however this was nearly double the number of companies who did so in 2015. Among leading companies, ACP was the category with most significant improvement.

Improved ACP scores were due to more companies meeting both the lower and the higher benchmarks for anticorruption. More companies made an explicit commitment to comply with anticorruption laws in 2016.

Two areas of improvement were particularly noteworthy. First, more companies, such as AYA Bank and MPRL, extended their anticorruption policies to include not just employees but also directors, suppliers and other agents working on behalf of the company (Q4-6). Second, in 2016 several companies made a new commitment to protect whistle-blowers and ensure proper channels for confidential reporting of policy breaches (Q10). While not all companies demonstrated effective procedures to achieve this, nearly all of the Top 15 make a public commitment to achieving this goal. There were also a handful of companies that clarified their position on facilitation payments and accepting gifts (Q8 and Q9).

Principle 10 of the UN Global Compact, to which a number of the companies in the TIME Index have committed, says that 'Businesses should work against corruption in all its forms, including extortion and bribery'.

The UNGC suggests that this should be implemented both through organisational change at the company level⁴⁰ and through collective action

⁴⁰ Under the UNGC Guidance for the 10th principles, companies are asked to integrate anti-corruption and compliance measures into their business strategies and operations; develop their own code of conduct, including the implementation of a zero tolerance policy and a range of rules and regulations concerning gifts, political contributions, charities and travel; and apply these policies, by implementing a range of actions, including the establishment of anonymous hotlines, employee training, supply

at the country level such as multi-stakeholder dialogue, and integrity or compliance pacts with industry peers.

To date, there has been no such collective action in Myanmar. The companies listed in the above chart could initiate this as a way of reinforcing their commitment and leadership. Initially this might perhaps focus on specific areas such as advocating for improved transparency of government tender processes, tax collection or customs clearance.

**ORGANIZATIONAL
TRANSPARENCY**

Out of 66 company websites scored, 49 companies reported on Organizational Transparency and this is the section where Myanmar companies make most information available. The top performing companies are in the table below:



In 2016 the leading companies demonstrated modest improvements in Organizational Transparency. Part of the improvement was due to a new question about the composition of executive management (Q21), where companies more often than not provided at least partial information. Several companies provided additional information on financial reporting, tax payments and the status of subsidiaries. Nonetheless, overall improvements in organizational transparency were generally attributable to more companies achieving a modest score, rather than a high one. Scores in this category were not particularly affected by changes to the scoring rubric (this inter alia sought additional detail on employment by gender).

Judging whether companies are fully disclosing all their business units or subsidiaries is challenging in the absence of complete corroborating

chain management, risk assessment and disciplinary measures. See <https://www.unglobalcompact.org/take-action/action/anti-corruption-in-business> for more information

information from independent sources. MCRB suspects that certain multi-sector conglomerates have ‘cleaned up’ their websites and are not disclosing their continued involvement in controversial legacy sectors, particularly jade and other forms of mining, forestry and agribusiness such as palm oil.

According to published reports, some of these companies are believed to have legacy jade and palm oil concessions granted under the military regime, which may or may not still be active. Many companies involved in jade as traders or miners have no websites, including UMEHL; those conglomerates with websites who are reported to have activities in the jade sector such as Asia World, Htoo, Myanmar Economic Corporation publish no, or in the case of KBZ, minimal, information on their jade-related activities.⁴¹ Asia World claimed in January 2016 to have divested its jade interests in Yadana Taung Tan company⁴². However this company shares a number of directors in common with Asia World companies.

Companies who are in the jade business and have commitments to anti-corruption and HSE need to demonstrate how they intend to honor those commitments within the sector, given issues of conflict and poor governance.

One of the ways they can demonstrate their commitment to tackling corruption is by making early disclosure of data in line with the EITI standard, such as what mining licences they hold, what they are paying to the government in taxes and other fees, what their production levels are, what the terms of their contracts are and who their ultimate beneficial owners are. Those who claim to have left the sector should publish full details of their exit.

A Flora and Fauna International (FFI) report on oil palm quoting 2015 government sources lists several companies in the 2016 Pwint Thit Sa report as having oil palm concessions in Tanintharyi. Some of these do not disclose this on their company websites⁴³.

Specifically Asia World (which is listed in FFI’s report as having both an oil palm mill and plantation), Myanmar Economic Corporation and Htoo Group make no mention of oil palm plantations in their websites. Shwe Thanlwin or Yuzana, who do not have Group websites, are also listed by FFI as having concessions. Dagon Timber does disclose its palm oil concession on its website.

41 ‘Jade: Myanmar’s Big State Secret’, Global Witness October 2015. Max Myanmar claims to have exited the sector. See <http://www.maxmyanmargroup.com/index.php/news-room/news-release/189-max-myanmar-group-ceased-jade-mining-activities-since-2012>

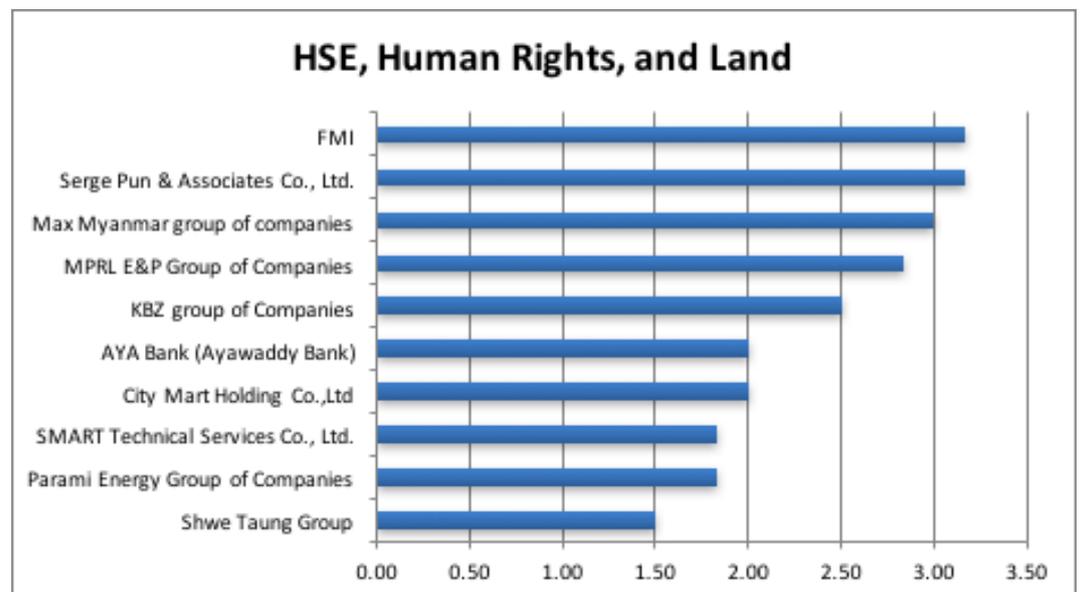
42 <http://www.asiaworldcompany.com/pdf/2016jan27-awc-press-release-restructuring.pdf>

43 [Myanmar Oil Palm Plantations: A Productivity and Sustainability Review](#), Flora and Fauna International, 2016

HEALTH, SAFETY & ENVIRONMENT (HSE), HUMAN RIGHTS AND LAND

This category - the area of most interest to the core mandate of MCRB - saw notable improvements, with 15 of 66 companies reporting on HSE and human rights. As with Anticorruption Programming, this was nearly double the proportion that did so in 2015.

This section also covers policies on land acquisition and resettlement (Qs 32 and 33), which have been the subject of much media and civil society attention and where the Myanmar legal framework remains weak, and companies are best advised to refer to international standards such as those of the IFC (particularly Performance Standard 5).



This year saw a marked improvement in the number of companies reporting some policies and procedures. In particular, more companies have put in place publicly available mechanisms for addressing grievances, although full details on implementation have not been made public.

MPRL's grievance mechanism and their reporting on progress remains a stand-out example of best practice⁴⁴. A few additional companies have also added land, human rights, and HSE policies. Again, however, information on the implementation of these policies is often lacking.

For example, several companies stated a commitment to conducting due diligence on human rights but provided little detail on this process, therefore failing to both 'know and show', as recommended by the UN Guiding Principles on Business and Human Rights. Good practice was observed Max Myanmar provided details on the implementation of its land acquisition policy with respect to compensation at Thilawa Port⁴⁵.

44 <http://www.mprlexp.com/index.php/csr-says-a-grievance-mechanism-is-important-to-build-a-partnership-between-stakeholders> and <http://www.myanmar-responsiblebusiness.org/news/workshop-developing-effective-grievance-mechanism.html>

45 <http://www.maxmyanmargroup.com/index.php/news-room/latest-news>

Although HSE and human rights reporting scores for the highest ranking companies are not significantly increased from 2015, the criteria for half the questions in this category were strengthened in 2016, setting a higher bar. More information was required about actual implementation to score a '1'.

Reporting implementation of HSE and human rights policies with real case studies and statistics is a challenge that even the best multinationals struggle with. It is therefore not surprising that this category had the fewest number of companies achieving high scores.

RECOMMENDATIONS

TO MYANMAR COMPANIES

- Establish websites with corporate information (ideally that contained in the 35 TIME questions) in both Myanmar and English languages, as a means to communicate with employees and stakeholders.
 - o Public reporting could also include the corporate mission and values, how these values are integrated into daily operations, and how the company is identifying and mitigating financial and non-financial risks.
- Adopt a recognised reporting framework such as the Global Reporting Initiative
- When compiling the annual Directors' Report (soon to be required by the Companies Law if adopted), undertake a 'materiality assessment' by engaging with internal and external stakeholders to identify the material risks to the company.
- Consider joining the UN Global Compact if not already a member. Make use of the associated reporting guidance to complete a high quality Communication on Progress (COP), and ensure that these reports are easily accessible from the company website.
- Establish and implement an anti-corruption programme, and demonstrate leadership from the highest level on business integrity. Publish annual information about the implementation of these programmes on the company website, including policy dissemination, staff and director training, and any major related incidents.
 - o Transparency International's ['Business Principles for Countering Bribery \(SMEs edition\)'](#) provides guidance for companies. A Burmese translation is available from MCRB's website.
- Pursue collective action with other businesses to combat corruption, for example concerning advocacy on public tender processes, or customs clearance.
- Publish complete details of subsidiaries, affiliates, joint ventures and other related entities, including data about numbers of employees.
- Publish the audited financial accounts submitted to the Myanmar government, and environmental and social impact assessments, where relevant. Undertake such EIAs using only qualified consultants and ensure that the contents of the assessment, and associated consultation and disclosure, meets the requirements of the EIA Procedure.
- Publish other implementation data such as health and safety statistics, details of human rights due diligence, and how complaints under the grievance mechanisms have been handled.
- Disclose where the company is involved in the jade sector, or other high-risk sectors such as mining, oil and gas, and hydropower.
- For jade or gems mining and trading companies, make early disclosure of data in line with the EITI standard, such as what mining

licences the company holds, what it pays to the government in taxes and other fees, what its production levels are, what the terms of their contracts are and who the ultimate beneficial owners are.

- Ensure relevant staff attend MCRB training courses and resources on these issues, and use the resources on www.mcrb.org.mm

TO THE MYANMAR GOVERNMENT

- Ensure that, when a new Myanmar Companies Act is implemented, ‘matters prescribed’ under Article 261(b) on the Directors Report explicitly include the most material non-financial risks, such as corruption, land use, HSE, labour and human rights⁴⁶. Encourage companies to undertake an assessment of material risks.

- Amend Notification 2/2015 to require similar disclosure requirements for companies listing on the Myanmar Stock Exchange.

- Expand DICA’s free online searchable registry of companies, to include directors and shareholdings, and submitted reports and accounts.

- Require all companies in receipt of a Myanmar Investment Commission (MIC) Permit to:

- o Publish, within six months of the end of the company’s financial year, an annual sustainability report in Myanmar language, (and other languages where appropriate). This report should address how the company has invested responsibly in Myanmar (see above for guidance). It should be published on the company website, and the web link for the report should be notified to DICA.

- o Establish, within six months of receipt of the MIC Permit, an effective grievance mechanism designed in collaboration with affected stakeholders. This should be notified to DICA, and any relevant line ministry, together with the name and contact details of the responsible officer. This mechanism should be publicised on the company’s website and made available to anyone affected by company operations. A short report on the implementation of the grievance mechanism should be included in the annual sustainability report.

- Include non-financial criteria relating to responsible business

⁴⁶ When designing such a requirement, the Myanmar government could look to the requirement for a Strategic Report in the UK Companies Act and specifically draw on key elements of Article 4141A of [The Companies Act 2006 \(Strategic Report and Directors’ Report\) Regulations 2013](#). Article 19A (Non-financial statement) of the [EU Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups](#) which applies to large undertakings with more than 500 employees is also relevant. This requires large companies to include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking’s development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.

conduct in public tendering and procurement processes, and ensure these processes are conducted transparently.

- In addition to meeting requirement 3.12b of the EITI Standard (which requires that the EITI Report document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals) take steps to disclose contracts and agreements that establish the terms for the exploitation of oil, gas and minerals (as encouraged under 3.12a).

TO PARLIAMENT

—

- Take the above recommendations concerning the draft Myanmar Companies Act and draft Myanmar Investment Law into account when making amendments
- Continue to press for transparent public tendering and procurement processes and publicly highlight questionable decisions.

TO THE INVESTOR COMMUNITY

—

- Engage with Myanmar companies to ensure that they meet or exceed international standards on responsible business conduct and report robustly on how they manage risks and impacts associated with operations, including with respect to contractors and supply chains.
- Press for companies to supply reliable data, audited by a third party.

TO MYANMAR CIVIL SOCIETY ORGANISATIONS, INCLUDING THE MEDIA

—

- Use the data published by companies to hold them accountable and monitor their public commitments to respecting human rights, HSE and labour rights. Any instances of companies failing to live up to those commitments should be raised with the company.
- Participate in consultations on environmental impact assessments, and other forms of stakeholder engagement by companies.

ANNEX 1: 35 QUESTIONS USED TO SCORE WEBSITES

REPORTING ON ANTI-CORRUPTION PROGRAMMES

1. Does the company have a publicity stated commitment to anti-corruption?

1 There is an explicit statement of “zero tolerance to corruption” or equivalent (e.g. a commitment to combat any corrupt activity).

0.5 There is no general anti-corruption statement, but only reference to public sector/government corruption; or if there is a weaker, less direct statement; or a company is a signatory of the UNGC and it explicitly underscores its commitment to the 10th principle.

0 There is no explicit statement/commitment, even if relevant policies are there; or if a company is a signatory of the UNGC, but there is no explicit reference to commitment to the 10th principle.

2. Does the company publicity commit to be in compliance with all the relevant laws including anti-corruption laws?

1 There is an explicit statement of such as commitment to all jurisdictions in which a company operates. A reference to all laws shall be deemed to include anti-corruption laws, even if they are not specifically mentioned.

0 There is no explicit reference to compliance with laws or the reference to compliance with laws excludes or omits anti-corruption laws.

3. Does the company leadership (senior member of management or board) demonstrate support for anti-corruption?

1 Company leadership (senior management or board) issues a personal statement that specifically highlights the company’s commitment to anti-corruption; or if the company leadership (senior member of management or board) issues a personal letter of support for company’s code of conduct or equivalent and the code of conduct includes anti-corruption policies.

0 The statement fails to specifically refer to corruption or is not inserted into a code of conduct; or the statement is not issued by the appropriate individual; or if there is no such statement.

4. Does the company’s code of conduct/anti-corruption policy explicitly apply to all employees and directors? (Directors = Board of Directors = Supervisory Board)

1 The policy explicitly mentions that it applies to all employees and directors, regardless of their position in the corporate hierarchy. There can be no exception for any country of operation. The policy is also published in Burmese.

0.5 The policy applies to all employees, but does not explicitly mention directors.

0 There is not an explicit statement that the code of conduct applies to all employees or directors.

5. Does the company's anti-corruption policy explicitly apply to persons who are not employees but are authorised to act on behalf of the company or represent it (for example: agents, advisors, representatives or intermediaries)?

1 If such persons must comply with the policy.

0 If such persons are only encouraged to comply with the policy or if such persons are not covered by anti-corruption policy or they are specifically excluded from the policy.

6. Does the company's anti-corruption programme apply to non-controlled persons or entities that provide goods or services under contract (for example: contractors, subcontractors, suppliers)?

1 If all of the following three elements are fulfilled:

- Such persons/entities are required to comply with the company's anti-corruption programme, its equivalent or with a supplier code issued by the company; and
- The company performs anti-corruption due to diligence on such persons/entities; and
- The company monitors such persons/entities.

0.5 If such persons/entities are only "encouraged" to comply with the policy or if only one or two of the three elements above are present.

0 If there is no reference to such persons/entities; or they are not specifically required to comply with the company's policy or equivalent.

7. Does the company have in place an anti-corruption training programme for its employees and directors? (Directors = Board of Directors = Supervisory Board)

1 The company states in public documents that such a programme is in place for employees and directors, and the company provides data on proportion of employees and directors trained.

0.5 The company states in public documents that such a programme is in place for employees and directors, (the reference to the training programme may focus explicitly on training on the anti-corruption policies, but it can also refer to training on the code of conduct, if it includes anti-corruption provisions).

0 There is no public reference to such a training programme.

8. Does the company have a policy on gifts, hospitality and expenses?

1 Company has a policy regulating offering, giving and receiving gifts, hospitality or expenses, and it is published in Burmese. The policy must cover the following elements:

- Offering or giving of such items
- Receipt of such items
- A definition of thresholds (descriptive or quoted as amounts) for acceptable gifts hospitality or expenses, as well as procedures and reporting requirements.

0.5 If some but not all of the elements enumerated above are present.

0 Company does not disclose that it has such policy.

Note : The exact guidance for employees does not have to be publicly available. There must be publicly available information that such guidance exists and that it includes all required elements.

9. Is there a policy that explicitly prohibits facilitation payments?

‘Facilitation payments’ are payments made to expedite or secure the performance of a routine governmental action, by any of official, political party, or party of official. Facilitation payments are illegal in most countries but they are not prohibited under the foreign bribery laws of some countries, such as the U.S Foreign Corrupt Practices Act. Nevertheless, we expect them to be prohibited in all countries in which a company operates.

1 There is an explicit prohibition and not only simple discouragement of such payments (recognising that exceptions may be made for life or health threatening situations). It is published in Burmese.

0 If such payments are discouraged or regulated internally (i.e allowed after being approved by the manager), or if such payments are “allowed if permitted by local law”, or if there is no reference to facilitation payments or they are specifically permitted.

10. Does the programme enable employees and others to raise concerns and report violations of the programme without risk of reprisal?

1 The publicly available policy specifies that no employees will suffer demotion, penalty or other reprisals for raising concerns or reporting violations (whistle-blowing).

0 There is no explicit policy prohibiting such retaliation

11. Does the company provided a channel through which employees can report suspected breaches of anti-corruption policies, and does the channel allow for confidential and/or anonymous reporting (whistle-blowing)?

1 There is public provision of such a channel in a form that assures full confidentiality and/or anonymity, and two-way communication with the whistle-blower for any needed follow-up on the disclosure. The company also reports regularly on the number, type, and status of complaints.

0.5 There is public provision of such a channel in a form that assures full confidentiality and/or anonymity, and two-way communication with the whistle-blower for any needed follow-up on the disclosure.

0 There is no such channel or the channel allows for neither confidential, nor anonymous reporting.

12. Does the company carry out regular monitoring of its anti-corruption programme to review the programme's sustainability, adequacy and effectiveness, and implant improvements as appropriate?

"The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the Programme. Senior management of the enterprise should monitor the Programme and periodically review the Programme's suitability, adequacy and effectiveness, and implement improvements as appropriate" (from TI's Business Principles for Countering Bribery).

1 There is public information on regular or continuous monitoring of all the anti- corruption programme including details on the review process, evaluation criteria, and key findings.

0.5 There is information on regular or continuous monitoring including outcomes of the monitoring.

0 There is information on some monitoring, but it is not a regular or continuous process; or if there is only compliance-related monitoring in place without specific reference to the review of programme's suitability, adequacy and effectiveness, or if there is only oversight or audit of the report (which mentions the programme), or if no monitoring is publicly mentioned.

13. Does the company have policy on political contributions that either prohibits such contributions or if it does not, requires such contributions to be publicity disclosed?

"Political contributions" refers to contributions of cash or in-kind support for a political party, cause or candidacy. Both direct and indirect contributions, i.e.,

through associations to which a company is a member will be considered. It is not required that companies prohibit political contributions, but it requires transparency in this area. Such transparency can be achieved by either publicly disclosing all contributions or by prohibiting them.

1 Company either publicly discloses or prohibits its political contributions (in all its countries of operations) and the policy is published in Burmese.

0 Political contributions are regulated but not disclosed or prohibited (e.g. there is a special internal approval procedure and internal reporting system for such contributions, but the actual payments are not made public), or if political contributions are disclosed only for certain countries, e.g. for company's home country, or if a company's policy refers only to contributions by employees but not to contributions by a company: or if political contributions are not regulated and/or disclosed

REPORTING ON ORGANIZATIONAL TRANSPARENCY

14. Does the company disclose all of its fully consolidated subsidiaries?

1 There is a full list of such subsidiaries.

0.5 There is a list of material/ main subsidiaries.

0 There is an incomplete list of such subsidiaries, or if there is no list of subsidiaries.

15. Does the company disclose percentages owned in each of its fully consolidated subsidiaries?

Scoring - See guidance for question 14

16. Does the company disclose countries of incorporation for each of its fully consolidated subsidiaries?

Scoring - See guidance for question 14

17. Does the company disclose countries of operations for each of its fully consolidated subsidiaries?

Scoring - See guidance for question 14

18. Does the company disclose all of its non-fully consolidated holdings?

For question 18-20: "non-fully consolidated holdings" include all non-fully consolidated entities, such as associated companies, joint ventures, entities consolidated by equity method.

- 1 There is a full list of such companies
- 0.5 There is a list of material/ principal/ significant/ main companies
- 0 There is no list of such companies, or if there is only a list of domestic entities or other incomplete information.
- N/A If a company does not have any non-fully consolidated entities, the question will not be used to calculate the score.

19. Does the company disclose percentages owned in each of its non-fully consolidated holdings?

Scoring - See guidance for question 18

N/A – If a company does not have any non-fully consolidated entities the question will not be used to calculate the scores.

20. Does the company disclose countries of incorporation and operation for each of its non-fully consolidated holdings?

- 1 There is a full list of such companies.
- 0.5 There is a list of material/ principal/ significant/ main companies.
- 0 There is no list of such companies, or if there is only a list of domestic entities or other incomplete information.
- N/A If a company does not have any fully-consolidated entities the question will not be used to calculate scores.

21. Does the company disclose the names of each of its directors and membership of its executive management committee?

- 1 Company reports some or all directors and members of executive management committee as well as those individuals' directorships in other companies.
- 0.5 Company reports some or all directors and members of executive management committee.
- 0 There is no report on the names of the directors or executive committee members.

22. Does the company disclose the names of each of its beneficial owner i.e the natural person (s) who directly or indirectly ultimately owns or controls the corporate entity?

- 1 Company reports all of their beneficial owners, including the percentage ownership of the largest shareholders.
- 0.5 Company reports some of their beneficial owners

0 There is no report on the names of the beneficial owners

23. Does the company disclose information about its size such as the number of employees?

1 Company reports total number of employees at the Group Level, including by gender.

0.5 Company reports the number of employees for some subsidiaries.

0 Company does not report number of employees.

24. Does the company publish audited financial reports?

1 Company publishes audited financial reports

0 No publication of audited financial reports

25. Does the company disclose what taxes and other payments it makes to the government?

1 Company provides a complete picture of all the tax and other payments.

0.5 Company reports some tax or payment it makes to the government.

0 There is no report of anything regarding tax or payments it makes to the government.

**REPORTING ON
HUMAN RIGHTS,
INCLUDING LAND,
AND HEALTH,
SAFETY AND
ENVIRONMENT**

26. Does the company explain how it identifies and engages with its stakeholders and provide a contact point for enquiries from stakeholders?

1 Company identifies key internal/external stakeholders and/or explains its approach to proactively engaging with stakeholders and how it implements this engagement, and provides a named and functioning contact point for inquiries from stakeholders. The company also explains how it engages stakeholders to determine materiality.

0.5 If company identifies key internal/external stakeholders, and/or explains its approach to engaging with stakeholders and provides a named and functioning contact point for inquiries from stakeholders.

0 There is no functioning contact point.

27. Does the company have a public human rights policy commitment, consistent with international standards, which includes a commitment to recognising and respecting the rights of those who may be affected by the company's operations and identifies the main human rights risks its operations may create?

1 If the company has a published policy commitment (a standalone policy or human rights commitment as part of a broader policy or code of conduct) that extends to suppliers and contractors and refers to specific human rights and international standards such as the International Bill of Human Rights, the UN Guiding Principles on Business and Human Rights, ILO Core Conventions and IFC Standards

0.5 If the company has a published human rights policy or has made statements on respecting human rights, but has not been specific about its risks.

0 If there is no public human rights policy or any related commitments.

28. Is the company publicly committed to carrying out human rights due diligence and does it report on the implementation of this commitment?

1 If there is a public commitment to carrying out human rights due diligence, including for suppliers and contractors and reporting on how this commitment has been implemented.

0.5 If there is a commitment, but no reporting on implementation, or vice versa

0 If there is no evidence of such a commitment.

29. Does the company have an employment policy covering:

- just and favourable remuneration
- freedom of association and collective bargaining
- non-discrimination including recruitment promotion and daily activities at the workplace
- forced labour
- child labour

1 Company has a published employment policy in Burmese that covers 4 or 5 of these aspects.

0.5 Company has a published employment policy that covers 2 or 3 of these aspects

0 No evidence of such an employment policy on the website.

30. Does the company have health, safety and environment (HSE) policies and procedures and report on their implementation?

1 The company has public HSE policies certified by an international organisation for standardisation or an equivalent body and reports on their implementation

0.5 If the company has public HSE policies and/or claims third-party certification but there is no reporting on implementation beyond health and safety incidents (Q31).

0 If there is no evidence of an HSE policy or reporting on implementation.

31. Does the company publish statistics on health and safety incidents in its operations?

1 Full statistics on health and safety incidents in its operations (including among any contractors) are reported on the website

0.5 Some information about health and safety incidents is provided

0 If there is no reporting on health and safety statistics

32. Does the company have a policy or procedures on how it acquires, uses and manages land, and report on its implementation including identifying the specific land holdings which form part of its operations?

1 If there is such a policy/procedure which is consistent with international standards and the company reports on its implementation, and lists land holdings

0.5 If there is no such policy/procedure, but the company provides some explanation of how land has been acquired, used and managed (or vice versa)

0 If there is no information about on land acquisition, use or management

33. Does the company have a policy which deals with the displacement or resettlement of people caused by its operations and report on its implementation?

1 If the company has a policy on dislocation and resettlement that meets international standards (eg IFC Performance Standard 5), including a commitment to restoration of livelihoods, and provides information on how this has been implemented

0.5 If there is no such policy but there is information on resettlement is implemented, or vice versa.

0 No evidence of a policy or information about resettlement.

34. Does the company conduct and publish any environmental and social impact assessments and management plans which it is required to undertake, or chooses to do, and do these take human rights impacts into account?

- 1 The company publishes all impact assessments and management plans and these take human rights impacts into account
- 0.5 Some publication of impact assessments and management plans.
- 0 No published impact assessments and management plans.

35. Does the company have publicly available mechanisms to address complaints/ grievances from its workforce and local communities?

- 1 There are mechanisms to address complaints/grievances from both the workforce and local communities and these mechanisms are made public in Burmese, including information on their implementation and a summary of complaints by type and status (resolved or unresolved).
- 0.5 There are mechanisms and processes to address complaints and grievances for both workforce and local communities but the process and its implementation is not made public.
- 0 There is no evidence of public complaint/grievance mechanisms.

ANNEX 2: SUMMARY OF MEDIA REPORTS AND CIVIL SOCIETY FEEDBACK

METHODOLOGY

MCRB reviewed reports in the media between July 2015 and July 2016 for criticism of the 100 companies being surveyed relating to HSE, human rights and stakeholder engagement, using predominantly online sources, in Burmese and English.

Those reports listed below are not a comprehensive list of media, civil society and public criticism of the companies concerned. They are those which were easy to find by internet search and which are linked to issues covered in the TiME report.

There are likely to be other reports, including those not online, those where the company's name has not been mentioned, or those where complaints are ongoing but have not been reported during the past year. It is only in recent months that Myanmar's domestic media has felt more able to publish critical reports of large companies' business practices.

As with claims to adoption and implementation of policies on company websites, MCRB has not been able to verify whether the allegations contained in these reports are correct. In most cases MCRB has not been able to find any media reporting of whether they have been responded to by the company, or resolved. The company's website - where present - was examined for any comment or response. Where possible, a summary was also sent to the company for comment.

Companies were encouraged to provide information about the issues via their website, including corrections to any misreporting. Max Myanmar is the only company to have done so.

MCRB has also issued a standing invitation to civil society groups and others to provide feedback on specific company practices related to the topics in this report.

Union of Myanmar Economic Holdings Ltd (UMEHL)

In Mingaladon Township in January, families were evicted from 478 homes and houses were destroyed on land owned by the Ministry of Livestock and Fisheries and leased to MEHL. According to the media report, at least one resident reported having purchased the land in 2014.⁴⁷

Protests continue against the Letpadaung copper mining project in Sagaing Division's Salingyi Township as operations resumed in 2016, in which UMEHL has a significant shareholding. Local residents have protested about pollution and land seizures related to the project, leading to a number of arrests.⁴⁸

Myanmar Economic Corporation (MEC)

Local villagers continue to seek compensation from Myanmar Economic

47 [Hundreds of families evicted from Mingaladon](#), Myanmar Times, 27 January 2016

48 [Farmers protest resumption of letpadaung coppermine](#), Irrawaddy, 5 May 2016

Cooperation amid allegations that over 400 acres of land was seized in 1997 for the construction of a steel factory near Kyauk-Swel-Yoe Village, Aung Lan Township, Ma-gwe Region.⁴⁹

Three staff were injured by an explosion at an MEC gas factory in Lin-Sa-Daung, Botahtaung Township of Yangon. The factory is located in a residential area and neighbors have expressed concerns about the safety of the facility⁵⁰.

International Group of Entrepreneurs (IGE)

The Mongton hydropower project implemented jointly by IGE and Chinese has been opposed by ethnic groups in the area who have also protested its EIA⁵¹.

Max Myanmar

Twenty farmers in Mon state alleged that they were pressured by Max Myanmar to part with land now part of Shwe Yaung Pya Agro rubber plantation in Bilin Township. Max Myanmar has responded that the farmers were fairly compensated for the land.⁵²

Eden

In multistakeholder workshops on tourism and human rights organised by MCRB, concerns were raised by local stakeholders about Eden's Ngapali hotel having been built on land acquired from local inhabitants by the military, and in the case of Bagan, within the Archaeological Zone.

Zaykabar

Zaykabar is alleged to have destroyed part of a monastery in Mingaladon Township in April in connection with a land dispute dating to 2010. The conflict between Zaykabar and local residents is tied to disagreements stemming from Zaykabar's acquisition of land for construction of a new industrial zone⁵³.

49 [Compensation claimed for MEC Steel Mill Land grab](#), Irrawaddy (in Burmese), 20 May 2016

50 [Police charge junior engineer over fire at MEC Gas Factory](#), Myanmar Times, 24 August 2015

51 [Thanlwin dam projects unjust: civil society](#), Myanmar Times, 9 July 2015

52 [At a southern plantation, laments for lost land](#), Irrawaddy, 24 May 2016.

Max Myanmar's response can be found in their [Newsroom](#) as well as details on [implementation](#) of their land acquisition policy and [future strategy for the rubber plantation at Shwe Yaung Pya](#).

53 [Zaykabar company accused of destroying monastery](#), Myanmar Times (Burmese), 27 April 2016

Yuzana

An open letter to President Htin Kyaw from 8000 villagers in Kachin state requested that the Myanmar government intervene to resettle farmers in Hpakant Township whose land was taken by Yuzana Company Limited in 2007⁵⁴. The letter asserts that nine villages were relocated and four villages destroyed in order to expand agricultural production in the area.

KMA

Twelve farmers from Toungoo in Bago Region renewed claims that Kaung Myanmar Aung (KMA) group of companies seized thousands of acres of land prior to 2009 for a teak plantation. Some of the farmers, who have filed suit and continue to protest company use of the land, have been charged with trespassing and defamation⁵⁵.

Capital Diamond Star

Premier Coffee, which is owned by Capital Diamond Star, has been sued by the Ministry of Labor, Immigration and Population for breaking labor laws. The ministry verified complaints from roughly 300 workers concerning the receipt of overtime pay and days off. After the company paid back unpaid overtime, the case was dismissed.⁵⁶

54 [Kachin Farmers urge government to address Yuzana land confiscation](#), Irrawaddy 11 May 2016

55 [Toungoo farmers restate claims of landgrabbing against well-known businessman](#), Irrawaddy, 12 February 2016

56 [Premier Coffee pays back overtime, lawsuit dismissed](#), Myanmar Times, 26 July 2016



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