

# LABOR AND ENVIRONMENTAL RISKS IN THE LARGE-SCALE AGRICULTURE AND LOGGING SECTORS OF MYANMAR

SEPTEMBER 23, 2020

Myanmar Centre for  
Responsible Business

**VERITÉ**  
Fair Labor. **Worldwide.**





Shawn MacDonald  
CEO, Verité

# About Verité



**Founded:** 1995

**Vision:** A world where people work under safe, fair, and legal conditions.

**Mission:** Provide the knowledge and tools to eliminate the most serious labor and human rights abuses in global supply chains.

## **Our Goals:**

- Provide businesses with tools that help to eliminate labor abuses.
- Empower workers to advocate for their rights.
- Create publicly-shared resources that enlighten and drive action.
- Contribute our expertise to government labor and human rights policy.

# Verité Activities and Services

Verité is a civil society organization that works globally with governments, multi-national corporations, suppliers, unions, NGOs, and labor advocates on mitigating risk to workers.

- Examples of activities and services:
  - Original field research and assessments that prioritize stories and voices of workers
  - Consultation on systems to prevent and remediate risks identified
  - Training for company staff, suppliers, workers, and auditors
  - Creation of open source tools and resources
- Confidential and practical approach
  - assessments/investigations
  - trainings for brands, suppliers, auditors
  - consultations with governments, companies, initiatives



Gap Inc.



patagonia



KEURIG



EILEEN FISHER





Erin Klett  
Senior Director,  
Research & Policy, Verité

# Today's Agenda



Introduction to the Verité Project (Erin Klett, Verité)



Labor Findings from Myanmar Case Studies (Max Travers, Verité)



Regulating Environmental & Social Impacts in Plantation Agriculture in Myanmar (Inga Makusheva, MCRB)



Q&A (Vicky Bowman, MCRB)



Synthesis (Mel Asuncion, Verité Southeast Asia)



# Goals of Verité's Independent Research



Exploring Intersections of Trafficking in Persons Vulnerability and Environmental Degradation in Forestry and Adjacent Sectors: Case Studies in Burma and Mozambique



Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR



Addressing Forced Labor in the Cocoa Sector in Côte D'Ivoire



Shed light on poorly understood dynamics and problems with labor rights in a variety of sectors and geographies



Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains



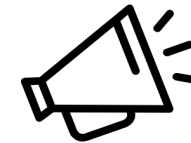
Recruitment Practices and Migrant Labor Conditions in Nestlé's Thai Shrimp Supply Chain



Financial and Contractual Approaches to Mitigating Migrant Worker Recruitment-Related Risks

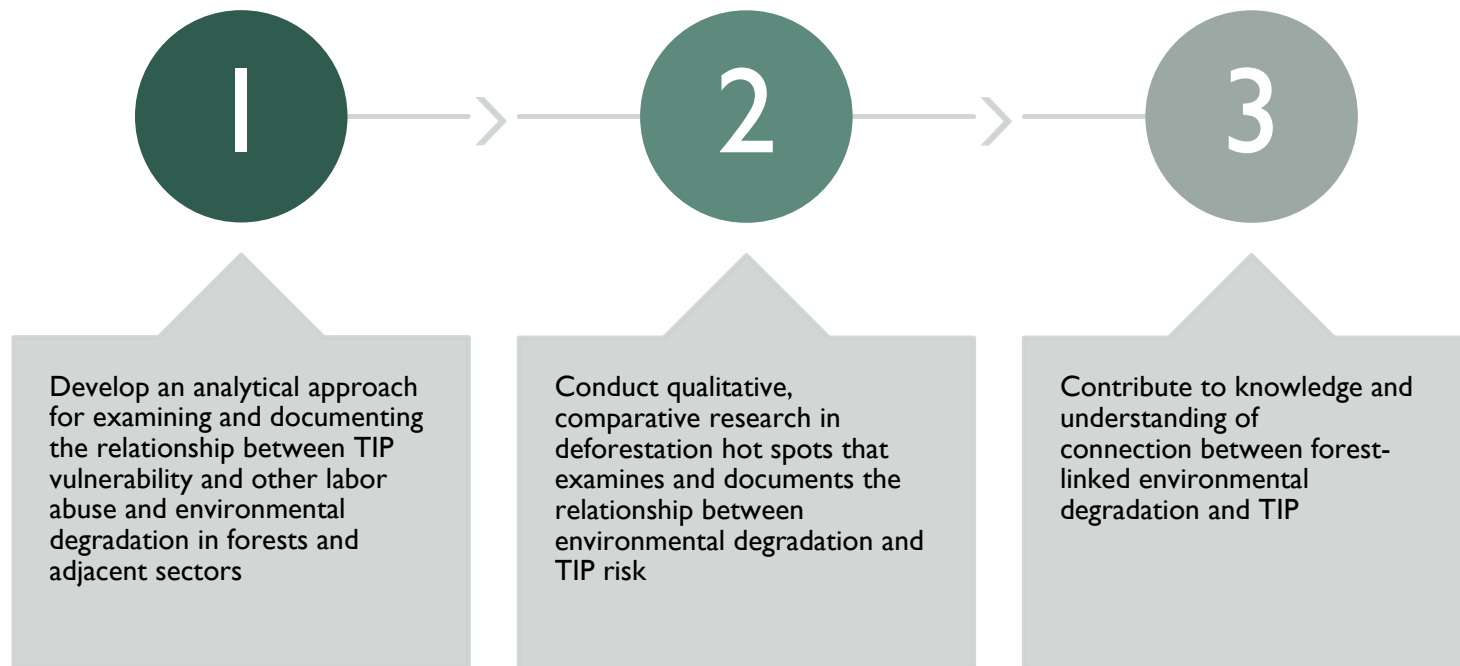


Create understanding of risks and vulnerabilities



Provide a platform for engagement: open-source tools, awareness raising, policy advocacy

# Exploring Intersections of Trafficking in Persons Vulnerability and Environmental Degradation in Forestry and Adjacent Sectors – Project Goals





## Exploring Intersections of Trafficking in Persons Vulnerability and Environmental Degradation in Forestry and Adjacent Sectors – Project Design

- Supported by the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (J/TIP)
- Study and analysis conducted over 2 years
- Set of case studies offering diversity of geographic locations, sectors, contexts
- Myanmar and Mozambique chosen as locations for case studies due to high volumes of tropical roundwood, high rates of deforestation, evidence of TIP vulnerability and research feasibility
- Final case study selections – banana cultivation, illicit and informal logging, road construction – highlight diverse workforce demographics, types of abuse, and linkages with environmental degradation





Max Travers  
Lead Researcher,  
Myanmar Case Studies,  
Verité



# INFORMAL LOGGING IN NORTHERN MYANMAR





## BACKGROUND OF INFORMAL LOGGING

- Small-scale informal logging occurring within areas of Sagaing Region, Shan State, and Kachin State, one of several types of logging in Myanmar
- Loggers interviewed were mostly involved in logging teak and rosewood
- Difficult to assess informal logging's contribution deforestation and timber exports, but significant gaps exist between overall timber exports and imports
  - In 2017, Myanmar reported exporting timber valued at USD 207 million, China reported importing USD 443 million
  - Other importers of Myanmar timber include India, Malaysia, Thailand, and the EU, among others
- Lack of traceability in supply chain
- More research should be conducted to assess labor conditions among companies subcontracted by Myanmar Timber Enterprises (MTE)



# NATURE OF WORK IN INFORMAL LOGGING

- Predominantly adult men, w/ some women and children under 18 also participating in the sector
- Teams typically comprised of 3-5 workers each, organized by a team leader
- Work on behalf of an agent or buyer, who a request for the amount (in tons) and type of logs they want to buy and agree on a set price.
- Logging teams travel from their communities of origin—typically by car or motorcycle—to the edge of the forest, then travel by foot to logging camp sites, with 10-15 loggers per camp, staying in camps for up to 15 days
- Tasks include searching for trees for felling, carrying equipment, clearing of trees or brush, chainsaw operation, transporting logs to trucks, and loading logs onto trucks



## LABOR FINDINGS

- Teams typically split proceeds, which yields high wages, although workers are sometimes paid at a daily rate (5,000 to 7,000 kyats per day)
- Hazardous living and working conditions
  - High incidences of injury and death witnessed
  - Drug use common
- Worst forms of child labor due to unsuitability of environment and hazardous tasks
  - Under 18s involved in drugs at the camp
  - Hazardous tasks such as chainsaw operation



BANANA  
PLANTATIONS  
IN KACHIN  
STATE,  
MYANMAR





# KACHIN STATE CONTEXTUAL BACKGROUND



- Kachin State is a resource rich state located in northern Myanmar
- Decades long internal conflict restarted in 2011 between the Kachin Independence Army (KIA) and Myanmar military, including in areas surrounding banana plantations, leading to 100,000 internally displaced persons (IDPs) in the state
- Conflict resource economy in areas controlled by KIA, Myanmar military, and military aligned militia groups
- Starting in 2008, Chinese companies began setting up banana plantations for export to China. Today, plantations cover approximately 275 square miles in the state and represented USD 130 million in exports in 2018

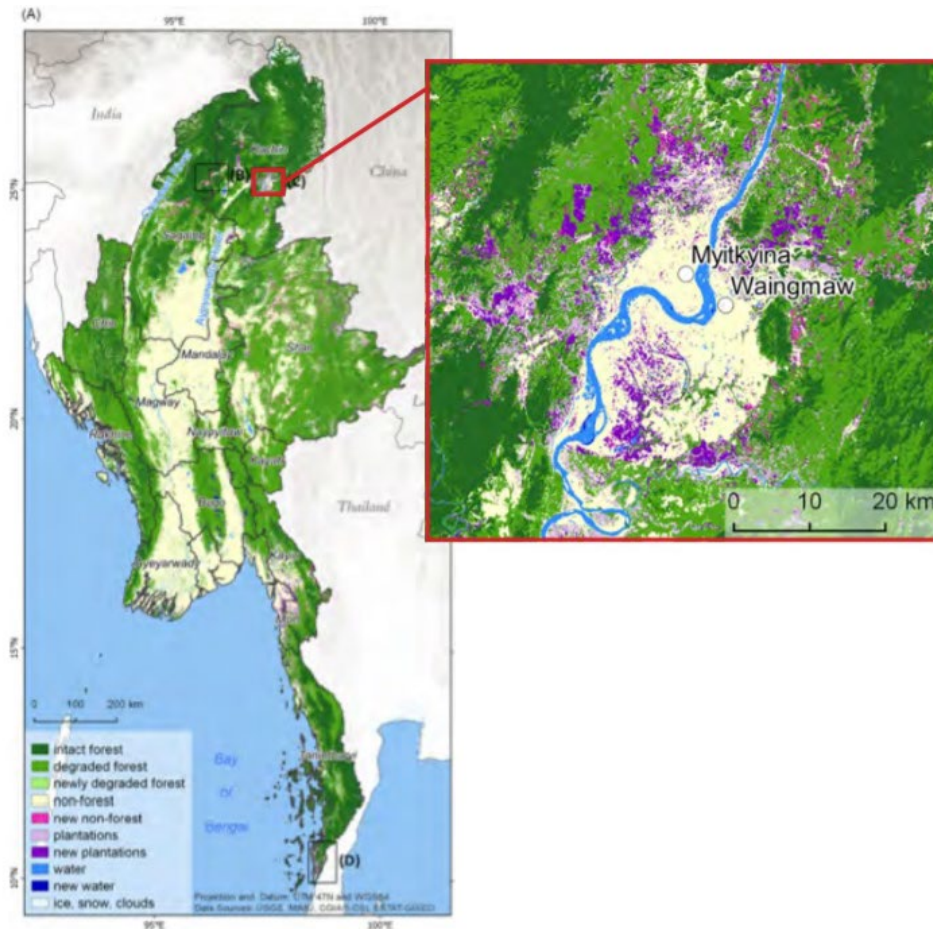
# LAND RIGHTS AND CORRUPTION

- Lack of official registration and oversight of plantation companies
- Chinese companies (through Myanmar proxy companies) set up plantations in areas generally controlled by the Myanmar military and military-aligned militia groups
  - Many banana plantations exist on land that has been designated as “virgin, vacant, fallow”
  - Locals pressured into selling or leasing land
  - IDP land confiscated





# DEFORESTATION AND ENVIRONMENTAL DEGRADATION



- Deforestation associated with banana plantations. Over 100,000 acres of deforestation associated with agricultural crops including banana plantations in case study area (Waingmaw Township)
- Pesticides in local water sources, affecting livelihoods (livestock, fishing, farming) and community health
- Strong effects on productive and protective forest functions for community

# WORKER DEMOGRAPHICS

Type of Worker	Demographics	Tasks	Pay Structure
<b>Permanent Worker</b>	Primarily Internal migrant workers, w/ local community members and some ethnic Kachin IDPs also represented.	All cultivation-related tasks.	Paid by “VWeight” or “Plant” based salary structure; paid full earnings at the end of 10-month period.
<b>Day laborers</b>	Local community members from nearby villages. Occasionally ethnic Kachin IDPs work in this system.	Tasks beyond capacity of permanent workers.	Paid a daily rate at end of each day.
<b>Seasonal workers</b>	Primarily workers from neighboring townships and regions/states.	Harvest-related tasks.	Paid a daily rate at the end of each day or in a piece rate system.


# Labor Findings



*“Yes, we could quit but we might lose a lot of our money. People who work on weight basis don’t usually drop out of work no matter the kinds of situations they face.”*

- Lack of available livelihood options leads to work on banana plantations or migration to other risky labor situations, such as migrating to China, or internal migration to work in sectors including jade, gold, or amber mining
- Deception in recruitment
- Lack of contracts or honoring of contracts
- Wage payment system leads to excessive amount of time waiting to be paid full salary (10 months).
  - Minimum wage violation
  - Forced overtime
  - Financial penalties and deductions
- Hazardous working and living conditions
- Worst forms of child labor





Myanmar Centre for  
Responsible Business

Inga Makusheva  
Deputy Director,  
MCRB

# **Regulating environmental and social impacts in plantation agriculture in Myanmar**

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Inga Makusheva, Deputy Director  
Myanmar Centre for Responsible Business (MCRB)

Webinar on Labor and Environmental Risks in the Large-Scale  
Agriculture and Logging Sectors of Myanmar (23 September 2020)

# Overview

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- **Introduction to MCRB**
- **Laws regulating environmental and social impacts  
in plantation agriculture**
- **Possible solutions**





# About me

- Deputy Director (Programme and Governance) at MCRB; with MCRB since October 2016  
(Responsible Business Conduct and Creating Shared Value; Corporate governance and disclosure, Oil Palm SWIA (plantation agriculture))
- Prior to MCRB, Government liaison in Nay Pyi Taw for VDB Loi (regional legal and tax advisory)
- Experience in tourism; mineral and oil exploration (local and foreign companies in Myanmar)
- Education:
  - MA International Human Rights Law, University of London, UK
  - BA Development Studies/ International Relations, Australian National University, Australia
  - BA Myanmar Language, YUFL, Myanmar




MCRB aims to provide a trusted and impartial platform for the creation of knowledge, building of capacity, undertaking of advocacy and promotion of dialogue amongst businesses, civil society, governments, experts and other stakeholders with the objective of encouraging responsible business conduct throughout Myanmar.

စီးပွားရေး အဖွဲ့အစည်းများ၊ အရပ်ရပ် အဖွဲ့အစည်းနှင့်  
အစိုးရ အဖွဲ့အစည်း မှားယွင်းမှုများ တာဝန်ယူမှုရှိသော  
စီးပွားရေးလုပ်ငန်းများ ဆိုတာပဲ။ ဗဟု သုတရှိစေရန်  
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ယုံကြည်မှုကို ရရှိသော သမာသမတတို့သာ အဖွဲ့အစည်း  
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ရရှိကြပါသည်။

MCRB 旨在为企业，民间社会，政府，专家和其他利益相关者之间



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Tel/Fax: 01 01-512613

Financial support from governments of:

- UK
- Norway
- Switzerland
- Netherlands
- Ireland
- Denmark



# What Does A 'Responsible Business' Do?

**Responsible business** means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.



ဥပဒေကို  
လေးစားလိုက်နာခြင်း  
Respect the law



လူ့အခွင့်အရေးကို  
လေးစားခြင်း  
Respect human rights



၎င်း၏  
အလုပ်သမားများကို  
လေးစားခြင်း  
Respect workers' rights



သဘာဝပတ်ဝန်းကျင်ကို  
လေးစားခြင်း  
Respect the  
environment



သက်ဆိုင်သူများနှင့်  
ချိတ်ဆက်ဆောင်ရွက်ခြင်း  
Engage with  
stakeholders



အခြားစီးပွားရေးလုပ်ငန်း  
များကို တဝန်ယူမှုရှိ  
စွာဆက်ဆံဆန်းခြင်း  
Treat other businesses  
responsibly



၎င်း၏ Customer များကို  
တာဝန်ယူမှုရှိစွာဖြင့်  
ဆက်ဆံခြင်း  
Treat customers  
responsibly



ပွင့်လင်းမြင်သာမှုရှိခြင်း  
Be transparent



လာဘ်ပေးလာဘ်ယူမှု/  
လဖက်ရည်ဖိုး ပေးခြင်းမျိုး  
မလုပ်ဆောင်ခြင်း  
Not pay bribes or tea  
money

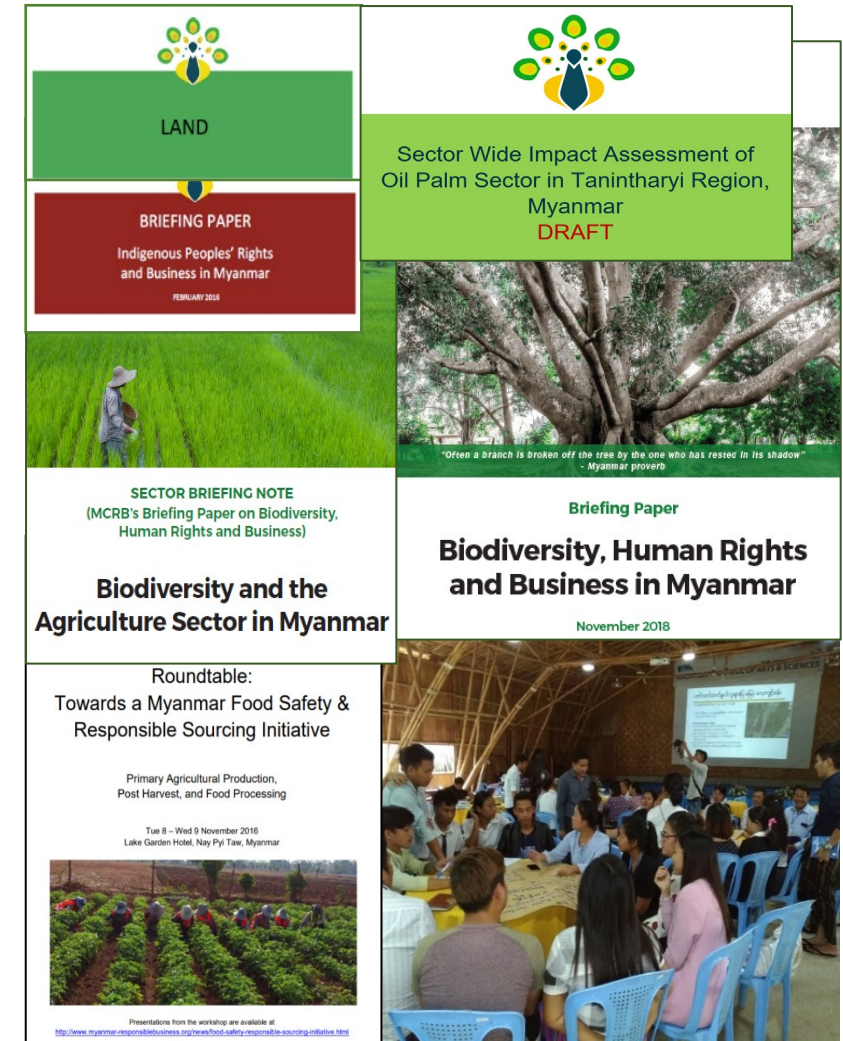


အခွန်ဆောင်ခြင်း  
Pay taxes

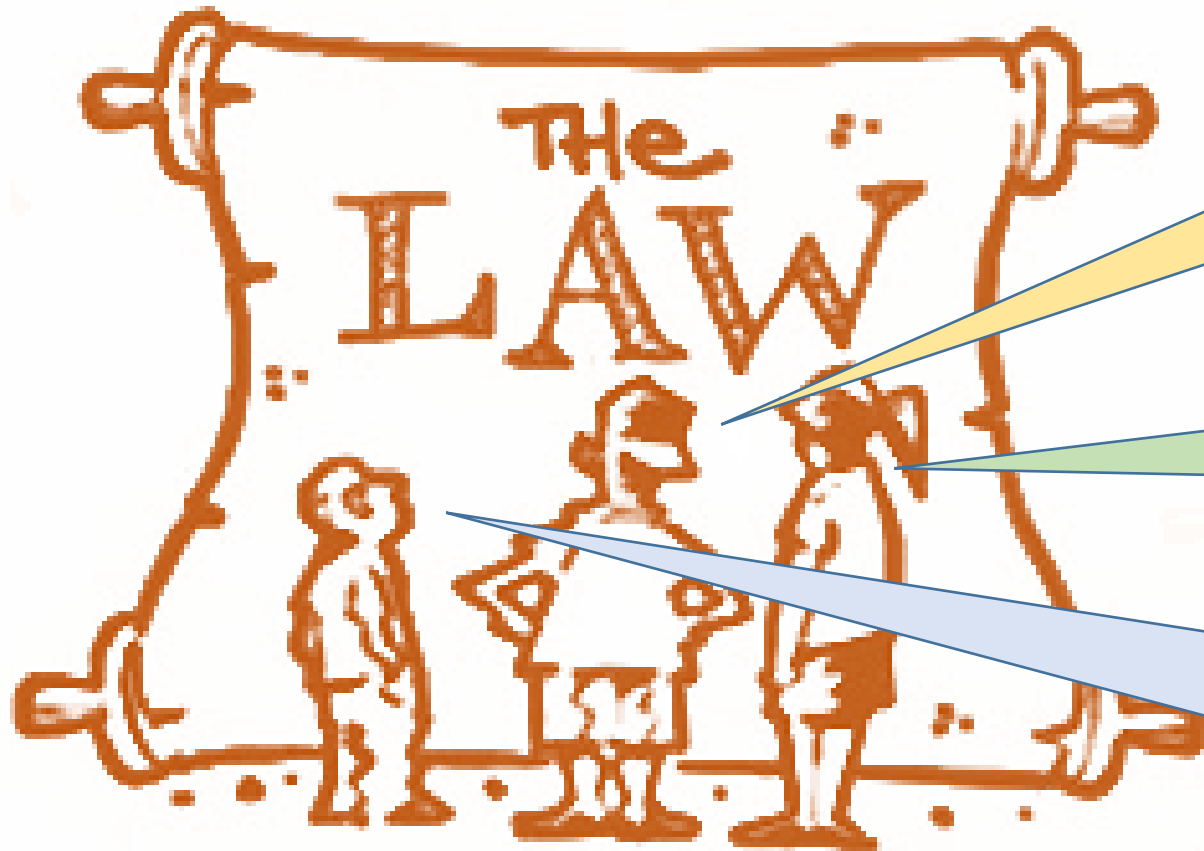


# MCRB's work related to plantations and agriculture

- Draft Oil Palm Sector-Wide Impact Assessment (SWIA) (2021)
- Briefing Paper:: Indigenous Peoples Rights (2016), updating Briefing 2015 Paper on Land (expected 2020); Biodiversity, Human Rights and Business in Myanmar, including Supplement on Agriculture) (2018)
- Workshop on 'Responsible investment in plantation agriculture, with a focus on land' 2018 (with Oxfam)
- Workshop on 'Towards food Safety and Responsible Sourcing Initiative' 2016 (with Prime-Agri)
- Recommendations and feedback on draft laws (land, ethnic nationalities, investment, EIA guidelines, etc)
- Comments to the Amyotha Hluttaw Agriculture, Livestock Breeding and Fishery Development Committee in response to their Enquiry into Agricultural Chemical Residues
- Sounding board on human rights due diligence for agriculture companies, EIA consultants and other stakeholders
- Training for companies, CSOs and Government (e.g. Tanintharyi Regional Hluttaw in April 2018; EIA and biodiversity trainings to DICA and ECD in 2019; RB101 and EIA training to CSOs, business associations and regional governments in Kachin, Shan, Kayah, Sagaing, Mandalay, Rakhine, Mon and Tanintharyi)



# Laws governing plantation agriculture



Myanmar Companies Law (2017)  
Myanmar Investment Law (2016) and  
Rules (2017)

Myanmar Environmental Conservation  
Law (2016), Rules (2014), Standards  
(2015) and EIA Procedure (2015)

And many other laws and byelaws and  
notifications on labour, disability,  
ethnic nationalities, land, pesticides,  
water, safety, wildlife conservation,  
cultural protection etc etc..... !

# Myanmar Companies Law

- Those involved in large scale agriculture need to register as a company under **2017 Myanmar Companies Law (MCL)**
- **Art.2(a):** “Myanmar companies” = < 35% foreign shareholding
- Whether a company is ‘foreign’ or ‘Myanmar/citizen’ has implications for:
  - What a company is permitted to do under the Myanmar Investment Law (MIL)
  - Land ownership





# Myanmar Investment Law – MIC or not?

## MIC

**All ‘foreign companies’** (prohibited from owning or renting land for > 1 year unless they have an MIC Permit (or Endorsement for small-scale projects). This provides land rights authorisation (LRA): land use rights for < 70 years. Myanmar investors do not need a LRA

**Myanmar Investment Commission (MIC) Permit is required** (MIL Art 36c. Myanmar Investment Rules) for Foreign or Myanmar large-scale agriculture investment which:

Are “strategic” (Rule 3):

- Rights to use > 1,000 acres (405 ha) land for primarily agriculture purposes
- Government granted concession > \$20 million investment
- Crosses international border or conflict (not defined) area (>\$1 million)
- Crosses State/Region boundary
- Is regarded as having large potential environmental/social impact (Rule 5: involves compulsory acquisition and rights to use > 100 acres (40.5 ha); land or where >100 individuals will be displaced)
- requires an EIA (under the EIA Procedure)

## No MIC

### **2012 Vacant, Fallow and Virgin Lands (VFV) Management Law, amended in 2018**

Common option for acquiring access to land → Government can allocate land in tranches of **5000 ha up to 50,000 ha**

Company applies → to VFV Land Management Committee

### **Farmland Law 2012 (under revision)**

Farmers typically have Land Use Certificates (LUC)

Apply → to Farmland Administrative Bodies (FAB)

Application passes up/down through multiple layers of FAB for approval

### **Forest Law 2018**

Myanmar company or foreign company → applies to MONREC for permission to establish a commercial plantation on forest land

# Obligations/Restrictions under Myanmar Investment Law

## Responsible Business Conduct and Investor obligations:

- ✓ Art.3(a) **Objective of 2016 Myanmar Investment Law** : to develop responsible investment in the interest of the Union and its citizens which does not harm the natural or social environment
- ✓ Art.24(d) **Myanmar Investment Commission (MIC) Duty**: advise Myanmar government on policies to develop responsible business;
- ✓ MIL applies to Myanmar and foreign investment
- ✓ **Investor obligations:**
  - Obey law and operate responsibly
  - Pay compensation
  - Regulate employee behaviour
  - Obtain all necessary permits under other laws (may include EIA)
- ✓ **Transparency:**
  - publication of investment proposals before MIC decision
  - Annual sustainability report (Rule 196) **for MIC permitted projects**



## MIL Restrictions: Agriculture

- **Only allowed as JV with any citizen-owned entity (i.e. Myanmar company) or Myanmar citizen:**
  - Cultivation of crops in agriculture land, distribution to the local market and exporting
  - Processing, canning, manufacturing and marketing of food products except milk and dairy products
- **Only allowed with approval of relevant ministries (Noti 15/2017):**
  - **MoALI**: production of seasonal crops
  - **MONREC**: logging, forest plantations, wood-based industry, etc

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# **Laws and responsible business requirements which apply to operations**





# Laws protecting land rights

- **1894 Land Acquisition Act**, replaced in August 2019 by **The Land Acquisition, Resettlement and Rehabilitation Law** (not in force) – The government can carry out land acquisition for a company when the acquisition ‘is likely to prove useful to the public’
- **2012 Vacant, Fallow and Virgin Lands (VFV) Management Law, amended in 2018** – Companies must apply for permission from Central Committee for the management of VFV lands
- **2012 Farmland Law** (under revision) – Farmland cannot be used for non-agricultural purposes without permission; land classified as farmland cannot be sold, leased, pawned, exchanged or donated to a foreigner



*These are just a few – there are more than 70 laws on land (and housing and property) in Myanmar!*



## MCRB Submits Comments on the Draft Work Plan for Drafting the National Land Law

September 14, 2020

In response to the request for comments, MCRB has submitted comments to the Union Attorney-General's office on the draft Work Plan for the drafting of the National Land Law.

**Also**

Tax Laws; Immigration Laws

Anti-Corruption Law (2013) and 4<sup>th</sup> amendment (2018)

# Relevant Environmental Laws

- **2018 The Biodiversity and Conservation of Protected Areas Law** – Support for wildlife protection and conservation of natural areas
- **2017 Conservation of Water Resources and Rivers Law** – protects from industry, vessels or local people polluting the environment
- **Freshwater Fisheries Law (1991)** - prohibits the pollution of waters important for freshwater fisheries
- **Fertilizer Law (2015) and Pesticides Law (2016)** - mainly about licensing and controlling producers, importers and distributors of fertilizer/pesticide rather than end-users
- **2012 Environmental Conservation Law (ECL)** - Myanmar's main regulatory framework for environmental protection; provides framework for permitting processes
- **2014 Environmental Conservation Rules** - Builds upon the ECL and clarifies the responsibilities of MONREC and the National Committee
- **2015 National Environmental Quality (Emissions) Guidelines** – regulations on noise, vibration, emissions and liquid discharges (Plantation Industrial - Sec.2.2.1)

# 2015 Environmental Impact Assessment Procedure (and the Myanmar Investment Commission)



- ‘Environmental impact’ means **both environmental and social impacts**
- After approval by ECD/MONREC, an Environmental Compliance Certificate (ECC) is issued
- ECC imposes legal obligations on the company, including for **monitoring and reporting**, and notifying MONREC of any breaches.
- Recently issued ECCs contain a requirement for companies to establish an **Operational Grievance Mechanism**
- Smaller plantations may be required to submit an Environmental Management Plan (EMP) instead of IEE/EIA
- **Companies applying for MIC Permits** should provide Myanmar Investment Commission with information about their EIA/IEE/EMP plans at time of MIC Permit application
- MIC Permit can be issued conditional on obtaining necessary permits including the ECC
- ECC should be provided to MIC once received (MIL (Art.65(q)) and MIR (Art.188-189))





# EIA and IEE for Plantation Agriculture

**EIA and Initial Environmental Examination (IEE) requirements for Plantation Industrial/Crop Production** (rubber, oil palm, cocoa, coffee, tea, bananas, sugar cane) in Annex 1 of EIA Procedure

<ul style="list-style-type: none"> <li>■ <b>Plantation Industrial/Crop Production</b> (e.g. rubber, palm oil, cocoa, coffee, tea, bananas, sugar cane)</li> </ul>	IEE ≥ 200 hectares but < 500 ha	EIA ≥ 500 ha
<ul style="list-style-type: none"> <li>■ <b>Annual Crop Production</b> (e.g. cereals, pulses, roots, tubers, oil-bearing crops, fiber crops, vegetables, and fodder crops)</li> </ul>	IEE ≥ 500 hectares but < 3,000 ha	EIA ≥ 3,000 ha
<ul style="list-style-type: none"> <li>■ <b>Concession Forest</b></li> </ul>	IEE < 10,000 ha	EIA ≥ 10,000 ha



# What about existing plantations?

**Art.8 EIA Procedure:** ‘Any project already in existence prior to the issuance of Environmental Conservation Rules (June 2014), or the construction of which has already commenced prior to the issuance of the Rules, and which, in either case, shall be **required to undertake , within the timeframe prescribed by the Department, an environmental compliance audit**, including on-site assessment, to identify past and/or present concerns related to that Project’s environmental impacts, and to:

- a) Develop an Environmental Impact Assessment (EIA) or Initial Environmental Examination (IEE) or Environmental Management Plan (EMP);
- b) Obtain an ECC; and
- c) Take appropriate actions to mitigate adverse impacts in accordance with the Law, the Rules and other applicable laws

- 46 Companies operating
- Only 3 companies obtained MIC permits

*(DICA Kachin, Sep 2020)*

# Laws regulating social impacts – and grievances raised

## Labour Laws

- Minimum Wage Law (2013) and No. 2/2018 Amendment
- Payment of Wages Act (2016)
- Occupational Safety and Health (2019 – not yet in force)
- Leave and Holidays Act (1951) with 2006 amendment
- Labour Organization Law (2011)
- Settlement of Labour Dispute Law (2012)
- Social Security Law (2012)
- Employment and Skills Development Law (2013)
- Workmen's Compensation Act (1923)
- Child Rights Law (minimum working age 14) (2018)
- Penal Code Section 374 on Forced Labor
- Anti-Trafficking in Persons Law (2005)



## Regional Banana Labour Union sent a written complaint to Kachin State Government, highlighting ten key issues:

1. No adequate rain cover
2. Not enough drinking water
3. Failure to pay agreed wages
4. No provision of personal protective equipment
5. Due to excessive use of chemicals, employees suffer frequent dizziness, vomiting and numbness
6. Cheating employees on weigh in (1kg/MMK60)
7. Disrespectful behaviour from Chinese business towards employees
8. Fine from being absent from work MMK 20,000-50,000 per day (daily wage – MMK 6000)
9. Frequent violations of labour contracts
10. Labour rights violations by businesses owners

> 100,000 labourers,  
mainly from Sagaing  
Region and Rakhine State

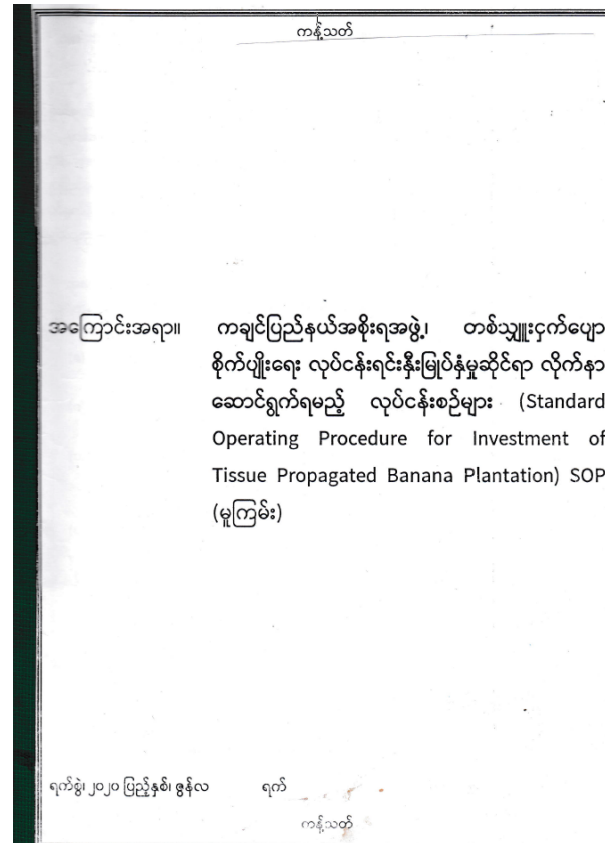
*(MCRB calls with local CSOs/CBOs Sep 2020)*



# Possible solutions (1)

## Full application of relevant laws

- Identification all relevant laws
- Information to companies about obligations
- Effective implementation by government and monitoring
- Enforcement by government departments
- No new investment till existing plantations are properly regulated



## One approach under consideration.....

- Proposed 'Standard Operating Procedure for Investment of Tissue Propagated Banana Plantation' (SOP)
- Prepared by the Kachin State Government, Department of Agriculture (DoA); draft SOP shared at the Mekong Region Land Governance Project (MRLG) alliance/partners' meeting
- Objective: 'for companies which come to Kachin state to invest in tissue propagated banana plantation to comply with and to be able to sustain their agricultural investment'
- Based on Myanmar laws and regulations, including investment procedure, land, labour, environment, pesticides, immigration, etc.
- Allows for formation of a 'Supervision Committee'

# Possible solutions (2)

## Addressing gaps/weaknesses in laws

- Myanmar missing some environmental standards: noise, waste
- If necessary, introduce higher (environmental?) standards at Kachin State level – Schedule 2 of Constitution?
- Corruption Risk Assessment of permitting process
- Simplify and reduce red tape to improve compliance
- Appropriate plantation size thresholds for EIA/IEE? Consistent with MIC requirements?
- Follow up to the Amyotha Hluttaw Pesticides enquiry
- Draft Whistleblowing Law

## Land Use Planning

- Where and how much banana should be planted?

## Supply chain engagement

- Encourage certification to international supply chain standards e.g. GlobalGAP. But who are the buyers? Do they care?
- Engagement with Chinese markets and regulators?



Thank You!  
ကျေးဇူးတင်ပါတယ်  
谢谢

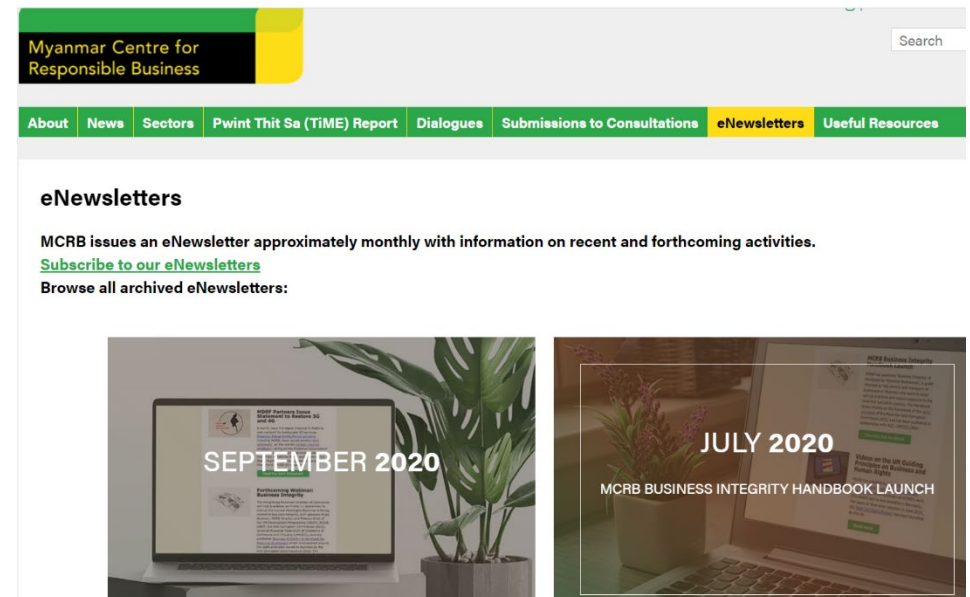
**Please use the Q&A box in Zoom to:**

- Ask a question
- Share your research and findings
- Share useful links

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The logo consists of a green horizontal bar at the top, a black horizontal bar below it, and a yellow vertical bar on the right side. The text "Myanmar Centre for Responsible Business" is written in yellow on the black bar.

Myanmar Centre for  
Responsible Business

Vicky Bowman  
Director, MCRB



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## Questions and Discussion



Mel Asuncion  
Senior Director for  
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# Thank You for Joining Us

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