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Conflict, graft and corporate complicity in human rights abuses can contribute to significant business-related harm

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AT first blush, Myanmar appears to be on a path towards democratisation. President Thein Sein's administration has instituted a series of political reforms after decades of military rule. It has released hundreds of political prisoners, including opposition leader Aung San Suu Kyi who is now an elected parliamentarian along with 42 colleagues from the National League for Democracy (NLD).

On a historic tour of the United States this month, she was awarded the Congressional Gold Medal, America's highest civilian honour.

The European Union, the United States and other Western governments have responded to these efforts by agreeing to ease certain financial and investment sanctions on the South-east Asian nation. This has spurred a gold rush among many transnational corporations which are attracted to Myanmar's vast, and largely untapped, natural resources and immense economic potential.

Risks forgotten in the "gold rush"

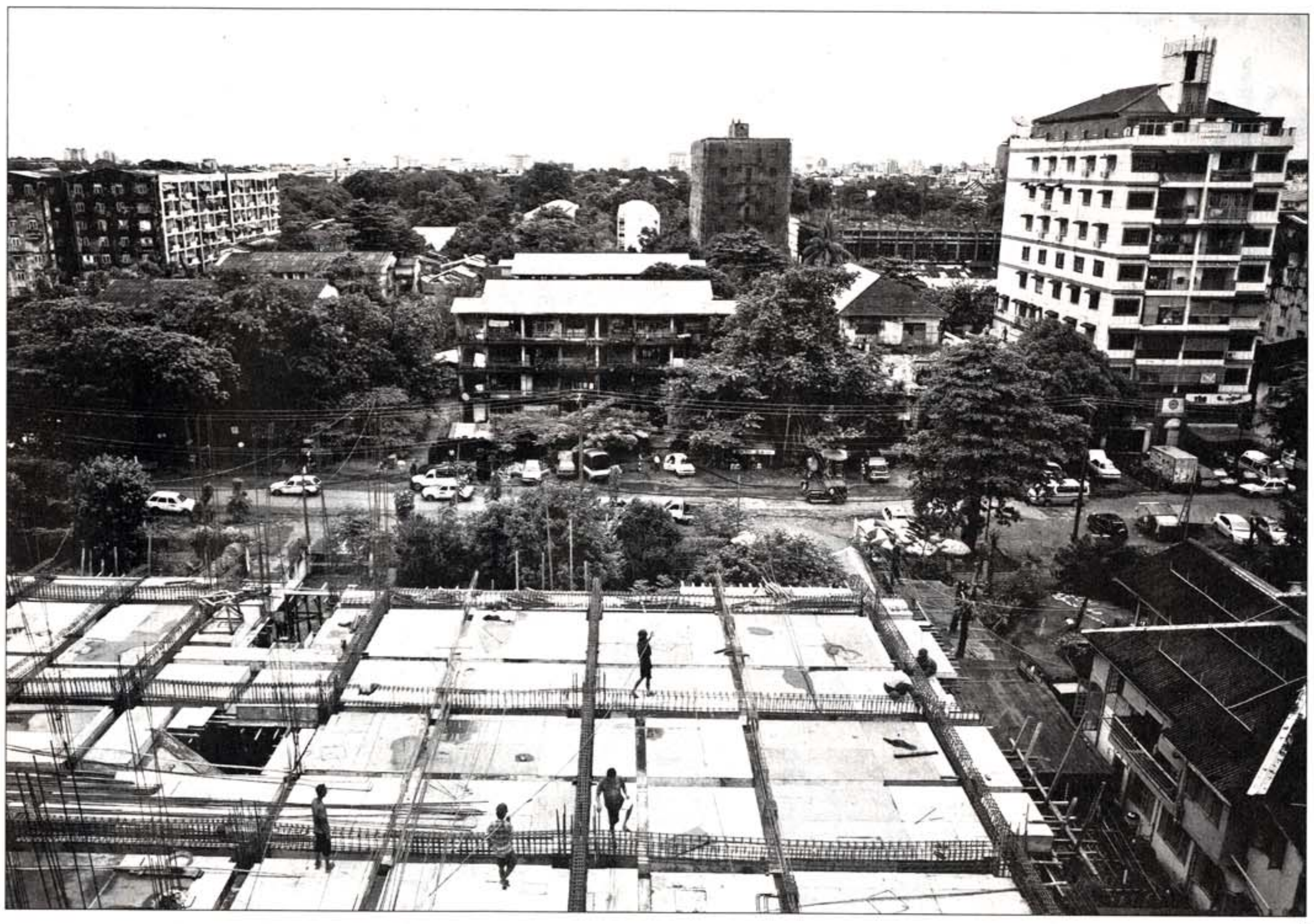
It is important for the international community to support Myanmar's journey. But investors should also understand their investment risks and live up to their responsibility to protect and respect human rights.

In several countries in the past, large infrastructure and extractive sector projects have led to significant human rights abuses, including, in some cases, forced labour, displacement and land grabbing. These abuses intensify conflict, and invariably affect the most marginalised and vulnerable sectors of society, especially women, children, ethnic minorities and indigenous peoples.

The Centre for Corporate & Investor Responsibility at the Sim Kee Boon Institute for Financial Economics in the Singapore Management University (SMU) is studying how the extractive industries sector in Cambodia, Laos, Myanmar and Vietnam should address human rights risks of their operations and relationships.

Prudent use of resources can help a developing nation such as Myanmar to overcome poverty, but the SMU study's findings indicate that the combination of conflict, corruption and corporate complicity in human rights abuses can contribute to significant business-related harm in that country.

As a conflict-affected state, Myanmar is prone to sectarian violence and recurrent human rights violations. The ongoing conflict in Myanmar's northern Rakhine state between ethnic Buddhists and Rohingya Muslims has become a humanitarian crisis. Conflict between the Myanmar army and ethnic Kachin in resource-rich Kachin state too has claimed hundreds of lives and shows no signs of abating.



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Giving a helping hand: *If the plight of vulnerable groups continues to get ignored, and if businesses fail to institute risk and impact assessments of their operations in such areas, the stability which currently supports investor confidence and economic progress in Myanmar may be short-lived*

Despite Myanmar's reforms, if the plight of vulnerable groups continues to get ignored, and if businesses fail to institute risk and impact assessments of their operations in such areas, the stability which currently supports investor confidence and economic progress in Myanmar may be short-lived.

Moving beyond 'CSR'

An official delegation of Myanmar's parliamentarians and business leaders is now in Singapore, Mynamar's fourth-largest trading partner, to affirm ties and discuss governance reforms. This marks a good opportunity for sovereign and business investors in both countries to move beyond considering their usual regulatory, taxation and fiscal concerns alone and confront the human rights impact of their ongoing or future activities in Myanmar.

Many Singapore corporations address the social impact of their foreign investment through corporate social responsibility (CSR) programmes. But the responsibilities of businesses with regard to human rights are not limited to the realm of CSR. The United Nations Guiding Principles on Business and Human Rights, unanimously adopted by the UN Human Rights Council in 2011, affirm the duty of states to protect human rights, the responsibility of corporations to respect human rights and the need to ensure access to remedies where business-related human rights abuses do occur.

Significantly, the UN Guiding Principles require companies to respect human rights law; they do not permit companies to confine themselves to only those issues with which they feel comfortable. Sundaresh Menon – who will be Singapore's new Chief Justice as at November – has rightly noted that knowledge of corporate legal accountability for human rights violations is vital to commercial lawyers "to protect your clients from expensive and protracted lawsuits in the court of law, but perhaps more importantly from reputational damage in the court of public opinion".

Reputation matters. Those advising businesses looking to invest in Myanmar should pay close attention to Mr Menon's words.

An early high-profile lawsuit under the US Alien Tort Claims Act, which gives US federal courts jurisdiction to hear foreign claims for human rights violations, was filed against energy giant Unocal. Unocal, the suit alleged, knowingly subjected villagers to forced labour, murder, rape and torture at the hands of the Myanmar military when constructing the Yadana natural gas pipeline together with the state-owned Myanma Oil and Gas Enterprise (MOGE). Unocal denied those charges.

Responsible investment is a priority

That case has since been settled out of court without the company admitting any wrongdoing, but similar concerns persist in Myanmar today, especially with regard to MOGE, widely perceived as a cash cow of the military. There are concerns that exploration contracts MOGE has entered into with Malaysian and Thai state oil companies, or concessions it has granted to Chinese ones to construct oil and gas pipelines, may not be consistent with the UN Guiding Principles and international standards.

Given the close ties between the government and business community in Myanmar, investors should vigilantly guard against corruption.

Both Ms Suu Kyi and Mr Thein Sein have called for ethical and responsible investment. To give effect to these calls, investors seeking entry into Myanmar will have to carefully select who they partner with. Like other companies that have done business in Myanmar, they run the risk of allegations of complicity if they associate with businesses with close relationships to members of the former military government – or others whose names appear on sanctions lists – who face credible allegations of human rights abuses.

Businesses acquiring land in Myanmar should also ensure that people are not forcibly evicted from their land; and obtain free, prior and informed consent of affected communities before any proposed relocation. A resettlement plan providing sufficient compensation, the guarantee of basic standard of living and access to livelihoods should be implemented when relocation becomes unavoidable.

Further, given the close ties between the government and the business community in Myanmar, investors should vigilantly guard against corruption. After all, in addition to their liability for gross human rights abuses and international crimes, investors could also be held liable for contravening domestic anti-bribery laws which have extra-territorial effect, such as the US Foreign Corrupt Practices Act, the UK Bribery Act and Singapore's Prevention of Corruption Act.

Legislative reforms

The road ahead for Myanmar is difficult, given its weak infrastructure, institutions and governance. Transparency International still ranks it as one of the world's most corrupt countries. However, these weaknesses should not be used as an excuse to detract from proposed legislative reforms or dilute investors' commitment to uphold human rights and responsible investment.

Myanmar should comply with the Extractive Industries Transparency Initiative, a mechanism for improving transparency and accountability by requiring companies in the extractive sector to publish what they pay, and governments to disclose what they receive, when they strike deals with each other.

Last week, the London-based Institute for Human Rights and Business (IHRB) published *Responsible Investment in Myanmar: The Human Rights Dimension*, which outlines the human rights challenges businesses face in Myanmar. Its earlier report, *Red to Green Flags*, recommends how companies can fulfil their enhanced due-diligence obligations when they operate in weak governance zones. Soon the IHRB will establish a "responsible investment resource centre" in Yangon to foster trade and investment. Corporations should draw on the IHRB's expertise.

As chair of Asean in 2014, Myanmar will be at the helm of the regional body as it ushers in an Asean Economic Community by 2015. In the interests of this integrated community, Asean, the Myanmar government, the NLD and other stakeholders must ensure that "the protection of human rights" enshrined in the Asean Charter is not sacrificed on the altar of economic development.

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