



Vicky Bowman: 'What's important is to ensure a level playing field'

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When Vicky Bowman became director of the Myanmar Centre for Responsible Business in October 2013 she was hardly a stranger to the country. The former diplomat had served at the British embassy as a second secretary from 1990 to 1993 and as ambassador from 2002 to 2006. After working as director of global and economic issues at the British Foreign and Commonwealth Office from 2008 to 2011, Ms Bowman joined the Anglo-Australian metals and mining giant Rio Tinto, where she was responsible for implementing the company's commitment to the UN Guiding Principles on Business and Human Rights. Fluent in Myanmar, she is married to well-known Myanmar artist Htein Lin. Ms Bowman spoke to *Frontier's* Peter Janssen.

MCRB has been operating for more than two years. What do you regard as its main achievements?

We conducted some detailed studies on several sectors – oil and gas, tourism and ICT – and highlighted the key challenges and issues for businesses that they need to address to be more responsible. We've produced a comprehensive picture of the policy, regulatory and societal challenges in these sectors, and identified which international standards and good practices are relevant, something that's not been done before.

We're finding companies – and not just western ones, but Chinese and other Asian companies – are now coming to us, and using us as a sounding board and a source of information about how to identify risks and engage with their stakeholders. We've helped to do that on the Thilawa SEZ, where we have brought together the government, the companies, the affected community members, NGOs, and JICA [Japan International Cooperation Agency] to have a constructive dialogue focused on finding solutions to grievances.

How receptive was the U Thein Sein government to advice from the MCRB?



They have been receptive, particularly if you can offer workable solutions and at the right time. Key government officials are busy people. They are not very interested in listening to NGOs who are just telling them what's wrong. They are more receptive to realistic advice to help them get it right. We've identified ways in which the government could require business to be more responsible, such as on how to achieve more effective and consistent implementation of requirements for environmental impact assessments. We've suggested textual changes to the oil and gas production sharing contracts, the draft Investment Law and Companies Law, and on the telecoms master plan – and the government has taken these up.

They also participated in the multi-stakeholder discussions we've arranged on the oil and gas and tourism sectors around issues like EIA [environment impact assessments], community engagement and grievance mechanisms, which in some cases have brought them into the same room with business and civil society to discuss these issues openly for the first time.

U Thein Sein's administration was credited for fair and transparent bidding processes for the telecommunications and foreign banking licences. Has that set a template for future bids?

Yes, we believe that these bids were well regarded by the industry, which is a good test. However this shouldn't be viewed as a question of fairness regarding foreign participation. It's just as important that these processes are fair for Myanmar companies.



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One aspect which differentiated the telecoms and banking rounds was that the government made effective use of international consultants. This allowed them to outsource the detailed legwork to people who had done it before and could therefore do it quickly and effectively. It ensured that the process met current international good practice and also gave bidders confidence in the integrity of the process.

Another factor – at least in the telecoms round – was that the criteria on which the bids would be scored were published. These seemed to be both exhaustive and rational for what the country was trying to achieve, and included aspects related to responsible business behaviour, such as human resource management and social investment.

What could have been done better in the last oil and gas concession bids?

The scoring criteria were not public. As far as we are aware, no weighting was given to the company track record for responsible business conduct in areas of real importance to the oil and gas industry such as safety, community engagement and environmental protection.

The fact that all the concessions were tendered at once meant that the government's capacity to handle the subsequent negotiations was overwhelmed. It risked pushing up costs as companies all start the same activities at the same time. That said, the government was, probably by luck, able to capture both the excitement about 'the Myanmar frontier' and the fact that in 2013 the price of oil was more than three times what it is today. If they were to tender anything today, I doubt they would get many bidders.

Another problem was that we did not see any intra-governmental consultation by MOGE [Myanmar Oil and Gas Enterprise] on the draft model Production Sharing Contract. For example, the EIA requirements in the PSC were not consistent in terms of timing and approach with what Myanmar Investment Commission was asking for, or what the Ministry of [Environmental Conservation and Forestry, MOECF] wants. This left companies confused about EIA requirements. Nor did MOGE seek feedback from external stakeholders, including companies on the model contract before putting it in place.

Consequently a lot of time was spent unnecessarily after the tender negotiating and clarifying points with companies, which in some cases is likely to have led to divergent contract terms.

The U Thein Sein government has approved EIA procedures for new projects. What about enforcement? And can they apply to existing projects?

There are two aspects to enforcement. One is enforcement of the EIA process itself, which includes ensuring that EIAs are comprehensive and relevant, consider all material impacts, and propose adequate mitigation measures in the environment management plans [EMP]. It also means enforcement of the requirements in the procedures around consultation. This needs to be genuine, not tickbox. The procedures require disclosure of the EIA, i.e. publication, which needs to be done by companies 15 days after they send the completed EIA to the ministry, as well as disclosure by the ministry itself, and the seeking of comments.



If these assessments are disclosed, and open to public scrutiny and comment, that might help to drive a better standard. Some of the EIAs I have seen which have been done by both Myanmar and international consultancies – but generally not made public – are completely inadequate.

The ministry needs to have the capacity to respond to them, but stakeholders need to also have the capacity and commitment to read them and comment. Sometimes I wonder if I am the only person outside the company and government who has read the Letpadaung EIA, which incidentally has been made public for over a year, and is actually not a bad EIA, although it leaves certain commitments open-ended and in need of more detailed management plans.

The second aspect is enforcement of the commitments in the environmental management plan. There is very weak capacity in MOECF both nationally and sub-nationally to do this. The best way to fix that is for Nay Pyi Taw to provide the human resources and political backing, and for donor governments to give technical support to their regulatory function.

The EMP also allows the government the opportunity to introduce international standards of environmental and social protection even where such requirements do not yet exist in Myanmar law. But they need to be introduced in a non-discriminatory way. The government needs to require the same standards of all projects in the sector, and not just foreign projects, or not just projects from 2016 onwards.



Vicky Bowman, director of the Myanmar Centre for Responsible Business. (Maro Verli / Frontier)

Should the next government reassess contracts made under the junta, such as those for oil and gas pipelines?

What's needed now is transparency as to what those contracts say, and a chance for experts, and the public to express a view. Do these projects meet the higher standards of environmental and social protection that Myanmar now expects? Are they a good deal for Myanmar in 2016? Here you have to consider not just the Myanmar situation but the global recession. Could the deals which have been signed be renegotiated on the basis of mutual agreement?

The successful renegotiation of the Letpadaung agreement shows that amending contracts is viable if both sides see the need. Some of these controversial projects – such as some of the Salween dams – have not yet even been permitted and 'No Go' should be considered by government as one alternative.

National League for Democracy chair Daw Aung San Suu Kyi has repeatedly called for "responsible" investment in Myanmar. Has the NLD been consulting the MCRB as it prepares to assume power?

We are still looking forward to seeing more details of new government's plans, to flesh out the mentions of responsible investment and international standards in the manifesto. What's important is to ensure a level playing field. Investment by Myanmar companies needs to be subject to the same requirements as that by foreign companies.

What are you looking for in the amendments to the Foreign Investment Law?



A level playing field concerning enforcement is, of course, essential. If a company does not see its competitors being required to apply the law, or certain standards, it will be reluctant to do so.

The old government had plans to merge and simplify the Foreign Investment Law and Citizens Investment Law, partly in response to recommendations from the OECD [Organisation for Economic Co-operation and Development]. The draft law proposes that these processes be simplified so that companies don't need to apply for a Myanmar Investment Commission permit simply to get permission to take out a lease for more than a year. Often that's the only thing they want, not the tax holiday that comes as automatic.

Assuming that this plan to merge the two laws is carried over to the next government, what MCRB have been recommending, inter-alia, is that the government require companies who do still receive a permit from the MIC should be required to publish an annual sustainability report addressing how the company has invested responsibly in Myanmar, and establish an effective grievance mechanism designed in collaboration with affected stakeholders.

Can responsible companies do business with cronies?

Firstly, it's important to recognise that not all "cronies" are included on the US sanctions or Specially Designated Nationals (SDN) list. Companies need to do some very careful due diligence on all their potential partners, not just those who have been on lists. The US sanctions list puts a clear legal block on US companies transacting with those individuals, and by extension most other companies who have US operations, or at least that's how many cautious compliance officers judge it.

But not everyone with questionable connections to drug warlords is an SDN, as the recent Global Witness report [on the jade trade] demonstrated, but that doesn't make it wise to partner with them.

What MCRB has seen from our Pwint Thit Sa/Transparency in Myanmar Enterprises (TiME) report is that those companies and individuals who are on the SDN list exhibit a wide range of commitment and performance when it comes to responsible business and transparent behaviour.

At one end, you have Max Myanmar, which has a full suite of corporate governance policies put in place with the advice of globally recognised consultancies, is introducing financial reporting according to IFRS, the global standard, has remedied past grievances on land, and withdrawn from sectors and projects which are high risk for human rights. And the other end you have Zaykabar and Myanmar Economic Corporation which do not yet make any information about their activities publicly available, and which are the subject of a number of unsettled grievances, particularly concerning land.

The Htoo Group is sponsoring parliamentary training for NLD MPs-elect. Is that a worry for MCRB?

From reports in the media, the NLD has been provided with free hotel facilities for its MPs training by the Htoo Group and by the Yuzana Group, coincidentally both on the US SDN list. The issue with such political contributions in kind is that if a company is to be considered responsible – the question MCRB focusses on – it needs to be transparent about those donations, and publish the details. That's what both Yuzana and Htoo should do, and neither currently does. That way the media and the wider public can receive information about a company's relationship with a political party and draw their own conclusions.

The think tank International IDEA have a database which details political finance regulations globally: only 22 percent of countries ban corporate donations to political parties. So it is a part of our political life. But there is a fine line between political donations and corruption, depending on the circumstances of the donation. That's why companies either subject to a legal ban on bribery – bizarrely not yet the case here in Myanmar – or with a corporate commitment should always review such donations at the highest level and publish the details.

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