



## Case studies: achieving access to remedy through multi-stakeholder engagement on the ground

*Parallel session*

*28 November*

*15:00-18:00*

*Organized by the Business & Human Rights Resource Centre (BHRRC), Global Business Initiative on Human Rights (GBI) and the UN Working Group on Business and Human Rights*

**Part 1: Multi-stakeholder perspectives on access to remedy for people affected by the Thilawa Special Economic Zone in Myanmar**

15:00-16:25

**Part 2: Resolving grievances in the mining industry in South Africa: an independent problem-solving service**

16:35-18:00

**Brief outline:** This session will feature two case studies of multi-stakeholder action on realizing access to remedy. These cases will explore an independent problem-solving service for communities affected by mining operations in South Africa and access to remedy for people affected by the Thilawa Special Economic Zone in Myanmar. The starting point is that a focus on demonstrating practice and innovative responses around the complex realities of implementation of the third pillar of the UNGPs are essential to their success and to the evolution of the Business and Human Rights agenda in the coming decades. A key assumption is that for the UNGPs (and B&HR movement) to succeed, all three pillars of the 'Protect, Respect and Remedy' Framework must be implemented. The session is intended to support dialogue and learning on this topic among the international business and human rights community.

The session aims to explore multi-stakeholder perspectives and experiences on specific case studies on realizing and delivering access to remedy in local contexts. Each panel/case study will highlight non-judicial remedial processes at different stages – one in progress and one currently being innovated and designed. Each panel will hear from multiple stakeholders on the experiences and perspectives of participating in each remedial process. Further, each panel will enter into two-way dialogue with the

audience to enable cross-learning, opportunities to input into ongoing and future processes and lessons learned from other processes on what is replicable.

### Session objectives

- **Demonstrating the complex interaction of the constellation of remedies in practice.** These cases and the intended dialogue at the Forum aim to demonstrate some of the complexities and realities of implementation of pillar three where multiple parties/stakeholders are engaged in the remediation process, and where the remedy required necessitates collective action to ensure effective implementation. The cases cited are not intended to demonstrate 'best practice', but rather the practical complexity of implementing the third pillar on the ground, and of the interaction of different parties with different forms of remedial effort in endeavouring to provide corrective/mitigative action.
- **A better understanding of the conditions required for collaborative problem-solving and collective action in relation to remedy could a) improve human rights outcomes for impacted parties; b) improve public policy, allocation of resources and capacity building of remedy mechanisms; and c) inspire and support replication or scaling of approaches that work.** Identifying and profiling examples of remedial action is valuable in and of itself. These sessions will also seek to engage in two-way learning and dialogue between the panellists and the audience in order to identify, beyond the cases themselves, examples, lessons learnt and approaches from the audience's expertise in trying to secure access to remedy in diverse geographies and through diverse means.

### Speakers part 1:<sup>1</sup>

- **Phil Bloomer**, Executive Director, Business & Human Rights Resource Centre (**Moderator**)
- **Daw Ai Ai Khaing**, General Administration Department of the Yangon Southern District
- **Tomoyasu Shimizu**, CEO, Myanmar Japan Thilawa Development Limited
- **Masayuki Karasawa**, Chief Representative, Japan International Cooperation Agency (JICA)
- **Daw Than Ei**, member, Thilawa community-driven operational level grievance mechanism (CD-OGM) Design Committee and affected community member
- **U Tin Latt Ye**, Representative of affected community of Thilawa SEZ & of Thilawa Coordination Committee
- **Katherine McDonnell**, Legal Advocacy Coordinator, EarthRights International
- **Michael Addo**, UN Working Group on Business and Human Rights (**Chair of the session and Closing remarks**)

**Background:** The [Thilawa special economic zone \(SEZ\)](#), 23 km southeast of Yangon, is the first SEZ to be established by the Myanmar Government. The Zone is being developed in cooperation with the Japanese Government. This session will explore approaches by key stakeholders to ensure access to remedy for people affected by the development of the Thilawa SEZ. The session will also:

- Explore how effective access to remedy is linked with the economic and social development for local communities

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<sup>1</sup> Further information on speakers provided in Annex

- Increase understanding of the practical complexity of implementing access to remedy and the experiences of key stakeholders in the case of the Thilawa SEZ
- Share the process of designing a community-driven operational grievance mechanism
- Explore lessons learned and plans for strengthening remedy mechanisms in Thilawa moving forward
- Surface lessons learned and other examples of innovative approaches for realizing access to remedy from participants

#### **Speakers part 2:**

- ***Katryn Wright***, Global Business Initiative on Human Rights (**Moderator**)
- ***Mmathapelo Thobejane***, Community Representative
- ***Tebello Chabana***, Chamber of Mines South Africa
- ***John Capel***, the Bench Marks Foundation
- ***Michael Addo***, UN Working Group on Business and Human Rights

**Background:** The panel will focus on an example of an innovative and in-progress approach to remedy from the perspectives of different stakeholders. A new Independent Problem-Solving Service (IPSS) for affected communities in mining areas in South Africa is currently being created by the Bench Marks Foundation. It will focus on facilitated dialogue and developmental solutions. The proposed service seeks to independently facilitate sustainable solutions in the context of fraught histories, the absence of trust between business and communities and systemic challenges.

This panel will:

- Demonstrate an innovative and unique example of an NGO leading a multi-stakeholder, collaborative process to solve company-community challenges at local levels;
- Highlight the value of independent mechanisms (that have the buy-in of the main stakeholders concerned);
- Emphasise the need for independent services formulated through consultative processes – while not excluding the voluntary use of company-led grievance mechanisms where communities have sufficient trust in them; and
- Engage in real two-way dialogue between the panel and the audience. The Bench Marks Foundation are eager to connect with experts and the experiences of others as they design this process.

#### **Methodology: criteria and principles guiding the session design and case selection**

The methodology used to select the case studies reflected the intention for a high level of ambition around the panels and corresponding case studies. The criteria applied for selection included identifying:

- Non-judicial mechanisms at different stages in a remedial process (e.g. complete, in progress, being innovated/designed)
- Cases which highlight a diversity of potential remedial outcomes - restorative (apology, rehabilitation, restitution), compensatory (financial, non-financial compensation), retributive

(punitive criminal or administrative sanctions), or deterrence (preventative injunctions of guarantees of non-repetition)

- A range of human rights impacts from a diversity of industries and geographies

The principles guiding the session design and delivery include ensuring that each panel and case study:

- Is multi-stakeholder, credibly featuring and reflecting the voices and perspectives of the business concerned, the people impacted or that use the mechanism (or their legitimate representatives where/if appropriate) and other actors involved on the same case study (e.g. government, financial institutions), thereby embracing different perspectives and experiences
- Draws lessons learned and observations that are relevant and replicable in other contexts
- Highlights the value of innovative and collective action to solve complex and often systemic challenges
- Reinforces the value and complementarity of all three pillars of the UNGPs

From an initial scoping of 15+ possible cases, the South Africa and Thilawa SEZ in Myanmar cases were selected.

Discussion questions will be tailored to specific case studies and panel participants, and additional discussion questions may be used as the basis for open dialogue with the audience. Due consideration is given to any perceived sensitivities, issues of confidentiality, and potential unintended consequences or impacts on the parties and remediation process to which the case study pertains. Whilst multistakeholder action can be impactful, collaboration and collective problem-solving efforts should not undermine human rights, nor excluding access to judicial mechanisms.

## **ANNEX. SPEAKERS SHORT BIOS.**

### **Masayuki Karasawa**

#### ***Chief Representative, Japan International Cooperation Agency (JICA) Myanmar Office***

Masayuki Karasawa, Chief Representative for Japan International Cooperation Agency (JICA) Myanmar Office since April 2017, possess extensive experience in ODA and served several positions, such as, Senior Representative Officer for Washington D.C. Office, JBIC (Japan Bank for International Cooperation) (1999-2001), Chief Representative for Vietnam Office, JBIC (2004-2007), Head of Office for Global Issues and Development Partnership, Operations Strategy Dept. JICA (2012-2014) and Director-General for Loan and Grant Administration Department Dept. JICA (2014-2017).

### **Tomoyasu Shimizu**

#### ***President & CEO, Myanmar Japan Thilawa Development Ltd. (MJTD)***

Tomoyasu Shimizu is President & CEO of Myanmar Japan Thilawa Development Ltd. (MJTD) which is the developer and operator of Thilawa SEZ project. He is dispatched from Sumitomo Corporation, one of Japanese Shareholders of MJTD. He has been working in Industrial Estate Business for 15 years and experienced management and operation of Industrial Estate in Vietnam.

### **Tin Latt Ye**

#### ***Representative of affected community of Thilawa SEZ & of Thilawa Coordination Committee***

Tin Latt Ye is community leader who has been involved in Thilawas SEZ Development Projected since 2012 and is endorsed by Thilawa Coordination Committee consisting of representatives of eleven affected communities at SEZ. He is also leading an organization with affected communities residents to promote social and economic prosperity for all affected communities in collaboration with Thilawa SEZ project.

### **Ei Ei Khaing**

Assistant Director, General Administration Department of Yangon Regional Government

Ei Ei Khaing is Assistant Director of General Administration Department of Yangon Regional Government and has been working for Thilawa SEZ to enhance community engagement by leading community relations program since 2014. She is the first community liaison officer at public private partnership project with international investment in the Republic of the Union of Myanmar.

**Katherine McDonnell*****Legal Advocacy Coordinator, EarthRights International***

Katherine helps facilitate community-led information gathering, and helps communities to seek remedy through both judicial and non-judicial processes. She is supporting villagers impacted by the Thilawa Special Economic Zone to design a Community-Driven Operational level Grievance Mechanism (CD-OGM). Katherine received her JD from Santa Clara Law, and has an MA in Social Anthropology from the University of Manchester. Katherine is currently admitted to practice law in New York and the District of Columbia.

**Daw Than Ei*****Thilawa CD-OGM Design Committee Member***

Than Ei is originally from A Hlawin Sout village, where she made her living growing seasonal plants. In November 2013, she was relocated to Myaing Thar Yar village, the resettlement site for Zone A of the Thilawa SEZ. She was elected as a Design Committee member to help draft the proposed Thilawa CD-OGM.

**Phil Bloomer*****Executive Director, Business & Human Rights Resource Centre***

Phil became Executive Director of Business & Human Rights Resource Centre in September 2013 and is responsible for leading the global organization, delivering the mission and strategic priorities, and ensuring effective management of programme, personnel, finance, and administration.

Prior to joining the Resource Centre Phil was Director of Campaigns and Policy at Oxfam GB, where he was responsible for a team of 170 staff working on food justice, humanitarian protection and assistance in conflict zones, and the provision of essential health and education for all. Previously he was head of Oxfam International's Make Trade Fair, and Access to Medicines campaigns. Prior to joining Oxfam, Phil spent 11 years in Latin America and worked on human rights dimensions of business, including in food security, resource extraction; mega-projects; and business relations with public and private security in repressive environments.