MMN Discussion Paper

BOTTOM OF ASEAN: IMPACT OF RUSHED INVESTMENT IN "LAST FRONTIER" COUNTRIES– BURMA/MYANMAR, CAMBODIA AND LAOS ON LABOUR AND MIGRATION

Mekong Migration Network

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Executive Summary

Since the programme of reforms initiated in 2011, the Burmese government has sent a strong message to the international community that Burma is once again "open for business". However, as the government looks to promote foreign investment, there is a real risk that this will be done at the cost of labour standards and decent wages for Burmese workers, and brings with it the risk of a 'race to the bottom' that may have effects across the region. MMN's Bottom of ASEAN project has been investigating the situation of workers in Burma and other 'last frontier economies' in the region, Cambodia and Laos. Poor labour standards and extremely low wages cause many workers from these developing economies to migrate to neighbouring countries. Once they migrate, they frequently suffer further exploitation and discrimination which is often justified by policy-makers and the business sectors as "better than the situation in the countries of origin". As a result, workers have no way out to escape exploitation at the bottom of the supply chain, whether at home or in destination countries. Accordingly, the Mekong Migration Network aims to advocate for improved labour protection and fairer wages for all workers at the Bottom of ASEAN, whether they are migrant workers who have moved internally within their country or are working in other countries in the region.

Burma, together with Cambodia and Laos, are all considered to have promising potential as Asian frontier markets, with high growth which is predicted to accelerate over the next 5 years. In Cambodia, the biggest foreign currency earner is garment manufacturing which accounts for approximately 80% of exports, and the largest investors are China, Korea and Japan. China is also the most significant investor in Laos, where major investment is in the hydroelectric power and mining sectors. Prior to the easing of economic sanctions against Burma the main foreign investment was from China, followed by Thailand, Hong Kong and South Korea. Since the easing of sanctions, there has been extensive interest in the Burmese market from Western investors and Japan due to the huge potential for development based on its fertile land, natural resources, strategic geographic location and a large low wage labour force which is attracting investment in labour-intensive, exported-oriented manufacturing such as the garment industry. However, economic analyses of investment opportunities in Burma generally highlight that Burma continues to be a risky environment for investors due to inadequate infrastructure, poor macroeconomic management, weak rule of law and corruption.

Foreign direct investment brings with it opportunities and risks for workers in Burma as well. Whilst an inflow of FDI will create jobs, introduce new technology, and increase gender equality, it may also bring inflation, putting local industries out of business, and placing even more pressure on infrastructure. Concentrated FDI in export oriented primary production in least developed countries can discourage skills and technology transfers; similarly, relying on low wage labour in the manufacturing industry is more profitable than investing in technological developments. Workers in Burma, Cambodia and Laos want job opportunities, but they are concerned that employers will not respect their rights at work and will not pay them sufficient wages to support themselves and their families. New employment opportunities are also unlikely to provide job security due to the increased use of short term or casual contracts, leaving many workers in a precarious situation which is open to exploitation.

China has traditionally been the main economic partner and political ally for Burma, with primary investments in oil and gas pipelines and hydropower dams. Since the civilian

administration has been in power, Chinese investment in Burma has actually significantly decreased as Burma has moved to diversify foreign relations with the West. On the other hand, Japanese investment has rapidly increased in Burma since 2011 in a strategy to counter China's influence in the region. In particular, Japan is a significant investor in the development of the Thilawa Special Economic Zone and is also involved in talks concerning investment in the Dawei Special Economic Zone. Thailand is another important investor in the Dawei SEZ, as well as in hydropower, oil and gas: 25% of Thailand's electricity is generated from gas piped from Burma, making Thailand the biggest beneficiary of Burma's energy resources. The single largest investment in Burma since the transition to a civilian government is the expansion of the telecommunications network by Telenor and Ooredoo, which has pledged to spend $15 billion on its network infrastructure over 15 years.

US investment in Burma has gradually increased since the easing of sanctions in May 2012 and the gradual normalization of economic relations. US investment in Burma is regulated by the "Burma Responsible Investment Reporting Requirements" under which US companies investing US$500,000 or more are required to report on a range of policies and procedures with respect to human rights, labour rights, land rights and so forth. Coca-Cola, Ford, General Electric, Chevron, Cisco, Visa, MasterCard and Gap are some well-known US companies which have invested in Burma, however, despite promoting various CSR initiatives, reports issued thus far under the reporting requirements have been criticised as containing serious informational gaps, suggesting a lack of full disclosure by investors. Similar initiatives include the Comprehensive Framework for the European Union's policy and support to Myanmar/Burma which provides the framework for development aid, parliamentary cooperation, support to the peace process and investment in Burma. In July 2013, the EU reinstated Burma's access to the Generalised System of Preferences, which provides for duty-free and quota-free access for the country's products to the European market, under the so-called "Everything But Arms" trade regime.

The "scramble" to invest in Burma may not be as fast as some media reports have made it out to be, with many investors opting to wait until after the 2015 elections and further political reform and institutional change. Growth alone does not guarantee poverty reduction, reduced income inequality, or improved standards of living. In fact, economic growth in developing countries in Asia in the 1990s and 2000s has been accompanied by rising inequality, illustrating more than ever the importance of inclusive development in Burma bolstered by investment in health, education, and social security.

Jobs creation must also go hand in hand with decent work and safe working conditions. Despite recent reforms to labour laws in Burma, freedom of association remains problematic for Burmese and Cambodian workers where anti-union retaliation and violent crackdowns on peaceful protesters continue to take place. Laws preventing large demonstrations severely curtail the collective power of labour movements, and the involvement of the military in repression of labour movements and other human rights movements is a serious cause for concern. For national and migrant workers alike, the threat of losing their job or even being deported means workers are under pressure to work harder and harder and are discouraged from asserting their rights through unions and collective bargaining. In addition, corruption prevents labour inspections from offering effective oversight of working conditions and respect for the rights of workers. In light of this, the need for worker solidarity across the region is crucial.

With respect to the manufacturing industry, competition on cost coupled with a high supply of available labour in countries such as Burma and Cambodia means that wages are kept as low as possible and workers are treated as a commodity. Raises to the minimum wage do not keep up with inflation and increasing costs of living, with the result that workers are being paid far below a living wage and are often forced to work overtime and borrow money to make ends meet. Low wages are also a main cause of labour unrest Increasing strikes in Bangladesh and Cambodia mean that Burma is being promoted as an alternative due to its hard working and obedient workforce.

Wages in Burma are also the lowest in Asia with no legal standard minimum wage, ranging from US$25 to US$120, with more than 50% of factory workers in and around Yangon earning less than US$40 per month. By way of comparison, the minimum wage in Bangladesh was raised in December 2013 following protests near Dhaka to US$68; in Cambodia it was raised from US$75 to US$100, leading to large scale protests in early 2014 in which workers called for an increase to US$160. Despite these increases, in Cambodia, workers earn only 21% of a living wage, whilst in Bangladesh workers earn only 11% of a living wage. Wages in these two countries have actually decreased in real terms over the last decade, meaning their purchasing power is less than it was 10 years ago. If investment in this sector is truly to contribute to the development of the economy and economic empowerment of individuals within it, the first step is to pay a living wage to workers, which not only allows them to support their families and send their children to school, it also has the flow on effect of improving worker productivity and pulling up wages in the informal sector.

Investors seeking low-cost production bases have been moving from more developed economies to lower wage countries with less regulation, including Vietnam, Cambodia and Laos, and now Burma. The impact of global supply chains sourcing from countries in Asia often leads to a production cluster of sweatshops and also creates challenges for the promotion and protection of the rights of workers. Standards adopted by buyers do not penetrate to the contractors, agents, employers and workers on the ground, meaning there is little real change at the factory level. Dispersed responsibility makes it extremely difficult for workers or workers' rights advocates to file complaints, and there are often no real mechanisms for redress.

In light of these challenges, governments of major investing countries which had sanctions in place against Burma[i] have stressed the importance of investing 'responsibly', taking better account of social, environmental, ethical and governance considerations. This approach has also had an effect on companies already operating in Burma, with Chinese companies advocating CSR activities in Burma by allocating funds to community projects in villages surrounding development areas. On the other hand, it is clear that there are investors who deliberately choose to go to countries or areas where there are very few labour standards and a very low wage labour force; who don't invest in safe working conditions; and who remain untouched by scrutiny. Neither international regulatory frameworks nor responsible investment initiatives appear to provide sufficient means to address this.

Such projects are unlikely to be effective unless there is genuine engagement with the communities intended to benefit, which, so far, has been lacking. There is also the risk of unintentionally creating a 'dual economy' where different sectors of the business community operate differently when it comes to human rights and labour standards implementation. Given the poor human rights record and high levels of corruption, CSR activities which are ad hoc, self-promoting, and self-regulated, rather than being aligned to international norms, would be inadequate.

Investment in Burma has the potential to vastly improve the standards of living of Burmese workers and other workers in the region as growth, trade and improved regional cooperation reach the developing economies at the Bottom of ASEAN. However, there is a real risk that investment without proper safeguards for labour standards and rights at work, as well as other social and environmental considerations will simply result in widespread exploitation. International and national regulatory frameworks and other CSR initiatives will not have any impact on the ground unless there is genuine commitment to reform by both the government and investors. There must also be a concerted effort to protect workers from unscrupulous investors whose businesses rely on low wage labour and treat workers as a liability to contain, rather than as an asset to develop.

1 – Background and Overview

1.1 Overview of political and economic reforms in Burma/Myanmar

Burma has long been off-limits to new Western investors as economic sanctions were imposed in response to the human rights violations and repression of democratic opposition by the military junta. The transition from a military regime to a military backed civilian government in 2011 has led to a series of political and economic reforms and the easing of sanctions. Positive steps include the release of Daw Aung San Suu Kyi from house arrest in November 2010. The National League for Democracy gained seats in Burma's Parliament in the same year. In 2013, President Thein Sein released hundreds of political prisoners, and promised to free all political detainees by the end of that year, although at least 59 prisoners still remain behind bars and arrests of activists and protestors continue.[ii]

The political transition has been accompanied by numerous reforms promoting greater freedoms, such as the independence of the press, greater freedom of movement, freedom of association, the right to strike and the right to demonstrate. The 2012 Foreign Investment Law and the floating of the kyat in April 2013 assisted the country's move towards attracting 'responsible investment' from new foreign investors and other economic reforms include tax reform and reduction in trade duties. The 2014 Special Economic Zones Law enables new areas to be considered as Special Economic Zones, provides tax incentives for investors, and establishes a management committee responsible for setting wage levels and monitoring the ratio of local and foreign labour.

While these initiatives demonstrate the government's move towards better transparency, democratic reforms have been slower and the continued power of the military is a cause for concern. The Constitution reserves 25% of seats in Parliament for the military and grants immunity for members of the former regime who committed crimes while carrying out their duties.[iii] The military also retains an effective veto over Constitutional amendments and there is resistance to changing the clause which prevents Aung San Suu Kyi from running for president.[iv] Military spending, at 12.26% for the 2014-105 fiscal year, significantly exceeds the budget allocated to education (5.92%) and health (3.38%).[v]

Since the programme of reforms initiated in 2011, the Burmese government has sent a strong message to the international community that Burma is once again "open for business", calling for foreign investment, development assistance and loans.[vi] However, organizations such as Burma Partnership and Human Rights Watch have expressed concern that the easing of sanctions by Western countries are too much, too soon,[vii] as human rights violations have continued throughout Burma, particularly in areas where economic interests are at stake. The gap between policy pronouncements and economic lived experiences in Burma illustrate the continuing challenges faced by workers. For example, the re-evaluation of the kyat was effective in reducing systematic corruption and boosting public finances, however the new method for determining the exact level of the currency was flawed, making commodities uncompetitive and reducing kyat incomes, to the detriment of farmers, fishers and small scale enterprises.[viii] Similarly, the creation of SEZs, whilst helping to attract new investors, is likely to do so by setting lower wages levels to increase competitiveness.[ix]

Both political and economic reforms should be treated with caution in Burma. Rapid investment without ensuring that there are mechanisms for the protection for workers brings with it the risk of suppressing wages and labour standards in Burma in a 'race to the bottom' that may have effects across the region. MMN's Bottom of ASEAN project has been investigating the situation of workers in Burma and other 'last frontier economies' in the region, namely Cambodia and Laos. Poor labour standards and extremely low wages cause many workers to migrate to neighbouring countries. Once they migrate, they frequently suffer further exploitation and discrimination which is often justified by policy-makers and the business sectors as "better than the situation in the countries of origin". As a result, workers have no way out to escape exploitation at the bottom of the supply chain, whether at home or in destination countries.

1.2 Overview of Burma/Myanmar, Cambodia and Laos as 'last frontier' markets

Burma, together with Cambodia and Laos, are all considered to have promising potential as Asian frontier markets. All are least developed countries (LDCs) which have low per capita income but high growth rates, with growth predicted to accelerate over the next 5 years. The so called "scramble" to invest in Burma is due to the huge potential for development based on its fertile land, abundant natural resources, young, low wage labour force and strategic geographic location.[x] Burma's move to a market economy against the backdrop of ASEAN economic integration also provides excellent opportunities to strengthen regional trade and investment and take advantage of the growing power of other Asian economies, including China and India. In particular, the abundance of low cost labour in Burma is seen as prime opportunity to expand labour-intensive, exported-oriented manufacturing such as the garment industry, creating jobs and diversifying the economy beyond resource extraction.[xi]

In Cambodia, over the last decade, FDI in garment manufacturing and export has rapidly expanded. Cambodia currently allows for 100% foreign ownership of investment projects, with garment manufacturing as the biggest foreign currency earner amounting to more than $5 billion in 2013, and accounting for approximately 80% of exports.[xii] The largest investors in Cambodia are China, Korea and Japan.[xiii] Cambodia is currently the 6th biggest garment exporter in Asia, behind its neighbours China, Bangladesh, Vietnam, India and Indonesia, but this sector is expected to continue to grow as rising wages and a shortage of labour for factory work in China have prompted several companies to move to cheaper countries, including Cambodia.[xiv]

Laos, on the other hand, has attracted significant FDI in the hydroelectric power and mining sectors. It has also developed labour-intensive consumer goods production but is seen as less attractive for export-oriented FDI, due to high transport costs arising from its landlocked geography, although this will change once the transport corridor is established.[xv] With over US$5 billion invested in Laos, China is the most significant investor, particularly with respect to hydroelectricity and dams. China is also a significant trade partner: In 2013 the value of trade between Laos and China reached US$2 billion, a 30% increase on 2012.[xvi]

2 – Investment in Burma/Myanmar

2.1 Opportunities and risks for investors and workers

Prior to the easing of economic sanctions against Burma in April 2012, the main foreign investment in Burma was from China, followed by Thailand, Hong Kong and South Korea.[xvii] At the time that Western countries were imposing sanctions on Burma, most Asian governments continued to engage with Burma and companies have invested freely, with the exception of Japan, which froze all development assistance for 9 years from 2003. The

Association of South East Asian Nations (ASEAN) and its members repeatedly called for Western sanctions to be lifted to help boost Burma's economy.[xviii]

Since the easing of sanctions, there has been extensive interest in the Burmese market from Western investors and Japan, as well as continued investment from Thailand and China. However, despite the encouragement to invest in Burma by governments, there are also indications that investors themselves are more sceptical about reforms in Burma, opting to wait until after the 2015 elections due to concerns about infrastructure, political stability and respect for the rule of law.[xix] This has led to complaints that Western companies have been too slow to invest and that businesses keep "changing the goalposts" through continual demands for more attractive terms.[xx]

The World Bank's 2014 Doing Business Report offered a "reality check"[xxi] for optimistic investors, ranking Burma as one of the worst environments in which to do business. Burma is ranked at 182 out of 189 countries, far below the regional average (88) and other LDCs in the region (Cambodia ranked 137 and Laos ranked 159). In particular, Burma ranked poorly for "protecting investors", and for the high costs required to start a business.[xxii] The operating environment is challenging due to weak macroeconomic management, underdeveloped banking, legal and administrative structures, poorly maintained roads and railways, and pervasive electricity shortages, despite the fact that Burmese electricity is also the priciest in the region.[xxiii] UK-based risk analyst Maplecroft rates Burma as an "extreme" risk in its annual Legal and Regulatory Environment Risk Atlas, reporting that that current levels of corruption, lack of rule of law and interference in business by a wide range of powerful and vested interests, including the military, continue to create a very uneven playing field for foreign investors.[xxiv]

Investment brings with it opportunities and risks for workers in developing countries as well. An influx of FDI in developing economies creates jobs, introduces new technologies, and improves gender equality, but can also lead to a decline in local industries, inflation, and infrastructure shortages. For countries which do not have the initial platform for technological innovation, the exploitation of low wage labour is more profitable than improving technology.[xxv] Lessons learned from the last decade of foreign direct investment in LDCs also show that the concentration of FDI in export oriented primary production meant that that skills and technology transfers remained problematic.[xxvi] There was also a lack of long term national investment in infrastructure, education, and technology.[xxvii] Workers in Burma, Cambodia and Laos want job opportunities, but they are also concerned that employers will not respect their rights at work and will not pay them sufficient wages to support themselves and their families. New employment opportunities are also unlikely to provide job security due to the increased use of short term or casual contracts and investors closing factories to get new tax breaks with no payment of compensation to workers. Precarious employment and the threat of losing their job means workers are under pressure to work harder and harder and are discouraged from asserting their rights through unions and collective bargaining. Often employers are able to continue the exploitation of their workers because workers don't fully understand their rights, underscoring the need for awareness raising and public information campaigns.

Investment in Burma, Cambodia and Laos has also brought with it issues of land confiscation and displacement of communities through mega development projects connected to hydropower dams in Laos and land concessions in Cambodia. Some groups claim that, since 2012, economic land concessions in Cambodia account for more than half of Cambodia's arable land.[xxviii] Land grabbing has also been rife in Burma where land is confiscated for military purposes, urban expansion, or for the establishment of industrial zones. The Burmese government has acknowledged only a small fraction of the complaints received regarding land grabbing, casting doubt on the country's commitment to political reform after decades under military rule.[xxix] Displacement affects labour rights as communities and livelihoods are destroyed, often with little or no compensation. In this way, investment and trade preferences have exacerbated human rights violations and denied adequate standards of living for many rural communities.[xxx]

2.2 Economic overview of Burma/Myanmar

According to the World Bank, FDI in Burma increased from US $1.9 billion in 2011-2012 to US $2.7 billion in 2012-2013,[xxxi] with an additional US $1.8 billion invested in the first 5 months of the 2013-2014 fiscal year (April – August 2013)[xxxii]. Figures from the Myanmar Ministry of Planning and Economic Development show that as at 31 January 2014, the total accumulated pledged and approved FDI in Burma is US $45 billion. The primary sectors for investment are power (US $19.2 billion), oil and gas (US $14.3 billion), and manufacturing (US $3.7 billion),[xxxiii] and the primary investors are China, Thailand and Hong Kong, followed by Singapore, the UK and South Korea. Japan is the 10th largest investor in Burma (US $321 million), whilst the US is the 13th largest (US $243 million).[xxxiv] Burma's main trading partners are China, Thailand and Japan, accounting for nearly two thirds of all trade.

The IMF has predicted that Burma will grow by 7.5% during the 2013-2014 fiscal year, and about 7.7% in the next fiscal year,[xxxv] and the Burmese government is aiming for even stronger growth at 9.1% for the 2014-15 fiscal year.[xxxvi] McKinsey predicts that Burma could potentially quadruple the size of its economy by 2030, creating upward of ten million non-agricultural jobs in the process. However, if the current demographic and labour productivity trends continue, Burma will grow by less than 4% a year. In order to reach growth of 8% or more, it must double its labour productivity, and in order to do this, the fundamental factors of political and macroeconomic stability, the rule of law, and enablers such as skills and infrastructure, must all be in place.[xxxvii] In addition, Burma must retain "its credibility and support with the international stakeholders, investors in particular".[xxxviii]

International organizations and other advisors have stated that "further economic engagement is contingent on steady political reform progress"[xxxix], calling for "institutional change initiatives that promote systematic increases in productivity and equitable distribution of opportunities and income".[xl] This cannot be done through the creation of a large number of "low skilled" jobs in which workers are laid less than a living wage, as this will only perpetuate a cycle of poverty. Despite Burma's economic potential, it is important to recognise that growth alone does not guarantee poverty reduction nor improved standards of living. In fact, economic growth in developing countries in Asia in the 1990s and 2000s has been accompanied by rising inequality, illustrating more than ever the importance of development that translates into improved wellbeing across the board in Burma.[xli] Jobs creation must go hand in hand with decent work and safe working conditions to provide a pathway to inclusive economic development, and poverty cannot be addressed unless there are also substantial investments in health, education and social security. As investors contemplate moving into Burma, there is an increased emphasis on avoiding the mistakes of investment in other developing economies and 'getting it right this time'. However, this will require a concerted effort by all stakeholders, supported by real political will.

2.3 Key investor countries and key investments in Burma/Myanmar

China

China has traditionally been the main economic partner and political ally for Burma, investing primarily in oil and gas pipelines and hydropower dams. Whilst Burma was previously a stronghold of Chinese business interests, since the civilian administration has been in power, Chinese investment in Burma has actually significantly decreased from approximately $12 billion between 2008 and 2011 to just $407 million in the 2012 - 2013 fiscal year.[xlii] The two largest Chinese-backed investment projects, the Myitsone Dam and the Letpadaung copper mine, worth a cumulative $4.6 billion, have faced significant backlash from activists and local communities in a wider pushback against resource grabbing.[xliii] Construction on the Myitsone Dam, which would have exported 90% of electricity generated to China, was suspended by President U Thein Sein in September 2011 with any further decision deferred until after the end of his term in 2015. This decision came as a shock to Beijing and at a time of increasing US influence, and there are many who believe that the US actively supported the suspension of work on the dam through assistance to Burmese civil society groups as part of a new "containment" policy against China.[xliv] The Letpadaung mine, owned by Wanbao Mining Ltd[xlv] and the Union of Myanmar Economic Holdings Ltd, a Burma Army-owned conglomerate, has also long been a source of conflict. Operations were suspended in November 2012, following mass local protests and demonstrations, with locals claiming they have not received fair compensation for the loss of farmland to the project. The mine resumed operation in October 2013 under a new contract giving the Burma government 51% of revenue, but protests continue.

Japan

Japan has rapidly increased its investment in Burma since 2011, in what has been seen as a strategy to counter China's influence in the region.[xlvi] Japan is a significant investor in the development of special economic zones, with a joint government-private agreement signed with MMS Thilawa Development Co. Ltd., a consortium grouping Mitsubishi, Marubeni and Sumitomo to develop the 2,400-hectare, $150 million Thilawa Special Economic Zone[xlvii], as well as involvement in talks concerning investment in the Dawei Special Economic Zone. According to official statistics in 2012-2013 the total trade volume between Burma and Japan reached US$1.5 billion.[xlviii]

Japan is also Burma's largest aid donor, writing off more than $5 billion in debt owed by Burma and extending bridge loans to help clear outstanding debt with the World Bank and the Asian Development Bank.[xlix] In May 2013 Japan announced that it would provide ¥51 billion (US $500 million) in new loans to help develop Burma's infrastructure, as well as up to ¥40 billion (US $395 million) in grant and technical assistance in the 2013 fiscal year.[l]

Thailand

Traditionally, the most significant Thai investments in Burma have been in hydropower, oil and gas. For example, the TaSang Dam, which Thailand's MDX Group agreed in 2002 to develop, will cost more than $6 billon and is planned for completion in 2022. Thailand is also one of the operators of the Yadana pipeline (with a 25.5% working interest through PTT Public Company Limited, a Thai state- owned company, together with Total 31.2%, Chevron 28.3%, and MOGE

15%) and is a major purchaser of gas from Burma: 25% of Thailand's electricity is generated from gas piped from Burma, making Thailand the biggest beneficiary of Burma's energy resources.[li] In February 2014, Thai Oil Public Co Ltd, announced it would invest $1 billion in Burma,[lii] whilst PTT Exploration and Production, a subsidiary of PTT, announced that it will invest US$3.3 billion in Burma over five years.[liii]

Thailand is an important investor in the Dawei SEZ through a 50-50 venture with Burma with an initial investment of 12 million THB (US $373,000). In late 2013, the project was transferred from Italian-Thai Development Plc to Dawei SEZ Development Co, which was granted a 75 year concession to develop the zone, including a highway linking it to Thailand and a deep sea port.[liv] Trade is also an area of focus, and the two countries have agreed to reach a target of $18.3 billion in mutual trade by 2015, almost tripling the current $6.1 billion.[lv]

United States

US investment in Burma has gradually increased since the easing of sanctions in May 2012 and the gradual normalization of economic relations. Commentators note that the improvement of ties with the United States signals an effort by Burma to distance itself from China, placing it in a pivotal position in the geopolitical rivalry between the US and China. In this context there have been calls for the US to play a "more informed role" in Burma's development" and encourage better engagement with ethnic groups.[lvi] US entities are still prohibited from dealing with blocked persons, including both listed Specially Designated Nationals (SDNs) as well as any entities 50% or more owned by an SDN. In order to address further concerns about the protection of human rights, corruption and the role of the military in the Burmese economy, US investment in Burma is regulated by the "Burma Responsible Investment Reporting Requirements" under which US companies investing US$500,000 or more are required to report on a range of policies and procedures with respect to their investments in Burma, including human rights, labour rights, land rights, community consultations and stakeholder engagement. These reporting requirements are intended to provide the transparency that civil society groups need to promote responsible investment in Burma. Coca-Cola (which announced it will invest $200 million over 5 years), Ford, General Electric, Chevron, Cisco, Visa and MasterCard are some well-known US companies which have invested in Burma, however, despite promoting various CSR initiatives, the reports issued thus far under the reporting requirements have been criticised as containing "serious informational gaps" suggesting a lack of full disclosure by investors.[lvii]

UK and the European Union

Since suspending sanctions against Burma in 2012, the UK and the EU have encouraged responsible investment in Burma following the standards set out in the OECD Guidelines for Multinational Enterprises, the UN guiding principles on business and human rights, the EU's CSR strategy 2011-2014 and the Extractive Industries Transparency Initiative. The EU's engagement with Burma is governed by the Comprehensive Framework for the European Union's policy and support to Myanmar/Burma[lviii] and it has established a joint EU-Myanmar taskforce which aims to provide comprehensive support to the transition in Burma through development aid, parliamentary cooperation, support to the peace process and investment. These initiatives have come under fire recently: NGOs have argued that the EU Comprehensive Framework does not adequately integrate human rights in its investment and trade component and have drawn attention to the shortcomings in the EU-Myanmar/Burma

Task force held in Yangon in November 2013, claiming that the EU failed to effectively and genuinely engage with civil society and to foster a comprehensive approach on human rights.[lix]

In July 2013, the EU reinstated Burma's access to the Generalised System of Preferences, which provides for duty-free and quota-free access for the country's products to the European market, under the so-called "Everything But Arms" trade regime.[lx] Burma exports to the EU totalled €164 million in 2012, approximately 3% of the Burma's total exports, concentrated largely on clothing. At present, foreign banks and insurance firms are not allowed to operate in Burma, but the government has said that it will allow both to enter the market as wholly independent entities in 2015. As financial services continue to develop in Burma, it is expected to see a strong British presence: several banks and insurers already have representative offices providing advisory services including Standard Chartered Bank, Prudential and each of the "big four" accountancy firms (PricewaterhouseCoopers, KPMG, Deloitte and Ernst & Young). In July 2013 the UK and Burma launched a financial services taskforce to support the development of Burma's financial sector, delivering practical support and assistance to the Burmese government as well as relevant training to the private and public sectors.

Telecommunications sector

Burma has extremely low coverage for telecommunications - as of July 2013, only 7% of the country had access to mobile phones. Development of a telecommunications network is an essential prerequisite to Burma's development in other sectors and will initially be managed by Norway's Telenor and Qatar's Ooredoo, which successfully tendered for the first operations licences, issued in February 2014. According to Forbes, this represents the largest investment in Burma since the civilian government took power in 2011.[lxi] Ooredoo has pledged to spend $15 billion on its network infrastructure throughout its 15 year license, aiming to cover Burma's four biggest cities by August 2014 and 97% of the population in five years.[lxii]

In support of development in this sector, the World Bank Group has approved $31.5 million credit for a Telecommunications Sector Reform Project. However, civil society has expressed concerns that expanding telecom capacity without proper legal safeguards will enable the Burmese government to further engage in surveillance, censorship, and other violations of the right to freedom of expression and privacy.[lxiii] There have also been complaints that the World Bank did not carry out adequate human rights due diligence and made misleading statements regarding civil society consultation.[lxiv] In mid-November 2013, the Bank attested that it had received 'broad support' from civil society for the telecom project, allegedly before it had hosted a single civil society consultation. Further, the project's one consultation held on 28 November was scheduled mere days in advance and did not allow civil society participants enough time to review the lengthy project documents or translate them into ethnic languages.[lxv]

3 – Legislative reforms, labour protection and working conditions

3.1 Freedom of association and labour organizations

Part of the political reform process in Burma has included the introduction of new labour laws allowing for the creation and registration of trade unions for the first time since 1962.[lxvi] As at June 2013, 602 workers and employers organizations had been formed in Burma under the

2011 Labour Organization Law.[lxvii] However, freedom of association remains problematic in both Burma and Cambodia where anti-union retaliation and violent crackdowns on peaceful protesters continue to take place. Laws preventing large demonstrations severely curtail the collective power of labour movements, and the involvement of the military in repression of labour movements and other human rights movements is a serious cause for concern.

The International Trade Union Confederation (ITUC) has observed that the new Burmese Labour Organization Law does not fully afford the rights guaranteed under ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, due to a high minimum membership requirement (10% of the workplace), overly prescriptive requirements for the structure of unions, and limitations on the right to strike.[lxviii] Workers have reported difficulties registering unions and that in many workplaces employers have established unions for workers, leading to tensions between the employer-created unions and the worker-created unions. The creation of “yellow unions” close to the government and putting pressure on workers to join such non-independent unions is also a tactic used in Cambodia to try to restrict genuine worker representation. The ITUC 2014 Global Rights Index has listed Cambodia as one of the worst countries for workers, in which they have no effective rights and are consistently exposed to abusive practices; similarly, the Index indicates that Burmese workers suffer from systematic rights violations and that their fundamental rights are under continuous threat.[lxix]

Of great concern is the inadequate protection against anti-union discrimination,[lxx] and there have been serious reports of retaliation by employers against union organizers in Burma and Cambodia, including death threats, dismissals, blacklisting, false charges, wage deductions and exclusion from promotion. In one incident at the Inlay shoe factory in Bago, Burma, the registrar rejected the registration of a workers organization and allegedly informed factory management, which retaliated by transferring suspected union activists to separate them from their co-workers. Other reports of forced transferrals of workers have come from workers in government ministries and universities.[lxxi] At the Taw Win embroidery factory in Burma, the employers retaliated against the decision of an arbitration council to enforce an agreement between management and workers on a pay rise by finding minor reasons to discipline the workers involved in the complaint and refusing to allow workers to collect dues, claiming that it was not legal.[lxxii]

Workers in Burma and Cambodia are concerned that the legal framework for their protection remains weak and that the unions do not have the bargaining power to negotiate with the government. Governments favour the interests of investors over workers and weak rule of law and a bias against trade unions means that increased investment only exacerbates the problems faced by workers. With respect to dispute resolution, workers have complained that whenever legal action is taken, cases take a long time to be resolved, and there is no monitoring system to force employers to respect the agreed decision. Trade union rights continue to be violated with impunity, and corruption prevents labour inspections from offering effective oversight of working conditions and respect for the rights of workers. In light of this, the need for worker solidarity across the region is crucial, such as through the creation networks between unions and CSOs within and between countries, allowing for the exchange of information and experiences to identify further solutions to the common problems faced by workers at the Bottom of ASEAN.

3.2 Minimum Wage

Low wages are characteristic of the garment and manufacturing industry in many South and South-East Asian countries. Competition on cost coupled with a high supply of available labour means that wages are kept as low as possible and workers are treated as a commodity. Raises to the minimum wage do not keep up with inflation and increasing costs of living, with the result that workers are being paid far below a living wage.

At present, there is no standard minimum wage in Burma[lxxiii] and Burmese workers in the manufacturing sector earn the lowest wages in South East Asia. The Ministry of Labour has announced that minimum wage will be determined before the end of 2014.[lxxiv] ILO research has indicated that basic monthly salaries in the manufacturing sector range from 21,000 kyat (US$25) to 120,000 kyat (US$120), depending on bonuses and overtime.[lxxv] However, a report prepared by the Labor Rights Clinic on wages in Yangon showed that 55% of workers interviewed were paid basic wages between US$25 and US$37 per month.[lxxvi] In June 2014, Gap announced that it would start sourcing from Burma using a factory owned by a South Korean company - the first major US retailer to do so. Workers will reportedly earn an average of US$110 a month, which is up to four times the average garment worker salary – but still less than other minimum wages in the region.[lxxvii]

In December 2013, the Cambodian government announced that the minimum wage for garment workers in Cambodia would be increased from US$75 to US$100, leading to large scale protests in which workers and workers' organizations called for an increase to US$160. The minimum wage in Bangladesh was also raised in December 2013 to US$68, an increase of 77%, following protests at the Ashulia industrial zone outside Dhaka in which 250 factories were closed.[lxxviii] In Laos, minimum wage is 626,000 kip (US$78). It was almost doubled from the old rate of 348,000 kip before January 2012.[lxxix] In Vietnam, minimum wages in 2014 range from 1.9M to 2.7M dong, or US$90 to US$128.[lxxx] Regionally, minimum wages have been rising[lxxxi] but in many countries such increases still fall far short of a living wage. In Cambodia, workers earn 21% of a living wage, whilst in Bangladesh, workers earn only 11%.[lxxxii] Even more worryingly, wages in Cambodia and Bangladesh have actually decreased in real terms over the last decade, meaning that workers' purchasing power is decreasing and slipping even further away from a living wage. A study by the Worker Rights Consortium has shown that between 2001 and 2011, wages have decreased by 2.37% in real terms in Bangladesh and by 19.2% in real terms in Cambodia.[lxxxiii]

Workers earning less than a living wage are often forced to work overtime and borrow money to make ends meet. Pressure to keep working means they are less likely to visit a doctor as they cannot afford to take the day off or to pay for medical expenses. A study by Labour Behind the Label shows that garment workers in Cambodia are also more likely to save on costs by eating as little and as cheaply as possible, leading to malnutrition and incidents of mass fainting.[lxxxiv] Low wages are also a main cause of labour unrest.[lxxxv] Figures from the Garment Manufacturers Association in Cambodia show that garment workers mounted 131 strikes in 2013, up from 121 for all of 2012, and making 2013 the most strike-prone year since records began in 2003.[lxxxvi] This has led to Burma being increasingly promoted as an alternative to Bangladesh and Cambodia for investment in the garment industry as having "abundant workers" who are "hard working and obedient".[lxxxvii] If investment in this sector is truly to contribute to the development of the economy and economic empowerment of individuals within it, the first step is to pay a living wage to workers, which not only allows them to support their families and send their children to school, it also has the flow on effect of improving worker productivity and pulling up wages in the informal sector.

4 – Impact of supply chains on labour standards

As wages rise in countries such as China and Thailand, investors face both rising costs and labour shortages as workers are no longer interested in taking factory jobs.[lxxxviii] A 2013 survey by the Japanese Chamber of Commerce in Bangkok showed an increasing number of member companies citing labour shortages as a challenge for their operations in Thailand since 2010, leading a growing number to decide to open factories in Cambodia and Laos. This follows the pattern of the 'China-plus-one' strategy, in which a cost advantage is sought by investing in countries such as Indonesia, Thailand and Vietnam. Investors are now also speaking of the 'Thailand-plus-one' strategy to diversify risks and benefit from upcoming regional integration and the likelihood of workers returning to their home countries as the economies of those countries improves.[lxxxix] 10% of members of the Thai Garment Manufacturers Association have already moved their manufacturing operations to other countries, such as Burma or Indonesia, and this number is expected to grow to 25% within two years.[xc] The 300 baht minimum wage in Thailand, introduced in 2013, has been accused of forcing companies out of business by making some of Thailand's traditional boom industries uncompetitive, boosting the informal economy, and attracting more migrant workers.[xci] Indeed, at this stage there is little indication that migrant workers in the Mekong region are moving back to their countries of origin, preferring to earn higher wages and send remittances back home.[xcii]

This confirms the pattern whereby investors seeking low-cost production bases have been moving from more developed economies to lower wage countries with less regulation, including Vietnam, Cambodia and Laos, and now Burma. A 2013 study on labour standards highlighted the current conditions in industrial zones around Yangon, including unsafe working environments, long hours and low wages, lack of protection for women workers, minimal legal protection and oppression of labour unions.[xciii] Given these conditions, the threat of Burma becoming a new Bangladesh, with a growth path that simply leads to a production cluster with thousands of sweatshops, is very real.[xciv] The impact of global supply chains sourcing from countries in Asia also creates challenges for the promotion and protection of the rights of workers. The global supply chain contains so many links that it makes CSR essentially meaningless. Standards adopted by buyers do not penetrate to the contractors, agents, employers and workers on the ground, meaning there is little real change at the factory level. Accountability is also a problem: one link in the chain can put the blame for exploitation of workers on another link in the chain and say that the issue is not their responsibility. Supply chains are deliberately structured to avoid or pass on responsibility. This dispersed responsibility makes it extremely difficult for workers or workers' rights advocates to file complaints, and there are often no real mechanisms for redress.

As far as garment manufacturing goes, however, the ILO predicts that the end of cheap garments is near: despite rising wages, material costs and energy costs, the consumer price of garments has not risen over the last decade, putting more and more pressure on manufacturers to keep costs low. Increasing industrial action in Cambodia and Bangladesh suggests that the pressure on workers in this industry is also reaching a peak, and failure to address the widespread problems created by poor working conditions and low wages will only lead to continued unrest and instability.[xcv] The fact that Burma is entering this market at a "watershed" time in the global garment industry is an opportunity to better manage the way in which growth and competitiveness can be reconciled with better social and environmental performance and human resource development, as well as avoiding competing on cost through improving added value in country. In the meantime, David Rees, program director with the ILO's Better Work program argues that, in order to address labour abuse in the supply chain, corporations must truly commit to reform by linking workers' rights to value within their business, and that businesses must push governments to improve legislation and governance in order to enforce international labour standards.

5 – Responsible investment initiatives

Overall, the governments of major investing countries which had sanctions in place against Burma[xcvi] have stressed the importance of investing 'responsibly', taking better account of social, environmental, ethical and governance considerations, and highlighting the benefits of this investment for Burma through inclusive development, incorporating low-income populations into corporate value chains, providing access to goods, services and livelihood opportunities. The responsible investment approach favoured by Western governments and investors, and advocated by the Burmese government,[xcvii] is arguably having an effect on companies already operating in Burma: Chinese corporations are starting to promote CSR activities and local businesses are aware that there is a need to understand and apply international standards, although they still lack capacity and expertise to undertake proper human rights due diligence.[xcviii] There is now an expectation across the board that all corporations investing in Burma earn a 'social licence' to operate.[xcix] On the other hand, it is clear that there are there are investors who deliberately choose to go to countries or areas where there are very few labour standards and a very low wage labour force; who don't invest in safe working conditions; and who remain untouched by scrutiny. Neither international regulatory frameworks nor responsible investment initiatives appear to provide sufficient means to address this.

Chinese investment in the Mekong region has been characterised as a "state-led, growth-at-any-cost development model", which has led to a backlash in Burma against large scale Chinese-backed development projects, perceived as the exploitation of Burmese natural resources purely for China's benefit.[c] In response to community mistrust as well as increased competition from Western investors, Chinese corporations have increasingly been promoting their CSR activities in Burma.[ci] Similarly, Thai businesses have been warned that "as the Chinese experience illustrates, investing in Myanmar is no longer just about bringing in money and knowhow."[cii] For example, the China National Petroleum Corporation (CNPC), which is jointly operating a gas pipeline running from western Burma to southwest China with the Myanma Oil and Gas Enterprise (MOGE), has stated that it will spend $20 million on communities living in the project area and along the pipeline's route.[ciii] The Chinese mining company Wanbao Mining has promised more than $1 million a year in social investments in villages around the site of the Letpadaung mine, and will also funnel 2% of profits toward CSR projects once the mine is in operation.[civ] Allocating funds to community projects will not be effective, however, unless there is genuine engagement with stakeholders and people living in affected areas, as illustrated by the issue with unstaffed schools built with Chinese CSR funds.[cv] In this regard, the Director of the Myanmar Centre for Responsible Business has called for longer and more transparent consultations by Chinese businesses to ensure that communities have some input in decision making on how CSR initiatives are carried out.[cvi] Thorough due diligence and genuine consultations can also help to promote respect and better cultural understanding between employers and workers. Increased consumer awareness of which companies respect human rights and labour standards though networking between supplier and consumer countries can also help to put pressure on governments and investors.

Research carried out by CSR Asia has indicated differences between regional understandings of CSR: in the Western context it is understood as good for business and creating impacts on the ground, whereas in Burma, prevalent Buddhist beliefs and merit-making culture mean that CSR is seen more as philanthropy.[cvii] Western governments have called on investors in Burma to abide by international corporate human rights standards, including the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises.[cviii] Respect for human rights under these international principles goes beyond avoiding actions that infringe on human rights: corporations must also take positive steps to address adverse human rights impacts with which they are involved, by undertaking human rights due diligence, conducting risk and impact assessments, setting internal management processes and targets with incentives to ensure compliance. For this reason, commentators have called for CSR in Burma to be aligned to international norms rather than self-promoting,[cix] noting that, given the high level of corruption and poor human rights record, "self-regulating company codes of conduct would be woefully inadequate".[cx]

The responsible investment approach in Burma carries with it the risk of being perceived as an externally imposed agenda and at least one analysis argues that Burma should not be made to adhere to higher standards than other countries in the region[cxi] as this may slow down or discourage Western investors. There is also risk of unintentionally creating a 'dual economy' where different sectors of the business community operate differently when it comes to human rights and labour standards implementation.[cxii] For example, at the most recent meeting of the OECD Global Forum on Responsible Business Conduct, the Burmese government indicated that it is unlikely to insist on OECD standards, including the Guidelines for Multinational Enterprises, to be used by companies from non-OECD countries operating in Burma.[cxiii]

Experience has shown that CSR initiatives implemented without safeguards, legislative reform and incentives regarding trade and investment do not lead to any improvement of human rights on the ground. This was tragically illustrated in Bangladesh where the Rana Plaza garment factory collapse in 2013 caused thousands of deaths. Conditions are unlikely to change in Bangladesh and Cambodia without any political will and it remains to be seen whether reforms in Burma will lead to real change so that the conditions for responsible investment from foreign investors can be realised.[cxiv]

6 - Conclusion

Investment in Burma has the potential to vastly improve the standards of living of Burmese workers and other workers in the region as growth, trade and improved regional cooperation reach the developing economies at the Bottom of ASEAN. However, there is a real risk that investment without proper safeguards for labour standards and rights at work, as well as other social and environmental considerations will simply result in widespread exploitation of Burmese workers, both inside and outside Burma, as well as Burma's natural resources. This will likely lead to further displacement of communities, exacerbating conflict and continued abuses of human rights. Both the government and investors are conscious of this risk and have called for responsible investment in Burma leading to inclusive, sustainable development. International and national regulatory frameworks and other CSR initiatives will not have any impact on the ground unless there is genuine commitment to reform by both the government and investors. There must also be a concerted effort to protect workers from unscrupulous investors whose businesses rely on low wage labour and treat workers as a liability to contain, rather than an asset to develop.

MMN seeks to strengthen solidarity among labour rights and migrants' rights movements in Burma and across the Mekong region to collectively monitor the situation that both local and migrant workers face, and work together in calling for improved labour protection and fairer wages for all workers. Ultimately, MMN is committed to contributing in ensuring that the workers of the Mekong region can enjoy better labour standards and an improved quality of life as a result of the economic growth expected inside Burma.

7 – Recommendations

7.1 Recommendations for governments

1. Ensure proper mechanisms in all ASEAN countries to protect the rights of all workers, including migrant workers and workers in informal sectors;

2. Improve and standardize working conditions for ASEAN countries (ie. OHS regulations, working hours, wages);

3. Expand coverage of social security to include all workers, including informal sectors and migrant workers, and work towards portable social security systems;

4. Respect the workers' legitimate right for freedom of expression and assembly, and the right to strike;

5. Uphold workers' right to justice by reforming judicial systems and increasing transparency.

7.2 Recommendations for civil society

1. Monitor labour standards and wages paid by (foreign) investors; in SEZs and industrial zones;

2. Lobby governments to improve the regulatory environment and labour inspection processes to ensure better oversight of working conditions in all workplaces;

3. Assist workers to bring complaints regarding breaches of human rights and labour rights to the appropriate complaints body, if any;

4. Urge ASEAN governments to respect the workers' legitimate right for freedom of expression and assembly, and the right to strike;

5. Coordinate with other CSOs and labour unions across ASEAN to promote a regional system to protect workers' right to unionization and collective bargaining; and consider forming an ASEAN workers' union.

7.3 Recommendations for investors

1. Adhere to international standards on corporate respect for human rights (UN Guiding Principles on Business and Human Rights) in addition to voluntary codes of conducts and/or business ethical principles;

2. Ensure that consultations with stakeholders are genuine, inclusive and transparent (i.e. engaging with government, civil society and local communities including women, children, the disabled and minority populations);

3. Ensure that workers throughout the supply chain are paid a living wage (above minimum wage, if necessary);

4. Encourage governments to improve legislation and governance in order to enforce international labour standards;

5. Commit to linking workers' rights to value within their business.

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