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The Role of Corporate Responsibility in Transitioning Countries

A Case Study on Workplace Inequality in Myanmar

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TABLE OF CONTENTS

SUMMARY	1
ACKNOWLEDGEMENTS	2
ABBREVIATIONS.....	3
I. INTRODUCTION	5
A. STATEMENT OF THE PROBLEM.....	5
B. SIGNIFICANCE OF THE STUDY.....	8
C. RESEARCH QUESTIONS	9
D. METHODOLOGY	9
1. Empirical study	10
E. DELIMITATIONS.....	11
F. STRUCTURE.....	12
II. MYANMAR – COUNTRY IN TRANSITION	13
A. THE SOCIO-ECONOMIC CONTEXT BEFORE 2011.....	14
B. 2011 – A TURNING POINT?.....	16
C. EQUALITY AND NON-DISCRIMINATION AT WORK – THE NATIONAL LEGAL FRAMEWORK	18
D. FROM LAWS TO REALITY	22
E. DOING BUSINESS IN MYANMAR.....	24
1. Responsible investments in Myanmar.....	26
2. Foreign Investment Law.....	28
F. CHAPTER SUMMARY	30
III. WORKPLACE EQUALITY AND THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS	31
A. INTERNATIONAL STANDARDS – PROHIBITION OF WORKPLACE DISCRIMINATION	31
B. THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS	34
1. Development of Corporate Responsibility	35
2. Regulatory framework.....	37
3. Responsibility to Respect according to UN Guiding Principles	38
4. Responsibility to Respect - a tool for Development.....	40
C. THEORETICAL CONSIDERATIONS OF APPLYING CORPORATE RESPONSIBILITY TO RESPECT TO TACKLE WORKPLACE DISCRIMINATION IN MYANMAR	42
D. CHAPTER SUMMARY	46
IV. WORKPLACE DISCRIMINATION IN MYANMAR – EMPIRICAL STUDY AND LITERATURE REVIEW.....	47
A. OVERVIEW.....	47
B. THE MOST VULNERABLE GROUPS AT THE WORKPLACE.....	50
1. Religious discrimination	51
2. Gender discrimination	55
3. Discrimination based on disability	57
4. Other types of discrimination at the workplace in Myanmar	59
a) <i>Ethnic discrimination.....</i>	<i>59</i>
b) <i>Anti-union discrimination</i>	<i>60</i>
c) <i>HIV/AIDS</i>	<i>61</i>
d) <i>LGBT.....</i>	<i>62</i>

C. RESPONSIBILITY TO RESPECT COMPLIANCE AND GOOD BUSINESS PRACTICES IN MYANMAR	62
D. CHAPTER SUMMERY	67
V. ANALYSIS OF THE FINDINGS.....	68
A. THE IMPACT OF THE UN GUIDING PRINCIPLES ON WORKPLACE INEQUALITY IN MYANMAR	69
B. THE ROLE OF THE MYANMAR GOVERNMENT AND OTHER STAKEHOLDERS IN ELIMINATING WORKPLACE DISCRIMINATION	73
1. Government of Myanmar	73
2. Other stakeholders	75
C. POTENTIAL FOR THE DEVELOPMENT OF CORPORATE RESPONSIBILITY IN MYANMAR.....	77
D. CONTRIBUTIONS OF CORPORATE RESPONSIBILITY TO DEVELOPMENT IN MYANMAR.....	78
VI. CONCLUSION.....	82
BIBLIOGRAPHY	85

SUMMARY

What is the importance of responsible business conduct and, in particular, corporate responsibility to respect human rights in transitioning countries with fragile legal, social and economic background?

On March 25, 2015, the United Nations Human Rights Council, in its resolution on the human rights situation in Myanmar, called upon all business enterprises ‘to meet their responsibility to respect human rights in accordance with the Guiding Principles on Business and Human Rights’.

The thesis examines the contributions of corporate responsibility to respect human rights —outlined in the United Nations Guiding Principles on Business and Human Rights— to eradication of the problem of workplace discrimination in Myanmar, a developing country in Southeast Asia undergoing a transition from an authoritative military rule to a civil democratic government.

Based on the analysis of the national regulatory framework, the international human rights instruments, the business, political and social environment in Myanmar, the human rights record and the evidence derived from an empirical study into workplace discrimination, the thesis examines whether the corporate responsibility to respect human rights may be an effective way to tackle workplace inequalities in the country, and whether it can contribute to the development in Myanmar.

The study concludes that discrimination is not only a problem that exists at the workplace but is deeply embedded in the societal structures of Myanmar people, making the implementation of UN Guiding Principles very difficult even for the few businesses that nowadays wish to address the problem. Even more, the illustrated reality, along Myanmar’s poor human rights record, magnifies the significance of corporate responsibility to respect human rights in the country. The thesis upholds the view that eradication of workplace discrimination is a necessary precondition for social and economic development in the country, and that the UN Guiding Principles is the main tool for achieving this goal.

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ABBREVIATIONS

ADB	Asian Development Bank
AEC	ASEAN Economic Community
APHR	ASEAN Parliamentarians for Human Rights
ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
CV	Curriculum Vitae
DIHR	Danish Institute for Human Rights
EU	European Union
FDI	Foreign Direct Investment
FESR	Framework for Economic and Social Reforms
FGLLID	Factories and General Labour Law Inspection Department
GDP	Gross Domestic Product
GSP	Generalized Scheme of Preferences
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ID	Identification Card
ILO	International Labour Organization
KBZ	The Kanbawza (KBZ) Group of Companies
MCDV	Myanmar Comprehensive development Vision
MCRB	Myanmar Centre for Responsible Business
MEC	Myanmar Economic Corporation
MILI	Myanmar Independent Living Initiative
NCDP	National Comprehensive Development Plan
NGO	Non-governmental Organization
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights

RtR	Corporate Responsibility to Respect Human Rights
SEZs	Special Economic Zones
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNRISD	United Nations Research Institute for Social Development
US	United States of America
USAID	The United States Agency for International Development
USD	United States Dollar

I. INTRODUCTION

A. Statement of the problem

Myanmar is a developing country in Southeast Asia undergoing transition from an authoritative military rule, which lasted until 2011 in the country, to a civil democratic government. The transition translates into an unstable political situation, ineffective governmental institutions, out-dated legislation and the first steps towards creating a ground for human rights protection after fifty years of repression.

Numerous reforms towards rule of law, democracy and human rights protection were initiated in Myanmar, which attracted foreign investments, including western enterprises. Currently, Myanmar has the fastest growing economy in Southeast Asia with foreign enterprises heavily investing in the country, as the region is rich in natural resources and cheap labour.

Businesses are the main source of economic development. Foreign investments have considerably contributed to the economic growth in the last couple of years in Myanmar. But economic growth alone cannot guarantee development. According to the World Bank analyses, despite the economic growth in the country, 37.5 per cent of the population is still living below the poverty line.¹

The Declaration on the Right to Development defines development as

A comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.²

It further states, that the right to development is

¹ The World Bank, 'Myanmar Overview', *The World Bank* [website], October 2014, <<http://www.worldbank.org/en/country/myanmar/overview>>, accessed 26 May 2015.

² United Nations General Assembly, *Declaration on the Right to Development*, resolution A/RES/41/128, United Nations, 4 December 1989, <<http://www.un.org/documents/ga/res/41/a41r128.htm>>, accessed 26 May 2015.

An inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.³

Therefore, development shall be inclusive and may only be achieved through protection and promotion of human rights of the population, paying particular attention to vulnerable groups. Economic growth does not *per se* translate into development. 'Economic growth is a means, not the goal, of development' and shall be achieved 'in a manner consistent with human rights principles'.⁴

Even though nowadays there are a lot of businesses in Myanmar, which take advantage of the transition period and do not consider human rights or development of the country, it still shall be admitted that business contributions to economic and social development, are indispensable in the long term. The question is then, how do economic growth, development and human rights interact and affect each other in this country?

As stated, socio-economic development can only be achieved if it encompasses the well-being of the entire population, including vulnerable groups. Thus, promoting equality and non-discrimination is essential for achieving development.

As it will be illustrated further in the thesis, discrimination is a systemic problem in Myanmar and is deeply embedded in the Myanmar society. If one looks back in history, there has always been repression and exclusion of vulnerable groups in the country. Discrimination is 'institutionalised in social patterns, institutional structures and legal constructs that reflect and reproduce discriminatory practices and outcomes'. The ILO defines this type of discrimination as structural discrimination.⁵

As it will be illustrated in the thesis, the basis of the problem is the national legal framework on equality and non-discrimination, which is incommensurate with international human rights standards. No comprehensive labour code exists in the

³ *Ibid.*, Article 1.

⁴ Office of the High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, United Nations, New York and Geneva, 2006, p.10, <<http://www.ohchr.org/Documents/Publications/FAQen.pdf>>, accessed 26 May 2015.

⁵ International Labour Organization, 'Equality at Work: The Continuing Challenge', *Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 100th Session, 2011, p. 1, <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_166583.pdf>, accessed 26 May 2015. [hereinafter: ILO, Equality at Work]

country, and labour standards are scattered throughout numerous laws of the colonial era. Out of the main international instruments on equality and non-discrimination, Myanmar has acceded to only two – the Convention on Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. Even the standards set in those two Conventions are not yet incorporated into the national laws of Myanmar.

Evidently, discrimination is a big problem in the private sector as well. Empirical study and the desk-research conducted for the thesis will illustrate that certain religious groups, ethnic groups and persons with disabilities are excluded from job opportunities; trade union leaders are regularly dismissed; women are not promoted to high level positions and there are still prejudices on their role in the society and workplace.

The thesis defines the current regulatory framework and business practices with regard to workplace discrimination and attempts to (1) illustrate the possible impacts that the adoption of the responsibility to respect human rights (*hereinafter* RtR) by companies operating in Myanmar have for the elimination of workplace discrimination, (2) examine the potential of expansion of the RtR within local businesses, and its possible contributions toward socio-economic development.

The thesis will also explain that complying with the RtR for the elimination of discrimination is not only beneficial for the society and the country, but it is beneficial for businesses as well. Among numerous positive effects, non-discrimination efforts can cut costs and increase revenue in the company,⁶ which is usually a principal concern for businesses.

In order to address the workplace discrimination in Myanmar, with transitioning government, poor enforcement mechanisms and out-dated legislation, the present thesis proposes to enhance the role of businesses in the protection of human rights by promoting responsible business conduct. The paper highlights that strengthened regulatory framework and the unions' representation of employees will lead to a mature industrial relations system. The thesis upholds the view that bringing equality to the

⁶ International Labour Organization, 'Promoting Equity - Ethnic diversity in the workplace: A step-by-step guide', *International Labour Organization* [website], 27 January 2015, <<http://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/lang--en/index.htm>>, accessed 26 May 2015.

workplace will significantly benefit the economic and social development of the country.⁷

As will be outlined in the thesis, the importance of corporate responsibility to respect human rights, for the promotion of socio-economic development has been confirmed by statements of international institutions such as European Union (*hereinafter* EU), United Nations (*hereinafter* UN), International Labour Organization (*hereinafter* ILO) and the Association of Southeast Asian Nations (*hereinafter* ASEAN).

One of the necessities for the development of the RtR is a result of the failure of the national regulatory system.⁸ And this is particularly true for present day Myanmar.

The contributions of Corporate Responsibility to equality, and consequently to development, might be understood in terms of ‘minimising deprivation, enhancing equality of opportunity, correcting gross imbalances in the distribution of income, wealth and power, and social justice’.⁹ Greater equality should be set as both a goal in itself and a means to economic and social development.¹⁰

Based on the analysis of the national regulatory framework, international human rights instruments, the business, political and social environment in Myanmar, and evidence derived from an empirical study into workplace discrimination, the thesis examines whether the corporate responsibility to respect human rights, defined by John Ruggie in the United Nations Guiding Principles on Business and Human Rights (*hereinafter* UNGPs), may be an effective way tackle workplace discrimination in Myanmar, and whether it can contribute to the development of the country.

B. Significance of the study

The study gives a practical overview of the problem of workplace discrimination in Myanmar and explores the impacts and potential for the evolving concept of corporate

⁷ ILO, Equality at Work, *supra* note 5.

⁸ D. Aguirre, ‘Micro Level: Corporate Responsibility’, *The Human Right to Development in a Globalised World*, Ashgate Publishing, 2008, p. 187.

⁹ P. Utting, ‘CSR and Equality’, *Third World Quarterly*, vol. 28, no. 4, June 2007, 697-712, p.697.

¹⁰ E. Anderson, T. O’Neil, ‘A New Equity Agenda? Reflections on the 2006 World Development Report’, *the 2005 Human Development Report and the 2005 Report on the World Social Situation*, Working Paper 265, London, 2006 cited in P. Utting, ‘CSR and Equality’, *Third World Quarterly*, vol. 28, no. 4, June 2007, 697-712, p.698.

responsibility to eradicate this problem and further socio-economic development in the country.

The paper provides first hand material from field research conducted in Myanmar, featuring opinions of different key stakeholders on workplace inequality and the development of the corporate responsibility concept in the country.

The study has also revealed that there is very little research done on workplace discrimination in Myanmar, therefore the present paper may draw the attention of international human rights organisations and businesses to this crucial human rights problem in the country.

C. Research questions

Based on thorough analyses of the empirical material, international human rights standards, Myanmar national legislation and literature review relevant to the topic, the thesis will address the following questions:

1. What are legal obligations that businesses operating in Myanmar have under national laws of Myanmar, with regard to ensuring equality and combating discrimination at the workplace and are those obligations commensurate with the international human rights standards on the corporate responsibility to respect HR as defined in the UN Guiding Principles on Business and Human Rights?
2. What are the implementation dynamics of the UNGPs and its potential to increase the protection of human rights and further economic and social development in Myanmar?

D. Methodology

The thesis is based on the micro-level analysis of the responsibility to respect human rights, while defining why is it so necessary in present day Myanmar. The thesis does not exclude macro-level analyses, but contrariwise, it supports the view that it is a

principal and essential approach in the long-term for both human rights protection and socio-economic development. The research is substantiated with qualitative data, in particular, an empirical study of the workplace discrimination in Myanmar and desk research.

The thesis begins with theoretical analysis, defining the regulatory framework, while empirical data and a review of relevant literature refine proposed theoretical assumptions. The legal sources are accordingly selected and applied to the specific case studies.

1. Empirical study

For the purposes of the present thesis, in February 2015, I conducted field research in Yangon, Myanmar. I have carried out interviews with various stakeholders on the issue of workplace discrimination in Myanmar. The interviews lasted about 60-70 minutes. For the purposes of extracting data, I recorded interviews electronically where possible, or took interview notes where it was not possible to record.

The stakeholders interviewed included: three representatives of Myanmar National Human Rights Commission; the Founder of Myanmar Living Initiative (an NGO working on the rights of persons with disability); the Director of the Myanmar Centre for Responsible Business; Chief of Party, Tetra Tech Inc. (working on USAID funded Rule of Law project in Myanmar); an ILO Liaison Officer in Yangon; an ILO Chief Technical Advisor (Fishery & Responsible Business); the Manager of one of the departments at Myanmar Economic Corporation, a Representative of Myanmar Chamber of Commerce; the Executive Director of Smile Education & Development Foundation (an NGO working on the rights of Muslims in Myanmar); the Director of a local SME – ‘Better Life Programme’; the Senior General Manager of the Human Resource Development Department at KBZ Bank, KBZ Group; the Project Director, Transformations Office, KBZ Bank, KBZ Group; the Managing Director of the International Banking Division and Head of Transformations Office, KBZ Bank, KBZ Group; an Employee at Ooredoo; Employees of Dagon Glory (a Local Recruitment Agency); the Chairman of Action Labour Rights (a local NGO working on labour rights); a Representative of Myanmar Business Executives Association.

The interviews were semi-structured with mainly open-ended questions.

I also had a conversation with Professors from Mandalay University, local people and expats living in Yangon on workplace inequalities in Myanmar.

The field research and interviews were conducted in accordance to the *Regulation on Ethical Issues at Lund University*.¹¹

E. Delimitations

For the purpose of the present thesis, the paper uses the following terminology interchangeably: ‘responsible business conduct’ and ‘corporate responsibility to respect’ in order to depict the corporate responsibility to respect human rights (RtR) defined by John Ruggie in UNGPs. The paper, where possible, attempts to avoid mentioning the term ‘corporate social responsibility’, due to its controversy and numerous definitions proposed by different institutions. In places where the term ‘CSR’ is still mentioned, the paper presupposes the definition adopted by the European Commission. The paper bases its findings only on the RtR.

The thesis, at the same time, does not enter the debate on the credibility or efficiency of the UNGPs in international law.

Neither does this thesis analyse theories on equality, as it is not relevant for the present study and falls outside the scope of the present research.

Further, it shall be outlined, that the empirical study on workplace discrimination conducted for the purpose of the present thesis, is limited in time, place and the number of interviewed stakeholders, therefore it cannot provide a comprehensive overview of the problem.

The thesis is not meant to provide deep analysis of the right to development within the framework of the present study. The paper relies on the statements of international organisations and financial institutions on the role of responsible business conduct for achieving social and economic development in the country.

¹¹ Lund University, ‘Regulation on Ethical Issues at Lund University’, *Lund University* [website], <http://www5.lu.se/upload/RULESandREGULATIONS/Ethical_issues_atLundUniversity_Notes_for_guidance.pdf>, accessed 26 May 2015.

The thesis uses the following names interchangeably: ‘Myanmar’ and ‘Burma’. The reason is that, number of international organizations and countries still refer to Myanmar with its old name ‘Burma’, and intentionally avoid using the new name, which was given to the country by the military government in 1989. Therefore while quoting their reports, the name ‘Burma’ will be used.

F. Structure

Chapter I of the thesis gives an overview of the problem and the approaches taken to address this problem. It provides information on methodology used for writing the present paper and delimitations of the study.

Chapter II outlines main aspects of legal, political and socio-economic situation in Myanmar. It provides an overview of national legal framework with regard to responsible investments, protection of labour rights and prohibition of discrimination, which serves as the bases for the further examination of workplace discrimination in the country.

Chapter III of the paper serves as the regulatory baseline for further analysis of the empirical study on Myanmar, as it defines the international human rights standards with regard to workplace discrimination, and provides an overview of the UNGPs RtR, defining its relevance for the protection of workplace equality in Myanmar.

Chapter IV presents findings of the field research conducted in Yangon, on workplace discrimination in the private sector of Myanmar and the responsible business conduct practices of local and foreign businesses. The section focuses on three main grounds of discrimination – religion, gender and disability. Findings on other types of workplace discrimination, such as ethnicity, HIV/AIDS, anti-union discrimination and discrimination against LGBT people are also shortly presented.

Chapter V analyses the findings presented in the previous chapters and examines the possible impacts of UNGPs on workplace inequalities today in Myanmar, the potential for development of RtR for the protection of human rights in the country, and argues whether UNGPs can lead to development in Myanmar.

The last section, *Chapter VI*, summarises and concludes the thesis, based on the presented findings and analysis.

II. MYANMAR – COUNTRY IN TRANSITION

Myanmar has already been under the focus of the international community for several decades. Isolated from the outside world for almost fifty years, the country had one of the poorest human rights records around the world.¹² Once one of the richest and prosperous countries in Southeast Asia, by the beginning of the twenty first century it had been ranked as one on the poorest countries in the world,¹³ following half a century of isolationism and military rule. 2011 has been a turning point for the country. The military junta seized the power of the civil government, naming current President Thein Sein as its successor.¹⁴ Even though Myanmar has made considerable steps towards democracy and the rule of law, recognising human rights standards and advocating for change, there has been little progress in implementing those commitments and reforms. While Myanmar may be making progress on paper, the actual results are yet to come.

The country is still politically and economically fragile and requires careful and thoughtful progress. Myanmar is undergoing a political and economic transition, while being prudently watched by the West and the whole international community.

Myanmar is not the only unique case of prolonged isolation, but it is distinct from other countries in many ways, including nationalism and persistent strive for independence of its people, fundamental Buddhism that reigns in the country and constant ethnic and religious conflicts throughout the region. Inequality that is enshrined in the social structures of the people of Myanmar is one of the essential problems that the country needs to overcome in order to achieve sustainable socio-economic development.

With current open borders, government incentives for foreign investments, and a fast growing economy, Myanmar is an attractive place for business. Given the massive inflow of foreign investments into the country, businesses need to be particularly

¹² J. Arendshorst, 'The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter', *Northwestern Journal of International Human Rights*, 2009, par. 10, <<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1095&context=njihr>>, accessed 26 May 2015.

¹³ International Fund for Agricultural Development, 'Rural poverty in the Republic of the Union of Myanmar', International Fund for Agricultural Development [website], <<http://www.ruralpovertyportal.org/country/home/tags/myanmar>>, accessed 26 May 2015.

¹⁴ The Associated Press, 'Burma names Thein Sein as president', *The Guardian*, Burma, 4 February 2011, <<http://www.theguardian.com/world/2011/feb/04/burma-names-thein-sein-president>>, accessed 26 May 2015.

cautious of the human rights situation, out-dated regulatory framework and ineffective enforcement mechanisms and the need to promote responsible business conduct in Myanmar.

The present chapter will provide an overview of the political and socio-economic context in the country before, and after, 2011. It will further define the national legislative framework on labour standards, equality and non-discrimination and give an overview of the human rights situation and business atmosphere in the country, in order to create the basis for further discussions.

A. The Socio-economic context before 2011

Myanmar, formerly known as Burma, had been a colony of Great Britain, as a province of the British India, for approximately 60 years, from 1886. In 1945, General Aung San, a national hero and the founder of the first Burmese Army, negotiated Burma's independence from colonial power.¹⁵

Myanmar's economy flourished during the colonial period, though following the independence there was a serious degradation. When in 1930 the GDP per capita was 902 USD, after independence and during military rule the economy collapsed and the GDP dropped to 396 USD.¹⁶

In 1987, General Ne Win, the ruler of Myanmar at that time, devalued seventy five per cent of Myanmar's currency, leaving only those banknotes valid, that were divisible by his favourite number – nine. He nationalised most of the industries and by devaluing local currency, forced out the remaining foreign businesses.¹⁷

Within the social context, Myanmar suffered degradation as well. The suppression of ethnic minorities intensified during the military rule. The conflict stemmed from colonial-era divergences on the establishment of the 'unified Burma' rather than

¹⁵ I. Holliday, *Burma Redux: Global Justice and the Quest for Political Reform in Myanmar*, New York: Columbia University Press, 2011, p. 38.

¹⁶ K. Wonik, *Rethinking Colonialism and the Origins of the Developmental State in East Asia*, 39 J. Contemp. Asia 382, 2009, p. 389.

¹⁷ R. E. Ryon, 'Foreigners in Burma: A Framework for Responsible Investment', *Pacific Rim Law & Policy Journal*, 23 Pac. Rim L. & Pol'y J. 831, June 2014, p. 837. [hereinafter: R. E. Ryon, *Foreigners in Burma*]

autonomous ethnic states.¹⁸ Consequently, the military had been targeting and suppressing ethnic minorities who were against the establishment of the union of Burma, through forced displacement, forced labour, deprivation of healthcare services and food.¹⁹ The ILO has expressed its concern on the specific targeting of ethnic minorities, stating that military targeting of civilians based solely on their ethnicity is ‘an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity’.²⁰

Burma has been isolated from the outside world due to its policies and internal governance that violated basic human rights in the country. The imprisonment of Aung San Suu Kyi, leader of the opposition party – National League of Democracy, in 1990, the violent suppression of the student uprising in 1988 have both contributed to the cutting of foreign aid programs, military assistance and imposition of sanctions on the country, which lasted until 2011. The EU has also imposed an arms embargo in 1990, suspended Generalised Scheme of Preferences (GSP) tariff preferences in 1997, and withdrew all assistance except humanitarian aid. The sanctions of the United States (*hereinafter* US) and the EU tightened up after the Saffron Revolution in 2007, when the military violently raided peaceful demonstrations of Buddhist monks.²¹

Isolation from Western States opened the doors to other foreign investors, from bordering States, principally China. China became Myanmar’s number one investor, with eighty-seven per cent of all foreign investments by 2011.²² Myanmar was deemed as the ‘client State’ of China for years.²³

¹⁸ B. Rogers, J. Woodrum, *Than Shwe: Unmasking Burma's Tyrant*, 2009, p.149.

¹⁹ J. Sarkin, M. Pietschmann, ‘Legitimate Humanitarian Intervention Under International Law in the Context of the Current Human Rights and Humanitarian Crisis in Burma/Myanmar’, *Hong Kong Law Journal*, 33 Hong Kong L. J. 371, 2003, 378-80.

²⁰ International Labour Organization, ‘Observation (CEACR) - adopted 1998, published 87th ILC session (1999)’, International Labour Organization [website], 1999, par. 538, <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2168399>, accessed 26 May 2015.

²¹ R. E. Ryon, *Foreigners in Burma*, *supra* note 17, p. 840-841.

²² I. Storey, *Southeast Asia and the Rise of China: The Search for Security*, New York: Routledge, 2011, p.161 cited in R. E. Ryon, ‘Foreigners in Burma: A Framework for Responsible Investment’, *Pacific Rim Law & Policy Journal*, 23 Pac. Rim L. & Pol’y J. 831, June 2014, p. 841.

²³ Strategic Study Institute, *Shaping China's Security Environment: The Role of the People's Liberation Army*, Andrew Scobell, Larry M. Wortzel eds., 2006, 298 cited in R. E. Ryon, ‘Foreigners in Burma: A Framework for Responsible Investment’, *Pacific Rim Law & Policy Journal*, 23 Pac. Rim L. & Pol’y J. 831, June 2014, p. 841.

The pressure of the international community, overwhelming dependence on China for investment and external assistance, an inability to join ASEAN, Cyclone Nargis, that left an estimated 140,000 dead and the much criticised 2010 elections, forced the military junta to give up its power and let democratic changes take place in Myanmar.²⁴

It is considered that the change was well planned and the generals approached the transition from a 'position of strength', choosing their timing and shaping the process to suit their own interests.²⁵ The reality is that despite civilian rule in the country, the military is still present in all three branches of the Government of Myanmar.

B. 2011 – a turning point?

The military junta gave up its power in 2011 and handed it over to the civilian government. Subsequently, Thein Sein, the former general, was elected as the President of Myanmar. New elections were held, and the National League for Democracy, led by the opposition leader Aung San Suu Kyi, won the majority of the seats in the Parliament. Despite numerous changes, Myanmar's armed forces still retain institutionalised power, especially on national security and in the Parliament of Myanmar, occupying 25 per cent of all seats.²⁶

The rapid changes in the ruling power, in the structure of the government and reforms that followed are certainly to be regarded as the positive transformations towards the rule of law and democracy in Myanmar; though it is hard to say whether these changes are sustainable.

According to Suu Kyi, the changes that took place until now were part of a 'seven point plan' by the former military government that was only intended to move the country enough to allow foreign investment, but not too far as to allow the army to lose effective

²⁴ G. Robinson, 'Myanmar's transition: Economics or Politics? Which came first and why it matters', *Economies in Transition, Transitions Forum*, Legatum Institute, November 2014, p. 5.

²⁵ M. Callahan, 'The Generals Loosen Their Grip', *Journal of Democracy*, Vol 23, No.4, *NED and The John Hopkins University Press*, October 2012, p.120.

²⁶ G. Robinson, *supra* note 24, p. 7.

control.²⁷ According to Suu Kyi, the reforms in Myanmar will continue at the slowest possible pace, so that military has the opportunity to retain control.²⁸

As to the social and economic development index in Myanmar, the country still holds low positions. In 2014, Myanmar was classified in the low human development category; with the development index value as low as 0.5.²⁹

Myanmar's economy is estimated to have grown by 8.3 per cent in the 2013/14 fiscal year, driven mainly by construction, manufacturing, and services.³⁰ Though according to the World Bank analyses, 37.5 per cent of the population is still living below the poverty line.³¹ Annual income per capita is 900 USD, the lowest among ASEAN countries.³² Social indicators are very low as well. 32 per cent of children under five suffer from malnutrition.³³ There is limited access to basic health and education services. Telecommunications and Internet access is also very limited. About 73 per cent of the population lacks access to electricity.³⁴

Myanmar became a member of ASEAN in 1997, though full pledged membership and consideration for the rotating chairmanship was not granted until after the political changes in 2011. In 2013 Myanmar hosted the Southeast Asian Games, chaired by ASEAN in 2014, and was included into the planned launch of the ASEAN Economic Community in late 2015. Inclusion of Myanmar in the ASEAN Economic Community (*hereinafter* AEC)³⁵, and the regional trade and economic cooperation agreement, will give Myanmar the opportunity for further economic development.³⁶

²⁷ E. Gerson, 'A Visit with Aung San Suu Kyi', *Huffington Post*, 2 May 2014, <http://www.huffingtonpost.com/elliott-gerson/a-visit-with-aung-san-su-_b_5256058.html>, accessed 26 May 2015; G. Robinson, *supra* note 24, p. 9.

²⁸ *Ibid.*

²⁹ United Nations Development Programme, *Human Development Report 2014*, 2014 <<http://hdr.undp.org/en/content/human-development-report-2014>>, accessed 26 May 2015.

³⁰ The World Bank, Myanmar Overview, *supra* note 1.

³¹ *Ibid.*

³² International Labour Office, 'Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)', *Review of the situation in Myanmar on issues relating to ILO activities, including forced labour, freedom of association, and the impact of foreign investment on decent working conditions*, International Labour Organization, 23rd Session, 3 GB.323/INS/4, Geneva, 12–27 March 2015, par. 38, <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_348466.pdf>, accessed 26 May 2015.

³³ The World Bank, Myanmar Overview, *supra* note 1.

³⁴ *Ibid.*

³⁵ 'The goal of ASEAN Economic Community is the regional economic integration by the end of 2015. The key characteristics for AEC are: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into

Myanmar has adopted numerous policies for improving the standard of living in the country, among others: a five-year Framework for Economic and Social Reforms (FESR), a 25-year National Comprehensive Development Plan (NCDP) and its accompanying Myanmar Comprehensive development Vision (MCDV), which were designed to envisage the goals and incorporate aspects set out in the FESR.³⁷

C. Equality and non-discrimination at work – the national legal framework

The national legal framework of Myanmar is mainly comprised of laws from the colonial era, with some of them dating back to the 19th century. Today, Myanmar has a common law legal system that draws on a combination of legislation, case law, and customary law.³⁸

The ILO is currently assisting the Government of Myanmar in amending existing laws and addressing critical legislative gaps. The ILO also plans to support the Government of Myanmar in adopting strategy for the development of a comprehensive labour code ‘that is modern, cohesive and in line with international labour standards’.³⁹

There are nineteen labour laws in Myanmar and three governmental agencies handling the implementation.⁴⁰ The major department concerned with implementation of the laws is the Factories and General Labour Laws Inspection Department (FGLLID).⁴¹

the global economy. AEC will transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital’, Association for Southeast Asian Nations, *ASEAN Economic Community*, Association for Southeast Asian Nations [website], <<http://www.asean.org/communities/asean-economic-community>>, accessed 26 May 2015.

³⁶ G. Robinson, *supra* note 24, p. 6.

³⁷ *Ibid.*, p. 8.

³⁸ Gender Equality Network, *Myanmar Laws and CEDAW, The Case for Anti-Violence Against Women Laws*, January 2013, p. 5, <http://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf>, accessed 26 May 2015.

³⁹ ILO, Review of situation in Myanmar, *supra* note 32, par. 45.

⁴⁰ Interview conducted with Myanmar National Human Rights Commission within the framework of the field research for the present thesis, 16 February 2015.

⁴¹ Ministry of Labour, Employment and Social Security, ‘Factories and General Labour Laws Inspection Department’, *Ministry of Labour, Employment and Social Security of the Republic of the Union of Myanmar*, [website], <<http://www.mol.gov.mm/en/departments/factories-general-labour-laws-inspection-dept/#detail-1>>, accessed 26 May 2015.

The labour rights are guaranteed by the following key legal instruments in Myanmar: the Constitution of the Republic of the Union of Myanmar (2008), the Labour Organisation Law (2011), the Settlement of Labour Disputes Law (2012), the Employment and Skill Development Law (2013), the Social Security rules and regulations (2014), the Foreign Investment Law (2012), the Social Security Law (2012), the Labour Organisation Rules (2012), The Minimum Wage Law (2013), the Factories Act (1951), the Shops and Establishments Act (1951), the Law Defining the Fundamental Rights and Responsibilities of the People's Workers (1964), and The Leave and Holidays Act (1951).⁴²

Equality and non-discrimination clauses are enshrined in several of the mentioned legal instruments, though in many cases the definition is not commensurate to international human rights standards.

Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth⁴³ but the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited by the Constitution, leaving significant gaps in protection against discrimination.

The new 2013 Minimum Wage Law provides that both men and women should receive the minimum wage without discrimination.⁴⁴ Though it is worth mentioning that a minimum wage is not yet set in the country.

Article 350 of the 2008 Constitution guarantees, that women have a right to the 'same rights and salaries' as received by men 'in respect of similar work'. This hardly complies with 'equal pay for work of equal value' standards set by the ILO.⁴⁵

According to Section 352 of the Constitution, while appointing civil servants, one shall

⁴² NATLEX, 'Country Profile - Myanmar', International Labour Organization [website], <http://www.ilo.org/dyn/natlex/country_profiles.nationalLaw?p_lang=en&p_country=MMR>, accessed 26 May 2015.

⁴³ Section 348, *Constitution of the Republic of the Union of Myanmar*, 2008, <http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf>, accessed 26 May 2015.

⁴⁴ Article 16 (f), *The Minimum Wage Law*, The Pyidaungsu Hluttaw Law No. 7/2013, <http://www.burmalibrary.org/docs18/2013-Minimum_Wage_Law-7-en.pdf>, accessed 26 May 2015.

⁴⁵ International Labour Organization, *Equal Remuneration Convention No. 100*, 1951, <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C100>, accessed 26 May 2015.

not discriminate for, or against, any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. ‘However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only’.⁴⁶

In 2011, Myanmar acceded to the UN Convention on the Rights of Persons with Disabilities. In the end of 2014, a draft law on the rights of persons with disabilities, prepared by a group of disability advocacy organisations and the Department of Social Welfare, was published by the Parliament. The document includes requirements for equality and non-discrimination at the workplace.⁴⁷

There are laws that still allow discriminatory practices in Myanmar. The 1982 Citizenship Law declines citizenship to Rohingya people [ethnic Muslim minority residing in the Rakhine State], by excluding them from the official list of 135 national races eligible for full citizenship.⁴⁸ This discriminatory approach towards one of the ethnic minority groups, limits their enjoyment of civil, economic, social and cultural rights, which includes protection from discrimination in employment and occupation.

The Factories Act (1951) contains out-dated and discriminatory clauses with regard to access to different types of work for men and women, limiting involvement of women for certain types of jobs. According to the Myanmar National Human Rights Commission, the Factories Act has been recently redrafted, amending the out-dated labour clauses, and was submitted to the Parliament.⁴⁹ As of January 2015, the Parliament has approved the Amendment to the Factory Act, and it is awaiting the President’s signature⁵⁰, though as of May 2015 there has been no up to date news on the adoption of the amendment.

In 2015, four so-called ‘Race and Religion Protection Bills’ were submitted to the

⁴⁶ Section 352, *Constitution of the Republic of the Union of Myanmar*, 2008, <http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf>, accessed 26 May 2015.

⁴⁷ *Myanmar Tourism Sector Wide Impact Assessment*, Danish Institute for Human Rights, Myanmar Centre for Responsible Business, Institute for Human Rights and Business, February 2015, p. 153, <<http://www.myanmar-responsiblebusiness.org/pdf/SWIA/Tourism/00-Myanmar-Tourism-Sector-Wide-Assessment.pdf>>, accessed 26 May 2015. [hereinafter: Myanmar Tourism SWIA]

⁴⁸ Human Rights Watch, ‘Burma: Amend Biased Citizenship Law’, *Human Rights Watch* [website], 13 January 2015, <<http://www.hrw.org/news/2015/01/13/burma-amend-biased-citizenship-law>>, accessed 26 May 2015.

⁴⁹ Interview conducted with Myanmar National Human Rights Commission within the framework of the field research for the present thesis, 16 February 2015.

⁵⁰ Danish Institute for Human Rights, Myanmar Centre for Responsible Business, *Myanmar Country Guide – Stakeholder Consultations*, Yangon, 19-23 January, 2015. [hereinafter: DIHR & MCRB, Stakeholder Consultations]

Parliament of Myanmar by an influential group of nationalist Buddhist monks. The drafts include: the Population Control Healthcare Bill, the Bill Relating to the Practice of Monogamy, the Bill on Religious Conversion, and the Myanmar Buddhist Women's Special Marriage Bill.⁵¹ The Religious Conversion Bill establishes a State-regulated system for religious conversion, including through interview with an eleven member Township Registration Board. The Population Control Bill is supposed to deliver health and population control measures in regions where there is a high birth rate. In those regions the women will be required to have a 36-month gap between two pregnancies. The Myanmar Buddhist Women's Special Marriage Bill would impose additional requirements, and potential penalties, on non-Buddhist men intending to marry Buddhist women. The Monogamy Bill prohibits polygamy in Myanmar, and according to the UN Special Rapporteur on Myanmar, the language of the bill indicates that the law is directed towards minority faiths and thus is discriminatory in intent.⁵² The international community urged the Parliament of Myanmar to drop the mentioned bills without further consideration, however, in March 2015, two of the bills – the Population Control Bill and the Buddhist Women's Special Marriage Bill, were passed by the lower house of the Parliament, bringing the drafts closer to becoming law.⁵³ On May 27, 2015 the Parliament adopted the Population Control Healthcare Bill.⁵⁴

Myanmar is a party to the following international treaties guaranteeing the right to equality and non-discrimination: the Convention on the Elimination of All Forms of Discrimination against Women (acceded in 1997) and the Convention on the Rights of Persons with Disabilities (acceded in 2011).

Myanmar has still not signed core human rights conventions, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic Social

⁵¹ UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Yanghee Lee, 9 March 2015, A/HRC/28/72, <<http://www.refworld.org/docid/55082e974.html>>, accessed 26 May 2015. [hereinafter: Report of the Special Rapporteur on Myanmar]

⁵² *Ibid.*

⁵³ N. Zaw, 'Lower House Approves Two 'Race and Religion' Bills', *The Irrawaddy*, 20 March 2015, <<http://www.irrawaddy.org/burma/lower-house-approves-two-race-and-religion-bills.html>>, accessed 26 May 2015.

⁵⁴ UN Office of the High Commissioner for Human Rights, 'Myanmar: UN rights experts express alarm at adoption of first of four 'protection of race and religion' bills', *United Nations Office of the High Commissioner for Human Rights* [website], <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>>, accessed 27 May 2015.

and Cultural Rights and the Convention on the Elimination of All Forms of Racial Discrimination; or ILO Convention No. 111 on Discrimination (Employment and Occupation) and ILO Convention No. 100 on Equal Remuneration.

Currently, Myanmar is amending its out-dated laws and drafting new legal instruments to fill in existing gaps in the human rights protection framework. However, incorporating international standards into national laws, and actually implementing those standards, are two different things and Myanmar is behind with the implementation, compared with the legislative, process.

D. From laws to reality

According to the 2015 Human Rights Watch World Report, 'Burma's human rights situation declined in 2014, setting back progress made since the reform process began three years ago'.⁵⁵

The report outlined the main shortcomings in democratic development, the rule of law and human rights protection in the country. Those included, the slow political reform process, with the military reserving quota seats in the Parliament and controlling the key ministries; interferences with the right to freedom of association and assembly; intimidation of the media, sectarian tensions and violence, specifically violence against the Rohingya population, and continuing ethnic conflicts.⁵⁶

The backtracking in the development process was outlined by the United Nations Special Rapporteur on the human rights situation in Myanmar, Yanghee Lee, who called on the country's authorities to rapidly address on-going challenges to the democratic reform process 'before they undermine the success achieved so far'.⁵⁷

⁵⁵ Human Rights Watch, 'Burma: Rights Heading in Wrong Direction', *Human Rights Watch* [website], 29 January 2015, <<http://www.hrw.org/news/2015/01/29/burma-rights-heading-wrong-direction>>, accessed 26 May 2015. Human Rights Watch, 'World Report 2015', *Human Rights Watch* [website], <http://www.hrw.org/sites/default/files/wr2015_web.pdf>, accessed 26 May 2015.

⁵⁶ *Ibid.*, World Report 2015, pp. 122-127.

⁵⁷ UN Office of the High Commissioner for Human Rights, 'UN rights expert calls on Myanmar to address worrying signs of backtracking in pivotal year', *United Nations Office of the High Commissioner for Human Rights* [website], 18 March 2015, <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15714&LangID=E#sthash.S8UWquX.dpuf>>, accessed 26 May 2015.

The Rapporteur outlined interferences with the enjoyment of the right to freedom of expression, drawing special attention to the pressure on human rights defenders and journalists. She stressed the existence of ethnic conflicts and violence in the border areas of Myanmar, stating that they were ‘being fuelled by discrimination against ethnic and religious minorities’.⁵⁸

Internal disturbances and violent clashes between the Buddhist population and the Muslim minority are common across the region.⁵⁹ According to ASEAN Parliamentarians for Human Rights: ‘The underlying tensions that stem from discrimination against ethnic and religious minorities pose a threat to Myanmar's democratic transition and stability’.⁶⁰

Despite economic developments in the region, which benefitted part of the population, the progress has not yet touched the remaining other half.

Positive developments in the human rights protection field include work undertaken by the Government to improve education, health and livelihood of the communities.⁶¹ Even though there has been progress, since 2011, in the exercise of the right to freedom of speech, freedom of assembly and freedom of association, as mentioned above, there are still plenty shortcomings to be addressed.

The rule of law and access to justice are developing concepts in the country. Even though the reform of judicial system has been a focus of the present Government, the judicial system is still widely considered to be ‘under-resourced, politically influenced and lacking in independence’.⁶² Therefore, there is no effective mechanism for victims of the human rights violations to seek justice and remedies in Myanmar.

⁵⁸ *Ibid.*

⁵⁹ The Associated Press, ‘Buddhist Mobs Torch Muslim Homes in Myanmar as Sectarian Violence Continues’, *N.Y. Daily News*, 1 October 2013, <<http://www.nydailynews.com/news/world/buddhist-mobs-torch-muslim-homes-myanmar-sectarian-violence-continues-article-1.1472705>>, accessed 26 May 2015.

⁶⁰ ‘Aung San Suu Kyi urged to place human rights, anti-Muslim violence at the top of the agenda’, *Asian Tribune*, 18 October 2013, <<http://www.asiantribune.com/node/65447>>, accessed 26 May 2015.

⁶¹ UN Office of High Commissioner for Human Rights, ‘Statement by Ms Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar at the 28th session of the Human Rights Council’, *UN Office of High Commissioner for Human Rights* [website], 16 March 2015, <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15713&LangID=E#sthash.9nq3Aeq0.dpuf>>, accessed 26 May 2015.

⁶² Organization for Economic Co-operation and Development, *OECD Investment Policy Reviews: Myanmar 2014*, OECD Publishing, 2014, p. 27, <<http://dx.doi.org/10.1787/9789264206441-en>>, accessed 26 May 2015.

E. Doing business in Myanmar

Until 2011, most of the businesses in Myanmar were either military owned, or closely tied to the Government. Even though the business environment has considerably changed since 2011, there are still some traits left from the past. Businesses are divided into the following groups: ‘old-style’ tycoons with close ties to the military; businesses with political connections and influence over various forms of State interventionism; family owned local conglomerates; small and medium size enterprises; and foreign businesses investing in the country.⁶³

Being rich in natural resources, cheap labour and due to its strategic location, Myanmar is an attractive place for doing business. According to the Asian Development Bank (*hereinafter* ADB) review:

Myanmar is endowed with rich natural resources, including petroleum, timber, tin, antimony, zinc, copper, tungsten, lead, coal, marble, milestone, precious stones, natural gas, and hydropower. In 2011, natural gas, wood, products, pulses, beans, fish, rice, clothing, jade, and gems were its largest export commodities. Its top export destinations in 2011 were the PRC, India and Thailand, while its top import sources were the PRC, Singapore and Thailand.⁶⁴

Besides being rich in natural resources, Myanmar shares international borders with significant players of the world economy, such as India, China and Thailand. The coastline of Myanmar runs across the Bay of Bengal and Andaman Sea, giving the country clear access to the Indian Ocean.

As mentioned in the previous sections Myanmar has a special economic significance for ASEAN, and ASEAN could significantly contribute to economic development in Myanmar, through the ASEAN Economic Community that is to be launched in late 2015. According to the US sponsored study, the AEC would contribute a 4.4 per cent increase in the national income of Myanmar and 65.8 per cent increase in exports to its

⁶³ G. Robinson, *supra* note 24, pp. 16-17.

⁶⁴ Asian Development Bank, *Connecting South Asia and South-East Asia – Interim Report*, Asian Development Bank and the Asian Development Bank Institute, Japan, 2013, <<http://www.adbi.org/files/2013.05.05.book.connecting.south.asia.southeast.asia.interim.report.pdf>>, accessed 26 May 2015.

fellow ASEAN members.⁶⁵ In 2014 Myanmar was chairing ASEAN for the first time. The ASEAN Chair has enormous influence over ASEAN meetings, and there is a lot of pressure for the host nation to fall in line with either the anti-China or pro-China camps, with regard to South China Sea disputes.⁶⁶ On the one hand, the Government of Myanmar needs to safeguard ASEAN solidarity in order to fully integrate into the community, and on the other hand it would be detrimental for the country to defy its long-time economic partner - China. Myanmar has been depending on China economically for decades and China still remains Myanmar's biggest trading partner and largest source of foreign direct investment. Fortunately, during the annual ASEAN meeting in 2014, Myanmar managed to have a neutral stand with regard to South China Sea disputes, pleasing most of the countries including China and the United States.⁶⁷

The renewed availability of Western, and other foreign investments, after decades of isolation caused by economic sanctions has made Chinese investment less appealing in Myanmar. Despite attempts to reduce Chinese foreign direct investment over the past few years, Beijing still remains one of the biggest investors in Myanmar and a crucial partner for the country's economic development. During Chinese Premier Li Keqiang's visit to Myanmar in November 2014, the two sides signed deals worth 7.8 billion USD covering energy, agriculture, telecommunications, infrastructure and finance.⁶⁸

While, Myanmar envisaged 4 billion USD of foreign direct investment (*hereinafter* FDI) in the fiscal year of 2014-2015, the reality exceeded expectations. From April

⁶⁵ P. A. Petri, M. G. Plummer, F. Zhai, *The Economics of the ASEAN Economic Community*, 2010, Brandeis University, Department of Economics and International Business School, Working Paper 12, pp. 18, 21.

⁶⁶ S. Tiezzi, 'Myanmar, ASEAN, and the China Challenge', *The Diplomat*, 7 August 2014, <<http://thediplomat.com/2014/08/myanmar-asean-and-the-china-challenge/>>, accessed 26 May 2015.

⁶⁷ 'Between its obligations as ASEAN chair and its relationship with China, Myanmar has pursued relatively modest goals on the South China Sea issue and has rather skillfully navigated between pushing for a collective ASEAN position and deflecting China's frustration. In principle, Myanmar allows for full inclusion and discussion of the tensions in the South China Sea in ASEAN meetings, but treads carefully in all final documents about naming names and pointing fingers at any parties, including China. This strategy has won Myanmar the approval of most countries, including China and the United States.' Yun Sun, 'Myanmar's ASEAN Chairmanship: An Early Assessment', *Stimson*, 10 September 2014, <<http://www.stimson.org/spotlight/myanmars-asean-chairmanship-an-early-assessment-/>>, accessed 26 May 2015.

⁶⁸ P. Parameswaran, 'China's Influence in Myanmar Facing Growing Scrutiny', *The Diplomat*, 7 January 2015, <<http://thediplomat.com/2015/01/chinas-influence-in-myanmar-facing-growing-scrutiny/>>, accessed 26 May 2015.

2014 to April 2015 the FDI in Myanmar amounted to 8.01 billion USD.⁶⁹ For the fiscal year of 2015-2016 Myanmar has set the target of 6 billion USD, hoping that the target will be surpassed as in the previous year.⁷⁰

In the 2014-15 fiscal year, Myanmar allowed 211 foreign enterprises to invest in the country.⁷¹ The foreign investors list is topped by Singapore, with 43 firms and more than 4 billion USD of capital. European States are also among the list of major investors. Twenty-five firms from seven European countries - the UK, the Netherlands, Sweden, Switzerland, France, Norway, and Germany - were allowed entry in Myanmar in 2014.⁷²

Besides having a special significance for the bordering Asian States and ASEAN community, Myanmar is of particular interest for Western countries due to its strategic location, natural resources and cheap labour. US based companies, such as Coca Cola, Colgate Palmolive, Western Union and Gap Inc., are also investing in Myanmar and have submitted public reports to the US Government on their responsible business conduct in Myanmar.⁷³

1. Responsible investments in Myanmar

In 2012, after lifting the sanctions and restrictions on investments in Myanmar, the countries stated that the new investments should be 'responsible'.⁷⁴

After the June 2012 decision by the Conference of the ILO to suspend its restrictive resolution on Myanmar, the EU reinstated the Generalised Scheme of Preferences (GSP) tariff preferences on 19 July 2013, which had been suspended since 1997.⁷⁵

⁶⁹ 'FDI target set at \$ 6 billion for fiscal 2015-2016', *Myanmar Business Network*, 19 April 2015, <<http://www.myanmar-business.org/2015/04/fdi-target-set-at-6-billion-for-fiscal.html>>, accessed 26 May 2015.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Embassy of the United States in Rangoon, 'Burma, Business – Reporting Requirements', *Embassy of the United States in Rangoon* [website], <<http://burma.usembassy.gov/reporting-requirements.html>>, accessed 26 May 2015.

⁷⁴ White House Press Office, 'Statement by the President on the Easing of Sanctions in Burma', *The White House Office of Press Secretary* [website], 11 July 2012, <www.whitehouse.gov/the-press-office/2012/07/11/statement-president-easing-sanctions-burma>, accessed 26 May 2015.

In March 2014, the EU Trade Commission launched negotiations for an investment protection agreement between the EU and Myanmar. The investment agreement will improve the protection and fair treatment of investors from both sides and will contribute to attracting investments to Myanmar.⁷⁶

In 2013, the United States imposed reporting requirements on businesses that are investing in Myanmar. According to the Reporting Requirements on Responsible Investment in Burma, any US person who invests 500,000 USD or more in Burma, or invests in Burma's oil and gas sector, is required to comply with the reporting requirements.⁷⁷ The majority of US based businesses have submitted reports to the US Government, which are available online and include the following information – transparency, anti-corruption policy, human rights and labour rights protection and protection of the environment.⁷⁸

There has been progress within the Asian community to support responsible investments and responsible business conduct. The Indonesian Capital Market and financial Institutions Supervisory Agency requires that listed companies report information on social responsibility (labour rights, community development, consumer safety).⁷⁹ The 2011 Singapore Stock Exchange publication – Sustainability Reporting Guidance 'encourages the company to disclose its sustainability policy'.⁸⁰ National Voluntary Guidance on Responsible Business in India also promotes reporting on human rights issues by businesses.⁸¹ In 2013, China published 'Guidelines for Environmental Protection in Foreign Investment and Cooperation', which encourages Chinese companies to 'regularise their environmental protection behaviours in foreign

⁷⁵ European Commission Press Release, 'EU and Myanmar/Burma to negotiate an investment protection agreement', *European Commission* [website], 20 March 2014, <http://europa.eu/rapid/press-release_IP-14-285_en.htm>, accessed 26 May 2015.

⁷⁶ *Ibid.*

⁷⁷ US Embassy, Reporting Requirements, *supra* note 73.

⁷⁸ *Ibid.*

⁷⁹ *Rule No. X.K.6 on Submission of Issuer or Public Company Annual Report*, Decision of the Chairman of Bapepam-LK No. Kep-431/BL/2012, 1 August 2012.

⁸⁰ Singapore Exchange, *Guide to Sustainability Reporting for Listed Companies*, 2011, <http://rulebook.sgx.com/net_file_store/new_rulebooks/s/g/SGX_Sustainability_Reporting_Guide_and_Policy_Statement_2011.pdf>, accessed 26 May 2015.

⁸¹ Security and Exchange Board of India, *Circular: Business Responsibility Reports*, 2011, <http://www.sebi.gov.in/cms/sebi_data/attachdocs/1344915990072.pdf>, accessed 26 May 2015.

investment... and support the sustainable development in the country'.⁸² All the above-mentioned countries are investing in Myanmar, therefore the domestic regulations they impose on the businesses will further promote responsible investments and sustainable development within Myanmar.

On May 1, 2012, the Global Compact was launched in Myanmar. Fourteen companies and the Myanmar Chamber of Commerce formally joined the Global Compact in a signing ceremony. As of 26 May 2015, there are 219 participants in Myanmar Global Compact Network.⁸³

The policy and legal framework for foreign investment in Myanmar is based on the following hard law documents: the Foreign Investment Law, the Citizens Investment Law, the Employment and Skills Development Law, the Competition Law, the Economic Zone Law and the Worst Forms of Child Labour Convention, 1999 (No. 182), which came into force on 18 December 2014.⁸⁴

The 2012 Foreign Investment Law and the 2013 Citizens Investment Law are currently being redrafted to create a single law for all investors.⁸⁵

2. Foreign Investment Law

In 2012, Myanmar adopted the new Foreign Investment Law⁸⁶, which substituted the old 1988 law.⁸⁷ The new law aims at creating jobs, encouraging competition with

⁸² Ministry of Commerce of the People's Republic of China, *Notification of the Ministry of Commerce and the Ministry of Environmental Protection on Issuing the Guidelines for Environmental Protection in Foreign Investment and Cooperation*, 2013, <<http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml>>, accessed 26 May 2015.

⁸³ United Nations Global Compact, 'Myanmar - Participant Search', *UN Global Compact* [website], <<https://www.unglobalcompact.org/participants/search?commit=t&country%5B%5D=127>>, accessed 26 May 2015.

⁸⁴ ILO, Review of situation in Myanmar, *supra note* 32, par. 38.

⁸⁵ Institute for Human Rights and Business, *Submission to the United Nations Human Rights Council Universal Periodic Review Session 23: Myanmar*, March 2015, <<http://www.ihrb.org/pdf/submissions/2015-UPR-Myanmar.pdf>>, accessed 26 May 2015.

⁸⁶ The Republic of the Union of Myanmar, *Foreign Investment Law*, Pyidaungsu Hluttaw Law No. 21/2012, 3rd Waning of Thadingyut 1374 ME, 2 November 2012, <http://www.burmalibrary.org/docs15/Foreign_Investment_Law-21-2012-en.pdf>, accessed 26 May 2015. [hereinafter: Foreign Investment Law]

⁸⁷ The State Law and Order Restoration Council, *The Union of Myanmar Foreign Investment Law*, Law No. 10/88, Nov. 30, 1988, <http://www.burmalibrary.org/docs14/Foreign_Investment_Law-10-88-en.pdf>, accessed 26 May 2015.

foreigners, developing infrastructure and technology and preserving the environment, which will lead to sustainable development of the country.⁸⁸

Even though the law eases regulations and restrictions on foreign investments in Myanmar, it contains restrictions on some economic activities. For instance the law prohibits investments that are prejudicial to traditions of ethnic minorities, to health, natural resources, and the environment and biodiversity. It also limits private investments in sectors such as oil and gas, hard minerals, telecommunications, banking, broadcasting, air and railway services.⁸⁹ Though those limitations may be derogated through Government-granted exemptions.⁹⁰

The law envisages financial incentives for foreign investors, such as tax exemptions for up to five years, from the year that production or services commenced.⁹¹ However, the Government of Myanmar maintains the discretionary power to ‘prescribe investment activities which are not required for tax exemption and relief’.⁹²

The law also requires that foreign businesses employ Burmese citizens for all unskilled work, and provide training and educational courses for those employees.⁹³ The law also prescribes a certain percentage of the skilled workers of Myanmar nationality that foreign companies must employ. According to Section 24 (a) of the Law, in the first two years of the project, at least twenty-five per-cent of skilled labourers must be citizens, whilst this figure rises to at least fifty per cent for the second two years, and at least seventy-five per cent for the third two year period.⁹⁴ The Foreign Investment Law outlines the duties and rights of the investor, listing eleven responsibilities and seven rights in Chapter 8. Amongst the duties, there exists the responsibility to abide by existing national laws, and to protect the environment. The rights of the investor include the possibility to freely sell part, or all, of its shares invested in the country.⁹⁵

Even though the Foreign Investment Law attempts to protect the rights of citizens, ethnic minorities, the environment and promote compliance with labour rights

⁸⁸ Foreign Investment Law, *supra* note 86, Chapter 3 and 4.

⁸⁹ *Ibid.*, Chapter 2.

⁹⁰ *Ibid.*, Chapter 2, par. 5.

⁹¹ *Ibid.*, Chapter 12, par 27 (a).

⁹² *Ibid.*, Chapter 7, par. 14 (j).

⁹³ *Ibid.*, Chapter 11, par 24 (a, b).

⁹⁴ *Ibid.*, Chapter 11, par 24 (a).

⁹⁵ *Ibid.*, Chapter 8, par. 17, 18.

standards, it lacks an enforcement mechanism. The Government is not strong enough to enforce and monitor the protection of those provisions by companies and, in the event of violations, victims lack a mechanism to pursue remedies. The law allows foreign investors to choose the dispute resolution mechanism in the event of conflicts,⁹⁶ which enables the corporation to use foreign or home-based legal systems, which would leave Myanmar victims of human rights violations without the ability to complain. Therefore, the responsibility lies on companies to effectively implement the provisions of the present law, without the ability to rely on the supervision of the Myanmar Government.

F. Chapter Summary

The chapter outlined the main aspects of the legal, political and socio-economic situation in Myanmar. It gave an overview of the national legal framework with regard to responsible investments, the protection of labour rights and the prohibition of discrimination, which serve as the bases for further examination of workplace discrimination in the country. The following chapter will give a theoretical overview on the international regulatory framework governing the corporate responsibility to respect human rights and define international legal standards on workplace equality and non-discrimination that businesses shall follow. Overall, both chapters will contribute to the core discussion on the role of corporate responsibility in promoting workplace equality in Myanmar and its contribution to development in the region.

⁹⁶ *Ibid.*, Chapter 19.

III. WORKPLACE EQUALITY AND THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Chapter II provided an overview of the human rights situation in Myanmar and defined the national regulatory framework with regard to prohibition of discrimination in respect of employment and occupation. The present chapter is going to further examine international standards on workplace equality and non-discrimination, focusing specifically on treaties that Myanmar has ratified. Adding to the previous chapter, the present section will provide a substantive overview of laws, regulations and human rights standards that companies operating in Myanmar are either obliged to comply with, due to their hard law status, or, in accordance to RtR, are obliged to respect, despite no formal basis in Myanmar's domestic law.

The second part of the chapter further provides an overview of the available regulatory framework in respect of the corporate responsibility to respect human rights, finally focusing on, and defining, the principles stipulated in the UNGPs, which provide a step-by-step framework for businesses on how to ensure human rights protection and, in this specific case, eliminate workplace discrimination.

The last section will look at the reasons why responsible business conduct is needed in Myanmar and the positive aspects that might particularly suit the Myanmar context.

A. International standards – prohibition of workplace discrimination

The Universal Declaration of Human Rights proclaims that 'all human beings are born free and equal in dignity and rights' and establishes that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹⁷ Article 23 of the Declaration further continues:

Everyone has the right to work, to free choice of employment, to just and favourable

⁹⁷ Article 1, 2, *Universal Declaration of Human Rights*, UN General Assembly, 10 December 1948, 217 A (III), <<http://www.refworld.org/docid/3ae6b3712c.html>>, accessed 26 May 2015.

conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.⁹⁸

‘Work is part of daily life and is crucial to a person’s dignity, wellbeing and development as a human being’.⁹⁹ Equality and non-discrimination in employment and occupation is guaranteed in the main international human rights instruments. Those include the International Covenant on Economic Social and Cultural Rights (Article 2, 3, 7),¹⁰⁰ the Convention on the Elimination of all forms of Discrimination against Women (Article 11),¹⁰¹ the Convention on the Elimination of all forms of Racial Discrimination (Article 5(e)(i)),¹⁰² and the Convention on the Rights of Persons with Disabilities (Articles 5, 5, 27)¹⁰³.

Myanmar acceded to the Convention on the Elimination of All forms of Discrimination against Women in 1997. The Preamble of the Convention stresses that:

The full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.

Article 11 further calls upon States to eliminate discrimination against women in the field of employment, guaranteeing ‘the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value’, which includes the same employment opportunities, the right to social security, paid leave and vocational training.¹⁰⁴

⁹⁸ *Ibid.*, Article 23.

⁹⁹ International Labour Organization, *International Labour Standards: Rules for the game for the Global Economy*, Revised Edition 2009, p. 10, <http://www.ilo.org/global/publications/WCMS_108393/lang-en/index.htm>, accessed 26 May 2015. [hereinafter: ILO, Rules for the game]

¹⁰⁰ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, 16 December 1966, p. 3, <<http://www.refworld.org/docid/3ae6b36c0.html>>, accessed 26 May 2015.

¹⁰¹ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations, Treaty Series, vol. 1249, 18 December 1979, p. 13, <<http://www.refworld.org/docid/3ae6b3970.html>>, accessed 26 May 2015. [hereinafter: CEDAW]

¹⁰² UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, United Nations, Treaty Series, vol. 660, 21 December 1965, p. 195, <<http://www.refworld.org/docid/3ae6b3940.html>>, accessed 26 May 2015.

¹⁰³ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, <<http://www.refworld.org/docid/45f973632.html>>, accessed 26 May 2015. [hereinafter: CRPD]

¹⁰⁴ Article 11, CEDAW, *supra* note 101.

Myanmar acceded to the Convention on the Rights of Persons with Disabilities (*hereinafter* CRPD) in 2011. Standards set out therein are not yet incorporated into national legislation, though the draft law on the rights of persons with disabilities has recently been prepared and submitted to Parliament. The Preamble to the CRPD asserts that ‘the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms’ will result in social and economic development of society. Further, Article 27 promotes the rights of persons with disabilities to employment and encourages States to ‘Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures’.¹⁰⁵

The ILO sees inequality as not only leading to a decline in productivity but also instigating poverty, social instability and conflict.¹⁰⁶ Two ILO Conventions specifically address employment discrimination: Convention No 111 on Discrimination in Respect of Employment and Occupation and The Equal Remuneration Convention No. 100. Myanmar has not yet ratified either of these two Conventions, though it expressed its intention to ratify them and requested technical cooperation from the ILO to overcome the challenges and assist in realising equality in employment and occupation in Myanmar.¹⁰⁷

The mentioned instruments are among the eight fundamental Conventions of the ILO and constitute the fifth and fourth most ratified Conventions among ILO Member States.¹⁰⁸

ILO Convention No 111 defines discrimination as following:

Any distinction, exclusion or preference made on the bases of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.¹⁰⁹

¹⁰⁵ Article 27, CRPD, *supra* note 103.

¹⁰⁶ ILO, Rules for the game, *supra* note 99, p.8.

¹⁰⁷ International Labour Office, *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 13–27 March 2014, International Labour Organization, 320th Session, GB.320/INS/4, Geneva, par. 122, 139, <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_236200.pdf>, accessed 26 May 2015.

¹⁰⁸ ILO, Equality at Work, *supra* note 5.

¹⁰⁹ Article 1, *Convention No 111 on Discrimination in Respect of Employment and Occupation*, 1958, International Labour Organization,

The Equal Remuneration Convention provides further guarantees of equality and advocates for ‘equal remuneration for men and women workers for work of equal value’.¹¹⁰

Workplace discrimination may be expressed in different ways. It can relate to hiring, promotion, job assignment, termination, compensation, working conditions and harassment. There are two forms of discrimination: direct and indirect.

Direct discrimination occurs when ‘rules practices and policies exclude or give preference to certain individuals just because they belong to a particular group’.¹¹¹

Discrimination is indirect, when ‘apparently neutral norms and practices have a disproportionate and unjustifiable effect on one or more identifiable groups’.¹¹²

The ILO standards on equality provide tools to eliminate discrimination in all aspects of the workplace, and in society as a whole.¹¹³

B. The Corporate Responsibility to Respect Human Rights

The present section asserts that there is a corporate responsibility to respect human rights, drawing upon the ‘Protect, Respect, Remedy’ framework of the UNGPs,¹¹⁴ and further determines the role of the RtR in the promotion of workplace equality and socio-economic development.

The section starts with a short history of the development of corporate responsibility in international law, it further maps the main instruments on corporate responsibility and analyses in more detail the UNGPs corporate responsibility to respect human rights. The

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111>, accessed 26 May 2015.

¹¹⁰ Article 1, *The Equal Remuneration Convention No. 100*, International Labour Organization, 1951, <http://www.ilo.org/dyn/normlex/en/f?p=normlexPUB:12100:0::no:12100:P12100_Ilo_Code:C100>, accessed 26 May 2015.

¹¹¹ ILO, Equality at Work, *supra* note 5 p.1.

¹¹² *Ibid.*

¹¹³ ILO, Rules for the game, *supra* note 99, p. 34.

¹¹⁴ John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Human Rights Council, Seventeenth session, A/HRC/17/31, 21 March 2011, <http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf>, accessed 26 May 2015. [hereinafter: UNGPs]

last sections attempt to determine the necessity of the RtR and its significance for Myanmar.

1. Development of Corporate Responsibility

In the mid nineteen hundreds corporate responsibility was mainly seen as a burden, imposed on the businesses by proponents of socialism. To the well-known economist, Milton Friedman, it was straightforward that companies were only responsible to the law and their investors.¹¹⁵ Accordingly, any effort to direct business in socially responsible directions was already socialism.¹¹⁶ Friedman had a radically negative perception of corporate responsibility and used to treat his opponents as ‘at best, naïve and, at worst, part of the vast left wing conspiracy to destroy capitalism, as we know it’.¹¹⁷

Throughout the years, the business approach to corporate responsibility developed and enterprises started looking at this concept as an asset for the businesses to gain social recognition and economic profit.

There are several arguments that this business approach is based on. One states that socially responsible conduct contributes to improving the workforce in terms of loyalty, commitment and productivity.¹¹⁸ The second argument asserts that environmentally responsible conduct ensures efficient use of resources, and the third argument claims that corporate responsibility encourages voluntary dialogue with a variety of stakeholders, and consequently builds trust and ensures support of the community.¹¹⁹

The business approach to corporate responsibility is widely criticised, as it results in responsible business conduct being dependable on economic return, which might lead to adverse consequences. Businesses may decide to invest only in the areas of corporate

¹¹⁵ M. Blowfield, A. Murray, ‘The Meaning and Origins of Corporate Responsibility’, *Corporate Responsibility*, Second Edition, Oxford University Press 2011, p.49.

¹¹⁶ J. A. Aune, ‘How to Read Milton Friedman, Corporate Social Responsibility and Today’s Capitalism’, *The Debate over Corporate Social Responsibility*, edited by S. May, G. Cheney, J. Roper, Oxford University Press 2007, p. 209.

¹¹⁷ *Ibid.*

¹¹⁸ O. De Schutter, ‘Corporate Social Responsibility European Style’, 2008, *14 (2) European Law Journal* 203, p. 217; O. Amao, ‘Corporate Social Responsibility, Human Rights and the Law’, *Multinational corporations in developing countries*, Routledge Research in Corporate Law, 2011, p.69, 70.

¹¹⁹ *Ibid.*

responsibility that bring economic profit, and generally it is hard to demonstrate the benefits of corporate responsibility practices in economic terms.¹²⁰

States and international organisations actively support the corporate responsibility agenda. The EU has advocated for responsible business conduct since the design of the Lisbon Agenda, in order to make the EU ‘the most comparative and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion’.¹²¹

The turning point for the development of corporate responsibility was the adoption of the UNGPs by the UN Human Rights Council in 2011. As it will be further illustrated in the next section, the UNGPs created the human rights focused corporate responsibility framework, which gained global recognition and acceptance.

There are certain differences between the recently developed UNGPs corporate responsibility to respect human rights and the traditional concept of corporate social responsibility. The common understanding is that CSR is ‘voluntary contributions to community development, charity and other social and environmental efforts’.¹²² This definition does not exclude the UNGPs RtR, however the difference between the two is that:

Implementation of the latter [UNGPs] is a global expectation of all companies rather than a voluntary effort a company may decide to engage in subject to its other objectives and priorities and/or as part of its social or legal license to operate in particular situations.¹²³

In 2011 the European Union adopted a new definition of CSR: ‘the responsibility of enterprises for their impacts on society’.¹²⁴ The mentioned definition better encompasses the corporate responsibility to respect human rights as set out in UNGPs.

¹²⁰ *Ibid.*

¹²¹ European Commission, *Promoting A European Framework for Corporate Social Responsibility: Green Paper*, COM 2001 366 final.

¹²² Office of the High Commissioner for Human Rights, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*, United Nations, New York and Geneva, 2014, p. 10, <http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf>, accessed 26 May 2015.

¹²³ *Ibid.*

¹²⁴ European Commission, *Corporate Social Responsibility: a new definition, a new agenda for action*, MEMO/11/730, Brussels, 25 October 2011, <http://europa.eu/rapid/press-release_MEMO-11-730_en.htm>, accessed 26 May 2015.

Nowadays, countries with developing economies are the ones that demand the development of corporate responsibility to respect human rights framework into an international hard law instrument. At the Human Rights Council's 24th session in September 2013, the Government of Ecuador proposed a legally binding international instrument on business and human rights to be adopted within the UN. The African Group, the Arabic Group, Pakistan, Sri Lanka, Kyrgyzstan, Cuba, Nicaragua, Bolivia, Venezuela and Peru supported the declaration. In June 2014, the UN Human Rights Council adopted the mentioned resolution.¹²⁵

ASEAN has lately become very active in endorsing the corporate responsibility to respect human rights in its Member States. Promoting responsible business conduct constitutes one of the objectives of ASEAN Socio-Cultural Community Blueprint. According to the document, corporate responsibility is going to contribute to the socio-economic development of ASEAN Member States.¹²⁶

2. Regulatory framework

The international framework on corporate responsibility is mainly soft law and thus non-binding in nature. However, the human rights principles it promotes constitute universally recognised hard law standards.

Among numerous soft law regulations on corporate responsibility the following are most commonly recognised by international community: the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises,¹²⁷ the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,¹²⁸ the United Nations Global Compact,¹²⁹ the International Finance

¹²⁵ Business and Human Rights Resource Centre, 'UN Human Rights Council Sessions', *Business and Human Rights Resource Centre* [website], <<http://business-humanrights.org/en/binding-treaty/un-human-rights-council-sessions>>, accessed 26 May 2015.

¹²⁶ C3. Promoting Corporate Social Responsibility, *ASEAN Socio-Cultural Community Blueprint*, ASEAN Secretariat, 2009, <<http://www.asean.org/archive/5187-19.pdf>>, accessed 26 May 2015.

¹²⁷ Chapter I (1), *OECD Guidelines for Multinational Enterprises*, 2011 Edition, <<http://www.oecd.org/daf/inv/mne/48004323.pdf>>, accessed 26 May 2015.

¹²⁸ International Labour Organization, *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, International Labour Office, Geneva, 2006, <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf>, accessed 26 May 2015.

Corporation Performance Standards on Environmental and Social Sustainability,¹³⁰ the CSR Papers of the European Commission¹³¹ and ISO 26000 Guidance on Social Responsibility¹³².

One of the principal documents in the business and human rights field, and the basis of the present thesis, is the UNGPs, drafted by Professor John Ruggie.¹³³

The UNGPs was the first successful attempt to compile regulations, related to the business and human rights, in one single document. One of the particularities of the UNGPs is the model on which it is based upon. John Ruggie substituted the well-known tripartite typology of ‘Respect, Protect, Fulfil’ with a ‘Respect, Protect, Remedy’ framework, which relatively eased the obligations imposed on businesses, with those compared to States, and made the concept of corporate responsibility more realistic.

Even though the UNGPs do not have binding force in international law, they are the most authoritative international statement regarding the responsibilities of business with respect to human rights.¹³⁴

3. Responsibility to Respect according to UN Guiding Principles

As stated, the UNGPs is the principal instrument, which defines the corporate responsibility to respect human rights.

¹²⁹ ‘Encourage[s] voluntary initiatives, including environmental management systems, codes of conduct, certification and public reporting on environmental and social issues’. United Nations Global Compact, ‘The Ten Principles’, United Nations Global Compact [website], <<https://www.unglobalcompact.org/abouttheGC/thetenprinciples/index.html>>, accessed 26 May 2015.

¹³⁰ ‘Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to’. Performance Standard 1, *Performance Standards on Environmental and Social Sustainability*, International Finance Corporation, World Bank Group, 2012, <http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES>, accessed 26 May 2015.

¹³¹ European Commission, ‘Corporate Social responsibility in the EU’, *European Commission* [website], <<http://ec.europa.eu/social/main.jsp?catId=331>>, accessed 26 May 2015.

¹³² International Organisation for Standardisation, *ISO 26000 Guidance on Social Responsibility*, 2010, <<http://www.iso.org/iso/home/standards/iso26000.htm>>, accessed 26 May 2015.

¹³³ UNGPs, *supra* note 114.

¹³⁴ Foley Hoag LLP, *UN Guiding Principles for Business and Human Rights*, Working Paper, May 2011, <<http://business-humanrights.org/sites/default/files/media/documents/ruggie/foley-hoag-briefing-guiding-principles-may-2011.pdf>>, accessed 26 May 2015.

The UNGPs are based on the three pillars of the ‘Protect, Respect, Remedy’ framework. The first is the State duty to protect against human rights abuses caused by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access to effective remedies for victims, both judicial and non-judicial.¹³⁵ All three pillars are inter-related and essential for preventing and/or addressing human rights violations by businesses.¹³⁶

The State duty to protect lies at the very core of the international human rights regime. The corporate responsibility to respect is the basic expectation society has of business in relation to human rights; and the right to access to remedy is essential as it is impossible to prevent all abuses and victims should have the possibility to seek justice and redress.

137

According to the UNGPs, the responsibility to respect human rights is independent of the legal duty of Governments to protect human rights. Companies should respect internationally recognised human rights, even if they are not recognised under national law. Further, when national law contravenes international law, companies should seek to respect the principles of the international standards, while complying with domestic law.¹³⁸

The UNGPs point to the international instruments that all businesses should comply with, namely, the International Bill of Human Rights and the principles set out in the ILO Declaration on Fundamental Principles and Rights at Work.¹³⁹

¹³⁵ UNGPs, *supra* note 114, par. 6.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*, Principle 11, Commentary.

¹³⁹ *Ibid.*, Principle 12. The International Bill of Human Rights consists of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. According to the Commentary of Principle 12, ‘Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families’.

In *Principle 14*, Ruggie outlines that the corporate responsibility to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership or structure.¹⁴⁰

The UNGPs give guidance to the businesses on how to effectively ensure compliance with human rights principles. According to *Principle 15*, business enterprises should have in place: (1) a policy commitment to respect human rights (2) a human rights due diligence process, so that businesses can identify, prevent, mitigate and account for their impacts on human rights, and (3) a grievance mechanism to address adverse human rights impacts.¹⁴¹ Further, *Principle 16 to 24* give the details on how to effectively implement the steps set out in *Principle 15*.

Principle 23 concerns the situation where national laws are not in compliance with international standards, and states that enterprises shall ‘seek ways to honour the principles of internationally recognised human rights, when faced with conflicting requirements’.¹⁴²

The corporate responsibility to respect human rights is outlined in most of the relevant instruments and the framework is either commensurate to the UNGPs, or points to the UNGPs as a term of reference. The OECD for instance amended its Guidelines in 2011 and aligned them to the UNGPs, stating that:

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard Enterprises should: 1. Contribute to **economic, environmental and social progress** with a view to achieving **sustainable development**. 2. **Respect** the internationally recognised human rights of those affected by their activities.¹⁴³

4. Responsibility to Respect - a tool for Development

In the globalised world the influence of business enterprises on the States in which they operate is constantly growing. This is particularly true for developing countries, and

¹⁴⁰ *Ibid.*, Principle 14.

¹⁴¹ *Ibid.*, Principle 15.

¹⁴² *Ibid.*, Principle 23 (b).

¹⁴³ Chapter II (A), Chapter IV, *OECD Guidelines for Multinational Enterprises*, 2011 Edition, <<http://www.oecd.org/daf/inv/mne/48004323.pdf>>, accessed 26 May 2015.

since the corporate influence on States is a central issue for the right to development, it is desirable to regulate this aspect of corporate activity. Corporate responsibility may be the response to global social inequalities, which undermine the socio-economic development process.¹⁴⁴

The EU defines corporate social responsibility as ‘the responsibility of enterprises for their impacts on society’¹⁴⁵ and sees it as the tool for development. By promoting responsible business conduct, the EU aims ‘to create conditions favourable to sustainable growth, responsible business behaviour and durable employment generation in the medium and long term’.¹⁴⁶

According to the EU strategy for Corporate Social Responsibility:

Through CSR, enterprises can significantly contribute to the European Union’s treaty objectives of sustainable development and a highly competitive social market economy. CSR offers a set of values on which to build a more cohesive society and on which to base the transition to a sustainable economic system.¹⁴⁷

One of the principle goals of ASEAN is the sustainable development of its Member States. The ASEAN Human Rights Declaration calls upon ASEAN States to cooperate with the international community ‘to promote equitable and sustainable development, fair trade practices and effective international cooperation’.¹⁴⁸ The ASEAN Socio-Cultural Community Blueprint promotes the role of CSR in development, naming it as a strategic objective in order to achieve sustainable socio-economic development in ASEAN Member States.¹⁴⁹

But how does responsible business conduct contribute to development? The present paper analyses the way in which the corporate responsibility to promote workplace

¹⁴⁴ D. Aguirre, *supra* note 8, p. 183.

¹⁴⁵ European Commission, CSR, *supra* note 124.

¹⁴⁶ European Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, Communication from the Commission to the European Parliament the Council, The European Economic and Social Committee and the Committee of the Regions, Brussels, COM(2011) 681 final, 25 October, 2011, p. 4, <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf>, accessed 26 May 2015.

¹⁴⁷ *Ibid.*, p. 3.

¹⁴⁸ Article 37, *ASEAN Human Rights Declaration*, Association of Southeast Asian Nations, 18 November 2012, <<http://www.refworld.org/docid/50c9fea82.html>>, accessed 26 May 2015.

¹⁴⁹ Paragraph C3, *ASEAN Socio-Cultural Community Blueprint*, Association of Southeast Asian Nations Secretariat, 2009, <<http://www.asean.org/archive/5187-19.pdf>>, accessed 26 May 2015.

equality and eliminate discrimination can contribute to socio-economic development in Myanmar.

According to the ILO, bringing equality to the workplace has significant economic benefits. The underlining reasons are the following:

1. Employers who practice equality have access to a larger and more diverse workforce.
2. Workers who enjoy equality have greater access to training, often receive higher wages, and improve the overall quality of the workforce.
3. The profits of a globalised economy are more fairly distributed in a society with equality, leading to greater social stability and broader public support for further economic development.¹⁵⁰

As outlined above, companies can play a crucial role in the development of the State if they comply with their corporate responsibility to respect basic human rights standards, and in this specific case, with the fundamental labour right of equality and non-discrimination.

C. Theoretical considerations of applying corporate responsibility to respect to tackle workplace discrimination in Myanmar

It is undeniable that businesses operating in Myanmar have a responsibility to respect the labour rights of their employees by complying with national laws and international human rights standards that the Government of Myanmar has agreed to. In this particular case, equality and non-discrimination at the workplace, as stated in previous chapters, is guaranteed by the Constitution of Myanmar and several domestic labour laws. Myanmar has also ratified CEDAW and CRDP. Besides the fact that the principles stated in those instruments are not fully incorporated into national legislation, Myanmar is bound to comply with the standards provided therein. Therefore businesses shall adhere to those standards as well.

Why do we then need corporate social responsibility to protect labour rights of employees in Myanmar? It is quite evident that businesses are required to abide by

¹⁵⁰ ILO, Rules for the game, *supra* note 99, p. 34.

existing laws and regulations of the country, which contain labour rights guarantees. Then why do we need to go beyond hard law and rely on voluntary regulations?

The necessity for the development of a framework for corporate responsibility is a result of the failure of the national regulatory system.¹⁵¹ According to the OECD, responsible business conduct means, above all, complying with laws, such as those on respecting human rights, environmental protection, labour relations and financial accountability, even where these are poorly enforced.¹⁵² The UNGPs stress the same approach. There are several reasons one needs to promote responsible business conduct in Myanmar:

Laws: Myanmar has out-dated legislation, which does not provide minimum human rights protection guarantees, especially in respect of equality and non-discrimination at the workplace.¹⁵³

Enforcement and monitoring: The Government of Myanmar is still in its early stages of transitioning and is not capable of even enforcing existing laws. There is lack of qualified staff in the country. The existing mechanism [FGLLID] for monitoring labour rights of employees is not effective. The labour inspectors lack capacity and numbers. Corruption is still evident in layers of public institutions, which considerably hinders progress.¹⁵⁴

Grievance mechanisms: The judicial system in Myanmar is ‘under-resourced, politically influenced and lacking in independence’.¹⁵⁵ There is no effective mechanism for victims of the human rights violations to seek justice and demand remedies in Myanmar.

Discrimination: The discrimination problem is very specific to Myanmar, as it is deeply embedded into the social structures of the population. The Government is not willing to deal with the issue of workplace discrimination, specifically discrimination based on ethnicity and religion. Even the existing laws are discriminatory and do not grant the same protection to all ethnic and religious minorities in Myanmar.¹⁵⁶

¹⁵¹ D. Aguirre, *supra* note 8, p. 187.

¹⁵² OECD Investment Policy Reviews, *supra* note 62, p.64.

¹⁵³ See thesis *supra* Chapter II, section C.

¹⁵⁴ See thesis *infra* Chapter IV, section A.

¹⁵⁵ OECD Investment Policy Reviews, *supra* note 62, p.27.

¹⁵⁶ See thesis *infra* Chapter IV.

Transition period: Myanmar is in the process of transition from military to civil rule. The ground is still fragile and there are signs of backtracking. The Government is pressured by the international community to undertake numerous reforms in different fields, and is currently being overloaded. With the upcoming elections, the Government does not have the ability or willingness to deal with the sensitive issue of discrimination.

Considering the above, responsible business conduct would have special significance in Myanmar nowadays. Not only society will benefit from the RtR in Myanmar, but companies will also benefit significantly.

According to the OECD Review on Responsible Investment's in Myanmar, business support for the UNGPs and the need to respect human rights has increased. This stems, in part, from the growing recognition that companies associated with alleged human rights abuses face a number of significant risks: 'project delays or cancellations (operational risks); lawsuits or fines (legal or regulatory risks) and any harm inflicted on their brand image (reputational risks)'.¹⁵⁷ According to an ILO report on operations in Myanmar, businesses are incorporating labour rights and RtR standards in their policies, though the progress is still slow:

Competition and the need to provide evidence of the application of standards when trading in the global economy have led to some sectors developing codes of conduct, with emphasis on international labour standards, the environment and corporate social responsibility. This, however, is all foundational activity and is still on a limited scale, meaning that there has been relatively little direct positive impact on working conditions as yet.¹⁵⁸

The UNGPs RtR enables companies to effectively address discrimination. One of the requirements of RtR, as mentioned in the section above, is to integrate labour standards into internal policies, codes of conduct and action plans of the company. This way the initiative becomes long lasting and sustainable. Consequently, the RtR provides the potential for long-term employment and income for socially excluded populations. By successfully linking the inclusion of excluded populations to the profit-making

¹⁵⁷ OECD Investment Policy Reviews, *supra* note 62, p. 65.

¹⁵⁸ ILO, Review of situation in Myanmar, *supra* note 32, par. 48.

operations of a business, this ensures that the business will not abandon these programmes in market downturns or difficult times.¹⁵⁹

Another principal aspect of the RtR, and a beneficial tool for business operations as stated in UNGPs *Principle 18*, is consultations with stakeholders. The purpose of these consultations is to identify and assess any actual or potential adverse human rights impacts in a timely manner. The consultations may take place either with potentially affected groups, human rights defenders or representatives of civil society groups.¹⁶⁰ Specifically, if we consider the problem of workplace discrimination in Myanmar, businesses could considerably benefit from consultations with local organisations in order to avoid exclusion of vulnerable population from the workforce and prevent internal disturbances between local employees of different minority groups. It is important for the companies, especially foreign investors, to engage with local NGOs and CSOs, which have substantive information about social attitudes, labour laws and practices, and challenges connected to the implementation of laws and protection of labour rights of employees in Myanmar.

Another positive aspect of the RtR is that by incorporating labour rights protection guarantees into the internal policies of companies, their efficiency and productivity are increased. Globalisation of markets means that companies with workers from different backgrounds in terms of gender, race, ethnicity, religion, national origin, age, disabilities, HIV/AIDS status, etc. will be in a better position to anticipate customers' diverse expectations and needs. Non-discriminatory practices are increasingly recognised as an important managerial tool to increase efficiency and productivity.¹⁶¹ Company policies and programmes should recognise and value the different backgrounds of employees and seek to attract and retain well-qualified workers and place equality of opportunity at the heart of their human resources management.¹⁶²

¹⁵⁹ W. J. Werner, *Corporate Social Responsibility Initiatives Addressing Social Exclusion in Bangladesh*, August 2009, <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2928098/>>, accessed 26 May 2015.

¹⁶⁰ Principle 18, Commentary, UNGPs, *supra* note 114.

¹⁶¹ International Labour Organization, 'Q&As on Business, discrimination and equality', *ILO* [website], <http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang--en/index.htm#Q6>, accessed 26 May 2015.

¹⁶² *Ibid.*

On the negative side, the UNGPs is a guideline and, despite global recognition, does not have binding legal force. Therefore the companies are not obliged to follow the RtR in order to address workplace discrimination. According to international law, only the State is responsible to respect, protect and fulfil human rights standards, and thus it is the obligation of the State to prevent the violation of those standards by third parties, including businesses. The businesses are required to comply with only the laws of the State, where they operate, and if the laws are not compatible with international standards, or the enforcement mechanism of the State is too poor to regulate the business practices, businesses escape the responsibility and we have two sides that bear the consequences: the society that is victimised and does not have a mechanism to seek remedies, and the State which is condemned by the international community. Neither of those consequences helps to restore justice and promote human rights in the country. Hence, we are back to the point from where we started. There is the need for the RtR, especially in developing countries and countries in transitions such as Myanmar, in order to achieve the protection of basic human rights.

D. Chapter Summary

The present chapter served as the baseline for further analysis of the empirical study on Myanmar, as it defined the international standards on prohibition of discrimination in employment and occupation, examined the corporate responsibility regulatory framework and provided a theoretical overview of why the RtR is needed in order to tackle workplace discrimination in Myanmar. *Chapter IV* will further provide empirical material on workplace discrimination in Myanmar and on the application of the RtR by businesses that are operating in the country.

IV. WORKPLACE DISCRIMINATION IN MYANMAR – EMPIRICAL STUDY AND LITERATURE REVIEW

Within the framework of the present study I conducted field research in Myanmar. The purpose of this research was to identify: (1) whether there is workplace discrimination in Myanmar within business enterprises (2) which are the most vulnerable groups that are affected by discriminatory practices (3) whether companies have specific policies in place to prevent workplace discrimination (4) good and bad business practices with regard to workplace equality and non-discrimination.

As mentioned in the methodology chapter of the thesis, the field research was limited in time and place, as it lasted for three weeks and was conducted only in Yangon. Within the framework of the study, representatives of local NGOs, international organisations, businesses, employees and ordinary citizens were interviewed. Due to the sensitivity of the issue the names of some of the interviewees will not be disclosed in this document. The transcript of every quoted text is available with the author.

The aim of this chapter is to illustrate problems connected to workplace inequality through the original words of stakeholders. The purpose of the field study was to gather material on workplace discrimination in Myanmar, which is scarcely available due to the country's recent opening and transition from military to civil rule.

Besides the interviews, the present chapter also draws information from other sources, and mainly from the document provided by the Myanmar Centre for Responsible Business and the Danish Institute for Human Rights, who kindly shared some of their field research findings.

The purpose of this chapter is to provide insight into workplace discrimination in Myanmar and application of the RtR by business enterprises operating in the country.

A. Overview

Grounds of workplace discrimination: The study revealed that discrimination is a systemic problem in Myanmar. It is enshrined in the society, in national laws, in

Government agencies and in the private sector as well. It is directed towards specific vulnerable groups, including religious and ethnic minorities, persons with disabilities, women, sexual minorities, members of trade unions, and persons with HIV/AIDS.

Based on the conversation with local people and foreigners who had been working in Myanmar for years, and also through the further desk research¹⁶³, it was clear that Myanmar community itself is divided into certain classes starting from the most privileged and ending with the most marginalised.

According to Steve Marshall, ILO Liaison Officer in Myanmar, even outside of the workplace there are serious problems with discrimination:

In certain ethnic groups, in certain religious groups, which are considered to be of less status and acceptance in society than others, that has resulted in some civil unrest and violence in the country.

According to him, workplace discrimination is not structured in Myanmar but it still exists. It is not that discrimination is targeted against specific groups, but that historically there has been a 'repression of the weak, the poor and the vulnerable in Myanmar'.

On the question about workplace discrimination in Myanmar, ex-Government officials, military owned business representatives and even certain members of the national human rights commission used to reply strictly that, there is no discrimination in Myanmar. But when I inquired further about employment practices of persons with disabilities, women in high-level positions, discrimination of trade union leaders - their answers revealed the opposite. However, the sensitive issue of workplace discrimination based on religion was abruptly denied, despite the different wording of the question.

Favouritism and nepotism: The general findings of the study, among other causes of workplace discrimination, also revealed favouritism and nepotism, mainly in the local companies. The Head of the ILO in Myanmar commented on the issue:

¹⁶³ Institute of Peace and Conflict Studies illustrates the ethnic and religious division of the society in Myanmar, comprehensive picture of the reasons causing this division. Institute of Peace and Conflict Studies, *Challenging the Reconciliation Process: Myanmar's Ethnic Divide and Conflicts*, issue brief, 2015, <<http://www.ipcs.org/issue-brief/southeast-asia/challenging-the-reconciliation-process-myanmars-ethnic-divide-and-conflicts-221.html>>, accessed 26 May 2015.

What you tend to find, is that people are recruited because they know somebody else in the factory, or in employment, and there is a tendency for a company to be employing people of a like nature. Whether that is actually a formal policy decision on the part of everybody or whether this is simply a practical response - I do not know. But you will find in a lot of workplaces that it is predominantly Christian, or it is predominantly Buddhist, or it is predominantly Burman, or predominantly ethnic. It depends largely on the ownership of the company.

There is also a big number of family-run local businesses in the country. According to the head of one of the local companies interviewed, he only hires his relatives and friends. The employees include his daughter, niece, nephews, and university and school friends.

Impact of foreign investments: All interviewees viewed foreign investments from the western States positively, and as incentive for local businesses to adopt better human rights and labour rights practices in Myanmar. One of the family-run conglomerates, the KBZ group, describes foreign investments as a positive step towards human rights protection. ‘A lot of multinational companies are coming in and maybe through them, there might be changes in local companies – the way they respect human rights’. According to a representative of the KBZ group, when cooperating with foreign businesses, local businesses have to make substantive changes in the internal operation of the company, as they have to follow the codes of conduct of their foreign partners. However, the KBZ group distinguished Western companies, from Asian companies. ‘Asian companies are not that cautious [with human rights]. Those are the companies that make the news.’¹⁶⁴

State-based monitoring mechanisms: The study further showed that the Government does not have an effective monitoring mechanism in place to reveal and address workplace discrimination in Myanmar. Almost all interviewees considered that labour inspectors lack in both numbers and professionalism. According to the Myanmar National Human Rights Commission, there are only eleven factory inspectors throughout the country. The Government is currently recruiting new staff, though their ‘attitude and professionalism’ is under question. According to the field research

¹⁶⁴ Transcript of the interview available with the author.

conducted in January 2015, by the Danish Institute for Human Rights (*hereinafter* DIHR) and the Myanmar Centre for Responsible Business (*hereinafter* MCRB), ‘the labour inspectors lack human resources and capacity’. Further, according to the mentioned research, it takes labour inspectors 5 to 10 years to go back to the factories inspected for a second time due to excessive workload.¹⁶⁵

According to the owner of a local family business, he has been running his business for twenty-one years and labour inspectors have not visited his company even once.

Employees do not find labour inspectors useful either. On the question about labour inspectors, one of the interviewees, working for a foreign company operating in Myanmar, replied: ‘Have not heard of such labour inspectors. I have never seen labour inspectors in my company and I am working there already for a year’.¹⁶⁶

The ineffectiveness of labour inspectors in the country was also outlined by the US Department of State Report:

Workers’ organizations alleged that government inspections were rare and often announced with several days’ notice that allowed factory owners to bring facilities – often temporarily – into compliance. Corruption and bribery of inspectors reportedly occurred.¹⁶⁷

B. The most vulnerable groups at the workplace

According to Vicky Bowman, head of the MCRB, which works with local and foreign businesses in order to promote responsible business conduct, the most discriminated groups at the workplace in the private sector of Myanmar are: ‘the disabled, followed by Muslims, followed by women, followed by ethnic minorities’. Other types of discrimination such as discrimination against persons with HIV/AIDS, LGBT and members of trade union were also outlined by the interviewees.

¹⁶⁵ DIHR & MCRB, Stakeholder Consultations, *supra* note 50.

¹⁶⁶ Transcript of the interview available with the author.

¹⁶⁷ U.S. Department of State, ‘Burma 2013 Human Rights Report’, in *Country Reports on Human Rights Practices for 2013*, <<http://www.state.gov/documents/organization/220394.pdf>>, accessed 26 May 2015.

The following subchapters will focus on three groups: religious minorities, women and persons with disabilities. Findings with regards to other vulnerable groups will be briefly mentioned in the last subchapter.

1. Religious discrimination

Discrimination based on religion is widespread in both the private and public sector of Myanmar. The whole society has discriminatory perceptions, stereotypes and the system they live in is discriminatory itself. If one just looks at the identification cards that Myanmar nationals hold, they can understand that discrimination is deeply enshrined into social structures and governing powers of Myanmar. All ID cards in Myanmar contain information about the ethnicity and religion of the person. Therefore it is easier for the employer to discriminate against a specific group during the recruitment process.

During my trip I visited a local recruitment agency in Myanmar, called Dagon Glory. It helps the locals to find job in companies operating in Myanmar. I asked staff members to show me a CV template, which they request potential candidates to complete. The CV template was only one page long and among other questions inquired information on the **religion** of the candidate. Further interviews explained this phenomenon.

According to the Myanmar National Human Rights Commission, workplace discrimination based on religion does exist in Myanmar: ‘if the Muslim is the owner of the shop he **might** prefer Muslims other than Buddhists; but if the Buddhist is the owner, he **will go** with his own religion’. The interviewee further explained that for Muslims it is sometimes a problem to find a job, though there are several Muslim-run businesses so maybe they can employ Muslims. As he stated: ‘Besides all your qualifications they [employers] might not consider you because you are Muslim’.¹⁶⁸

According to the US Department of State Report, anti-Muslim violence, which reigns throughout the country, is sanctioned by Government of Myanmar.¹⁶⁹ A minority group, which self identifies itself as Rohingya, but is regarded as Bengali (immigrants) by the Government. The group remains stateless due to the country's 1982 Citizenship Act,

¹⁶⁸ Transcript of the interview available with the author.

¹⁶⁹ U.S. Department of State, ‘Burma 2012 Human Rights Report’, in *Country Reports on Human Rights Practices for 2012*, <<http://www.state.gov/documents/organization/204400.pdf>>, accessed 26 May 2015.

which deprives the Rohingya of citizenship rights.¹⁷⁰ Consequently, the Rohingya suffer restrictions on movement, forced labour, confiscation of property, discriminatory taxation, and limitations on marriage, employment, health care, and education.¹⁷¹

According to the ILO, this attitude towards the Rohingya is largely driven by ‘jealousy, greed, selfishness, status structure, ethnicity, religion and even the colour of the skin’. Both groups, Rakhine and Rohingya, were historically oppressed, but now that the Rakhine people gained relatively more recognition and several seats in the Parliament, they do not want to share the power with the Rohingya minority, which also reside in the Rakhine State.

According to one of the local employees in Yangon, the jealousy of Rakhine people towards the Rohingya is also caused by international organisations – ‘International non-governmental organisations hire only Muslims and not locals in Rakhine State. Rakhine people see it differently – they do not hire us and there is discrimination against us’.¹⁷² Locals hardly consider that due to discrimination and marginalisation of the mentioned groups, employment in international organisations is one of the few job opportunities that religious minority groups can access in the region. The evidence of discontent of the Rakhine people with international organisations supporting the Rohingya in the Rakhine State was reported by the UN Special Rapporteur in March, 2015 stating that - in March 2014 attacks on the United Nations and humanitarian organisations were initiated in the Rakhine State and several international organisations ‘were required to suspend or withdraw their operations which had a significant impact on the well-being of both Buddhist and Muslim communities’.¹⁷³ In 2015, access to the IDP camps in the Rakhine State was again granted to a limited number of international organisations. The Rapporteur though, asserts that ‘The perception amongst the Rakhine Buddhist population that international support is only for Rohingyas and discriminates against their community is still prevalent’.¹⁷⁴ Yet the Special Rapporteur highlights that she

¹⁷⁰ *Ibid.*

¹⁷¹ B. Zawacki, *Defining Myanmar's 'Rohingya Problem'*, 20 Hum. Rts. Brief 18, 2012-13.

¹⁷² Transcript of the interview available with the author.

¹⁷³ Report of the Special Rapporteur on Myanmar, *supra note* 51, par. 44.

¹⁷⁴ *Ibid.*

witnessed that the international community was making an effort to assist both communities, even by building separate schools and health centres side by side.¹⁷⁵

According to the ILO, Buddhist nationalist movements, which are extremely discriminatory and potentially violent, constitute another threat and emerging power in fuelling religious conflicts in the country.

Religion is capable of controlling businesses and employment practices in Myanmar. Muslim run businesses are specifically targeted. According to one of the interviewees, a local employee of a foreign company operating in Myanmar,

These days in this country, this religion cut is like a microwave oven, so depending on the climate of the situation and depending on how eager they want to have a distraction, they [National Buddhist movements] can always heat it up... so you want to set it to number three, or you want to set it to number five. They always keep it warm. So whenever they want a distraction – that is a little microwave oven... you know, how much you want it, small scale, big scale... just create a rumour that a Muslim guy raped a Buddhist girl.¹⁷⁶

The local Buddhists also avoid working for Muslim run businesses in Myanmar. According to one of the employees of Ooredoo (a telecommunications company based in Saudi Arabia) some of his acquaintances refused to accept a job in the mentioned company, only because it is run by Muslims.

There were vacant job positions at Ooredoo and I recommended several candidates to the Human Resources director, who contacted those candidates, but none of them replied or took the job offer.

According to him, there is reluctance among locals to work for the company, so most of the staff nowadays employed by Ooredoo come either from the US or Singapore. Only the lower level positions, such as sales and marketing, are held by local people. However, according to the mentioned employee, Ooredoo pledged to the Government of Myanmar to gradually increase the number of local employees in the company.¹⁷⁷

When I asked the question about workplace discrimination based on religion to the representative of the Myanmar Economic Corporation (*hereinafter* MEC), a military

¹⁷⁵ *Ibid.*

¹⁷⁶ Transcript of the interview available with the author.

¹⁷⁷ Transcript of the interview available with the author.

owned conglomerate, he recalled discrimination by Muslim run businesses against Buddhists. According to him, ‘Muslims have allergy on Buddhists’, as usually they do not employ Buddhist workers. He highlighted, as an example, Ooredoo – the Telecommunications Company. In order to verify facts, I talked to a Buddhist employee at Ooredoo, who stated that most of the employees in the company are Buddhists.

There have been cases when businesses could not recruit Muslim minorities, due to the threat of internal conflict at the workplace among the workers. In a number of cases in Yangon and Mawlamyine, employers mentioned that tensions would occur in workplaces if Muslims were hired. Some hotel owners indicated that they are afraid of hiring Muslims due to a fear of social conflict.¹⁷⁸ During the interview, Vicky Bowman regarded this particular anti-Muslim discrimination as obviously a growing problem, specifically in places such as the Rakhine State. She recalled speaking to one hotel business in the Rakhine State, which was forced by its employees to sack Muslim workers, otherwise they would refuse to work. ‘In Rakhine State you have acute external problem of boycotting Muslim businesses, or businesses that are perceived as being Muslim.’

The Coca-Cola Company branch in Myanmar has very few Muslim employees. Even though there are no reported cases of discriminatory practices against Muslims, they have difficulties integrating with other Buddhist workers employed by the company. There is a lack of understanding from Buddhist workers, for example when Muslim colleagues ask for flexible working hours during Muslim days.¹⁷⁹

According to internal statistics provided during the interview with the banking branch of the local conglomerate, the KBZ group, out of a total of 12709 employees, 96 per cent are Buddhists, 3.5 per cent are Christians, 0.1 per cent Hindu, 0.3 per cent Muslims and 0.1 per cent of other religions.¹⁸⁰ The company specified, that identification of religion, ethnicity and other similar information, is requested only after recruitment of the candidate, and only for the purposes of internal statistics.

¹⁷⁸ Myanmar Tourism SWIA, *supra* note 47, p. 148.

¹⁷⁹ DIHR & MCRB, Stakeholder Consultations, *supra* note 50.

¹⁸⁰ The document featuring statistics of KBZ bank employees (dated 25 February, 2015) is available with the author.

According to the owner of a local family business, most of the Buddhist employers are reluctant to employ Muslims. He further explained:

I will tell you something – I will never employ Muslim here. According to my personal experience, Muslims bring a lot of trouble. Muslim and Myanmar are very different. Muslims usually betray you. Myanmar will not employ Muslim. Basically it is unwritten law.¹⁸¹

The head of a local NGO working on the rights of Muslims in Myanmar, Smile Foundation, highlighted that Muslims and especially Rohingya are a marginalised group in Myanmar. According to him, it is impossible for Rohingya to get a job, as they do not possess Myanmar citizenship. For Muslims, it is possible, but very hard as well. He raised an example of his acquaintance, who was working in the laboratory in Yangon. When the conflict against Rohingya escalated in the Rakhine State, her co-workers started talking bad about Muslims, even though not talking directly to her, but every time she was around. So she, being a Muslim, felt pressured and was forced to resign from work.

The case of workplace discrimination against Muslim women was revealed by DIHR and MCRB field study, conducted in the beginning of 2015. According to the findings, two Muslim women were not hired at the Korean garment factory in Bago because of their religion in 2014. Pursuant to the internal policy of the factory, supervisors can directly appoint workers and it is allegedly believed that they do not hire Muslims. The two Muslims lodged a complaint to the policy special branch of the company. They received a reply from the management saying that this behaviour did not reflect the company's policy.¹⁸²

2. Gender discrimination

There are a lot of stereotypes with regards to a woman's role in Myanmar's society and what kind of jobs they may, and may not, hold.

¹⁸¹ Transcript of the interview available with the author.

¹⁸² DIHR & MCRB, Stakeholder Consultations, *supra* note 50.

Several interviewees had a similar perception of a woman's place at the workplace. The owner of the local family business stated, that cashier and accountant positions are for women, as 'they do not cheat and are not greedy' in comparison to men. Also, according to him, garment [manufacturing] is a woman's job, driving – a man's job.¹⁸³

According to an employee holding a high level position in the MEC, a military owned conglomerate, women in Myanmar up to present time are considered to be the weaker sex. According to the interviewee:

When there is an important correspondence that MEC needs to send to the capital, there is no need for ladies to go. This is a duty of men. Women cannot shout or cannot argue because they are of weaker sex.

In response to the question whether there is gender discrimination at the workplace, the interviewee mentioned an example of his department at the MEC:

Nowadays lady from Myanmar is not different from men. They are working, do you see [pointing to three female employees present at the interview]. They are good staff to me. Among my employees there are only several male, others are women.

He further noted that executive level positions in MEC are mostly held by men, but in the low and medium level positions they are mainly women.¹⁸⁴

Vicky Bowman, the head of MCRB, commented that discrimination against women at the workplace is more related to particular jobs being perceived as being for women or men. Otherwise, as she stated, there are a lot of female senior managers who are in businesses, and there is strong cultural acceptance of women in business in Myanmar.

A representative of the Myanmar National Human Rights Commission, while commenting on the question about labour laws and gender discrimination at the workplace, gave an example of the Factories Act, which according to him covers the protection of 'weaker sex – women'. The law lists types of work that cannot be done by women. According to the interviewee 'the women are not entitled to' carry heavy loads, or do other similar hard work. The interviewee further explained:

¹⁸³ Transcript of the interview available with the author.

¹⁸⁴ Transcript of the interview available with the author.

Garment factories are mostly for women, they are more patient, well sewing is their job, so they are more used to it. The men, the ones that are graduates, they might come in as the supervisors, or foreman.

To the question, if women are holding managerial position in Myanmar, the interviewee responded:

Mostly, the managerial jobs are filled up by men. But because of the big number of women employed by the factories they also have some women supervisors – it largely depends on the owners... In banks situation is opposite. Most of the graduates are women. If you go to the bank and look around there are a lot of women. On the higher, managerial positions, women as well as men are employed.¹⁸⁵

According to internal statistics, provided during the interview with the banking branch of the local conglomerate, the KBZ group, out of a total of 12709 employees, 53.55 per cent are women and 46.45 per cent are men.¹⁸⁶ Further, a representative of the HR department noted that 36 per cent of managerial positions in the company are held by women.¹⁸⁷

According to Steve Marshall, head of the ILO in Myanmar, ‘there is no question that there is a wage gap between female and male in the workplace’.

DIHR and MCRB research revealed several instances of discrimination against pregnant women at the workplace in Myanmar. According to their study, pregnant women workers are not given any benefits throughout the pregnancy period, they are not paid during the maternity leave, and they do not get reintegrated in the same position/level when they return to their jobs, so they have to start again as ‘new staff’.¹⁸⁸

3. Discrimination based on disability

In relation to workplace discrimination based on disability, Vicky Bowman, head of the Myanmar Centre for Responsible Business commented:

¹⁸⁵ Transcript of the interview available with the author.

¹⁸⁶ The document featuring statistics of KBZ bank employees (dated 25 February, 2015) is available with the author.

¹⁸⁷ Transcript of the interview available with the author.

¹⁸⁸ DIHR & MCRB, Stakeholder Consultations, *supra* note 50.

There is clear statistics on lack of persons with disabilities at the workplace and there is no real efforts made by the companies to employ them - which is almost all the companies.

According to her, foreign businesses are prioritising health and safety issues at the workplace and the recruitment of persons with disabilities is their lowest priority.

The new law on the rights of persons with disabilities was recently drafted and submitted to Parliament. The law contains clauses on non-discrimination, and also proposes adoption of quotas for persons with disabilities at the workplace. The Social Welfare Department and disability groups, including the Myanmar Independent Living Initiative, were involved in drafting the new law.

According to a representative of the Myanmar National Human Rights Commission, persons with disabilities usually find jobs with their own relatives, in family run businesses, but outside the family business, companies do not employ persons with disabilities.

The head of the ILO office in Myanmar commented that unfortunately, disability does not seem to be a top priority at the present time for the Government of Myanmar.

According to representatives of the KBZ group, their company does not discriminate based on disability, though there are no persons with disabilities employed in their offices.

We do not discriminate based on disability, but the reality in Myanmar is that a lot of persons with disabilities don't have education, so it's very difficult for them to apply to work with us. It has nothing to do with our bank or policies; it is a situation in our country. It is not that we don't want them, it is just that they don't meet the criteria.¹⁸⁹

The following cases of discrimination based on disability were revealed by the DIHR and MCRB study:¹⁹⁰

- People with hearing impairment are harassed at work and do not get promotions, as they lack understanding during meetings and no tools to help are provided by companies.

¹⁸⁹ Transcript of the interview available with the author.

¹⁹⁰ DIHR & MCRB, Stakeholder Consultations, *supra* note 50.

- 85 per cent of people with disabilities are unemployed, due to the general belief by employers that they only represent a burden and have no skills.
- Job descriptions often mention ‘physical strength’ as a criterion for employment.

Myanmar Independent living Initiative

A local NGO in Myanmar, the Myanmar Independent Living Initiative, conducts professional trainings for persons with disabilities. According to the head of the organisation, Nay Lin Soe, organization prepares persons with disabilities for the job market: ‘We have contract with several local businesses, we train persons with disabilities here, and then help them to get a job in those companies.’ According to Nay Lin, 40 to 45 trained persons were employed as of 19 February 2015. Usually they get hired for positions such as telephone operator, computer operator, and receptionist. The NGO also supports the education of persons with disabilities, which can further contribute to their employment. It provides financial support to persons with disabilities studying in universities. In the 2014-2015 academic year, the organisation supported twenty-five students. The organisation plans to increase the number of scholarships to one hundred. In response to the question, which are the companies that recruit persons with disabilities, the head of the MILI, replied that there are two major ones – Blue Ocean Operating Management Company Ltd., a local business running a call centre, and a local Bank. Shangri-La hotel has also employed one or two persons with disabilities. According to him, no other foreign companies have employed persons with disabilities yet.

4. Other types of discrimination at the workplace in Myanmar

a) Ethnic discrimination

According to Vicky Bowman, ethnic discrimination is much more prevalent in the Government compared with businesses.

In response to the question regarding ethnic discrimination at the workplace, a representative of the Myanmar National Human Rights Commission commented:

Ethnic groups are mostly very clannish, and prefer to employ workers of their own ethnicity. It depends on person who is in charge. They look out for their own people. Preferential treatment - I would put it.¹⁹¹

In response to the question on workplace discrimination against minority groups, a local employee of a company operating in Myanmar surprisingly stated that those groups are more favoured than discriminated. As an example he named Foreign Embassies:

In the Western world the minorities - other religious groups, are discriminated, but around here this is the opposite... because, for example, the British Embassy and the US Embassy, they only hire Karens, and most favourably Christians. So for most of their security guards, there are few Muslims, but mainly there are either Karens, maybe Indian, but most of them, almost all of them – Christians. In the British Embassy there are all Karens, and in the US embassy Karens and Indians. And same thing goes for some of their NGOs.¹⁹²

According to internal statistics provided during the interview with the banking branch of the KBZ group, out of a total of 12709 employees, 82.46 per cent are of Bamar race. It is interesting to see, that the statistics that the KBZ group collects from its employees, are so detailed that the race of the employee is illustrated separately from the father's and mother's side.¹⁹³

b) Anti-union discrimination

A representative of the Myanmar National Human Rights Commission named one of the grounds of workplace discrimination – anti-union discrimination. According to him, employers always pinpoint trade union leaders, and when the strike is over, the leaders are dismissed.¹⁹⁴ Also the DIHR and MCRB field study in 2015 named, as one of the contemporary challenges, anti-union discrimination through unfair dismissal in mining, manufacturing, construction, garment and other sectors, including education (universities).¹⁹⁵ The cases within the mentioned study include:

¹⁹¹ Transcript of the interview available with the author.

¹⁹² Transcript of the interview available with the author.

¹⁹³ The document featuring statistics of KBZ bank employees (dated 25 February, 2015) is available with the author.

¹⁹⁴ Transcript of the interview available with the author.

¹⁹⁵ DIHR & MCRB, Stakeholder Consultations, *supra* note 50.

- The Belmond Governor's Residence hotel fired trade union leaders. According to the complaint letter on 20th October 2014, trade union members were subject to harassment, discriminatory treatment by the management and unfair dismissals. Some of the discriminatory practices allegedly included assigning union members to tasks not suitable for their skills, forcing them to move to other departments, forcing women staff to work during the night, with no salary increase. Disproportionate actions, such as demotion, were taken against minor faults. Many of them quit their jobs as they could no longer stand those discriminatory practices.
- In January 2015, a fish processing factory, Garland Ocean, in the Hlaingtharyar industrial zone, fired the trade union leader (a woman), because she joined 2 days training on how to do the survey to define the minimum wage, which was conducted by the Ministry of Labour.
- A Japanese garment company, Famoso, fired three union leaders, in 2013.
- One union leader was fired for having brought up to management the case of a woman who was denied maternity leave. The two others were fired because they talked to the Ministry of Labour.
- A Korean shoe factory, Esquare, fired 3 union leaders (women), because they responded to a survey on the labour situation conducted by the Parliament.

c) HIV/AIDS

According to one of interviewees working for Ooredoo, all employees of the company were tested for HIV/AIDS in the beginning of 2015. When he inquired with HR, if the results of the test would affect the employment, HR replied that they do not have such a policy. The interviewee further stated that he was looking forward to the results of the test and how those results would affect employment at the company. According to him, companies do not usually hire workers with HIV or AIDS. He further noted that persons with HIV/AIDS are employed by an international NGO, International HIV/AIDS Alliance, which operates in Myanmar.¹⁹⁶

¹⁹⁶ Transcript of the interview available with the author.

d) LGBT

LGBT is another group that, according to most interviewees, is commonly being discriminated against at the workplace in Myanmar. According to the US State Department's 2013 Annual Human Rights Report, LGBT people face discrimination in employment, including denial of promotions and dismissal. Also, according to the report, activists reported that job opportunities for many openly gay and lesbian persons were limited, and there is a general lack of support from society as a whole.¹⁹⁷

On the positive side, according to an Ooredoo employee, there are several LGBT persons employed in the marketing department of Ooredoo and there have been no instances of workplace discrimination against them.

C. Responsibility to respect compliance and good business practices in Myanmar

The empirical study, in combination with desk research, revealed that most companies understand corporate responsibility in Myanmar more as philanthropy, rather than the useful framework for the promotion of labour rights. A representative of the KBZ bank noted:

I don't think corporate social responsibility should be involving labour rights, because CSR is responsibility in terms of social initiative right? In terms of labour rights, it's a different issue. Labour rights should already be part of corporate culture, it should not be taken as part of CSR initiative... It is a breach of labour laws, not CSR.

She further explained:

A lot of people are not aware that labour rights are part of CSR. They see those as a two different things. CSR is seen to be external – so what we do for other people. The labour laws and human rights are completely internal.¹⁹⁸

¹⁹⁷ U.S. Department of State, 'Country Report on Human Rights Practices for 2013', *Burma*, <<http://www.state.gov/documents/organization/220394.pdf>>, accessed 26 May 2015.

¹⁹⁸ Myanmar has published article on CSR in Myanmar, outlining: 'Traditionally, CSR in Myanmar has been seen as philanthropy. Many companies have made generous donations to education, rural

The interviewee's vision of CSR is confirmed by the KBZ Group website as well, which states: 'KBZ Group of Companies is recognised to be the leading philanthropic organisation in Myanmar and has been awarded for its CSR initiatives'.¹⁹⁹

Hence, there is urgent need to raise the awareness of local businesses on the UNGPs and particularly the RtR.

Foreign companies are more aware of the UNGPs, and they reiterate their commitment to follow guidelines and comply with international human rights standards on several occasions within their corporate responsibility reports. For instance, the Coca-Cola report on Responsible Investments in Myanmar defines from the beginning that they are following the UNGPs framework: 'This report describes the due diligence process followed by the Company in line with the United Nations Business and Human Rights Guiding Principles'.²⁰⁰ Coca-Cola further reiterates their support of the UNGPs, stating that it is the role of businesses 'to respect all human rights' and asserting that the UNGPs constitute the 'key touchstone' of their policies. As part of this commitment, the Company expects its bottling partners and suppliers to 'avoid causing, or contributing to, adverse human rights impacts as a result of business actions'.²⁰¹

The Coca Cola Company has published two reports as of 24 May 2015. In the first of these reports, the company highlighted the problem of gender and age discrimination, which was revealed during due diligence process of the Company: 'There was an indication of discriminatory hiring and payment practices. At the time of the assessment women were paid approximately 11 per cent less than male colleagues'. According to the report, the Coca Cola Company addressed the issue by carrying out training and capacity building of employees. According to the report, during the second audit,

development and healthcare projects, benefitting many people. However, these initiatives have, arguably, done little to benefit the companies whose profits were used to fund them.

CSR needs to go beyond philanthropy and demonstrate a benefit for the business as well as the community.' The article further criticises window dressing by companies, stating: 'CSR needs to be more than a PR exercise that tries to show how "good" a company is. Such PR strategies will actually damage the business in the longer term, as stakeholders realise that rhetoric does not match reality.'

R. Welford, 'CSR is Good Business', *Myanmar Times*, 17 June 2013, <<http://www.mmmtimes.com/index.php/opinion/7166-csr-is-good-business.html>>, accessed 26 May 2015.

¹⁹⁹ KBZ Group of Companies [website], <http://www.kbzgroup.com.mm/about_us_>, accessed on 26 May 2015.

²⁰⁰ The Coca Cola Company, *Responsible Investments in Myanmar*, 12 December 2013, p. 3, <<http://photos.state.gov/libraries/burma/895/pdf/TCCCStateDepartmentResponsibleInvestment%20in%20MyanmarReport121213.pdf>>, accessed 26 May 2015.

²⁰¹ *Ibid.*, p.14.

considerable improvements were noticeable – ‘Eliminated pay discrimination against women by moving pay to same level as men in the same job grade/ classification’.²⁰²

According to the interview with Vicky Bowman:

Within the international sphere, Coke is definitely one of the most transparent about what they are doing here and one of the best established now as they are not that many.

Further, the 2015 DIHR and MCRB study revealed that the Coca Cola Company was further trying to address workplace discrimination issues through changing the typical job description, which used to mention the age and gender. The company also organised women only career development courses and there is a focus on increasing the number of women employees from 20 per cent in 2014 to 25 per cent in 2015.²⁰³

GAP Inc. has also prepared its report on responsible operations in Myanmar in accordance with the UNGPs. GAP Inc. is not directly investing in the country, though it has subcontractor factories in Myanmar. GAP Inc. outlines in the report that the company has a zero tolerance approach towards workplace discrimination:

We have zero tolerance for discrimination, harassment or retaliation. This policy applies to our directors, employees, customers and business partners, including independent contractors, vendors and suppliers.²⁰⁴

According to the report, in 2013, discriminatory practices were identified with regard to distribution of wages and benefits in one of the factories. The company addressed the issue and since then there has been considerable improvements. The report outlined further risks of discrimination during hiring, firing or terms of employment in the factory due to ethnic tensions in the Myanmar community.²⁰⁵

In response to the question of which companies are promoting responsible business conduct with regard to workplace equality in Myanmar, the head of MCRB, Vicky Bowman responded: ‘Telenor has a more acute policy on incorporating peoples with disabilities in their work force globally’. She further stated:

²⁰² *Ibid.*, p. 16.

²⁰³ DIHR & MCRB, Stakeholder Consultations, *supra* note 50.

²⁰⁴ GAP Inc., *Responsible Sourcing in Myanmar*, 25 August 2014, <http://photos.state.gov/libraries/burma/895/pdf/Gap_Inc_Myanmar_Public_Report-8_25_14FINAL.pdf>, accessed 26 May 2015.

²⁰⁵ *Ibid.*

When I ask Burmese people which are the most responsible companies, most of them refuse to answer as they say there isn't one. Personally I think City Mart limited is a very good company in terms of having its prestige, but also having its workforce, which is very motivated and systematically managed.

Several interviewees stated that Telenor is doing well in Myanmar, with regard to protection of the rights of its employees. I contacted Telenor's sustainability team and enquired about information on workplace equality in Myanmar. I received the following reply: 'As you know, our operation in Myanmar is very new. Per today – we do not have any material on workplace discrimination in Myanmar to report.'²⁰⁶

Ooredoo's website defines corporate responsibility as philanthropy and there is no mentioning of the UNGPs or human rights in CSR section.²⁰⁷ During the interview with one of their employees, Ooredoo has made efforts to combat discrimination in its Myanmar offices. According to the employee, Ooredoo has created a special place for praying in its office in Myanmar in order to promote the rights of religious minorities. The company employs representatives of almost all the major religious groups in the country – Buddhists, Muslims, and Christians. According to one of the employees, there is no discrimination in the company during the recruitment process or at the workplace. Recruitment and promotion of employees is based on their skills and performance. However, employees were recently tested for HIV/AIDS and it is not yet clear if the results will affect the employment practices of the company. Furthermore, according to the same employee, there are no persons with disabilities employed in the company. This questions the non-discrimination and diversity policy of the company.

As stated, according to the head of one of the departments of the KBZ group, corporate responsibility is more like philanthropy and does not include protection of labour rights of employees. Also, neither during the interview, or on the website of the company, can the commitment to implementing the UNGPs be found. However, during the interview the representatives reiterated company's commitment to the protection of the international human rights standards on several occasions. According to the interviewed representative, it is impossible to incorporate everything in national legislation, as

²⁰⁶ Email available with the author.

²⁰⁷ Ooredoo, 'Corporate Social Responsibility', Ooredoo [website], <<http://www.ooredoo.om/Ooredoo/CSR.aspx>>, accessed 26 May 2015.

societal needs change too fast and legislative amendments need a lot more time. Legislation should only serve as guide on how to do things. Therefore it is the responsibility of the company to incorporate international human rights standards in its policies, and upgrade them regularly according to changing societal needs. The Code of Conduct of the KBZ group is available online and contains a clause on the prohibition of workplace discrimination: ‘We are an equal opportunities employer with a strict non-discrimination policy in recruitment and promotion at the workplace’.²⁰⁸

Several NGOs and locals mentioned that the KBZ group, specifically the bank branch of the conglomerate, was complying with labour standards better than any other local company in Myanmar.

Oil and gas sector companies from Western countries, and particularly Total, was named to have responsible practices in respect of its employees in Myanmar. The reason for oil and gas sector companies being more aware of labour rights is that they have been operating in Myanmar for longer than any other foreign business and have made considerable progress in adopting comprehensive codes of conduct and CSR strategies, which protect labour rights of their employees. For instance, Total has been operating in Myanmar since 1992.²⁰⁹ According to Total’s website, they have commitment to promote diversity and equality at the workplace.²¹⁰ Their Code of Conduct for Myanmar operations provides that the company is willing to ‘Meet high ethical standards in working practices: To treat everyone fairly and with respect, to offer equal

²⁰⁸ KBZ Group of Companies, *Code of Conduct*, 24 June 2014, <http://www.kbzgroup.com.mm/sites/default/files/kbz_code_of_conduct.pdf>, accessed 26 May 2015.

²⁰⁹ It’s worth noticing, that Total has been accused in supporting military junta in Myanmar and contributing to torture and forced labour in 2002. ‘In April 2002, four Myanmar refugees filed a lawsuit against TotalFinaElf (now Total), Thierry Desmarest (chairman of Total) and Hervé Madeo (the former director of Total’s Myanmar operations) in Brussels Magistrates’ Tribunal. The plaintiffs allege that Total and its managers have been complicit in crimes against humanity, such as torture and forced labour, committed by the Myanmar military junta in the course of the construction and operation of the Yadana Gas Pipeline in Myanmar. Total owns the largest stake in this pipeline (31%). The plaintiffs allege that Total provided moral and financial support to the Myanmar military government with full knowledge that its support resulted in human rights abuses by the military.’ The case was dismissed on procedural grounds, due to the lack of jurisdiction of Belgian Courts to hear the case. Business and Human Rights Resource Centre, ‘Total Suit in Belgium (re Myanmar)’, *Business and Human Rights Resource Centre* [website], <<http://business-humanrights.org/en/total-lawsuit-in-belgium-re-myanmar>>, accessed 26 May 2015.

²¹⁰ Total, ‘Fulfilling Our Commitments to Employees’, *Total* [website], <<http://www.total.com/en/society-environment/ethics-values/areas-of-focus/Fulfilling-Our-Commitments-to-Employees>>, accessed 26 May 2015.

employment opportunities...'.²¹¹ Further, the recently updated version of the Code outlines that the company follows the UNGPs as well as ILO standards.²¹²

The MEC, a military owned local conglomerate, does not have a website and during the interview with a representative of the company, no commitment to implementing the UNGPs by conglomerate was outlined. According to the interviewee, the company has a Code of Conduct for employees, which contains basic labour rights guarantees. However, due to the fact that the Code is not publicly available, and is only in Burmese, it is hard to say if equality at the workplace is guaranteed by the document. Further, as illustrated by the interview [see previous sections], there are also shortcomings in implementing the non-discrimination policy of the company.

D. Chapter summery

The present chapter presented findings of the field research, conducted in Yangon, on workplace discrimination in the private sector of Myanmar. The chapter focused on three main grounds of discrimination – religion, gender and disability. Examples of other types of workplace discrimination, such as ethnicity, HIV/AIDS, anti-union discrimination and discrimination against LGBT people were also shortly presented. The chapter additionally illustrated the commitment of businesses in Myanmar to uphold UNGPs standards and several good practices with regard to implementation of the framework.

The presented findings will be further analysed in *Chapter VI*.

²¹¹ Total-Myanmar, *Code of Conduct*, 2011 version, <<http://burma.total.com/myanmar-en/the-socio-economic-program/the-code-of-conduct-200170.html>>, accessed 26 May 2015.

²¹² Total, *Code of Conduct*, September 2014, <<http://business-humanrights.org/sites/default/files/documents/TOTAL-attachment-code-of-conduct.pdf>>, accessed 26 May 2015.

V. ANALYSIS OF THE FINDINGS

The thesis illustrated that the national legal framework in Myanmar is not commensurate to international human rights and thus to the standards that the UNGPs encourage businesses to follow. The societal conflicts, radical national movements, unstable Government and upcoming elections particularly complicate responsible businesses operations in Myanmar. Nevertheless, investments are still flowing in and there is a need for businesses to take responsibility for their actions.

On March 25, 2015, the United Nations Human Rights Council, in its resolution on the human rights situation in Myanmar, called upon all business enterprises ‘to meet their responsibility to respect human rights in accordance with the Guiding Principles on Business and Human Rights’.²¹³

This statement not only confirms the increased recognition and value of the UNGPs, but highlights the necessity of the UNGPs specifically in Myanmar.

The thesis illustrated that there is lack of awareness among local companies on the UNGPs RtR. At the same time there are businesses that are willing to comply with the international human rights standards. The UNGPs uphold the same international human rights standards, thus the problem is not in business opposition to comply with UNGPs, but in a lack of awareness.

Further, the willingness of companies to comply with the UNGPs framework will not necessary translate into the willingness to implement this framework in respect of the inclusion of different minority groups in the workplace and, moreover, in the willingness of local employees to comply with the new setting. Dealing with workplace inequalities needs a constructive and cohesive approach of the State, businesses, and international and civil society organisations.

The sections below analyse what impact the UNGPs can have on workplace inequality today in Myanmar, what potential development of the RtR can have for the protection

²¹³ UN Human Rights Council, ‘Situation of Human Rights in Myanmar’, *Human rights situations that require the Council’s attention*, UN General Assembly, twenty-eighth session, A/HRC/28/L.21/Rev.1, 25 March 2015, par. 15, <<http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G15/063/49/PDF/G1506349.pdf?OpenElement>>, accessed 26 May 2015.

of human rights in the country, and whether the UNGPs can lead to development in Myanmar?

A. The impact of the UN Guiding Principles on workplace inequality in Myanmar

It seems obvious that if companies comply with the UNGPs in Myanmar, and respect internationally proclaimed human rights standards, it could free Myanmar from workplace inequalities, support social and economic development, and make the country a better place to live in. However, everything is not that easy, especially in Myanmar.

As stated in the previous chapters, discrimination is a societal problem in Myanmar. There are ethnic and religious groups that despise each other to the point that it causes communal violence and disturbances in the country. As stated, several companies tried to recruit representatives of two opposing groups, though their attempts were unsuccessful. This caused internal disturbances in the company and representatives of minority groups were either forced to leave by their own co-workers, or the company was forced to let them go. One then needs to reformulate the question and ask - how realistic is it to eliminate the problem of workplace discrimination through the UNGPs framework in Myanmar?

The thesis outlined three of the most vulnerable groups with regard to workplace discrimination in Myanmar – women, persons with disabilities and religious minorities. The paragraphs below separately discuss these three groups.

Women

Compliance with the UNGPs will potentially be the most effective way to address gender related workplace inequalities. At the same time, out of three vulnerable groups outlined in the thesis, this is the least difficult field to tackle. There are several reasons: first, there has been a lot of attention drawn to this issue by international organisations, Government, society, local and foreign businesses, and all of these institutions support the empowerment of women in Myanmar. Secondly, empowerment of women is not a

sensitive or controversial issue, and therefore there are no external obstacles for businesses, except traditional stereotypes, to promote workplace equality for Myanmar women. Thirdly, considering the fact that women make up the majority of the Myanmar population, and the majority of them are well educated, they firmly stand for the promotion of their own rights.

Raising the awareness of local businesses on CEDAW, ILO standards and the UNGPs RtR could considerably contribute to the elimination of the problem of gender inequality at the workplace.

Businesses need to tackle the problem of stereotypes in Myanmar. There is the need to eliminate the perception that there are jobs that are for women, and there are jobs that are only for men. The CEDAW, which Myanmar is the party to, explicitly states that it is important:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.²¹⁴

The compliance with the UNGPs, through promoting labour rights of women employees, incorporating those standards into company policies, conducting thorough due diligence to eliminate discriminatory practices against women workers and establishing effective grievance mechanisms to provide proper remedies to the women victims of employment discrimination – can tackle gender workplace inequalities in Myanmar in an effective manner. There is also a need for general vocational training for the professional development and growth of women employees, which would give them an opportunity for promotion at the workplace. Representation of women workers in the trade unions and employee organisations is also crucial for giving them the opportunity to voice their concerns.

As stated above, foreign companies, and also several local ones, try to tackle gender workplace inequalities at the workplace. The Coca Cola Company, for instance, identified the problem of gender inequality and addressed it through thorough due

²¹⁴ Preamble, CEDAW, *supra* note 101.

diligence. The same can be said for GAP Inc.. In relation to local companies, the KBZ group has pledged to increase the number of women managers in upcoming years.

The analysis of the regulatory framework together with the case study shows that the UNGPs RtR can be a useful guidance for companies, and normative basis for individual or joint action to effectively combat gender inequalities at the workplace in Myanmar.

Disability

Tackling the problem of workplace discrimination would be a little harder in respect of persons with disabilities in Myanmar and companies would need to put in more effort. The basis of the problem lies deeper, among other things, in the educational system and infrastructure of Myanmar. As stated above, the majority of persons with disabilities do not have proper access to education. During an interview, the head of the MILI mentioned that: ‘fifty-three per cent of persons with disabilities do not have primary education in Myanmar and only one per cent are university graduates’.

Therefore, the majority of persons with disabilities are exempt from the opportunity to be employed in skilled positions. In addition, a lot of unskilled positions in Myanmar require physical strength as one of the criterion for employment. There is a need to address the causes of workplace discrimination of persons with disabilities, which lies deeper than the capacity of private actors.

However, there is still a lot that can be done by companies through adhering to the UNGPs and international human rights standards.

Numerous job positions exist in the private sector, where persons with disabilities could be employed in Myanmar. As previously illustrated in the empirical study chapter, there are several local companies that have commenced employment of persons with disabilities for jobs such as call operator, computer operator and banking services.

The Myanmar Centre for Responsible Business, together with the Myanmar Deaf Community Development Association, has recently developed a ‘Corporate Social

Responsibility and Disability Guide for Companies in Myanmar’.²¹⁵ The document offers guidance to companies on how to integrate persons with disabilities into the workplace through the CSR framework. The guide is based on international human rights standards, and particularly CRPD standards, to which the Myanmar is party.

Until recently, as a result of transitioning from being an invisible group in Myanmar, the rights of persons with disabilities are gaining more attention. It is surprising, but local companies are the ones that started inclusion of persons with disabilities in their workforce. Foreign companies are silent on this issue in their CSR reports.

In order to make these first steps sustainable, and promote the proper integration of persons with disabilities in the workforce from the very beginning, it is important that businesses follow the RtR of the UNGPs.

Religion

Eliminating workplace discrimination based on religion would be particularly difficult in Myanmar. As illustrated in previous chapters, the religious divide in Myanmar is radical and the issue remains very sensitive in the region. Despise of Muslims by the Buddhist majority, and especially discrimination against Rohingya minority, transcends casual relations and translates into difficulties in access to education, employment and healthcare.

There are a number of aspects that one needs to consider: Firstly, local Buddhist-run companies, especially SMEs, will not be willing to employ Muslim minorities even if they pledge to comply with international standards and adopt RtR. As illustrated, even in the conglomerates with good reputation and practices, such as KBZ group, the proportion of Muslim employees is too small. In the most developed branch of the group, the KBZ banking sector, only 0.3 per cent of employees are Muslims.²¹⁶ Secondly, in areas such as the Rakhine State, employment of Muslim minorities is impossible despite the will of foreign companies. A number of examples were mentioned in *Chapter IV*, adding to the cases highlighted by international organisations,

²¹⁵ Myanmar Deaf Community Development Association, Myanmar Centre for Responsible Business, *Corporate Social Responsibility and Disability, A Guide for Companies in Myanmar*, August, 2015, <<http://myanmar-responsiblebusiness.org/pdf/2014-08-29-CSR-D-Guide.pdf>>, accessed 26 May 2015.

²¹⁶ See thesis *supra* Chapter IV, section B (1).

where companies tried to employ minorities and were forced to withdraw from the Rakhine State.

The UNGPs may contribute slightly to the change, but eradication of the problem of workplace discrimination based on religion needs deeper involvement and a constructive approach from the Government, pressed and supported by foreign businesses and international community.

B. The role of the Myanmar Government and other stakeholders in eliminating Workplace Discrimination

1. Government of Myanmar

The Government plays a major role in the eradication of workplace discrimination in Myanmar. Based on the analysis of previous chapters it is obvious that businesses can greatly contribute to the elimination of workplace inequalities in Myanmar, though they cannot completely eradicate the problem. According to international human rights law, the State has the legal obligation to protect human rights within its jurisdiction. Pillar I of the UNGPs further specifies the duty of the State to protect against human rights abuses by third parties, including business enterprises. Below are several areas that need the State's attention in order to achieve workplace equality in Myanmar:

- *Amending the national legal framework in accordance with international human rights standards:*

The Government of Myanmar has a responsibility to amend existing labour laws and regulations, which are out-dated and hardly provide basic protection from workplace discrimination in the country. It shall also adopt a comprehensive labour code, which will include all basic labour law protection guarantees. The Government further needs to incorporate international standards it has ratified into national laws including, amongst others, standards set out in the CEDAW and the CRPD.

The Government of Myanmar should accede to the basic international human rights conventions – ICCPR, ICESCR, CERD and the two ILO conventions on prohibition

of workplace discrimination and incorporate the standards stated therein into national law.

The Government should further avoid adoption of the three remaining discriminatory bills that, at the present time, are pending in the Parliament.²¹⁷

- *Strengthening enforcement system*: Enforce the laws through thorough action plans and policies. In the particular case of workplace discrimination - increase the number of labour inspectors and raise their professional capacity and provide suitable salaries.
- *Ensuring access to adequate and effective remedies for the victims of employment discrimination*.
- *Enforcing laws that require business enterprises to respect human rights*.
- *Supporting and promoting responsible business conduct with regard to workplace equality in Myanmar through adopting relevant policies and increasing awareness of the UNGPs in the private sector*.
- *Conducting public consultations*: Public consultations on legislation and on investment projects, as well as on labour and human rights should be improved.²¹⁸
- *Investing in an inclusive and accessible education system*.
- *Guaranteeing independence of the Myanmar National Human Rights Commission*.
- *Implementing policies on the inclusion of persons with disabilities in all areas of everyday life, including the workplace*.
- *Commencing dialogue with radical national Buddhist movements and taking steps towards reconciliation of Buddhist and Muslim religious minorities*.
- *Development issues*: ensure that the outcomes of economic growth are inclusively shared and contribute to poverty reduction and stability in the country. ‘Systemic changes are crucial in order to tackle the many on-going social and economic difficulties that can hamper Myanmar’s goal of genuine development.’²¹⁹

²¹⁷ There is a package of four “Race and Religion Protection” bills relating to religious conversion, inter-faith marriage, monogamy and population control submitted the Parliament of Myanmar. One of the bills on population control was already passed by the Parliament on May 27, 2015. Not only are the bills inconsistent with international human rights law, but they have the potential to fuel existing tensions between ethnic and religious minorities in the country - Report of the Special Rapporteur on Myanmar, *supra* note 51, par. 27.

²¹⁸ ILO, Review of situation in Myanmar, *supra* note 32, par. 39.

²¹⁹ *Ibid.*

- *Supporting civil society projects that focus on elimination of workplace discrimination in Myanmar.*

In addition to the above-mentioned points, there is a recent Human Rights Council resolution which:

Urges the Government of Myanmar to accelerate its efforts to address discrimination, human rights violations, incitement to violence, acts of violence, displacement and economic deprivation affecting members of ethnic and religious minorities, to take all measures necessary to prevent attacks against Muslims and members of other minorities and to hold actors who incite and commit violence accountable.²²⁰

2. Other stakeholders

Myanmar needs the assistance of international stakeholders in this transition period in order to reform its legislative and enforcement mechanisms and achieve basic human rights protection in the country. The UN Special Rapporteur has stressed the necessity of international assistance in Myanmar in her recent report on the human rights situation in Myanmar.²²¹

The Human Rights Council, in March 2015, has also encouraged:

The international community to continue to support the Government of Myanmar in the fulfilment of its international human rights obligations and commitments, the implementation of its democratic transitional process and its economic and social development.²²²

The principal body, which ensures global protection of labour rights, including workplace equality, is the **ILO**. As stated previously, the ILO has a regional office in Myanmar, which supports the Government of Myanmar in the adoption and implementation of international labour standards. However, it was surprising to find that ILO has not undertaken any specific project on the elimination of discrimination in respect of employment and occupation in Myanmar.

²²⁰ UN Human Rights Council, Situation of Human Rights in Myanmar, *supra* note 213, par. 15.

²²¹ Report of the Special Rapporteur on Myanmar, *supra* note 51, par. 44.

²²² UN Human Rights Council, Situation of Human Rights in Myanmar, *supra* note 213, par. 15.

The field research, and specifically interviews with ILO office, revealed that there is no thorough research conducted or statistics collected on the issue of workplace discrimination in Myanmar. While asking specific questions on workplace discrimination, the ILO Liaison Officer in Myanmar responded: ‘I don’t know to be honest, there is no research on it’. In response to the question, why ILO is not working on the problem of workplace discrimination in Myanmar, the answer was that workplace discrimination is a crosscutting issue and the ILO is touching upon this issue in its other major projects.

It is worth noticing that there is no information about ILO work on workplace discrimination based on religion, ethnicity or disability in Myanmar, even though, as mentioned in the previous chapters, the Government of Myanmar has officially asked the ILO for technical assistance on the elimination of workplace discrimination in the country.²²³

On the positive side, according to the recent report on activities of the Organisation in Myanmar, the ILO is implementing a new cooperation project with the EU. This project includes a specific component on the promotion of corporate social responsibility among national and foreign direct investors, in particular with regard to labour standards and their application in special economic zones (SEZs), and other commercial developments in, or in close proximity with, conflict-affected areas.²²⁴

As was illustrated by the present study, there is a lack of awareness by local companies in Myanmar on the UNGPs. Therefore, **non-governmental organisations** working on business and human rights issues in Myanmar, could considerably contribute to the elimination of workplace inequalities through raising the awareness of local businesses on the RtR and international human rights standards.

The Myanmar National Human Rights Commission is another institution, which could greatly contribute to the elimination of the problem through State reports and its complaint mechanism. As was stated in previous chapters, the Commission lacks independence from the Government of Myanmar and needs to raise capacity of its employees on international human rights standards.

²²³ See thesis *supra* Chapter III, section A.

²²⁴ ILO, Review of situation in Myanmar, *supra* note 32, par. 47.

ASEAN is another mechanism, which could considerably contribute to the promotion of international human rights standards in Myanmar. As mentioned in *Chapter II* and *Chapter III*, the organisation is also actively working on the promotion of corporate responsibility in its Member States. Now that ASEAN plans to economically integrate Southeast Asian States, it is in the interest of the organisation, and the rest of Member States to promote workplace equality in Myanmar in order to achieve inclusive economic growth and development in all its Member States. Otherwise, the failure of one State can affect the rest of the Member States as well.

C. Potential for the development of corporate responsibility in Myanmar

As stated in *Chapter II*, and illustrated in several instances in *Chapter IV*, despite numerous shortcomings, businesses are starting to realise their responsibilities towards the community in Myanmar.

Foreign direct investment in certain areas of the economy is only possible if foreign company cooperates with local businesses. At the same time, Western companies uphold international human rights standards and promote policies based on the UNGPs RtR, so they require their contractors or partners to follow the same standards. For instance, according to the April 2015 report by Colgate – Palmolive Company, a US-based business operating in Myanmar, ‘Colgate aspires to work only with those suppliers, that share the same values as embodied in the Code of Conduct’.²²⁵

In November 2014, the Business and Human Rights Resource Centre conducted the Myanmar Foreign Investment Tracking Project, which was aimed at creating public database on foreign companies investing in Myanmar and their human rights commitments. Several large companies mentioned that they are specifically complying with the UNGPs in their operations in Myanmar. Those companies included: Total,

²²⁵ Colgate-Palmolive Company, *Report on Responsible Investment in Myanmar*, 1 April 2015, <http://photos.state.gov/libraries/burma/895/pdf/ColgatePalmolive_ResponsibleInvestment_in_Myanmar.pdf>, accessed 26 May 2015.

Shell, Unilever, Ericsson, Coca-Cola Company, British American Tobacco and H&M.²²⁶

It is in the interest of local companies to initiate positive changes in their internal policies and comply with human rights standards. Some of the local businesses, which are already promoting human rights in their company and have gained recognition, are now concerned with retaining this image. According to a representative of the KBZ group ‘We need to uphold our image, so we cooperate with organisations like us, who respect the human rights standards’.²²⁷

Due to the recent Human Rights Council resolution, which urges businesses to follow the UNGPs framework, there is a greater possibility that businesses may start adopting the mentioned standards in their everyday operations.

The business environment is gradually shifting from *know-who*, to *know-how* in Myanmar. Instead of using connections to establish themselves in the market, businesses have to compete fairly. It is still not the complete reality, as a big part of the economy in Myanmar is still owned by the military, though there are considerable steps towards improvement.

D. Contributions of corporate responsibility to development in Myanmar

As stated in *Chapter III*, many international organisations, among them the EU and the ASEAN, support the view that the corporate responsibility to respect human rights will lead to social and economic development of the country.

The purpose of this thesis was to analyse whether the RtR can affect workplace inequalities in a transitioning country, such as Myanmar, and consequently contribute to social and economic development. The transition has brought rapid changes in Myanmar as illustrated in *Chapter II*, without a prepared foundation for those

²²⁶ Business and Human Rights Resource Centre, ‘Myanmar Foreign Investment Tracking Project’, *Business and Human Rights Resource Centre* [website], <<http://business-humanrights.org/en/search-responses-by-company-name-myanmar-foreign-investment-tracking-project>>, accessed 26 May 2015.

²²⁷ Transcript available with the author.

transformations. Does the RtR have potential to contribute to development in such an unstable political, social and economic setting?

The present thesis cannot provide a definite answer to this question, but only a hypothetical one based on the analysis of the presented study.

As defined in previous chapters, sustainable development cannot be achieved without the inclusion of all minority groups into the development process. In Myanmar, for instance, by excluding Muslims and Rohingya from employment opportunities, businesses marginalise certain parts of population, which will remain in poverty and consequently hinder the development of the country. Development cannot be achieved without equality of opportunity for all.

The thesis defined that the application of the UNGPs by businesses could affect the reviewed minority groups to differing extents. As discussed above, ethnic and religious discrimination at the workplace cannot be addressed solely by businesses in Myanmar, as this is politically and socially very sensitive issue. There is a need for the Government to refine discriminatory legislation, promote policies and make public statements, which would reconcile the conflicting groups. The Government's Framework for Economic and Social Reform (FESR) sets out macroeconomic policy priorities for 2012 – 2015 to promote, *inter alia*, inclusive growth, stability, and poverty reduction, with the primary objective of contributing towards people centred development.²²⁸ As illustrated, the Government does not seem to be implementing this framework particularly well. There is also an urgent need in the country for heads of major religious groups to advocate for more tolerance and acceptance in the society. Only through the will and statements from both the Government and religious leaders, the ethnic and religious conflict can be settled in Myanmar. Only after that can businesses contribute through the UNGPs framework to inclusion of all community groups in the workplace and further economic development in the country.

However, the reality is the complete opposite. The Government and religious groups are fuelling the conflict as opposed to helping to resolve it. This is clearly illustrated by the

²²⁸ Government of Myanmar, *The Framework for Economic and Social Reforms*, Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan, 14 December, 2012, <<http://www.eaber.org/sites/default/files/FESR%20Official%20Version%20-%20Green%20Cover.pdf>>, accessed 26 May 2015.

four recently drafted bills, extremely discriminatory in nature, submitted to Parliament by major nationalist Buddhist monks. The most alarming fact is that the lower house of the Parliament of Myanmar approved two of those bills, the Population Control Bill and the Buddhist Women's Special Marriage Bill, while the other two remain under consideration.

In the mentioned circumstances, there is very little that businesses can do. Compliance with the UNGPs for inclusion of certain ethnic and religious minorities would simply be almost impossible. This, consequently, considerably hinders economic development in Myanmar.

As to elimination of other types of discrimination presented in previous chapters, businesses in Myanmar have higher chances to contribute to social and economic development in the country through complying with the UNGPs. For instance, according to the study of local NGOs, Myanmar's Gross Domestic Product (GDP) could be 1.2 billion USD higher if people with disabilities had been properly included in the workforce.²²⁹ The inclusion of disability groups to the workplace should take place through the RtR in order for it to be sustainable. The rights of persons with disabilities is not a politically and socially sensitive issue, it is an emerging field in the country and implementing it in the right way, through responsible business conduct, could greatly contribute to social and economic development in the country.

Further, promotion of gender equality at the workplace through the RtR could be very effective in Myanmar. In 2015, gender equality has been set as one of the Millennium Development Goals. Higher relative unemployment rates for women, along with wage inequality, overrepresentation in the informal economy and inadequate social protection have all hampered progress.²³⁰ The UNGPs provide a way to tackle those gender inequalities, and their adoption in Myanmar could considerably contribute to social and economic development. By complying with the RtR, businesses can contribute to the elimination of gender stereotypes, prejudices, and the perception that certain types of

²²⁹ Shwe Yee Saw Myint, 'Labour discrimination billion dollar detriment to Myanmar's GDP: NGOs', *Myanmar Times*, 14 December 2012, <<http://www.mmmtimes.com/index.php/national-news/3554-labour-discrimination-billion-dollar-detriment-to-myanmar-s-gdp-ngos.html>>, accessed 26 May 2015.

²³⁰ International Labour Organization, 'The Millennium Development Goals and Beyond: An ILO perspective', *International Labour Organization* [website], <http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_300627/lang--en/index.htm>, accessed 26 May 2015.

jobs are only for a certain gender, breaking glass ceilings and giving an opportunity to women to climb the corporate ladder. Promoting gender equality and the empowerment of women is an effective way to combat poverty, hunger, disease and to stimulate development that is truly sustainable.²³¹

²³¹ UN General Assembly, *United Nations Millennium Declaration*, resolution adopted by the General Assembly (A/RES/55/2), New York, 2000, <<http://www.un.org/millennium/declaration/ares552e.htm>>, accessed 26 May 2015.

VI. CONCLUSION

The thesis analysed the corporate responsibility to respect human rights of the UN Guiding Principles on Business and Human Rights (UNGPs) within the context of Myanmar, a country in transition with fragile political social and economic foundation for carrying out business activities.

With the inflow of foreign investments and liberalisation of the internal market, the country achieved significant economic growth, though without visible social and economic development. The thesis illustrated that one of the problems hindering socio-economic development in the country is the exclusion of certain groups from the development process, by denying them equality of opportunity, and treatment, in respect of employment and occupation.

The basis for discriminatory practices as outlined in the thesis is the out-dated legislative framework of Myanmar. Besides the ratification by the country of the Convention on the Elimination of all Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities, the standards set out therein have not yet been incorporated into national laws. The progress in passing the four ‘Race and Religion Protection Bills’, which are discriminatory in nature and have the potential of fuelling ethnic and religious conflicts in the country, and worsening already existing inequalities, is particularly alarming. The study showed that instead of addressing the problems, the Government is further violating the rights of already marginalised groups.

The study further revealed, that State institutions are too weak to even enforce the existing laws in the country. Labour inspectors, whose responsibility it is to inspect the private sector, reveal labour rights violations and address them, lack in numbers and professional capacity. Moreover, the inspectors are underpaid, which contributes to their involvement in the bribery and corruption cases.

Through the empirical study and the literature review the thesis illustrated that there are certain minority groups, such as Rohingya, religious minorities and persons with disabilities, that are particularly marginalised and either have none or a very limited access to employment opportunities in Myanmar. Women are another group that is

being discriminated in Myanmar due to various prejudices and stereotypes on the their role in the society and limited types of jobs they are allegedly entitled to have.

Particularly, in this outlined setting, it was interesting to analyse the role of the RtR and whether it could contribute to the elimination of the problem of workplace discrimination in Myanmar and lead to inclusive development.

On one hand the findings showed that there is general lack of awareness of the meaning of corporate responsibility in the country. The study illustrated that local businesses are especially not aware of the human rights aspect of corporate responsibility and understand the concept more as philanthropy than a responsibility to respect human rights. Knowledge of the UNGPs is even lower. This in itself reduces the chances of businesses to effectively address the workplace discrimination problem in Myanmar.

Further, local businesses are not willing to, and foreign businesses are not able to, address certain types of workplace discrimination such as discrimination based on religion and ethnicity (specifically against Rohingya) in Myanmar. This excludes certain parts of the population of Myanmar from employment, violating their right to development and hindering the social and economic development of the country. In these circumstances, implementation of UNGPs becomes very difficult even for those few businesses that wish to address the problem. However Myanmar's poor human rights record magnifies the significance of corporate responsibility to respect human rights in the country.

On the positive side, foreign enterprises, and mainly those from Western countries, are positively influencing the Myanmar economy through responsible investments and are promoting responsible business conduct with their local business partners as well. Consequently, local businesses are starting to be more aware of international human rights standards and the responsible business framework. This illustrates that there is a potential for the development of the RtR in the country, if the Government and general political situation does not hinder the process.

The study further revealed that unfortunately international organisations, such as the ILO, are not working specifically on eradication of workplace discrimination in Myanmar. As of February 2015 no statistics on workplace discrimination exist in the country. According to the interviewees, there is not even comprehensive research

conducted on this issue.

To sum up, based on the analysis of the presented study, the corporate responsibility to respect human rights can potentially contribute to development in Myanmar but the contribution will not be sustainable without Government support in the elimination of the discrimination and inequality problem. At the present time, businesses alone are not able to effectively address the problem of workplace discrimination with respect to religious and ethnic minority groups in the country. However, their contributions are more valuable for the elimination of discrimination against other vulnerable groups mentioned in the thesis.

Development should be inclusive, and exclusion of Muslims and Rohingya from development already substantively hinders the process. As illustrated, international organisations are already warning the country about backtracking. Considering the inaction of the Government to protect marginalised groups, the activism of radical nationalist and religious groups and the suppression of minorities in the country, the warnings of the international community may turn into a reality, which will worsen the human rights situation in the country and may reduce foreign direct investments.

The whole world awaits the 2015 elections in Myanmar, which will play a crucial role for human rights, social and economic development in the country.

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