

Critical Reflection

following KOFF Myanmar Roundtable of February 28, 2013 on

Doing Business in Myanmar: Potential Challenges and Ways Forward

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INTRODUCTION

Since the establishment of President Thein Sein's elected government in 2010, significant political and economic reforms in Myanmar have placed it in the spotlight. After many years of isolation, an influx of both regional and international actors eager to engage in international development cooperation, peacebuilding and economic development has increased. Companies are looking towards the 'last frontier of Asia' as a potential location for future investments. While domestic, regional and international actors have the potential to shape the political and economic landscape, reflections on how to not fall party to the 'gold rush' remains.

This roundtable sought to bring together Swiss-based governmental organizations, civil society actors and the private sector. The aim of the roundtable was to discuss and deliberate on the economic transition in Myanmar and to analyze some of the opportunities and challenges for doing business in the country. The event featured two presentations which outlined opportunities, challenges and ways forward, while reflecting on the specific lessons learned from the French oil and gas company, Total, in Myanmar. Representatives from the State Secretariat of Economic Affairs (SECO) and the Swiss Development Cooperation (SDC) provided an overview of current priorities and activities.

This report highlights some of the key points of the discussion during the roundtable and provides some critical reflection on potential ways forward. The first section highlights the potentials and challenges of

doing business in Myanmar as well as some recommendations of how to do it better. The second section discusses the experiences of the French oil and gas company, Total. The third section offers concluding remarks.

DOING BUSINESS IN MYANMAR

Potentials

The Myanmar economy is undergoing a transformation that is being led by domestic government actors on the one hand and international donors and companies on the other hand. The GDP growth rate of 2012 was 5.5% with an expected rate of 6.3% in 2013 (Integrity Research & Consulting 2012: 18-19; ADB 2012: 2). With a labor force of 32.53 million and an adult literacy rate of 92%, the population has the potential to support the development of key sectors (Ibid). Currently, the economy is based on a few major sectors that are predominantly linked to the country's abundance of land and natural resources. For example, sectors such as agriculture, mining, petroleum, gas, forestry, hydro-electric power, pharmaceuticals, textiles and tourism and services are playing a large role in the economy.

Geographically, the country is strategically located. On one side between the two big powers of India and China (which could be both a blessing and a curse), and on the other side possessing important regional access to ports and trade routes. The country's enthusiasm to play a larger role in ASEAN

is also demonstrative of this reality. Currently, the top foreign direct investment is coming from China, Thailand and South Korea; highlighting how 'new global players' will also need to take these regional actors into account when engaging in the country.

Economic reforms

The Myanmar government has been commended by international actors for their economic reform efforts. For example, legal apparatus' have been established on foreign direct investment, tax breaks for foreign companies and special economic zones (SEZs). There has been progress on developing a land rights law, access to micro-finance for farmers and a loosening of media censorship. The government has been particularly commended for releasing political prisoners; many of whom were imprisoned in 1988. Specific reforms have been aimed at stabilizing the kyat currency, unifying multiple exchange rates and addressing the fiscal deficit.

Political will

Efforts by the Myanmar government to engage in reforms that aim to support processes such as democratization, economic liberalization, and social development have gone a long way to earning the trust of international donors and companies. For example, the 2012 launch of the UN Global Compact and efforts to join the Extractives Industry Transparency Initiative (EITI) have demonstrated an interest to develop processes and institutions that help ensure that both state and private-owned companies are being held accountable for their actions.

The government has made strides towards establishing peace in remote and conflict-ridden areas. There are currently 13 ceasefire agreements that have been signed between ethnic armed groups and the government which are being simultaneously negotiated (Burma News International 2013: 43).

There has also been significant efforts made by the government to engage with its long term adversary, Daw Aung San Suu Kyi and her political party, the National League for Democracy (NLD); winning 43 out of the 44 seats they had contested in by-elections in 2011 (out of 664 Parliamentary seats) (Integrity Research and Consultancy 2012: 17).

Local NGOs

Since the aftermath of cyclone Nargis, civil society in Myanmar has seen a considerable re-birth. The number of local non-governmental organizations (NGOs) and associations has increased drastically. Many focus on the delivery of services in social assistance, education, health, development etc. Women and youth organizations are also present and active. A few organizations have had long term involvement in peacebuilding activities. Others are involved in advocacy on environmental issues and the practices of (mainly) foreign companies. For example, protests at the Chinese-run Myitsone dam in 2012 led President Thein Sein to suspend its operations. However, there are six other dams that are planned for Kachin state. There is an awareness among civil society actors that constructive engagement with companies would be useful for consensus building in Myanmar. This would contribute to trust building with the government and companies, while seeking to prevent pitfalls that civil society in other South East Asian countries have encountered.

Challenges

Ongoing economic reforms

The reform process is challenging. While there appears to be domestic political will to put forth reforms, there remain significant obstacles such as weak capacity, institutional support and human resources. Further, one cannot assume that the government is a monolithic block. There are some within the government who are skeptical about reforms, particularly those that are likely to change the power balance. A major impeding factor to implementation is cleavages within the government itself.

A long wish list of economic reforms remains. The economic climate continues to be extremely vulnerable; begging for additional reforms that will help maintain macro-economic stability. A low and stable inflation rate and government efforts to put forth sustainable budgets are crucial. Domestic savings need to be further encouraged in order to help promote investment. Lack of infrastructure (i.e. roads, buildings and electricity) remains an impediment for industry. Efforts to restructure the financial and banking sector are time consuming and complex. The implementation of transparency measures to combat corruption also continues to be a challenge.

Thus, although international companies appear eager to invest in Myanmar, they remain wary to do so until certain safeguards are put into place.

Reforms need to take a rights-based approach into consideration. Labor rights have come a long way in the past two years, with the introduction of the right to form unions as well as the right to protest. However, the enforcement of this 'right' is not always being met with open arms by the government.

Debt

The country is in a debt crisis. Although the political will of the Thein Sein government is being generously rewarded by international financial institutions, one must wonder about future repercussions. Debts of up to USD 400 million have been forgiven by both the World Bank and the Asian Development Bank, with new loans of similar value being approved. The 'Paris Club' group has also forgiven a debt of USD 6 billion and the International Finance Cooperation has granted a new loan. While the forgiveness of such debts are crucial for moving economic development forward, one must also reflect on how this removes reform incentives. The approval of new loans also risks to foreshadow a future where the country will remain extremely dependent on international donor handouts.

The military in economic and political processes

One of the key hindrances to combating corruption is the role of the military in economic and political processes. The Myanmar armed forces, also known as the *Tatmadaw*, are continuously seen as a violent threat, particularly by ethnic minorities who have felt their wrath. The *Tatmadaw* have historically been strongly embedded in security, economic and political issues. This places them in both a powerful as well as vulnerable position, particularly in the face of current reforms which may challenge their opportunities to gain access to political office, economic ventures and security responsibilities.

Several factors have contributed to greater involvement of military in economic activities. The gradual direct and indirect expansion of the military to the institutional, administrative and economic systems of the country has contributed to their position and leverage. Moreover, the 1997 order which required the military to be responsible of sourcing its own food and being economically self sufficient has

meant that many soldiers engage in economic activities for survival (Campbell 2012). A lack of monitoring of borderland areas and access to natural resources have also been instrumental in creating an environment where the military is integrated into local economies. Efforts will need to be made in order to support more transparency and regulation in such activities. This is strongly linked to broader efforts to develop strategies for wealth sharing and natural resource management.

Domestic companies

The country's opening to global markets and foreign companies is seen as a much awaited opportunity, by Myanmar business. This opportunity, however, is also met with fears that local businesses may not be prepared to compete with international ones. The years of nationalization, closure and sanctions have hindered, if not regressed, the development of capacities, production systems, and infrastructures. While an FDI law would bring better regulations of foreign business activities, enabling the local private sector to grow, it also risks to place domestic companies at a competitive disadvantage.

Conflict

Despite the ongoing peace negotiations, risk of conflict and instability remain. Ethno-political grievances include but are not limited to the restrictions of the 2008 Constitution, the unequal distribution of profits gained from natural resource extraction and industrial projects of the central government and foreign investors and unequal access to political power (Burma News International 2013: 26). The country's abundant access to arable land and natural resources places it in a position of vulnerability as competition over such wealth risks to lead to conflict. Further, the lack of recognition of certain ethnic minorities such as the Rohingya people continue to be a major constraint to peace and human rights. Practically, the parallel peace negotiations offer a challenging environment to achieving peace.

Rakhine State

Human rights activists have been raising their arms in frustration over the praise that the Myanmar government is receiving while a humanitarian crisis continues in Rakhine state (Human Rights Watch 2013). What started as communal riots has led to a full-fledged crisis with the displacement of over 125,000 Rohingya and Kaman Muslims (UNOCHA

2013). The lack of access of international agencies to the region has led to devastating results. Humanitarian organizations are disturbed by the inaction of the government and the silence of donors, who appear to be more interested in signing MOUs than pressing the Myanmar government to ensure assistance. It appears that the spotlight on economic development is overshadowing the reality; that conflict remains very present in the country.

Kachin conflict and the role of China

The violence between the Kachin Independence Army and the *Tatmadaw*, has intensified over the past months. Despite peace talks taking place in China and repeated calls from President Thein Sein on the army to cease attacks, conflict continues to rage on in Kachin Province; creating doubts on the opportunity for peace. Linked to the conflict is the issue of Chinese oil and hydropower pipelines that are planned in and around Kachin state. The conflict has caused Chinese companies to halt operations as security has become a serious issue. As Chinese state-owned enterprises are likely to benefit greatly from an economic peace dividend, it is in their interest to support the peace talks through different means such as facilitation.

One potential solution could be the renegotiation of contracts to establish a partnership where the Chinese owned enterprise, the Myanmar government and the Kachin state would all hold shares of the company (Dapice 2012). This could help ensure mutual consultation, a more fair distribution of resources, better accountability of activities, improve access to affordable electricity and improved safety and security. However, such proposals have been met with criticism from the Kachin Independence Army, stating that “The Kachin conflict can’t be solved by money. We want self-determination, and the right to decide how our own lands and rivers are managed” (KDNG 2013).

These issues present several dilemmas on the role of business, whether private or state-owned, in helping to support peace and sustainable development. Solutions to conflict need to critically assess the root causes of the violence as well as the interests of the different actors involved in order to help identify how foreign companies generally and Chinese companies specifically can contribute to investment and development without creating conflict.

Doing it better

The decision whether to invest energies and resources in Myanmar is marked by complexity. The past experience of many companies and organization has shown that no organization, regardless of the sectors it belongs to, can operate ‘outside’ the context: as soon as one enters a particular setting, it immediately becomes part of that system. However risks can be managed.

The inevitable influence of contextual dynamics on both operations and business models pose dilemmas on how to deal with such issues. As a first step, it becomes pertinent for businesses to carry out an in-depth assessment of potential risks linked to their activities as well as their responsibilities in managing them. For example, businesses need to be aware of how they can carry out effective core business while minimizing potential negative impacts (i.e. brain-drain, local community dependency, social exclusion, inflationary effects of wages and expat presence) and maximizing positive ones (i.e. developing local content, bringing together different actors to work on a common issue, contributing to community empowerment/development, capacity transfer, supporting social inclusion). Such an assessment can help businesses identify how their operations can contribute to creating shared value.

Much emphasis in the CSR and conflict sensitivity literature and practice is useful for companies in this regard as an emphasis is placed on ‘pre-empting’ potential issues by enriching the decision making process on whether to invest in context and conflict analysis right from the beginning.

Secondly, such an assessment provides a strong foundation for the company to take a step back and analyze how such risks influence their core business. It allows for an informed understanding of local dynamics that companies can use to identify how they can balance short term needs with long term impacts. This helps to determine which activities may benefit multiple stakeholders and their diverse needs. Here, broader issues need to be addressed to ensure that a company is sustainable and that it is questioning whether ‘more’ is the appropriate solution or whether ‘less’ can be ‘more’.

As a third step, companies can seek out existing guidance and frameworks which are relevant for the company’s activities. Principles have been estab-

lished by international organizations like The Organisation for Economic Co-operation and Development (OECD), International Finance Corporation (IFC) and the United Nations (UN) i.e. UN Global Compact Guidance on Responsible Business. Institutions and NGOs such as IPIECA (the global oil and gas industry association for environmental and social issues) and International Alert have produced guidelines for conflict sensitive business practice and normative standards i.e. ISO 26000. There have also been efforts made by specific sectors on self regulation i.e. the Voluntary Principles on Security and Human Rights. Conventions have been agreed upon at the international level i.e. ILO 169: Indigenous and Tribal Peoples Convention. The Myanmar government has also outlined its own National Sustainable Development Strategy for Myanmar in 2009.

As a fourth step, based on the previous processes, a company would need to identify a feasible theory of change. In general terms, the process of change - in societies as well as organizations - requires multi-level initiatives (across different levels), as well as multidimensional interventions (interventions on structures, processes, policies, relationships, personal development, narratives, etc.). The participation and involvement of multiple actors is conducive to fostering change. This involves identifying which other actors would be suitable for developing synergies. An analysis of different interests and goals as well as respective strengths and weaknesses would be useful in helping companies to establish sound partnerships. This requires reflection in terms of how different actors can effectively work together in order to maximize each other's added value. Critically assessing strengths, needs and limitations are useful in establishing learning processes and opportunities to moving forward.

From an organizational point of view, critical assessments of activities are also useful in ensuring that they are aware of how they may contribute to both peace and conflict i.e. Do no Harm guidelines. Operating in a context like Myanmar requires considerations on the best way to adjust internally. For example, it is useful to find a balance between the need for the standardization of practice, structure and policies with contextual demands. This requires an understanding of how the building of internal commitment can be built to respond to local needs. Effective communication to both internal and exter-

nal parties of both challenges and achievements becomes relevant in helping to ensure transparency. Moreover, as part of the learning experience, successes and failures can be shared with other actors in order to help prevent future conflicts and to anticipate potential (negative) impacts of chosen actions. This demonstrates that learning from the experiences of our peers remains essential.

THE CASE OF TOTAL IN MYANMAR

Total has been in Myanmar since 1995. It is the operator company of the Yadana joint venture (31.2%). The other joint venture partners are: a subsidiary of Unocal, now Chevron (28.3%); Petroleum Authority of Thailand-Exploration & Production (PTT-EP, 25.5%); and Myanmar Oil and Gas Enterprise (MOGE, 15%), a state-owned enterprise. Controversy over the joint venture operations in Myanmar received significant media attention in the early 1990s due to allegations of human rights abuses and its relationship with a totalitarian regime.

Over the years the French company has shifted its approach, increasingly focusing on relationship building and constructive engagement. It has strengthened internal processes, learned to think ahead and anticipate potential long-term implications in terms of community relations and social impacts. It has demonstrated sensitivity in relation to specific qualities needed in people for specific positions. It strives to develop multi-talented teams, integrating people of different professional backgrounds for effective local engagement.

In its work with communities, Total has moved from a service delivery mode towards community development. The company has increasingly involved and worked with a number of civil society organizations to improve its socio-economic programme and has invested much on building the skills and knowledge of local contractors.

Below are some examples of the initiatives adopted by Total. This is guided by the belief that *how* one does business is an essential determinant of social responsibility. This plays a role in shaping relationships and contributing to shared value creation. Thus, the below examples are grouped into three categories. The first includes actions to influence relationships among internal stakeholders, thus

shaping the way the organization is guided and managed (through for instance employment policies). The second refers to external relationships, or the way organizations engage with its environment and stakeholders (for example with contractors and local communities). The third category illustrates the company's efforts towards influencing stakeholders and their practices within the wider context.

Internal stakeholders

Total has adopted a number of measures to influence company behavior, practice and its engagement with the local context. As it is possible to see from the examples, these cover a range of different dimensions such as its corporate ethics, systems and procedures, ways of working, capacity building and professionalization. Some of these initiatives are contextualized company-wide approaches and others are context-specific.

Total has formulated its Code of Conduct, available in English and Burmese. Regular assessments of its work in relation to the code of conduct are conducted by the UK-based NGO, Good Corporation. As part of its operations, Total has adopted international environmental standards (i.e. ISO 14001) and developed its own reference guides and processes.

It runs cultural awareness workshops for non-Myanmar nationals and offers English and Burmese language training to all its staff and contractors. There is regular safety training and it has carried out specific ILO and human rights awareness raising. The company has established a societal *métier* - internal professional figure - and relevant network to encourage the professionalization and institutionalization of practices.

Wages are above the national average, however, they are set in consideration of potential inflationary effects. Collective bargaining is considered accepted practice, even when trade unions were banned in Myanmar. Hiring policies are merit-based, though quotas have been set for local employments and recommendations are often made from local communities. Total holds a nationalization policy (in 2010, 90% of staff was a Myanmar national).

External stakeholders

Total has taken constructive steps to encouraging good practices of its contractors and fostering positive impacts on local communities. It supports the capacity building of its contractors: for example on how to develop insurance schemes, and enabling local contractors to compete in the company's bidding process. Audits and other trainings are also carried out: for example in Myanmar it has run human rights awareness raising.

Total has reorganized its Socio-economic Programme to focus on community development. This has, for example, included regular collaborations with other organizations such as the Boston-based NGO Collaborative Learning Projects (CDA), and Entrepreneurs du monde. Engagement with civil society has helped to support Total's process of professionalization and has enhanced its positive impact on local communities. In Myanmar, the French company shares practices and lessons learned with other oil and gas operators.

Working with the wider context

Total is increasingly leveraging on its experience and position to benefit other actors in Myanmar. It has run corporate social responsibility (CSR) workshops with the Union of Myanmar Federations of the Chambers of Commerce and Industry. It has contributed to United Nations Institute for Training and Research (UNITAR) in guiding civil servants on human rights and international law. The company has opened its operations to international and national visitors, as well as local ones. Total has acted as a catalyst in mobilizing other resources to social initiatives at the national level i.e. It encouraged the Global Fund to participate in a HIV/AIDS programme.

The French company acknowledges that changing behaviors and attitudes has, and still does, involve a journey of learning and gradual transformation. Staff is proud of the company's achievements though remains conscious that more can be done and, most importantly, that maintaining the levels of trust gained is paramount for its future.

Conclusions

Myanmar is characterized by tensions deriving from its history, running vertically and across society. As a result, education, health and social welfare systems are weak. Society is fragmented along political, religious and ethnic lines. The broad level of skills and abilities, including that of implementing change, requires patience as well as a consistent strategy. Unequal access to resources and opportunities remain. Issues such as corruption and illegal trafficking continues to be widespread.

During the last 24 months, the government has indicated a will to improve the situation and has agreed on needed reforms. The political and economic outlook is changing at an incredibly fast pace. The opportunities that arise from the country's natural and human resources and needs are substantial. Regional and international actors are rushing in, all wanting to be part of this exciting transition.

This excitement and energy comes hand in hand with profound issues related to how to engage and support local development. Domestic and interna-

tional actors themselves need to question how the latter are contributing to peace and stability in Myanmar. The current 'gold rush' appears to be creating a competitive space that does not allow actors to critically assess their contributions. In relation to the role of business in conflict zones generally and Myanmar specifically, actors need to reflect how they can encourage foreign direct investment (FDI) while being conscious of its potential setbacks. Actors need to be able to not only criticize businesses, but also provide them with support on implementing socially responsible businesses. This requires an identification of key actors and engaging with domestic interlocutors without reinforcing past divisions.

While non-Myanmar actors can play a potentially important role in supporting the country's development process, a coherent, coordinated approach that promotes different synergies is needed. This applies to all actors such as state, civil society, private sector, etc. There is a fundamental need to promote a participatory, inclusive approach based on responsible behavior and conflict sensitivity.

swisspeace

swisspeace is a practice-oriented peace research institute. It carries out research on violent conflicts and their peaceful transformation. The Foundation aims to build up Swiss and international organizations' civilian peacebuilding capacities by providing trainings, space for networking and exchange of experiences. It also shapes political and academic discourses on peace policy issues at the national and international level through publications, workshops and conferences. swisspeace therefore promotes knowledge transfer between researchers and practitioners. swisspeace was founded in 1988 as the Swiss Peace Foundation in order to promote independent peace research in Switzerland. Today the Foundation employs more than 40 staff members. Its most important donors are the Swiss Federal Department of Foreign Affairs, the Swiss National Science Foundation and the United Nations.

Center for Peacebuilding (KOFF)

The Center of Peacebuilding (KOFF) of the Swiss Peace Foundation swisspeace was founded in 2001 and is funded by the Swiss Federal Department of Foreign Affairs (FDFA) and 45 Swiss non-governmental organizations. The center's objective is to strengthen Swiss actors' capacities in civilian peacebuilding by providing information, training and consultancy services. KOFF acts as a networking platform fostering policy dialogue and processes of common learning through roundtables and workshops.

Critical reflections

In its *critical reflection* publications, swisspeace and its guest speakers critically reflect on topics addressed at roundtables. They both make a note of the arguments put forward during the roundtables and carry on the discussion in order to encourage further debates.