



Sector Wide Impact Assessment

# Myanmar Oil & Gas Sector Wide Impact Assessment



**The Myanmar Centre for Responsible Business (MCRB) was set up in 2013** by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, capacity, and dialogue amongst businesses, civil society organisations and governments to encourage responsible business conduct throughout Myanmar. Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.

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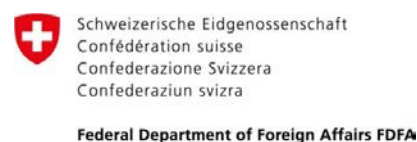
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## **TERMS**

<b>Amyotha Hluttaw:</b> The “House of Nationalities”, which is the Upper House of the National Legislature and has 224 representatives – 168 are elected in equal numbers from each Region and State, i.e. 12 representatives from each Region or State. The 12 must include one elected representative from each Self-Administered Division or each Self-Administered Zone. 56 representatives are nominated by the Commander-in-Chief of the Defence Services, including 4 representatives from each Region or State. (Constitution of the Republic of the Union of Myanmar (2008), Article 141)
<b>Constitution:</b> The 2008 Constitution of the Republic of the Union of Myanmar which came into operation on the day the first session of the Pyidaungsu Hluttaw was convened (31 January 2011).
<b>Hluttaw:</b> A Burmese equivalent of “legislature.” Myanmar has a National (Union) Hluttaw, and Hluttaws in each State and Region.
<b>Pyidaungsu Hluttaw:</b> The National (Union) Legislature, which is bicameral and composed of the Amyotha Hluttaw and the Pyithu Hluttaw.
<b>Pyithu Hluttaw:</b> The “House of Representatives” or the “People’s Assembly”, which is the Lower House of the National Legislature and has 440 representatives. 330 representatives are elected from township-based constituencies. 110 representatives are nominated by the Commander-in-Chief of the Defence Services. (Constitution, Article 109)
<b>Tatmadaw:</b> The Tatmadaw refers to the armed forces of the Union of Myanmar. The main armed force is the Defence Services, and all armed forces in the Union are under the command of the Defence Services. (Constitution, Articles 337 and 338)
<b>Union Government:</b> The Union Government comprises the President, the two Vice-Presidents, the Ministers of the Union, and the Attorney-General of the Union. (Constitution, Article 200)

## **ABBREVIATIONS**

<b>ADB</b>	Asian Development Bank
<b>ASEAN</b>	Association of South-East Asian Nations
<b>DICA</b>	Directorate of Investment and Company Administration
<b>CESD</b>	Centre for Economic and Social Development
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>FESR</b>	Framework for Economic and Social Reforms
<b>FPIC</b>	Free, Prior and Informed Consent
<b>IFC</b>	International Finance Corporation
<b>IFI</b>	International Financial Institution
<b>MDRI</b>	Myanmar Development Resource Institute
<b>MIC</b>	Myanmar Investment Commission
<b>MOECAF</b>	Ministry of Environmental Conservation and Forestry
<b>MNPED</b>	Ministry for National Planning and Economic Development
<b>NLD</b>	National League for Democracy
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>PSC</b>	Production Sharing Contract
<b>SLORC</b>	State Law and Order Restoration Council
<b>SPDC</b>	State Peace and Development Council
<b>SWIA</b>	Sector-Wide Impact Assessment
<b>UNDP</b>	United Nations Development Programme

<b>USDP</b>	Union Solidarity Development Party
<b>WBG</b>	World Bank Group

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# EXECUTIVE SUMMARY

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Myanmar is currently facing a rapid increase in investment in its oil and gas (O&G) sector with the award of 16 onshore and 20 offshore blocks in the space of 12 months in the period 2013-2014. Even though the country is emerging from decades of ethnic conflict, authoritarian rule and economic isolation it is, and will remain for some time, a high-risk country with poor governance. It is highly vulnerable to the 'resource curse'. Responsible business conduct in the O&G sector in Myanmar therefore requires enhanced due diligence to determine what impacts business activities may have on society, including on human rights. This must include robust approaches to managing those impacts in a manner that provides benefit to Myanmar, its people and business alike.

The Myanmar Centre for Responsible Business (MCRB) has conducted a sector-wide impact assessment (SWIA) on Myanmar's O&G sector in partnership with its co-founders, the Institute of Human Rights and Business (IHRB) and the Danish Institute of Human Rights (DIHR), to provide guidance to underpin responsible business conduct in the sector. The SWIA draws on established environment and social impact assessment methodologies, but applies a human rights lens. The scope of a SWIA goes beyond a particular project. It is about a whole sector and involves assessing not only impacts on individuals and groups that may arise from particular projects but also the potential for the sector's impact on society as a whole. It therefore looks at impacts on three levels: (i) sector level impacts that cover the aggregate impacts of the sector and paints the "bigger picture" of the interaction between the sector and Myanmar society ([Part 3](#)); (ii) project level impacts that cover eight areas of common project level impacts: stakeholder engagement and grievance mechanisms; communities; land; labour; ethnic minority groups and indigenous peoples; groups at risk; security and the environment ([Part 4](#)); and (iii) cumulative level impacts arising from the combined impacts of O&G – and potentially other economic – activities in the same area or timeframe ([Part 5](#)). The SWIA is based on both desk-based and field-based research in six locations throughout Myanmar which have already experienced O&G related investment. It includes in-depth analysis of existing Myanmar policy and legal frameworks as well as the challenging historical, political and economic context that is reflected throughout the SWIA.

The SWIA highlights relevant international standards of responsible business conduct, particularly from the United Nations (UN), the International Finance Corporation (IFC) and the Organisation for Economic Cooperation and Development (OECD). It makes recommendations on how these standards can be incorporated into policy-making and practice, as the SWIA's objective is to help maximise the positive and minimise the negative outcomes of the O&G sector in Myanmar at a time of increased investment, by pointing the way towards how to achieve responsible business conduct. The intended audiences are multiple: the Myanmar Government, companies in the O&G sector, civil society including the Myanmar media, development partners and investors. The analysis and the recommendations targeted to each intended audience will enable each to take steps to prevent and mitigate risks and amplify positive outcomes for the sector through changes in policy, law, contracts, investment choices and operations as relevant.

The SWIA can assist companies in their ‘human rights due diligence’ which they are expected to conduct in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs). It provides detailed analysis for businesses to inform project level Environmental and Social Impact Assessments (ESIA), and equally importantly, the development of appropriate Environmental and Social Management Plans to manage risks and impacts throughout operations, both relatively new concepts in Myanmar. The SWIA encourages companies to undertake ESIA’s which address the broad range of their potential impacts on the environment and society, beyond what may be strictly required by domestic law to ensure that the assessments effectively capture the full picture of potential impacts.

It is hoped that this SWIA offers a common analysis to underpin the ESIA’s that need to be conducted to make them more efficient and consistent and reduce duplication of effort. It is also intended to support the Myanmar Government and civil society organisations (CSOs) in their roles as regulators and monitors of company performance, and help them ask the right questions of companies. Beyond ESIA’s, the SWIA highlights human rights considerations to be incorporated into other types of relevant due diligence, for example for the business relationships O&G operators will need to establish.

**Four main themes emerge from the report specific to Myanmar in 2014.** These are analysed in more depth in the sector- and project-level chapters.

**The first is that engagement, information and genuine two-way communication by business with stakeholders has historically been almost completely absent,** leading to mistrust, misunderstanding and occasionally conflict. Businesses, whether those already present or investing for the first time, need an in-depth understanding of local priorities and concerns, through greater engagement with and accessibility to workers, local communities, national level stakeholders and the local and national media. Appropriate engagement from the start of relationships with workers and communities matters because it demonstrates respect, where, until recently, they have often experienced either neglect or reprisals for complaints. Furthermore, the lack of judicial and non-judicial mechanisms for effective resolution of complaints means that constructive and responsible approaches to establishing operational mechanisms to resolve grievances will be even more important.

**Second, Myanmar’s extractive industries have become intimately entwined with ethnic conflict over the last few decades.** The desire of ethnic minority groups for more control over and benefit from natural resources in their areas has been one of the key drivers of conflict and demands for constitutional change. Currently ethnic minorities see very little benefit from O&G extraction in their areas. The extractive sector is consequently pulled into the complex dynamics around three ongoing processes: proposed Constitutional reform, peace negotiations between the Union Government and non-state armed groups, and the push for transparency around and more localised distribution of revenue flows. The recent acceptance of Myanmar as a candidate country in the Extractives Industries Transparency Initiative (EITI) should lead to a change in the opaque practices which have characterised the sector. Business needs to play a



constructive role in supporting EITI implementation and the emerging national dialogue on natural resource governance and revenue-sharing.

Foreign companies, particularly those with operations which will impact on ethnic areas, need to understand Myanmar history, local legacies and multiple viewpoints. Brief regional analyses focus on conflict dynamics in two locations with increasing O&G activity – Rakhine and Tanintharyi – drawing out the implications for companies operating in those areas. Both here and elsewhere, it will be important to take the time to engage directly with as wide a range of stakeholders as possible to get a more complete picture of the conflict and communal dynamics. Expert location and context-specific advice on conflict-sensitive business practices should be used to help shape engagement and operations.

The existence of active or recent conflict or inter-communal violence in a number of O&G areas, often associated with militarisation, means that companies need to pay particular attention to human rights risks associated with security. The nationwide ceasefire process, even if successful, will not necessarily bring an end to insecurity in Myanmar's border areas due to continued lack of economic opportunities, easy availability of weapons, and weak security and rule of law. Given the history of human rights violations perpetuated by the military and the low level or complete lack of awareness of human rights standards and training of the military and police, O&G companies and contractors will need to be particularly attentive to ensuring that their security arrangements respect human rights. This should include constructive outreach to police and military through consultation, as well as training on human rights, potentially building on the Voluntary Principles on Security and Human Rights and the experience and expertise of several O&G companies operating or soon to be operating in Myanmar that are members of the initiative.

**The third point to highlight is that land is possibly the most complex challenge any business investing in Myanmar with a land footprint will face.** The reform of the land policy and laws in Myanmar is incomplete. It is characterised by a patchwork of old and new laws and regulations that leads to overlap, contradiction and confusion that can and has been exploited to deprive people of their land. Land is often the most significant asset for most rural families, but they are vulnerable to exploitation and have limited protection under the existing and even new land laws. Field research findings indicated that there was often absent or inadequate community consultation about land acquisitions, accompanied by a lack of due process, and concerns about corruption in the payment of compensation when it was forthcoming.

**Fourth, during the transition, businesses, government and development partners need to take steps to fill the existing gaps in Myanmar's legislative framework on the protection of the environment, society and human rights.** The Government has an immediate and important opportunity in the new production sharing contracts to fill these gaps through contractual requirements to meet the International Finance Corporation Performance Standards and World Bank Group Environmental, Health and Safety Guidelines. To ensure a level playing field, the Government should impose the same requirements on all operators and not just new entrants. Companies should publicly commit to operating to these international standards.

The Government has made a commitment to high environmental and social standards in its 2012 Framework for Economic and Social Reforms. But if there are neither relevant domestic laws nor contractual requirements to these standards, the environmental and social costs of O&G operations risk being externalised on local populations, with workers and local communities bearing the brunt of any environmental and social harms with little or no accountability for the companies operating in the sector.

Development partners have an important role to play in supporting the Myanmar Government's current regulatory and enforcement capacity, as well as supporting the emergence of robust national legislation to fill these gaps in the future. They also have a role to play as home governments to companies operating in Myanmar, exercising their leverage over companies from their jurisdiction to meet international standards of responsible business conduct.

**Many of the other risks and impacts highlighted in this Report** will be familiar from other developing countries with O&G resources, particularly those with weak governance and vulnerable land-based rural populations. The analysis and recommendations, drawing on field analysis from Myanmar and experience from other countries, aim to identify prevention and mitigation steps the different actors can take to address these risks.

Rapidly changing labour laws and low awareness of rights means workers and potentially employers are not well informed of even the most basic **labour rights protections**. While that function is often filled by trade unions in other countries, in Myanmar, trade unions are only just emerging after many years of prohibition. The forced labour previously associated with military operations around O&G operations has almost disappeared. But the increasing use of temporary workers and labour contractors, as well as inadequate enforcement by Government of new laws risks replacing this with other forms of labour exploitation. Another familiar challenge is the mismatch in expectations around requirements for "**local**" hires - with O&G companies hiring skilled and semi-skilled workers from other parts of Myanmar to meet statutory local hire requirements, while local communities consider "local" to mean from within the very immediate area.

The recommendations cover the importance of companies taking active steps to **build local capacity** to provide goods and services to spread local economic benefits and meet local content requirements. **Social investment** programmes should build on community requests, an informed analysis of community needs, coordination with local government programming and a link to business strategy, rather than treating the programmes as a matter of local philanthropy.

Businesses will need to take active steps to respect the rights of **groups at risk**, given the often high level of discrimination and marginalisation that exists for many at risk groups. The SWIA highlights discrimination in Myanmar, which is based both on legislation and societal attitudes towards a number of groups including religious minorities; women; people living with disabilities, and Lesbian, Gay, Bisexual and Transgendered People (LGBT). There are several other groups that are also vulnerable to impacts from O&G

operations, including children, the landless and in some areas, internally displaced. Generally the trend in Myanmar is towards reduced discrimination and increased legal recognition of minority rights. However religious discrimination and related violence is a growing problem and in recent times particularly impacting the Muslim community. O&G operations may potentially have an impact on many of these groups, with the possibility of either exacerbating their vulnerabilities or improving their situation through equal opportunity workforces, appropriate prevention and mitigation strategies and social investment programmes to support needed infrastructure, services or income generation opportunities for excluded groups. Inclusive business practices also send important signals to wider Myanmar society.

The report also highlights typical concerns from communities about the impacts of O&G operations on the **environment**. The research approached this through the lens of those impacts on an adequate standard of living and health, rather than looking at broader environmental impacts. Predictably, there were a range of localised environmental impacts that affected health or community water or soil, with varying levels of response from companies and frustration over where to take complaints when concerns were unresolved. Companies have an opportunity to address widespread concerns about environmental impacts, leakages and emergency procedures, by providing information and training through a single point of contact and through developing community based monitoring.

The large number of new production sharing contracts expected to be signed in 2014 when combined with ongoing economic development and reform initiatives, and weak administrative capacity means that Myanmar is likely to be particularly challenged in handling **cumulative impacts**. The Government's draft Environmental Impact Procedures anticipate the assessment and management of cumulative impacts. Managing them typically requires company–Government cooperation or at least company–company cooperation. The SWIA identifies potential areas or activities that may lead to cumulative impacts on institutions, society and the environment and identifies options and initial recommendations for collective action.

### **Recommendations**

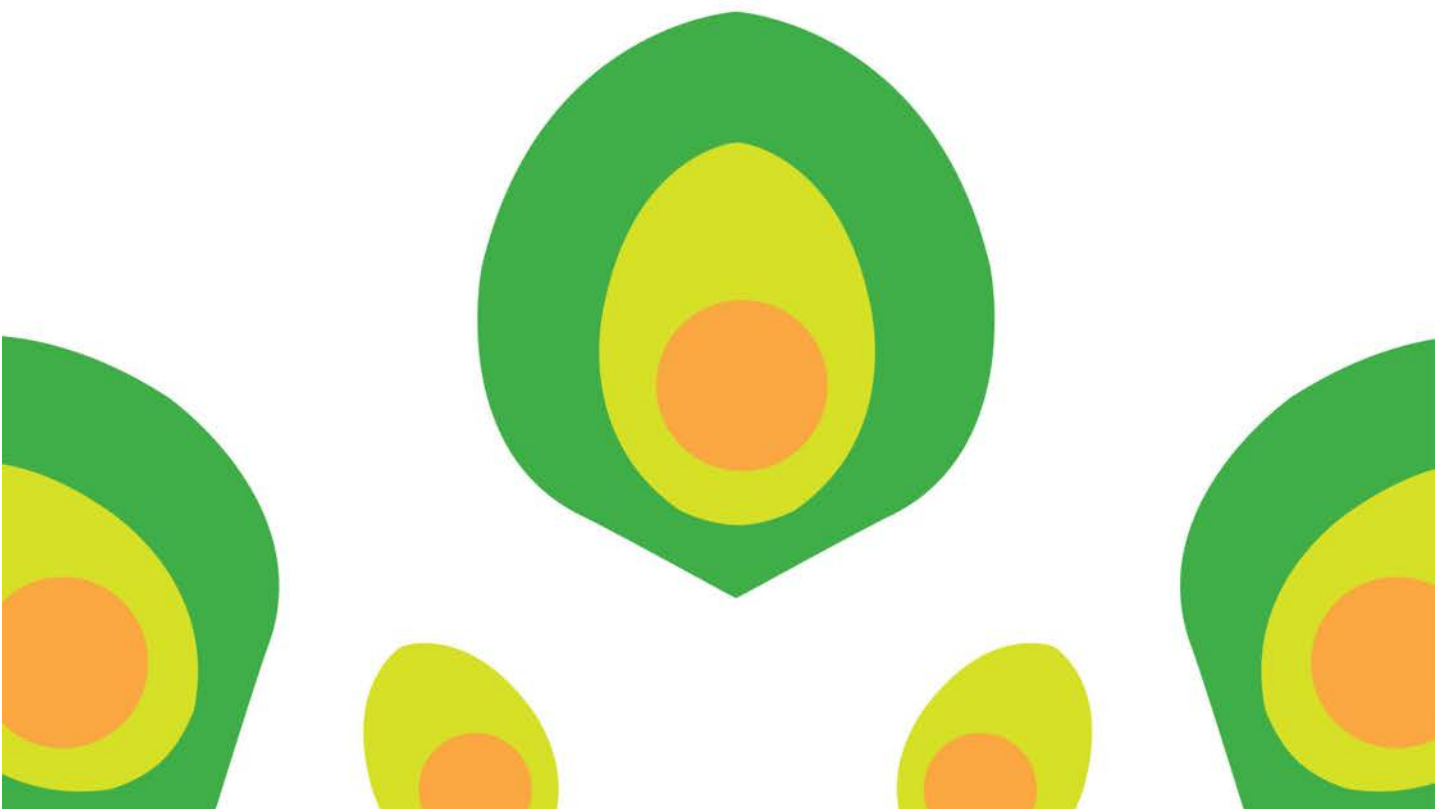
The following is a summary of the recommendations to the main actors in Myanmar's O&G sector. A fuller explanation of these recommendations and suggestions for how they can be implemented are included in the full report ([Part 7](#)).

The effective management of cumulative impacts is just one area where multi-stakeholder dialogue is likely to be more effective than individual action. This assessment of the Myanmar O&G sector has identified other areas where such a dialogue is desirable and the Myanmar Centre for Responsible Business (MCRB) stands ready to facilitate those discussions.

<p><b><u>To the Government of Myanmar</u></b></p> <ol style="list-style-type: none"> <li>1. Strengthen the social and human rights requirements in the forthcoming Environmental (and Social) Impact Assessment (E(S)IA) Procedures.</li> <li>2. Strengthen the environmental, social and human rights requirements in the Production Sharing Contracts (PSC).</li> <li>3. Improve transparency of the O&amp;G sector at various levels of Government, including full implementation of the Myanmar Extractives Industries Transparency Initiative (MEITI), complemented by a modern Access to Information Law.</li> <li>4. Improve policy planning and enact legislative reform to establish a coherent framework for the O&amp;G sector with adequate safeguards.</li> <li>5. Adopt appropriate models of local benefits sharing from extractive projects.</li> <li>6. Undertake security sector reform aimed at protecting people and private sector operations in a way that respects human rights.</li> <li>7. Develop and strengthen effective non-judicial grievance mechanisms and require businesses to provide operational level grievance mechanisms.</li> </ol>	<p><b><u>To Companies in the O&amp;G Sector</u></b></p> <ol style="list-style-type: none"> <li>1. Adopt a policy commitment to responsible business conduct and respect for human rights, communicate and implement this.</li> <li>2. Commit to applying international standards of responsible business conduct in the absence of developed national legal frameworks.</li> <li>3. Take account of local complexities and legacies when assessing the impacts operations may have, and integrate and act on these findings.</li> <li>4. Integrate consideration of conflict issues - latent, existing and potential - into all phases of operations.</li> <li>5. Monitor and track responses to risks and impacts, involving workers and communities.</li> <li>6. Communicate with stakeholders, particularly workers and communities, to build understanding and demonstrate transparency and accountability.</li> <li>7. Be prepared for negative impacts by having in place mechanisms that can address grievances quickly and effectively.</li> <li>8. Develop strategies for creating positive impacts at the local, regional and national level.</li> <li>9. Take collective action where appropriate to address environmental, social and human rights issues.</li> </ol>	
<p><b><u>To Investors</u></b></p> <ol style="list-style-type: none"> <li>1. Identify and conduct enhanced due diligence on companies in their portfolios that are involved in the O&amp;G sector in Myanmar.</li> <li>2. Engage with investee companies involved in the O&amp;G sector in Myanmar to ensure</li> </ol>	<p><b><u>To Civil Society</u></b></p> <ol style="list-style-type: none"> <li>1. Engage actively in E(S)IA consultation and disclosure processes, analyse and comment on the documents and hold companies to account.</li> <li>2. Continue to engage actively in the Myanmar Extractives</li> </ol>	<p><b><u>To Development Partners / Home Governments</u></b></p> <ol style="list-style-type: none"> <li>1. Support better governance and management of the O&amp;G sector and programmes to ensure potential positive impact are realised.</li> <li>2. Support the strengthening of environmental and social</li> </ol>

<p>that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar.</p> <p>3. Urge companies doing business in the O&amp;G sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.</p>	<p>Industries Transparency Initiative (MEITI) and press for MEITI to adopt the full range of options under the 2013 EITI Standard.</p> <p>3. Encourage companies and Government to engage in multistakeholder discussion on other extractives sector issues that are not part of the EITI mandate.</p> <p>4. Increase media reporting on the O&amp;G sector.</p>	<p>policies and legal frameworks.</p> <p>3. Support implementation of the corporate responsibility to respect human rights in Myanmar by international companies.</p> <p>4. Ensure investment and free trade agreements negotiated with the Government of Myanmar reinforce responsible business practices.</p>
<p style="text-align: center;"><b>To All Stakeholder Groups - Concerning Cumulative Impacts</b></p> <p>1. Regional/State Governments, companies and relevant national ministries should work together to plan for and prevent or mitigate potential cumulative impacts.</p>		

# Introduction





# INTRODUCTION

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**In this section:**

- A. How to Use this Sector-Wide Impact Assessment (SWIA)
- B. Why a SWIA on Oil and Gas (O&G) in Myanmar
- C. The Reference Framework for the SWIA
- D. Expectations for Responsible Business in Myanmar
- E. The Corporate Responsibility to Respect Human Rights in Myanmar
- F. SWIA Methodology

## A. How to Use this Sector-Wide Impact Assessment (SWIA)

In countries such as Myanmar, emerging from decades of ethnic conflict, authoritarian rule and a long period of economic sanctions, responsible business requires enhanced due diligence to determine what impacts business activities may have on society, including on human rights. To facilitate this, MCRB, DIHR and IHRB are carrying out a series of Sector Wide Impact Assessments (SWIA) of key sectors of the Myanmar economy.

This report presents the findings of a SWIA of the human rights impacts of the oil and gas (O&G) sector in Myanmar. The O&G SWIA was conducted by the MCRB in collaboration with IHRB and DIHR between August 2013 and March 2014, using both desk-based and field-based research.

The scope of a SWIA covers a whole sector and involves assessing not only impacts on individuals and groups that may arise from projects but also the sector's potential impact on the society as a whole. It sets out the context for responsible business in Myanmar. A SWIA is intended to sensitise planners, decision-makers, businesses and civil society, including the media, by highlighting the likely risks and impacts of business activities, so that at an early stage appropriate steps can be taken to prevent and mitigate risks and amplify positive human rights impacts through changes in policy, law, contracts, operations or other relevant steps.

Since a SWIA is a new concept, the report is extensive in scope and targeted at multiple audiences who may find it useful for different purposes. It gives details of the SWIA methodology which others may want to undertake elsewhere ([Annex A](#)). For those who will be conducting or otherwise engaged in detailed analysis and impact assessment of projects in Myanmar, there is an analysis of the current Myanmar context concerning responsible business and the legal framework which may also be of use to those outside the O&G sector. For those unfamiliar with international standards the SWIA provides extensive references.

Readers, particularly from business, who are keen to understand the immediate implications for them are encouraged to read the sections entitled “Key Human Rights Implications for the O&G Sector” in the eight chapters of [Part 4](#) on Project Level Impacts. In addition, [Part 7](#) gives recommendations to companies, government, civil society, development partners and investors. Other sections will serve as useful references in understanding the evolving Myanmar context.

## B. Why a SWIA on Oil and Gas (O&G) in Myanmar

Oil and gas is considered a high-risk sector for human rights and the impacts of the extractive industry, including O&G, on a range of human rights have been well documented.<sup>1</sup> In Myanmar, investments in the O&G sector have been associated with human rights abuses in the past and although decreasing, still remain a concern. The Government of Myanmar (the Government) has recently awarded numerous new onshore and offshore O&G blocks. Negotiations between companies and the state owned Myanmar Oil & Gas Enterprise (MOGE), are under way on new production sharing contracts (PSC). As investments in the sector are increasing rapidly, it is a priority for all stakeholders – companies, Government, civil society and donors – to understand the potential impacts of the sector if they are to improve the outcomes for Myanmar and all of its people.

This SWIA for the O&G sector looks at upstream and midstream (transportation) activities but not processing and sale as these are currently fairly limited activities in Myanmar. See [Annex B](#), which provides a brief description of the phases of an O&G operation with a brief overview of the kinds of companies (foreign and national) involved in Myanmar’s O&G sector.

This SWIA aims to:

- Inform **companies** conducting project-level Environmental and Social Impact Assessments (ESIA) or other due diligence and help them understand the overall potential impact of their sector and their project(s) on the country. SWIA will provide a strategic review of the broader policy and legal frameworks relevant to their sector where those frameworks are in place. It also crystallises the acute issues that are central to operating in Myanmar and require proactive management by O&G companies and highlights a number of issues that will be best served if tackled collectively.
- Help the **Government and Parliamentarians** as they shape policy and law, licensing and other initiatives so that they better prevent and mitigate harms and enhance the potential for positive outcomes. Adequate attention to longer-term impacts on human rights supports more equitable growth and poverty reduction for the broader Myanmar population.
- Support **local communities**, who are generally the rights-holders most directly impacted by O&G projects, to engage with investors and local authorities, and call on international standards to support their case. Support **trade unions, national civil**

<sup>1</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (herein “SRSG”), [“Addendum, Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse”](#), A/HRC/8/5/Add.2 23 (2008).

**society groups, and the media** so that they can participate in policy development and project planning, leveraging international standards and approaches in their interventions.

- Enable **development partners** to align their support and policies to the sector such that human rights are better respected and protected
- **Build the capacity of local researchers** to better understand international standards relevant to operations of the sector in Myanmar and to be able to assess performance in light of those standards.

## C. The Reference Framework for the SWIA

“Responsible business conduct,” and the standards that help define that conduct, require businesses to take responsibility for the impacts they have on society. “Impacts on society” is understood very broadly to include human rights, social, environmental, ethical, and consumer concerns. The standards that cover such conduct are diverse and they are not always labelled as “human rights” or even created with human rights in mind. However, given the breadth and depth of human rights, they are intimately intertwined with human rights. Some impact pathways will be direct: suppression of a protest has an immediate impact on the right to freedom of expression. Impacts on the environment can have both direct and indirect impacts on human rights. Pollution can directly harm someone’s health and impact on the right to health, while at the same time degrade the quality of the soil or water so that crops can no longer be grown or grown in sufficient quantities, impacting on the right to food. Wider governance issues, including a lack of transparency and corruption<sup>2</sup> have indirect impacts as they can weaken the accountability systems needed to address human rights impacts.

When the “human rights” label or terminology becomes a stumbling block rather than a facilitator to better outcomes, the use of other terms may be appropriate. But it will still be important for those dealing with these issues in companies and any others who routinely engage with stakeholders, to have an understanding of internationally-recognised human rights and their implications for company processes.

This SWIA does not address technical operating standards for the O&G industry. Instead it focuses on the following international standards relevant to responsible business conduct, particularly those concerning impacts of business on human rights:

- the [UN Guiding Principles on Business and Human Rights](#) (“the UN Guiding Principles” or “UNGP”)
- the [OECD Guidelines on Multinational Enterprises](#) (which apply to companies domiciled in an OECD country and the 10 additional countries adhering to the OECD Guidelines).<sup>3</sup> The human rights chapter of the OECD Guidelines on Multinational Enterprises is aligned with the UN Guiding Principles.

<sup>2</sup> While this SWIA Report addresses corruption because it has an impact on the quality of governance more generally and the resources governments have available to fulfil human rights, it does not include a specific review of all the steps that would be needed to reduce corruption in the country. See for example, Devex, [“How Myanmar can curb corruption to boost development”](#) (30 Jan 2014).

<sup>3</sup> Additional signatories to the OECD Guidelines are: Argentina, Brazil, Colombia, Egypt, Latvia, Lithuania, Morocco, Mexico, Peru, and Tunisia.

- the sustainability policies of international financial institutions (Asian Development Bank and World Bank Group), and in particular, the [IFC Performance Standards](#) and [World Bank Group Environmental, Health and Safety \(EHS\) Guidelines](#). The IFC Performance Standards and EHS Guidelines are designed to be applied by the private sector, contain quite detailed standards for many areas relevant to O&G operations, and specifically cover and are aligned with many human rights standards.
- [ISO 26000 and the UN Global Compact](#) are also aligned with the UN Guiding Principles and often important references in the region.
- It also draws on guidance from leading industry groups such as [IPIECA](#).

As the O&G SWIA is particularly focused on human rights, the [UN Guiding Principles on Business and Human Rights](#) are its primary benchmark. These principles were unanimously endorsed by the UN Human Rights Council in 2011 and are now an authoritative global reference point on business and human rights. At a minimum business must ensure that its activities do not infringe the human rights set out in the [International Bill of Human Rights](#),<sup>4</sup> the principles concerning fundamental rights set out in the International Labour Organisation's [Declaration on Fundamental Principles and Rights at Work](#), as well as other human rights instruments relevant to the circumstances.<sup>5</sup>

The UN Guiding Principles provide operational guidance to States and business for the implementation of the [UN "Protect, Respect and Remedy" Framework](#), which articulates the complementary but distinct roles of States and business in protecting and respecting human rights. The SWIA process is designed to support the implementation of the UN Guiding Principles within Myanmar as follows:

- **The State Duty to Protect** against human rights abuses by third parties, including businesses, means the State should adopt effective policies, legislation, regulations and adjudication to prevent, investigate, punish and redress human rights abuses as a result of domestic business operations. As the Government of Myanmar and Parliamentarians develop sectoral policies and laws, they will be making choices about the future direction of the country, balancing potential negative and positive impacts of their decisions. The O&G SWIA provides an analysis that helps inform law, policy and administrative procedures in ways that prevent and mitigate harms and enhance positive outcomes. Foreign governments supporting economic development in Myanmar can also use the SWIA to better understand the human rights impacts of the O&G sector in Myanmar, and align their foreign direct investment support and policies.
- **The Corporate Responsibility to Respect** human rights, means that companies should avoid infringing on the human rights of others and address negative impacts with which they are involved. The SWIA provides both a preview of factors contributing to a sectoral "social license to operate" and a better understanding of potential human rights impacts at the project level. This should assist companies to incorporate attention to human rights issues into their investments and operations.
- **Access to Effective Remedy** for victims of business-related human rights abuses should be provided through both judicial and non-judicial means. While the O&G

<sup>4</sup> Comprised of the UN Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

<sup>5</sup> See: OHCHR, "[The Core International Human Rights Instruments and Their Monitoring Bodies](#)" (accessed 15 July 2014).

SWIA is not a comprehensive review of rule of law and access to justice in Myanmar, it is intended to support workers and local communities in understanding and protecting their rights. It is also intended to encourage businesses to put in place operational level grievance mechanisms that enable both communities and workers to raise their concerns regarding O&G sector impacts, in order that they can be addressed as early and effectively as possible.

## D. Expectations for Responsible Business in Myanmar

The President of Myanmar, U Thein Sein, Daw Aung San Suu Kyi, leader of the National League for Democracy (NLD), numerous governments and international organisations, have all called for “responsible business” in Myanmar. The Government has made repeated references to its desire to attract responsible investment to its extractive sector. The most visible manifestation is its candidacy for the Extractive Industries Transparency Initiative (EITI). The Government recently conducted with the OECD an “investment policy review” of the country. The 300+ page report starts with a chapter on responsible business, focused on human and labour rights and how international standards of responsible business conduct can be introduced in the country (See Box 1 below for a list of the OECD recommendations on responsible business conduct).<sup>6</sup> In discussing the report, the Myanmar’s Union Minister of National Planning and Economic Development, Dr Kan Zaw, “praised the comprehensive nature of the report and said that it would help to guide the Government in solidifying investment climate reforms and in promoting more and better investment.”<sup>7</sup>

### Box 1: Recommendations from the OECD as part of the Myanmar Investment Policy Review Chapter on Responsible Business Conduct<sup>8</sup>

- Ratify major international human rights, labour and environmental conventions
- Enact and enforce domestic legislation consistent with these standards
- Strengthen the independence and expand the mandate of the National Human Rights Commission
- Promote revenue transparency, such as through the EITI
- Ensure that domestic enterprises, including state owned enterprises, conform to the new standards of behaviour and prosecute lawbreakers
- Expand the role of civil society (labour unions, local community organisations) to help ensure that businesses obey the law
- Prepare sectoral master plans which include responsible business conduct (e.g. tourism)
- Provide adequate protection of property rights, including for customary land
- Free, prior and informed consent (FPIC) for land acquisitions, relocations, etc.
- Develop grievance mechanisms in other areas and provide redress to victims
- Work with home governments to promote respect for the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational

<sup>6</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014).

<sup>7</sup> ASEAN Secretariate News, “[Myanmar Welcomes International Support for Responsible Investment](#)” (March 2014).

<sup>8</sup> OECD, above, pg. 32.

Enterprises. Require foreign investors receiving a permit from the MIC to commit to these principles.

Thus at the highest level the indications point to a Government interested and willing to re-join the international community and align itself with international standards. The hard work of translating those commitments into relevant laws, policies and practices throughout the country is just beginning to take root. While Myanmar has taken significant steps towards reintegration into the global community, it is still a “high risk” or “weak governance” country, requiring a higher level of rigour and sensitivity in conducting business. There are deep challenges ingrained by over fifty years of military government and isolation that will have to be addressed to ensure that the benefits of enhanced extractive revenue contribute to widespread development. Entrenched elite interests, widespread corruption, lack of state capacity and a lack of comprehensive social policies have led to low levels of state legitimacy, social cohesion and trust. At the same time, high-risk countries like Myanmar need responsible investment more than elsewhere. However, the economic, social and political benefits companies can bring to such societies should not obscure, or be obscured by, the detrimental economic, social and political impacts that companies can cause if operations are not carried out responsibly. If the extractive revenues are not developed and invested well, as one commentator noted it may be better to “keep oil and natural resources in the ground” until they can be.<sup>9</sup>

There are high expectations and intense scrutiny of companies entering or operating in Myanmar, particularly in the extractive sector, with a particular focus on whether they are in line with the UN Guiding Principles on Business & Human Rights and other relevant international standards. As noted in OECD guidance on weak governance zones, “because legal systems and political dialogue in weak governance zones (almost by definition) do not work well, international instruments that provide guidance on acceptable behaviours are particularly useful in these contexts.”<sup>10</sup>

International operators are expected to act as industry leaders on environmental and social performance but so too can home governments also play a key role in expressing and incentivising expectations for corporate behaviour and then following up to ensure that the standards are applied. In lifting its sanctions on Myanmar, the EU noted that it would “[p]romote the practice of the highest standards of integrity and corporate social responsibility.”<sup>11</sup> In 2013 the G8 welcomed the Government’s commitment to responsible investment.<sup>12</sup> However the US’s Burma Responsible Investment Reporting Requirements<sup>13</sup> (see Box 2 below) are the only example to date of explicit home country

<sup>9</sup> van der Ploeg and Venables, “[Harnessing Windfall Revenues: Optimal Policies for Resource-Rich](#)” (March 2011).

<sup>10</sup> OECD, “[OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#)” (2006).

<sup>11</sup> Council of the European Union, “[Council Conclusions of 22 July 2013 on the Comprehensive Framework for the European Union’s policy and support to Myanmar/Burma](#)” (2013). The Council Conclusions go on to name the OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights and the EU CSR Strategy 2011-2014 as sources of these standards.

<sup>12</sup> UK Foreign & Commonwealth Office, “[G8 Foreign Ministers’ meeting statement](#)” (April 2013).

<sup>13</sup> US Department of the Treasury, Office of Foreign Assets Control (OFAC) “[Burma Responsible Investment Reporting Requirements](#)” (2012).



requirements on businesses investing in Myanmar. They are intended to prompt businesses entering the country to consider and address key risks upfront. These reporting requirements should be replicated or referenced by other home countries, thereby reinforcing the message and levelling the playing field. Some home countries have however introduced general responsible business expectations of their companies, which are not Myanmar specific.<sup>14</sup> Chinese companies are expected to follow guidelines that refer to meeting international standards (see Box 2 below).

Investors are demanding information on company actions in Myanmar, and research providers are now providing specialised information on this.<sup>15</sup> Several foreign investors have already faced “specific instances” under the OECD Guidelines for their actions in Myanmar.<sup>16</sup> Other stakeholders interested in O&G company actions in the country have an increasingly wide range of sources information on O&G operations in Myanmar.

### Box 2: Examples of Home Country Requirements/Expectations

#### US Reporting Requirements on Responsible Investment in Burma<sup>17</sup>

Companies subject to the US reporting requirements must, inter alia notify the US Department of State of any investment with the Myanmar Oil and Gas Enterprise (MOGE), of their policies and procedures on human rights, labour rights, land rights, community consultations and stakeholder engagement, environmental stewardship, anti-corruption, arrangements with security service providers, risk and impact assessment and mitigation, payments to the Government, and any investments with and contact with the military or non-state armed groups.

#### Chinese Guidelines

- China's [SASAC 2008 Guidelines](#) to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities include responsibilities for legal and honest business operation, sustainable profits, innovation, resource conservation and environmental protection, duties toward employees' well-being and development, community engagement, and reporting on implementation.
- In 2013, the Chinese Ministry of Commerce (MOFCOM) and the Ministry of Environmental Protection (MEP) co-issued [Guidelines on Environmental Protection in Foreign Investment and Cooperation](#) that urge Chinese companies doing business abroad to respect host country environmental protection laws, religions, and customs, and ensure rights and interests of workers; in addition, they suggest that companies follow established principles and practices of international organisations and multilateral financial institutions.<sup>18</sup>

<sup>14</sup> For example, the UK National Action Plan. See, HM Government, “[Good Business Implementing the UN Guiding Principles on Business and Human Rights](#)” (Sep 2013).

<sup>15</sup> EIRIS, “[New service enables investors to manage conflict-related investment risks in Burma/Myanmar](#)” (May 2014).

<sup>16</sup> See a list involving the UK, Canadian, French, the Netherlands, South Korean and US NCPs considering specific instances regarding activities in Myanmar up to 2011 here:

<http://www.tuacoecdmguidelines.org/cases.asp>

<sup>17</sup> OFAC, above.

<sup>18</sup> IHRB, “[‘Going Out’ in Search of Oil and Gas: How should Chinese companies investing abroad tackle human rights challenges?](#)” M. Aizawa commentary (24 March 2014).

As one investor blog recently noted, “[c]ompanies investing in Burma are exposed to a complex business environment and those that are seen to benefit from violations of human rights face serious reputational risks.”<sup>19</sup> To fully understand the direct and indirect risks that arise from weak governance, enhanced due diligence is needed to understand and manage those risks.<sup>20</sup> Some of the many challenges and opportunities of operating in Myanmar are set out in the subsequent chapters of this Report. This is the context that companies must either change where appropriate or adapt to in the context of running operations in a responsible manner, rather than simply accepting the deficiencies as they are. Companies operating in a high-risk environment have a particular responsibility to influence that operating environment, within the bounds of their own impacts (which may be broader than just their own operations) by operating according to international standards. Where appropriate, this includes engaging with the Government, quietly, collectively or even publicly to prompt it to take up those same standards, as well and on broader issues that can affect the business environment and society – peace, security, human rights, good governance. A transparent approach to applying international standards on responsible business conduct will help provide a common floor for all. The choices companies make in responding to these conditions will play a major role in whether the O&G sector is seen as a positive contributor to national development in Myanmar.

## E. The Corporate Responsibility to Respect Human Rights in Myanmar

### Box 3: The Corporate Responsibility to Respect Human Rights

Under the [UN Guiding Principles on Business and Human Rights](#), companies are expected to:

- Adopt a **policy commitment** that commits the company to respecting human rights (this may be a standalone commitment or integrated with other commitments to responsible business conduct)
- Carry out **human rights due diligence** (which can be integrated into other types of due diligence procedures that assess and manage the company’s impacts on society and the environment).<sup>21</sup> This includes:
  - **Identifying** and assessing actual and potential impacts (impact assessments are a common method used in the O&G sector to structure due diligence around the potential impact of O&G operations and the related impacts of the value chain)
  - Acting on and integrating the assessment findings into a management plan for operations

<sup>19</sup> Eiris, “[An Australian perspective on human rights, conflict risk and investment](#)” (June 2014).

<sup>20</sup> IHRB, “[From Red Flags to Green Flags, The Corporate Responsibility to Respect Human Rights in High-Risk Countries](#)” (2011), pg. 21.

<sup>21</sup> See Danish Institute for Human Rights and IPIECA, “[Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry](#)” (2013). See also, European Commission, “[Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#)” (2013).

- Tracking and monitoring performance in managing impacts
- **Communicating** that performance to relevant stakeholders
- Provide or cooperate **in remedying** actual impacts caused or contributed to and set up or participate in operational level grievance mechanisms<sup>22</sup> to manage and address actual or potential impacts.

Companies should not assume that in Myanmar complying with national law will be sufficient to meet the responsibility to respect human rights. The evolving domestic legal framework still lags behind international standards in many areas, and compliance with national law is unlikely to be sufficient to also meet international standards.

The UN Guiding Principles and the OECD Guidelines on Multinational Enterprises require companies to assess and manage their potential adverse impacts as a core part of meeting the corporate responsibility to respect human rights. Being as transparent as possible, including communicating the dilemmas they face and the measures they are taking to address them is part of “knowing and showing” that a company is taking steps to respect human rights.<sup>23</sup>

A few points on human rights due diligence should be emphasised in particular:

- Because situations and operations change, due diligence should be an on-going activity, carried out particularly when operations change phases or the context evolves. While due diligence can feed into and build from one-off events such as an impact assessment at the start of a new project, there should be continuous assessment of potential impacts during the full lifecycle of operations or a company’s role in operational activities. The Myanmar Environmental Impact Assessment Procedures (which we refer to as the E(S)IA Procedures since the inclusion of ‘social’ impacts is partial), if adopted in its draft form, would require updates to an E(S)IA as operations or situations change and a management plan (an environmental management plan (the E(S)MP) to guide actions following the assessment. This would reinforce an approach of continued assessment and management as needed.
- Due diligence should be built on a recognition that different types of activities can have quite distinct impacts on different human rights and can affect different groups, or some individuals within certain groups differently. For example, impacts can be more severe where individuals or groups are marginalised or at risk (see [Part 4.6](#) on Groups at Risk in Myanmar).<sup>24</sup>
- The current fluidity in the national legal framework is another reason why all companies should look to international standards as an anchor for their social, human rights and environmental due diligence. Benchmarking due diligence against only national requirements is difficult (given the difficulties of obtaining copies of old legislation, and the even greater difficulties of obtaining copies of drafts of legislation

<sup>22</sup> See, IPIECA, “[Community Grievance Mechanism toolbox](#)” (May 2014).

<sup>23</sup> See the International Chamber of Commerce, “[Guidelines for International Investment](#)” (2012) that call on businesses to respect human rights in line with the UN Guiding Principles, pg. 18.

<sup>24</sup> To see some indicative examples of impacts on different stakeholders during different O&G activities, see: European Commission, “[Oil & Gas Sector Guide on Implementing the UN Guiding Principles](#)” (2013), pg 10.

as Myanmar does not yet have a transparent system for making draft legislation available), and could result in benchmarking against outdated laws.

- Due diligence should also cover risks that business relationships pose to human rights (see Box 4 below). While all companies – international and local - operating in the sector, including suppliers, have their own standalone responsibility to respect human rights, they must also assess and address the impacts of business relationships that are directly linked to their operations, products or services.<sup>25</sup>

#### Box 4: Business Relationships in the O&G Sector in Myanmar<sup>26</sup>

This SWIA Report mostly focuses on the O&G operators, since they are the party contracting with the state to conduct O&G operations and will be the driver of most of the actions from the contracting phase through to decommissioning. O&G operators may contribute to or be linked to adverse human rights impacts not only through their own activities but also as a result of their business relationships, so must also assess and address the actions of their Myanmar business partners. Apart from deep water offshore operations, O&G operators must have Myanmar companies as business partners. Additionally, O&G operators typically have a wide range of business relationships, relying on many different contractors for services including: shooting seismic, logistics, transportation, security, catering, construction, drilling, etc.

Companies will need to carry out careful due diligence on the background, ownership, policies and practices of potential business partners, including whether they are or have been subject to any current or former US or EU sanctions, and – given that many Myanmar companies are involved in other sectors – how they conduct their business in those other sectors.

Finding the right business relationships in Myanmar will therefore require enhanced due diligence throughout the life of the particular relationship:

- **Before entering into the relationship:** Carry out due diligence on business partners and their policies and practices for addressing environmental, social, human rights impacts and corruption; the Ministry of Energy’s listing of local service companies should not be seen as an evaluation or endorsement of those entities’ compliance with responsible business conduct standards.
- **Documenting the terms of the relationship:** Include contractual requirements on meeting relevant international standards.
- **Supporting the relationship:** Provide advice, training, and capacity building on how business partners or entities in the value chain should responsibly conduct themselves.
- **Monitoring the relationship:** Include requirements ranging from self-assessment and reporting, visual inspections, to third party monitoring,

<sup>25</sup> UN Guiding Principle 11, Commentary: “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations.”

<sup>26</sup> See for example, the sections on business relationships in each chapter of: European Commission, “[Oil & Gas Sector Guide on Implementing the UN Guiding Principles](#)” (2013), pg 10. See also, IHRB, “[State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships](#)” (Dec 2013).

depending on the business relationship's level of risk.

- **Ending the relationship:** Include provisions to escalate and permit termination of the contract if for example there are findings or credible allegations of severe human rights violations or failure to take the required corrective actions.

These relationships provide the opportunity to promote better corporate governance<sup>27</sup> practices and share policies and practices on managing environmental, social and human rights impacts.<sup>28</sup> This opportunity to promote responsible business practice also holds true for the most important business relationship which is common to all operators in Myanmar, i.e. with MOGE<sup>29</sup>.

## F. SWIA Methodology

### The SWIA Design

The methodology for this O&G SWIA has been developed by IHRB and DIHR in cooperation with MCRB. [Annex A](#) contains more details on the methodology.

A SWIA is built on well-established processes and procedures for environmental impact assessments (EIA) and social impact assessments (SIA), and emerging practices around human rights impact assessments (HRIA). HRIA are grounded in EIA/SIA methodologies but look at potential impacts through a human rights lens and using international human rights standards as a reference framework. EIA/SIA/HRIA approaches are used to understand the potential impacts of specific projects at particular sites within a particular context in order to prevent or mitigate negative impacts as a project is designed and developed.

This SWIA, building on existing impact assessment and management techniques and on the UN Guiding Principles, emphasises the on-going management of potential negative and positive impacts as well as using management systems that can adapt to situations (i.e. actual impacts) that were not predicted at the design stage of a project. Myanmar is undergoing rapid changes so companies operating in the sector will need to be well-equipped to assess and manage change.

#### Box 5: SWIA Mitigation Hierarchy

Impact assessments should incorporate a mitigation hierarchy with respect to potential impacts:

- first to anticipate potential impacts in order to avoid or prevent them,
- where avoidance is not possible, then to minimise where residual impacts remain, to

<sup>27</sup> OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014), pg. 269.

<sup>28</sup> See, IHRB, "[State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships](#)" (Dec 2013).

<sup>29</sup> MOGE has the exclusive right to carry out all exploration and production of petroleum in the country. Under the production sharing contract PSC, MOGE is responsible for the management of the operations while the operator is responsible to conduct the operations.

restore

- where other mitigation approaches are neither possible nor fully effective, to compensate or remediate impacts.<sup>30</sup>

This hierarchy fits well with the UN Guiding Principles on Business and Human Rights which emphasises prevention of negative human rights impacts first and foremost, with mitigation where that is appropriate and remediation where impacts have not been prevented. For particularly serious human rights abuses, avoidance or prevention is the only appropriate response if an impact assessment were to identify risks of such serious abuses.

### Three Levels of Impact: Sector, Project and Cumulative

As the SWIA is a sector-wide assessment, it looks at potential impacts at three levels of analysis: sector-, project- and cumulative-level.

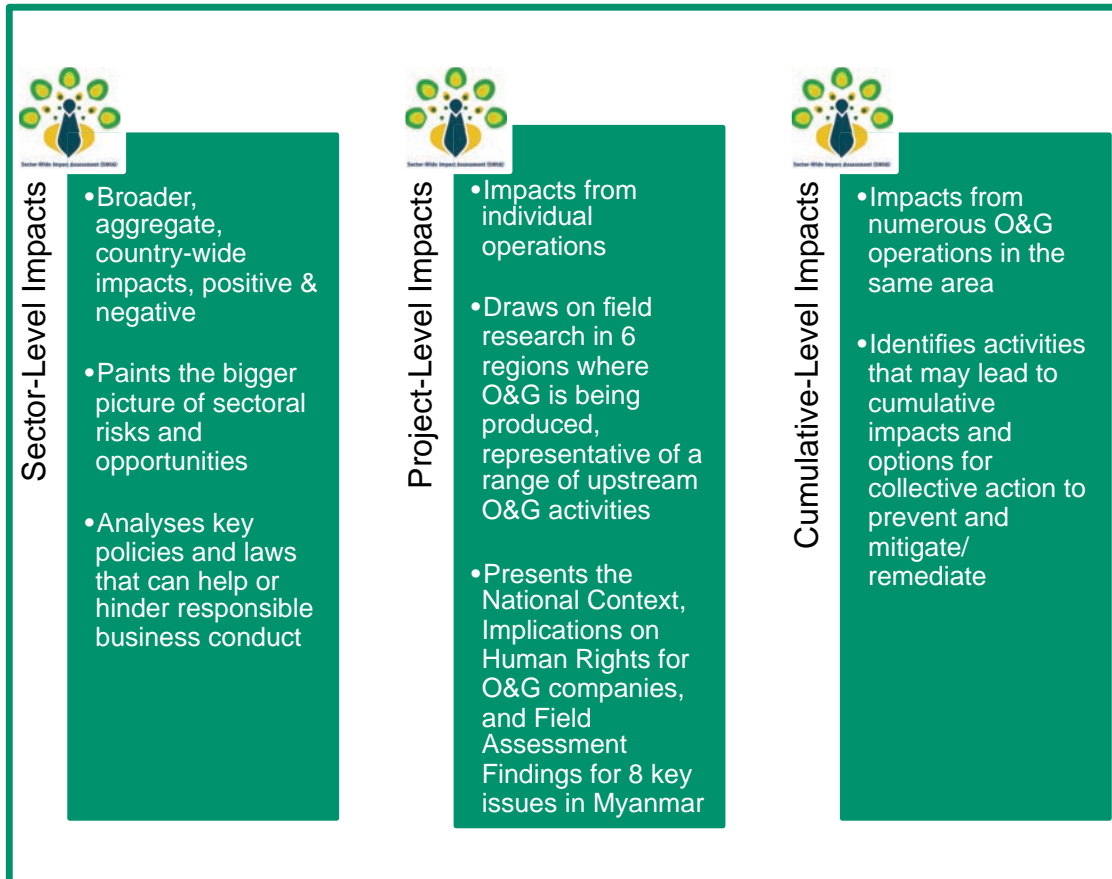
- **Sector level:** These are broader, aggregate, country-wide impacts – positive and negative – of the sector itself on the national economy, governance and the overall environment and society. In order to be able to address the root cause of potential negative impacts, the SWIA includes an analysis of the relevant policy and legal frameworks that help shape business conduct (where available) and the national context that businesses and civil society need to address in order to achieve more responsible business conduct. The SWIA also draws out recommendations on opportunities to improve human rights outcomes at the sectoral level. A sectoral view should help stakeholders see the “bigger picture” of potential negative impacts of projects in a whole sector, as well as potential opportunities for positive human rights outcomes, and to make choices based on a broader perspective.
- **Project level:** The SWIA looks across a range of existing projects in the O&G sector in Myanmar. The findings represent common project level impacts that are relevant to O&G operations, recognising that impacts are often very context-specific and importantly can be avoided or shaped by (good and bad) company practices. In addition to looking at actual and potential negative impacts from projects in the sector, the SWIA also catalogues positive impacts observed in Myanmar during the SWIA desk and field research.
- **Cumulative level:** Where there are numerous O&G companies operating in the same area, this may create cumulative impacts on surrounding society and the environment that are different and distinct from impacts of any single company or project. Managing those impacts typically requires the host government authorities taking a leading role. However, company–Government cooperation or at least company–company cooperation is also essential. The SWIA identifies potential areas or activities that may lead to cumulative impacts and identifies options for collective sectoral action to address the impacts observed in and predicted for Myanmar.

<sup>30</sup> See Danish Institute for Human Rights and IPIECA, “[Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry](#)” (2013), pg. 17-18.



## Box 6: SWIA – Three Levels of Impact

1



# Government Structure & Legal Framework



## Part 2

# GOVERNMENT STRUCTURE & LEGAL FRAMEWORK

### **In this section:**

- A. Brief Background on Myanmar
- B. Union, State/Region and Local Government in Myanmar
  - Government Structure
  - The Union Legislative Assembly (Pyidaungsu Hluttaw)
  - Separation of Powers
- C. Myanmar's Legal Framework
  - Myanmar's Legal History
  - The Myanmar 2008 Constitution
  - Access to Justice
  - Judicial and Non-Judicial Mechanisms
- D. Relevant Areas of Law Underpinning Responsible Business Conduct
  - International Human Rights Instruments in Myanmar
  - The Foreign and Citizens Investment Laws and MIC Permitting Process

This section provides a brief overview of Myanmar and an orientation on core issues to consider for responsible investment, as well as signposting further resources. There is more detailed analysis of the national context surrounding certain issues particularly relevant to responsible investment in the O&G Sector in [Part 3](#) on Sector-Level Impacts and [Part 4](#) on Project-Level Impacts.

## A. Brief Background on Myanmar

Myanmar is the largest country in mainland Southeast Asia, at the cross-roads between India and China. Despite having the second largest economy in South-East Asia in the 1900's, it is currently one of the poorest countries in East Asia and the Pacific.<sup>31</sup> With a population of over 52 million, one of the lowest population densities in the region, fertile lands, significant untapped agricultural potential, a rich endowment of natural resources, and a long coastline, Myanmar has the potential to re-establish itself as a growing and dynamic economy in the region. If managed well, some have estimated it could quadruple the size of its economy, from \$45 billion in 2010 to more than \$200 billion in 2030.<sup>32</sup> The challenge will be addressing the growing inequality in Myanmar's multi-ethnic society and ensuring that growth is inclusive and reaches the neglected rural and border areas and not just a privileged few. With the opening of the country, there is a risk of rising

<sup>31</sup> Myanmar is currently ranked 150 out of 195 on the [Human Development Index](#) and is considered a Least Developed Country by the UN.

<sup>32</sup> McKinsey Global Institute, "[Myanmar's moment: Unique opportunities, major challenges](#)" (2013).

expectations leading to popular frustration and disillusionment if these important opportunities are missed, or worse, squandered.

Myanmar has a long and rich history dating back into the Bronze Age, with the rise and fall of numerous empires. More recently it was a British colony until independence from British rule in 1948. Since then, the country has been consumed by long-running civil wars, which are currently being addressed through a comprehensive peace process.<sup>33</sup> Myanmar was ruled by successive military governments starting with a 1962 coup led by General Ne Win who pursued an isolationist "Burmese path to socialism" that included nationalisation of the economy and severing links with the outside world. While some of the country's self-imposed isolation ended following Ne Win's resignation in 1988, when the State Law and Order Restoration Council (SLORC) took power, the Government's continued suppression of political opposition resulted in a broad range of sanctions by Western governments.

In March 2011, a new Government headed by former general U Thein Sein came to power articulating a policy framework for people-centred and sustainable development, giving "priority to improving the quality of life of ordinary citizens, and specially poor citizens"<sup>34</sup> and fulfilling the basic needs of the people.<sup>35</sup> He began talks with opposition leader Daw Aung San Suu Kyi, who had been freed from house arrest one week after the November 2010 elections. Her party, the National League for Democracy (NLD), contested the April 2012 by-elections and won 43 parliamentary seats. The next general election is expected to take place in late 2015.

The country is going through a "triple transition": first, from an authoritarian military system to democratic governance; second, from a centrally directed economy to a market-oriented economy, and; third, from 60 years of conflict to peace in its ethnic group, border areas.<sup>36</sup> The transitions take place against the backdrop of integration among the Association of South-East Asian Nations (ASEAN) toward one economic community, which should provide an important opportunity for Myanmar's re-entry and integration to the sub-regional, regional, and global economies.<sup>37</sup> Myanmar is seeking to leave behind decades of isolation, fragility and conflict, but faces enormous capacity constraints in the face of such an ambitious agenda. Long-term reforms are needed to improve governance.

President Thein Sein's March 2011 inaugural speech to the Pyidaungsu Hluttaw (Union Legislative Assembly), outlined economic reform as a key priority of his Government. Much of the recent economic growth has been in extractive industries (in particular mining and natural gas). However the agriculture sector accounts for the largest share of the

<sup>33</sup> See further [Myanmar Peace Monitor](#).

<sup>34</sup> U Myint (Chief Economic Adviser to the President and Chief of the CESD-MDRI), "Myanmar and the FDI Issue" (20 October 2012), pg. 6, citing: New Light of Myanmar, "[President U Thein Sein calls for more efforts in reform process for national development](#)", (12 May 2012). and New Light of Myanmar, "[Priority task of government is to satisfy desire, fulfill requirements of people](#)" (13 May 2012).

<sup>35</sup> Eleven Media, "[People-Centred Development Tops Government's Agenda](#)" (11 August 2013).

<sup>36</sup> World Bank, "[Myanmar Overview](#)" (accessed 15 July 2014).

<sup>37</sup> ADB, "[Myanmar in Transition: Opportunities and Challenges](#)" (Aug 2013).

economy and provides livelihoods for more than 70% of the population.<sup>38</sup> The President has repeatedly called for responsible investment as part of the renewed emphasis on economic reform.

## B. Union, State/Region and Local Government in Myanmar

### Government Structure

Under the 2008 Constitution, the Union of the Republic of Myanmar is organised into seven States and seven Regions (formerly known as Divisions), six Self-Administered Zones and Self-Administered Divisions and one union territory containing the capital Nay Pyi Taw and surrounding townships.<sup>39</sup> Ethnic minorities live mostly in the seven States that are along the border of the country, and the ethnic majority Burman/Bamar people live mostly in the seven Regions which, with the exception of Tanintharyi and Sagaing Regions, mainly run through the middle of the country.

The population is organised into the following levels of administration, starting with the lowest administrative level: the village, with several grouped together into village tracts; urban wards; towns, with several grouped together into townships (where the lowest levels of government offices are generally located); townships are then organised into districts; several districts then comprise a region or state.<sup>40</sup> Regions and States are constitutionally equivalent.

Currently, the President appoints a Chief Minister for each State and Region. Each State/Region has a unicameral legislative assembly (Hluttaw), but laws passed by the Union Legislative Assembly (Pyidaungsu Hluttaw) are superior to those passed at the Regional/State level.<sup>41</sup> The areas in which they can pass laws are limited to the eight sectors listed in Schedule Two of the Constitution.<sup>42</sup> The powers to legislate on “Energy, Electricity, Mining, and Forestry” are quite limited, for example, to power generation that is off the national grid, and do not include any matters related to O&G. The Region /State assemblies can legislate on matters of land revenue, municipal taxes on buildings and land and the sale, lease and other matters involving property of the Region or State.<sup>43</sup> On the other hand, revenues from the exploitation of the natural resources of a Region or State are to be paid to the Union Fund, and not the Region or State Fund.<sup>44</sup>

<sup>38</sup> World Bank, “[Myanmar - Interim strategy note for the period FY13-14](#)” (Oct 2012).

<sup>39</sup> For a discussion of local governance, see MDRI and the Asia Foundation, “[State and Region Governments in Myanmar](#)” (Sep 2013). The six self-administered territories are the zones of Naga in Sagaing Region, Danu, Pa-O, Palaung, Kokaung, and the Self-Administered Division of Wa (all in Shan State).

<sup>40</sup> See MDRI and the Asia Foundation, above.

<sup>41</sup> Bingham Centre for the Rule of Law, “[Constitutional Awareness Myanmar](#)” (Oct 2013).

<sup>42</sup> Constitution of Myanmar, Art. 188. See also, MDRI and the Asia Foundation, above, p v; 12; pp 62-64; pp 86-87. See Appendix I for a translation of Schedule Two of the Constitution.

<sup>43</sup> Constitution of Myanmar, Schedule Two, Articles 1, (c, e, g). See also, MDRI and the Asia Foundation, above.

<sup>44</sup> Article 231 of the Constitution provides that all taxes and revenues not listed in Schedule 5 to be collected by regions or states are to be paid into the Union Fund. Schedule 5 of the Constitution does not include revenues from natural resources, save land.



The Region/State Hluttaws have so far passed very few laws. Moreover, the effectiveness of these legislatures is further circumscribed by capacity issues at the local level. The Union Government does not need approval from state or regional governments for large-scale investments in their local jurisdictions, although they must be informed, and their views are sought as part of the evolving ESIA process and on foreign lease of land in their area. Local governmental authority is still quite limited, as is its capacity to take on some of the more technical dimensions of natural resource management such as geological assessments or negotiating contracts.<sup>45</sup>

Before the new Government came to power in 2011, regional military commanders had absolute authority in their areas, as they served both as military chiefs and as heads of regional governments. Currently serving military generally play no formal role in Region/State administration other than on security issues.<sup>46</sup> However, of the 14 Region/State Chief Ministers, most are former military officers. The Region/State Border and Security Affairs Minister is a military-appointee, although other Ministers are appointed by the Chief Minister.

### The Union Legislative Assembly (Pyidaungsu Hluttaw)

The Union Legislative Assembly, elected in November 2010, was convened in early 2011 and has shown a degree of independence from the executive branch, though it is dominated by the Union Solidarity Development Party (USDP), established by the previous Government, and the military. 25% of both the upper and lower Houses are reserved for serving military officers and appointed by the Commander-in-Chief, and the USDP won most of the other parliamentary seats in the 2010 elections, widely believed to have been neither free nor fair.

A major priority has been a rapid programme of updating its laws (one source notes 68 laws enacted since autumn 2011, with 20 in the first three months of 2014 alone).<sup>47</sup> While there is justifiable urgency to the programme to update its laws, the lack of experience and expert knowledge of most legislators, the very ambitious legislative agenda, and the speed with which legislative decisions are being taken raises questions about the effectiveness and coherence of some of the new legislation. Due to the tendency to rush through legislation, there has been little effective consultation with the public, which is a serious deficiency. Not only does consultation develop a sense of participation and buy-in, it would improve the legislative process. Presently, the Parliamentary Rule of Law, Peace and Stability Committee, chaired by Daw Aung San Suu Kyi, is tasked with reviewing existing legislation and recommending changes. The Attorney General's Office also plays a role in checking draft laws, including for conformity to the country's international commitments and consistency with existing laws. The International Bar

<sup>45</sup> Thet Aung Lynn and Mari Oye, "[Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing](#)" (June 2014), pg. 31.

<sup>46</sup> International Crisis Group, "[Myanmar's Military: Back to the Barracks?](#)" (April 2014), pg. 8

<sup>47</sup> See, Myanmar Legal Services: "[Doing Business in Myanmar](#)" (April 2014); "Myanmar Laws Enacted in 2014" and "[Overview of Legal and Regulatory Regime, Sanctions, Cross-border Projects and ASEAN Integration 2015](#)" (April 2014).



Association recommended a law reform commission, in order to make reforms as consistent and efficient as possible.<sup>48</sup>

The scope for the President to block the enactment of a bill passed by the Union Legislative Assembly is very limited. Under the Constitution, the President is obliged to enact into law any bill passed.<sup>49</sup> If the President withholds signature, the bill is deemed to become law on the day after the end of the period prescribed for the President to sign the bill.<sup>50</sup>

Constitutional amendments are currently under discussion in Myanmar after a Joint Committee for Reviewing the Constitution was formed in July 2013 and nationwide consultations took place. The Committee submitted its report to Parliament on 31 January 2014 and another committee was formed in Parliament to take the amendment process forward. Key issues which opposition politicians have identified for reform include: 25% of seats in parliament reserved for non-elected serving military; requirements to become President (which currently would exclude Daw Aung San Suu Kyi from running for President); the extreme difficulty in amending the constitution<sup>51</sup>; broad Presidential powers to declare a state of emergency; and the need for more region/state government control over local resources and local governance.<sup>52</sup>

### Separation of Powers

The Constitution puts in place a governance structure that, to some extent, gives effect to the separation of powers principle. It provides for a system that permits reciprocal checks and balances, and requires that members of the executive and judicial arms of government cannot at the same time be members of the legislature.<sup>53</sup> A Constitutional Tribunal can determine whether measures taken by the executive authorities of the Union, States, Regions and self-administrative areas are in conformity with the Constitution.<sup>54</sup> This judicial review may be triggered by representatives of the Hluttaws,<sup>55</sup> the Chief Justice of the Union, the President or the leader of the executive government of a Region, State or self-administrative area.<sup>56</sup> It may also be triggered where a dispute arises over the constitutionality of a law in a hearing of a case before any court.<sup>57</sup>

<sup>48</sup> International Bar Association, “[The Rule of Law in Myanmar: Challenges and Prospects](#)” (Dec 2012).

<sup>49</sup> Articles 105 and 106, Constitution.

<sup>50</sup> Articles 105(c) and 106(c), Constitution.

<sup>51</sup> Aung San Suu Kyi is currently not permitted to be President because her two sons have British rather than Myanmar nationality. Over 75% of parliament must vote for a constitutional amendment to change this. For an analysis of the constitutional amendment process, see Bingham Centre for the Rule of Law “[Constitutional Reform in Myanmar: Priorities and Prospects for Amendment](#)” (Jan 2014).

<sup>52</sup> Ethnic minorities are particularly concerned about resource and power-sharing in the seven ethnic minority states.

<sup>53</sup> This also applies to Defence Services personnel.

<sup>54</sup> Article 322(c), Constitution.

<sup>55</sup> These are the Speakers of the Pyidaungsu Hluttaw, Pyithu Hluttaw, Amyotha Hluttaw, the Region or State Hluttaw, or representatives numbering at least 10% of the Pyithu or Amyotha Hluttaw. Articles 325 and 326, Constitution.

<sup>56</sup> Articles 325 and 326, Constitution.

<sup>57</sup> Article 323, Constitution. The court hearing the case must then refer the dispute to the Constitutional Tribunal, whose resolution of the matter is final and conclusive and must be applied to all cases. Articles 323 and 324, Constitution.

However, the Constitution makes an incursion into the separation of powers principle by entrenching the military in both the executive and legislative arms of government and placing the armed forces outside of the oversight of the executive, legislature and judiciary.<sup>58</sup> As noted above, currently 25% of seats in the Union Legislative Assembly,<sup>59</sup> and in the State and Region Assemblies<sup>60</sup> belong to unelected members of the military. At the same time, members of the military are mandated or permitted to occupy positions in the executive arms of the Union, States and Regions. The military personnel for all these positions must be nominated by the Commander-in-Chief of the Defence Services. The reality is that the military's influence over the legislature is not limited to just the 25% of seats, as it has considerable influence over non-military Hluttaw representatives. Stability in government and prospects for further reforms that advance the rule of law and human rights are therefore, according to the Constitution, dependent to considerable extent on the military's will and restraint.

## C. Myanmar's Legal Framework

### Myanmar's Legal History

Myanmar inherited a common law system from Great Britain as implemented in colonial India with few updates of the laws after the 1950's, until the recent changes in 2011.<sup>61</sup> Since the 1950s, legal precedent has not been used, nor significant case law developed. As such, many outdated and repressive laws from the colonial era remain on the books, including the Penal Code. The main sources of law in Myanmar, codified under the "Burma Code" (13 volumes, enacted 1841 – 1954), are still in force today, unless specifically superseded.

While many new laws relating to investment have been enacted since 2011, including the 2012 Foreign Investment Law, lawyers have noted that these laws provide for large discretionary powers for decision-making bodies, which could result in a lack of legal certainty. Flaws in a number of laws and in the justice system itself present major risks to companies operating in Myanmar.

### The Myanmar 2008 Constitution

After the 1974 constitution was suspended in a September 1988 coup d'état to suppress mass nationwide pro-democracy demonstrations, the military government ruled by decree

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<sup>58</sup> Firstly, the Defence Services has the right to not only independently administer all affairs of the armed forces, it also has the right to independently adjudicate on all such affairs (Art. 20(b), Constitution). Secondly, a "Courts-Martial" is established under the Constitution to "adjudicate Defence Services personnel" (Art. 319, Constitution). Its powers and activities are unfettered by the Constitution, and it is given complete independence from the Supreme Court (Art. 56, Constitution). Thirdly, the autonomy of the Defence Services may go beyond the exercise of military duties and functions; relevant provisions around military courts are vague and could be interpreted to confer on the Courts-Martial jurisdiction over acts committed by Defence Services personnel even outside of their military duties and functions – this is especially problematic due to the military's extensive record of human rights violations and corruption.

<sup>59</sup> Articles 109(b) (in relation to the Pyithu Hluttaw) and 141(b) (in relation to the Amyotha Hluttaw), Constitution.

<sup>60</sup> Article 161(d), Constitution.

<sup>61</sup> The courts in Myanmar adjudicate criminal and civil cases under the provisions of the Criminal Procedure Code, the Civil Procedure Code and the Evidence Act.

for over two decades. A new constitution was drafted with very little public participation and was approved in a flawed constitutional referendum held just days after Cyclone Nargis in May 2008. Many people who organised “Vote No” anti-referendum campaigns were arrested and imprisoned during that time.

The 2008 Constitution contains a range of aspirational, though unenforceable, statements of principle related to business and economic development, including around: equitable valuing of “peasants” agricultural produce; the rights of workers; a changeover from manual to mechanised agriculture; facilitating industrial development; reducing unemployment; a number of free market-type principles including not nationalising economic enterprises or demonetising currency in circulation; and affirming certain property rights.

The Constitution provides that “[t]he Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union” and therefore sets the approach for the Government’s management of O&G resources. As various CSOs have pointed out, the Constitution does not grant citizens the right to a clean and healthy environment, nor are there any clauses granting freedom of information. There is no obligation for the revenue from natural resources to be subject to equitable sharing among the citizens.

The 2008 Constitution provides enforceable guarantees that relate to a range of rights, some of which apply to citizens only and some of which are more broadly applicable. Moreover, most of these guarantees do not fully reflect international human rights standards, due to the wide qualifiers and caveats they contain.<sup>62</sup>

#### Box 7: Constitutional Rights of Citizens and Non-Citizens

Some Constitutional rights/ guarantees are specifically designated to “**all persons**”, which on their plain wording should apply to both citizens and non-citizens, including broadly the right to:

- equality;
- life and liberty (security of the person is not recognised in the Constitution);
- freedom from forced labor and servitude
- work

While others are specifically designed to “**citizens**” **only**, including broadly the right to:

- freedom from discrimination
- privacy
- freedom of movement
- property
- freedom of expression
- freedom of assembly and association
- elect and be elected
- socioeconomic development of “less developed national races” (including education, health, economy, transport

<sup>62</sup> Of the rights covered by enforceable guarantees, only the following stand without qualification: the right to enjoy equal rights before the law and equal protection of the law, the prohibition on slavery and trafficking, the prohibition on being re-tried for the same crime after legitimate conviction or acquittal, and the prohibition on retroactive application of penal law. Notably, even the right to life and personal freedom comes with a wide caveat: “[n]othing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person.”

- and communications)
- health
- education
- just and fair conditions of work
- participate in cultural life

## Access to Justice

Reforming the rule of law in Myanmar has been a major focus of the administration under President U Thein Sein. The Government’s “Framework for Economic and Social Reforms” notes “the lack of effectiveness and predictability of the judiciary”.<sup>63</sup> The judicial system is widely considered to be “under-resourced, politically influenced and lacking in independence.”<sup>64</sup> However, reform will take a long time, and substantial resources, and not least, changes in attitude to the rule of law, starting from the bottom up with attention to legal education. The legal education system has been eroded by decades of under-investment, and the legal profession targeted by long-term political restrictions, leading to a major shortage of lawyers taking up cases.<sup>65</sup>

Judicial independence in Myanmar to date has been essentially non-existent,<sup>66</sup> with judges accustomed to acting “as administrators rather than arbiters, basing decisions on state policy, instead of legal reasoning and the application of precedent.”<sup>67</sup> While there are basic principles of separation of powers integrated into the Constitution, it is not complete. The broad power of the President to appoint the judges of the Constitutional Tribunal, the Supreme Court of the Union, and the High Courts of Regions and States is problematic. The President’s nominees must be approved by the relevant Assembly “unless it can clearly be proved that the person does not meet the qualifications prescribed...”.<sup>68</sup> A recent report by the parliamentary Rule of Law and Stability Committee, led by Daw Aung San Suu Kyi, found “continued intervention by administrative officials in the judicial system.”<sup>69</sup> This indicates that structural changes will be required to put in place a rigorous separation of powers. There is no Ministry of Justice.

Systemic corruption in the administration of justice is a major concern, manifesting itself through bribes, delays, and obstructions,<sup>70</sup> with a widespread local perception that the courts in Myanmar are corrupt and unfair.<sup>71</sup> As a result, many would “[resort] instead to

<sup>63</sup> “[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)”, (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 116.

<sup>64</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 27.

<sup>65</sup> See: International Commission of Jurists, “[Right to Counsel: The Independence of Lawyers in Myanmar](#)”, (Dec 2013).

<sup>66</sup> Human Rights Resource Centre, “Rule of Law for Human Rights in ASEAN: A Baseline Study” (May 2011), pg. 163, citing Asian Legal Resource Centre, Amnesty International, “[Myanmar: No Law At All – Human Rights Violations under Military Rule](#)” (1992).

<sup>67</sup> International Bar Association’s Human Rights Institute, “[The Rule of Law in Myanmar: Challenges and Prospects](#)” (Dec 2012), 56.

<sup>68</sup> Articles 299(c)(ii), 299(d)(ii), 308(b)(ii) and 328, Constitution.

<sup>69</sup> The Irrawaddy, “[Interference in Judicial System Harming Burmese People: Lawmakers](#)” (14 August 2013).

<sup>70</sup> See: International Commission of Jurists, above.

<sup>71</sup> See: USIP, “[Burma/Myanmar Rule of Law Trip Report](#)” (June 2013), pg. 5 and 34.

local-level dispute resolution mechanisms they perceive to be more reliable, accessible and affordable.”<sup>72</sup> These local-level mechanisms generally involve village leaders and/or elders’ councils. Although the village leader has an obligation to inform the police about serious crimes, smaller issues and petty crimes can be settled by the village leader and/or the elders’ council, a small group of respected men within a village. If one party to the problem does not agree with the solution reached, they can take the matter to the township level, but this rarely happens because it is seen as being too expensive, considering both the administrative legal costs and bribes that would have to be paid. In addition, there is currently little in the form of a legal aid system in Myanmar, making it impossible for many to afford the time and cost commitments of using the court system. In conflict areas, the issue would be taken to the head of the controlling armed group.<sup>73</sup>

In addition to the courts, other bodies responsible for the administration of justice, including the police, lack the training and capacity to enforce the rule of law (though the EU has been providing training to improve the human rights performance of Myanmar’s police).<sup>74</sup>

### Judicial and Non-Judicial Mechanisms

With respect to the court system, according to the Constitution, Courts of the Union include: the Supreme Court of the Union; High Courts of the Region; High Courts of the State; Courts of the Self-Administered Division; Courts of the Self-Administered Zone; District Courts; Township Courts; other Courts constituted by law; Courts-Martial; and Constitutional Tribunal of the Union. As in most countries, the Supreme Court is the highest Court in the country, though it does not have jurisdiction over the powers of the Constitutional Tribunal or the Courts-Martial. There is no jury system in Myanmar. Cases are normally tried by a single judge (though in special cases the Chief Justice of the Supreme Court can instruct to form a panel of judges).

The Government has also taken a number of actions to provide non-judicial grievance mechanisms to the public in the absence of a fully functioning judiciary (see Box 8 below). However, these mechanisms are already overloaded with complaints and hindered by limited mandates.

Many businesses commonly seek to incorporate safeguards into their investment contracts by ensuring access to international – rather than domestic – arbitration tribunals in the event of an investment dispute.<sup>75</sup> Myanmar acceded to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards in April 2013, which entered into force July 2013.<sup>76</sup> This solidifies the ability of foreign investors to submit disputes with Myanmar Government and commercial partners to international arbitration. The Myanmar legislature is now reportedly considering a new law based on the 1985

<sup>72</sup> See: USIP, above, p. 5.

<sup>73</sup> See: USIP, above, p. 34.

<sup>74</sup> EU Delegation to Myanmar, “[EU Crowd Management Training Supports Reform of Myanmar Police Force](#)” (Feb 2014).

<sup>75</sup> More recently, the EU and Myanmar have begun discussions on an investor-state dispute settlement mechanism with Myanmar. See for example: Herbert Smith Freehills, “[Myanmar and the European Union to enter into an investment protection agreement](#)” (13 March 2014).

<sup>76</sup> [New York Convention on the Recognition of Foreign Arbitral Awards](#) (1958) (accessed 15 July 2014).

UNCITRAL Model Law on International Commercial Arbitration to replace the 1944 Arbitration Act, which would enable Myanmar courts to recognise and enforce international arbitral awards.<sup>77</sup>

An equivalent assurance of access to remedies for most Myanmar people affected by private sector operations is still a practical impossibility. Accountability in Myanmar is a new phenomenon and one that will take time to take root. It is particularly important in these circumstances that companies provide operational-level grievance mechanisms for those working in or affected by their projects as they have few effective alternatives for remedy.

#### Box 8: Existing Non-Judicial Grievance Mechanisms in Myanmar

- Daw Aung San Suu Kyi was appointed to head up the new **parliamentary Rule of Law and Stability Committee** formed in August 2012 to serve as a mechanism for the general public to lodge complaints about government departments. In one month it received over 10,000 complaint letters regarding courts within the Yangon Division alone.<sup>78</sup>
- The **President's Office opened a public access portal** for people to submit opinions and complaints directly to the President.<sup>79</sup>
- A non-judicial **labour dispute settlement system** to resolve disputes between employers and workers is in place, but implementation is still weak due to lack of adequate knowledge about the newly enacted labour laws.
- There are a number of mechanisms to hear land disputes, including a **parliamentary committee on land confiscation inquiry**, but without a mandate to give binding decisions. (See [Part 4.3](#) on Land)
- The **Myanmar National Human Rights Commission (MNHRC)**. While the MNHRC was established in September 2011, the MNHRC Law was only enacted on 28 March 2014. The MNHRC has a broad mandate of promoting and monitoring compliance with human rights. It is empowered to investigate complaints and contact the concerned person, company or government department and can recommend action. It can also make its recommendations public. It can undertake inquiries and will prepare an annual report to the President and Parliament. It is also mandated to consult different stakeholders including CSOs. The President selects members after proposals by a selection board. While the law provides that proposed members should have expertise or knowledge in different areas relevant to human rights including from civil society, it does not guarantee pluralism, nor a total independence from the Executive, in accordance with the Paris Principles.<sup>80</sup> It received over 1700 complaints in its first 6 months of operation, a majority of which involved land grabbing cases.

<sup>77</sup> Singapore International Arbitration Blog, "[Draft Arbitration Bill in Myanmar](#)" (June 2014).

<sup>78</sup> Regarding the various bodies noted, see further: Hnin Wut Yee, "[Business & Human Rights in ASEAN – A baseline study: Myanmar chapter](#)" (April 2013).

<sup>79</sup> "[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)", (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 114.

<sup>80</sup> OHCHR, "[OHCHR and NHRIs](#)" (accessed 15 July 2014).



- The **ILO and Myanmar Government have agreed a complaints mechanism** to allow victims of forced labour an opportunity to seek redress/remedies from government authorities in full confidence that no retaliatory action will be taken against them.<sup>81</sup> The October 2013 report by the Myanmar Liaison Officer notes that there has been an increasing number of complaints about forced labour in association with land confiscation, with people either losing their livelihoods completely or being required to work on land which they have traditionally occupied.<sup>82</sup>

## D. Relevant Areas of Law Underpinning Responsible Business Conduct

Responsible business conduct is often underpinned by many areas of law at the international and national level and covering a range of issues (see [Part I.C](#) above). Where international laws or standards are incorporated into domestic law this can provide a predictable and familiar reference point, at least for international businesses who may be familiar with the standards from other countries of operation, and also provides a level playing field among operators. However, international standards may be partially or poorly transposed into domestic law. More detailed analysis of alignment between the international standards and national law is necessary (together with other areas of legal due diligence).

This section of the Report addresses two main areas:

- Myanmar's accession to **international human rights instruments**, as this provides some indication of areas the Government considers priorities, as well as providing standards that business and civil society can point to in holding the Government to promises of action to protect human rights;
- the **Foreign Investment Law** and the **Citizens Investment Law**, to highlight provisions in the laws that either require or at least support responsible business conduct or undermine such conduct by prohibiting or limiting such an approach.

Similar analyses could usefully be made of other business laws applicable to the sector. [Part 3.A](#) of this Report discusses more specific O&G laws.

### International Human Rights Instruments in Myanmar

Myanmar has a relatively low level of accessions of international human rights treaties. The Government reportedly has not conducted any assessment of the compatibility of its existing laws with its obligations under international law.<sup>83</sup> Domestic courts cannot directly invoke the provisions of global or regional human rights instruments to interpret national

<sup>81</sup> ILO, "[Forced Labour Complaint Mechanism](#)" (accessed 15 July 2014).

<sup>82</sup> Section 6, ILO, "[Update on the operation of the complaint mechanism in Myanmar, report of the ILO Liaison Officer to ILO Governing body](#)" (319th Session, Geneva, 16-31 October 2013), GB.319/INS/INF/2.

<sup>83</sup> DLA Piper et al, "[Myanmar Rule of Law Assessment](#)" (Mar 2013), pg. 27.

norms unless such norms are incorporated into national legislation.<sup>84</sup> While it is not unusual for international law not to be automatically incorporated into domestic law, one implication of this is that Myanmar's judiciary cannot have recourse to international human rights law to circumscribe the wide discretionary powers that Myanmar's laws confer on the executive branch.

### Box 9: Myanmar's Accession to International Human Rights Instruments

#### Myanmar has acceded to:

- the Convention on the Elimination of Discrimination Against Women (CEDAW)
- the Convention on the Rights of Persons with Disabilities (CRPD)
- the Convention on the Rights of the Child (CRC) & the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- 3 out of 8 of the Fundamental Conventions of the ILO:
  - ILO Forced Labour Convention (ILO Convention 29);
  - ILO Freedom of Association and Protection of the Right to Organise Convention. (ILO Convention 87);
  - Worst Forms of Child Labour Convention, No 182 (entering into force December 2014);
- 19 out of 177 of the Technical Conventions of the ILO, including the ILO Hours of Work (Industry) Convention
- the Convention against Transnational Organised Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children & the Protocol against the Smuggling of Migrants by Land, Sea and Air; supplementing the United Nations Convention against Transnational Organised Crime
- the UN Convention against Corruption
- Myanmar is also a State Party to Geneva Conventions, I, II and III

#### Myanmar has not signed the following international human rights treaties:

- International Covenant on Economic, Social and Cultural Rights (ICESCR) & the Optional Protocol to the ICESCR (OP-ICESCR)
- International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the ICCPR (ICCPR-OP 1), and the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (ICCPR-OP 2)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW)
- Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT) and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (OP-CAT)

<sup>84</sup> UN General Assembly, "[Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 \(b\) of the annex to Human Rights Council resolution 5/1, Myanmar](#)", A/HRC/WG.6/10/MMR/2 (15 Nov 2010), para. 5.

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (OP-CRC-AC)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP);
- International Convention for the Protection of All Persons from Enforced Disappearance (CED)
- Geneva Convention IV (Related to Rights of Civilians in Armed Conflict)

**Myanmar has also not signed 5 out of the 8 ILO Fundamental Conventions:**

- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)

Nor has it signed 158 out of the 177 Technical Conventions, and none of the 4 Governance Conventions<sup>85</sup>

Myanmar has been the subject of annual resolutions at the UN Human Rights Council for over two decades.<sup>86</sup> The former Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in his final report in March 2014 at the end of his six-year mandate, highlighted the strong progress that had been made during the reform since 2011, most notably the release of over 1,100 political prisoners. However, he also cautioned that “[a]ddressing the impunity for human rights violations in Rakhine State together with the marginalisation and discrimination against the Rohingya community remain the two fundamental challenges that the Government seems unwilling to address”.<sup>87</sup> The new Special Rapporteur, Lee Yanghee, took up the mandate in April 2014 and made a first visit in July 2014.<sup>88</sup>

### The Foreign and Citizens Investment Laws and MIC Permitting Process

The 2012 Foreign Investment Law (“FIL”)<sup>89</sup> sets out certain key points relating to foreign investment in Myanmar. It provides a new set of incentives and prohibitions for investors who choose to apply for the optional investment permit from the Myanmar Investment Commission (MIC) (though a permit from the Directorate for Investment and Company

<sup>85</sup> ILO Normlex, “[Up-to-date Conventions not ratified by Myanmar](#)” (accessed 15 July 2013).

<sup>86</sup> In 1992 the Commission on Human Rights passed Resolution 1992/58, noting the seriousness of the human rights situation in Myanmar, and mandating the appointment of a Special Rapporteur. There are currently 14 country rapporteurs.

<sup>87</sup> See: OHCHR, “[UN expert’s final report: ‘Prospect of a brighter future for the ethnic groups of Myanmar is real’](#)” (March 2014).

<sup>88</sup> OHCHR, “[Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar](#)” (26 July 2014).

<sup>89</sup> Pyidaungsu Hluttaw Law No. 21/2012.

Administration (DICA) is required to establish a business vehicle).<sup>90</sup> Foreign-owned companies and foreign joint ventures with FIL permits, while subject to the same principles of company law as local companies, will have the advantage of certain benefits and preferential treatment to those foreign investors who choose not to obtain a FIL permit, including: (i) protection against state expropriation; (ii) repatriation of profits and invested funds; (iii) security of tenure through long-term use or lease of land with terms of up to 50 years (extendable twice to a maximum of 70 years); (iv) and a means to enforce the terms of their contracts through the dispute settlement mechanism.<sup>91</sup> Companies 100% owned by Myanmar citizens can apply for an MIC permit under the 2013 Citizens Investment Law (“CIL”).<sup>92</sup> As the 1913 Burma Companies Act is in the process of being changed, it was not reviewed.

The MIC is the main administrative body for the granting of investment permits under the FIL. The FIL and Foreign Investment Rules (“FIR”) do not indicate what terms and conditions may or may not be set out in an MIC permit. The basic investment permit process is set out below.<sup>93</sup> However, DICA, MOECAF and MOGE are still working through the sequencing of this approvals process for O&G Production Sharing Contracts (PSCs), and the process described below has not been followed for the current round of onshore PSCs:

- Investor submits a Proposal Form, with E(S)IA documents and relevant draft agreements. If the proposed investment is extractives-based, the proposal is submitted to the MIC through the Ministry of Energy or Ministry of Mining. However in practice, the recent onshore PSCs have been submitted to MIC for approval in advance of being signed and in advance of the commencement of an ESIA, which is a more logical order.
- DICA, as the MIC’s secretariat, will submit requests to the relevant Region or State government for their recommendations on the acceptability of the proposal, but the Union Government does not need approval from state or regional governments for large-scale investments in their local jurisdictions; they only need to be informed.<sup>94</sup> It is therefore unclear, and probably unlikely, that Region or State governments currently consult locally with those potentially affected by incoming investments but this would be one avenue for engaging local communities in decisions on natural resource investments.
- DICA will also submit requests to MOECAF for its comments on the proposed measures to prevent or mitigate adverse environmental and social impacts.

<sup>90</sup> The FIL is implemented through Notification 1/2013 which sets out the permitted activities for foreign investors and the activities which require a joint venture, and Notification 11/2013 which details the process for applying for a MIC permit, the use of land, transfer of shares, remittance of foreign exchange and the taking of security on land and buildings. See: Clifford Chance, “[Myanmar: Foreign investment rules in practice](#)” (March 2013), 1.

<sup>91</sup> Jones Day Commentary, “[Myanmar’s New Foreign Investment Legal Regime](#)” (April 2013).

<sup>92</sup> Pyidaungsu Hluttaw law No. 18/2013. DICA is reported to be considering combining the 2012 Foreign Investment Law and the 2013 Citizens Investment Law to level the economic playing field between local and foreign investors and make the investment regime more economically attractive. Myanmar Times, “[DICA confident of hluttaw approval on combined investment law](#)” (15 December 2013).

<sup>93</sup> Article 20(b), 2012 Foreign Investment Law; Rules 32-49, 2013 Foreign Investment Rules.

<sup>94</sup> Transnational Institute/Burma Centrum Netherland, “[Access Denied: Land Rights and Ethnic Conflict in Burma](#)” (May 2013).

- DICA will submit the proposal and relevant recommendations and assessments received to the MIC for consideration at its next meeting.
- The MIC will scrutinise the proposal and accompanying documents. If accepted, the permit will be issued, and copies sent to the relevant Union Ministries. There is a statutory time limit of 90 days from date of receipt for a proposal to be processed.
- Following approval, MIC is also responsible for undertaking inspections of the construction and subsequent implementation of the business and would also presumably verify if any conditions attached to the MIC permit are being followed.

**Box 10: The Myanmar Foreign Investment Law, Citizens Investment Law and Human Rights**

**How the FIL aligns with or supports fulfilment of international human rights standards:**

- by requiring the hiring and training of local workers and submission of annual capacity development plans
- by promoting local labour development as all jobs that do not require skilled labour must be given exclusively to Myanmar citizens<sup>95</sup>
- by offering incentives for investments in less developed regions through tax exemptions and relief and lease rights for longer periods
- by requiring environmental and social impact assessments (ESIAs) for certain activities, including “the exploration, drilling and production of oil and gas”
- by requiring compliance with national labour laws, in particular ensuring equivalent salaries between local and foreign employees with equivalent experience
- by protecting “religious lands” and regions designated by the Government as regions of cultural or natural heritage
- through MIC supervision of land lease rates paid by foreign investors and a prohibition on resettlement if the people living in the location “do not wish to vacate”.<sup>96</sup>

**How the FIL, CIL and MIC regime potentially undermines human rights:**

- The FIL provides expansive investment protections that do not require an equivalent and corresponding set of responsibilities on investors.
- MIC can approve a restricted or prohibited investment without MOECAP approval.<sup>97</sup>
- Apart from requiring public consultations when MIC is asked to approve restricted or prohibited investments, the only other provision for transparency is for MIC to submit a bi-annual performance report to the National Assembly. At a minimum, there should be public notifications not just, as at present, of which companies have been granted MIC permits, but also the nature of those investment projects, including the approved period of the investment’s

<sup>95</sup> The FIL also contains additional local content requirements for skilled workers: for all jobs requiring skilled labour, foreign investors must meet specified local employment quotas, which substantially increase over a specified period of time, by the end of which at least 75% of skilled jobs must belong to Myanmar citizens.

<sup>96</sup> DICA, “[Notification 39/2011](#)”, Art. 28.

<sup>97</sup> Article 47 of the 2012 Foreign Investment Law.

construction and operation, and other key terms and conditions on which the permit was granted.

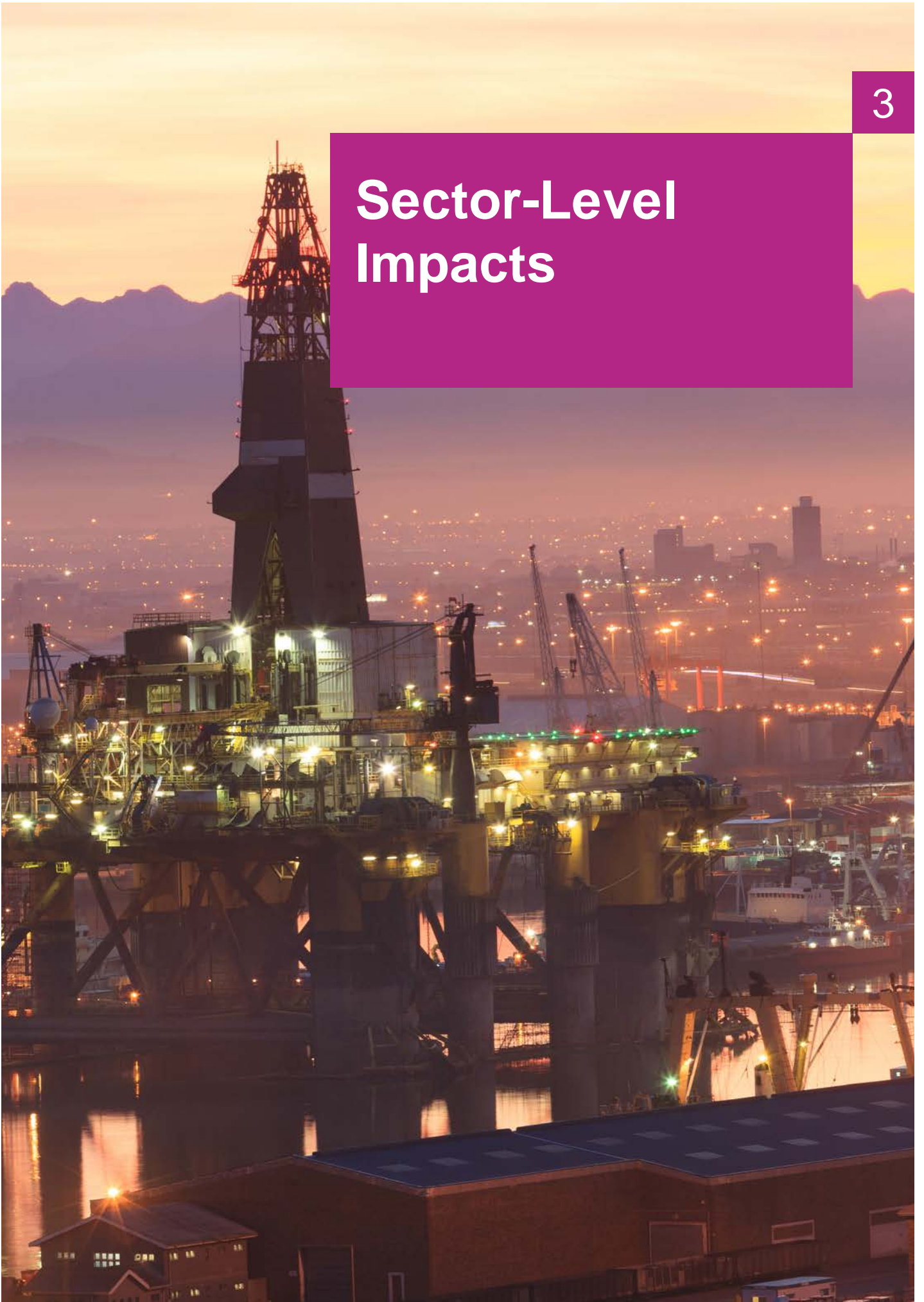
- The lack of harmonisation between requirements of the FIL and CIL regarding investments prohibited on environmental and social grounds.<sup>98</sup>
- The preclusion of appeals to court by those potentially affected to contest a MIC permit.
- A lack of any requirement to ensure that investors' "corporate social responsibility programme" respond to social impacts.
- The express provision in the FIL that in the event of conflict between its provisions and an international treaty or agreement, the provisions of the latter should prevail. While this could be useful if it is interpreted to improve human rights or environmental protections around investments in line with international treaties, it may also (and more likely) be interpreted in line with international trade and investment agreements which commonly contain obligations that constrain policy-making and administrative action in protection of human rights and environmental protection.

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<sup>98</sup> Under the CIL, it is not possible to approve prohibited investments under the CIL that can be approved under the FIL.



# Sector-Level Impacts



# SECTOR-LEVEL IMPACTS

## In this section:

- A. The Myanmar Energy Context
  - History and Current Context of Myanmar's O&G Sector
  - Current O&G Bidding Rounds
  - Government Institutions Regulating O&G Operations in Myanmar
  - Policy Frameworks for O&G Operations in Myanmar
  - Laws Regulating O&G Operations in Myanmar
- B. Potential O&G Sector Impacts
  - Economic Impacts
  - Governance Impacts
  - Environmental & Social Impacts

This chapter highlights “the big picture” – potential sector wide impacts that Government, civil society and the companies operating in the sector will need to consider and address as part of the multifaceted effort to ensure that O&G operations provide a positive contribution to equitable and sustainable development in Myanmar, including improved protection of human rights.

## A. The Myanmar Energy Context

Myanmar currently suffers from acute “energy poverty”<sup>99</sup> despite proven natural gas reserves of 7.8 trillion cubic feet.<sup>100</sup> 80% of the country's natural gas is exported. Its immediate neighbours, India, China, and Thailand, are all net importers of crude oil and natural gas and have been eager to tap into Myanmar's gas reserves.<sup>101</sup> The geopolitical context of Myanmar's energy sector places the country in a unique position to attract foreign investment into its energy sector while trying to provide for its own energy needs. Yet with only 20% of natural gas feeding domestic demand, there is an insufficient supply to meet local use and only about 26% of the population has access to electricity.<sup>102</sup> The existing power infrastructure can meet only about half of current demand, resulting in frequent blackouts and rationing of electricity supply. Only 13% of the population have access to the national electricity grid, and almost 95% depend on solid fuels such as wood

<sup>99</sup> International Energy Agency, “[Energy poverty](#)”.

<sup>100</sup> BP, “[BP Statistical Review of World Energy](#)” (June 2011).

<sup>101</sup> Energy-hungry China's needs are addressed by the new Shwe Gas pipeline spanning the width of Myanmar, address the country's energy security by bypassing the Strait of Malacca. Thailand is also a net importer of crude oil and gas and Myanmar gas accounts for 30% of Thailand's gas consumption. The pipeline transporting Myanmar's natural gas to Thailand has never been turned off. India's attempts to access to Myanmar's gas have so far failed due to political-economic issues with Bangladesh.

<sup>102</sup> World Economic Forum et al, “[The New Energy Architecture, Myanmar](#)” (June 2013). Asian Development Bank, “[Myanmar Energy Sector Initial Assessment](#)” (Oct 2012).

and rice husks for cooking and heating.<sup>103</sup> The World Bank projected that Myanmar would need \$444 million every year – almost 10 percent of its GDP, the highest of any country in Asia – to achieve universal access to electricity by 2030; to put this number in perspective, the next highest investment requirement, in Timor Leste, would need to invest only 2.7 percent of its GDP.<sup>104</sup>

Energy will be important to Myanmar's further integration into the global economic system: its reserves and strategic location between Asia's two biggest economies already mean it can be an important regional supplier and crossroads. However, the development of the sector will require a transformation of the basic institutions and infrastructure that are needed to drive the country's future economic growth and ensure that O&G and power generation can contribute to poverty alleviation and address the disparity between urban and rural areas. In their proposed framework for Myanmar to build a 'New Energy Architecture',<sup>105</sup> the World Economic Forum and the Asian Development Bank highlight three essential requirements that Myanmar's energy policy must achieve in order to balance a myriad of competing interests: economic growth and development, sustainability, and energy access and security in the country.

However, there are good reasons for Myanmar to diversify away from an over-reliance on the sector. In addition to potential resource curse issues (see [Part 3.B](#) below), as the ADB also notes, Myanmar's current growth pattern, with a major concentration in energy and the extractive industries, is placing huge pressure on its environment and if continued, will certainly be unsustainable.<sup>106</sup> It has also been identified as a country with strong potential to develop renewable energy resources and to be a regional supplier of clean and affordable energy.<sup>107</sup>

### History and Current Context of Myanmar's O&G Sector

Myanmar has a long history of oil production with its first barrel exported in 1853.<sup>108</sup> Following the 1962 coup d'état by General Ne Win, the O&G sector was nationalised and the Ministry of Energy formed the Myanma Oil and Gas Enterprise (MOGE) for exploration and production, the Myanma Petrochemical Enterprise (MPE) for refining and processing, and Myanma Petroleum Products Enterprise (MPPE) for distribution. By the 1980s O&G production had declined due to technical limitations of local companies and restrictions on foreign firms.<sup>109</sup>

When the State Law and Order Restoration Council (SLORC) took power in 1988 one of the first laws promulgated was the Foreign Investment Law of November 1988. This opened the door for international joint venture and production sharing contracts. Shortly afterwards, the SLORC awarded onshore and offshore blocks leading to an influx of international companies including Amoco, Shell, BHP, Total, Idemitsu, and Unocal,

<sup>103</sup> UNDP, "[Accelerating Energy Access for All in Myanmar](#)" (2013), Executive Summary.

<sup>104</sup> UNDP, above, p. 7.

<sup>105</sup> WEF et al, above.

<sup>106</sup> ADB, "[Myanmar in Transition: Opportunities and Growth](#)" (2012), p. 14.

<sup>107</sup> ADB, above, p. 39

<sup>108</sup> WEF et al, above.

<sup>109</sup> A Kolas, "[Burma in the Balance, The Geopolitics of Gas, Strategic Analysis](#)" (Nov 2007).

although most onshore blocks were relinquished within a few years.<sup>110</sup> By 1997 the human rights situation deteriorated further, leading to escalating US economic sanctions. The few US companies already invested in the country, such as Unocal/Chevron, who had a share in Total's block, were 'grandfathered' under the new sanctions regime. EU companies were not legally prevented from investing but, with the exception of Total, generally withdrew or stayed away due to NGO campaigns and reputational risk. The first modern US Alien Tort Claims Act case involved O&G operations in Myanmar during this period, and held that the statute could apply to private actions.<sup>111</sup> As the recent OECD Investment Policy Review noted, history matters, and foreign investment during this time came to be associated by the population with "the full litany of possible ills: land grabbing, population displacement without adequate compensation, forced labour and other abuses of both worker and human rights."<sup>112</sup>

Asian companies acquired a number of offshore blocks in their absence. In 2000, MOGE and South Korea's Daewoo International began exploring the Bay of Bengal discovering a major gas deposit, termed the Shwe Prospect, operated by Daewoo, Korean Gas Corporation, India's ONGC, and GAIL. After intense international lobbying over the Shwe gas find with India, Thailand, and China, all eager for pipelines built to address their energy needs,<sup>113</sup> the Chinese Government signed an agreement with the Myanmar Government in mid-2009 which made China the sole buyer of the Shwe gas reserves.<sup>114</sup> The China National Petroleum Corporation (CNPC) has built parallel O&G pipelines running 2,800 km from Rakhine state to China's Yunnan Province.<sup>115</sup> The gas pipeline is complete and operational as from 2013. The parallel crude oil pipeline will transport African and Middle East crude oil from storage tanks on Maday Island off Rakhine State across the country to China, bypassing the Straits of Malacca. As of summer 2014 oil had not yet been loaded into the finished tanks at Maday.

### Box 11: Artisanal Oil Extraction in Myanmar

Unusually, if not uniquely in the world, Myanmar has a continuous history of artisanal oil extraction, with individuals or small informal enterprises extracting oil with equipment sometimes as simple as a bucket and rope. There is existing artisanal extraction in several oil field areas that provides important primary or secondary livelihoods for communities. The extraction is carried out with little if any health and safety precautions and even fewer measures to protect the environment. The extraction is typically a full time occupation and in many locations has created an 'oil rush' drawing in migrants with associated crime and social impacts. The practice is prohibited by law but carried on in several places in the country where the oil is readily accessible. The original artisanal drillers (*twin-zar-yoe*) were largely blocked from

<sup>110</sup> A Kolas, above.

<sup>111</sup> *Doe I v. Unocal Corp.*, 963 F. Supp. 880. The parties reached an out-of-court settlement in which Unocal agreed to compensate the plaintiffs and provide funds for programmes in Myanmar (the exact terms of the settlement are confidential). This settlement was accepted by the court, and the case was closed on 13 April 2005. For a summary and views from both sides see the [Business & Human Rights Resource Centre](#).

<sup>112</sup> OECD "[Investment Policy Reviews: Myanmar](#)" (Mar 2014), p. 23.

<sup>113</sup> Interview with a senior member of the Myanmar Geosciences Society.

<sup>114</sup> Burmese Environment Working Group, "[Burma's Environment, People, Problems, Policies](#)" (June 2011).

<sup>115</sup> Myanmar Business Network, "[Myanmar-China gas pipeline starts to deliver gas to China](#)" (29 July 2013).



extraction by the Government when oil fields were nationalised in the 1960's and 1970's. This impacted on their primary source of income dating back many generations. There is still a strong desire from many communities to recommence these activities.

Myanmar's Framework for Economic and Social Reform (FESR)<sup>116</sup> commits to increasing the levels of employment in and the profitability of small scale and artisanal mining without eroding the necessary environmental and social standards but makes no similar mention of artisanal oil extraction.<sup>117</sup> Artisanal and small scale mining extraction is an important feature of the informal economy in many countries. There is a growing understanding that simply prohibiting artisanal mining extraction is not always the right approach – it deprives local communities of income and creates tension -- but at the same time small scale extraction often has dangerous implications for health and the environment that must be addressed.<sup>118</sup> Artisanal oil extraction should also be addressed as part of the forthcoming energy policy, starting with a comprehensive options study to understand current activities, livelihood consequences, environmental and social consequences and to set out options for either establishing a safer and more productive approach to artisanal oil extraction (which may be unlikely) or a programme to safely shut down the operations and support communities and small enterprises to move into other, safer livelihood options. While there may be some similarities with artisanal mining in terms of dangerous health and safety and environmental impacts, it is likely to be far more difficult to envisage integration of these artisanal producers into larger scale O&G value chains.

### Current O&G Bidding Rounds

The reformist Government has enhanced transparency somewhat during the most recent onshore and offshore bidding rounds, by publicly advertising tenders in English,<sup>119</sup> but the selection criteria and decision-making remains opaque. Once Myanmar's application to the EITI is accepted, Myanmar's report will have to include information on the process and

<sup>116</sup> [“Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”](#), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), Overview. The FESR: i) provides a reform bridge linking the ongoing government programs of government to the National Comprehensive Development Plan, a 20-year long-term plan; ii) FESR serves as a required reference for various entities of the government to develop more detailed sectoral and regional plans; iii) it can serve as a guide for building cooperation with development partners and international organisations; and iv) finally, it focuses on potential “quick wins” that the government will consider implementing to bring tangible and sustainable benefits to the population.

<sup>117</sup> [“Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”](#), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 71-74.

<sup>118</sup> See for example: IIED, [“IIED shines a light on small-scale mining”](#) (Mar 2013).

<sup>119</sup> Financial Times, [“Myanmar cleans house – China's worst nightmare?”](#) (15 April 2013). See also a Global Witness report commending the Government for “important early steps towards a transparent oil and gas sector by publishing standard contract terms and names and contact details of bidding companies” but criticising the high levels of corporate secrecy of the companies who have been awarded blocks. Global Witness, [“Real winners of Myanmar's oil and gas blocks remain hidden”](#) (June 2014).

the criteria used to award licenses<sup>120</sup> but there are additional steps beyond these that could be taken to improve transparency. (See the [Annex to the Recommendations](#)).

### *Onshore O&G Bidding Rounds*

Following the November 2010 general elections and the subsequent economic and political reform process, Australia, Canada, the EU and US suspended or removed economic sanctions in 2012<sup>121</sup>, opening the way to new external investment in the sector. There are 101 blocks demarcated for O&G operations in Myanmar, 53 for onshore and 48 for offshore. The Ministry of Energy (MoE) opened new rounds of bidding in 2011 for 19 onshore blocks. The bidding round was less successful than hoped, with seven local companies partnering with foreign companies for only half of the blocks available. In January 2013 there was a new round of bidding for 18 onshore blocks in which 59 bidders were shortlisted.<sup>122</sup> In October 2013, the MoE announced the winners of 16 of the 18 onshore blocks available.<sup>123</sup> PSC negotiations continue and as of the publication of this Report, no PSCs had been reported signed for onshore blocks, although some had received conditional Myanmar Investment Commission (MIC) approval.<sup>124</sup> See [Annex B](#) for further information.

### *Offshore O&G Bidding Rounds*

In April 2013, the much anticipated offshore bidding round was announced for 11 shallow water and 19 deep-water blocks in which 61 international companies were prequalified.<sup>125</sup> While there is limited or no seismic data on these deep-water blocks, the existence of the Shwe, Yadana, Yetagun and Zawtika gas fields has led to hope of new discoveries. The results of the offshore licensing round were announced in March 2014.<sup>126</sup> For onshore and shallow water blocks, foreign bidders had to partner with at least one of the 145 (as of June 2013) Myanmar national owned companies registered at the Energy Planning Department. Bidders for deep offshore blocks need not include a Myanmar partner.<sup>127</sup> The 2013/4 offshore round brought in a number of major and some junior international O&G companies, particularly from North America, Europe, Australia and India. Notably absent were Thai and Chinese companies. Again, as of publication of this Report, no offshore PSCs have been signed. See [Annex B](#) for further information.

<sup>120</sup> EITI, "[The EITI Standard](#)", Section 3.10 Allocation of licenses: "a) *Implementing countries are required to disclose information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report, including: a description of the process for transferring or awarding the license; the technical and financial criteria used; information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable; and any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards.* b) *Where licenses are awarded through a bidding process during the accounting period covered by the EITI Report, the government is required to disclose the list of applicants and the bid criteria.*"

<sup>121</sup> Canada and the US have retained special economic restrictions on key individuals and businesses.

<sup>122</sup> Albert Chandler, "[Myanmar Upstream Oil & Gas Sector](#)" (June 2013).

<sup>123</sup> Two blocks, IOR-3 and PSC M, did not receive any bids. Thirteen of the 16 contracts were production sharing deals, with the remaining 3 as petroleum recovery contracts (for blocks IOR 7, IOR 4 and IOR 6). See the Ministry of Energy [announcement](#).

<sup>124</sup> See <http://dica.x-aas.net/dica/permitted-investment-company>

<sup>125</sup> Myanmar Ministry of Energy, "[Myanmar Offshore Blocks First Bidding Round – 2012](#)" (July 2013).

<sup>126</sup> Myanmar Ministry of Energy, above.

<sup>127</sup> Albert Chandler, above, pg. 4.

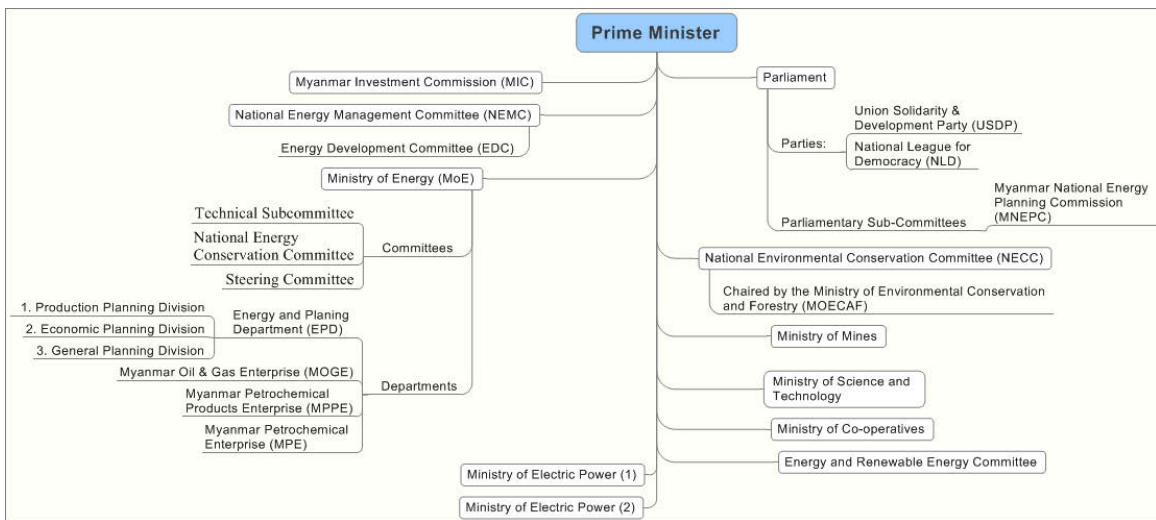


### Box 12: Government Institutions Regulating O&G Operations in Myanmar

- The **Ministry of Energy (MoE)** has the main responsibility to carry out exploration and production of crude oil and natural gas, refining, manufacturing of petrochemicals and transportation, and distribution of petroleum products. It is in the process of developing a new Energy Policy. There are no State/Region-level departments of energy.
- The **National Energy Management Committee (NEMC)**, under the MoE, was formed in January 2013 to “formulate National Energy Policy based on energy demand and production and fulfilment of energy requirement on energy matters of the State.” Among the NEMC’s duties is to “explore environmental impact and social impact assessment ahead of the implementation and to release information the people should be informed of.”
- The **Energy Development Committee (EDC)** is tasked with “laying down the energy development policy and plans of the National Energy Management Committee.”
- The **Myanma Oil and Gas Enterprise (MOGE)**, under the MoE, has the exclusive right to carry out all O&G operations with private contractors. As the party entering into PSCs, MOGE holds the contractual rights to receive payment of royalties, bonuses, profits, etc. It has offices at some onshore oil fields. The legal nature, powers and duties of MOGE are unclear from publicly available information. MOGE does not publish regular reports on its performance. It has a role both as a business partner in operations and as a regulator; in many countries this role is split due to potential conflicts of interest. A recent report reviewed some of the challenges MOGE faces and the options for the appropriate model as a national oil company. The Government recently announced plans to make MOGE a state-owned corporation. This will separate its business activities from its role as a regulator of the country’s O&G industry and in doing so, should help it improve its business performance. MOGE has said that it expects the process to be completed by 2015.
- The **National Energy Planning Department (NEPD)** negotiates production sharing contracts (PSCs) with foreign firms.
- The **Ministry of Environmental Conservation and Forestry (MOECAF)** is empowered to undertake a range of regulatory activities under the 2012 Environment Conservation Law. It is in the process of establishing a procedure and system for screening, assessing and monitoring environmental and social impacts (ESIA) of business activities.
- The **Myanmar Investment Commission (MIC)** is the main administrative body for the granting of investment permits under the 2012 Foreign Investment Law and 2013 Citizens Investment Law. The MIC approves the terms and conditions of PSCs, but in practice, once MOGE approves the technical specifications of all concessions, MIC would normally also approve the investment.
- The **Directorate of Investment and Company Administration (DICA)** acts a secretariat to the MIC. The incorporation of a foreign Myanmar company and registration of a Myanmar branch of a foreign company is subject to the

procedures and requirements of DICA under the Myanmar Companies Act. A DICA permit is required for all foreign companies, whether a 100% owned, joint-venture or a branch/representative office.

- The **Natural Resources and Environmental Conservation Committee** of the Pyithu Hluttaw oversees legislation related to the development of natural resources and environment conservation activities and also has the power to investigate complaint letters and petition letters regarding natural resources and environment.



### Policy Frameworks for O&G Operations in Myanmar

The policy frameworks for the energy and more particularly the O&G sector provide the signals about where and how far the Government will go in translating broad political commitments into specific incentives and disincentives to drive a responsible, sustainable approach for the sector. They can shape the forthcoming regulatory environment for responsible business in a number of ways, for example by levelling the playing field, requiring all businesses to meet the same “high social and environmental standards” promised in Myanmar’s Framework for Economic and Social Reform<sup>128</sup> (FESR). Alternatively they could make it harder for companies to respect human rights and other responsible business standards by adopting provisions that deny or undermine human rights, or by leaving significant gaps that can be filled by either good or bad practice.

The FESR acknowledges that there are hard choices to be made in balancing the economic, social and environmental issues facing the extractive sector. The FESR specifically recognises that “there will be unavoidable trade-offs” for natural resource and infrastructure projects. It proposes a number of steps as trade-offs: a specific recognition of trade-offs, early consultations with stakeholders to better understand and address those

trade-offs, stricter environmental and social requirements and enhanced transparency.<sup>129</sup> The FESR calls for stricter requirements for environmental and social impact assessments of major projects and programmes that include public participation, with “particular attention” to guidelines concerning resettlement, relocation and compensation. These are important safeguards for policies, administrative processes and projects provided they do not simply promote a broad-brush utilitarian approach that values and balances trade-offs based on the greatest good to the greatest numbers at the macro level. Instead, they should use international standards and good practices to inform processes that lead to appropriate balancing at the meso- and micro-level of projects, with a view to avoiding or preventing harms to the greatest extent possible, and where that is not possible, build in mitigation or compensation steps.

### *Energy Policy Framework*

Myanmar’s energy strategy for the past few decades has consisted largely of exploiting O&G reserves for export, rather than domestic use. It is currently developing a new Energy Policy with support from the ADB. This draws on earlier work from ADB, WEF and Accenture proposing a “New Energy Architecture” for Myanmar based on nine months of multistakeholder consultations.<sup>130</sup> As the ADB project documents note, “Myanmar’s energy sector suffers from a lack of an overall energy planning, policy and strategy. Currently, there is limited and fragmented long-term planning for each energy subsector or planning in the whole energy sector.”<sup>131</sup> The project will have two main activities (i) to prepare the 20-year long-term energy master plan that will include consolidating the existing fragmented medium- and long-term energy plan within the concerned ministries and agencies; and preparing a 20-year long-term energy master plan for each primary energy subsector and the energy sector as a whole;<sup>132</sup> and (ii) to address the institutional arrangements and capacity development within the NEMC, EDC and concerned ministries for sustainable and inclusive development. The revised Energy Policy is due October 2014.<sup>133</sup> The Government is also involved in a number of programmes to develop regional energy cooperation.<sup>134</sup>

The Ministry of Energy (MoE) has set the basis of Myanmar’s energy policy framework— (i) fulfilling domestic energy requirement; (ii) implementing sustainable energy development; (iii) promoting the wider use of new and renewable sources of energy; (iv) promoting energy efficiency and conservation; (v) promoting use of alternative fuels; (vi) implementing effective utilisation of discovered crude oil and natural gas resources in the interest of the entire nation; and (vii) promoting more private participation. The Government has made further political commitments to transparency and good

<sup>129</sup> [“Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”](#), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 91-92.

<sup>130</sup> WEF, ADB, Accenture, [“The New Energy Architecture, Myanmar”](#) (June 2013), pg. 27-29.

<sup>131</sup> ADB, [“Institutional Strengthening of National Energy Management Committee in Energy Policy and Planning”](#) (Mar 2014).

<sup>132</sup> The ADB’s work is in complement to JICA’s work in preparing the long-term power sector development plan. There is a donor sector working group on electric power that is working on a Power Sector Masterplan, National Electrification Programme and Energy Sector Masterplan.

<sup>133</sup> ADB, above.

<sup>134</sup> Myanmar Ministry of Energy, [“Regional Energy Cooperation”](#) (accessed 15 July 2014).

governance in the sector in its “[Joint Statement on Good Governance and Transparency in the Energy Sector](#)” between Myanmar and the USA and in their subsequent commitment to a [G8 Partnership on Extractives](#).

The ADB has made a clear recommendation that Myanmar’s investment projects “should aim to incorporate measures that protect the environment and people from projects’ potential adverse impacts” and is providing technical assistance to the Government to help develop its own safeguards over a longer time frame.<sup>135</sup> It has highlighted the lack of legal requirements for environmental and social safeguards for energy infrastructure as a deficiency.<sup>136</sup> The Government has signalled in numerous ways that it is beginning to take impacts on the population into account. Myanmar’s cancellation of the Myitsone dam project signaled a significant shift in this direction.

These signals for the new energy policy are positive. The policy should accurately reflect the true economics of O&G production -- taking account of earnings but also of the depletion of stocks, the degradation of the environment and the costs to workers and local communities. As highlighted above, these often externalised costs otherwise end up being borne in most cases by workers, the communities in the area of operations or otherwise by the local or regional governments. The key challenge will be turning these positive commitments and indicated policy directions into concrete policy and where relevant, into the regulatory framework that balances the country’s tremendous short-term need to develop its energy resources and boost its GDP with a longer term commitment to sustainable development and a people centred approach. A key concern is that the pace of policy and regulatory development (which needs time to explore options) is not keeping up with the rapid moves towards finalising arrangements to exploit onshore and offshore resources through the signing of PSCs that will define O&G operations for many years to come (See the [Annex to the Recommendations](#) for suggested recommendations in dealing with this gap).

### *Natural Resource Policy Framework*

There is currently no policy framework, vision or roadmap for the development of the natural resource sector (however narrowly or widely defined) more specifically in Myanmar. UNDP will be working on the development of a national environmental management framework and action plan with the Government through stock-taking of the past and on-going interventions, and identification of the needs in environmental sustainability and mainstreaming environment consideration into development planning. This remains an urgent priority given the country’s reliance on natural resources for their contribution to its development and the need to appropriately safeguard these resources in light of increasing rates of degradation and use. There is also a need to develop them in a way that is inclusive and that considers the options for a more decentralised approach to natural resource management, carefully weighing the costs and benefits in light of

<sup>135</sup> ADB, “[TA 7566-REG: Strengthening and Use of Country Safeguard Systems, MYA: Capacity Building for Implementing Environment and Social Safeguards in Myanmar](#)” (July 2012).

<sup>136</sup> ADB, “[Myanmar: Energy Sector Initial Assessment](#)” (Oct 2012), Summary.

current and potential future capacity at the State / Region level to take a role in managing resources.<sup>137</sup>

Given the pace of investment in the natural resources sector compared to many other sectors, and its overlaps with the agricultural sector which is the lifeblood of the rural economy, there is a need for improved master plans and more detailed land-use planning that envisages and plans for agriculture and extraction co-existence. Throughout the project's lifecycle, there will be relatively few jobs for local community members in the O&G sector, even through the value chain, meaning that many community members in oil field areas will need to continue to rely on agriculture for their livelihoods.

### Laws Regulating O&G Operations in Myanmar

Myanmar needs appropriate levels of private and foreign investment for the development of its energy sector. To attract and manage that investment, there is a need for a clear vision for investment and a transparent legal framework that investors can trust.<sup>138</sup> The Government is responding to competing pressures of revising its legal framework to provide rapid clarity and certainty, with the goal of developing coherent, updated legislation in line with its international commitments and international standards that should ideally be developed allowing time and space for consultation with Myanmar citizens.

Myanmar's Constitution states that "[t]he Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union." As noted above, the Constitution contains some guarantees on human rights, but does not grant citizens the right to a clean and healthy environment, nor are there any clauses granting freedom of information, particularly with respect to environmental and social information. That means that stakeholder must look instead to forthcoming policy and laws to incorporate relevant protections.

### O&G Laws

Many of the existing O&G laws (see Box 13 below) are old and outdated and, according to sector analysts, effectively defunct. All indications are that the Government and operators use the signed Production Sharing Contracts (PSC) and the Foreign Investment Law to administer current O&G operations. Unlike in some countries, a PSC does not need approval or ratification of the legislature.

Most of these old laws are not easily available in Burmese or in English translation. The 1918 Petroleum Law is reported to be under review but a revised draft version is not publicly available. As these laws appear to be defunct, they have not been reviewed as part of the SWIA process.

A number of other laws relevant to the O&G sector are undergoing revision, such as the forthcoming EITI Law and the E(S)IA Procedures. There is an opportunity for coordination

<sup>137</sup> Thet Aung Lynn and Mari Oye, "[Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing](#)" (June 2014).

<sup>138</sup> WEF et al, "[The New Energy Architecture, Myanmar](#)" (June 2013).

and cross-referencing among laws to build a more comprehensive approach to O&G operations. It will also be important to ensure there is coordination between any new Petroleum Law and the Environmental Conservation Law (2012) which points to resource-specific legislation as the place to develop more specific environmental controls for the sector.

### Box 13: Principal Existing O&G Laws in Myanmar

- The Oilfields Act (1918) supplemented by numerous laws and regulations, including:
- The Oilfield Rules (1936)
- The Petroleum Act (1934)
- The Petroleum Rules (1937)
- The Essential Supplies and Services Act (Law No. 13/2012)
- The Water Power Act (1927)
- The Oilfields (Labour and Welfare) Act (1951)
- The Petroleum Resources (Development Regulation) Act (1957)
- The Law Amending the Petroleum Resources (Development Regulation) Act (1969)
- Oilfield (Workers and Welfare) Act (1951)
- The Myanmar Petroleum Concession Rules (1962)
- Occasional Notifications from the Ministry of Energy are also relevant

#### **In addition: State Owned Economic Enterprise (SOEE) Law**

The 1989 SOEE Law and MIC Notification No. 1 of 2013 prescribe a list of types of business activities that the Government has the exclusive right to carry out (unless the Government otherwise provides special permission), which includes public services such as banking and insurance, the generation of electricity, as well as activities involving timber, metals, forestry and **oil and gas**.<sup>139</sup> Investments in the exploration of commercial scale production of oil and natural gas therefore require the approval of the Union Government, and adherence to the Ministry of Energy's terms and conditions.<sup>140</sup>

The 1989 SOEE Law does not impose any obligations on businesses that are permitted to carry out these SOEE business activities. Instead, obligations on such businesses relating to the conduct of their activities may be imposed by other applicable laws (e.g. the 2012 Foreign Investment Law, the 2013 Citizens Investment Law, the 2012 Environmental Conservation Law, etc.) as well as under any contracts with the Government (such as a PSC in the O&G sector).

#### *An Extractives Industries Transparency Initiative (EITI) Law*

A law would help legally entrench the EITI institutions and reporting framework in the country as there may be certain actors, foreign and national, who will try to subvert the process. As the World Bank's study on EITI implementation notes: "[t]hose countries that have invested time in providing a regulatory or legislative basis and/or requisite waivers for EITI have often been able to implement the standard more rapidly because regulations

<sup>139</sup> Chapter II, Article 1, 1989 State-owned Economic Enterprises Law

<sup>140</sup> Myanmar Investment Commission, "[Notification No. 1 of 2013: 3.1 List of economic activities which are allowed with the relevant ministry's recommendations](#)" point 9.



or legislation clarify the roles of all parties involved in the process...”<sup>141</sup> Adopting these into an EITI law would set Myanmar on a seemingly irreversible path that could challenge and eventually replace the former (and to some extent on-going) practices in the sector where secrecy and corruption were often the accepted approach to business in the sector.

### *Environmental and Social Impact Assessment Procedure for O&G Operations*

For many years there was no regulatory framework for conducting Environmental Impact Assessments (EIA) in Myanmar, although some of the international O&G companies in Myanmar routinely carried out their own ESIA's prior to significant activity, using third party providers. Other projects conducted ESIA's on a case-by-case base, using a mixture of international and Myanmar third parties, or internal experts. The quality of these ESIA's has been mixed, and few were ever made public. ESIA's have now risen up the agenda, following the Presidential decision to suspend the Myitsone dam project and the protests at Letpadaung mine. The Letpadaung mine has subsequently been required to conduct an ESIA which is publicly available as a November 2013 draft.<sup>142</sup>

Properly conducted ESIA's that result in detailed environmental and social management plans (ESMP) that are developed through consultation, publicly available and can be monitored and used to hold companies accountable for their impacts, can provide a solid basis for more responsible investment in the sector. An ESIA is a natural “anchor” for broadening the ESIA process to include a full range of human rights<sup>143</sup>, thereby contributing to a more systematic assessment and management of these issues in Myanmar. The recently adopted EIA Regulations and the associated forthcoming Procedures<sup>144</sup> should help to put in place a solid regulatory framework. The Annex to the Procedures will define which types and sizes of project require an EIA or Initial Environmental Examination (IEE).

However, there is a risk of pinning too many hopes on ESIA's and neglecting other dimensions of an appropriate environmental and social regulatory framework. MOECAF has been growing quickly but still has a limited number of staff working on ESIA's, testifying to departmental overstretch in putting the process into practice. The Environment Conservation Department of MOECAF is creating sub-national offices, at the regional level, with further offices planned at the district and township levels from 2016 onwards.<sup>145</sup> This will provide an important opportunity to address what is currently missing: monitoring the implementation of environmental laws, including the implementation of E(S)MPs at the more local level, closer to operations. But there remains the core challenge of building new staff expertise and capacity to take meaningful action. In parallel, there is a need to build civil society capacity to be able to understand and credibly participate in E(S)IA consultations and E(S)MP monitoring.

<sup>142</sup> See: [http://www.myanmaryangtse.com.mm/images/pdfs/ESIA\\_OF\\_LETPADAUNG\\_PROJECT\\_ON\\_NOV\\_21ST\\_BY\\_KNIGHT\\_PIESOLD\\_2883\\_PAGES.pdf](http://www.myanmaryangtse.com.mm/images/pdfs/ESIA_OF_LETPADAUNG_PROJECT_ON_NOV_21ST_BY_KNIGHT_PIESOLD_2883_PAGES.pdf)

<sup>143</sup> DIHR and IPIECA, “[Integrating Human Rights Into Environmental, Social and Health Impact Assessments](#)” (Dec 2013).

<sup>144</sup> Draft procedures refer to an EIA rather than an ESIA so this refers to an EIA Procedure.

<sup>145</sup> Thet Aung Lynn and Mari Oye, “[Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing](#)” (June 2014), pg. 22.

The importance of further developing the suite of environmental laws and regulations, including on environmental liability, for the O&G sector as well as all other heavy footprint sectors cannot be overstated. The same is true for social issues, including those highlighted in the FESR (resettlement, relocation and compensation). There is a need for long term donor support to the country in developing and enforcing the type of regulatory system that matches the Government's vision of responsible, sustainable development.

#### Box 14: The Draft Environmental Impact Assessment Procedure

The 2012 Environment Conservation Law included for the first time a specific requirement for the new Ministry of Environment, Conservation and Forestry (MOECAF) to establish a system for Environmental Impact Assessment.<sup>146</sup> MOECAF (with support provided by the ADB) has designed a multi-step process that follows standard EIA practice.

The recent Environmental Conservation Rules<sup>147</sup> include some basic provisions on EIAs that are then supplemented by far more detailed provisions on EIA under the draft EIA Procedures. These include many features that will help support a more robust EIA approach in Myanmar. However, the current latest English version of the draft EIA Procedure (dated 24 December 2013) is quite weak on social issues and not surprisingly includes no reference to human rights issues. The Recommendations in [Part 7](#) make suggestions for improvements.

There are several **provisions** in the draft EIA Procedure that can be built on to integrate relevant potential human rights impacts into the final version:

- **Includes some references to social issues:** refers to social and socio-economic impacts at various points.
- **Refers to specific human rights issues but without labeling them as human rights** including indigenous peoples and involuntary resettlement (noting that they will be covered by other ministry processes and are not covered by the EIA Procedure). However in the absence of such national procedures, it requires adherence to international best practice on Involuntary Resettlement and Indigenous People, setting an important precedent of referring to international standards.
- **Disclosure and Transparency:** requires that MOECAF organises disclosure of the draft IEE or EIA reports, invites public comment and arranges public consultation at the local level; public disclosure of MOECAF decisions.
- **Public consultation:** requires the project proponent to disclose information to and

<sup>146</sup> Environmental Conservation Law (2012), Article 7. In addition, for foreign investments in the O&G sector, see DICA, "[MIC Notification 1/2013](#)" (Jan 2013), which lists 'economic activities which are allowed in accordance with certain separately stipulated conditions. A list of "Activities requiring Environmental Impact Assessments" refers to a requirement for an "initial study and assessment on environmental and social impacts". Sectors which are subject to this requirement include minerals and oil and gas exploration and production, dams, large scale agribusiness, chemicals manufacturing etc. MOECAF is identified as lead Ministry in determining this whether this requirement has been satisfied, which suggests that the draft EIA Procedure being developed by MOECAF will govern the review of O&G E(S)IA.

<sup>147</sup> These Rules were released at the end of June 2014 in Burmese. No English language translation is currently publicly available.

consult with local communities, project affected peoples, civil society and local government through all phases of the process of preparing an EIA Report and take their views into account and report publicly on the consultation.

- **Robust EIA reports:** requires a wide range of information to be included in the EIA report, including consideration of alternatives and cumulative impacts.
- **Conditions attached to an Environmental Conservation Certificate:** requires an Environmental Management Plan (EMP) and the possibility to specify a wide range of conditions that can be attached to the final certificate for approval.
- **Monitoring:** requirements for monitoring or inspection by the ministry or consultants acting on its behalf and required notification to the ministry of a breach; monitoring reports are to be made public.
- **Appeal:** appeal by the project proponent is allowed in certain circumstances but it is unclear from the draft (or translation) whether project affected people can appeal a decision.
- **Accountability:** clear provisions assigning responsibility to the project proponent for all adverse impacts, including by its contractors and sub-contractors and penalties for non-compliance.
- **Inclusive:** the EIA Review Board will comprise technical experts from relevant government departments, government organisations, technical organisations as well as civil society.

## B. Potential O&G Sector Impacts

This part of the chapter looks at potential positive and negative “sector-wide impacts”. It looks at how the O&G sector can be a potential driver or contributor to either positive or negative impacts in three areas: economic, governance and environmental and social.

As used in this SWIA Report, these sector-wide impacts can result from government action – policies, laws, actions by its institutions – that require or at least support responsible business approaches or that actively undermine or even prohibit them. They can also result from company action, including where companies act together. Many impacts result from a combination of Government action or policy (or lack thereof) and company actions.

### Economic Impacts

Myanmar currently has one of the lowest levels of tax revenue collection, and natural resource revenues are an important source of income.<sup>148</sup> Only 1 per cent of the FDI coming into Myanmar from FY2010–11 was outside the extractive sectors,<sup>149</sup> although the more recent pattern of inward investment is changing. Gas revenues are the largest source of foreign income for the Government of Myanmar, with a peak of 6.5% of GDP

<sup>148</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (2014), p. 159.

<sup>149</sup> Jared Bissinger, “[Foreign Investment in Myanmar, A Resource Boom or a Development Bust? Contemporary Southeast Asia](#)”, Vol 34, No. 1 (2012), pp. 23-52.

projected in 2014/15.<sup>150</sup> As such, the O&G sector will remain a major contributor to the Myanmar economy through significant revenue transfers for a long time to come.

Historically, Myanmar's economy has been operated to benefit political elites, rather than the population. Under the military regime, there was very limited transparency around O&G operations and revenues. Even in a recent report reviewing the Government budget, UNICEF was not able to find the 2012-2013 figures for contributions of the energy sector to the consolidated national budget.<sup>151</sup>

The Framework for Economic and Social Reforms (FESR) specifically recognises the potential for the country to be cursed rather than blessed by its abundant resources. It indicates plans to reform the management of natural resources to contribute to a sustainable basis for the country's growth: "macro-economic policies to manage the impact of increased demand for Myanmar's exports on the exchange rate and inflation rate and facilitate public expenditure smoothing."<sup>152</sup> As a recent report notes, there is a "quadruple challenge here: (i) slowing down the rate of extraction to a sustainable pace; (ii) avoiding pressure on the exchange rate that makes non-resource exports uncompetitive; (iii) obtaining full value—for the country as a whole—of the resources being extracted, which will require renegotiating pre-2011 contracts; and (iv) investing the value in ways that will benefit future generations, such as a sovereign wealth fund."<sup>153</sup> The FESR also signals a purposeful diversification of economic sectors, focusing in particular on labour-intensive sectors – agriculture, infrastructure, light manufacturing and tourism.

#### Box 15: Escaping the Resource Curse

The "resource curse" refers to the paradox that many countries with plentiful natural resources, such as O&G, tend to perform worse in terms of governance and economic development than countries with fewer natural resources. Global examples of the resource curse are well-documented. Initiatives such as the Norwegian Oil for Development Programme<sup>154</sup> and the Natural Resource Governance Institute (formerly the [Natural Resource Charter](#)) seek to help governments and their societies "effectively harness the opportunities created by natural resources ... to provide a pathway out of poverty."

However, if managed well, as another recent UNICEF report identifies, extractive sector rents can contribute to human development if reinvested wisely. This could include direct support to economic, social and cultural rights: for example, less than nine days of natural gas revenues would be needed to ensure one teacher per each primary school grade and

<sup>150</sup> IMF, "[Myanmar: 2013 Article IV Consultation and First Review Under the Staff-Monitored Program](#)" (Aug. 2013).

<sup>151</sup> UNICEF, "[Snapshots of Social Sector Spending Allocations and Spending in Myanmar](#)" (2013), Annex 2. There is a blank instead of reported revenues from the energy sector.

<sup>152</sup> "[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)", (14 January 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), Section 5.3.

<sup>153</sup> Lex Rieffel and James W. Fox, "[Too Much, Too Soon? The Dilemma of Foreign Aid to Myanmar/Burma](#)" (March 2013), p. 8.

<sup>154</sup> See the Norwegian Government's [Oil for Development Programme](#).

0.87% of revenues from new natural gas projects would provide for the purchase of all the vaccines needed annually in Myanmar.<sup>155</sup> The “translation” of gas revenues to teachers or vaccines highlights the magnitude of the funding gaps, but does not count the costs of the underlying educational and health systems that need to be in place to support those services. The report nonetheless provides an ambitious but human-centred vision for use of Myanmar’s abundant O&G resources.

The sector will require the development of a small, but highly skilled workforce that will require companies providing training and education for employees, workers and contractors.<sup>156</sup> However, O&G is not labour intensive, meaning investment does not translate into large-scale job creation<sup>157</sup> that can bring immediate and visible benefits to a population hungry for change. Sector-wide training programmes that extend beyond the needs of the enterprise, as has been done in other countries<sup>158</sup> would provide a way of developing a more sustainable set of skills and expertise in the country.

Nor does the sector create many deep linkages to the rest of the economy. However if companies approach such linkages strategically, they can develop local supply chains that both bring indirect economic opportunities, while also lowering company costs in the long term. If developed appropriately “corporate social responsibility programmes” as referred to in the PSC, can provide much needed infrastructure, services or income generation opportunities for excluded groups.

Foreign investors in the sector can bring much-needed innovation and expertise as well as access to additional funding for highly capital-intensive projects that had formerly been inaccessible to the Government or national companies.

### Governance Impacts

This section examines the O&G sector’s contribution to improved or diminished governance in Myanmar through its connection with **conflict**, **militarisation**, pressures for **revenue sharing**, and **corruption**; and considers the involvement of the military in business, and the impact of Myanmar’s candidacy for EITI on governance of the sector.

#### *Conflict and Revenue-Sharing*

Many of Myanmar’s natural resources are in the ethnic minority states with long running conflicts. They have been a flashpoint for grievances by ethnic minority groups. There are

<sup>155</sup> UNICEF, “[From Natural Resources to Human Capital: Practical, feasible, immediate resourcing solutions for Myanmar’s children](#)” (2013), p. 2.

<sup>156</sup> [TOTAL notes](#) that it has spent \$11 million on training (presumably since 1992 when the Yadana project started but this is not specified).

<sup>157</sup> [TOTAL notes](#) that while the Yadana pipeline created 2,500 people jobs during the construction phase, for the long-term operating phase, the number of employed is 800. 95% of the company’s workforce is Myanmar nationals.

<sup>158</sup> See for example, the [Petroleum Institute of Thailand](#), a neutral, independent, non-profit organisation established to foster better understanding of the petroleum, petrochemical, and related industries in Thailand with emphasis on human resources development, information services, technical services, public policy and regulatory support, to ensure sustainable development and competitiveness of the industry and the country.

some onshore blocks in current or post-conflict areas<sup>159</sup>. Major O&G pipelines pass through areas with a history of conflict or inter-communal violence, characterised by large numbers of *tatmadaw* troops, militias, and armed ethnic minority-based opposition groups, leading to high levels of militarisation.<sup>160</sup>

Over recent years, the Myanmar army has been accused of widespread human rights violations, including forced labour, against civilians in the vicinity of gas pipelines, leading to a clear association by locals and more widely between O&G operations and human rights violations. The fact that O&G projects bring with them increased presence of state security prompts concerns of human rights abuses from the local population, and it also prompts fears from armed groups of greater militarisation and therefore a potential shift in the military balance of power in conflict or ceasefire areas. Natural resource revenues have also financed continuing conflict (in the case of O&G, mostly on the government side). The ceasefires have also opened up new areas for business, mostly mining, which are associated with negative impacts on local populations.

The 2008 Constitution allocates all natural resources to the Union Government. Natural resource revenue also flows to the Union Government, and the Constitution currently does not contain any obligation for the revenue from natural resources to be subject to equitable sharing among the citizens. The desire of ethnic minority groups for more control over and benefit from natural resources in their areas is one of the key drivers of their demands for constitutional change. Gas revenues are a part of this debate, which remains unresolved in the current round of peace talks, and which the Government wants left to the subsequent political dialogue.

The FESR highlights as a “quick win” an action point for the Government to “develop the necessary measures to enhance equitable sharing of resources among various states and regions as well as other local governments.”<sup>161</sup> But as noted in the recent paper from the Myanmar Development Resource Institute (MDRI) “[a]ny discussion of wealth sharing in Myanmar bears on three key, on-going processes: proposed Constitutional reform, peace negotiations between the central Government and non-state armed groups, and expansion of investment in the extractive industries accompanied by a push for transparency of revenue flows.”<sup>162</sup>

A Constitutional amendment process is currently underway in Parliament. However it is uncertain if any reforms will in fact be enacted before the 2015 general elections,<sup>163</sup> given the military’s veto powers over constitutional change, the complex and contentious nature

<sup>159</sup> Onshore blocks A, B1/B2, J, R, S, T, U and V are all in areas which have been or currently are affected by armed conflict.

<sup>160</sup> Transnational Institute/Burma Centrum Netherlands, “[Developing Disparity: Regional Investment in Burma’s Borderlands](#)” (Feb 2013).

<sup>161</sup> “[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)”, (14 January 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 103.

<sup>162</sup> Thet Aung Lynn and Mari Oye, “[Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing](#)” (June 2014), pg. 2.

<sup>163</sup> The Irrawaddy, “[USDP Leader Urges Committee to Review Key Constitutional Changes](#)” (18 February 2014). Thura Shwe Mann, the Speaker of the Union Parliament urged the parliamentary constitutional amendment committee to complete work six months before the 2015 elections.



of the debate, the limited time remaining (particularly since a national referendum is also required), and the Government's expressed fears that the constitutional reform process could create "instability".<sup>164</sup>

Implementation of EITI will make the scale of revenues going to the Government more transparent, which could intensify demands for revenue sharing. There are increasingly open calls by some States for a more equitable sharing of revenue. Rakhine political and community leaders have called for a 50-50 split of revenue with the Union Government.<sup>165</sup> The November 2013 Chin National Conference called for 'equitable sharing between the Union and State government of the revenues obtained from the natural resources,' for 'state government to play a more important role in the management of the natural resources in the state,' and for strengthened environmental policies and transparency."<sup>166</sup> These on-going debates, particularly in areas of latent conflict, are likely to significantly colour the population's view of the sector in these regions. Localised measures through social investment programmes are unlikely to satisfy these broader demands.

The Government has expressed interest in models of revenue distribution from other countries. An allocated distribution of benefits to compensate producing regions and communities for the social and environmental costs of production and allow for more equal living standards across regions could help balance out those trade-offs for natural resource development highlighted in the FESR.<sup>167</sup> In a country where disparities and inequities are evident and bound to grow, a system to redistribute revenue will help promote the social cohesion required for economic growth. But this must also be balanced against the capacities of regional and local governments to manage funds, the potential of adding another layer(s) of corruption and rent-seeking to revenue flows and entrenching local elites, the potential volatility for state budgets as natural resource commodity prices fluctuate and the counterbalancing measures for accountability that can realistically be set in place.

Once revenue is distributed, the policy choices the government makes -- at the central, region/state and local levels -- will also play a vital role in turning O&G revenues into sustainable, equitable growth. Sound economic policies and sustained growth alone are insufficient for social development. The Government must make important choices about investing in comprehensive, inclusive and rights-based social policies and building strong democratic institutions for accountability.<sup>168</sup>

<sup>164</sup> See for example, The ConstituionNet, "[Amending the Constitution will 'hurt' the people', says Myanmar's President](#)" (18 May 2014).

<sup>165</sup> Mizzima, "[Arakan National Conference calls for Rakhine to get 50% of oil and gas revenues](#)" (April 2014).

<sup>166</sup> Cited in Thet Aung Lynn and Mari Oye, "[Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing](#)" (June 2014), pg. 38.

<sup>167</sup> The FESR specifically recognises that "there will be unavoidable trade-offs" for natural resource and infrastructure projects and proposes a number of steps as trade-offs: a specific recognition of trade-offs, early consultations with stakeholders to better understand and address those trade-offs, stricter environmental and social requirements and enhanced transparency. "[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)", (14 January 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 91-92.

<sup>168</sup> UNRISD, "[Mineral Rents and the Financing of Social Policy: Options and Constraints](#)", Research and Policy Brief 16 (Dec 2012).

### *Business Links with the Military*

The military is deeply involved in the Myanmar economy through its two holding companies, Union of Myanmar Economic Holdings Limited (UMEHL) and Myanmar Economic Corporation (MEC), both of which remain on the US sanctions list. Although both have mining interests, they have not been involved in O&G.

Any business activity involving the military and UMEHL/MEC is accompanied by exposure to being directly linked to human rights abuses. In particular, heightened caution is required when doing business in Myanmar's conflict-affected areas, including areas in an official state of emergency. Despite the suspension/lifting of investment and trade sanctions against Myanmar by the US, EU and other governments<sup>169</sup>, companies committed to responsible business conduct will want to avoid dealings with the military and their companies. This issue is relatively straightforward for companies incorporated in the United States, which are prohibited by U.S. law from making investments in Myanmar with the military and any entities in which the military owns a stake of 50% or more.<sup>170</sup> The EU does not impose such restrictions on its companies, save in respect of arms and equipment that can be used for internal repression.<sup>171</sup>

However connections with the military may not be immediately apparent. Enhanced due diligence will be required to ensure there is no direct linkage through the acquisition or use of land that may have been confiscated or unlawfully expropriated by military linked businesses, or indeed by the military itself.

### *Improving Extractives Transparency*

In a report compiled in 2012, the Resource Governance Index, which measures the quality of governance in the oil, gas and mining sector, gave Myanmar the worst score out of all countries surveyed for failing "to disclose any meaningful information about the extractive sector and lacking basic governance standards."<sup>172</sup> While revenue from gas exports over the past five years helped boost international reserves to \$9.9 billion, little showed up in Government accounts, according to the IMF.<sup>173</sup>

<sup>169</sup> The EU had previously imposed bans on trade and investment in the sectors of logging, timber processing and mining of precious metals and precious stones (Council Decision 2010/232/CFSP of 26 April 2010 renewing restrictive measures against Burma/Myanmar, 05/22). In May 2012, the EU suspended its trade and investment bans, except for its embargo on arms and equipment that can be used for internal repression: Official Journal of the EU (Council Decision 2012/225/CFSP of 26 April 2012 amending Decision 2010/232/CFSP renewing restrictive measures against Burma/Myanmar, L.115/25). In April 2013, the EU suspended bans were permanently lifted. See: Council of the EU, "[Council Conclusions on Myanmar/Burma, 3236th Foreign Affairs Council meeting](#)", Luxembourg (22 April 2013). In 2012, the United States partially suspended its trade and investment sanctions against Myanmar. See also, U.S. Department of Treasury, "[An Overview of the Burmese Sanctions Regulations Title 31 Part 537 of the U.S. Code of Federal Regulations](#)".

<sup>170</sup> United States Department of the Treasury, General License No. 17, read with the United States Burmese Sanctions Regulations 31 C.F.R. Part 537. These laws prohibit investments by United States persons with the Burmese Ministry of Defense, including its Office of Procurement, any state or non-state armed group, or any entity in which any of the foregoing own a 50% or greater interest.

<sup>171</sup> In May 2012, the European Union suspended its trade and investment bans, except for its embargo on arms and equipment that can be used for internal repression: Official Journal of the European Union, "[Council Decision 2012/225/CFSP of 26 April 2012 amending Decision 2010/232/CFSP renewing restrictive measures against Burma/Myanmar L.115/25](#)" (27 April 2012).

<sup>172</sup> Revenue Watch, "[Myanmar](#)" (accessed 11 July 2014).

<sup>173</sup> IMF, "[Myanmar 2011 Article IV Consultation](#)" (May 2012).

Corruption and lack of transparency are long-entrenched problems in both the Government, including the judiciary, and in business, which is widely acknowledged by domestic civil society, the international community, and the Government itself. Myanmar ranks 157th out of 177th on Transparency International's Corruption Perception Index.<sup>174</sup>

In December 2012 the President announced that the Government would tackle pervasive corruption in its ranks, acknowledging problems of weak governance,<sup>175</sup> and ratified the UN Convention against Corruption (UNCAC).<sup>176</sup> An Anti-Corruption Law was enacted on 7 August 2013 by the legislature although the President's Office submitted comments highlighting weaknesses and inconsistencies with UNCAC.<sup>177</sup> An Anti-Corruption Commission was appointed in February 2014. The Commission involves 15 members, five of who are appointed by the President, with another five each appointed by the speakers of both houses. While it is encouraging that the Union Government has acknowledged the problem and begun to take steps to address corruption, it remains a major risk for companies investing in Myanmar, as it will take some time for corruption to be significantly reduced in all levels of Government. Given the home state anti-corruption laws that apply to many of the larger international O&G operators and the significant fines that can accompany violations, these businesses could also be a strong voice for tackling the problem.

The President signalled an intention to apply for the Extractives Industry Transparency Initiative (EITI) membership early in his term in 2012, and donor governments have supported this. In August 2013 a Deputy Minister was quoted as saying "If we become an EITI member, corruption in resource based industries will be wiped out automatically. The other benefit we will get from it is more foreign investment."<sup>178</sup> In reality, eliminating corruption in the sector will take far more than this, but EITI implementation will be an important step towards revenue transparency.<sup>179</sup>

The Government formally applied for EITI membership in May 2014<sup>180</sup> and was accepted as a candidate in July 2014.<sup>181</sup> The Myanmar EITI (MEITI) Multi-Stakeholder Group has developed a work plan that sets out the objectives for EITI implementation and is aligned with the reporting and validation deadlines established by the EITI.<sup>182</sup> The first report is likely to be in 2016. The MEITI Workplan indicates that the Multistakeholder Group is working on a draft law that will set out the changes necessary to implement EITI.

<sup>174</sup> Transparency International, "[Myanmar](#)" (accessed 11 July 2014).

<sup>175</sup> The Irrawaddy, "[Third phase of reform tackles govt corruption, President says](#)" (26 December 2012).

<sup>176</sup> See: United Nations Office on Drugs and Crime "[United Nations Convention against Corruption Signature and Ratification Status as of 2 April 2014](#)" (accessed 15 July 2014).

<sup>177</sup> The Republic of the Union of Myanmar President's Office, "[Press Release on the Promulgation of Anti-Corruption Law](#)" (8 August 2013).

<sup>178</sup> Myanmar Times, "[Myanmar EITI application on track](#)" (11 August 2013).

<sup>179</sup> The EITI has two core components around transparency and accountability: oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled and published in annual EITI Reports alongside contextual information about the extractive sector. A multi-stakeholder group with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report.

<sup>180</sup> Myanmar EITI, "[MEITI-MSG submitted its candidature application on 7 May, 2014](#)" (May 2014).

<sup>181</sup> Myanmar EITI, "[Myanmar accepted as EITI Candidate country](#)" (July 2014).

<sup>182</sup> Myanmar EITI, "[MEITI-MSG Approved Work Plan](#)" (May 2014).

US and EU companies have home country laws requiring reporting on extractive revenue payments to governments. The advantage of EITI is that it applies to companies regardless of nationality, levelling the playing field among competitors and allowing local stakeholders to obtain a more complete picture of extractives revenues.

For companies, EITI candidacy signals the Government's intent to improve governance. Once MEITI reporting is in place, companies will be able to point to a transparent process that documents the financial benefits for the country, and can underpin government accountability for appropriate stewardship of those funds. Greater transparency can also insulate regional governments (and companies) against assumptions among populations in producing regions that revenues are greater than they really are. This may be particularly important in the early days of the new rounds of exploration when there is limited to no revenue flowing back to the Government and few local jobs or other tangible benefits.

In addition to stimulating governance reform through enhanced public financial management and contributing to anti-corruption efforts, MEITI could contribute to the improvement of human rights protection. EITI requires an inclusive approach to stakeholder engagement, starting with the Multi-Stakeholders Group, but also through MEITI's planned outreach to citizens and affected communities. The Myanmar Alliance for Transparency and Accountability (MATA) serves as an umbrella organisation for a number of CSO groups and ensures regular and wider liaison with wider CSO constituencies around the country. Moreover an 'Oil and Gas Group' of 18 companies has met twice since January 2014 and is expected to continue to meet on a regular basis.<sup>183</sup> Multi-stakeholder structures and networks are therefore being put in place which can be built on to address the wider range of issues for the sector that are beyond EITI's mandate.

When reviewing Myanmar's application, the EITI Board assessed the ability for civil society to engage in the EITI. It typically looks at the following types of issues: impediments to the free selection of civil society representation; an enabling framework for CSO activities, not only in theory but also in practice; whether civil society representatives are distinct from members of parliament from the ruling party or other political parties aligned with the Government and from the private sector; whether there are there any restrictions to access to external funding and training; and patterns of harassment and intimidation of civil society representatives working on governance, transparency and anti-corruption issues.

The changes the Government put in place to respond to these issues has the possibility of collateral positive impacts for all civil society<sup>184</sup>. However arrests of people for their peaceful activities is continuing, with dozens of political prisoners still behind bars and others on trial. Many of them have been arrested under the Peaceful Assembly and Processions Law. Moreover, journalists have also been arrested under other repressive laws (see [Part 4.1](#) on Stakeholder Engagement). MATA warned EITI's International Board

<sup>183</sup> MEITI, "[MEITI Candidacy Application Form](#)" (May 2014), p. 11.

<sup>184</sup> The Form addresses a number of changes made in laws and the release of political prisoners linked to CSO requests as part of the MEITI process. MEITI Candidacy Application Form, above, pg. 11-12.

on the eve of their deliberations on Myanmar's membership that EITI conditions regarding civil society freedoms are not being met but stopped short of asking for a delay of the country's consideration.<sup>185</sup>

If the MEITI opts for disclosures of contracts,<sup>186</sup> social expenditures and beneficial ownership<sup>187</sup> (optional under the 2013 EITI Standard),<sup>188</sup> this, combined with greater transparency around environmental and social impacts expected to be required under the forthcoming EIA Procedure has the potential to dramatically open up the sector to public scrutiny from the first step of concluding contracts. Together with the EITI requirement for transparency around revenue paid by O&G companies, and its reconciliation with payments the Government acknowledges, would allow Myanmar stakeholders and others to better understand the true costs and benefits of the sector.

### Environmental & Social Impacts

Most of the environmental and social impacts, including human rights impacts of O&G operations happen at the project-level (see [Part 4](#)) or cumulative-level (see [Part 5](#)). This section considers key factors relating to **sector** level impacts and how they can be addressed.

#### *Lack of Environmental & Social Regulation*

The most pressing issue for the sector is the current lack of national environmental, social and human rights standards to regulate the environmental, social and human rights impacts of O&G operations, both onshore and offshore. Under the FESR the Government has committed "that future concession agreements meet high social and environmental standards as well as delivering a transparent and equitable sharing of financial benefits. In this regard the legal and fiscal frameworks under which these agreements are made will need to be revised and modernised. It will also be important that the respective regulatory agencies have clearly defined authority, institutional capacity and resources for monitoring regulatory compliance" (emphasis added).<sup>189</sup> Despite the recognition at the highest levels that the legal frameworks need to be revised and modernised, there is little indication that MOGE's model PSC which was reportedly developed in the early 1990's based on model PSCs used in Malaysia, Indonesia, Thailand, and Singapore, has been updated to address these issues. This model PSC is the basis for the on-going rounds of offshore and onshore contracting.

<sup>185</sup> The Irrawaddy, "[Burma Accepted for EITI Scheme, But NGOs Remain Concerned](#)" (3 July 2014).

<sup>186</sup> Note that if the IFC finances any extractive projects in Myanmar, it will require that any contracts are disclosed to the public: IFC, "[Policy on Environmental and Social Sustainability](#)" (2012), para. 49-52.

<sup>187</sup> See a recent report on information requested and gathered from the 47 winners of the 2013 and 2014 oil and gas blocks on details of their beneficial owners, Global Witness, "[Who is buying up Myanmar's Oil & Gas?](#)" (June 2014). See also: Global Witness, "[Beneficial Ownership and the Extractive Industries Transparency Initiative](#)" (date unknown).

<sup>188</sup> See the EITI Standard, Section 3.12b - which requires the Government to disclose its policy on contract and license transparency, and encourages disclosure of the contracts and agreements (Section 3.12a). These topics are in the MEITI Workplan.

<sup>189</sup> "[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)", (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), Section 5.3.



Given the importance of the PSC to regulating O&G companies in Myanmar, there is a window of opportunity in the current round of PSCs to build in requirements to apply international standards on responsible business conduct, and specifically include a requirement to meet IFC Performance Standards and World Bank Group (WBG) Environmental, Health and Safety Guidelines in the PSC. The current model PSC includes only a requirement on the operator to ‘be responsible to conduct Petroleum Operation in accordance with the good international petroleum industry practices’ and with national law. While “good international petroleum industry practices” is often seen in PSCs and particularly older models, it does not provide the clarity or specificity necessary to hold companies accountable for their environmental, social and human rights performance.<sup>190</sup> Unless there is a legal requirement to meet more specific standards, some (but not all) companies may operate to whatever minimal Myanmar standards are applicable.

Myanmar currently has a weak framework for protection of the environmental and society. The 2012 Environmental Conservation Law is only a framework law, and must be complemented by more detailed laws and regulations. While the law provides for general environmental protection obligations, it does not stipulate whether and how infringements of the law are punishable. It is unclear if it provides for claims for compensation for damages only from the government and not individuals harmed by environmental pollution,<sup>191</sup> although claims for damages from local communities are making their way to court.<sup>192</sup> The law also leaves the management of natural resources to more resource-specific legislation, yet it is unclear if these issues will be picked up in the revised Petroleum Law reported to be under development.

The labour law framework is most developed but is undergoing extensive overhaul. There are significant gaps in laws covering many of the non-labour social issues that are relevant to O&G operations, such as land acquisition and resettlement procedures, community health, safety and security, as well as other emerging issues such as indigenous peoples’ rights. Given the absence of laws or vague or outdated provisions, it will be very difficult for the Government to hold companies accountable to operating to the “high social and environmental standards” as promised in the FESR. Furthermore, the Government’s administrative capacity to implement new Myanmar policies and laws consistently and effectively in areas where there will be O&G operations will take time.

The O&G sector is highly regulated in some parts of the world given its high risk profile (though even in developed countries, accidents happen where there is insufficient attention to risk)<sup>193</sup>. It has been active in developing its own technical standards and guidance to address the wide ranging hazards and risks inherent in such operations.<sup>194</sup> In addition, some companies commit to applying their company standards globally which is

<sup>190</sup> Which precise standard applies in the context becomes a matter of discussion between the government and the operator or litigation – neither of which are helpful approaches to holding companies accountable to consistent, robust, internationally agreed standards.

<sup>191</sup> Environmental Conservation Law (2012), Article 33.

<sup>192</sup> See Business and Human Rights Resource Centre, “[Case profile: Myanmar Pongpipat lawsuit \(re environmental & health impact of Heinda tin mine\)](#)” (accessed 15 July 2014).

<sup>193</sup> For example, TIME, “[100 Days of the BP Spill: A Timeline](#)” (2010).

<sup>194</sup> For example, [IPIECA](#), [International Association of Oil & Gas Producers](#), [Society of Petroleum Engineers](#).



to be welcomed. This presents an opportunity for improvements in the sector through peer-to-peer learning and via the business relationships O&G companies will create. It also provides the opportunity to model good corporate behaviour that not only builds wealth and creates jobs, but acts as a steward for protecting the surrounding environment, society and workers. But in the absence of an enforceable legal requirement by the host government, if a company fails to meet its commitment, there are no enforceable accountability mechanisms. A lack of standards allows companies to externalise most of their environmental, social and human rights costs onto Myanmar society. Such externalised costs include for example, unremediated environmental contamination, ecosystem services that are used but not paid for, failure to compensate workers for work completed or injury, displacing farmers without compensation etc. These costs will for the most part be localised around O&G operations and fall on workers and communities. At the same time, the absence of arrangements for equitable revenue sharing (see above), means a disparity in local costs and benefits that can fuel a rise in tensions around O&G operations.

For these reasons, it is important that the Government incorporate specific international standards in the PSC's currently awaiting agreement, and subsequently take steps to update older contracts to bring them in line on this issue. Suggested changes to the PSC are set out in the [Annex to the Recommendations](#).

### *Climate Change*

Myanmar is a country that is vulnerable to climate change given its long coastline and extensive delta, its heavy reliance on agriculture, much of which is in an area already referred to as the “dry zone”, and its reliance on natural resources.<sup>195</sup> The O&G sector's longer term, aggregate impact includes its contribution to climate change, which this SWIA Report will not expand on, not least as Myanmar's contribution to global climate change is currently minimal.

However it is worth noting the related aggregate environmental and health impacts from gas flaring which is not prohibited in Myanmar and specifically permitted under the PSC, as well as its longer-term contribution to climate change.<sup>196</sup> Many other countries have moved to limit or prohibit gas flaring.<sup>197</sup>

### *Land Footprint*

Significant land impacts are generally felt at the project level. The aggregate national land footprint of the sector is not large compared to some e.g. agriculture, particularly as much new development will be offshore. However, the national land use policy that is currently under discussion needs to incorporate the O&G sector into coordinated land use planning.

<sup>195</sup> [“Myanmar's National Adaptation Programme of Action \(NAPA\) to Climate Change”](#) (2012).

<sup>196</sup> See the [Global Gas Flaring Reduction Partnership](#) (accessed 15 July 2014).

# Project-Level Impacts



# PROJECT-LEVEL IMPACTS

## In the following chapters:

The following chapters present the analysis and findings from a range of existing projects in the O&G sector in Myanmar, recognising that impacts are often very context-specific and importantly can be avoided or shaped by (good and bad) company practices. The information presented draws from desk and field research in 6 regions where O&G is being produced,<sup>198</sup> representative of a range of upstream O&G activities.

Each chapter present common project level impacts that are relevant to O&G operations, divided according to **8 key issues in Myanmar**:

- 4.1 Stakeholder Engagement & Grievance Mechanisms
- 4.2 Communities
- 4.3 Land
- 4.4 Labour
- 4.5 Ethnic Minorities / Indigenous Peoples
- 4.6 Groups at Risk
- 4.7 Security
- 4.8 Environment

Each chapter follows the same structure, presenting the:

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

Each chapter also highlights **relevant international standards** and **guidance** on each issue, as well as **related initiatives in Myanmar** linked to the O&G sector that provide information on relevant initiatives and potential partners or sources of information for O&G companies.

<sup>198</sup> See [Annex A](#) for further information and a map of locations visited.



Project-Level Impacts

# Stakeholder Engagement & Grievance Mechanisms



## Part 4.1

# Stakeholder Engagement & Grievance Mechanisms

### In this section:

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

## A. National Context

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Until recently citizens' rights to speak freely had been forcefully suppressed for 50 years and as a result many individuals are still reluctant, even fearful, about speaking out against the Government or military in particular. That is beginning to change. The Government has historically placed itself as the main interface between companies and communities and this approach will take time to change. Ethnic diversity, and experience of armed conflict and inter-communal violence provide different perspectives which may be difficult for outsiders to access and understand.

### Freedom of Expression and Assembly

Since the reform process began in 2011 there have been significant improvements in the rights to freedom of expression, including loosening of restrictions on the media, and in peaceful assembly and the ability to stage peaceful protests.<sup>199</sup> The right to speak out is guaranteed by the 2008 Constitution, but with significant restrictions. Article 354 of the Constitution guarantees the rights to freedom of expression, peaceful assembly, and association; however exercising such rights must not contravene "community peace and tranquillity", which permits expansive interpretations that require only a low threshold for justifying infringements to the guaranteed right.<sup>200</sup> Moreover, many laws which greatly restrict these freedoms have not been repealed and the authorities continue to use them to arrest and imprison people for their peaceful activities. These include but are not limited to the 1908 Unlawful Associations Law; the 1950 Emergency Provisions Act; the 1975 State Protection Law, and various articles of the Penal Code, especially Article 505(b).<sup>201</sup> While the vast majority of political prisoners have been released, dozens still remain behind bars and others are at risk of arrest and imprisonment under these and

<sup>199</sup> In January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See: The Republic of the Union of Myanmar President's Office, "[Order No. 3/2013](#)" (28 January 2013) and "[Order No 2/88](#)".

<sup>200</sup> Legal Background paper commissioned for IHRB.

<sup>201</sup> For a discussion of these and other laws, see Amnesty International, "[Justice on Trial](#)" (July 2003).



other laws. Among those still detained are many land activists, especially farmers who have struggled against land grabs.<sup>202</sup>

In December 2011 the Parliament enacted the Law Relating to Peaceful Assembly and Peaceful Procession, which permits peaceful assembly for the first time in several decades. However, prior permission from the Government (in this case the Township Police) is still required for an assembly/procession of more than one person and the requirements for seeking such permission are unduly onerous. Moreover, Article 18 of the current law has often been used to target activists and human rights defenders, many of whom have been arrested and imprisoned under its provisions. In addition, Article 18 of the law acts as a significant deterrent as it provided for up to one-year imprisonment for those who demonstrate without prior permission.<sup>203</sup> Parliament amended the law on 19 June 2014; new amendments now reportedly oblige the authorities to grant permission for peaceful demonstrations unless there are “valid reasons” not to do so, and punishment for failing to seek prior permission and holding a demonstration without such permission was reduced from one year to six months.<sup>204</sup> However, the amended law still provides for the arrest and imprisonment of peaceful protesters.

Protests, including against private sector projects, particularly in the extractive industries, have been suppressed in the past, sometimes violently, and continue to be, with participants arrested and subjected to ill-treatment.<sup>205</sup> Non-governmental organisations have reported on arrests and detentions of people protesting against the Shwe Gas Pipeline in Rakhine State during 2009 and also as recently as May 2013.<sup>206</sup> In another notable example, during November 2012 the police violently broke up a peaceful protest against the Letpadaung Copper Mine near Monywa, Sagaing Region.<sup>207</sup> The punishments that peaceful protesters have received for publicly opposing or demonstrating against extractives projects was raised with Government by civil society members of the emerging EITI multi-stakeholder group, and appears to have led to a lessening of arrests.<sup>208</sup>

Media censorship has been relaxed and since August 2012, for the first time in 50 years, there has been no pre-publication press censorship. Independent Myanmar media report regularly on criticism of the Government by civil society; demonstrations protesting against land grabs by the military and businesses; and environmental concerns. However, reporting on corruption or the military remains problematic, as shown by the arrests of journalists as recent as July 2014, some of whom were sentenced to years of hard labour

<sup>202</sup> Myanmar Times “[Despite Amnesty, Political Prisoners Remain](#)” (17 January 2014).

<sup>203</sup> Pyidaungsu Hluttaw, [The Right to Peaceful Assembly and Peaceful Procession Act](#) (Dec. 2011).

Requirements include an application form submitted at least five days in advance; the biographies of assembly leaders and speakers; the purpose, route, and content of “chants; approximate number of attendees etc, Chapter 3, 4.

<sup>204</sup> DVB, “[Peaceful Assembly Bill passed, now awaits President’s signature](#)” (19 June 2014).

<sup>205</sup> Norwegian Council on Ethics, Pension Fund Global, “[Recommendation on the exclusion of Daewoo International Corporation, Oil and Natural Gas Corporation Ltd., GAIL India and Korea Gas Corporation from the investment universe of the Government Pension Fund Global](#)” (2012). See also the [2013 Recommendation](#) concerning the post-construction phase of the project.

<sup>206</sup> Amnesty International “[Annual Report 2010: Myanmar country entry](#)” (2010); Earthrights International, “[The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy](#)” (March 2011); Human Rights Watch, “[Burma: China-led Oil, Gas Projects Spark Arrests](#)” (11 May 2013).

<sup>207</sup> Human Rights Watch, “[Burma: Investigate Violent Crackdown on Mine Protesters](#)” (1 December 2012).

<sup>208</sup> MEITI, “[Final Candidacy Application](#)” (2014), p. 13.



for their reporting.<sup>209</sup> Moreover, some arbitrary media laws remain on the books, including the 2004 Electronics Transaction Act. And although pre-publication censorship has been abolished, media outlets must submit their publications to the Ministry of Information after the fact.<sup>210</sup> The Media Law and the Printers and Publishers Regulation Bill were passed in March 2014. The vague provisions of the latter law and broad powers of a Registrar to grant or revoke publishing licenses, lead to fears of press self-censorship.<sup>211</sup>

### Freedom of Association

A vibrant and resourceful network of civil society and community-based organisations is active at both the national and local levels, including many ethnic minority-based groups. In the aftermath of Cyclone Nargis in May 2008, Myanmar CSOs greatly expanded and organised as they worked to help survivors. They have remained a significant positive force in the country and have been able to engage with the Government to some extent. Since 2011 Myanmar civil society groups have been granted a greater degree of latitude by the Government and have taken that opportunity to increase their activities to help people claim their rights, including those affecting local communities.

Under EITI Requirement 1.3, the Government must commit to ensuring that civil society and companies face no obstacles to participation; refrain from restricting public debate on EITI; and respect the “fundamental rights” of civil society and companies engaged in EITI. The application noted that MEITI members have the right to communicate freely with one another, and that this was happening in practice. The draft Association Registration Law originally required all groups to be formally registered, with severe penalties for failing to do so. This was raised as a key concern and which the EITI CSO group wanted clarified before agreeing to participate in EITI. The law was adopted in July 2014 with this provision removed. It retains another provision of concern to CSOs, which requires groups who do decide to register to do so at township, state or national level, thereby potentially restricting their area of operation.<sup>212</sup> The website of the International Centre for Not-for-Profit Law (ICNL) provides information on laws relating to Myanmar civil society.<sup>213</sup>

### Corruption, Lack of Transparency and Accountability

Corruption and the lack of transparency are long-entrenched problems in Myanmar in both the Government, including the judiciary, and in business. While the Union Government has acknowledged the problem of corruption and begun to take steps to address it (see [Part 3](#) for a discussion on steps taken on corruption), it remains a major risk for companies investing in Myanmar, as it will take some time for corruption to be significantly reduced in all levels of Government. For example Coca-Cola’s report to the US State Department on its Myanmar operations noted the challenges with regard to corruption and bribery in Myanmar, and outlined the steps it is taking to combat such practices there.<sup>214</sup>

<sup>209</sup> See for example, The Irrawaddy, “[Burma Resorting to Police State Tactics’ in Unity Trial: US Official](#)” (17 July 2014).

<sup>210</sup> Committee to Protect Journalists, “[Burma falters, backtracks on press freedom](#)” (13 June 2013).

<sup>211</sup> The Irrawaddy, “[Burma Clampdown Gathers Pace as Legislation Passed](#)” (17 March 2014).

<sup>212</sup> DVB, “[Activists relay worries of draft association law to parliament](#)” (5 June 2014).

<sup>213</sup> ICNL, “[NGO Law Monitor: Myanmar \(Burma\)](#)” (accessed 25 July 2014).

<sup>214</sup> The Coca Cola Company, “[Responsible Investment in Myanmar](#)” (Dec. 2013).

Interactions between the Government and the people of Myanmar have been marked by a lack of transparency on the part of the authorities, including about business operations. Recently the Government has begun to take steps to improve transparency through Government-controlled media and the President's and Ministry websites.<sup>215</sup> For example the Ministry of Labour, Employment, and Social Security publishes the text of recent laws and provides information about benefits;<sup>216</sup> and the Directorate of Investment and Company Administration's (DICA) website which contains a Myanmar Investment Guide and a list of proposals approved by the Investment Commission has recently been upgraded.<sup>217</sup> However, there is currently no freedom of information law in Myanmar, although civil society is advocating for such legislation. Local Government generally does not provide crucial information to communities about business operations in their areas, as revealed by the SWIA field assessments.

The previous Government was characterised by a lack of accountability for human rights violations and violations of international humanitarian law. Those who dared to make complaints about the authorities or companies were at risk of reprisals, including arrest, torture, and imprisonment. Since the reform process began in 2011, there has been a marked increase in calls by communities to provide redress for abuses, particularly around land grabs and labour rights. The Government's response has been contradictory, which may be partially explained by the different levels of government involved in responses. As highlighted above, protesters, particularly those involved in land disputes, are still being arrested and charged for peaceful activities by local authorities. On the other hand the Union Government has responded by forming investigative bodies to deal with complaints; but without giving them powers to resolve complaints, for example on land disputes (See [Part 2.C](#) for more information on non-judicial mechanisms). For high profile incidents, the authorities have also established ad hoc commissions to deal with individual incidents, some of which have criticised the security forces. After March 2014 mob violence against international humanitarian organisations led to the evacuation of scores of aid workers from Rakhine State, the Government appointed a body to investigate the situation, which found that the security forces' response to the violence had been "sluggish".<sup>218</sup> A Government-appointed commission on the November 2012 Letpadaung protests also criticised the security forces' violent response, including the use of phosphorous smoke bombs.<sup>219</sup>

Given the inefficiencies and acknowledged corruption in the judiciary and the inability of even the ad hoc commissions to resolve complaints, there is a clear lack of access to effective avenues for individuals and communities to express their grievances, engage with responsible parties in the Government or to seek redress if harms have occurred - especially at the local level. Since the reform process began, these committees and the Myanmar National Human Rights Commission have received many hundreds of

<sup>215</sup> See for example: <http://www.president-office.gov.mm/en/> and <http://www.modins.net/myanmarinfo/ministry/home.htm>

<sup>216</sup> See: <http://www.mol.gov.mm/en/>

<sup>217</sup> See: <http://dica.x-aas.net/dica/permitted-investment-company>

<sup>218</sup> The Republic of the Union of Myanmar President's Office, "Union Government to fully Protect aid groups in Rakhine State" (8 April 2014). Available at: <http://www.president-office.gov.mm/en/?q=issues/rakhine-state-peace-and-stability/id-3552>

<sup>219</sup> Charltons Law Firm, "[Letpadaung Investigation Commission Issues Final Report](#)", Issue 3 (19 April 2013).

complaints from the public about abuses at the hands of the Government and military, but, as noted above, many of these people still await a resolution to their problems.

## Stakeholder Engagement in Conflict-Affected Areas

There are particular challenges in conducting effective consultations in conflict-affected areas. It is important to understand the dynamics of the conflict and the key stakeholders that need to be consulted, through a conflict mapping and stakeholder analysis. This is important in identifying who is representative of constituencies in the area (but whose voices may not always be heard, such as women's groups or marginalised communities), as well as key power holders (who may not always be representative). In some cases – for example, armed group leaders – contacts may have to be established through a trusted third party, who can provide a channel of communication and/or convene meetings. In conflict contexts in particular, consultations with key stakeholders should be seen as a relationship-building exercise more than an information-collection exercise. In such areas, direct consultations with communities may be more difficult – access may be constrained, contact with communities may be mediated by a conflict party, people may be reluctant to speak openly, and if handled poorly the consultation process could put communities at risk.

In areas where there are inter-communal tensions and violence, such as parts of Rakhine State, similar challenges exist. In some cases, one community may even object in principle to consultations with another community, due to concerns that this may give legitimacy to that community and its viewpoints. Such situations need to be handled with great delicacy, and require a detailed understanding of local dynamics; local authorities are often not neutral. (See further [Part 6](#) on Region-Specific Conflict Considerations in Rakhine and Tanintharyi & Mon)

## B. Key Human Rights Implications for the O&G Sector

### Meaningful Engagement

- **Long-term engagement:** In such a high-risk environment as Myanmar, it is all the more important to engage with local communities early, regularly and meaningfully. Engagement clearly indicates a more in-depth and longer-term relationship with local communities than a one-time consultation around an ESIA for example. Local and foreign O&G companies may operate within communities for the next twenty to thirty years, if and when moving from exploration into development and production phases for onshore operations, and for on-shore facilities of offshore operations. Appropriate engagement from the start of that relationship matters because it: i) demonstrates respect for the community, where they have experienced either neglect or reprisals for complaining until very recently; ii) is a process for providing information to and receiving information from communities relevant to operations; iii) enables communities to raise concerns and grievances; and iv) helps both companies and communities to understand needs and expectations.
- **Independent engagement:** The formal duty to consult its citizens rests with the Government, which will play a role in implementation of mandated consultations, such as under the forthcoming ESIA regulations. A clear agreement with MOECAP, MOGE,

local government, and companies about who has responsibility for what aspect of the E(S)IA consultations and how they are made transparent will also be important. However, given the long-standing distrust between local communities and the Government and MOGE, they should not be the only conduit for engagement between local communities and O&G operators and sub-contractors. There is still a high level of fear and distrust among rural populations. Given the militarisation in parts of the country around some O&G facilities and the history of human rights abuses linked to the military in connection with some O&G facilities, the presence of military, police, or local authorities during consultations could significantly undermine open and active participation and the credibility of the consultation exercise. While changes in attitude and political reforms will take some time to filter down to local authorities, companies cannot move equally as slowly in adapting to the changes. Companies should seek to meet communities without the presence of the Government and military. In areas where there is a long legacy of mistrust between communities and the local government or companies, trusted intermediaries may be required. Companies must also be particularly sensitive to undermining or exposing human rights or land defenders to potential arrest and imprisonment

- **Engagement by business partners:** Sub-contractors are often the earliest “face” of forthcoming operations and often have a large footprint in the local community. Most companies operating in Myanmar, local and foreign, are unfamiliar with the concept of stakeholder engagement, including opening their business up to receiving complaints directly from workers and local communities through grievance mechanisms. Sub-contractors will need training and incentives/ disincentives from the earliest phase of exploration to develop a positive interface with local communities.
- **Constructive engagement:** Some Government and company officials have been observed referring negatively to the emergence of “activists” and others with “political motives” as “stirring up opposition” from the locals. However, this reflects newly empowered local communities making use of new freedoms of expression and peaceful assembly, and local and international groups working with them, to hold companies to account for negative impacts. Companies are encouraged to engage openly with these groups to understand their concerns and provide accurate information about the company’s approach and model behavior towards freedom of expression that demonstrates support for the right in law and in practice. Dealing with criticism through constructive engagement rather than unhelpful labeling, or worse, through actively undermining individuals or groups or through violence or through putting them at risk of arrest,<sup>220</sup> will demonstrate to authorities alternative mechanisms for dealing with dissent. Where there are arrests or violence in connection with a company’s operations that violate these rights, companies will be expected to raise the issue with the Government, quietly or publicly, individually or collectively, to express their concerns.
- **MEITI as an additional outlet:** The Myanmar Extractive Industries Transparency Initiative (MEITI) multi-stakeholder group also provides a forum for companies to engage with key civil society groups working on extractives issues.<sup>221</sup>

<sup>220</sup> See the recent [report of the UN Special Rapporteur on the Situation of Human Rights Defenders](#), reporting on risks faced by land and environmental activists around some extractive projects.

<sup>221</sup> See the [Myanmar EITI website](#) for more information.

- **Engagement in conflict affected areas:** In areas where non-state armed groups operate, it is critical to engage with them and the ethnic civil society groups operating in their areas. Most of these groups have bilateral ceasefire agreements with the Government that authorise them to travel freely within the country (without arms) and meet with whomever they want. It is important to recognise that some of these groups have areas of political influence and authority that are far wider than the limited territory over which they have military control. It is also important to recognise that most ethnic border areas have never historically come under the administrative control of the central state. The larger armed groups run parallel administrations, from health and education through to land registration, forestry and revenue collection. As the de facto authority in their areas, their agreement is necessary for any activities to take place. With regard to community consultations in these areas, it should not be assumed that the armed group is representative of the views of all communities, and in some cases relations may be coercive; experienced third party facilitators will need to be engaged to ensure that effective community consultations can take place in an atmosphere where people will be safe and confident to speak freely – something that the presence of either Government or armed group representatives might hamper.

### Accountability and Grievance Mechanisms

- **Establishing operational level grievance mechanisms:** Even where operations are managed well, communities are likely to have concerns about environmental, social and human rights performance. International human rights standards require access to remedy for harms, and international good practice recognises that engaging with communities early and resolving concerns (real and perceived) effectively is an essential part of operating successfully. Accessing remedies in Myanmar is very difficult if not impossible in many cases, and there is – with good cause – little or no faith that the judicial system can currently deliver this. The frustration over lack of access to effective remedy for real or perceived damages to livelihoods can increase tensions between communities and O&G operators or their sub-contractors. Operational level grievance mechanisms – i.e. processes that allow concerns to be raised and remedied at the operational level (rather than at far away headquarters) – are therefore even more important in Myanmar, where there are few other outlets to resolve concerns; numerous unresolved legacy issues in the sector; new opportunities to express those concerns openly; a lack of experience among local Government in addressing complaints constructively and effectively; and in some cases a lack of organisations in communities with the experience and expertise to assist in moderating and mediating between the private sector and communities. In addition, there is evident frustration with what can be a bewildering array of contractors and sub-contractors without a core focal point for engagement and grievances. At present, such grievance mechanisms are largely absent or misunderstood.
- **Effective operational level grievance mechanisms:** Such grievance mechanisms should be implemented according to the criteria established in the UN Guiding Principles on Business and Human Rights<sup>222</sup> and the increasing availability of good practice guidance specifically for the O&G sector (see Box 16 below). Operational level grievance mechanisms should be a part of a broader community engagement

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<sup>222</sup> See [UN Guiding Principle 31](#).



strategy, using lessons learned from dealing with grievances to improve ongoing engagement with communities and on-going operations to avoid repeating activities that have been addressed through the mechanism and led to grievances in the first place. A grievance process can help companies better understand how O&G activities are being perceived and impacting, positively or negatively, on local communities, acting as an “early warning” system.

- **Literacy considerations:** Given the variations in literacy in communities, there should be ways of expressing views and complaints that do not rely on reading/writing and are available to speakers of ethnic languages.
- **Access to other mechanisms:** Operational-level grievance mechanisms should not impede access to other remedies, judicial or non-judicial. Additional remedy options are expected to continue to evolve in Myanmar, given the focus by the Government and donors on improving the rule of law in the country.

## C. Field Assessment Findings

### Stakeholder Engagement

**Human Rights Implicated:** Right to freedom of opinion and expression

#### Field Assessment Findings

- Communities were **rarely consulted or provided information prior to the decision to develop an O&G project in their area** (see further in the *Land Issues Project-Level Impact Summary*). Many communities reported that they only heard of O&G projects once construction had begun, sometimes just on the outside of the community. There were cases of company and Government surveyors walking through community villages and fields but not providing any information on the purpose of their activities when asked nor reporting back to communities with results (both before and during operations). Communities felt that if data was being collected about them, they should at least be informed of the purpose and results.
- Given that there is little to no discussion with communities about which areas of their land would be used, there is a **high risk of failing to identify, value and where possible avoid areas of particular cultural relevance** to local communities that may not be apparent to surveyors.
- Communities have had **very little opportunity to provide input into O&G project planning**, nor were they informed about the systems companies may have in place to avoid impacts and receive complaints.
- There are **different practices amongst operators and their sub-contractors** when it comes to engaging communities. Some companies take an ad hoc approach or assign this issue to their CSR departments (often HQ-based). Other companies have set up specific village focal points for engagements and complaints, composed of local authorities, village heads and representatives, designated village representatives and company staff (see Myanmar Good Practice Example below).
- A key challenge within Myanmar involves **requirements for Government permission and/or involvement in order to engage communities directly**,



although practice varies among different operating locations. Some companies report they are unable to approach communities at all and instead have to communicate with Government or MOGE representatives as the interface while others have regular, direct engagement with communities.

- **One company was noted by communities as particularly inaccessible** to communities and the public when a local impact or problem arises, and does not provide a complaints telephone number or office location to which to direct enquiries.

## Grievance Mechanisms

**Human Rights Implicated:** Right to remedy; right to freedom of opinion and expression

### Field Assessment Findings

- It was commonly reported that **communities are reticent to complain**, especially to the Government or MOGE, or do not do so because they **think nothing would change**.
- **Few companies had grievance mechanisms**. There might be a contact to take complaints, but not always. Sometimes those responsible for community relations were **stationed in Yangon, leading to clear physical barriers for communities** to interact with such contacts. **Communities complained repeatedly of being sent from local authorities, to MOGE, to companies and back to the authorities without resolution**.
  - There were observed cases of damage to community crops or drinking ponds being compensated following community grievances to the company and resolved in a mutually acceptable manner.
  - Some companies had or were establishing focal points in local communities to act as a conduit for complaints and to help resolve complaints.
  - The growth of mobile telephony, internet access and use of social media provides a further channel for companies to engage with communities in addition to face to face contact to receive complaints, provide information and to report incidents to communities. Companies are increasingly developing dedicated webpages for environmental and social information to provide quick access to information.
- Some are hesitant to accept any compensation offered (e.g. for land, for impacts to water supply, etc) out of fear and mistrust that such acceptance would mean they were prohibited from raising issues or grievances in the future.
- There were a **few cases reported of local communities using the local courts** – and even with some success – but this was generally a mistrusted and little used route. There was one reported case of local corruption being adjudicated and enforced in the local courts, in support of local communities and unimpeded by local authorities or companies.

### Myanmar Good Practice Example:

- Some companies have set up specific **village focal points** or **groups for**

**engagements and complaints**, composed of local authorities, village heads and representatives, designated village representatives and company staff, which meet regularly and proactively seek and facilitate regular community engagement.

**Box 16: Relevant International Standards and Guidance on Engaging with Stakeholders, Grievance Mechanisms, and Linked Initiatives in Myanmar**

**Relevant International Standards:**

- IFC:
  - [PS 1 – Assessment and Management of Environmental and Social Risks and Impacts](#)
  - [PS 4 – Community Health, Safety and Security](#)
  - [PS 5 – Land Acquisition and Involuntary Resettlement](#)
- [UN Guiding Principles on Business and Human Rights](#) (especially Principles 29-31)

**Relevant Guidance on Stakeholder Engagement:**

- European Commission, "[Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)"
- IFC, "[Stakeholder Engagement - Good Practice Handbook for Companies Doing Business in Emerging Markets](#)"
- IPIECA, "[Community Engagement](#)" (web page)
- Shift, "[Conducting Meaningful Stakeholder Consultation in Myanmar](#)"
- World Resources Institute, "[Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects](#)"

**Relevant Guidance on Grievance Mechanisms:**

- European Commission, "[Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)", particularly part 3.VI
- IIED, "[Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms](#)"
- IFC, "[Good Practice Note: Addressing Grievances from Project-Affected Communities](#)"
- IPIECA, "[Community Grievance Mechanism Toolbox](#)"

**Myanmar Initiatives Linked to the O&G Sector:**

- UK Aid, [Civil Society Strengthening Programme](#) [GB-1-202393]
- ActionAid, [Project supporting local organisations through intensive training and deployment of 'change-makers' \(youth leaders\) in target communities](#)

Project-Level Impacts

# Communities





## Part 4.2

# Communities

### In this section:

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

## A. National Context

### Poverty, Social Services and Social Protection

Myanmar is primarily a rural agrarian society, with many engaged in subsistence farming. Most poor families are working in agriculture or as casual day labourers.<sup>223</sup> Reliable, detailed data on socio-economic indicators is still lacking. The 2014 UN Human Development Index ranked Myanmar at 150 out of 187 countries surveyed, putting it in the “low human development category,” with a 65.2-year life expectancy and just 4.0 mean years of schooling. Nearby ASEAN member states Thailand ranked at 89, Viet Nam at 121, Cambodia 136, and Laos 139.<sup>224</sup>

The UNDP has reported that the national poverty rate is 26%, and poverty rates are twice as high in rural than in urban areas. However, more recent information based on the same UNDP data reported in May 2014 by the World Bank in Myanmar indicates a national poverty rate of 37.5%, using a higher number of minimum calories per day as a cut-off point for poverty, and a higher rate of urban poverty.<sup>225</sup> Its re-interpretation of UNDP data indicates an alarming 77.9% poverty rate in Rakhine State. The landlocked Shan State, which the South East Asia Gas/Oil Pipeline passes through, had a 2010 poverty rate of 33%.<sup>226</sup> Magwe Region in central Myanmar, a key area for onshore O&G operations, had a 2010 poverty rate of 27%.<sup>227</sup> The high poverty levels feed into and also result from conflict in the ethnic states (see [Part 4.7](#) on Security). In 2010 the poverty rates in coastal areas where offshore natural gas will come on shore were 44% in Rakhine State, 33% in Tanintharyi Region, 16.3% in Mon State, and 32% in the Ayeyarwady Region, compared to a 26% national rate.<sup>228</sup>

Social service delivery is poor, partly due to the country’s decades-long isolation and ban on development aid imposed during the 1990s by the US, Canada, Australia, New Zealand Governments and the EU in response to human rights abuses. But it is also

<sup>223</sup> ADB, “[Interim Country Partnership Strategy: Myanmar 2012 – 2014, Poverty Analysis \(Summary\)](#)” (2012).

<sup>224</sup> [United Nations Development Programme](#)

<sup>225</sup> Myanmar Times, “[Data tweaks change face of poverty](#)” (19 May 2014).

<sup>226</sup> ADB, above, pg. 4.

<sup>227</sup> ADB, above.

<sup>228</sup> ADB, above.

because the previous military Government did not treat health, education, and welfare as priorities. Even in the current period, Government spending on social services as a percentage of GDP was 0.76% for health, 1.46% for education and less than 0.01% for social welfare in 2012-2013.<sup>229</sup> The low public resource allocations to social spending has negative impacts for the provision of health, education, and welfare services, particularly in remote rural areas where O&G projects operate. The Government has recognised the need for a social protection system and will set up a National Committee for the Coordination of Social Protection, “with due attention given to alleviating poverty and addressing inequities, social exclusion, and emergencies”.<sup>230</sup>

## Education

As the OECD noted in its Investment Policy Review, “the limited educational and health financing translates into a major obstacle to growth and development in the future.”<sup>231</sup> Primary school dropouts and low secondary school enrolment rates,<sup>232</sup> often due to poverty, are continuing challenges. Myanmar has a lower rate of expected schooling than in Cambodia and Laos. The Government’s Framework of Economic and Social Reforms (FESR) notes that at an 87% rate of primary school enrolment,<sup>233</sup> Myanmar is also behind other ASEAN countries under Millennium Development Goal 2, “Achieve Universal Primary Education”.<sup>234</sup> The OECD also notes that with the low levels of schooling, there is limited education beyond basic literacy, but also highlights that the Government is taking steps to improve the education system.<sup>235</sup> Official literacy rates are over 90%; however, a survey found that one third of rural people in a small sample were functionally illiterate, which may be indicative of a widely observed problem.<sup>236</sup> There is also a clear need for increased vocational training.

## Health

An estimated 75% of the population of Myanmar does not have quality health care.<sup>237</sup> The private sector provides most of the health care, especially for the poor, but such services are often inadequate or unaffordable. The public health facilities that do exist often do not have basic equipment and supplies or staff. Around 87% of health expenditures is incurred by consumers in out-of-pocket expenses, the highest in the region.<sup>238</sup> The health assistant ratio to population is 1:21,822; there are 26,435 doctors nationwide.<sup>239</sup>

<sup>229</sup> UNICEF, “[Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar](#)”, p 10 (2013).

<sup>230</sup> “[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)” (FESR), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), Overview.

<sup>231</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 42.

<sup>232</sup> For more inclusive growth and equitable opportunities, OECD, “[Multidimensional Review of Myanmar, Initial Observations](#)” (2013).

<sup>233</sup> Please note that this is a much higher rate of primary school enrolment than that used in UNICEF’s [Situation Analysis of Children in Myanmar 2012](#).

<sup>234</sup> FESR, as above.

<sup>235</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 42.

<sup>236</sup> Harvard Kennedy School, Ash Center, “[Creating a Future: Using Natural Resources for New Federalism and Unity](#)” (July 2013).

<sup>237</sup> World Bank, “[Power to People: World Bank Group to invest US\\$2 billion in Myanmar, to support reforms, reduce poverty, increase energy and health access](#)” (26 January 2014).

<sup>238</sup> UNICEF, “[Situation Analysis of Children Myanmar 2012](#)”, (July 2012), p 47.

<sup>239</sup> UNICEF, above, pp xiv – xvi



The Ministry of Health has formulated a National Health Plan (2011-2016) within a 20 year National Comprehensive Development Plan, to ensure *inter alia* that “quality health services are accessible equitably to all citizens”.<sup>240</sup> The FESR states that the Government will double its commitment to improving health care and increasing public financing to meet the health MDGs as soon as possible.<sup>241</sup>

Myanmar suffers from one of the highest tuberculosis rates in the world; a 2009 TB prevalence survey identified a rate of 434 cases per 100,000 people.<sup>242</sup> Myanmar accounts for most of the malaria-related deaths in the Mekong Region.<sup>243</sup> About 70% of the population lives in malaria-endemic areas, with pockets of artemisinin-resistant malaria in the southeast. However UNDP reports that Myanmar reduced malaria morbidity rates by 50% since 2007 and the TB incidence rate has been in decline since 1997.<sup>244</sup> The number of people living with HIV in Myanmar is 216,000 according to a 2012 estimate, with a high level of transmission through injecting drug users; sex workers and their clients; and men who have sex with men. All these groups have shown a “considerable decrease in prevalence in the last years”.<sup>245</sup>

### Food

As of 2010, food poverty affected 5% of the population, with considerable regional variation, with the highest rate at 25% in Chin State. Rural areas account for 85% of food poverty in Myanmar.<sup>246</sup>

### Infrastructure

Over 70% of the population has no access to electricity.<sup>247</sup> The transport sector is considerably underdeveloped, including roads and railways, impeding economic activity and hampering the movement of goods and rural people to markets, schools, and clinics; road fatality rates are high.<sup>248</sup> Only 20% of roads are paved to all-weather standard.<sup>249</sup> A report by Mastercard, with support from Myanmar think tank MDRI-CESD, notes that formal banking penetration in urban areas is 10% and considerably less in rural areas because of reliance on cash and a lack of trust in the banking system.<sup>250</sup>

<sup>240</sup> See Myanmar Ministry of Health, [Health in Myanmar](#) (accessed 25 July 2013).

<sup>241</sup> FESR, above, p 29.

<sup>242</sup> 3MDG, “[Myanmar’s Tuberculosis National Health Programme working with 3MDG and partners to scale up delivery of TB services](#)” (29 November 2013).

<sup>243</sup> Artemisinin combination therapies are the most effective against the falciparum strain of malaria. The Irrawaddy, “[World Malaria Day: Changes in Disease Control Amid Burma’s Political Transition](#)” (25 April 2014).

<sup>244</sup> UNDP, [About Myanmar](#) (accessed 25 July 2014).

<sup>245</sup> UNAIDS, “[Global AIDS Response Progress Report Myanmar, reporting period 2010 – 2011](#)” (31 March 2012).

<sup>246</sup> ADB, “[Interim Country Partnership Strategy: Myanmar 2012 – 2014, Poverty Analysis \(Summary\)](#)” (2012).

<sup>247</sup> World Bank, “[Bringing more electricity for the people of Myanmar](#)” (24 September 2013).

<sup>248</sup> ADB, “[Myanmar in Transition: Opportunities and Challenges](#)” (Aug 2012), pp 22 – 24.

<sup>249</sup> ADB, above.

<sup>250</sup> Mastercard and MDRI-CESD, “[Cash in Context: Uncovering Financial Services in Myanmar](#)”, Executive Summary and Introduction, (Feb. 2014).

## Cultural and Religious Sites

As noted in the [Part 4.5](#) on Ethnic Minority Groups/Indigenous Peoples below, Myanmar is a very culturally diverse country. There is an extensive spread of spiritual and cultural sites throughout the country, with communities often attaching great importance to their local temples or shrines. There is likely to be local areas of cultural importance in areas where O&G are found, especially given the range of cultures and religions. These include the Mon State and Tanintharyi Region, home to the Mon, the Karen, and the Tavoyan ethnic groups, with a mixture of Buddhist, Christian and animist religions. Rakhine State comprises the Buddhist Rakhine and Bamar, and Muslim groups, including the Kaman and Rohingya.

Exploring for O&G in designated national cultural heritage sites is prohibited. Article 20(d) of The Protection of Preservation of Cultural Heritage Regions Law (1998), amended by Law No. 1/2009 states that “No person shall carry out any of the following in the cultural heritage region...(d) exploring for petroleum, natural gas, precious stones or minerals.”

## Corporate Social Responsibility / Social Investment Programmes

While there is a growing awareness in Myanmar of the concept of corporate social responsibility (CSR), this is often limited to a concept of corporate philanthropy – i.e. making donations to charities or local communities. An approach to CSR based on the concept of business taking responsibility for its impacts on society and the environment is less well understood by Myanmar businesses and Government as is the concept of a “social license to operate” – i.e. a tolerance if not acceptance by local communities of business operations that goes beyond its legal and regulatory license to operate.

Local businesses and the Government are also not well informed about leading extractive companies’ approaches elsewhere to social investment in communities surrounding extractive projects and how these can address impacts and build relations with local communities in way that is effective for communities, the local government and the companies.

The model Production Sharing Contract (PSC) does not require a social investment programme per se but there is discussion within the MIC of strongly encouraging all investors to put aside a budget for CSR programmes of 1-3% of pre-tax profits, and to take decisions on spending this in cooperation with local communities and authorities. Although this amount is currently not compulsory, an actual contractual commitment of 2% was inserted in the renegotiated Letpadaung Copper Mine Project.

Currently the PSC simply requires the company signing the agreement with MOGE to “expedite the Corporate Social Responsibility in the Contract Area according to the code of conduct for each Contractor Party”<sup>251</sup> which leaves the approach up to the individual company. This provides for flexibility in designing a programme but assumes that companies have the appropriate experience in designing useful CSR/social investment programmes. Neither charitable donations nor transferring the CSR budget to a local or

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<sup>251</sup> Clause 17.2 dd.

regional government with little capacity is likely to be effective in supporting a company's social licence to operate. It could become a driver for local conflict or corruption. Furthermore many companies' business integrity rules would not allow such payments.

If this approach becomes a more established or compulsory MIC requirement, transparent principles are needed about how the money should be spent, such as requiring agreement with the local community for sums spent locally, and these should be discussed first with business and civil society. There should also be guidelines on what the money may not be spent on (e.g. environmental and social protection required to comply with the ESMP) and whether it is cost-recoverable under the PSC. Above all, it is important that the strategic business link between social investment and the O&G project is maintained. Otherwise companies, particularly in a country with Myanmar's level of poverty, become drawn into playing the role of development agency or philanthropic social service providers, neither of which is their purpose. Rather the Government should fulfil its 'duty to protect' and provide health and education services on the basis of full collection of revenue from the entire tax base, including the O&G sector.

## B. Key Human Rights Implications for the O&G Sector

### Livelihood Impacts

- **High levels of vulnerability:** There is a high vulnerability of local rural populations to social and environmental impacts due to their overwhelming dependence on land-based subsistence agriculture or local fishing. The vulnerability will be even higher within at-risk groups within the community – women, minorities and the disabled (See [Part 4.5](#) and [Part 4.6](#) on Ethnic Minority Groups / Indigenous Peoples and Groups at Risk respectively).
- **Lack of clear processes:** There is a lack of clarity and transparency for local communities (and sometimes local authorities as well) about the process and legal requirements for consulting and compensating individuals and communities for impacts on their livelihoods, particularly where impacts may result from slower or longer-term changes brought about by project activities, such as through soil or groundwater contamination.
- **Limited types of compensation:** There does not appear to be any legal requirement and very limited practice of providing villagers with the option of land-based compensation and yet in many rural areas, there will be limited ability, expertise or opportunity to use cash compensation, given the lack of even the most basic banking facilities.
- **Lack of baseline data:** Given the pervasive lack of any kind of baseline data for much of the country and the lack of requirements or practice to date on documenting baseline conditions, communities (and companies) have a difficult time establishing claims and assessing attribution of impacts to project activities, which means that farmers and fisher-people often go uncompensated for longer-term impacts to livelihood.
- **Potential impacts on fishing:** The development and operation of offshore O&G projects has the potential to adversely impact fish habitats and resources, small-scale subsistence and artisanal fisheries exploiting these resources, and the fishing-based

livelihoods of communities within the project area. Although small-scale and artisanal fisheries can be affected by project operations (by boat traffic, seismic activities, exclusion zones, security restrictions), for various reasons (e.g. political marginalisation, insufficient ESAs, and due to the nature of the resource itself and variability of peoples' use) the assessment and management of project impacts on these populations is often inadequate.<sup>252</sup> Some fishing populations, like the indigenous Moken people – known as “Sea Gypsies” on the Tanintharyi coast, traditionally follow a nomadic, sea-based culture, and therefore may be more difficult to capture in assessments but are particularly vulnerable to impacts on fish stocks.

- **Micro-economic impacts:** On a broader scale, there is a clear risk of micro-economic impacts of O&G operations from the money that flows into operations areas. Staff who are better paid than local average, together with local procurement, can lead to local level increases in the cost of basic provisions, which can have a negative impact on the poorer and more marginalised members of society who may be less likely to derive economic benefits from O&G activities to offset the increased costs. This can be exacerbated by additional in-migration of Myanmar and migrant workers and their families into O&G areas looking for work, with a potential for social and environmental cumulative impacts that affect both the host population and the newcomers (See [Part 5](#) on Cumulative Impacts).

### Local Employment & Local Content

- **Mismatch between expectations and skill levels:** There are high expectations of employment from local communities but most often a lack of skills and education matching job requirements. Apart from the relatively short peaks of demand for unskilled labour during certain periods of exploration and development (e.g. for seismic survey work and construction) there are often limited unskilled jobs on a longer-term basis. While there will usually be a surplus of unskilled labour which brings its own risks of exploiting temporary workers, it will be hard for companies to find skilled labour from among the national workforce, and even harder to find it among the local workforce.
- **High local competition:** Given the limited range of unskilled labour opportunities, particularly in the post-construction period, there is high local competition for unskilled labour opportunities that do and will exist, which can lead to tensions within the community and with the company and also to risks of corruption/bribery in connection with hiring.
- **Local procurement challenges:** The model Production Sharing Contract (PSC) contains general requirements on local procurement of goods and services.<sup>253</sup> This provides another opportunity of developing local sharing of benefits from projects, but

<sup>252</sup> See further, IFC, “[Addressing Project Impacts on Fishing-Based Livelihoods: Baseline Assessment and Development of a Fisheries Livelihood Restoration Plan](#)” (2009), which provides further detail on the types of potential impacts to fishing-based livelihoods, tools to identify and make baseline assessments, support with the range of measures available to prevent and mitigate impacts through community investment programmes, and guidelines for development of fisheries livelihood restoration and development plans.

<sup>253</sup> Onshore (Model) PSC, March 2014, Section 17(n): “unavoidably give preference to such goods and services which are available in Myanmar or rendered by Myanmar nationals approved by MOGE, provided such goods and services are offered at comparable conditions with regard to quality, price, availability at the time and in the quantities required; such payments for goods and services shall be made in US Dollars or local currency as appropriate in accordance with prevailing regulations;”

companies will initially have challenges in finding local companies that meet their quality, safety and other requirements, sometimes even around the most basic needs, such as food supplies. There is and will be predictable mismatches between local community perception of “local” procurement (meaning local from the community) and the company / legal definition (meaning from Myanmar rather than foreign services).

### Education

- **Lack of educated workers:** Given the low levels of educational spending and achievements, the scarcity of educated, skilled staff is likely to continue for the foreseeable future as it will take years for current educational reforms<sup>254</sup> to deliver results in terms of improved education outcomes. The Government has adopted the Employment and Skills Development Law, which provides for skills training and a fund which employers pay in to, but it will take some time for the system to be set up and workers to graduate from any programmes (assuming there are programmes relevant to the sector). (See [Part 4.4](#) on Labour.)

### Health

- **Healthcare is a key wish:** The widespread lack of health care throughout the country means companies will face expectations that they provide some form of health care services, at least for their workers (see also [Part 4.4](#) on Labour). Communities may request health services too.
- **Health Risks:** Employee or contractor actions can have significant health impacts on the community in relation to the transmission of sexually transmitted infections (STIs), including HIV/AIDS, as well as vehicular fatalities and injuries, exacerbating the already high rate of road fatalities. Company related activities therefore have the potential to impose additional health burdens and costs on local communities who have neither the facilities nor the funds to address their health situation. This can and has been complicated by the diversity of contractors and sub-contractors often working on a project and a lack of clarity about which party if any is responsible for more obvious impacts such as accidents or fatalities, much less for longer term health implications such as increasing the disease burden in an area.
- **Malaria:** Building and construction activity which invariably alters habitats has the potential for both short- and long-term disease consequences, and can have pronounced impacts on vector-borne diseases including malaria which can affect workers and the local community in Myanmar’s malaria prone areas.

### Infrastructure and Public Services

- **Mismatch between infrastructure demand and resources:** Currently there is no specific mechanism for revenue sharing between the Union Government and the State/Region governments of O&G revenue that would provide additional funding for additional infrastructure or social services. It also does not match the inflow of companies and attendant demands on infrastructure and services, which can cause frustration in local communities and among companies. Moreover, local governments

<sup>254</sup> The Government, donors and international organisations in the Education Sector Working Group are working on a [Comprehensive Education Sector Review](#).



often do not have sufficient resources to repair local infrastructure, including roads and bridges, which may be damaged by heavy construction vehicles from operations. Compensation for damage caused by companies using local infrastructure is appropriate.

- **Expectations of company-provided infrastructure:** Where there is simply a lack of infrastructure or services, communities will often expect that O&G companies will provide public services and infrastructure to the communities surrounding their facilities. Myanmar communities generally seem to prefer company provided services to Government provided services. This can create a longer-term situation of dependency by both the Government and communities on O&G companies for infrastructure and services, with the Government relying on the companies to provide these and communities failing to demand infrastructure and services and accountability from the Government. Where there is a demand for local infrastructure, this can be combined with local government planning and funds in order to develop better quality infrastructure that serves both the project and the population.

### Cultural Diversity

- **Cultural sensitivity:** Myanmar has a diversity of cultures, sometimes several overlapping within a small area. Understanding and respecting local cultures and social norms, particularly in more remote areas where communities are not used to interacting with even other Myanmar citizens, much less foreigners, is essential. Good practice elsewhere for companies with workers in remote sites is to arrange site induction training that involves local community leaders and provides a briefing on local culture, and to develop and enforce a code of conduct for their employees that requires respect for local culture and communities.
- **Specialist expertise:** Given the widespread cultural sites, some of which may not be obvious to outsiders and therefore missed in assessments, expert local assessment is needed, together with engagement around any potential impacts or use of cultural sites.

### Corporate Social Responsibility / Social Investment Programmes

- **Involving communities in programme plans:** With increasing transparency and communities starting to experience participatory development methods, they and village authorities increasingly expect to be involved in discussions about the development of social investment programmes. There is increasing good practice guidance about developing social investment programmes that is built on respect and engagement that may be useful for Myanmar, given the paucity of social investment programmes.
- **Potential disclosure of social expenditures under MEITI:** The revised EITI Standard requires disclosure of social expenditures by companies where companies are legally or contractually required to make social contributions. Once the EITI is implemented in Myanmar, this might require disclosure of the funds spent on company CSR programmes/social investments under the PSC.<sup>255</sup>

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<sup>255</sup> Model Onshore PSC, clause 17.2 dd.

## C. Field Assessment Findings

### Livelihoods

**Human Rights Implicated:** Right to an adequate standard of living; right to work; right to the highest attainable standard of physical and mental health.

#### Field Assessment Findings

- **Inability of communities to obtain compensation for impacts to livelihoods caused by road and site construction** (e.g. changes to hydrology resulting in monsoon flooding to crop areas which had not occurred previously). While land disturbance is common in O&G operations, in the context of Myanmar, farmers often had no access to compensation through complaints procedures, grievance mechanisms or other processes. Where complaints were lodged, in some cases local authorities or companies failed to respond or explain why complaints would not be addressed. Farmers found it particularly difficult to obtain compensation for longer-term impacts to livelihoods resulting from environmental changes.
  - One company had put in place a system of local contacts within the community to provide a focal point to raise these kinds of issues.
  - Another company expressed interest in piloting a project on informing the communities about the grievance mechanisms and also encouraging communities to communicate with companies to inform them and raise complaints.
- Some cases of fishermen having to **travel further off-shore to find fish stocks were reported, allegedly due to the impact of explosives used during construction** on fish populations. Prior consultation was rarely conducted with fishermen to notify them or mitigate the impact to livelihoods dependent on fishing. When reported to some companies and local authorities, communities were asked to provide statistical evidence of reduced fish populations, which they would not have.
- **Post-construction site rehabilitation and restrictions limiting farmer's activities.** Land disturbances from construction were often improperly restored, with poorer soil (rocky and less fertile) than the original soil, requiring local farmers to either switch crops (which might be less nutritious or profitable) or to take great effort and time to sift out stones. Activities in restored areas restricted for safety reasons (prohibition on burning crop stubble to improve the soil) but with no compensation, for example to pay for fertiliser. Cases of access to fields restricted by new infrastructure.
- **Inconsistent practice on allowing communities to replant on top of buried pipelines.** It is unusual to allow planting along pipeline routes, but in these cases where communities were unable to continue planting, there was no consultation to identify options that would prevent this loss of land. There was also no alternative land provided to continue planting. Where compensation was provided it was without negotiation (see *Land Issues Impact Summary*).
- In some areas, farmers had difficulty in securing compensation or changes in operations to address **destruction or impairment of agricultural fields** by waste runoff and water use from operations.
- **Very little local** (i.e. from local villages) **procurement** of produce or local services

was observed, reducing opportunities for positive economic impact.

- Reflecting this, some companies made an effort to source unskilled labour for construction and security from local communities.

## Public & Community Services

**Human Rights Implicated:** Right to an adequate standard of living; right to the highest attainable standard of physical and mental health; right to education; right to freedom of movement; right to liberty and security of the person

### Field Assessment Findings

- Damage caused to **local roads** from increased traffic due to one or more projects, reducing access for the local communities.
  - In some cases, construction or improvement of local roads for operations were made available to local communities. Some cases were observed of rapid responses to community complaints about increased dust from construction trucks, for example by paving dirt roads or removing blockages.
- Some company construction of infrastructure was of **poor quality, designed for the construction period but not a longer term contribution to the community**. One case of bridge collapsing shortly after building, another case of pipes providing community drinking water rusting a short period of time after installation and different quality piping used for water delivery to the community as compared to housing for workers.
  - Some cases were observed of new or improved bridges and access roads built for the construction phase directly benefitting nearby local communities.
- Access to **electricity** was a key demand from villagers. This had often been promised by the Government but not delivered on. In one case, electricity promised to villagers was diverted to a Government-run cement plant. In others, the Government promised generators that were not delivered.
  - A minority of communities have benefited from increased electricity provision due to the nearby presence of an O&G project. One operator provided subsidised solar panels to select villages. One company delivered a generator to each community, but the community was required to fund diesel usage.
- A number of cases were reported of **commitments being made by companies** to local communities for roads to be built or electricity infrastructure improved that were reportedly **never fulfilled**, leading to community resentment and distrust of promises of local benefits to their economies.
- With some exceptions, most companies **did not adequately consult with communities** to understand their priorities and needs before embarking on their social investments, relying on discussions with local authorities (see [Part 4.1](#) on **Stakeholder Engagement and Grievance Mechanisms Project-Level**).

## Community Health & Safety

**Human Rights Implicated:** Right to the highest attainable standard of physical and mental health.

### Field Assessment Findings

- A few operators **provided health services and health awareness training to selected villages**, for example 24-hour ambulance services and regular access to doctors.
- Assessments indicated some **awareness and fear of the linkage between O&G operations and potential health impacts**, with concerns about the lack of information, including about potential accidents and a lack of focal points to turn to in such cases. Some fears could have been addressed through appropriate explanation. Such explanations might have been provided when operations first started but if so, there was a clear need to continue to provide information on a more regular basis.
- Numerous communities complained that there seemed to be **no comprehensive emergency plans – or at least no plans communicated widely** – about what to do in case of an accident at the nearby O&G operations.
- Given the lack of systematic community consultation by many O&G companies, assessment teams found **very few cases of communities that had been educated and trained on health and safety** when living in close proximity to a major O&G drilling area or pipeline.
- Some companies reported plans to undertake **community health and safety awareness raising** along pipeline areas, but this is only tentative and being considered well after operations have already commenced.
- There was inconsistency amongst companies as to whether **oil spill responses** were the responsibility of the operator or the local authority.

## Education

**Human Rights Implicated:** Right to education

### Field Assessment Findings

- Cases were observed of **schools being built in host communities** as part of community development projects without always consulting **local communities**.
- In some cases, the Government was not able to provide **a sufficient number of teachers for these schools**. There is a nationwide shortage of primary school teachers and problems of retention in remote areas. As a result the buildings were not used or under-utilised.
- **Community skills building programmes** were not observed with one exception.
- Several companies are **providing scholarships** for secondary or higher education, others are supporting early childhood and vocational training programmes.

## Cultural Heritage

**Human Rights Implicated:** Right of everyone to take part in cultural life; right to freedom of religion

### Field Assessment Findings

- There were a handful of issues raised of impacts on **culture and cultural sites**.
- One MOGE authority **asked the community to move a cemetery** near a pipeline which the community refused to do. To date the cemetery has not been moved.
- **A pond filled with soil/earth during pipeline construction** had cultural significance as it was used by Bo Yan Naing and comrades from the Burma Independence Army who camped near it and used its water.
- Relevant communities referred to the **decline of the traditional profession of Twin-zar-yoe** (owner of hand dug oil wells, i.e. artisanal oil workers) following nationalisation of the oilfields. These professions dated back at least several centuries and were linked to the Myanmar Kings. Twin-zar-yoe were leading figures in Yenanchaung and their wealth meant they could contribute significantly to cultural ceremonies and community development.

## Social Investment

**Human Rights Implicated:** Right to remedy; right to self-determination

### Field Assessment Findings

- When asked by the assessment teams **what kinds of issues communities would like the opportunity to discuss** with O&G project developers, the following were typical:
  - infrastructure requests especially roads and electricity
  - reconstructing and restoring areas after construction
  - knowledge and training on more effective agriculture practice
  - support relating to education
  - training and jobs for unemployed youth and women
  - capacity development for better and longer-term job opportunities, especially for women and youth groups.
- **Social investment decisions**, for example for community and public services, were **commonly made through unilateral decision without first consulting communities** as to what they truly needed. Some companies provided school or health buildings without local consultation or a community needs assessment. (see the *Community Issues Project-Level Impact Summary* for further findings)
- Where there was engagement, communities and village authorities also reported a **desire for increased transparency in community development funds**, including past and future spending.

### Myanmar Good Practice Example:

- One company reported good cooperation with regional and local authorities, who shared with it a list of Government plans regarding community development in order to avoid duplication of efforts and maximise positive outcomes. Another company developed village committees that provide a framework for community decision-making on priorities for social investment. One Myanmar company is preparing to conduct a community baseline assessment to support their social investment programme.



## Box 17: Relevant International Standards and Guidance on Working with Communities, and Linked Initiatives in Myanmar

### Relevant International Standards:

- IFC:
  - [PS 1 – Assessment and Management of Environmental and Social Risks and Impacts](#)
  - [PS 4 – Community Health, Safety and Security](#)
  - [PS 5 – Land Acquisition and Involuntary Resettlement](#)
- [UN Guiding Principles on Business and Human Rights](#)

### Relevant Guidance:

- European Commission, "[Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)", particularly part 3.III.
- EI Sourcebook, "[Good Practice Note on Community Development Agreements](#)"
- IIED, "[Shared Value, Shared Responsibility](#)" on opportunities in the extractive sector's complex supply chains
- IFC, "[Addressing Project Impacts on Fishing-Based Livelihoods: Baseline Assessment and Development of a Fisheries Livelihood Restoration Plan](#)"
- IFC, "[Strategic Community Investment: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#)"
- IPIECA, "[Local content strategy: a guidance document for the oil and gas industry](#)"

### Myanmar Initiatives on Working with Communities Linked to the O&G Sector:

#### Community Development

- World Bank, "[National Community Driven Development Project in Myanmar](#)"
- ADB, "[Skills Development for Inclusive Growth](#)"
- ADB, "[Pro-Poor Community Infrastructure and Basic Services](#)"
- [Livelihoods and Food Security Trust \(LIFT\) Fund](#), "Village books" project to enable communities to map and track sustainable development in the Delta and central dry zone of Myanmar
- UN HABITAT, [Coastal Communities Livelihoods Assistance Programme \(CLAP\)](#)
- [Norwegian supported survey](#) of fish resources, marine biodiversity and oceanography in Myanmar waters

#### Skills, Entrepreneurship

- UNIDO, [Pro-poor and inclusive micro, small and medium enterprises \(MSME\) development project in Myanmar](#)
- ADB, Programme supporting [technical and vocational education and training and other post-primary education subsectors in Myanmar](#), in cooperation with the Myanmar Ministry of Science and Technology (MOST) and Ministry of Industry (MOI)
- GIZ, [Strengthening the Technical Education and Vocational Training System](#)
- Project Hub Yangon (PHY), Indiana University, USAID, [Programme delivering](#)

[entrepreneurship training programs to the students and faculty of the Yangon Institute of Economics](#)

- [Building Markets' Sustainable Marketplace Initiative in Myanmar](#) (SMI-Myanmar), supporting opportunities for local small and medium-sized enterprises (SMEs) to grow their businesses and create jobs
- ILO, [Entrepreneurship Development and SME support in Myanmar project](#)
- Pact Global Microfinance Fund (PGMF), Life, [Myanmar Access to Rural Credit \(MARC\) project](#)
- GRET, [Microfinance and nutrition project](#)
- The [Myanmar Engineering Society](#) is running a number of programs for engineers, including young engineers.

Project-Level Impacts

# Land





**In this section:**

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

**A. National Context**

Land is often the most significant asset of most rural families. 70% of Myanmar's population lives in rural areas and 70% of the population is engaged in agriculture and related activities.<sup>256</sup> Many farmers use land communally under a customary land tenure system, especially in upland areas inhabited by ethnic minorities. Customary use and ownership of land is a widespread and longstanding practice.<sup>257</sup> The field assessments confirmed what is evident from secondary research: that for the vast majority of the Myanmar population dependent on access to land for livelihoods, where land is taken, even with monetary compensation, the impacts on an adequate standard of living can be significant. Compensation is often not keeping up with rapidly escalating land prices, meaning displaced farmers are unable to acquire new land in nearby areas.

**Landlessness in Myanmar**

Rural people continue to remain at risk of land confiscation, which has over several decades led to landlessness amongst the population. An estimated 25% of farmers are considered landless agricultural labourers in Myanmar, making them food insecure, in particular when food prices increase.<sup>258</sup> The Government itself recognizes landlessness as a major problem in its Framework for Economic and Social Reforms (FESR) and states that landlessness in the country was at 26% in 2005, with even higher levels in Yangon (39%), Ayeyarwady (33%), and Bago (41%) Regions, the so-called "rice bowl" of Myanmar.<sup>259</sup> Additionally, hundreds of thousands of ethnic minority civilians have been displaced in eastern and northern Myanmar as a result of internal armed conflict, and 143,000 have been displaced by inter-communal violence in Rakhine State since June 2012. Some ethnic minorities in the east of the country have been displaced for decades,

<sup>256</sup> Myanmar Ministry of Labour Handbook on Human Resources; Development indicators 2009, Ministry of Labour Nay Pyi Taw 2011

<sup>257</sup> Transnational Institute, "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)" (May 2013).

<sup>258</sup> Harvard Kennedy School, Ash Center, "[Creating a Future: Using Natural Resources for New Federalism and Unity](#)" (July 2013), pg. 10.

<sup>259</sup> "[Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#)", (Jan. 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum).

leading to very weak land tenure of their original land, which they may not have occupied for years, and may now be used by others.

### Land Regime

Reform of land policy and law in Myanmar remains incomplete. There is a recognized need in Myanmar for a written comprehensive land use policy. The Land Allotment and Utilisation Scrutiny Committee, a Cabinet-level committee, was established in July 2012 with a remit to focus on national land-use policy, land use planning, and allocation of land for investment that will allow it to better balance competing demands for land-use that will inevitably increase with further economic development and investment.<sup>260</sup> A working group of the Committee, which includes civil society representation and external experts, is currently formulating a draft land policy. The final policy is not expected to reach Parliament until 2015 or 2016. Once adopted, the policy will presumably guide the drafting of an overarching land law in 2016.

The land regime in Myanmar is characterised by a patchwork of new and old laws that leads to overlap, contradiction and confusion. Insecurity of tenure is a major problem. Moreover, the land registration system is considered inefficient, with complex requirements and lack of benefits for registering land.<sup>261</sup> UN Habitat recently announced new cooperation with the Government on the implementation of a land administration and management programme.<sup>262</sup> The cadastral (land mapping) system is weak, which further exacerbates the problem of land disputes, as land classifications and mapping may overlap or not reflect true land use patterns. For example one map may classify a plot of land as forest land, whereas another map may classify the same plot as farmland, leading to confusion about land use rights and possible disputes about whether the land can be sold or not, depending on the classification. Participatory land use planning is needed that balances the needs of all land users.

As the recent OECD Investment Policy Review of Myanmar notes: “[l]and tenure remains insecure for most smallholder farmers for a wide range of reasons: i) a complex and long registration process resulting in low land registration rates; ii) rigid land classifications that do not reflect the reality of existing land use; iii) lack of recognition of customary land use rights; iv) weak protection of registered land use rights; v) inefficient land administration; and vi) active promotion of large-scale land allocations without adequate safeguards.”<sup>263</sup> The OECD has also recommended the use of free, prior and informed consent (FPIC) for all land acquisitions, not just those involving ethnic minorities / indigenous peoples, which goes further than the IFC Performance Standard.<sup>264</sup>

<sup>260</sup> Food Security Working Group’s Land Core Group, “[Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#)” (Nov. 2012).

<sup>261</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 108.

<sup>262</sup> UN-Habitat, “[UN-Habitat to help strengthen land administration and management in Myanmar](#)” (June 2014).

<sup>263</sup> OECD, above, pg. 292.

<sup>264</sup> OECD, above.



## Land Disputes

Since the recent reform process began, there has been increased reporting of protests against “land grabs” in the press and by non-governmental organisations in many parts of the country. In addition, large-scale land allocation has increased significantly in the past decade.<sup>265</sup> While some of these land grabs are new, many of them originate in land confiscations under the previous military Government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the Government. In the past, there have been involuntary resettlements of villages to make way for O&G infrastructure directly and in connection with military forces moving into areas to protect gas pipelines. Some land in Myanmar has been returned to farmers and others since the reform process began. In January 2014 the military reportedly apologised for previous land confiscations, pledged to stop the practice, and said it would begin to return some of the land.<sup>266</sup> However, there are still tens of thousands of rural people who have lost their land due to Government confiscation.

In recognition of the problem of land disputes, the Government has established two bodies to deal specifically with land issues. The Land Allotment and Utilisation Scrutiny Committee (as noted above) and the Parliament’s Farmland Investigation Commission (with a mandate to accept complaints from the public) were both established in July 2012. In February 2014 the Parliamentary Commission set a deadline for the Government to resolve cases of land grabs of farmland by September 2014, stating that the executive branch had not adequately responded to their March 2013 report outlining the severity of land grabs.<sup>267</sup> The Myanmar National Human Rights Commission, established by the President in September 2011 to deal with a broader range of issues, has noted that most of the complaints they receive are in relation to land grabs. The Myanmar Legal Aid Network is currently administering two complementary Land Legal Aid Mechanisms, which are taking a few cases to court. As noted above, the October 2013 report on the ILO Forced Labour Mechanism notes that there has been an increasing number of complaints submitted about forced labour in association with land confiscation (see [Part 4.4](#) on Labour).<sup>268</sup>

## Resettlement

Myanmar has only limited standards governing the resettlement process for land confiscated from people for projects. As discussed below, the 1894 Land Acquisition Act does provide for compensation for land the Government has acquired in the public interest, but with only limited safeguards and no provisions concerning resettlement.

A recent case of land expropriation and resettlement provides one example of the challenges of larger scale resettlement where there are no detailed requirements and little Government experience in carrying out resettlement to international standards. The Japanese International Cooperation Agency (JICA) is supporting the development of the

<sup>265</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 324.

<sup>266</sup> Mizzima, “[Vice President defends land seizures by Tatmadaw](#)” (12 May 2014).

<sup>267</sup> The Irrawaddy, “[Parliament Sets Deadlines for Govt to Resolve Land Disputes](#)”, (20 February 2014).

<sup>268</sup> ILO, “[Update on the operation of the complaint mechanism in Myanmar, report of the ILO Liaison Officer to ILO Governing body](#)”, 319<sup>th</sup> Session, Geneva, (16-31 October 2013), GB.319/INS/INF/2, Section 6.

Thilawa Special Economic Zone outside of Yangon. Sixty-eight households have already been resettled under Phase 1 of the project; however, many resettled from this farming community do not currently have access to livelihoods options and there are also concerns about sanitation in the new resettlement site.<sup>269</sup> A delegation of the resettled communities recently visited Japan to present their complaints directly to JICA, and to press for it to apply its own guidelines effectively.

## Legal Framework for the Acquisition or Lease of Land

### *Acquisition by/with the Myanmar Government*

The 2008 Constitution provides that the State is the ultimate owner of all land in Myanmar, but also provides for ownership and protection of private land property rights.<sup>270</sup> As set out below, the Government can carry out compulsory acquisitions in the state or public interest. A private investor may acquire land or land use rights from either the Government or from a private land rights owner. A foreign investor can lease land.

With respect to lands not covered by other, more specific land laws (either “Vacant, Fallow and Virgin Land” or “Farmland” – see below), land acquisition is governed by a 120 year old law, a holdover from the former British colonial period. The 1894 Land Acquisition Act provides that the Government can carry out land acquisitions for a company when the acquisition is “likely to prove useful to the public” (Article 40(1)(b)). The Government has responsibility for carrying out the acquisition and distributing compensation but the funds for compensation are to be provided by the company acquiring the land. Land in kind can be provided in place of monetary compensation. It sets out basic procedures governing the acquisition of the land, including undertaking preliminary investigations on the land, and a procedure for notification of, and objections to be raised by, persons interested in the land (Article 5A). The agreement between the company and the Government is to be disclosed in the National Gazette<sup>271</sup> and notice given to the public (Art 42), though it is not clear how the public would be notified and there is no requirement to directly notify those owning or occupying the land. In practice this has meant that local land owners or users are often unaware their land is being taken because notice in the Gazette is insufficient and they are not able to lodge an objection during the short window mandated under the law. At the same time, those who do publish a correct notice in the Gazette can claim compliance with the law.

### *Vacant, Fallow and Virgin (VFL) Land*

The VFV and Farmland Law and Rules (see below), are clearly aimed at providing a legal framework for implementing Government land policies to maximise the use of land as a resource for generating agricultural income and tax revenues. Tenure security is deliberately circumscribed to allow the Government the flexibility to do what they believe is needed for development. Civil society groups and farmers organisations have pointed out that land regarded as vacant, fallow and virgin may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices, but which the

<sup>269</sup> DVB, “[JICA dismisses accusations of negligence](#)” (10 June 2014). DVB, “[Displaced villagers descend on Tokyo](#)” (6 June 2014).

<sup>270</sup> Myanmar Constitution (2008), Articles 35, 37, 356 and 372.

<sup>271</sup> See <http://www.moi.gov.mm/ppe/pyantan>

Government classifies as VFV. The complicated registration procedures under the new agricultural laws mean that smallholder farmers, which is most of Myanmar's population, will struggle to register their land and are at risk of having their land registered by more powerful interests. Potentially developers could register in their names as owners of farmland and so-called VFV land, which has in fact long been occupied. By not recognising informal land rights, and formalising land rights through titling, despite pre-existing informal claims, the new laws may reinforce existing inequality and/or create new injustices, potentially creating or exacerbating tensions or even conflict.<sup>272</sup>

With respect to land designated as vacant, fallow and virgin (VFV), investors may acquire land by applying to the Government for land rights over VFV lands. Foreign investors with Myanmar Investment Commission (MIC) permits, those in joint ventures with Government bodies, or citizen and Myanmar citizen investors are permitted by the 2012 VFV Law to apply to the Central Committee for the Management of VFV Lands for the rights to cultivate and use VFV land (Article 5(a), (d), and (e)). Foreign investors without MIC permits do not appear to be permitted to do the same. These VFV land rights are temporary and not transferable.

Article 55 of the 2012 VFV Rules gives the Central Committee for VFV Land Management the right to repossess VFV land that had been granted to others for, among other things, the "implementation of basic infrastructure projects or special projects required in the interests of the state", and also where natural resources are discovered on VFV lands. Compensation is based on current value (Article 56). The 2012 VFV Law and Rules do not provide for procedures for objections to be made to the acquisition or to the compensation provided and no procedures for judicial review, which has been widely criticised. The VFV legislation is strict in prohibiting and criminally penalising persons that "encroach" on VFV land without permission, "obstruct" VFV land rights owners, and "destroy the benefit" of immovable property on VFV land. These criminal provisions may be abused through their use against protestors seeking reform or remedy in respect of VFV land.

### *Farmland*

With respect to farmland, the 2012 Farmland law makes clear that applicants who are individuals must be citizens (Articles 6 (a) (iv), 7 (a), (iv)). However, it also states that "organisations" include Government departments or organisations, non-governmental organisations and companies (Articles 6(b), 7(b), who are also permitted to apply. This appears to include foreign companies, as there is no statement in the English translation of the law that a company that may be granted a right to use farmland must be a Myanmar company. Farmland rights under the 2012 Farmland Law are freely transferable (subject to discrete restrictions such as transfers to foreign investors). This has been seen as problematic, since it exposes poor farmers to the temptation to sell their land use rights for short term gain, potentially leaving them landless and without a livelihood.<sup>273</sup> The problem is not the fact that farmland rights may be transferred through private negotiations and agreements, as this gives land rights owners the ability to convert their property assets

<sup>272</sup> Transnational Institute, "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)", (May 2013).

<sup>273</sup> Displacement Solutions, "[Myanmar at the HLP Crossroads](#)" (Oct. 2012).

into cash value when they choose. The issue is to what extent protection should be provided (many states' contract laws commonly provide protections against unfair terms and conditions and agreements made under duress or undue influence, mistake, or misrepresentation). The 2012 Farmland Law also allows for the "repossession of farmland "in the interests of the state or the public"<sup>274</sup> provided that "suitable compensation and indemnity is to be paid; the farmland rights holder must be compensated "without any loss" (Article 26). As with the VFV law, the Farmland Law and Rules do not provide for procedures for objections to be made to the acquisition or compensation awarded or for judicial review.

### *Non-Citizens' Use of Land*

With respect to foreign investors, the Restriction on the Transfer of the Immoveable Property Law (1987) had restricted foreign companies from buying land or leasing land for a term exceeding one year. Private investors may now acquire land rights from private persons through ordinary contractual agreement, subject to the following legal restrictions. First, land ordinarily cannot be sold or transferred to a foreigner through private transaction.<sup>275</sup> The Government may however allow exemptions from these restrictions and Union Government Notification No. 39 of 2011<sup>276</sup> set out the circumstances in which a foreign investor may lease land. Second, private investors cannot acquire VFV land rights or farmland through private transactions without the permission of the Government (Article 16(c) VFV Law) (Article 14 Farmland Law). Under the newer Foreign Investment Law, the foreign investors can obtain leases for an even longer period - 50 years, extendable for 10 years twice, depending on the type of business, industry and amount of investment. Leases can be even longer for land in "the least developed and less accessible regions."<sup>277</sup>

The Foreign Investment Rules provide certain protections against abuses but these apply only to leases by foreign investors under the MIC permit regime. Leases must be submitted to the MIC and the person leasing the land can make a complaint to MIC if the investor fails to pay the promised lease payment or carry out any provision in the agreement. MIC can thereafter terminate the lease. MIC is also entitled to terminate the lease after necessary investigations if the investor violates a law on the land. Interestingly, a foreign investor shall not be permitted to lease land "in a place that the public is not desirous to transfer and vacate."<sup>278</sup> If there are occupants, the foreign investor must submit to MIC the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement, including payment of the current price plus and damages.<sup>279</sup> This indicates that with respect to leased land that is privately negotiated,

<sup>274</sup> The distinction drawn between interests of the state and interests of the public is troubling, but it may be premature to draw conclusions without knowing the nuances of the provision in Burmese.

<sup>275</sup> The 1987 Transfer of Immoveable Property Restriction Act prohibits the sale or transfer of immoveable property, and the lease of such immoveable property for more than one year, to a foreigner or foreigner-owned company (Articles 3-5).

<sup>276</sup> "[Notification 39/2011](#)" on the Right to Use of Land relating to the Republic of the Union of Myanmar Foreign Investment Law.

<sup>277</sup> Ministry of Planning and Economic Development, "[Notification 11/2013, Foreign Investment Rules](#)", (31 Jan 2013).

<sup>278</sup> Foreign Investment Rules, above, Chapter 15, para 126.

<sup>279</sup> Foreign Investment Rules, above, Chapter 15, para 126.

there should be no involuntary resettlement. Given the wide scope of this provision, whether the Government can or will enforce this veto is questionable. Foreign investors are prohibited from leasing religious lands or areas of cultural or natural heritage.<sup>280</sup>

### *Concerns with the Current Legal Framework*

There have been numerous concerns expressed about the current framework and its implications for owners and land rights holders. The Government has wide discretion to expropriate land “in the interests of the public” or even if “likely to prove useful to the public.” The 1894 Land Acquisition Act permits expropriation because the Government “is or was bound” to provide land under an agreement with a company, without any additional requirement of public interest. The laws and rules provide limited specifications on the process of expropriation and as noted, limited safeguards for those whose property is being acquired. Only under the 1894 Act is there a process for objections. There are no procedures for objections to acquisitions or compensation for VFV land or farmland. Apart from these laws, there are no other laws on expropriation or resettlement.

## **B. Key Human Rights Implications for the O&G Sector**

### **Considerations for Land Acquisition / Use**

- **Pre-2011 approaches:** Access to natural resources and the land base for carrying out extractive operations has often been a source of contention in Myanmar, whether as a driver of armed conflicts between the Government and ethnic minority groups, or a basis for local disputes. Pre-2011 approaches to land acquisition, especially through State and military expropriation, are no longer acceptable to the public, even if they are still happening in practice.
- **Antiquated land acquisition procedures:** Myanmar does not have detailed procedures on land acquisition and appears primarily to be using laws from the 19<sup>th</sup> and early 20<sup>th</sup> centuries as the basis for land acquisition and designation of oil field areas respectively.<sup>281</sup> These laws do not reflect more modern protections developed in other common law countries to define procedural and substantive protections, nor the even far more recent international guidelines on governance of tenure led by FAO.<sup>282</sup>
- **Lack of recognition of customary rights:** The new land laws<sup>283</sup> do not sufficiently recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their “usufruct” rights.<sup>284</sup> Experts have recommended that the Government formally recognise customary law for land use rights and provide mechanisms for communal ownership of land to ensure *inter alia* ethnic minority rights

<sup>280</sup> Foreign Investment Rules, above, Chapter 15, para. 125.

<sup>281</sup> *Land Acquisition Act* (1894) and the *Oilfield Fields Act* (1918). The *Land Acquisition Act* provides the main framework, but there are also provisions relating to government acquisition in the more recent *Vacant, Fallow and Virgin Lands Management Law* (2012) and *Farmland Law* (2012).

<sup>282</sup> FAO, “[Voluntary Guidelines on the Responsible Governance of Tenure](#)”, (2012).

<sup>283</sup> *Vacant, Fallow and Virgin Lands Management Law* (2012) and *Farmland Law* (2012). See for further description, Land Core Group, “[Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#)” (Nov. 2012).

<sup>284</sup> “...the written and unwritten rules which have developed from the customs and traditions of communities...” Land Core Group, above. pp 15-16.



are protected.<sup>285</sup> In addition, as noted above, the Government may be declaring land vacant that in reality is not. This has resulted in large numbers of landless who would not appear in any Government records but who many nonetheless be affected by displacement and compensated for at least economic displacement if they have lost their livelihoods, and could be addressed as part of a social investment programme.

- **“Land grabbing”:** There has been extensive reporting in the press and by civil society organisations in recent years of outright “land grabs” with little pretense of following the law and of villagers being deprived altogether of compensation for expropriation, receiving reduced payment for land, or being denied any recognition of ownership<sup>286</sup> by Government authorities, the military and business. Some of these incidents have been connected to O&G operations. In the complicated Myanmar land situation, there is therefore legitimate concern about land grabs in connection with existing O&G projects or anticipated projects and the source of tension with local communities and advocacy by civil society groups (who are increasingly better versed in international standards and international good practices). There are increasing calls from CSOs and also from the recent OECD Investment Policy Review for companies to use a process of free, prior, informed consent (FPIC) for any kind of land acquisition or use in Myanmar, and not only in connection with land belonging to or used by ethnic minorities.<sup>287</sup>
- **Speculation:** Companies should also be aware that there have reportedly been cases of speculators moving in to acquire land in areas where it is thought that investment projects may be implemented. These speculators seek to acquire land cheaply from original land users who are unaware of the development, hoping to profit from compensation payments. This can create tensions with the original users, who may feel cheated when land compensation is subsequently paid.
- **Detailed due diligence:** Longer-term relationships with the communities in their areas of operation can be influenced early on, positively or negatively, by processes for land acquisition and use. Given the lack of a uniform and accessible land registry establishing land ownership, the lack of recognition of customary ownership, and the significance of land based livelihoods and attachment to ancestral lands, any approach to land use and acquisition should recognise those customary rights and deal with the holders on an equal basis as more formal land owners. This requires detailed due diligence, with direct consultation with villagers and local authorities. Companies should be sensitive to the continuing fear of many villagers in raising

<sup>285</sup> Land Core Group, above, pp 23-24.

<sup>286</sup> The Land Core Group, a subset of the Myanmar-based NGO-led Food Security Working Group, has documented 13 cases of land confiscations in central Myanmar in September 2012 (Land Core Group, “13 Case Studies of Land Confiscations in Three Townships of Central Myanmar” Sep. 2012, on file with IHRB.). Over the last several years the Transnational Institute has focused on land rights problems in Myanmar’s borderlands where ethnic minorities live. See for example TNI, “Financing Dispossession, China’s Opium Substitution Programme in Northern Burma” (Feb. 2012); [“Developing Disparity: Regional Investment in Burma’s Borderlands”](#) (Feb. 2013), and “Access Denied: Land Rights and Ethnic Conflict in Burma”, (May 2013). Myanmar civil society, including those which are ethnic minority-based, have also reported on land grabs without compensation or recognition of customary ownership. The Karen Human Rights Group has documented land disputes and land grabs in Karen areas over a number of years. See KHRG website, particularly [“Losing Ground: Land conflicts and collective action in eastern Myanmar”](#) (Mar. 2013). The Human Rights Foundation of Monland has also reported on such abuses, particularly at the hands of the military, in ethnic Mon areas. See for example Human Rights Foundation of Monland, [“Disputed Territory: Mon farmers’ fight against unjust land acquisition and barriers to their progress”](#), (Oct. 2013).

<sup>287</sup> OECD, [“OECD Investment Policy Reviews: Myanmar 2014”](#) (March 2014).

concerns about land acquisition processes, meaning concerns may remain hidden and unresolved. Where the acquisition has been carried out by the Government, due diligence should also focus on identifying whether there have been deficiencies in Government consultations with communities (or indeed, any consultations at all), or deficiencies in expropriation and compensation processes, including with respect to customary owners or users of land, benchmarked against both national law and international standards. It cannot be taken for granted that land acquired or reallocated by the Government has been done in a manner in line with national law, international standards and community expectations. The SWIA team was informed that MOGE is in charge of land acquisition processes when expropriation is involved, often together with a land acquisition team that also involves the Settlement and Land Records Department. MOGE holds the title to any land acquired. The Operators signing PSCs must obtain land use or other certificates from land owners and pay compensation for permanent and temporary acquisitions as well as damages. Voluntary land acquisition by companies needs MOGE approval and consultation with regional authorities. As some form of cadasters are usually maintained in paper form at the township level, local authorities are often relied upon to identify who is the recognised owner of land.

- **Legacy land issues:** There may also be significant legacy issues around land allocated by the Government that, while potentially not the legal responsibility of companies coming in, nonetheless leaves a practical legacy of tension and distrust that risks escalating if ignored. Where deficiencies are identified in dealing with current and legacy claims, companies should engage directly, as far as possible, with the communities, rather than relying solely on land committees and Government authorities (although companies should cooperate and coordinate as necessary).
- **Minimising land use:** Given the lack of clarity on ownership, the high levels of shifting cultivation in some areas, the high levels of landlessness, there are clear risks of operations impacting people without any compensatory measures. In addition, given that land based compensation is uncommon, companies should be seeking to minimise their impact: limiting their footprint to the minimum possible, returning land when it is no longer used for operations, and seeking alternatives to outright purchase, such as leasing land and thereby providing a steady source of income to landholders, although restrictions on change of use of paddy land sometimes complicate the ability to do this.

## Resettlement

- **Gaps in the law:** The current legal framework, including even the more recent Farmland and VFV Laws, provide only general authorisations on expropriation “in the public interest” with no further procedural or substantive restrictions, leaving this process open to abuse. Myanmar also does not have detailed regulations defining specific compensation levels for all types of land<sup>288</sup> or on involuntary resettlement processes where it is necessary to move households or where there is economic but not physical displacement (although it does have some restrictions on what appears to

<sup>288</sup> However, there are some limited protections: foreigners who lease land from private owners or users are required to pay the current market value and submit the lease to the Myanmar Investment Commission (MIC). DICA, “Notification 39/2011” (2011), art. 15. The 1894 [Land Acquisition Act](#) provides for compensation at market value with adjustments, including for crops, Art. 23. Available at (unofficial translation).

be involuntary resettlement).<sup>289</sup> There are also no core principles or hierarchy of compensation approaches, which is contrary to international human rights law and other international standards. The objective for resettlement in line with international standards<sup>290</sup> is full livelihood restoration, not simply compensation for assets, with priority to land-based compensation over monetary compensation<sup>291</sup> in order to avoid loss of sustainable livelihood assets and the rapid dissipation of financial compensation. In addition, the current lack of transparency and consistency in land compensation provides opportunities for abuse. In many circumstances there is no effective process to object to acquisition or negotiate the level of compensation. Given the complete lack of guidance on voluntary or involuntary resettlement, companies should encourage the Government to apply IFC Performance Standards 1 and 5 and be guided by those standards themselves.

- **Draft EIA Procedures on involuntary resettlement:** The latest available English translation of the draft Environmental Impact Assessment (EIA) Procedures explicitly states that it does not apply to resettlement; instead projects involving resettlement or potentially affecting Indigenous People shall comply with separate procedures issued by responsible ministries, “and in the absence of such procedures all such Projects shall adhere to international best practice on Involuntary Resettlement...” If adopted as is, adherence to international best will become a requirement, not just an option.

#### Land in Areas Affected by Armed Conflict & Communal Tension

- **Added complexity:** In conflict-affected areas, the situation has added complexities. Many of these areas are not included in the national cadaster, or are considered VFV land by default. Some ethnic armed group administrations have their own systems of land registration, including recognition of communal rights, customary rights, and shifting cultivation. Weaknesses in these systems, corruption and lack of transparency mean that local populations are not always consulted on decisions, including the granting of logging and mining concessions and plantation agriculture. In some areas of contested authority, communities are sometimes not aware that such concessions have been granted, or by whom. Local armed group commanders may give authorisations without the knowledge of their headquarters.<sup>292</sup> In addition, large swathes of the borderlands are polluted by landmines and other explosive remnants of war, restricting their use by communities and other potential land users; the fact that they have not been able to be utilised by rights holders for long periods increases the chances of dispossession, and particularly susceptible to land grabs if future demining programs render this land safe to use. The critical importance of land issues in the peace process has been recognised through the proposed establishment within the

<sup>289</sup> Interestingly, if foreign investors seek to lease land but “in place that public not desirous to transfer and vacate, it shall not have the right to lease the land and invest.” (sic) DICA, Notification No. 39/2011, above, art. 28. Given the wide scope of this provision, whether the government can or will enforce this veto is questionable.

<sup>290</sup> See IFC, “[Performance Standard 5: Land Acquisition and Involuntary Resettlement](#)” (2012).

<sup>291</sup> International human rights on the right to an adequate standard of living, which includes the right to housing. See IFC, “Performance Standard 5”, as above. See also Asian Development Bank, “Involuntary Resettlement Safeguards” (2012). These standards recognise that compensation should be provided when land (including housing) is acquired or used and when operations result in a loss of assets or access to assets and restrictions on land use that leads to loss of income sources or other means of livelihood.

<sup>292</sup> See Karen Human Rights Group, “[Losing Ground: Land conflicts and collective action in eastern Myanmar](#)” (Mar. 2013) and TNI, “[Financing dispossession](#)” (Feb. 2012).

Myanmar Peace Centre of a Land Centre,<sup>293</sup> focused on policy issues and technical issues such as geospatial mapping.

- **Additional due diligence in Rakhine State:** In areas of inter-communal tension, such as Rakhine State where 143,000 people, the vast majority of them Muslim Rohingya, have been displaced by inter-communal violence beginning in June 2012, companies will need to carry out particularly careful due diligence on the provenance of any land they may need to use. They should first establish whether there is a connection to persons displaced by inter-communal violence. Since displaced populations should be entitled to return to their homes, it is important for companies to avoid contributing to the problem, or appear to give tacit support to, or benefit from, the activities which have resulted in the displacement. Companies should obtain advice from local experts including relief agencies and civil society organisations operating in the area before deciding how to proceed. See also [Part 6](#) on Region-Specific Conflict Considerations.

See also [Part 4.5](#) on Ethnic Minority Groups / Indigenous Peoples.

## C. Field Assessment Findings

### Consultation Prior to Land Acquisition

**Human Rights Implicated:** Right to take part in the conduct of public affairs, right to information

#### Field Assessment Findings

- There was **inadequate informed community consultation and participation** about projects or land acquisitions that can have an impact on communities' livelihoods (and other rights), particularly concerning pipeline projects. In many cases, communities:
  - received **no prior information** about the intention to acquire their land, or the project for which their land would be taken.
  - were **not consulted** or given an opportunity to become informed about the broader project. Instead, information was given only with respect to land compensation, often shortly before the arrival of construction crews for the pipeline.
  - were not made aware of, **nor given the opportunity to provide input** into the pre-feasibility or feasibility stages of the project design.
  - were given **no choices** or opportunity to negotiate about the plots of land taken or restrictions on land use.

### Due Process in Acquisition

**Human Rights Implicated:** Right to not be arbitrarily deprived of property, right to an adequate standard of living, right to freedom of expression

<sup>293</sup> [Myanmar Peace Centre](#)

### Field Assessment Findings

- **There was lack of basic due process in the procedures followed** (generally by Government authorities rather than a company) to inform villagers about the acquisition of their land, to seek to secure their consent to the land acquisition and to negotiate compensation. Communities:
  - **were not informed which Government authorities or companies were involved** in the discussions with them about the acquisition of their land, on whose behalf action was being taken, or how further information could be obtained, with the exception where “land committees” were put in place (see below).
  - **were not consistently given written documentation** setting out the conditions of the purchase of their land.
  - **were sometimes asked to sign documentation in a language that they did not understand.** The documentation was not translated from Burmese into a local language or was sometimes not even in Burmese (i.e. in foreign languages). (Some contracts were bilingual Burmese/English).
  - were sometimes told that **by signing the documentation they were also agreeing not to object to or obstruct the project.**
  - **were given a document where the Burmese translation of documentation did not match the English version of the document, or even reflect the same concepts.** In one village the binding English version of a document used the terms “compensation”, while the local Burmese version referred to the compensation as a “good will gesture”, thus undermining the concept that compensation was owed as a matter of right.
  - **were required to undergo additional, burdensome steps necessary to claim compensation** – e.g. to travel to the nearest regional administrative centre to claim the compensation, claim compensation payments from local authorities (rather than being paid directly), or pay bribes to local authorities to recover some proportion of their compensation payment.
- In most of the villages, villagers were compensated on the basis of Form 7 (formerly Form 105, and or tax form showing tax paid on land or property), or sometimes alternative documentation or even testimony from neighbours. Given the lack of a uniform and accessible land registry, being able to provide alternative forms of documentation to prove ownership is a significant protection but can also be a significant risk if this is used to bypass customary owners. **As a result, establishing land ownership, including customary ownership, requires more detailed due diligence**, often including direct discussions with villagers and local authorities.

### Compensation for Land Acquisition and Use

**Human Rights Implicated:** Right to not be arbitrarily deprived of property; right to an adequate standard of living; right to an effective remedy

#### Field Assessment Findings

Communities often complained of inadequate compensation for land, housing or crops,



and in particular:

- **Lack of transparency and documentation of rates offered** for land and crops. In principle it appeared that land and crops were compensated at market value which is an appropriate standard. This results in variation throughout the country depending on the market price in that location.<sup>294</sup> In some cases however, there was little or no transparent documentation on rates, and no negotiation. Given that rates varied, in the absence of transparency about the basis for calculations, resentment was found amongst villagers in some areas upon hearing of higher amounts being paid for land elsewhere.
- **For many there was no breakdown of payments, just a lump sum offered, making it difficult to verify whether they were receiving an appropriate amount.**
- **There was variation in the types of assets that were being compensated,** depending on location and company. In some cases permanently occupied land was compensated as well as compensation for 5 years' worth of crops if there was a crop on the plot. In other cases the team heard reports of farmers only receiving land compensation and 3 years' worth of crop compensation even for permanently occupied land. In the case of temporarily occupied land one operator provided 90% of the land value and 3 years' worth of crops, while another did not compensate for land. For the most part compensation for crops was offered, for example where land was damaged by soil overspill and one company gave compensation for 1 year's crop while another gave 150%, also continuing to compensate yearly if the damage continued.
- **There was less likelihood that loss of access to resource usage, customary land or communal land was compensated.**
- There was **frequent denial of claims for economic displacement** (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) resulting from ongoing operations.
- **Some did not receive any compensation at all for their land despite claims of appropriate documentation.** Some complained about the level offered (sometimes based on specific information on comparisons). There were complaints of Government officials soliciting or taking a cut in cash-based compensation for land.
  - In other cases, some villagers were satisfied with compensation received.
  - For one pipeline, "Land Committees" along the pipeline comprised of relevant authorities from different Government departments, MOGE and the companies provided, in principle, a coordinated approach to land acquisition and a single point of enquiry for villagers.
- **In principle, there is no legal impediment to providing compensation to women or women-headed households,** but households are registered in the husband's name and therefore **in general compensation was handed over to the husband in the family.** However, widows or single mothers would also be able to obtain compensation in the same way as male headed households.
- **Little consideration was given to alternative livelihoods for affected populations in the project areas or in designing appropriate compensation**

294 See IFC, "[Performance Standard 5](#)", Footnote 4.

### packages.

- No alternative land was reported as offered to those with land-based livelihoods, resulting in major impacts on livelihoods, especially where there was not sufficient additional land in a nearby area (see *Impact Summary on Livelihoods*).
- Payments were made in cash. **Many in rural communities have no access to or knowledge of banking to safeguard cash and were also unfamiliar with how to manage large amounts of money.** For some, compensation was spent quickly, leaving them with no livelihood or assets to fall back on and often few skills that would allow them to move into employment-based livelihood.
- Some companies and local officials are seeking to **improve transparency in the payment process**, by making payments publicly, in front of the concerned group, providing a clear and transparent register of payments, or providing payments directly into bank accounts when they exist.

## Involuntary Resettlement

**Human Rights Implicated:** Right to housing; right to an adequate standard of living

### Field Assessment Findings

- The team was not informed about any large-scale resettlements directly attributable to operations in the areas where they conducted the assessments. (See the national context section above for reports in other areas).
- The field assessments identified only limited, individual resettlement in the areas of the field work. **No assistance was provided in re-establishing the family in the new location.** Cash compensation was provided. However, it was up to those resettled to find a new location, move and build a new house.

## Access to Remedy for Land Grievances

**Human Rights Implicated:** Right to an effective remedy

### Field Assessment Findings

- Most villagers expressed **concern or even fear about speaking out** to raise complaints about the land acquisition process or compensation. Others noted they would be threatened if they complained.
- Others noted that complaints were futile due to **layers of bureaucracy**, being passed from one authority to the next, lengthy delays and active obstruction. No one spoke of having been able to change decisions on the taking of their land or their level of compensation. However in one case a local official was prosecuted and lost his job for confiscating land compensation payments.
  - A few companies had established their own grievance mechanisms with local contacts and local procedures to make the process more accessible to villagers (see [Part 4.1 on Stakeholder Engagement & Grievance Mechanisms](#)).
- Villagers were often **directed to MOGE** to make their complaints, yet MOGE liaison officers posted in companies are typically rotated into company operations for a

short period of time and do not have the expertise or training to deal with community complaints.

- There have been a number of examples of **localised protests** around land acquisitions in connection with O&G projects, one of which resulted in the jailing of protestors.

#### Myanmar Good Practice Examples:

- For one pipeline, "**Land Committees**" along the pipeline comprised of relevant authorities from different Government departments, MOGE and the companies provided, in principle, a coordinated approach to land acquisition and a single point of enquiry for villagers.
- Some companies and local officials are seeking to **improve transparency in the payment process**, by making payments publicly, in front of the concerned group, providing a clear and transparent register of payments, or providing payments directly into bank accounts when they exist
- The model of "**Village Rights Committees (VRC)**" makes complaint resolution a community process in the first step, helping vulnerable affected persons to raise justified concerns. If communities do not manage to solve the conflict the practice of "Legal Clinics" (involving the help of professional lawyer who visits the community as mediator) has been very successful.

#### Box 18: Relevant International Standards and Guidance on Land Issues, and Linked Initiatives in Myanmar

##### Relevant International Standards:

- [IFC Performance Standard 5 and Guidance Note – Land Acquisition and Involuntary Resettlement](#)
- FAO, "[Voluntary Guidelines on the Responsible Governance of Tenure](#)"

##### Relevant Guidance:

- ADB, "[Handbook on Resettlement, A Guide to Good Practice](#)"
- FAO, "[Guidelines on Compulsory Acquisition of Land and Compensation](#)"
- IFC, "[Handbook for Preparing a Resettlement Action Plan](#)"

##### Myanmar Initiatives on Land Linked to the O&G Sector:

- The UN-Habitat, Supporting the implementation of the [Land Administration and Management Programme \(LAMP\)](#) by the Myanmar Settlements and Land Records Department (SLRD)
- [Myanmar Food Security Working Group](#) and the [Land Core Group](#)

Project Level Impacts

# Labour





# Labour

**In this section:**

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

## A. National Context

Labour issues in Myanmar pose several challenges to responsible business conduct. For 50 years, independent trade unions and employer organisations were prohibited; laws covering labour protection were antiquated and/or restrictive; forced labour of civilians by the military and civil authorities was common; and child labour is still an ongoing problem. 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 wealth 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.

An estimated 70% of the population is engaged in agriculture or related activities; 23% in services, and 7% in industry.<sup>295</sup> Underemployment in Myanmar was 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike, as well as young people in particular.<sup>296</sup> However, there is a lack of reliable statistics and other accurate data in Myanmar with regard to labour. The Ministry of Labour, Employment and Social Security, with International Labour Organisation (ILO) support, will undertake a comprehensive national labour force survey in the third quarter of 2014.<sup>297</sup>

### Freedom of Association and the Right to Collective Bargaining

With respect to the protection of workers' and employers' rights and obligations, for the first time in 50 years, the 2008 Constitution and key new labour laws provide for independent trade union activity – though there are some gaps in protecting freedom of association in both the Constitution and the laws. The 2011 Labour Organisation Law permits the exercise of freedom of association and the 2012 Settlement of Labour Dispute Law provides for disputes resolution institutions and mechanisms. Hundreds of independent trade unions have since been registered, mostly at the enterprise level.

<sup>295</sup> Labour Background Paper commissioned for IHRB, p 2 (on file with IHRB).

<sup>296</sup> Underemployment refers to people who worked or had a job during the reference week but were willing and available to work more. ILO, "[Underemployment Statistics](#)" (accessed 25 July 2014).

<sup>297</sup> ILO, "[Myanmar sign agreement on National Labour Force Summary](#)", (14 November 2013). The survey is intended to inform national labour policy and will examine youth employment, child labour, forced labour, and social security.



On a national scale, there is an opportunity to build from scratch the sort of “development” model of industrial relations the country needs. The current law however promotes fragmentation of industrial relations by making it difficult for unions to establish themselves beyond the enterprise level. A lack of understanding, or in some cases entrenched attitudes, can see the new rights-based industrial relations framework drift towards a conflict model. This risk has been increased by the perceptions created by several high profile disputes and the weaknesses in the law and its implementation, which mean that, in practice, employers can discriminate against workers who seek to exercise their rights in accordance with the new laws. The ILO has recommended a number of amendments to the new laws on freedom of association to improve their functioning, including an obligation on parties to engage in collective bargaining in good faith, and to strengthen the enforceability of decisions of the labour arbitration bodies.

### Forced Labour

A major concern in Myanmar has been the widespread and systematic use of forced labour of civilians by the *tatmadaw* (the Myanmar army) and the civilian administration for several decades, despite the fact that the Government had ratified ILO Convention 29 against forced labour in 1955. There have been allegations of forced labour in relation to a variety of infrastructure projects, including in connection with security provided in the area of an international or domestic O&G pipelines. Since the reform process began in 2011, many observers, including the ILO, have welcomed the decrease in forced labour, but noted that the practice is still continuing in some areas<sup>298</sup>. President U Thein Sein has made a public commitment to end forced labour by 2015.

While there is now less risk to companies of forced labour being used in relation to projects, such as road construction, there is a need to remain vigilant, as it was a common practice for several decades, and local government and other authority figures still sometimes use it.<sup>299</sup> The ILO noted that while there are relatively few complaints of forced labour in the private sector, this may be because in Myanmar forced labour is generally associated with the Government.<sup>300</sup> However, in the past there were numerous allegations of forced labour in relation to O&G projects, most recently about the Shwe Gas Pipeline. In September 2011 a Myanmar NGO reported that forced labour was used to construct roads in Rakhine State and build pipeline-related infrastructure in Magwe Region.<sup>301</sup> The UN Special Rapporteur on Myanmar noted in his March 2010 report that he had received reports of rampant forced labour in areas near the Shwe gas pipeline and the Kanbauk to Myaing Kalay gas pipeline project in Southeastern Myanmar.<sup>302</sup>

<sup>298</sup> ILO Committee on the Application of Standards [Extract from Record of Proceedings](#) (June 2012), para 18.

<sup>299</sup> Meeting with ILO, 5 December 2013.

<sup>300</sup> ILO, “[Update on the operation of the complaint mechanism in Myanmar](#)”, report of the ILO Liaison Officer to ILO Governing Body, 319<sup>th</sup> Session, Geneva, (16-31 October 2013), GB.319/INS/INF/2. Please note that complaints include underage military recruitment.

<sup>301</sup> Shwe Gas Movement, “[Sold out, Launch of China pipeline project unleashes abuse across Burma](#)” (Sep. 2011).

<sup>302</sup> UN General Assembly, “[Progress Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana](#)”, A/HRC/13/48, (10 March 2010), section 112.

## Child Labour

Child labour is widespread throughout Myanmar, including as tea shop or restaurant attendants, street vendors, manual labour, waste collectors or beggars, in food processing and light manufacturing, and on farms in rural areas. The risk of child labour to companies operating in Myanmar is high, as they are working in a wide variety of industry sectors, although not generally directly in the O&G sector. Moreover, ascertaining someone's age in Myanmar is not always straightforward.

Birth registration in urban areas was reported at 94%, but in rural areas the rate was only 64%.<sup>303</sup> In May 2014 local media reported that the Ministry of Labour is aiming to eradicate the worst forms of child labour by 2015, in line with the Government's ratification of ILO Convention No 182 on the Worst Forms of Child Labour in December 2013.<sup>304</sup>

## Labour Laws

In addition to the laws on freedom of association and collective bargaining noted above, new laws with regard to labour passed by Parliament include the Employment and Skill Development Law (30 August 2013), the Social Security Law (August 2012), and the Minimum Wage Act, 2013. Other laws are believed to be in draft form or in the process of being drafted, including the Shops and Enterprises Act, 2013, the Occupational Health and Safety Act and the Factories Act Amendment Bill, 2013. The ILO is currently working with the Government to come up with an overall legal and policy framework, with the aim of drafting one comprehensive labour law.

The new Minimum Wage Law provides for salaried workers to have one day off per week with pay, and for the payment of over-time if a salaried worker works on the day of leave (Article 16d). Protections for daily wage workers is predictably less. However, if a worker in a daily wage job works less than the set hours per day not because of the worker, but because of the employer, the worker should still receive the full wage for the day (Article 16(e)). The law covers part-time work, hourly jobs and piecework (Article 16c) and provides that both men and women should receive the minimum wage without discrimination (Article 16f). The Minimum Wage Law also provides for penalties if the employer fails to pay the minimum wage<sup>305</sup> but the minimum wage rate, or rates, have not yet been set. The Labour Minister announced in January 2014 that it would be established by the end of the year.<sup>306</sup> Labour experts have noted that both employers and workers in Myanmar do not fully understand the concept of a minimum wage. Working hours are generally very long but with new labour laws in place, there is a focus on reducing hours.

The new Social Security Law (August 2012) provides for a health and social care insurance system; a family assistance insurance system; invalidity benefit, superannuation benefit and survivors' benefit insurance system; and an unemployment benefit insurance system from a social security fund, which both employers and workers

<sup>303</sup> UNICEF, "[Situation Analysis of Children in Myanmar 2012](#)" (2012).

<sup>304</sup> Eleven Media, "[Myanmar Vows To Root out Child Labour By 2015](#)", (4 May 2014).

<sup>305</sup> Ministry of Labour, Employment and Social Security, "[The Minimum Wage Law draft 2012](#)".

<sup>306</sup> Eleven Media, "[Myanmar to announce minimum wage by end of year](#)" (17 January 2014).

pay into. The Law revokes the Social Security Act 1954<sup>307</sup>, and came into effect on 1 April 2014.<sup>308</sup> Currently only 1% of the population is registered in the social security system, according to the head of the Social Security Board.<sup>309</sup> Social security rules and regulations were also due to be promulgated on 1 April 2014, making it mandatory for most companies to cover its employees regardless of income. Companies with two or more employees in the manufacturing, entertainment, transportation, extractive industries, foreign enterprises, and financial sector are required to pay social security.<sup>310</sup> The Ministry of Labour announced that some benefits from the new social security scheme would be paid beginning in April 2014.<sup>311</sup>

The Employment and Skills Development Law provides for skills training and a fund into which employers pay. The Law also provides for the establishment of an employment and labour exchange office by the Ministry of Labour, Employment and Social Security. Significantly, written employment agreements between employer and employee will now be required under Chapter 3 of the law. The law went into effect on 30 November 2013 and revoked the Employment and Training Act, 1950.<sup>312</sup>

The new Occupational Health and Safety Act is expected to be passed by Parliament in the latter part of 2014. There is a recognised need for an increase in the number of Government labour inspectors on workplace safety and health. According to the Ministry of Labour, new inspectors have been hired to work on the O&G sector, but they need to be trained before becoming operational. The 1951 Oilfields (Labour & Welfare) Act prescribes a wide range of protection measures for O&G workers, covering health, safety and worker welfare issues. It also covers working hours, holidays and extensive prescriptions on employing children as well as setting up an inspection service, complemented by a range of penalties but it is unclear whether there has been inspection and enforcement of these basic provisions.

### Awareness and Enforcement of Labour Rights

There is an overall lack of awareness by workers of these new legal rights and safeguards. Enforcement of the new laws is piecemeal, and full-scale implementation will be a long-term process. This was reflected in the findings of the field assessments, where labour conditions and worker satisfaction were reported to vary greatly, indicating a lack of consistency in enforcing labour laws – a recognised weakness in Myanmar.

<sup>307</sup> *The Social Security Law*, 2012, on file with IHRB.

<sup>308</sup> New Light of Myanmar, "[State is also exerting efforts to ensure fair protections without affecting the interest of both workers and employers](#)" (1 May 2014).

<sup>309</sup> The Irrawaddy, "[Burma's Social Security Enrollees to See Benefits Boosted by April](#)" (29 January 2014).

<sup>310</sup> Myanmar Times, "[Social security scheme in the pipeline](#)" (24 March 2014).

<sup>311</sup> The Irrawaddy, "[Burma's Social Security Enrollees to see Benefits Boosted by April](#)" (29 January 2014).

<sup>312</sup> *Employment and Skill Development Law* (30 August 2013), unofficial translation on file with IHRB.

## B. Key Human Rights Implications for the O&G Sector

### Workplace Issues

- **Trade unions:** There is a need to provide relevant information and explanation to employees and other workers on their labour rights, particularly in light of the many new laws and the fact that independent trade unions are permitted for the first time in 50 years. The very limited number of trade unions in the sector are unlikely to be ready to fulfil that role fully in the near future. Given the non-existent to nascent awareness and understanding of the right to freedom of association and collective bargaining, companies should ensure that their workers are aware of and able to exercise their rights, and engage constructively with trade unions where workers choose to establish them.
- **Benchmarking international standards:** Given the rapid succession of labour laws being adopted, it is likely that there will be overlap and contradiction within the laws, and missed opportunities to align with international labour standards. As noted above, the ILO is working with the Government to develop one harmonised, overarching labour law. Until such time, benchmarking policies and practices against international standards provides for sound worker-management relationships.<sup>313</sup>

### Expectations of Local Employment

- **Different perceptions of “local”:** There are high expectations of employment from local communities but very often a lack of skills and education matching job requirements. While companies may meet “local hire requirements” by hiring workers from other parts of Myanmar, for local communities “local” hiring means from within the very immediate area. This mismatch in terminology and perceptions may create longer-term tensions around projects, and genuinely “local” workers are likely to be frustrated with the limited numbers and levels of jobs available which were largely unskilled, low wage and temporary. According to the Foreign Investment Law, all unskilled workers must be Myanmar nationals. Beyond construction periods where unskilled labour is needed, local communities often do not have the skill set to match requirements in operational periods.
- **Local employment targets:** O&G companies may struggle to meet “local content” employment targets due to stiff competition for the limited pool of skilled Myanmar workers. The Foreign Investment Law has requirements for the appointment of skilled citizens: 25% within 2 years, at least 50% within 4 years, and at least 75% within 6 years. The model Production Sharing Contract (PSC) requires the O&G company entering into the contract to “endeavour to employ Myanmar citizens in accordance with the Foreign Investment Law and other laws, and to present a staffing plan” (clause 15.1); they must spend a minimum of \$50,000 per year on data and/or training (clause 15.2). MOGE is encouraging O&G companies to recruit fresh graduates and women. Under similar circumstances in other emerging economies, this competition has driven wage and price inflation, disproportionately impacting low paid employees or the informal segment of the workforce.

<sup>313</sup> In addition to the ILO core labour standards, IFC Performance Standard 2 on Labour and Working Conditions and Guidance Note provides relevant guidance on relevant issues.

- **Local employment during exploration:** Some companies have been told that the local employment rules in the FDI law do not apply during exploration. However, it may create tensions if local communities see companies operating in their area for three - four years with very little local employment.

### Forced Labour and Other Forms of Labour Exploitation

- **Forced labour decline:** While the incidence of forced labour in areas of O&G operations is diminishing, O&G operators should still be vigilant to the potential risks of forced labour related to their operations. There is still the potential for forced labour by the *tatmadaw* in connection with an extractive project to be a driver or at least a contributor to conflict between the Union Government and ethnic groups. The link between O&G operations and forced labour has been almost exclusively via the *tatmadaw* or local authorities conscripting local villagers for portering, either to carry supplies for the military that provides security around extractive operations and related O&G infrastructure like pipelines, or to supply labour to build roads or other infrastructure. As noted above, while the incidence of reported forced labour is decreasing, the ILO is not yet proposing to disband the Forced Labour Complaints Mechanism and change will take time to trickle down, particularly where there are financial, strategic or other advantages to be gained in using forced labour of local villagers.<sup>314</sup>
- **Other forms of labour exploitation:** Myanmar is a least developed country (LDC) with a high degree of rural poverty; uneducated populations; underemployment; many with a keen wish to be part of a changing economy; corruption and a current lack of worker awareness about their rights and few trade unions. Many of the jobs for such local communities will be in unskilled, daily wage jobs, often controlled via third party labour brokers operating either formally or informally. The field assessments indicated labour brokers taking a high percentage of the wages that were to be distributed to workers; basic protections for workers (written contract, defined working conditions, living wage) were often lacking; and long delays in payments to workers (2-3 months during construction) among Myanmar and foreign sub-contractors. In addition, the field assessments indicated that even for longer-term unskilled or semi-skilled employment such as local security guards, existing O&G operators are moving to outsource many non-core jobs. While the prevailing pattern has been one of out-migration from Myanmar to other countries in search of work, as the economy develops, that trend may reverse with migrant workers from surrounding countries entering in search of work, particularly in border regions. Migrant workers are often particularly vulnerable to labour exploitation.<sup>315</sup>
- **Migrant and temporary workers:** The circumstances described above create the possibility of exploitative working conditions and practices that can in some cases fall within the definition of forced labour – where work is undertaken by a person under the menace of a penalty. Workers indicated they are keen for any kind of paid work, so

<sup>314</sup> The ILO reports a reduction in occurrences generally throughout the country but notes that “forced labour remains a problem,” and that the “number of reported cases of forced labour in the private sector is relatively small ... but that this does not necessarily reflect the actual situation as there appears to be a general belief that forced labour is in some way an offence committed only by the Government.” ILO, [“Update on the operation of the complaint mechanism in Myanmar”](#), GB.319/INS/INF/2 (October 2013).

<sup>315</sup> See the [Dhaka Principles for Migration with Dignity](#).



they are often very reluctant to speak out about what can be exploitative working conditions. Companies will need to pay careful attention to the working arrangements and conditions for day labourers or temporary workers engaged through a third party to ensure that they are not directly linked to situations of exploitation. International labour standards prohibit labour brokers from taking fees from workers for job placements; instead, any placement fees should be paid by the employer. While the Myanmar Government has not ratified this particular international labour convention,<sup>316</sup> it is a global standard in this emerging area of human rights risk that serves a relevant guide for company practice. Employers should set in place a clear recruitment policy for hiring of staff or use of labour brokers; ensure that supervisors and managers are aware of the signs of exploitation; and understand that accepting payments or other inducements from labour brokers or workers is prohibited; monitor the allocation of jobs and use of agencies for signs of suspicious practices; and ensuring that all workers, including temporary workers, have access to the grievance mechanism. The risks of labour rights violations tend to increase with each tier of the supply chain. Most negative human rights impacts tend to occur to those workers in lower-skilled, lower paid, manual labour positions which are temporary or irregular and was often dependent on whether the workers were contracted directly for an O&G operator or for their sub-contractors.

### Child Labour

- **Business partners:** While there is a very low likelihood of child labour in direct O&G operations in skilled operations, given the prevalence and general acceptance of child labour in Myanmar and the difficulties of validating age, companies should be alert to the possibility of child labour being used in supplying products or services, such as in construction or catering, directly linked to their operations. As noted above, assessments will need to include a specific focus on different vulnerable groups, and there are an increasing range of tools available on children to assist companies.<sup>317</sup> (See also [Part 4.6](#) on Groups At Risk)

### Discrimination

- **Female representation in the workforce:** Discrimination against women and girls in education and the workplace is widespread.<sup>318</sup> Educational institutions related to O&G, such as engineering, require female students to have higher marks than their male counterparts. MOGE is encouraging companies to hire female engineers which is an important signal promoting women in non-traditional roles in the sector. The current rate of female employment in the sector is low, as it is in many other countries. Similarly, as in other countries, it will take positive, active steps by employers to increase their percentage of female workers beyond traditional roles in catering and cleaning. (See [Part 4.6](#) on Groups At Risk)

<sup>316</sup> ILO, *C181 - Private Employment Agencies Convention*, 1997 (No. 181).

<sup>317</sup> UNICEF and the Danish Institute for Human Rights, "[Children's Rights in Impact Assessments - A guide for integrating children's rights into impact assessments and taking action for children](#)" (2013).

<sup>318</sup> For example, in Coca Cola's report to the US State Department on its activities in Myanmar, the company highlighted that it found that women were being paid approximately 11% less than male colleagues for the same work. See: <http://www.ihrb.org/commentary/staff/coca-cola-report-myanmar-operations.html>

- **Ethnic and religious discrimination in the workforce:** Employers need to be aware of the potential for ethnic and religious tensions and discrimination in recruitment and the workplace, as workers' ethnicity/religion will not be readily apparent, particularly to non-Myanmar managers. Inter-communal tensions between Buddhists and Muslims elsewhere mean companies will need to be alert to the potential for discrimination recognising that who represents the company and in which positions, is an issue of high importance.<sup>319</sup> The best way to understand the ethnic make-up of the workplace is challenging; surveys of nationalities in mixed settings may create more tensions than they solve and many Myanmar citizens anyway are of mixed origin or self-identify in various ways. A better approach may be management awareness of the sensitivities, clear company policies on non-discrimination, reinforcement of those messages and modelling an approach to equal opportunities that includes active measures to achieve those outcomes. There are few easy answers on how to address hostility that may spill over into the workplace; specialised expertise and re-emphasising a commitment to non-discrimination are a good place to start.
- **Community composition considerations:** It is also essential that companies are aware of the ethnic composition of communities where they operate and from where they may recruit. One location may have a mixture of ethnicities. For example in Mon State, there may be Mon, Kayin/Karen and even Pa-O close by in addition to Bamar; and in the Rakhine State there are Rakhine Buddhist communities and Muslim communities in the same area. Different ethnicities have different languages and traditions, which need to be taken into account in the workplace.
- **The disabled:** The disabled are an invisible group in the population and even more invisible in the workforce. As in many other countries, it will take positive, active steps by employers to recruit and maintain disabled workers, and making them an integrated part of a workforce not used to disabled co-workers.<sup>320</sup> Where possible, companies may consider incorporating the principles of universal design (defined as the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design). (See also [Part 4.6](#) on Groups At Risk)
- **Lesbian, gay, bisexual and trans-gender (LGBT):** Employers need to be aware of discrimination against LGBT people in the workplace and society more generally, and the fact that same-sex relationships are still criminalised. (See also [Part 4.6](#) on Groups At Risk)

### Health & Safety

- **Accident rate data:** Health and safety are core concerns in O&G operations with company standards among big operators typically far exceeding the basic provisions in the 1951 Oilfields (Labour & Welfare) Act. Unlike many other countries, the accident rate at O&G operations in Myanmar is not publicly available.
- **Health risks:** Given the range of communicable diseases (malaria, TB, HIV/AIDS) in the country, this can pose a risk to operations by affecting the availability of a labour pool and the productivity of the workforce, just as actions by companies involved in an

<sup>319</sup> From IHRB, "[From Red Flags to Green Flags: The corporate responsibility to respect human rights in high risk countries](#)", (2011), pp. 73-76.

<sup>320</sup> See MCRB, Deaf Resources Centre, "[Corporate Social Responsibility and Disability \(CSR-D\) – A Guide for Companies](#)" (Sept. 2014). See also, ILO, "[Disability in the Workplace: Company Practices](#)" (2010).

O&G project can exacerbate the spread of such diseases. Integrating assessment of potential health impacts into ESIA's and other steps (such as health checks – provided the information will not be used for exclusion from employment or any other form of discrimination) can provide relevant information in devising a strategy for workers and the local communities. In many places long-haul truckers have significantly higher rates of sexually transmitted diseases than the host communities. A specific education and training programs for transportation contractors may be necessary if there are a lot of trucking services to be used.

### Labour Rights among Sub-Contractors

- **Business partners:** Local Myanmar companies will need support in meeting a wider range of contracting requirements around quality, health and safety, anti-corruption, etc. Operators and the main contractors should put in place specific contractual requirements together with monitoring, support, and relevant incentives and disincentives with business partners supplying goods and services to prompt uptake and respect for relevant international, national and company standards. As highlighted during the field assessments, health and safety issues were raised by workers of sub-contractors, in lower-skilled, lower paid, manual labour positions working on a temporary or irregular basis where working conditions and preventative measures could be haphazard, with unclear access to operator provided health services or facilities.

## C. Field Assessment Findings

Employment Status
<p><b>Human Rights Implicated:</b> Right to just and favourable conditions of work; right to equal payment for equal work</p>
<p><b>Field Assessment Findings</b></p> <ul style="list-style-type: none"> <li>■ Among workers with sub-contractors, <b>written employment contracts</b> were not always provided, or where there were written contracts that workers were asked to sign, they were not always given a copy to retain for their records.</li> <li>■ <b>Wage slips</b> itemising pay and deductions were not always provided, other than for skilled, permanent staff.               <ul style="list-style-type: none"> <li>• One operator has introduced standard requirements for contracts and payslips by its subcontractors.</li> </ul> </li> <li>■ <b>Long-term status as “temporary” staff</b> was common. In order to avoid the costs associated with pensions and social benefits of permanent workers, workers are often held in temporary positions for years, facing worse working conditions than permanent employees and without access to social benefits.</li> <li>■ There were common cases of <b>employment agencies and brokers</b>, which are regularly used during construction phases of O&amp;G projects in Myanmar, and increasingly for other services, <b>taking large placement fees</b> directly from workers in direct contravention of international law and labour standards.</li> <li>■ Operators are not commonly practicing heightened <b>oversight of contractors’</b></li> </ul>

labour standards.

### Working Hours, Wages and Benefits

**Human Rights Implicated:** Right to just and favourable conditions of work; right to an adequate standard of living

#### Field Assessment Findings

- **Temporary daily wage workers** typically work every day possible to maximise income while work is available, thereby exceeding the limits under the labour law.
- **Overtime** pay is very rare in MOGE, though it was paid by many other companies.
- **Awareness of rights to wages and benefits varied considerably.** Many workers admitted to a **very low level of understanding of their rights** vis-à-vis employers or the Government. There was also little to no information regarding labour rights or working conditions shared proactively by most companies with their workers, which will be important as a number of new labour laws, such as the minimum wage law have recently come into force.

### Health, Safety & Environment (HSE)

**Human Rights Implicated:** Right to the highest attainable standard of physical and mental health; right to life, liberty and security of the person

#### Field Assessment Findings

- **HSE practices vary** between companies as well as sub-contractors; some of the international O&G companies and international service providers typically have robust HSE practices. Many operators maintain the same HSE requirements for sub-contractors working on site.
  - Through contractual requirements, monitoring and support, there is an opportunity to build the awareness and skills of local companies around HSE management. One large company does this for their subcontractors.
- Workers in some operations noted a **lack of HSE training or HSE awareness** by supervisor to workers which in some cases led to dangerous worker apathy about the need for careful attention to HSE.

### Freedom of Association & Collective Bargaining

**Human Rights Implicated:** Right to assembly; right to freedom of association and collective bargaining

#### Field Assessment Findings

- **Only three labour** organisations in the O&G sector had been formed across the companies operating within the six project areas visited.
- This appears to be due to a **lack of understanding amongst O&G workers regarding the role of trade unions** (labour organisations), rather than complaints

about active suppression or harassment as has been exhibited in other industries. Independent unions are new in Myanmar and labour is not yet well organised. Workers also generally lacked of awareness about alternatives to trade unions where they could address their grievances.

- One company had the ILO present a pilot session about the concept of union with their workers last year.
- There was a **lack of worker-management engagement** in most companies, and only a few companies provided grievance mechanisms through which workers could raise complaints regarding their jobs and seek a resolution.
- **Unskilled workers tend to be relieved to secure a job at all** due to greater demand for work than supply of jobs available. This leads to a tendency for workers to **refrain from raising workplace and employment related complaints**, such as unpaid or inadequate wages, poor health and safety (H&S) standards, or barriers to unionising.

### Non-Discrimination and Equal & Fair Treatment

**Human Rights Implicated:** Right to non-discrimination; right to work; right to just and favourable conditions of work

#### Field Assessment Findings

- There was a fairly clear and **assumed gender division of roles** (for example regular sentiments of “women aren’t doing these jobs as these are for men”) that was rarely being challenged by local workers or the companies. The extractive sector typically has a very low percentage of women across a wide range of jobs and this was evident across the field assessments.
- **Local communities in some cases noted the tensions that would be created in workplaces if Muslims were hired.** This indicates the high level of challenge in applying a non-discrimination policy in the workforce in Rakhine in particular, though reported discriminatory attitudes are also widespread throughout the country. One company had placed a local Muslim worker offshore as a preventive step at a time of tension.
- The impact of the **influx of other workers from some surrounding countries**, as co-workers and as managers **was less remarked upon** than might be expected; instead comments tended to focus on particular incidents of discriminatory behaviour. However there was a recent well-publicised violent incident between foreign and local workers in a company which resulted in damage to property.

### Provision of Facilities to Workers

**Human Rights Implicated:** Right to an adequate standard of living; right to just and favourable conditions of work; right to non-discrimination

#### Field Assessment Findings

- **Housing** was not consistently provided around construction sites, but was generally



provided in permanent sites. In some sites housing for Myanmar nationals was separate from housing for foreign workers, whereas in other sites, all workers were provided housing together of the same standard.

- Most non-permanent workers stay in camps in order to be available for the daily job allocations each day. The field team also noted that at one site many workers reported having to **construct their own shelters**, the quality of which can be poor and inadequate to keep them dry, warm and protected. As such, workers **experience poor housing quality and sanitation levels**, for themselves as well as their families staying there.

### Forced Labour and Child Labour

**Human Rights Implicated:** Right to freedom from forced labour and servitude; right to freedom from child labour; right to an adequate standard of living; right to education

#### Field Assessment Findings

- Occasional cases have been reported locally by community-based organisations about **forced labour** by local authorities on infrastructure related to O&G and not by companies, but the assessment team did not observe any cases directly.
- The assessment team did not observe cases of **child labour** within any of the sites visited. Nor was this expected, given industry practice and emphasis on health & safety. Child labour is a recognised common phenomenon in the Myanmar but would be more likely to be found in the tea shops and bars near O&G sites.
- **Age verification** of workers was routinely practiced at the projects observed.

### Business Relationships

**Human Rights Implicated:** Right to just and favourable conditions of work

#### Field Assessment Findings

- There was lack of respect for various labour rights, such as working hours and documented contracts among workers in some parts of the **value chain** of **business relationships**, which took place in both foreign and Myanmar companies.
- The more rigorous control of working conditions at operators is **not consistently carried through to business partners**, even where there may be contractual conditions committing sub-contractors to meeting business partners' standards. A number of operators noted that they have such commitments and monitoring systems in place, though it is often focused on principal, long-term business partners.
- Some companies noted the practice that recruitment agencies or sub-contractors **were taking a disproportionate share of the budget allocated for worker's wages**, pocketing it as profit while leaving workers earning less than minimum or subsistence wages.

**Myanmar Good Practice Examples:**

- **Due diligence on business relationships:** One operator has introduced standard requirements for labour contracts and payslips to be provided to workers by its subcontractors.
- **Awareness raising among workers on labour rights:** One company had the ILO present a pilot session about the concept of trade unions to their workers last year.

**Box 19: Relevant International Standards and Guidance on Labour Issues, and Linked Initiatives in Myanmar****Relevant International Standards:**

- IFC/World Bank Group:
  - [Performance Standard 2 and Guidance Note – Labour and Working Conditions](#)
  - [General Environmental, Health and Safety Guidelines](#)
  - [Environmental, Health and Safety Guidelines for Offshore Oil and Gas Development](#)
  - [Environmental, Health and Safety Guidelines for Onshore Oil and Gas Development](#)
- ILO, [Declaration on Fundamental Rights and Principles at Work](#)
- [UN Guiding Principles on Business and Human Rights](#)

**Relevant Guidance:**

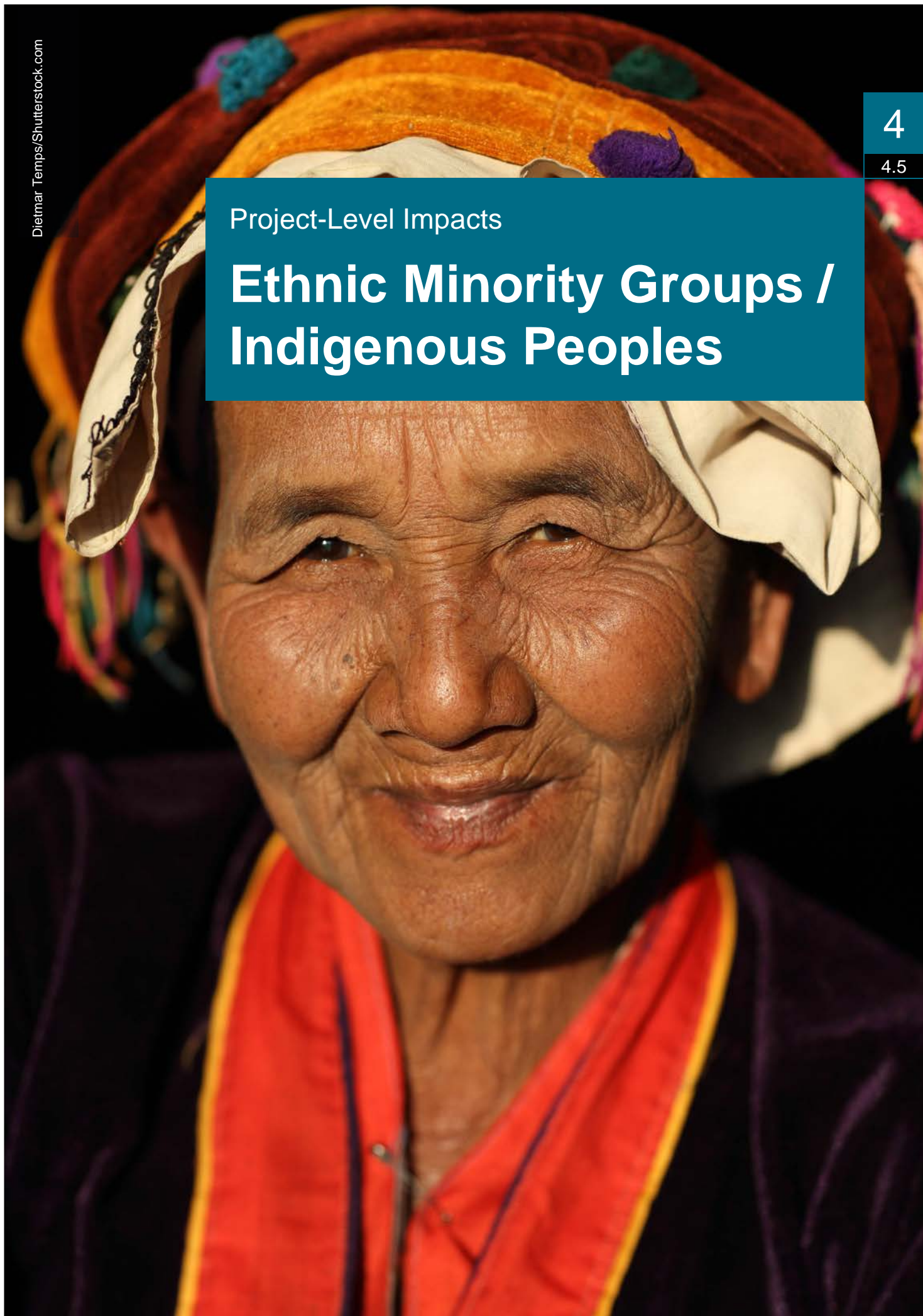
- IFC:
  - [“Good Practice Note: Non-Discrimination and Equal Opportunity”](#)
  - [“Good Practice Note: Workers’ accommodation: processes and standards”](#)
  - [“Measure & Improve Your Labor Standards Performance: Performance Standard 2 Handbook for Labor and Working Conditions”](#)
- IHRB, [“Dhaka Principles for Migration with Dignity”](#)
- ILO:
  - [“Indicators of Forced Labour”](#)
  - [“Combating forced labour: a handbook for employers and business”](#)
  - [“Working Conditions of Contract Workers in the Oil & Gas Industry”](#)
  - [“The Labour Principles of the UN Global Compact – A Guide for Business”](#)
- Verite, [“Help Wanted programme and Fair Hiring Toolkit”](#)

**Myanmar Initiatives on Labour Linked to the O&G Sector:**

- ILO, [initiative Decent Work Country Programme in Myanmar](#)
- ILO, [Forced Labour Complaints Mechanism](#)
- Government of Norway, [Capacity building and technical assistance on implementation of the Freedom of Association Law](#)

Project-Level Impacts

# Ethnic Minority Groups / Indigenous Peoples



# ETHNIC MINORITY GROUPS / INDIGENOUS PEOPLES

**In this section:**

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Research Findings

## A. National Context

### Ethnic Minority Identities and Political Boundaries

Myanmar is one of the most culturally diverse countries in the region, and ethnicity is a complex, contested and politically sensitive issue where ethnic groups have long believed that the Government manipulates ethnic categories for political purposes.<sup>321</sup> Myanmar's ethnic minorities make up an estimated 30 - 40% of the population, and ethnic states occupy some 57% of the total land area along most of the country's international borders.<sup>322</sup> The Constitution makes no reference to ethnic minorities. It instead uses the term "national races". However this term is not defined by the Constitution, and is generally interpreted by applying the 1982 Myanmar Citizenship Law, which defines the 135 national races in its 1983 Procedures.<sup>323</sup> Under the Citizenship Law, nationals of Myanmar include the "Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D."<sup>324</sup> Almost all Rohingya are denied citizenship under the 1982 Citizenship Law – either because they do not meet its stringent and discriminatory citizenship requirements, or where they do, because they lack the documentary evidence required. People of Chinese, Indian or Nepali heritage are mostly denied full citizenship under this law because they do not automatically qualify under "national races".

The 2014 national census used the 135 categories of national races, with people required to check one of them, or indicate "other"; there was no option to indicate the often mixed heritage of many residents. This categorisation is strongly contested by ethnic minorities, as they believe it does not accurately represent their true ethnicity and also that the Government, comprised primarily of ethnic Bamars, is using this to lower the real number

<sup>321</sup> International Crisis Group, "[Myanmar Conflict Alert: A Risky Census](#)" (Feb. 2014).

<sup>322</sup> Transnational Institute/Burma Centrum Netherland, "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)", (May 2013).

<sup>323</sup> See: Burma Library, "[Burma Citizenship Law of 1982](#)".

<sup>324</sup> Article 3, Myanmar Citizenship Law.



of each broad ethnic group. A last minute Government decision prevented those Muslims in Rakhine State identifying as Rohingya to write in “Rohingya” as their ethnic group during the census process.<sup>325</sup>

Political boundaries in Myanmar are to some extent organised according to ethnic demographics. Seven states are named after seven large ethnic minority groups – namely, Kachin, Kayah, Kayin, Chin, Mon, Rakhine, and Shan States. Although the Bamar do not have a specific state named after them, they are the dominant ethnic group living in the country, especially in the seven Regions (Sagaing, Magwe, Tanintharyi, Mandalay, Yangon, Ayeyarwady, and Bago). There are also six self-administered areas that are part of Regions or States, each named after the minority national race that forms the majority in the relevant area (Naga, Danu, Pa-O, Palaung, Kokang and Wa Self-Administered Areas)<sup>326</sup>. Myanmar national law sets out rights of ethnic nationalities to representation in State parliaments.

### Ethnic Minorities and Armed Conflict

Non-international armed conflict between ethnic minority armed opposition groups in the border areas and the central Bamar-dominated Government broke out shortly after independence in 1948.<sup>327</sup> Bitter and protracted conflict has continued ever since. A nationwide peace process is currently ongoing, with involvement of the Government and 16 ethnic armed groups. A nationwide ceasefire accord is under negotiation, with the aim of signing the accord by August 2014; however, this timeframe may not be met. The next step of the process will be a structured political dialogue involving not only ethnic armed groups, but other national stakeholders.

In its decades-long counter-insurgency campaigns against various ethnic minority armed opposition groups, the Myanmar army has committed a wide range of violations of international human rights and humanitarian law. As troops entered ethnic minority villages, they seized foodstuffs, destroyed villages, used civilians for forced labour, particularly portering, killed and tortured civilians, and forcibly displaced them. Armed ethnic minority opposition groups have also committed abuses, although to a lesser degree.<sup>328</sup>

Ethnic grievances have centred on these abuses; the lack of self-governance and resource sharing with the central Government; discrimination and marginalisation; religion; and lack of education in ethnic minority languages. Many ethnic minority leaders believe that the Burman-dominated central government instituted a policy of “Burmanisation”, which has resulted in suppression of ethnic minority cultures, languages and religions and ethnic people being treated as “second-class citizens”.<sup>329</sup>

<sup>325</sup> See International Crisis Group, “[Counting the Costs: Myanmar’s Problematic Census](#)” (15 May 2014).

<sup>326</sup> Article 56, Constitution.

<sup>327</sup> At the same time, armed conflict broke out between the government and the Burman-dominated Burma Communist Party.

<sup>328</sup> For a full discussion of the human rights situation in the counter-insurgency context, see reports from Amnesty International from 1988 – 2008, and Human Rights Watch.

<sup>329</sup> For a further explanation and discussion of these issues, please see Transnational Institute/Burma Centrum Netherlands reports from 2011 to 2013.



Conflict has greatly inhibited economic development in the ethnic border areas, and poverty rates in these areas are high. For example 73% of the population in Chin State lives below the poverty line, 44% in Rakhine State (though the World Bank's reinterpretation of the data suggests a rate of 77.9%) and 33% in Shan State; the national poverty rate is 26% (the World Bank's reinterpretation of the data reveals a 37.5% rate – see [Part 4.2](#) on Communities).<sup>330</sup> At the same time ethnic minority states are rich in natural resources, including minerals and gems, hardwoods, and hydropower; there are also natural gas deposits off-shore from these states that are national assets, though the residents of these areas do not necessarily see it that way. Significant natural gas deposits are present in Myanmar territorial waters off the coasts of Rakhine and Mon States and Tanintharyi and Ayeyarwady Regions.

Ceasefires have made land more available to commercial interests, some of which are linked to the central Government and the military. Ethnic minority armed groups also have business interests in their territories. At the same time these areas are highly militarised, including Myanmar army troops and allied militias,<sup>331</sup> ethnic minority armed groups, and armed criminal elements. This has resulted in very poor land governance, with a heightened risk of land grabs, instability and a climate of fear.<sup>332</sup> Future demining operations that make land more accessible and commercially valuable will likely exacerbate these risks (see further [Part 4.3](#) on Land).

### Indigenous Peoples

Indigenous peoples are recognised as being among the world's most vulnerable, disadvantaged and marginalised peoples. Due to their general social and economic marginalisation, indigenous peoples are particularly at risk of human rights impacts connected to business activities and are often excluded from decision-making processes and other consultations regarding matters that may impact them.<sup>333</sup> The recognition of indigenous peoples' rights has been a long-contested process and remains so in several parts of the world, though with significant political movement in favour of recognising a distinct set of human rights in the UN Declaration on the Rights of Indigenous Peoples in 2007.<sup>334</sup>

There has also been increasing engagement from companies, particularly the extractive sector, at policy and practice levels, in recognising indigenous peoples' rights and developing approaches – though in many places indigenous peoples remain sceptical and even hostile to extractive industries, owing to negative experiences.<sup>335</sup>

<sup>330</sup> ADB, "[Interim Country Partnership Strategy: Myanmar 2012 – 2014, Poverty Analysis \(Summary\)](#)" (2012).

<sup>331</sup> There are dozens of militias formed by the government; some of them known as "people's militias". These groups are armed and operate in ethnic minority states.

<sup>332</sup> Transnational Institute/Burma Centrum Netherland, "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)" (May 2013). See other reports by Transnational Institute from 2011 to 2013, and also reports by the International Crisis Group, the Karen Human Rights Group, the Shan Human Rights Foundation, and the Human Rights Forum of Monland.

There are political, legal, policy and practical considerations to be taken into account in addressing indigenous peoples' rights in Myanmar. The term "indigenous people" is not widely understood, nor is the term generally used (this is explored in the Research Findings below). However, there is a growing body of national and international law on the rights of indigenous peoples that recognises the cultural and other specificities of indigenous peoples; calls for special measures to be adopted to safeguard the persons, institutions, property, labour, cultures and environment of these peoples; recognises their right to freely determine their political status and freely pursue their economic, social and cultural development; and sets out processes for engaging with indigenous peoples and tribal peoples about their development, including through a process of free, prior and informed consent (FPIC).<sup>336</sup>

## B. Key Human Rights Implications for the O&G Sector

### Applying International Standards on Indigenous Peoples

- **The concept of indigenous peoples in Myanmar:** Ethnic identity is an important dynamic in Myanmar society that will play out in many ways in relation to extractive sector policy and projects, particularly in areas that are emerging from long-running conflict or still suffering from inter-communal violence. Previously, ethnic identity was generally not expressed in terms of broader international standards on indigenous peoples' rights, but that is changing as a result of capacity-building programmes and international networking. O&G companies (and others) with experience in engaging with indigenous peoples rights elsewhere are likely to see increased references in Myanmar to international standards on indigenous peoples as a framework for engagement.<sup>337</sup>
- **Draft EIA Procedures on indigenous peoples:** The latest available English translation of the draft Environmental Impact Assessment (EIA) Procedure provides for consultation but does not specifically refer to FPIC. It also explicitly states "Projects involving resettlement or potentially affecting Indigenous People shall additionally comply with separate procedures issued by responsible ministries, and in the absence of such procedures all such Projects shall adhere to international best practice on Involuntary Resettlement and Indigenous People." If adopted as is, adherence to international best practice on indigenous peoples will become a requirement, not just an option.<sup>338</sup> The OECD has recommended the use of free, prior and informed consent (FPIC) for all land acquisitions, not just those involving ethnic minorities / indigenous peoples.<sup>339</sup>
- **International financial institutions safeguards concerning indigenous peoples:** Several international financial institutions (IFIs) including the Asian Development Bank (ADB) and the World Bank Group (WBG) are considering how to apply their safeguard

<sup>337</sup> See for example, International Alert, "[Free, prior and informed consent in Myanmar](#)", (Oct. 2012).

<sup>338</sup> OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014). See for example, UNDRIP (Art. 10 and 28), and IFC Performance Standard 7, which requires companies to obtain the free, prior, informed consent of indigenous peoples (FPIC) in certain circumstances (para. 12-17).

<sup>339</sup> OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014).

policies in Myanmar, including on indigenous peoples.<sup>340</sup> Since there are unlikely to be major changes in national policy under the existing Constitution, the evolving IFI approach to indigenous peoples in Myanmar -- and the critical feedback they are already receiving -- can probably provide practical lessons to O&G companies on applying these relevant international standards in the Myanmar context.

### Operations in Ethnic Minority Areas, including those Affected by Armed Conflict

- **Local trust building:** The field assessments indicated that current practice in Myanmar in the extractive sector involves little to no consultation with communities. That indicates that there is a long way to go towards a far more consultative, consensus based approach for companies and communities on land, resources and more general operations issues. In the ethnic states, this will require a greater effort and longer-term trust building. Engagement in local languages will be important.
- **The legacy of history:** The experience of many ethnic armed groups during the previous round of ceasefires in the 1990s was that “no war” did not equate to “peace”, since a plethora of armed groups remained in control of a confusing and overlapping patchwork of territories, and continued to fund their activities through informal taxation, resource exploitation and various illegal activities. New economic actors that entered these areas after the earlier ceasefires generally resulted in negative rather than positive outcomes for local communities. There is considerable concern now, among armed groups and communities that their areas will be vulnerable to further economic exploitation, and companies with operations in these areas will inevitably face a high level of concern and suspicion that they will have to address.
- **Benefits sharing:** Key demands of ethnic groups are for revenue-sharing arrangements between the centre and the states/regions (which will likely be addressed in the future political phase of the peace process, but not the current constitutional amendment process), as well as much greater local control of commercial activities in their areas. O&G companies should be sensitive and responsive to the prevalent view that ethnic minorities see very little benefit from O&G extraction in their areas.
- **Effective consultation:** In armed conflict-affected areas, there are additional challenges for effective consultation. The Myanmar State has historically never been present in many of these areas, and its legitimacy is fundamentally questioned. O&G companies with activities in these areas will need to undertake detailed consultations with ethnic armed groups who are the de facto authority in many of these areas. Wherever possible, they should seek to engage with ethnic representatives directly, while being careful not to undermine or contradict on-going peace processes.<sup>341</sup> However, as these groups do not necessarily represent the interests and concerns of all communities in these areas, such consultation should not be seen as a substitute for community consultation. It should be recognised that in conflict-affected areas,

<sup>340</sup> The ADB is carrying out a “country systems safeguard” review, that covers the ADB safeguards on indigenous peoples. The World Bank has a safeguard policy on indigenous peoples and IFC as a Performance Standard on indigenous peoples. The World Bank has already applied its Indigenous Peoples Safeguard Policy to a [project in Myanmar](#).

<sup>341</sup> IPIECA provides a summary of emerging practices in relation to the oil and gas industry interaction with Indigenous Peoples, “[Indigenous Peoples and the oil and gas industry: context, issues and emerging good practice](#)” (April 2012).

such consultation is difficult. People may not always feel free to speak openly, and there can be serious risks to people if consultations are mishandled. It is advisable that such consultations be facilitated by individuals or organisations with a strong track record of conducting such consultations in these areas, and with detailed knowledge of local political, ethnic and conflict dynamics. In addition, companies may need specialist advice from anthropologists or other social scientists with expertise in ethnic minority cultures in Myanmar.

See further the [Part 4.3](#) on Land, which highlights concerns around national law failing to adequately recognise customary and communal land rights.

## C. Research Findings<sup>342</sup>

### Recognition of Indigenous Peoples

**Human Rights Implicated:** Right to determine their own identity or membership in accordance with their customs and traditions; right to self-determination

#### Assessment

- The recognition of certain groups living in Myanmar as “indigenous peoples” is **unclear in law and contested in practice.**
- **The Myanmar Constitution and most domestic laws are steadfast in not acknowledging any concept of special minority or indigenous groups** who have additional or special rights.
- The **Foreign Investment Law refers to “ethnic nationalities” or “native peoples”** (depending on the translation) and specifically allows the Myanmar Investment Commission (MIC) to restrict or prohibit foreign investment activities “which can affect the traditional culture and customs of the national races within the Union;” unless the investments is found to be “for the interest of the Union and citizen especially the native people with the approval of the Union Government”. This approval shall take into consideration the opinions from the local population and civil society, relevant regional administrative entities and the region or state government.<sup>343</sup>
- **Myanmar has not ratified ILO Convention 169 - Indigenous and Tribal Peoples Convention.** However, **Myanmar voted in favour of endorsement of the UN Declaration on the Rights of Indigenous Peoples in 2007**, while noting that it “would seek to implement it with flexibility.” The Myanmar statement did not take a position of whether there are or are not indigenous peoples in Myanmar. The **standard working definition for qualification as an “indigenous people”** uses several criteria: historical continuity; commitment to preserving ethnic identity;

<sup>342</sup> Note that given security constraints and time limitations, the SWIA field teams did not carry out in-depth consultations in ethnic minority areas. The findings in this section are therefore presented as “research findings” rather than “field findings” as in the other sections.

<sup>343</sup> MIC Notification 11/2013, Art. 14.

distinct differences from the prevailing sectors of society; and formation of non-dominant sectors of society<sup>344</sup>, as well as the criteria of self-identification which is included in many definitions. **There are ethnic minority groups in the O&G development areas that meet the criteria of indigenous peoples.**

- **The IFIs have already applied or indicated that they will apply their indigenous peoples safeguard policies to their operations in Myanmar.**
  - In 2013, the World Bank applied the World Bank Safeguard Policy on Indigenous Peoples in a project to upgrade the Thaton gas fired power plant in Mon State, noting that the overwhelming majority of people in the project area in Mon State are indigenous peoples.<sup>345</sup>

## Land and Natural Resources

**Human Rights Implicated:** Right to self-determination; right to autonomy or self-government in matters relating to their internal and local affairs; right to develop their own strategies for development

### Assessment

- **Foreign investors are prohibited from obtaining rights to lease and use “religious lands” or regions that are designated by the Government as regions of cultural or natural heritage.**<sup>346</sup>
  - How these lands are designated, and any role that ethnic minorities might play in such designation, is not clear from the Foreign Investment Law.
- Myanmar has a centralised (i.e. unitary) form of government.<sup>347</sup> In particular, the Union-level Government is given control over the administration of investment and appointments to region or state government.<sup>348</sup> **The Union Government does not need approval from state or regional governments for large-scale investments in their local jurisdictions, although they must be informed.**<sup>349</sup>
- **Under Myanmar’s Constitution, all lands and natural resources belong to the State, and the State has exclusive jurisdiction to authorise the use of all lands and natural resources** – i.e. Myanmar’s recognition of the right of self-government in matters relating to internal and local affairs for some topics does not extend to the jurisdiction (i.e. use and management) by ethnic nationalities over lands and natural resources within their claimed territories. However state and division legislatures

<sup>344</sup> ILO, “[Research on Best Practices for the Implementation of the Principles of ILO Convention No. 169](#)”, (2008).

<sup>345</sup> “*The Indigenous Peoples policy is triggered because of the presence of ethnic minorities (EMs)/Indigenous Peoples (IPs) within the project’s area of influence. The overwhelming majority (over 90 percent) of the beneficiaries and affected peoples in the Project influence area are IPs and, therefore, a separate Indigenous Peoples Plan (IPP) has not been prepared, but relevant elements of the policy will be integrated into project design.*” World Bank, “[Myanmar - Electric Power Project: environmental assessment](#)” (2013), pg. 17.

<sup>346</sup> Rule 128(a), (b), 2013 Foreign Investment Rules.

<sup>347</sup> Article 8 of the Constitution provides that “[t]he Union is constituted by the Union system.”

<sup>348</sup> Article 262, Constitution. Ministers for border and security affairs are to be nominated by the Commander-in-Chief. Although the nominees must be approved by the Region or State Hluttaw, the said Hluttaw cannot refuse the appointment of the nominee “unless it can clearly be proved that the person concerned does not meet the qualifications of the Chief Minister of the Region or State.” Article 262(c), Constitution.

<sup>349</sup> Transnational Institute/Burma Centrum Netherland, “[Access Denied: Land Rights and Ethnic Conflict in Burma](#)”, (May 2013).



have the power to regulate on environmental protection, within the boundaries of national legislation.

- **Myanmar is undergoing a transition to more devolved government.** The regional and state governments were only set up in 2011, and there are still ambiguities in the delegation and separation of responsibilities between Union-level and state or region-level government. There are unlikely to be changes in central Government control over natural resources in the near future, although ultimately this will depend on the outcome of the ongoing peace talks and Constitutional amendment process. Ethnic minorities have called for amendments to the Constitution which would give them more control over their own resources and governance.
- **Once implemented, the Extractive Industries Transparency Initiative (EITI) process will bring some transparency** to the local or regional origin of extractive sector-generated Government revenues.
- **Promoting the involvement of local indigenous communities in resource extraction is an emerging international approach** to ensuring the local communities can retain control over and benefit from use and management of natural resources within their (communal) lands.<sup>350</sup> Myanmar law limits on-shore O&G production to companies that meet requirements set out in tender requirements and therefore is not currently well adapted to explore new models of indigenous ownership.

### Engagement and Free, Prior & Informed Consent (FPIC)

**Human Rights Implicated:** Right to consultation and cooperation, including through free prior informed consent (FPIC) for certain actions

#### Assessment

- Under the Foreign Investment Rules 11/2013, the Myanmar Investment Commission must seek permission from the relevant region or state government as to whether measures proposed to avoid or mitigate an impact on the environment or society in connection with an investment are sufficient. While these consultation procedures with relevant region or state governments provide the opportunity for review by these bodies that may have strong representation from the majority and minority ethnic groups in the region, **this is not equivalent to or a substitute for long-term engagement by O&G companies with local communities, including local indigenous communities.** Furthermore, it may lead to conflict, for example where a company seeks to obtain regional government support, for example, through financial support to regional economic development initiatives against the wishes of the local community.
- **The Government has recognised the relevance of FPIC** in the context of REDD+ and more specifically, FPIC's importance in the context of extractive operations.<sup>351</sup>

<sup>350</sup> See Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, "[Extractive industries and indigenous peoples](#)", A/HRC/24/41, (1 July 2013).

<sup>351</sup> Reducing Emissions from Deforestation and Forest Degradation (REDD). "REDD+" goes beyond deforestation and forest degradation, and includes the role of conservation, sustainable management of

- The SWIA field assessments indicated that, with limited exceptions, there has been **virtually no meaningful consultation** with local communities around land use or relocation for recent O&G developments, much less any kind of wider discussion that could be characterised as FPIC or even “broad community support.” This partly reflects the absence of legal requirements to conduct impact assessments prior to the adoption of the 2012 Environmental Conservation Law.
- The ADB, the World Bank (see above) and the IFC have all indicated that they will apply their **safeguard policies** on indigenous peoples to projects they finance in Myanmar, including their provisions on **FPIC**.
- **The forthcoming EIA Procedures are expected to require consultations with, and disclosure to, local communities.** According to the December 2013 draft, O&G exploration and production requires an EIA. The model Production Sharing Contract (PSC) also provides for EIAs and a social impact assessment (SIA) as an obligation and required step under the PSC (clause 17.2 bb). However the draft EIA Procedures do not currently require more detailed consultation or even consent when indigenous peoples/ethnic minorities are involved **but would require the application of international best practice in the absence of more detailed national procedures**, leaving the door open to the application of standards requiring more in-depth engagement and FPIC in designated circumstances.

### Local Sharing of Benefits

**Human Rights Implicated:** Rights to own, use, develop and control the lands, territories, and resources that they have traditionally owned, occupied or used

#### Assessment

- **Myanmar currently does not have any agreed framework for sharing of benefits from O&G projects with communities from where those benefits derive.** The standard PSC has a few limited clauses that refer to preferential procurement of goods and services from Myanmar (subject to certain conditions) and to the need to “expedite ... Corporate Social Responsibility in the Contract Area.” None of the PSC provisions require a more in-depth engagement, or benefit-sharing, with local communities.
- **International good practice for resource extraction projects increasingly involves some form of a “Community Development Agreement” (CDA).**<sup>352</sup> This may be based on specific national obligations imposed by governments on developers to formally enter into a CDA; or specific legal regimes that require developers seeking access to indigenous lands to negotiate conditions of access or use with the traditional custodians of that land. Companies may also propose a CDA where there has been significant conflict involving the developer and local communities, and an agreement has been negotiated in an effort to resolve these conflicts, or to strengthen their social license to operate.

forests and enhancement of forest carbon stocks. See, Spectrum, “[Presentation on Transparency and Accountability](#)” (2014) and “[US-Myanmar Joint statement for Good Governance and Transparency in the Energy Sector](#)”.

<sup>352</sup> EI Sourcebook, “[Good Practice Note on Community Development Agreements](#)” (2011).

## Box 20: Relevant International Standards and Guidance on Engaging with Ethnic Minority Groups / Indigenous Peoples, and Linked Initiatives in Myanmar

### Relevant International Standards:

- [IFC Performance Standard 7 and Guidance Note – Indigenous Peoples](#)
- [UN Declaration on the Rights of Indigenous Peoples](#)
- [ILO Convention 169: the Indigenous and Tribal Peoples Convention](#)
- [UN Guiding Principles on Business and Human Rights](#)

### Relevant Guidance:

- European Commission, "[Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)", particularly Part 3.II
- IIED, "[FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects](#)"
- International Council on Mining and Metals (ICMM), "[Good Practice Guide: Indigenous Peoples and Mining](#)"
- IPIECA, "[Indigenous Peoples and the Oil and Gas Industry: Context, Issues and Emerging Good Practice](#)"
- Reports of the [UN Special Rapporteur on the Rights of Indigenous Peoples](#)
- UN Global Compact, "[Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples](#)"

### Myanmar Initiatives on Ethnic Minority Groups / Indigenous Peoples Linked to the O&G Sector:

- [SWISSAID](#) (Swiss Foundation for Development Cooperation), Natural Resource Management, community forestry, watershed management in Kachin State and Shan State
- [Mercy Corps](#) is working on Livelihoods & Food Security, Natural Resources Management, Emergency Response in Ayerwaddy Division, Mandalay Division, Rakhine State and Chin State
- [Promotion of Indigenous and Nature Together](#) (POINT), Research on indigenous knowledge and sustainable development in Myanmar
- [International Alert](#) co-hosted a roundtable discussion on free, prior and informed consent (FPIC)



Project-Level Impacts

# Groups at Risk



## Part 4.6

# GROUPS AT RISK

**In this section:**

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

### A. National Context

As noted above, Myanmar is one of the most culturally diverse countries in Southeast Asia, with many ethnic minority leaders believing that the Burman-dominated central Government instituted a policy of “Burmanisation” that suppresses ethnic minority cultures, languages and religions, and treats ethnic minorities as “second-class citizens”.<sup>353</sup> In addition to this complex interplay of ethnic identities, there are several other groups that are also at risk of marginalisation, who are particularly vulnerable to the impacts of increasing change in the country due to poverty, lack of stature to make their voices heard in the process of shaping those changes, and an inability to resist more powerful forces. They risk being left behind in Myanmar’s rush to transform itself. O&G operations may potentially have an impact on many of these groups, exacerbating their problems; ensuring that any impacts are neutral; or developing equal opportunity workforces and social investment programmes to support needed infrastructure, services or income generation opportunities for excluded groups.

#### Religious Minorities

##### *Buddhists and Muslims*

The 2008 Constitution provides for freedom of religion, but with a notable exception. Articles 34 and 354 of the Constitution generally provide for freedom of conscience, religion and customs, but subject to a number of restrictions.<sup>354</sup> Restrictions on the basis of security, law and order, and public order and morality are provided for under international law.<sup>355</sup> However, Article 354’s permitted restrictions for “community peace

<sup>353</sup> For a further explanation and discussion of these issues, please see Transnational Institute/Burma Centrum Netherlands reports from 2011 to 2013.

<sup>354</sup> Article 34 of the Constitution states that, “Every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to other provisions of this Constitution.” Article 354 states that, “every citizen shall be at liberty...if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility...to develop religion and customs without prejudice to the relations between one national race and another or among national races to other faiths.” See also the United States Commission on International Religious Freedom, “[2013 Annual Report](#)” (2013), p 22.

<sup>355</sup> International Media Support and Centre for Law and Democracy, “[Analysis of the Guarantees of Freedom of Expression in the 2008 Constitution of the Republic of the Union of Myanmar](#)” (Aug. 2012), pg. 7.



and tranquillity” allows expansive interpretations that provide a low threshold for justifying infringements to the guaranteed right.<sup>356</sup>

Muslims, who live in many parts of Myanmar, are a minority of the population. In the absence of the March-April 2014 census results, it is not only difficult to give a more precise estimate, it is also an extremely sensitive issue in the light of recent violence and Buddhist fears of an increasing Muslim population.<sup>357</sup> Anti-Muslim sentiment and discrimination are widespread – not only against the Rohingya,<sup>358</sup> which is the clearest case, but also against other Muslims in other parts of the country. As noted above, inter-communal violence between Buddhists and Muslims broke out in Rakhine State during June 2012. In its wake, some 143,000 people in Rakhine State remain displaced, many of them in camps, in very poor conditions,<sup>359</sup> the vast majority of them Rohingya.<sup>360</sup> The violence has also affected other areas, particularly Meiktila in the centre of the country, where over 40 people were killed in March 2013. In July 2014 further inter-communal violence broke out in Mandalay, Myanmar’s second largest city, resulting in dozens arrested and wounded, at least two deaths, and a strict curfew being imposed on the city.<sup>361</sup>

Some members of the Buddhist Sangha (clergy) in Myanmar lead the “969” movement, which claims *inter alia* that Muslims are trying to take over the country. The “969” movement encourages Buddhists to boycott Muslim businesses, and has some popular support.<sup>362</sup> Moreover, in the midst of such violence, some Buddhist leaders have called on the Government to enact legislation to “protect” Buddhism and there are currently four proposals that would restrict the following: religious conversion to non-Buddhist religions; inter-faith marriage; non-Buddhist family size; and polygamy. At least one of these – the Religious Conversion Law – has been drafted and is currently with Parliament. The draft Religious Conversion Law requires that anyone wishing to convert to another religion must obtain permission from the township Registration Board on religious conversion. Such a process includes questioning by the board and the issue of a “certificate of religious conversion”<sup>363</sup>

### Other faiths

People of other faiths also face discrimination and marginalisation. Christians comprise a small minority in the country, but the vast majority of the Chin and Kachin ethnic minorities are Christian, with smaller numbers of Karen and Karenni Christians. Christians, like other members of minority religions, are generally not promoted to senior positions within the civil service or military. Ethnic minority Christians face restrictions on their religious

<sup>356</sup> Legal Review commissioned by IHRB, Appendix 2 (on file with IHRB).

<sup>357</sup> For a discussion of Muslim population figures in the context of the March-April 2014 census, see International Conflict Group, “[Myanmar Conflict Alert: A Risky Census](#)”, (Feb. 2014).

<sup>358</sup> The Myanmar Government refuses to accept the term ‘Rohingya’ and refers to the population as ‘Bengali’.  
<sup>359</sup> UN Office for the Coordination of Humanitarian Affairs, “[Myanmar: Displacement in Rakhine State](#)” (Sep. 2013).

<sup>360</sup> The Arakan Project, “Brief Overview of the current human rights situation in Northern Arakan/Rakhine State, Myanmar”, (Aug. 2013), on file with IHRB.

<sup>361</sup> DVB, “[Mandalay riots reveal splintered community, complex agendas](#)” (8 July 2014).

<sup>362</sup> ICG, “[The Dark Side of Transition: Violence Against Muslims in Myanmar](#)” (Oct. 2013).

<sup>363</sup> Draft *Religious Conversion Law*, unofficial translation on file with IHRB.

freedom, including restrictions on building places of worship and destruction of religious venues and artefacts. These abuses are particularly acute in the context of the armed conflict in Kachin and northern Shan States. Bamar/mixed race Christians also face some restrictions on building churches and holding public ceremonies, although to a lesser degree compared to Christians in conflict zones.<sup>364</sup>

### Internally Displaced People

As a result of internal armed conflicts over the last several decades, hundreds of thousands of people have been internally displaced, and others have fled to neighbouring countries. The UN Refugee Agency (UNHCR) estimates that over 490,000 people in Myanmar are internally displaced, the vast majority of them members of ethnic minority groups. Over 230,000 people remain displaced in southeast Myanmar, and some 128,000 refugees live in camps in Thailand near the Myanmar border<sup>365</sup>. As noted above, there has also been significant internal displacement in Rakhine State due to inter-communal violence, with 143,000 people, the vast majority of them Muslim Rohingyas now in IDP camps.

IDPs are at risk of human rights abuses, including being trafficked into forced marriage or as labourers. They also suffer from food insecurity and often lack access to basic services, such as healthcare and education. Conditions in camps in both the Rakhine and Kachin States are poor. Moreover, internally displaced people (IDP) are at risk of losing their original land, as others may occupy the land in their absence. If the Government and armed ethnic groups can agree a nationwide ceasefire, IDPs and refugees may eventually return to their home villages. However, this poses significant challenges as their land have been claimed by others or may remain seeded by landmines (see [Part 4.3](#) on Land).

### Landless

See [Part 4.3.A](#) on Land for a brief overview of landlessness.

### Women

Women can be particularly at risk of negative impacts because they have fewer livelihood options than men, due to social status, family and cultural roles and expectations, and lower literacy levels and as a result, are disproportionately affected by poverty.<sup>366</sup> Girls are often not able to attend school, which means that women are on the whole are less educated, leading to a lower literacy rate. In many remote mountainous border regions, illiteracy among women is 80%.<sup>367</sup> Without access to education, women cannot access the job market and remain in low paid positions and are more prone to exploitation.

Myanmar acceded to the UN Convention against All Forms of Discrimination against Women (CEDAW) in July 1997. The 2008 Constitution does not include an effective constitutional guarantee of substantive equality; Article 350 of the 2008 Constitution

<sup>364</sup> United States Commission on International Religious Freedom, "[2013 Annual Report](#)" (2013), p 22; 23-25.

<sup>365</sup> UNHCR, "[2014 UNHCR country operations profile – Myanmar](#)" (accessed 25 July 2014).

<sup>366</sup> US Department of State, "[2013 Country reports on Human Rights practices, Burma 2013 Human Rights report](#)" (2013).

<sup>367</sup> Burma Women's Union, "[Women's issues in Burma](#)" (2012).

guarantees that women have the enforceable right to the “same rights and salaries” as that received by men “in respect of similar work.” The use of “similar work” will not achieve the same equalities outcome as the principle of equal pay for work of equal value used in CEDAW.<sup>368</sup> In practice, women do not receive equal pay for work of equal value.<sup>369</sup> Although the law guarantees equality between men and women, enforcement is weak and women are underrepresented in Government and in most traditionally male occupations. In order to address some of these issues, in October 2013 the Government launched a 10 year action plan for the advancement of women.<sup>370</sup> The ADB is supporting the Government in carrying out a gender situational analysis that will provide a far more detailed assessment of the status of women in the country.<sup>371</sup>

Maternity leave is provided to female employees covered by the Social Security Act 1954 for six weeks before and eight weeks after the expected date of childbirth on the condition that the employees have to have contributed 26 weeks to the social insurance system during the 52 weeks before confinement.<sup>372</sup> Sexual harassment is prohibited by the penal code and carries a penalty of fines or up to one year's imprisonment. However, such crimes go largely unreported due to the sensitivity of the topic in Myanmar.

Myanmar women's groups and CSOs have strongly protested against the proposed Interfaith Marriage Law in particular as discriminating against women and have also stated that “faith based extremist nationalism can destroy state peace and incite conflict”.<sup>373</sup> Several individuals, including women, who have protested against these proposed laws have received anonymous death threats via Facebook and on their mobile phones.<sup>374</sup> International organisations have also objected to this law, which reportedly would require people holding other beliefs to convert to Buddhism in order to marry a Buddhist, and would require Buddhist women to receive permission from their parents to marry a non-Buddhist man. Men would not need such permission.<sup>375</sup>

## Children

The Myanmar Government ratified the Convention on the Rights of the Child (CRC) in 1991, and acceded to the CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in January 2012<sup>376</sup> and ILO Convention 182 on the Worst Forms of Child Labour in December 2013. Nonetheless Myanmar law diverges from the CRC in some significant areas. For example, the provisions of the 1993 Child Law define a child as becoming an adult at 16 years rather than 18 years, and sets the minimum age of criminal responsibility at seven years old. Although the Government has

<sup>368</sup> Myanmar Legal Framework Background Paper for IHRB, p 83, on file with IHRB.

<sup>369</sup> UNFPA Myanmar, “[The 100th International Women's Day celebrated in Yangon, Myanmar](#)” (8 Mar. 2011).

<sup>370</sup> UNDP, “[Women's National Strategic Plan for Women Advancement Released](#)” (4 October 2013).

<sup>371</sup> ADB, “[46484-001: Support to the Preparation and Dissemination of the Myanmar Gender Situational Analysis](#)” (Dec. 2012).

<sup>372</sup> Asian Monitor Resource Centre, “[Labour Laws in Myanmar](#)” (May 2014).

<sup>373</sup> See for example “Statement of Women's Groups and CSOs on preparation of draft Interfaith Marriage Law”, signed by 97 groups, 5 May 2014, on file with IHRB.

<sup>374</sup> See The Irrawaddy, “[We Will Not Back Down](#)” (19 June 2014).

<sup>375</sup> Human Rights Watch, “[Burma: Scrap Proposed Discriminatory Marriage Law](#)” (24 March 2014).

<sup>376</sup> [UN Treaty Collection](#)

stated that it will reform the law to bring it into line with the CRC, this has reportedly not yet occurred.

Child labour is widespread and visible throughout Myanmar in various sectors (see [Part 4.4](#) on Labour). Children also end up as beggars on the streets, bus and railway stations and at tourist attractions. One survey found that one third of child labourers worked as street vendors.<sup>377</sup> The Government is working with the ILO and UNICEF to reform laws and end the worst forms of child labour. The minimum age for the employment of children is set at 13 years, which is in line with international standards for light work, but not in line with the international standard of 15 years for regular work.<sup>378</sup> The 1993 Child Law classifies children between the age of 14 and 17 as youths, and allows them to engage in “light duties”. However, “light duties” is not defined.<sup>379</sup> Children are frequently victims of economic exploitation, as employers generally pay them less despite their high contribution of labour.<sup>380</sup>

Although the recruitment of under-18s into the military is illegal and the Government is working with the ILO to eliminate this practice, both the Myanmar army and ethnic minority armed groups continue to recruit and use child soldiers.<sup>381</sup> Ethnic minority children are adversely affected by ongoing internal armed conflict in Kachin and northern Shan States, and by inter-communal violence between Buddhist and Muslim communities in Rakhine State and elsewhere. Tens of thousands are internally displaced, many in very poor conditions, and face disruption to their education and family lives, with a heightened risk of them becoming involved in child labour, including being trafficked.

The 2008 Constitution reaffirms the State’s responsibility to provide free basic education and health care for children.<sup>382</sup> The majority of children attend primary school, but the net completion rate is only 54%. Only 58% of children attend secondary school.<sup>383</sup> Due to widespread poverty and the unstable economic situation, many children drop out of school and work for low pay to help earn money for their families.<sup>384</sup>

### Persons with Disabilities

Myanmar acceded to the UN Convention on Disabilities in December 2011.<sup>385</sup> The Government entity responsible for people living with disabilities is the Ministry of Social Welfare.<sup>386</sup> Several international and Myanmar aid agencies are actively working to assist and advocate for disabled people, including through working with local CSOs. A recent study noted that people with disabilities suffer from widespread discrimination and exclusion within their communities, families, and from society as a whole. Disabled

<sup>377</sup> UNICEF, “[Situation Analysis of Children](#)” (2012), p 116.

<sup>378</sup> Freedom House, “[The Global State of Workers’ Rights – Burma](#)” (31 August 2010).

<sup>379</sup> US Department of State, “[2013 Country reports on Human Rights practices, Burma 2013 Human Rights report](#)” (2013).

<sup>380</sup> Child Rights Forum of Burma, “[CRC Shadow Report Burma](#)” (29 April 2011).

<sup>381</sup> US State Department, above.

<sup>382</sup> UNICEF, above, pg. 4-5

<sup>383</sup> UNICEF, above, p. xviii.

<sup>384</sup> Democracy for Burma, “[Child labour continues in Burma](#)” (4 February 2011).

<sup>385</sup> [United Nations Treaty Collection](#).

<sup>386</sup> [Myanmar Ministry of Social Welfare](#).

children and women were the most vulnerable.<sup>387</sup> There is a severe lack of education for people living with disabilities; a Myanmar Government study reported that 50% of disabled people received no education whatsoever. The survey also reported that 85% of disabled people were unemployed.<sup>388</sup> There have been very few employment training programs for people with disabilities, and there is a much greater need for more vocational training and employment, supported by funding. A law on disabilities was drafted by a group of disabilities advocacy organisations and the Department of Social Welfare, and is now with the Attorney General's Office, amidst hopes that the law will be passed by Parliament by the end of 2014. (See also [Part 4.4](#) on Labour.)

### Lesbian, Gay, Bisexual and Transgendered (LGBT) People

Article 377 of the Penal Code, a British colonial law, criminalises any activity that the authorities decide constitutes “carnal intercourse against the order of nature.”<sup>389</sup> The LGBT Rights Network in Myanmar has called for the abolition of this article, which can be used against people in same-sex relationships. The US State Department's 2013 Annual Human Rights Report states that LGBT people face discrimination in employment, including denial of promotions and dismissal. Activists reported limited job opportunities for openly gay people, and general societal lack of support. (See also [Part 4.4](#) on Labour)

## B. Key Human Rights Implications for the O&G Sector

### Business Leadership

- **Impacts on investment:** Societal discrimination and exclusion are not unique to Myanmar, but such discrimination and exclusion, particularly with respect to Muslims, could become even more entrenched and overt, thus going in the opposite direction of the general trend of openness signalled by the recent political changes. There has been widespread condemnation of the recent intercommunal violence and violence against Muslims,<sup>390</sup> the Government's inadequate response to the violence,<sup>391</sup> and the extremely poor conditions in IDP camps in Rakhine State, which is the responsibility of the Union Government to correct. Businesses, collectively and individually, could highlight the impact that communal violence has on the investment climate.
- **Modelling equal opportunity:** Addressing entrenched discrimination demands a change in societal attitudes, which often requires prompts from many directions to tip the balance towards broader acceptance. These can include messages from the political leadership - the President's office has repeatedly called for building an “inclusive and sustainable” Myanmar -- as well as changes in law and changes in peer countries. However, changes can also start with modelling equal opportunity and

<sup>387</sup> Salai Vanni Bawi, “[Understanding the Challenges of Disability in Myanmar](#)” (2012).

<sup>388</sup> The Irrawaddy, “[In Burma, Children with Disabilities Struggle to Access Schools](#)” (5 November 2013).

<sup>389</sup> Lawyers' Collective, “[LGBT Section 377](#)” (23 November 2010). This Penal Code is still used by many countries formerly ruled by the British, including India, Malaysia, and Myanmar.

<sup>390</sup> Association Press, “[US Says Myanmar Resorting to Police-State Tactics](#)” (17 July 2014).

<sup>391</sup> Even the Government's own investigations have been critical of the response. After March 2014 mob violence against international humanitarian organisations led to the evacuation of scores of aid workers from Rakhine State, the Government appointed a body to investigate the situation, which found that the security forces' response to the violence had been “sluggish”. Republic of the Union of Myanmar President's Office, “[Union Government to fully Protect aid groups in Rakhine State](#)” (8 April 2014).



demonstrating the benefits. This is an important role that businesses of all sizes in the O&G value chain can play, through leadership messages and by creating workplaces that are not only visibly free of discrimination but also moving towards equal opportunity for the groups at risk of marginalisation noted above.

### Understanding and Addressing Differentiated Impacts of Projects

- **Identification and engagement:** A first step in understanding what potential impact a project may have on groups at risk is to identify who may be in the potential workforce and surrounding community from these various groups. This assessment may require specialist sociological and health expertise and methods to identify, locate and engage vulnerable individuals or groups, which may often need to be done separately, and sometimes quietly. There is long-standing guidance on consulting women separately, and increasing guidance on engagement with other groups as well. As noted previously, in some cases, one community may even object in principle to consultations with another community, due to concerns that this may give legitimacy to that community and its viewpoints. Moreover, local authorities are often not neutral. Such situations need to be handled with great delicacy, and require a detailed understanding of local dynamics.
- **Differentiated assessments and prevention:** The objective of an assessment is to better understand how impacts may affect each potential group at risk, and in particular, understanding who could experience adverse impacts from the proposed project more severely than others. This should be done using disaggregated data and community consultations to identify, assess and discuss potential impacts and measures to appropriately avoid, minimise, mitigate or compensate for impacts. This may require differentiated prevention or mitigation measures to address the greater severity of impacts. Groups at risk should be able to benefit from project opportunities equally with others and this too may require differentiated benefit-sharing processes and levels. For example, if job training is offered, there may be a need for specialised or separate training provided for individuals or groups from any of these groups who might lack the necessary skills to find a job with the project and may face exclusion from the dominant group. Monitoring of project impacts should track impacts on these individuals or groups on a disaggregated basis.

### Labour

See [Part 4.4](#) on Labour for a discussion on addressing discrimination in the workplace.

### Women & Children

- **Children:** While the usual and often exclusive focus is on child labour when discussing potential impacts on children, extractive projects can have a wider set of impacts on children, as a consequence of their physical and cognitive immaturity. For example, children are at greater risk from environmental hazards than adults due to their physical size, developing bodies, metabolic rate, natural curiosity and lack of knowledge about the threats in their environment. Children and youth are often left out of consultation processes that would enable them to express their views on the impact of land acquisition on their future. Male relatives or community members may override women and child-headed households in consultations and securing benefits. Security

staff may need to be specifically instructed in respecting children's rights such as prohibitions on requiring children to carry out unpaid personal services or using physical punishment of children. There is an increasing range of tools regarding children available to assist companies in identifying and understanding potential impacts.<sup>392</sup>

- **Women:** While community members did identify concerns about sexual harassment of women in connection with an influx of male workers, particularly foreign male workers, no community members spoke of sexual exploitation of children around operations during the field assessments, which is often a taboo subject. Sexual exploitation, including of children, is a common phenomenon in connection with extractive projects that tend to attract large groups of men around peak periods such as exploration and development phases. Awareness raising among workers, inclusion of prohibitions on sexual contact with children in company codes and contracts, monitoring by company security forces and access to company level grievance mechanisms are all useful steps.

## C. Field Assessment Findings<sup>393</sup>

### Women

**Human Rights Implicated:** Right to non-discrimination; right to work; right to just and favourable conditions of work

#### Field Assessment Findings

- There was a fairly **clear and assumed gender division of roles** (for example regular sentiments of “women aren't doing these jobs as these are for men”) that was rarely being challenged by local workers or the companies. The extractive sector typically has a very low percentage of women across a wide range of jobs and this was evident across the field assessments.
- While there is a cultural reticence to raise difficult issues, particularly those related to personal privacy, a few cases of **sexual harassment** were brought to the team's attention. The cases most often revolved around claims involving foreign men, rather than locals, including one complaint that resulted in a foreign supervisor being returned to his country of origin.
- **In principle, there is no legal impediment to providing compensation to women or women-headed households**, but households are registered in the husband's name and therefore **in general compensation was handed over to the husband in the family**. However, widows or single mothers would also be able to obtain compensation same way as male headed households.
- **Despite the presence of security guards, women indicated a rising sense of insecurity in some areas of O&G operations**, in light of the presence of the often predominantly male workforce, with a particular concern about foreign male

<sup>392</sup> UNICEF and the Danish Institute for Human Rights, “[Children's Rights in Impact Assessments - A guide for integrating children's rights into impact assessments and taking action for children](#)” (2013).

<sup>393</sup> The field assessment teams did not access to Muslim IDPs in and around Kyaukphyu so were not able to interview those living in the camps.

workforces.

- Some community members remarked with concern on **the marked rise of bars in the areas of O&G operations**. They noted drinking at all hours of the day and a particular concern about young adolescents drinking in the bars. There was a worry that the introduction of readily available alcohol into the community would lead to a decrease in security with fights and petty crimes.

## Child Labour

**Human Rights Implicated:** Right to freedom from child labour; right to an adequate standard of living; right to education

### Field Assessment Findings

- The assessment team did not observe cases of **child labour** within any of the sites visited. Nor was this expected, given industry practice and emphasis on health & safety. Child labour is a recognised common phenomenon in the Myanmar but would be more likely to be found in the tea shops and bars near O&G sites.
- **Age verification** of workers was routinely practiced by the projects observed.

## Education

**Human Rights Implicated:** Right to education

### Field Assessment Findings

- Cases were observed of **schools being built in host communities** as part of community development projects which in principle is beneficial to children and families. However, they were not always consultation with **local communities** about the schools.
- **In some cases, the Government was not able to provide sufficient number of teachers for these schools**. There is a nationwide shortage of primary school teachers and problems of retention in remote areas. As a result the buildings were not used or under utilised.
- **Community skills building** programmes were not observed with one exception.
- Several companies are **providing scholarships** for secondary or higher education, others are supporting early childhood and vocational training programmes.

### Myanmar Good Practice Examples:

- Cases were observed of **schools being built in host communities** as part of community development projects which in principle is beneficial to children and families.
- Several companies are **providing scholarships** for secondary or higher education, others are supporting early childhood and vocational training programmes.

**Box 21: Relevant International Standards and Guidance on Engaging with Groups at Risk, and Linked Initiatives in Myanmar**

**Relevant International Standards:**

- [IFC Performance Standard 2 and Guidance Note – Labour and Working Conditions](#)
- [ILO, Discrimination \(Employment and Occupation\) Convention \(No. 111\)](#)
- [UN Convention on the Elimination of Discrimination Against Women](#)
- [UN Convention on the Rights of Persons with Disabilities](#)
- [UN Convention on the Rights of the Child](#)

**Relevant Guidance:**

- CSR-D, “Guide on Corporate Social Responsibility and Disability” and in Burmese, MCRB and DRC, “Corporate Social Responsibility and Disability (CSR-D) - A Guide for Companies in Myanmar”
- European Commission, [“Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights”](#)
- IFC, [“Good Practice Note, Non-Discrimination and Equal Opportunity”](#)
- IFC, [“Gender Dimensions of the Extractive Industries”](#)
- ILO, [“Working Conditions of Contract Workers in the Oil & Gas Industry”](#)
- ILO, [“Disability in the Workplace - Company Practices”](#)
- UNICEF, UN Global Compact, Save the Children, [“Children’s Rights and Business Principles”](#)
- UN Global Compact, [“Women’s Empowerment Principles”](#)
- UN [“Inter-Agency Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the ‘Pinheiro Principles’”](#)

**Myanmar Initiatives on Groups at Risk Linked to the O&G Sector:**

- European Union, [Towards improved services delivered by local associations to disabled people in Myanmar](#)

Project-Level Impacts

# Security





**In this section:**

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

**A. National Context****Armed Conflict in Areas of O&G Operations**

Operating onshore oil blocks are located primarily in Magwe Region, central Myanmar. While there is no history of armed conflicts in this area, it is an important region in Myanmar history with close ties to the O&G sector. During the colonial period, demonstrations sparked by labourers at the Burma Oil Company (BOC), swept the nation into a campaign against colonialist oppression.

Parts of Mon State and Tanintharyi Region have been affected by decades-long armed conflict between the central Government and various ethnic armed groups. The Karen National Union (KNU) and New Mon State Party (NMSP) armed groups are present in parts of Tanintharyi Region – although they are no longer active in the vicinity of the Yadana/Yetagun gas pipeline. Although ceasefires are now holding in Mon State and Tanintharyi Region, they still experience high levels of militarisation, which includes the presence of the *tatmadaw*, its allied militias, Mon and Karen armed groups, small splinter groups, and armed criminal gangs. This militarisation and insecurity has led to past and some continued human rights abuses, including land confiscation, extortion and arbitrary taxation, and sexual violence.<sup>394</sup>

The more recently developed pipeline by the Southeast Asia Gas Pipeline Company (SEAGP)/ the Southeast Asia Crude Oil Pipeline Company (SEAOP) (also referred to as the Shwe Gas Pipeline), which comes on shore at Kyaukphyu in Rakhine State and then travels through central Myanmar to northern Shan State and into China, has seen international and Myanmar groups report human rights violations by the Government during the construction phase.<sup>395</sup> Rakhine State is characterised by a disproportionately high poverty rate and on-going inter-communal violence between Muslim and Buddhist

<sup>394</sup> See for example recent reports by the Karen Human Rights Group, "[Losing Ground: Land conflicts and collective action in eastern Myanmar](#)", (March 2013). Transnational Institute/Burma Centrum Netherlands, "[Developing Disparity: Regional Investment in Burma's Borderlands](#)", (Feb. 2013). See for example, Earthrights International, "[Total Impact](#)" (Sep. 2009).

<sup>395</sup> See Earthrights International, "[The Burma-China Pipelines: Human Rights Violations, Applicable Law and Revenue Secrecy](#)" (Mar. 2011) and Shwe Gas Movement, "[Sold Out: Launch of China pipeline project unleashes abuse across Burma](#)" (Sep. 2011).

groups, as previously noted, although there is little or no armed conflict there. Northern Shan State is host to a number of ethnic minority armed groups, including the United Wa State Army (the largest armed group in the country, which has long had an uneasy ceasefire with the Government); the Kachin Independence Organisation (KIO, a major armed opposition group); the Ta-ang (Palaung) National Liberation Army (TNLA); the Shan State Progress Party (Shan State Army-North); and a recently reactivated Kokang armed group.<sup>396</sup> Fighting continues in northern Shan State, mainly between the *tatmadaw* on the one hand, and the KIO and TNLA on the other. Myanmar civil society groups have accused the *tatmadaw* of recent human rights violations against the civilian population, including forced portering and torture, amidst an increase in *tatmadaw* battalions in Palaung areas.<sup>397</sup> International human rights organisations have reported on widespread human rights abuses in areas where the KIO and *tatmadaw* are fighting, including Kachin State and northern Shan State, after a 17 year ceasefire between the KIO and the Government broke down in June 2011.<sup>398</sup> Some analysts and civil society groups have claimed that fighting in this area is related, at least in part, to the *tatmadaw*'s efforts to secure the Shwe Gas Pipeline route.<sup>399</sup>

The nationwide ceasefire process, even if successful, will not necessarily bring an end to insecurity in Myanmar's border areas. In addition to the major armed groups at the peace table, there are numerous small splinter groups, village militias (some with hundreds of troops), and armed criminal gangs. Lack of economic opportunities, an easy availability of weapons, and weak security and rule of law mean that these areas will be characterised by insecurity for some time to come. If the peace process eventually leads to Disarmament, Demobilisation, Rehabilitation and Reintegration (DDRR) – which is still likely some years off – there will be the additional dynamic of former combatants with limited opportunities for lawful employment, and who may resort to extortion, racketeering and other criminal activities to support themselves – as some are already doing.

### International Support for Reform of the Myanmar Security Forces

Since the reform process began in 2011, foreign governments and international organisations have started to provide training to the police and *tatmadaw* in human rights-related areas. The International Committee for the Red Cross (ICRC), which has a presence in Myanmar, began training senior police officers in September 2013 in the proper use of force, crowd control, and detention procedures. In December 2013 the ICRC provided training in international policing standards and appropriate use of police powers for police based in Rakhine State.<sup>400</sup> EU training for Myanmar police began in November 2013.<sup>401</sup> In February 2014 EU police officers provided training to 200 Myanmar police on

<sup>396</sup> See Transnational Institute/Burma Centrum Nederland, "[The Kachin Crisis: Peace Must Prevail](#)" (Mar. 2013) and "[Burma's Ethnic Challenge: From Aspirations to Solutions](#)" (Oct. 2013).

<sup>397</sup> The Irrawaddy, "[Burma Army Attacks Displaced 3,000 Palaung Civilians: Rights Group](#)" (25 Feb 2014).

<sup>398</sup> See for example Human Rights Watch, "[Untold Miseries: Wartime Abuses and Forced Displacement in Kachin State](#)" (Mar. 2012).

<sup>399</sup> See for example, Transnational Institute, "[The Kachin crisis: Peace must prevail](#)" (Mar. 2013).

<sup>400</sup> UPI, "[ICRC helps guide police policies in Myanmar](#)" (12 Sep. 2013) and "[ICRC advising police in Myanmar](#)" (10 Dec. 2013).

<sup>401</sup> The Irrawaddy, "[Burma's Police Get EU Training on Crowd Control](#)" (8 November 2013).

human rights in policing, effective crowd control, and prevention of the escalation of violence. The EU aims to conduct training for 4,000 police personnel until March 2015.<sup>402</sup>

The US Government has had military-to-military contact with the *tatmadaw* and senior Administration officials have called for training on human rights, but no formal training has yet taken place, due to remaining sanctions. Members of the US Congress and Myanmar groups have expressed concern about training because of ongoing allegations of human rights violations by the *tatmadaw*.<sup>403</sup> In January 2014 the UK Government trained 40 *tatmadaw* officers in the role of the military in a democracy, security sector reform, governance, accountability, and the rule of law. UK Government senior officials emphasised that the training did not enhance *tatmadaw* military capabilities.<sup>404</sup>

Broader security sector reforms are critically important after decades of isolation and in a context where it is hoped that the security forces will come gradually under greater civilian control, but currently this does not feature among the 16 “Sector Working Groups” composed of Government, donors and international organisations active in reshaping Myanmar policies and laws.<sup>405</sup> Training is an important step but training to date covers only a very small part of the military and police. Much remains to be done before human rights and international humanitarian law are fully incorporated into the rules of engagement of the military and standard operating procedures for the police and to integrate new thinking around the primary role of security in protecting the population rather than only the state. Moreover, there will need to be a major shift in behaviour on the part of the security forces in the way in which they treat the population.

## B. Key Human Rights Implications for the O&G Sector

### Interaction with the Myanmar Security Services

- **Linkages to the military:** Governments have the primary obligation of maintaining law and order, security and protection of human rights. Security is the responsibility of the Government. In sensitive and conflict-affected areas this will be the *tatmadaw*, which generally does not have positive or unproblematic relations with communities,

<sup>402</sup> DVB/Reuters, “[EU assists training of Burma’s police force](#)” (21 February 2014).

<sup>403</sup> DVB/AP, “[US Considers limited engagement with Burmese military](#)” (5 December 2013). The Irrawaddy, “[Ethnic Groups Concerned over US, UK Military Engagement with Burma](#)” (30 April 2014).

<sup>404</sup> The Irrawaddy, “[British Minister Defends Burma Army Training](#)” (30 January 2014).

<sup>405</sup> The Government of Myanmar and its development partners (bilateral and multilateral donors) endorsed the “[Nay Pyi Taw Accord for Effective Development Cooperation](#)” in January 2013. The development partners in Myanmar have established a new Development Partners Group (DPG) in late-2013 chaired by the UN and DFID to facilitate coordination. The Government and these development partners have formed 16 Sector Working Groups (SWG). The SWGs are intended to be a one-stop shop for coordination in their respective sectors and to ensure that sectoral strategies and priorities are elaborated by the Government of Myanmar as well as identifying priority programmes and ‘quick win’ initiatives. The SWGs cover the following sectors: 1. Education, 2. Cultural Conservation, 3. Agriculture & Rural Development, 4. Environmental Conservation, 5. Employment Opportunities, 6. Electric Power, 7. Health & Water Supply, 8. Communications & Information Technology, 9. Transportation, 10. Social Protection & Disaster Risk Reduction, 11. Public Administration & Reform Process, 12. Gender Equality & Women’s Empowerment, 13. Media, 14. Hotels & Tourism, 15. Statistical Quality Development and 16. Trade.

particularly in ethnic areas. In other areas, there are Oilfield Police who provide more routine security in the oil field areas.

- **The security clause in the PSC and US sanctions:** Under the model Production Sharing Contract (PSC) (clause 17.1) MOGE is responsible for providing “security protection ...as may be requested by the Contractor and made available from the resources under MOGE’s control. In the event that such ...personnel are not readily available, then MOGE shall promptly secure the use of such ... personnel from alternative sources. Expenses thus incurred at the Contractor’s request shall be reimbursed to MOGE by Contractor.” As noted, many foreign operators may be very reluctant to be seen to be paying for security protection by the *tatmadaw* as payments could directly link the company to *tatmadaw* actions. The clause may well breach US Sanctions. (See further the [Annex to the Recommendations](#)). Companies may need more flexibility on how security protection is arranged, and to do so in a way that permits companies some control over the arrangements for security protection where needed. Companies should be formally permitted to have their own security guards.
- **Consultation and capacity building:** Given the history of human rights violations perpetuated by the military and given the low level or lack of awareness of human rights standards and low level of human rights training of the military and police, O&G companies and contractors will need to be particularly attentive to ensuring that their security arrangements respect human rights, with constructive outreach to police and military through consultation, as well as training on human rights. In the changing environment, companies are advised to pursue a broader and more systemic response to the risks of abuses by the military, police and other forces, rather than a narrow approach that has sometimes been taken in the past. This has previously involved creating a “cordon sanitaire” around their projects, within which the company provides a protective presence for villagers, but which has little effect on the situation immediately outside their area of operations, and which can sometimes have the effect of displacing abusive practices (such as demands for payments or labour) to other nearby areas.
- **International humanitarian law:** International humanitarian law regulates situations of armed conflict. Businesses carrying out activities that are ‘closely linked to’ an armed conflict (whether through the location or the nature of the business) are required to respect relevant aspects of international humanitarian law.<sup>406</sup> This may therefore impose additional responsibilities on companies both with respect to security forces and to other dimensions of operations, including the acquisition of assets.
- **Voluntary Principles on Security and Human Rights:** The Voluntary Principles on Security and Human Rights<sup>407</sup> (VPs) is an initiative that includes governments, companies, and NGOs. The Principles are designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights and which addresses working with public and private security providers. The VPs emphasise that companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. Security risks and appropriate responses to risks should be covered in regular

<sup>406</sup> ICRC, “[Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law](#)” (2006).

<sup>407</sup> [The Voluntary Principles on Security and Human Rights](#)

communications between companies and public security forces (military and police). Myanmar is not a member of the VPs but this does not prevent companies applying them to their Myanmar operations and engaging with government agencies. The training already provided to the public security sector noted above is an important step in laying the groundwork for these discussions and it is an area where a collective discussion between O&G operators and the Government could be useful.

### Newly Emerging Security Considerations and Situations

- **Protests around O&G projects:** There is a potential for increased protests around O&G projects, for which local authorities may be unprepared after decades of suppression of freedom of expression, which may result in violence or arrests of protesters.
- **Persons fleeing violence:** Companies will need to be alert to newly emerging security scenarios, such as the unfolding developments involving the Rohingya, some of whom flee violence and extreme poverty by boat across the Bay of Bengal (the government asserts that these boats are also carrying Bangladeshis). Those boats may cross paths with the vessels conducting exploration in the area, or supplying goods and services to the offshore platforms. Companies will need to develop appropriate procedures to respond if they find the people on the boats are in distress and in need of assistance.<sup>408</sup> The cumulative impact of ships using Sittwe and Kyaukphyu for O&G exploration activities may also interfere with logistics around the Rakhine State relief effort or lead to a larger security presence around those two ports, with negative implications for local populations and the relief efforts.
- **Crime in O&G areas:** On a more localised level, communities expressed concerns in some areas about increased drugs and alcohol with an influx of workers and an increase in the number of bars serving alcohol, including to children in the community. These dimensions, together with increased wealth and company assets, raises the potential for increased crime in O&G areas, increasing security risks for companies and communities. Some communities expressed concern that they did not receive the same level of protection as company workers.

### Company Employed & Contracted Security Providers

- **Business partners:** Companies appear to be contracting out to service providers for security guards. It is important to ensure that contracted security providers have had background checks to ensure security service owners, managers or guards have not been linked to past human rights abuses. They also need appropriate training on respecting human rights. Companies should ensure that working conditions and employment contracts, in line with labour rights standards, are integral parts of the contract with the security provider. Companies should consider prioritising members of local communities for security jobs, but bearing in mind where this may exacerbate inter-communal tensions, depending on the choices made (see further [Part 4.2](#) on Communities). There is now an international code of conduct for private military providers (ICoC) that sets private security industry principles and standards based on

<sup>408</sup> See: International Maritime Organisation, UNHCR and International Chamber of Shipping “[Rescue at Sea: A guide to principles and practice as applied to migrants and refugees](#)” (2006); and [forthcoming guidance](#). And see: [Human Rights at Sea](#).



international human rights and humanitarian law. The code is open to signature by companies.<sup>409</sup> This is a relevant reference for screening potential service providers and should serve as a target for company commitment within a specified time period.

- **Use of weapons:** Private security guards are unarmed in Myanmar, which lowers the level of risks to human rights posed by private security providers but does not eliminate all risks. Appropriate training in human rights will still be needed.<sup>410</sup>

## C. Field Assessment Findings

### Company Security

**Human Rights Implicated:** Right to life, liberty and security of the person

#### Field Assessment Findings

- **There were no complaints reported during the assessments from local communities about company-employed security guards.** In the pipeline areas, companies typically employ unarmed security guards who are usually from the community. The security guards are therefore present in the community. The security incidents reported during the field assessments instead involved localised, unremarkable issues such as drunken fights among O&G workers. Pipeline security is monitored through sensors inside the pipeline. Pipeline walkers are sent out routinely (on a monthly or weekly rather than daily basis) to walk the pipeline route to inspect the area above buried pipelines.
- There were some **complaints by workers towards their employer (sub-contractor) regarding long work hours and lower wages** compared to same ranking staff working in different departments employed by a different sub-contractor.

### Public Security

**Human Rights Implicated:** Right to life, liberty and security of the person

#### Field Assessment Findings

- Designated oil field areas (OFA) are usually guarded by the Oil Field Area (OFA) Police, a detachment of the **Myanmar Police Force which liaises closely with MOGE** and can be armed. These special police forces are particularly focused on theft or unauthorised extraction of oil from OFA. **Complaints were aired about the OFA police attempting to attribute responsibility to local farmers** for monitoring local wells or for being complicit in thefts of oil.
- No other complaints against the military or the MOGE security forces were mentioned to the researchers but this also needs to be considered in light of continued reticence to speak out.

<sup>409</sup> International Code of Conduct for Private Security Service Providers.

<sup>410</sup> For further guidance, see "[Voluntary Principles Implementation Guidance Tools](#)".

## Impacts on Livelihoods Due to Security Restrictions

**Human Rights Implicated:** Right to an adequate standard of living

### Field Assessment Findings

- Fishing communities informed that, for reasons of security, there can be restrictions on fishing near the sub-sea pipeline areas for long or indeterminate periods. The fish ban announcements are made by local authorities and sometimes by the Navy. **Fishing communities complained that these restrictions impact on their regular income and livelihood.**

## Gender / At-Risk Groups

**Human Rights Implicated:** Right to life, liberty and security of the person

### Field Assessment Findings

- **Despite the presence of security guards, women indicated a rising sense of insecurity in some areas of O&G operations**, in light of the presence of the often predominantly male workforce, with a particular concern about foreign male workforces.
- Some community members remarked with concern on **the marked rise of bars in the areas of O&G operations**. They noted drinking at all hours of the day and a particular concern about young adolescents drinking in the bars. There was a worry that the introduction of readily available alcohol into the community would lead to a decrease in security with fights and petty crimes.

### Myanmar Good Practice Examples:

- One company provided **training for MOGE, the army, navy and township authorities** on the Voluntary Principles on Security and Human Rights.
- One company reported that it specifically integrated the **Voluntary Principles on Security and Human Rights** into its security management, training material, procedures and assessment.
- As a good practice, there were examples of **coordination between security staff and community engagement staff** to make sure that all grievances were logged and then referred to appropriate department in the company to address.

**Box 22: Relevant International Standards and Guidance on Security Issues, and Linked Initiatives in Myanmar****Relevant International Standards:**

- [IFC Performance Standard 4 and Guidance Note – Community Health, Safety and Security](#)
- [Voluntary Principles on Security and Human Rights](#)
- [International Code of Conduct for Private Security Service Providers](#)

**Relevant Guidance:**

- Fafo, “[Red Flags: Liability Risks for Companies Operating in High-Risk Zones](#)”
- IHRB, “[From Red Flags to Green Flags: The Corporate Responsibility to Respect in High-Risk Countries](#)”
- International Alert, “[Conflict-sensitive Business Practice: Guidance for Extractive Industries](#)”
- Voluntary Principles “[Implementation Guidance Tools](#)”

**Myanmar Initiatives on Security Linked to the O&G Sector:**

- European Union, [Crowd Management Training of Myanmar Police Force programme](#)



Project-Level Impacts

# Environment



## Part 4.8

**ENVIRONMENT****In this section:**

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

**A. National Context**

Myanmar has diverse coastal and marine habitats, including coral reefs, seagrass beds, mangroves, sandy beaches and mudflats. It also hosts abundant natural resources, including on-shore and off-shore oil and gas, timber, silver, lead, tin and gems as well as and fertile ecological zones which have traditionally provided extensive agricultural production. These resources have supported a large population over many centuries, and they continue to provide the bulk of Myanmar's economic output to this day.<sup>411</sup>

However, deforestation, large-scale mining, habitat and land degradation and diminishing water resources are all placing pressure on the environment.<sup>412</sup> The expansion of agriculture and industry, pollution, population growth, along with uncontrolled use and extraction of resources, are causing severe environmental and ecosystem degradation. Rubber plantations have almost doubled from 1990 to 2010 and together with large scale palm oil plantations are among the biggest threats to biodiversity.<sup>413</sup> These environmental pressures in turn, increase the vulnerability of several socio-economic sectors including agriculture, transport and energy sectors.<sup>414</sup> Although accurate updated estimates are difficult to obtain, illegal wildlife trade in Myanmar is considered to be widespread. Together with illegal hunting, it is causing a general decrease of wildlife population. Many Myanmar citizens, and local and international civil society organisations, fear Myanmar's rich biodiversity and natural habitats will be depleted and damaged by greater investment in the extraction of such resources.<sup>415</sup>

Myanmar's programme to adapt to climate change addresses the main environmental stresses affecting the country: climate related hazards/extreme weather events; deforestation; and diminishing water resources. The coastal areas, where offshore O&G production already comes on shore in Rakhine and Ayeyarwady, are exposed to long-term climatic impacts such as sea-level rise as well as an increase in cyclones and storm

<sup>411</sup> UNDP, "[Myanmar Programme](#)" (accessed 25 July 2014).

<sup>412</sup> "[Myanmar's National Adaptation Programme of Action](#)", p. 21.

<sup>413</sup> European Commission, "Myanmar Protected Areas: Context, Current Status and Challenges", (2011) p. 4. Available at: <http://www.banca-env.org/pdf/reports/ebook-lampi.pdf>

<sup>414</sup> Myanmar's National Adaptation Programme of Action, above, p. 3.

<sup>415</sup> See for example, Asian Scientist, "[Myanmar: A Biodiversity Hotspot Under Threat](#)" (Aug. 2013).



surge/flooding. The country more generally is exposed to both geological and meteorological hazards (e.g. earthquakes, floods, cyclones and tsunamis) as a result of the country's southwest location within the Bay of Bengal and low-lying coastal zone.<sup>416</sup> On a longer-term basis, Myanmar, like many developing countries faces the dilemma of developing the O&G resources that also contribute to the climate change impacts to which the country is particularly susceptible.<sup>417</sup>

### Water and Sanitation

There is a general lack of access to safe drinking water and basic sanitation is a crucial issue in Myanmar as infrastructure is already extremely limited. Access to safe drinking water varies significantly among different states and regions in Myanmar. A 2011 study indicated that just 68% of households had access to improved water sources, but only 17% of households had a safe way of extracting water from sources, thereby increasing the risk of contamination.<sup>418</sup> The Water Environment Partnership in Asia (WEPA) reports Myanmar's agricultural sector uses 90%, while industry and domestic use is only about 10% of the total water use. However, even with those high rates the total usage of the nation's water resources is only about 5% of the potential.<sup>419</sup> River and lake pollution from sewage, industrial waste and solid waste disposal in particular are serious problems in Myanmar, but the only control of water pollution in the country is through guidelines issued in June 1994 by the Myanmar Investment Commission (MIC), which require that new investment projects have waste-water treatment systems.<sup>420</sup>

### Air Quality and Pollution

There are at present no air quality standards in place in Myanmar, nor is there advanced technology (or capacity) for air quality measurement. Attention to date has focused mainly on the largest city, Yangon, where air quality is becoming a visible concern,<sup>421</sup> and pollution monitoring equipment is beginning to be installed in the city. This is despite the fact that many other areas around the country are also anticipating industrial development and increased activities by heavy footprint and high emissions industries.<sup>422</sup> Notably, the model Production Sharing Contracts (PSC) for onshore and offshore O&G projects permit the flaring of natural gas produced from the area, without any additional safeguards or other obligations to eliminate or manage these risks.

<sup>416</sup> Myanmar's National Adaptation Programme of Action, p. 23. Available at: [www.unfccc.int/resource/docs/napa/mmr01.pdf](http://www.unfccc.int/resource/docs/napa/mmr01.pdf)

<sup>417</sup> See Mary Robinson Foundation Climate Justice, "[Equity and Climate Justice](#)" (accessed 25 July 2014).

<sup>418</sup> UNICEF, "Situation Analysis of Children", (2012), pg. 55 and 57. Available at:

[http://www.unicef.org/eapro/Myanmar\\_Situation\\_Analysis.pdf](http://www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf)

<sup>419</sup> See WEPA, "[Myanmar](#)" (accessed 1 September 2014).

<sup>420</sup> Kyaw Thi Soe, Mon Mon Yin, "[Environmental Management in Myanmar](#)" *Yangon University of Distance Education Research Journal*, Vol. 1, No.1 (2009), pg. 264.

<sup>421</sup> See: Statement of the Myanmar Deputy Minister for Transport, "[Pollution Control and Air Quality Management in Myanmar](#)". For example, recent reports showed particulate matter levels in Yangon 60% above WHO recommended maximums. See eg, Myanmar Times, "[Our growing air pollution problem](#)" (2012).

<sup>422</sup> Mizzima, "[Air pollution monitors to be installed in Yangon](#)" (20 Feb. 2014).

## Forest Conservation and Land Degradation

Approximately half (49%) of the total land area of Myanmar is forested, well above the average for the rest of East Asia and the Pacific,<sup>423</sup> but the country is experiencing deforestation due to over-exploitation of natural resources and unsustainable land management practices.<sup>424</sup> Already in the period 1990-2010 Myanmar lost 7,445,000 hectares (19.0% of its forest cover).<sup>425</sup> Myanmar still remains one of the ten countries in the world with the largest annual net loss of forest area and among the five countries (Indonesia, Australia, Myanmar, Madagascar and Mozambique) with the largest net loss of mangrove area during the period 2000–2010.<sup>426</sup> Similarly, soil erosion is a serious concern in the upland areas on about 10% of the country's cultivated areas, with the Government's land rehabilitation schemes not keeping pace with new cultivation by upland farmers, sustained by high rates of population growth.<sup>427</sup>

There are currently 43 officially-recognised protected areas but so far the information on their status has been poor, scattered and not updated; these currently cover 7.3% of the country.<sup>428</sup> One of the nature reserves is supported by financial contributions from three O&G companies operating nearby.

### The Marine Environment

Information on Myanmar's marine habitats is extremely limited, as are effective conservation measures. Threats facing the marine areas include overfishing, coastal development, and the use of destructive fishing practices such as dynamite and cyanide. Despite the country's long coastline there are only four marine protected areas and there is little capacity to conserve and manage marine resources. The Myanmar Government has expressed its commitment, through international conventions, to put 10% of its marine areas under protection by 2020; however a range of factors including the lack of biological and socio-economic data and a lack of financial and technical resources severely constrain the ability of the Government and other actors to meet this target. Overfishing, including by foreign vessels, is contributing to the declining livelihoods of fishing villages.<sup>429</sup>

In the Bay of Bengal where several of the offshore blocks are located, Myanmar, together with seven neighbours, are collaborating through the Bay of Bengal Large Marine Ecosystem (BOBLME) Project to better the lives of their coastal populations by improving regional management of the Bay of Bengal environment and its fisheries. As part of this project, a scientific survey is now underway on the fish resources, marine biodiversity and oceanography in Myanmar waters supported by Norad.<sup>430</sup>

<sup>423</sup> World Bank, "[Myanmar country data](#)" (accessed 25 July 2014).

<sup>424</sup> "[Myanmar's National Adaptation Programme of Action](#)", p. 23.

<sup>425</sup> Mongabay, "[Myanmar Forest Information and Data](#)", (accessed 25 July 2014).

<sup>426</sup> FAO, "[Global Forest Resource Assessment \(FRA\). Country Report Myanmar](#)" (2010).

<sup>427</sup> ADB "[Myanmar National Environmental Performance Assessment Report](#)" (2008).

<sup>428</sup> European Commission, "[Myanmar Protected Areas: Context, Current Status and Challenges](#)" (2011) p. 4.

<sup>429</sup> See for example, [Norwegian supported survey](#) of fish resources, marine biodiversity and oceanography in Myanmar waters.

<sup>430</sup> See for example "[The Bay of Bengal Large Marine Ecosystem Project](#)" (accessed 25 July 2014).

## Legal and Regulatory Framework

The 2008 Constitution confirms that the Government will protect and conserve Myanmar's natural environment,<sup>431</sup> however there is no right to a clean environment and instead citizens have a duty to assist the Union Government in environmental conservation.<sup>432</sup> Under the Constitution, the national Parliament can enact environmental and other protective laws.<sup>433</sup>

Myanmar is currently in the process of revising its policies and laws on environmental protection. The Environmental Conservation Law requires MOECF to put in place a comprehensive waste and pollutant monitoring scheme. MOECF has just adopted the Environmental Conservation Rules 2014 and is in the process of developing environmental quality, starting with effluent standards. UNDP is supporting the Government in the Development of National Environmental Management Framework and Action.

The updated 2012 Environmental Conservation Law and 2014 Rules, empowers MOECF to act as a “gate keeper” for business activities. It confers powers on MOECF to regulate and to establish a “prior permission scheme”<sup>434</sup> for a range of business activities that “may cause impact on environmental quality”. Other Government departments authorised to approve business activities may do so only after the relevant permission from MOECF.<sup>435</sup> MIC Notification No. 1 sets out the list of economic activities that require an ESIA and approval by MOECF that includes the exploration, drilling and production of O&G, although the EIA Procedures under the Environmental Conservation Law will refine these. In addition, there are basic provisions in this law, as there are in the Foreign Direct Investment Law, that require basic pollution control.<sup>436</sup>

The Environmental Conservation Law is based on the “polluter pays principle”, with compensation for environmental impacts to be paid to a fund to be set up by MOECF. In addition, the Law requires that any business that requires prior permission, (which includes O&G operations), must have insurance cover for impacts on the environment.<sup>437</sup> The Law provides for criminal penalties (although it is unclear if these apply to business entities) and payment of compensation for damages.

In addition to the framework Environmental Conservation Law, there are currently 44 existing laws with some form of obligations on operators in respect of pollution, disposal, and other harmful impacts on the environment and local society. The 2006 Conservation of Water Resources and Rivers Law provides a general prohibition on polluting water

<sup>431</sup> Myanmar Constitution, Article 45.

<sup>432</sup> Myanmar Constitution, Article 390(b).

<sup>433</sup> Myanmar Constitution, Schedule 1, Section 6(b)

<sup>434</sup> Article 26.

<sup>435</sup> Foreign Investment Law, Article 38.

<sup>436</sup> Article 15 states that: “The owner or occupier of any business, material or place which causes a point source of pollution shall install or use an on-site facility or controlling equipment in order to monitor, control, manage, reduce or eliminate environmental pollution. If it is impracticable, it shall be arranged to dispose the wastes in accord with environmentally sound methods.” The Foreign Investment Law, Art. 17(h) states that the “foreign investor shall ....carrying out not to cause environmental pollution or damage in accord with existing laws in respect of investment business;” (sic).

<sup>437</sup> Chapter X.

courses or rivers.<sup>438</sup> The implementation of these laws needs to be factored into new and forthcoming rules to be developed under the 2012 Environmental Conservation Law.

## B. Key Human Rights Implications for the O&G Sector

- **Diverse environmental impacts:** As noted in [Part 4.2](#) on Communities, local rural and coastal populations are highly vulnerable to social and environmental impacts due to their overwhelming dependence on land-based subsistence agriculture and local fishing. O&G operations, both onshore and offshore, can have significant and diverse environmental impacts if not well-managed, including: physical damage from exploration and construction activities (such as to habitats and biodiversity from land clearing or seismic); various forms of pollution (such as of the air, marine and freshwater areas, land and noise pollution) and contamination (such as from disposal of toxic and other polluting substances, and oil leaks); and depletion of natural resources (such as water use, land clearances and biodiversity).<sup>439</sup> These potential impacts will arise at different times depending on the different phases of an O&G project, e.g. shooting seismic offshore can have temporary marine impacts at the very early stages of a project whereas managing waste water disposal during production will have ongoing risks that need to be managed throughout the years or decades the project is operating. Through such impacts, O&G operations can have impacts on the right to health, the right to life, the right to an adequate standard of living (including the right to food, water and housing), and on the right to take part in cultural life.
- **Due diligence:** Implementation of effective risk and impact assessment and management can play a significant role in preventing or mitigating and remediating impacts. As environmental impacts can change as operations change from exploration to production to decommissioning or as a result of any significant changes in the surrounding environment (for example the Myanmar coast is expected to be subjected to increasing storms which have the potential to change the environmental conditions in the coastal area), it will be important for operators to update the E(S)IA and associated E(S)MP as operations change significantly. The current PSC indicates that an E(S)IA must be completed within the first six months of signing a PSC; MOECA has informally clarified that there will be a requirement for E(S)IAs at further stages in the project cycle. The specific requirements for updated or new IEEs/ESIAs for O&G operations will need to be clarified and should be specified in the PSC. (See further the [Annex to the Recommendations](#))
- **Sparse information:** Information on the current state of the environment onshore and offshore is sparse to non-existent. In some cases there may be numerous factors at play that result in declining productivity of soil or waters and in many cases, any nearby industrial or extractive operations will be the most obvious source of concern, rightly or wrongly.

<sup>438</sup> The [Conservation of Water Resources and Rivers Law](#), Article 34(b).

<sup>439</sup> UNEP & OGP, "[Environmental management in oil and gas exploration, and production - An overview of issues and management approaches](#)" (1997).

## Standards and Community Engagement

- **Business leadership:** Some operators may have in place their own global policies on environment, health, safety and social issues that they may apply in Myanmar, which may meet or even exceed good international practice. Companies can choose to play a leadership role both by demonstration and coaching and also in driving those requirements through their business relationships and into the O&G value chain. A commitment to applying its global standards or international standards in Myanmar could be made through an amendment or side letter to the PSC which ideally a company would publicly disclose together with its E(S)MP. A company could also make this commitment part of its social investment programme with the community; and involve the community in public monitoring reports on its operations.
- **Transparency:** Given the Government's commitment to the application of "high environmental and social standards" in extractive operations, the expectations of the home governments of many of the companies recently awarded blocs,<sup>440</sup> as well as the pent up expectations of the Myanmar population to see benefits from the sector, transparency around operator's environmental and social policies and their application to contractors will be important to build confidence in the sector.
- **Project assessment & monitoring information:** The draft EIA Procedure contains robust disclosure and consultation requirements with local communities. If implemented well, the Procedures could signal a turning point in practices in the country where communities previously often had little to no information or contact with operators. The field assessment findings indicated a desire for more information – in a form and language understandable to them. If communities have relevant information, they will be better able to understand potential and actual environmental impacts and take necessary actions to protect themselves and their surroundings from harmful substances and impacts. Communities should have a chance to comment on the company's plans and the company should consider these comments and provide answers back to the community about how it will address their concerns.
- **Emergency procedures:** Communities expressed particular concern about emergency situations, ranging from a request for basic information to further details on procedures in case of emergencies. It is another topic that would benefit from a single point of contact from operators, though emergencies will likely also require coordination with and intervention from local or regional authorities as well.
- **Gas Flaring:** The Model PSC permits the flaring of natural gas produced from Myanmar blocks without specific safeguards for the emissions. As noted in [Part 3](#) on Sector-Wide Impacts, many countries are working towards reduction or elimination of gas flaring.<sup>441</sup>

<sup>440</sup> US companies that are covered by the US Treasury Department's Office of Foreign Assets Control (OFAC) [General License 17](#) are required to report on their environmental policies to the US Department of State pursuant to the responsible investment reporting requirements. Chinese companies are expected to comply with the "[Guidelines on Environmental Protection in Foreign Investment and Cooperation](#)" (2013). See: IHRB Commentary, "['Going Out' in Search of Oil and Gas: How should Chinese companies investing abroad tackle human rights challenges?](#)" M. Aizawa (24 March 2014).

<sup>441</sup> See [Global Gas Flaring Reduction Partnership](#) (accessed 25 July 2014).



## Working with Sub-Contractors

- **Business partners:** Many O&G operators sub-contract different parts of their operations to business partners who can have an impact on the environment – from specialised services such as shooting seismic to more routine tasks such as constructing workers' camps. Equally, the size and capacity of sub-contractors may vary widely, from very large, specialised operators who are used to running international operations according to international standards, to smaller local companies who may be unfamiliar with updated environmental protection practices. As noted in [Part 4.2](#) on Communities, many of these sub-contractors are often the earliest “face” of forthcoming operations and can have a large footprint in the local community. Given the generality of Myanmar law and therefore lack of detailed regulation to guide sub-contractors, it will also be important for the O&G operators to impose environmental and social requirements in their sub-contractor arrangements that at a minimum require compliance with the requirements in the PSC and the E(S)MP agreed with MOECAP and MIC, and the ability to monitor the respect of such requirements on the part of their business partners.
- **Focal point for communities:** Local communities will rarely distinguish between a sub-contractor and the main operator and will usually know the name of the main operator, or none at all. A key concern from communities is having a single point of contact with the main operator to address complaints (and many will predictably be about environmental issues) – whether they are linked to actions by contractors or the operator. Establishing an early, single point of contact between communities and various teams who may be in the field for different kinds of operations could be useful, constructive step in addressing environmental issues.

## Remedies for Environmental Damages

- **Limited avenues for remedies:** Current options for seeking remedies in Myanmar are very limited, slow and often unsatisfactory for local villagers who may be making claims for damages to their livelihoods. Prompt restoration where possible or monetary compensation for damage responds to the right to access to remedy and will be important dimension of responding to local impacts. Repairing or restoring environmental damage should not be portrayed as part of the social investment programme or any kind of local benefit but instead is part of restoring local communities to the baseline situation. As noted in a recent report, “[s]tate/region governments, local governments and communities could play a role in these [restoration] initiatives, perhaps via the newly-created state/region environmental conservation departments or by channeling some forms of compensation through subnational budgets as appropriate.”<sup>442</sup>
- **Baseline data:** It will be important for companies to collect detailed baseline information (although that will not always be possible) and to be constructive in addressing environmental damage, even where the damage is not wholly attributable to the company or its sub-contractors. There may be actions the company can support, perhaps with the local or regional government, such as providing relevant information that will better explain why and how environmental impacts are happening,

<sup>442</sup> Thet Aung Lynn and Mari Oye, “[Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing](#)” (June 2014), pg. 48.

to support actions that can help prevent or mitigate further environmental damage, or to provide support to appropriate research. Requiring local communities to provide baseline data (such as historical data on local fish catches) as a basis for a damage claim is unrealistic and counterproductive if this is used as a reason to deny what communities see as valid claims; helping the community to construct a survey and address its findings could be a far more useful approach to addressing grievances.

## C. Field Assessment Findings

**NOTE:** The field assessments focused on environmental impacts of the O&G sector in Myanmar to the extent that this affected the livelihoods of surrounding communities and their ability to maintain an adequate standard of living and health, rather than looking at broader environmental impacts, such as on biodiversity.

### Water & Sanitation

**Human Rights Implicated:** Right to an adequate standard of living, including the right to safe drinking water and sanitation; right to highest attainable standard of physical and mental health.

#### Field Assessment Findings

- **A number of cases were observed of failures to resolve and address damage to local community water supplies caused by construction or project activity.** Issues were left to linger for months unaddressed. This may have been because company did not view the minor infrastructure repairs needed to fix the problem as a priority, or it did not carry out quality repairs. These included:
  - **A pipeline at one site visited was built across a village's main water stream,** which was also used for hydropower, diminishing access to both safe drinking water and electricity. While the company involved sought to mitigate the problem once it was brought to its attention, the repairs were not satisfactory in delivering the quantity of water needed. An international NGO working in the area intervened on the community's behalf but was not able to persuade the company to provide a more appropriate solution.
  - **A hydropower station built for one O&G project had a clear impact on the quantity of community water supplies,** requiring farmers to switch to crops requiring less water (from paddy crops to maize) to continue producing.
  - One community water supply built as part of an O&G operation was found to have **used iron pipes, leading to water smelling of rust shortly after installation** (safe but poor quality). Villagers compared this to the plastic pipes used to supply the O&G project site itself, adding to feelings of resentment and mistrust by the community that they were not treated as equals to the project developers.
- **Cases were reported of waste and garbage disposed of in drinking water locations** within workers' housing areas, which in most cases are not built and supplied by operators (see the *Labour Issues Project-Level Impact Summary*).
- **Fears that naturally occurring mercury in gas will contaminate local water supplies** were reported to researchers.

## Community Health & Safety

**Human Rights Implicated:** Right to highest attainable standard of physical and mental health; right to information

### Field Assessment Findings

- **Communities lack information on environmental impacts of O&G operations** and the potential consequences for human health, food production and livelihoods. They perceive adverse effects on health of local communities arising from environmental impacts of industrial activities on food crops, including pipeline leaks and waste emissions from project sites.
- **Communities are generally fearful of pipeline leaks with little reported outreach or education to assuage fears.** Pipeline leaks reported to research teams were commonly associated with MOGE operated pipelines. In such cases, communities were not notified of health and safety procedures beforehand or upon reporting the leak. The lines were regarded as poorly maintained, with infrequent and irregular monitoring. Instead, the practice appears to be to wait for leaks to be reported by communities rather than systematically maintaining the lines. The nearest emergency response/maintenance team is located far outside of the pipeline area, meaning the quickest spill response requires at least a day.

## Soil & Air

**Human Rights Implicated:** Right to life; right to highest attainable standard of physical and mental health; right to an adequate standard of living

### Field Assessment Findings

- **Farmers reported leakage or seepage from drilling waste sumps/pits, impacting crop production.** At one onshore field, the monsoon would flood the area around the sumps/pits, and lead to pollution of local plantations. No compensation was provided for the damaged crops, and long-term measures to solve the problem were inadequate. Water treatment testing had to be done in Naypyitaw, due to inadequate local on-site facilities.
- **One severe case was reported of toxic waste being burned off the project site but near a local community.** The toxicity of the ash was so high that 19 cattle belonging to two local farmers that licked ground contaminated with the ash died within a matter of hours. Local authorities were involved but no information was given to community members on the occasion. When an investigation was conducted, community members were not given full information. Compensation remained disputed at the time of writing.
- Construction of the pipeline across one river at the Myanmar border had required sandbagging and pumping out the riverbed in two phases to permit construction. Sandbags were left in place following the completion of the construction which had led to **erosion** of the Myanmar bank and resulted in flooding of plantations and endangering of nearby houses.
- **Road dust from vehicle traffic accessing project sites was a common complaint** of many villages who frequently reported little action was taken to

suppress dust generated at worksites, on roads, some built by companies, and at other project installations. At one site, this was a cumulative impact attributable to a growth in road-users from multiple sources following construction of the road.

### Artisanal Extraction

**Human Rights Implicated:** Right to life; right to highest attainable standard of physical and mental health

#### Field Assessment Findings

Some artisanal extraction was observed in Rakhine region oil field areas, and referred to in Magway region; it is also practiced elsewhere in the country.

- Processes and methods observed were **extremely basic**, with no real capability to implement environmental safeguards.
- **No protective equipment** was worn by workers and health and safety procedures were absent.
- **Other safety issues are a concern**, with workers smoking in the immediate vicinity of extraction, resulting in burns and other accidents.

### Natural Habitat

**Human Rights Implicated:** Right to an adequate standard of living; right to information

#### Field Assessment Findings

- Several fishing communities complained about a **general decrease in fish** available to local fishermen in their traditional fishing grounds, that they associated with the arrival of O&G operations and associated infrastructure in the area. Neither the local communities nor (apparently) the companies operating in the area have any baseline data on fishing populations as a basis for verifying impacts. One company also noted an increase in complaints from the local fisheries department about the impact of operations.
- A local naturalist expressed concern that offshore seismic operations were being conducted **without the presence of Marine Mammal Observers** who are required under best practice guidelines<sup>443</sup>. This may have contributed to a stranding on Lampi Island, although the whale was destroyed and buried before an autopsy to determine the cause could be conducted.

#### Myanmar Good Practice Examples:

- Partners within one project contribute **substantial funding to a local nature reserve** through which their pipeline passes to mitigate impacts identified in their EIA, conserve the region's forestry and biodiversity, and potentially compensate for

<sup>443</sup> International Association of Geophysical Companies "[Recommended Mitigation Measures For Cetaceans during Geophysical Operations](#)" (June 2011) and Marine Mammal Observers Association, "[Position statement on Environmental Impact Assessments and Mitigation Plans](#)" (accessed 25 July 2014).

some residual impacts of the pipeline and possible indirect impacts of the service track (e.g. access for hunting and encroachment). They are also running a biodiversity conservation project at a pipeline centre with a local NGO.

- One company financially supported an environmental conservation programme focusing on **mangrove restoration and protection** in a township near its operations in order to improve local fisheries/hatchery and the livelihoods dependent on them, done through community plantation. The project currently covers 800 acres.

### Box 23: Relevant International Standards and Guidance on Environmental Issues, and Linked Initiatives in Myanmar

#### Relevant International Standards:

- IFC/WBG:
  - [Performance Standard 3 and Guidance Note – Resource Efficiency and Pollution Prevention](#)
  - [Performance Standard 6 and Guidance Note - Biodiversity Conservation and Sustainable Management of Living Natural Resources](#)
  - WBG [General Environmental, Health and Safety Guidelines](#)
  - WBG [Environmental, Health and Safety Guidelines for Offshore Oil and Gas Development](#)
  - WBG [Environmental, Health and Safety Guidelines for Onshore Oil and Gas Development](#)
- Regarding off-shore seismic activity and potential marine mammal impacts, see for example the New Zealand Department of Conservation, "[Code of conduct for minimising acoustic disturbance to marine mammals from seismic survey operations](#)" (Nov. 2013) Other codes from Australia, the North Sea and the Seychelles are also available.

#### Relevant Guidance:

- UNEP, "[Environmental Management in Oil and Gas](#)"
- UNEP FI, "[Oil and Gas](#)"
- IPIECA, "[Biodiversity and Ecosystem Services Good Practice Guidance](#)"

#### Myanmar Initiatives on Environment Linked to the O&G Sector:

- [Livelihoods and Food Security Trust \(LIFT\) Fund](#), MERN, Coastal livelihoods and environmental restoration project in Gwa Coastal region of Rakhine State
- [Istituto Oikos](#), Research and training programme on forest and marine resources management, and establishment of community forestry, nurseries and plantations activities in Gwa and Kyeintali township in Southern Rakhine State
- [Government of Norway](#), Exploring options in 2014 of including Myanmar in the Reducing Emissions for Deforestation and Degradation (REDD) Initiative



# Cumulative-Level Impacts



# Cumulative-Level Impacts

**In this section:**

- A. Background
- B. National Context
- C. Assessment Findings

## A. Background

There are numerous definitions of “cumulative impacts”. The definition used in this SWIA Report is the successive, incremental and combined environmental and social, including human rights, impacts from multiple projects or multiple activities located in the same region or affecting the same resource (e.g. a watershed or an air shed).<sup>444</sup> Each project (i.e. different projects or different phases of the same project) adds incremental impacts to other existing, planned, or reasonably predictable future projects and developments, leading to an accumulation of impacts. Environmental and social impacts from one project alone are not always significant. Instead it is the building up of smaller impacts over time, or within the same physical footprint, that have a cumulative effect. Sometimes a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly (for example where there is a rapid influx of people seeking jobs at, or in the vicinity of, newly established projects (the “boomtown effect”)). They can also be triggered by poorly designed policies that prompt companies to make the same mistakes over and over again. The resilience of the environment or society to cumulative impacts depends upon both the nature of the impacts and the vulnerability (or sensitivity) of the society or ecosystem (i.e., the degree to which they are susceptible to and unable to cope with injury, damage, or harm).<sup>445</sup>

More recent approaches refer to the “cumulative dimensions of impacts” which mean the “major aspects of comprehending and managing impacts from a cumulative perspective.”<sup>446</sup> This has the advantage of considering governance, cumulative processes and impacts, rather than just the impacts themselves. This positions impact assessments as an adaptive management process that modulates the management of impacts according to the changes in and on projects over their life cycle.<sup>447</sup>

<sup>444</sup> Franks, Brereton and Moran, “Cumulative Social Impacts,” in Vanclay and Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, (2011). They are sometimes also referred to as collective impacts.

<sup>445</sup> IFC, “[Good Practice Handbook on Good Practice Handbook, Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets](#)” (2013).

<sup>446</sup> Franks et al in Vanclay and Esteves (Eds), above, pg. 640-647.

<sup>447</sup> Franks et al in Vanclay and Esteves (Eds), above, pg. 640-647

Cumulative impacts can be negative (e.g. outmigration due to cumulative land acquisition results in government withdrawal of health services) or positive (e.g. cumulative economic developments in the area justifies opening of a public health clinic). In some cases, cumulative impacts can have both positive and negative effects.

If not managed, cumulative impacts can overwhelm environmental or social “carrying capacity” to withstand or recover from the changes. They can act upon:

- Institutions – the accumulated impacts overwhelm the local capacity to provide services, including protection or fulfillment of the population’s human rights, providing remedies, or managing or changing the course of events;
- Society – the rapid onset and acceleration of the changes overwhelms societal structures and capacity to manage change, which may eventually lead to a rise in tensions or violence and a potential breakdown in law and order;
- Environment – the biophysical impact surpasses the environment’s carrying capacity.

There are several clear challenges in managing these kinds of impacts: there are often multiple actors contributing to the impact, often with front-end licensing that sets operating conditions at the beginning of the project; the impacts may accumulate over time making them harder to predict; perceived lack of incentives to take on responsibility for impacts that cannot be directly linked to their activities and unfamiliarity and capacity constraints on regulators.<sup>448</sup> Because these impacts typically involve more than one actor, a collective approach to managing these kinds of impacts is often required.

Strategies for collaboration range from at their simplest, information exchange, forums, networking or coordinated community engagement to options of increasing complexity, that require more effort, and co-ordination, such as multi-stakeholder monitoring or the collective management of data.<sup>449</sup> Strategic master plans that are accompanied by strategic impact assessments for the region that take account of multiple sectors and multiple activities projected or planned for the region can provide an important starting point. These need to be coordinated with sectoral master plans that make sectoral projections of development. However, often enough the two kinds of planning (regional and sectoral) are not coordinated.

#### Box 24: Human Rights Concerns Regarding Cumulative Impacts

Cumulative impacts are a clear area of concern from a human rights point of view for a number of reasons:

- Cumulative impacts are often much harder to predict than singular impacts from one project. Unless the hard work is done to assess and analyses the potential for such impacts, it is much harder to prevent environmental and social changes that can have long term impacts on human rights, such as the rights to life and security of person, health, education and an adequate standard of living.
- Cumulative impacts can be severe – both in terms of the type of impact (e.g. the cumulative burden on poor infrastructure causes it to collapse, killing hundreds) or

<sup>448</sup> Franks et al in Vanclay and Esteves (Eds), above, pg. 640-647.

<sup>449</sup> Franks, et al., “[Cumulative Impacts: A Good Practice Manual for the Australian Coal Mining Industry](#)” (2010), p. 28 and 38.

the widespread nature of the impact (e.g. cumulative water use reduces water tables, resulting in drought with widespread effect on food security in the local community) or because repetition increases the severity (e.g. a singularly-occurring, minor impact may not pose a human rights risk, but a series of minor impacts may add up to a human rights impact).<sup>450</sup>

- Even where a responsible party can be identified in the case of a singular negative human right impact, there are often challenges in holding the responsible party accountable; where cumulative impacts are involved, responsibility for impacts is even more dispersed making it even harder to identify parties responsible for prevention, mitigation and remediation, and hold them accountable.
- Companies and regulators may not consider they are responsible for cumulative impacts since they make only a *contribution*. This is especially the case when their activities may individually fit within acceptable regulatory limits, but where the regulatory regime is not advanced enough to take account of accumulation of impacts over time or space.<sup>451</sup>
- It may often be populations most at risk who are affected by cumulative impacts, as they will have the least resilience to respond and the least capacity to demand a response from the authorities or businesses.
- Cumulative impacts are sometimes slow and build up incrementally over time, meaning it is harder to draw attention to the issues and prompt action from responsible parties.

## B. National Context

Because project developers (exploration companies, operators) and regulators focus on assessing impacts of individual projects in a typical ESIA process, they often do not consider and miss the incremental impacts on areas or resources used or directly impacted by a project from other existing, planned or reasonably defined developments.<sup>452</sup> Cumulative impacts are of growing importance in regions where environmental and social systems have reached their maximum capacity to absorb (as may be the case in parts of neighbouring China) and adapt to additional impacts,<sup>453</sup> but they can also be equally as important to consider in regions that will undergo significant growth, as is the case in certain areas in Myanmar. The framework or expertise does not currently exist in Myanmar (or in many emerging markets). However, as an important first step, the FESR recognises the need to consider the cumulative impacts of projects and programs on regions and groups, both across sectors and through time, stating: "Planners and policy-makers will need to consider the longer-term dimensions of a balanced strategy of economic, social, environmental and cultural development, recognising particularly that stakeholder groups can be affected simultaneously by projects or programs that are considered independently of each other without acknowledging their cumulative impact on particular stakeholders. Decision-making and monitoring processes

<sup>450</sup> Rio Tinto, "[Why Human Rights Matter: A resource guide for integrating human rights into Communities and Social Performance work at Rio Tinto](#)" (Jan. 2013).

<sup>451</sup> OHCHR, "[WG meeting on cumulative impacts, United States of America](#)" (8 May 2013).

<sup>452</sup> Global Compact Dilemmas Forum, "[Cumulative Human Rights Impacts](#)" (accessed 25 July 2014).

<sup>453</sup> Franks et al in Vanclay and Esteves (Eds), p. 202



will need to be open to such cumulative impacts. Taking a longer-term perspective may also help to resolve apparent trade-offs in situations where greater emphasis on equitable development in the short-term contributes to greater sustainability and economic growth over the longer term.<sup>454</sup> In addition, the current draft of the E(S)IA Procedure includes references to cumulative impacts, especially for complex projects.<sup>455</sup>

As noted above, the National Energy Management Committee (NEMC) is currently working on a National Energy Policy and is required to explore environmental and social impact assessment as part of its mandate.<sup>456</sup> It is unclear how detailed the policy will be and whether it will address the cumulative impacts of the sector. A more detailed master plan for the sector would provide a useful starting point for identifying areas for potential cumulative impacts of the sector and therefore areas for potential collaboration between the local or regional governments and existing or new O&G operations and operators.<sup>457</sup> It will also be important for such sectoral plans to be matched to the regional plans where there will be sectoral operations to ensure coordination and consideration of cumulative impacts as early as possible in areas such as Rahkine, Ayeyarwady, Tanintharyi and Magwe where O&G operations have or will shortly be increasing.

Given the low capacity, the Government will have to think carefully about the most effective way of addressing cumulative impacts, together with the sector. This could start out with a small number of identified areas for collaboration between O&G operators and regional or local authorities, developing a joint understanding of some key potential cumulative impacts, their impact pathways and how these impacts may affect local communities (see [Part 7 Recommendations](#)).

## C. Assessment Findings<sup>458</sup>

### Potential Areas of Cumulative Impacts from Myanmar's O&G Sector

#### Institutions

- Overload of local and regional capacity to effectively consider E(S)IA and monitor E(S)MP, especially for managing cumulative impacts.
- Overload of existing social services due to a rapid influx of people seeking work (e.g. childcare, healthcare and education).

<sup>454</sup> [“Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”](#), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 92.

<sup>455</sup> The key issues will be whether that provision remains in the finally adopted EIA Procedure, when it will be adopted and how it will be implemented. In the meantime, there may be numerous E(S)IA commissioned for the O&G sector that do not address cumulative impacts.

<sup>456</sup> The Republic of the Union of Myanmar President's Office, [“Formation of National Energy Planning Committee and Energy Management Committee”](#) (9 Jan. 2013).

<sup>457</sup> The assumption is that it will be easier to prompt cooperation among companies in one sector than it will be to cross-sectoral collaboration among Myanmar companies where there is no common approach or experience in acting collectively. A sectoral plan would not address cumulative impacts arising where O&G operations are already adding to existing developments from other sectors where there may equally be cumulative impacts that must be managed.

<sup>458</sup> These are a result of field assessment findings and research findings.



- Overload of labour inspection capacity to deal with multiple operators, especially for offshore.
- Overload of local ports in Rakhine, Ayeyarwady, Mon and Tanintharyi, resulting in displacement of local fishermen.
- Overload of Sittwe port, disrupting humanitarian operations addressing intercommunal violence.

#### Society

- Overloading the labour market, increasing competition for workers, attracting workers from less-well paid but important Government services such as health and education.
- Competition for workers drives up wages and inflation, raising the local cost of living with potential negative effects on local standard of living.
- Successive construction of pipelines in the same areas repeatedly disrupts the same communities.
- Successive land acquisitions within an area that rapidly diminishes the land available for livelihoods to local populations.
- Influx of predominantly male workers attracts sex workers, exploitation of at risk groups and potential increase in crime.

#### Environment

- Increases in pollutant concentrations in a local water body or in the soil or sediments, or their bioaccumulation as a result of several projects in the same area.
- Reduced water quality (e.g. pollution discharge into rivers) and water quantity (groundwater draw and water table impacts) from multiple users all taking a modest amount of water.
- Traffic congestion, road degradation and increased dust from multiple projects on one roadway.<sup>459</sup>
- Reduced fish catch, disruptions to marine mammals due to increased boat traffic for offshore seismic operations (noise, congestion, pollution).
- Increases in pollutant concentrations in offshore areas due to offshore operations (tanker discharges, discharges from operations).

### Key Concerns Regarding Procedures for Addressing Cumulative Impacts in the Short-Term

- **Consultation overload of local communities:** The current onshore and offshore permitting process will potentially require O&G operators to carry out E(S)IAs within a condensed timeframe (i.e. six months). In both cases, those E(S)IA will require consultations with local communities. This could result in multiple consultations and investigations with the same local communities, causing consultation fatigue and confusion within communities. Given the small number of sites where offshore exploration could impact, those sites should be subject to joint E(S)IAs for those areas that also look at the potential for cumulative impacts, through a consolidated

<sup>459</sup> Franks, et al., "[Cumulative Impacts: A Good Practice Manual for the Australian Coal Mining Industry](#)" (2010).

set of consultations. Depending on how proximate onshore blocks (i.e. new blocks in the same general area) are developed, it may make sense to include them in a coordinated impact assessment approach.

- **Wasted resources of having numerous E(S)IAs** looking at the same areas but without considering the cumulative impacts of their operations. Again joint or coordinated E(S)IAs would avoid this.

### Key Locations or Activities Potentially Associated with Cumulative Impacts (past, present or future)

- There are several identifiable areas of operations where there will be multiple operations in the same area – both from onshore and offshore:
  - Landing offshore operations (e.g. Kyaukphyu, Sittwe in Rakhine State, Yebyu in Tanintharyi Region and possibly sites in Ayeyarwady Region).
  - Offshore routes between landing areas and offshore platforms.
  - Successive construction of parallel pipelines or other facilities (e.g. in Tanintharyi Region and from Rakhine to Shan States) that required or requires successive disruption to the same communities.
  - Concentrated onshore O&G operations (e.g. Minbu, Chauk, Yenangyaung Townships, in Magway Division).
  - Areas of concentrated use of certain roadways or other transport corridors.
  - Planned additions of O&G Operations to SEZs (eg. Kyauk Phyu, Dawei).

#### Box 25: Relevant Guidance on Cumulative Impacts

- IFC, "[Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets](#)"
- Franks *et al*, "[Cumulative Impacts: A Good Practice Manual for the Australian Coal Mining Industry](#)"
- Global Compact, "[Business & Human Rights Dilemmas Forum: Cumulative Impacts](#)"

# Region-Specific Conflict Analysis



# Rakhine

**In this section:**

- A. Regional Context
- B. Conflict Dynamics
- C. Key Human Rights Implications for the O&G Sector

## A. Regional Context

Rakhine State is located in the western part of Myanmar, with a long coastline on the Bay of Bengal to the west, and a shorter border with Bangladesh to the north. The state is separated from the rest of Myanmar by the Rakhine Yoma, a mountain range running north-south and rising to 3,000m at its highest point. Only three roads cross these mountains, the main one being Magway to Ann, then Pyay to Toungup to the south, then Yegyi to Gwa, in the far south. The state is divided into four districts, with a total of 17 townships.

The population of around 3.3 million is made up of a majority Rakhine Buddhists, and a significant minority (estimated at 30+ per cent) of Muslims. In some areas, particularly northern Rakhine State, there is a large majority of Muslims; in some other areas there is a reasonably large Chin minority. Apart from the capital Sittwe, the population of the rest of the state is overwhelmingly rural. It is one of the poorest states/regions of the country, along with Chin State.

## B. Conflict Dynamics

Rakhine State has been little affected by armed conflict in recent decades. There are a number of Rakhine armed groups, but these are very small, and most of them are not based in Rakhine State, but rather in Kachin or Kayin states, where they have fought alongside larger armed groups. The Arakan Liberation Party (or Rakhine State Liberation Party) concluded a ceasefire in April 2012 and has a liaison office in Kyauktaw township. There have also been Muslim (Mujahid) armed groups operating in the state in the past – most recently the Rohingya Solidarity Organisation, formed in 1982. However, this group has no camps on Myanmar territory and is mostly defunct as an armed force, although some recent deadly attacks on Myanmar border police have been blamed on the group.

Over the years, there have been serious intercommunal tensions and violence. In 1977 and again in 1991 there were major exoduses of Rohingya Muslims from northern parts of the state into Bangladesh, as a result of intercommunal clashes and abuses by state security forces. Most of the 250,000 who fled were subsequently repatriated under UN

auspices, but there were no real efforts at reintegration, and the majority have no citizenship papers and are registered as “foreign residents” with fewer rights. For over 20 years credible international organisations have reported on human rights violations against the Rohingya, including forced labour, forcible displacement, restrictions on marriage and freedom of movement, as well as the more recent violence against them.<sup>460</sup> Moreover successive UN Special Rapporteurs on the situation of human rights in Myanmar have expressed concerns about such violations against the Rohingya.<sup>461</sup>

A new round of deadly violence erupted across much of the state in 2012. This has mainly been anti-Muslim violence by Buddhist mobs, although in northern Rakhine State where the Muslim population is in a large majority, there has also been Muslim-on-Buddhist violence. There has been a long history of intercommunal violence dating back to colonial times. However, the most recent manifestation has been among the most intense and sustained and is partly linked to the new political realities and the competition for political power in Rakhine State. Under the military regimes of the past, the Rakhine minority was seen as a threat and systematically sidelined, and so there was effectively no political power to compete for.

Currently, there are 143,000 internally displaced persons in Rakhine State, many living in very poor conditions; the large majority are in Sittwe township. Other Muslim populations are vulnerable due to loss of jobs, compounded by longstanding restrictions on movement that prevent them travelling in search of work. Access to vulnerable populations for humanitarian organisations is a major challenge, with local Rakhine communities accusing them of pro-Muslim bias, and often intimidating humanitarian workers and blocking access to Muslim communities; in March 2014, there were attacks on the homes and offices of aid agencies in Sittwe, leading to the temporary evacuation of their staff out of Rakhine State.

## C. Key Human Rights Implications for the O&G Sector

- **Consultation:** Consultations with all communities prior to, during and after the E(S)IA process will be challenging in areas with a Muslim population (much of the State), due to anti-Muslim sentiment, inter-communal tensions, and difficulty of access due to displacement of Muslim populations. Consultations themselves could present a risk of increasing tensions or prompting violence if Rakhine communities object to consultation with Muslim communities, or if they (mis-)perceive those consultations as being a prelude to assistance projects. Companies should also seek to consult with humanitarian organisations operating in the State, including UN agencies, about such risks.

<sup>460</sup> See for example Amnesty International, “[Myanmar: The Rohingya Minority: Fundamental Rights Denied](#)”, Index number ASA 16/005/204 (May 2004). Human Rights Watch, “[All you can do is pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State](#)” (April 2013) and International Crisis Group, “[The Dark Side of Transition: Violence Against Muslims in Myanmar](#)” (Oct. 2013).

<sup>461</sup> Office of the High Commissioner for Human Rights, “[Myanmar: Build on achievements and reach for democracy’, Outgoing Special Rapporteur](#)” (30 May 2014).



- **Security risks:** There exist potential security risks to expatriate O&G staff in Rakhine State given current anger/protests directed towards international aid workers, and with the possibility that O&G staff may be mistaken for aid workers.
- **Fisher-people:** O&G companies need to be aware of possible disruption to fishing communities as a result of seismic work. Offshore fishing has previously been mostly conducted by Muslim fishermen, but now that many have been displaced or confined to camps and are unable to fish, Rakhine fishermen are starting to take their place. Companies need to be aware of this dynamic in the context of consultations and compensation. Maritime security is likely to be provided by the Myanmar Navy, and companies should be aware of the possibility of discrimination against Muslim fishermen.
- **Non-discrimination in the workplace & local procurement:** Discrimination against Muslims will make it very challenging for companies to achieve non-discrimination in hiring and promotion, whether hiring is done directly or through third party agencies. There will be similar challenges to ensuring that local procurement benefits all communities equitably.
- **Workplace tensions:** Tensions between Buddhists (Rakhine or Bamar) and Muslims, and between Bamar and Rakhine, which will have to be managed and addressed.
- **Persons fleeing violence:** There are frequent people-smuggling boats carrying Rohingya Muslims that depart from northern Rakhine State and nearby parts of Bangladesh, mostly heading for southern Thailand and Malaysia. O&G companies conducting off-shore activities may therefore come into contact with these boats, many of which are unseaworthy and with unreliable engines. Companies will need to develop policies for dealing with boats in distress, taking into account their illegal status, the fact that neither Myanmar nor Bangladesh may recognise the occupants as having legal status in their countries, and possible abuse at the hands of the authorities, including maritime security forces.
- **Interactions with the Myanmar military:** O&G companies need to be cognisant of the fact that Myanmar security forces – particularly the police, but also the military – have in some cases been complicit in incidents of anti-Muslim violence. Training and other interventions will be required to mitigate the risks of this occurring in the context or in the vicinity of company operations.
- **Benefits sharing:** As one of the poorest parts of Myanmar, but with considerable natural resources and economic potential, there are strong grievances in Rakhine State about economic exclusion. This means that in addition to the debates taking place across Myanmar about more local benefit from extractive industry projects and appropriate compensation for the impact of these projects, there are deeper grievances that Rakhine State has not benefitted from its natural resources. This means that O&G companies will likely come under strong local scrutiny not only over the negative impacts and benefits that their operations bring to local communities, but also over the extent to which the major revenues that their projects are bringing to the central Government are being equitably shared with Rakhine State. Even if O&G companies have limited influence over such policy decisions by the central Government, they will inevitably be impacted by such debates, particularly so in Rakhine State.

## Part 6.2

# Tanintharyi & Mon

**In this section:**

- A. Regional Context
- B. Conflict Dynamics
- C. Key Human Rights Implications for the O&G Sector

### A. Regional Context

Mon State and Tanintharyi Region together form the coastal strip of Myanmar along the Gulf of Martaban and Andaman Sea; the Mergui Archipelago, which forms part of southern Tanintharyi, consists of more than 800 islands. Tanintharyi Region, and a small part of Mon State border Thailand. The border with Thailand is formed by the Tenasserim Hills, rising to 2,000m at their highest point. There is one north-south road running along the coast from Mon State down to the southern tip of Tanintharyi Region. Mon State is divided into two districts, with a total of 10 townships; Tanintharyi Region is divided into three districts, with 10 townships.

The Yadanar and Yetagun gas pipelines converge offshore from Yebyu township in northern Tanintharyi, then cross the township to Thailand as a single pipeline. There is a controversial tin mine, the Heinda mine east of Dawei, which is currently the subject of a domestic law suit by communities affected by pollution and waste from the mine. There is also a proposed major port and industrial complex near Dawei, which is currently in the planning stage and has been delayed by lack of financing and change in developer. This project faces considerable resistance locally, as a result of concerns over potential environmental issues and land expropriations. There is also a planned port/power station/oil refinery planned at Launglon township near Dawei that is facing local resistance for similar reasons. Finally, environmental groups and local communities are concerned about plans for a large coal-fired power station in Ye township.

The population of Mon State is around 2.1 million (23 per cent urban); the state capital Mawlamyine is one of Myanmar's largest cities. Tanintharyi region has a population of around 1.4 million (34 per cent urban). The majority of the population in Mon State are the Mon, who are predominantly Buddhist, along with minority Burman and Karen populations. There is a fairly large minority Muslim population, particularly in Mawlamyine, which is also a stronghold of the Buddhist-nationalist (and anti-Muslim) 969 movement. In Tanintharyi Region, the majority of the population are Burman (of the Tavoyan ethnolinguistic sub-group), with a number of other small minority populations. Mon State has a relatively low poverty incidence of 16 per cent (compared with a national average of 26 per cent); Tanintharyi Region is poorer, at 33 per cent.

## B. Conflict Dynamics

Both Mon and Tanintharyi have been mired in conflict for decades. The two largest ethnic armed groups in the area are the Karen National Union (KNU) and the New Mon State Party (NMSP), both of which have ceasefires with the Government. There are in addition a plethora of smaller armed groups and factions, some with ceasefires, some not, and armed criminal gangs.

The NMSP controls a number of ceasefire zones in Mon State, and straddling the border with Kayin State and into northern parts of Yebyu township in Tanintharyi Region. The KNU operates in parts of Mon State (the north-east and south-east) and in large parts of Tanintharyi Region, in the mountains to the east of the car road. There is significant insecurity in the areas east of the car road in Tanintharyi's Yebyu township, due to the presence of armed Mon bandits. A Mon splinter group also operates around Lenya in Bokpyin township, in the far south of Tanintharyi Region. These groups and other ethnic armed groups and criminal gangs conduct piracy operations in the archipelago. These are mostly focussed on 'taxing' legal and illegal Thai fishing trawlers operating in Myanmar waters, but some may engage in other opportunistic piracy. In addition, pockets of insecurity and risk of banditry can occur across the more isolated areas of Tanintharyi and Mon.

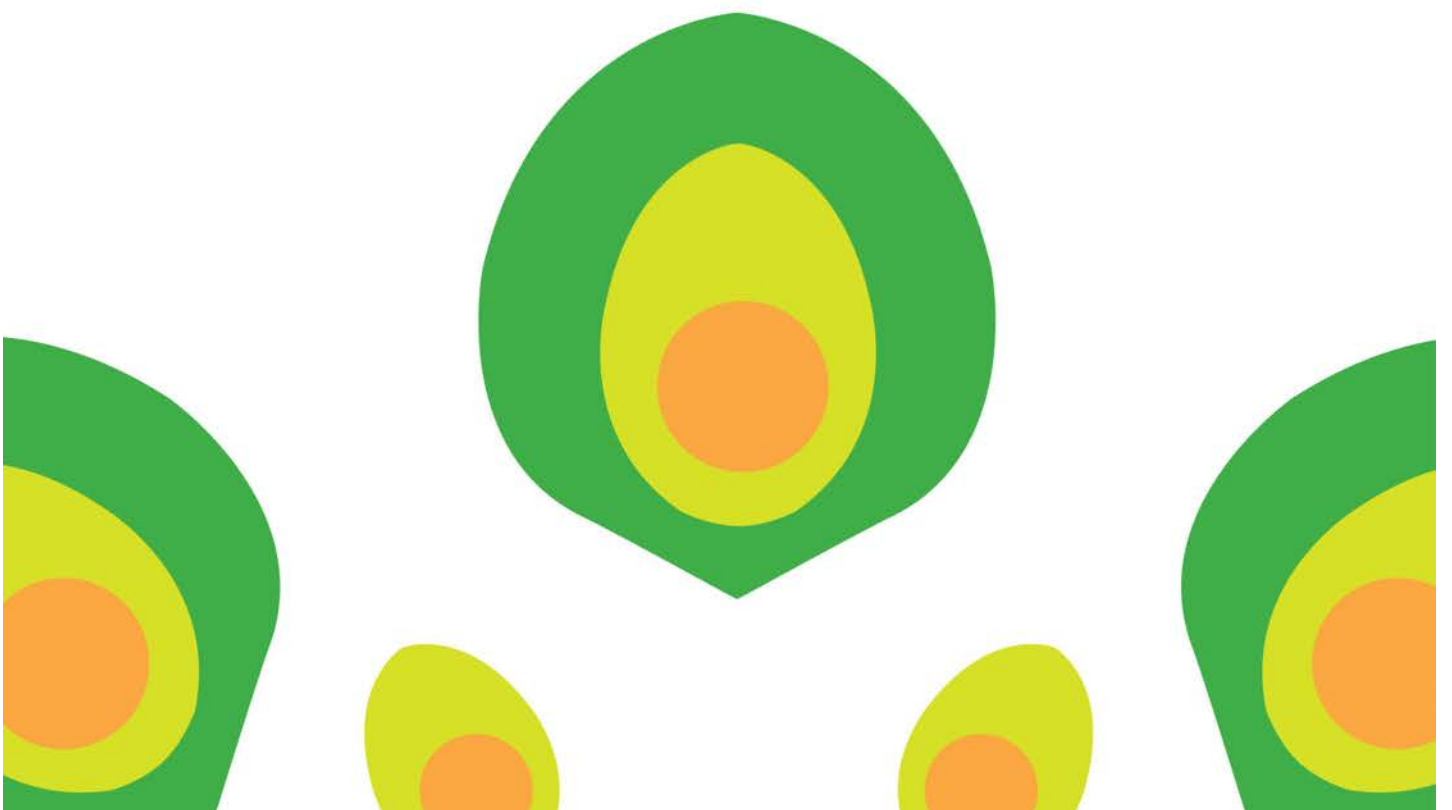
## C. Key Human Rights Implications for the O&G Sector

- **Interactions with the Myanmar military:** Due to the legacy of armed conflict in this area, and occasional clashes still occurring, O&G companies will have to be particularly sensitive of the risks of rights abuses being committed by the Myanmar military near to their areas of operations or more directly linked to provision of security for companies – including in the context of any security provided for the conduct of community consultations in the ESIA process. Forced labour, illegal taxation, land confiscation and sexual abuses by troops are issues that will require particular attention.
- **Repercussions of historic experiences:** There is likely to be particular scrutiny of companies in this area – both by communities and activist groups – given the controversies and allegations of rights abuses connected to the construction of the Yadana pipeline in the early 1990s. Even if the political-security context is now significantly different, communities may have concerns based on previous experiences; similarly, expectations of how new O&G companies will operate may be shaped by the CSR and other practises employed by existing O&G companies in the area.
- **Land rights:** Given a legacy of land grabbing in the past, there are strong local sentiments in this area over land rights issues, and strong civil society organisation. O&G companies will face considerable scrutiny in this regard and should learn the lessons from other companies on instituting effective, transparent and equitable procedures for consultation and compensation in this regard.
- **Consulting ethnic armed groups:** It will be critical for O&G companies to have detailed early consultations with ethnic armed groups (NMSP and/or KNU, depending

on the specific location), who have longstanding non-state administrative systems, and who are the de facto authorities in some areas.

- **Piracy:** Companies should be aware of the possibility of piracy in off-shore central/southern Tanintharyi Region. On-shore, there are risks in some areas of banditry and attempts at extortion of O&G companies.
- **Fisher-people:** Companies with activities in the Mergui Archipelago should also be aware of possible impact on the indigenous Moken people – known as “Sea Gypsies”. They traditionally follow a nomadic, sea-based culture, although many have adopted more sedentary village-based lifestyles, sometimes under Government pressure.
- **Non-discrimination in the workplace:** Companies will have to be mindful of the ethnic mix in these areas and ensure equitable hiring practices, as well as the possibility for workplace tensions. Although tensions between communities and different ethnic groups in this area are not as strong as in some other parts of Myanmar, issues can still arise. As in other parts of Myanmar, there can be fairly strong anti-Muslim sentiments and discrimination.

# Recommendations





# Recommendations

The following is a summary of the recommendations to the main actors in Myanmar's O&G sector. A fuller explanation of these recommendations and suggestions for how they can be implemented are included below.

The effective management of cumulative impacts is just one area where multi-stakeholder dialogue is likely to be more effective than individual action. This assessment of the Myanmar O&G sector has identified other areas where such a dialogue is desirable and the Myanmar Centre for Responsible Business (MCRB) stands ready to facilitate those discussions.

<b><u>To the Government of Myanmar</u></b>	<b><u>To Companies in the O&amp;G Sector</u></b>
<ol style="list-style-type: none"> <li>1. Strengthen the social and human rights requirements in the forthcoming Environmental (and Social) Impact Assessment (E(S)IA) Procedures.</li> <li>2. Strengthen the environmental, social and human rights requirements in the Production Sharing Contracts (PSC).</li> <li>3. Improve transparency of the O&amp;G sector at various levels of Government, including full implementation of the Myanmar Extractives Industries Transparency Initiative (MEITI), complemented by a modern Access to Information Law.</li> <li>4. Improve policy planning and enact legislative reform to establish a coherent framework for the O&amp;G sector with adequate safeguards.</li> <li>5. Adopt appropriate models of local benefits sharing from extractive projects.</li> <li>6. Undertake security sector reform aimed at protecting people and private sector operations in a way that respects human rights.</li> <li>7. Develop and strengthen effective non-judicial grievance mechanisms and require businesses to provide operational level grievance</li> </ol>	<ol style="list-style-type: none"> <li>1. Adopt a policy commitment to responsible business conduct and respect for human rights, communicate and implement this.</li> <li>2. Commit to applying international standards of responsible business conduct in the absence of developed national legal frameworks.</li> <li>3. Take account of local complexities and legacies when assessing the impacts operations may have, and integrate and act on these findings.</li> <li>4. Integrate consideration of conflict issues - latent, existing and potential - into all phases of operations.</li> <li>5. Monitor and track responses to risks and impacts, involving workers and communities.</li> <li>6. Communicate with stakeholders, particularly workers and communities, to build understanding and demonstrate transparency and accountability.</li> <li>7. Be prepared for negative impacts by having in place mechanisms that can address grievances quickly and effectively.</li> <li>8. Develop strategies for creating positive impacts at the local, regional and national level.</li> <li>9. Take collective action where appropriate</li> </ol>

mechanisms.	to address environmental, social and human rights issues.	
<p style="text-align: center;"><b><u>To Investors</u></b></p> <ol style="list-style-type: none"> <li>1. Identify and conduct enhanced due diligence on companies in their portfolios that are involved in the O&amp;G sector in Myanmar.</li> <li>2. Engage with investee companies involved in the O&amp;G sector in Myanmar to ensure that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar.</li> <li>3. Urge companies doing business in the O&amp;G sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.</li> </ol>	<p style="text-align: center;"><b><u>To Civil Society</u></b></p> <ol style="list-style-type: none"> <li>1. Engage actively in E(S)IA consultation and disclosure processes, analyse and comment on the documents and hold companies to account.</li> <li>2. Continue to engage actively in the Myanmar Extractives Industries Transparency Initiative (MEITI) and press for MEITI to adopt the full range of options under the 2013 EITI Standard.</li> <li>3. Encourage companies and Government to engage in multistakeholder discussion on other extractives sector issues that are not part of the EITI mandate.</li> <li>4. Increase media reporting on the O&amp;G sector.</li> </ol>	<p style="text-align: center;"><b><u>To Development Partners / Home Governments</u></b></p> <ol style="list-style-type: none"> <li>1. Support better governance and management of the O&amp;G sector and programmes to ensure potential positive impact are realised.</li> <li>2. Support the strengthening of environmental and social policies and legal frameworks.</li> <li>3. Support implementation of the corporate responsibility to respect human rights in Myanmar by international companies.</li> <li>4. Ensure investment and free trade agreements negotiated with the Government of Myanmar reinforce responsible business practices.</li> </ol>
<p style="text-align: center;"><b>To All Stakeholder Groups - Concerning Cumulative Impacts</b></p> <ol style="list-style-type: none"> <li>1. Regional/State Governments, companies and relevant national ministries should work together to plan for and prevent or mitigate potential cumulative impacts.</li> </ol>		

## Part 7.1

# Recommendations to the Government of Myanmar

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**NB:** These Recommendations are presented in an order from immediate, short-term actions to longer-term actions.

### 1. Strengthen social and human rights requirements in the forthcoming Environmental (and Social) Impact Assessment (E(S)IA) Procedures.

The draft E(S)IA Procedures include welcome changes that will bring Myanmar's ESIA requirements much closer to international standards and good practice – including around Government-led and company-led community consultations and disclosure (See [Part 3](#)). These improvements should be maintained in the finalised version of the Procedures. However, there are additional improvements that could be made to the Procedures and their application to ensure that these processes are used as efficiently and effectively as possible to cover a fuller range of impacts from operations, while ensuring that limited Government resources to consider ESIA's are prioritised on high risk projects, and that assessments are conducted at meaningful stage-gates in the permitting process.

#### Key Points for Implementation:

- **Explicitly include social and human rights issues in the E(S)IA Procedure.** “Social” should be included in the title of the Procedures, which should include a definition of “social impacts” and “human rights impacts” and provide for consistent treatment of these impacts in the text<sup>462</sup>. If separate social/human rights impact procedures are to be forthcoming (including with respect to indigenous peoples and involuntary resettlement), indicate the ministry(ies) responsible.
- **Prioritise** the requirement for a full ESIA on those stages of the O&G project cycle which involve **the most serious potential negative impacts**.
- Do not require companies to undertake ESIA's until their **project status allows them to conduct realistic assessments** of the impact of their activities and meaningful public consultation.
- **Strengthen the right to information.** There are good consultation provisions in the current draft but they do not provide a clear right by communities or other third parties to ask the project proponent for further information, only to receive disclosed information.

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<sup>462</sup> This has been achieved, for example, in the IFC Performance Standards by both including human rights requirements within the Performance Standards and including an explicit reference to human rights.

- Provide for **appeal for project affected peoples** to challenge ESIA on procedural and substantive grounds to build trust in the process that it is more than just a tick-box exercise.
- **Clarify remaining uncertainties** in the E(S)IA Procedure process including:
  - The involvement of regional administrations in scrutinising assessments of social impacts and how they will take local views into account.
  - Whether requirements to update ESIA as needed will be included in contracts (such as the PSCs) issued by MIC or line ministries.
  - Whether an ESIA must be completed within 6 months of signing a PSC or will be a performance requirement which would need to be fulfilled to receive a permit for the next stage of activity (as is common practice elsewhere).
  - Whether MOECAP will issue more detailed standards or refer to existing standards for particular types of ESIA such as for onshore or offshore seismic operations, and how impact assessments and seismic shooting will be sequenced.

## 2. Strengthen the environmental, social and human rights requirements in the Production Sharing Contracts (PSC).

The Framework for Economic and Social Reforms (FESR) recognises that there is a need to update and modernise the legal frameworks for O&G operations. This should also include the PSC. This section draws on an analysis of Myanmar's Model Onshore and Offshore Production Sharing Contracts (PSC)<sup>463</sup> as well as on an analysis of emerging good practices on O&G contracts from other countries.<sup>464</sup> Two of the main recommended changes are included below – a more detailed set of suggested changes to the PSC is included in the [Annex to the Recommendations](#).

### Key Points for Implementation:

- **Include a contractual requirement that O&G operators meet the IFC Performance Standards and WBG Environmental, Health and Safety Guidelines** for [Offshore Oil & Gas Development](#) or [Onshore Oil & Gas Development](#)<sup>465</sup> that are designed to be applied in country situations like Myanmar. The PSC can be drafted so that Myanmar's environmental and social laws apply if and when they provide an equal or greater level of protection as the IFC Performance Standards, thus ensuring that forthcoming national laws are given due consideration. This approach would:
  - **Demonstrate that the Government is taking additional concrete steps** to implement its stated commitment in the FESR to **high environmental and social standards** and to attracting responsible investors.
  - **Level the playing field** among all competitors from all regions, ensuring that they are all operating to the same standards (in theory if not in practice).
  - **Provide specific benchmarks** to measure whether appropriate environmental and social measures have been put in place once operations have begun in order to

<sup>463</sup> These models are not yet publicly available from MOGE's website, which only publishes standard terms and conditions. See for example, [Myanmar Ministry of Energy](#).

<sup>464</sup> See for example [Open Contracting](#)

<sup>465</sup> The Guidelines set out good industry practice that is generally considered to be achievable in new facilities at reasonable costs by existing technology. Although the Guidelines are currently being updated, they still provide an important reference in the absence of updated Myanmar regulations for the sector.

hold companies accountable for their environmental, social and human rights performance.

- **Use familiar standards** which are already applied by many **O&G companies**, by 80 major **banks** around the world who often provide project finance for extractive and other large scale project financing (the Equator Principles)<sup>466</sup> and by many of the **Export Credit Agencies** from the OECD countries that may be providing guarantees or financing to suppliers of O&G operations in Myanmar.<sup>467</sup>
- **Modify the stabilisation clause to exclude changes in law related to responsible business conduct.** There is a planned programme of legislative changes covering a wide range of laws that will drive or at least affect responsible business requirements in Myanmar. The current PSC contains a “stabilisation clause” that requires that the economic equilibrium of the O&G operations should be maintained if there are changes in the law. Such stabilisation clauses may be considered important to investors, but should be very carefully crafted to exclude changes in areas of law that are important to responsible business practice from the scope of its application. Otherwise the Government would be locked into offsetting or even compensating O&G companies for foreseeable and needed changes in these areas of its legal framework.<sup>468</sup>

### 3. Improve transparency of the O&G sector at various levels of Government, including full implementation of the Myanmar Extractive Industries Transparency Initiative (MEITI), complemented by a modern Freedom of Information Law.

The Union Government has introduced some welcome measures around transparency, including its commitment to join the EITI, and more recently to the International Aid Transparency Initiative (IATI) and transparent government budgeting. In addition to requiring disaggregated reporting of revenue by company, the new EITI Standard will require reporting on state owned enterprises (SOEs), sub-national transfers, transit fees, and disclosure of social expenditures by companies – all of which will give a far clearer picture of the revenue flows in the sector than has ever been possible to date. The new EITI Standard also includes the option of requiring disclosure of contracts and beneficial ownership – two options that would be a useful addition under MEITI. Robust EITI implementation brings the immediate benefit of improved transparency, but also indirect

<sup>466</sup> The [Equator Principles](#) are based on the IFC Performance Standards and applied by 80 Equator Banks.

<sup>467</sup> Under the OECD Common Approaches, Export Credit Agencies must benchmark their environmental and social reviews against the IFC Performance Standards (or in some cases the World Bank Safeguard Policies). See: [Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence \(the "Common Approaches"\)](#), as adopted by the OECD Council on Thursday 28 June 2012: TAD/ECG(2012)5.

<sup>468</sup> The model Production Sharing Contracts do not exempt any areas of law from the operation of the clause. “Stabilization: If a material change occurs to the either MOGE's or CONTRACTOR 's economic benefits after the Commencement of the Operation Date of the Contract due to the promulgation of new laws decrees, rules and regulations, any amendment to the applicable laws, decrees, rules and regulations or any reinterpretation of any of the foregoing made by the Government, the Parties shall consult promptly and make all necessary revisions or adjustment to the relevant provisions of the Contract in order to maintain the affected Party's normal economic benefit hereunder.” Clause 27.2



benefits, such as: the development of a constructive multi-stakeholder dialogue; strengthening the capacity and protection of civil society, improving tendering, procurement and budgeting processes; and attracting more responsible investors. Beyond these important improvements, there are other steps the Government could take to improve transparency around the operation of the O&G sector.

### Key Points for Implementation:

- **Adopt a dedicated EITI Law to legally entrench EITI requirements into law in Myanmar.** This should involve a progressive approach which includes the options under the 2013 EITI Standard to require disclosure of beneficial ownership and disclosure of contracts.
- **Enhance the bidding process for O&G blocks.** Under the FESR, the Government has committed to “transparent, competitive and non-discretionary procedures for the award of exploration, development and production rights”<sup>469</sup> Other new EITI members have chosen to do a retrospective audit on earlier license awards under the EITI umbrella.<sup>470</sup> Disclosure of the following additional information both retrospectively and for future rounds would improve the governance of the bidding and selection process:
  - who is mandated to make the decision about awards.
  - the criteria and priorities for selection of winning bidders (these criteria should be revised to seek information on bidder’s commitments to environmental and social sustainability by requiring information on policies and management systems for environmental, social, human rights, health & safety, community engagement<sup>471</sup>).
  - whether there was a signature bonus paid and if so, to whom it was paid and how much.
  - the evaluation criteria and scoring MOGE uses, together with a brief justification for the selection of the chosen operators.<sup>472</sup>
- **Enhance the MIC permit process by including key contract requirements.**
  - Conditions relating to responsible business requirements (as reflected in a revised PSC) should also be included as a condition of the MIC permit, which could be monitored by both MIC and civil society.
  - MIC should issue public notifications that includes more than just a list of investments that have been granted MIC permits as it does currently, including information on the nature of those investment projects, the approved period of the investment’s construction and operation, and other key terms and conditions on which the permit was granted.
- **Adopt a modern Freedom of Information Law** that would generally permit the general public access to information held by the Government (subject to certain accepted exceptions). No such law currently exists. It would provide an important tool for the population, their representatives and the media to contribute to an evidenced based approach to governance of the sector.

<sup>469</sup> [“Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”](#), (Jan 2013) (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), Section 5.3.

<sup>470</sup> See for example the [Liberia EITI](#) (LEITI).

<sup>471</sup> The recent bidding process run by the Myanmar Ministry of Communications and Information Technology (MCIT) provide good lessons learned on more transparent bidding and tendering processes.

<sup>472</sup> See MCRB, [“Draft SWIA consultation report”](#), p. 4.

## 4. Improve policy planning and legislative reform to establish a coherent framework for the O&G sector with adequate safeguards.

The commitments in the FESR to “extracting natural resources sustainably” need to translate into a comprehensive, coherent and coordinated energy and natural resource policy and legal frameworks, and incorporate measures that protect the environment and people. There are many laws affecting the operation of the sector that are in need of revision or replacement to bring the legal framework up to date with modern practices in the sector, and to better reflect human rights, social and environmental considerations. These reforms will take time not least to allow for the consultation of citizens and other experts. In the interim, as noted in Recommendation 2, the Government can use the contractual framework of the PSC to fill some gaps and provide an assurance (at least contractually) that international standards will be applied in the sector.

### Key Points for Implementation:

- **Include adequate environmental, social and human rights safeguards for private sector operations in each sector policy**, with specific plans to incorporate such safeguards into the legal framework and operating standards for projects.
- **Ensure** policy frameworks are coordinated, **with specific attention to the necessary long-term strategic** and land use planning to promote the coexistence of natural resource and energy development with **each other and with agriculture**.
- **Develop a new O&G law in line with international standards** to replace the current Petroleum Law in force since 1934.
- **Complete the transformation of MOGE** into a state owned national oil company and separate its current regulatory function into another part of the Ministry of Energy, to remove conflicts of interests, leading to better long-term regulation of the sector.
- **Complete the legal framework on environmental protection**.
- Develop a **comprehensive and overarching labour law framework** in line with international labour standards, including around freedom of association and collective bargaining, and extending protection to new types of workers, including temporary and migrant workers whose numbers will continue to increase alongside new investments.
- **Reform the land laws** to provide clear protections that reflect the customary and informal arrangements in the country both in terms of protecting security of tenure as well as providing appropriate process safeguards to eliminate or at least reduce unlawful acquisition (land grabbing).
- **Develop a new law on the expropriation of property** for public purposes and associated resettlement, grounded in international standards, to replace the current 1894 Land Acquisition Act currently governing such processes.
- **Eliminate the criminalisation of protests under the Law Relating to Peaceful Assembly and Peaceful Procession** to ensure that those affected by potential and actual O&G operations and their representatives can speak freely without fear of retribution or even imprisonment.

## 5. Adopt appropriate models of local benefits sharing from extractive projects.

Implementation of the EITI Standard will provide a better understanding of the revenue contributions of the O&G sector. However, this is just one part of the broader governance choices ahead for the Government in improving the management of the sector for the benefit of Myanmar's population – present and future.

### Key Points for Implementation:

- **Publicly debate options for sharing out benefits** between the Union Government and States/Divisions that will take account of the negative impacts experienced locally and in the region of O&G operations, and the costs and benefits of different options, including local content requirements and support for wider economic development. Consider international good practice for resource extraction projects which increasingly involves some form of a “**Community Development Agreement**” (CDA).
- Encourage companies to focus on “**strategic CSR**” which maintains the business link between social investment and the O&G project, and does not require the company to usurp the Government's role in fulfilling human rights (e.g. to provide health and education services). Require engagement and transparency around company CSR programmes, including an annual public report and budget.
- **Consider options for protecting the interests of future generations.** These could include safeguarding resources in the ground (also in light of climate change considerations), or a sovereign wealth fund or some other financial mechanism for the purpose of smoothing out and sustaining public expenditures and safeguarding some portion of revenue for future generations. There are numerous considerations the Government must take into account, including balancing shorter term desires for tangible benefits of reform versus longer-term needs.<sup>473</sup>

## 6. Undertake security sector reform aimed at protecting people and private sector operations in a way that respects human rights.

A peace process that brings with it reduced tensions around significant investments in the O&G sector can potentially pay multiple dividends and attract further investment into the country. The possibility of reducing militarisation around O&G projects diminishes the opportunities for clashes that could reignite conflicts. Local communities must feel secure and protected from criminalised or other potentially harmful activity that could flow into newly peaceful areas, including for land and resource grabbing. O&G operations also have a legitimate interest in protecting their personnel and operations. There are already training programmes underway involving the military and police focused on improving human rights performance but these are currently not connected to security and business operations.

<sup>473</sup> See the [Norwegian Oil for Development Programme](#) for further details.

### Key Points for Implementation:

- **Pro-actively address human rights and security issues in connection with the extractives sector**, learning from experiences of other emerging producers like Colombia.
- **Consider engagement with the [Voluntary Principles on Security and Human Rights](#)**, a tripartite government, private sector, civil society initiative implementing a set of principles designed to guide extractive companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights.
- Government (and business) should **engage with local governments and local communities** on security arrangements where O&G projects will be developed, to ensure that they do not feel excluded which can lead to frustration and understand the security arrangements.
- **Address the security measures in some oilfield areas (OFA)** that have been in place since the 1960's and that have negative impacts on local livelihoods. These Article 144 orders in OFA could be replaced with more targeted measures to control access to oil areas and prevent theft of oil, while also protecting local community members in line with human rights and permit appropriate local economic activities and freedom of movement.

## 7. Develop and strengthen effective non-judicial grievance mechanisms and require businesses to provide operational level grievance mechanisms.

Myanmar's judicial system requires comprehensive reform which will take many years. In the interim, and even in the longer term, it is important that effective alternatives to formal legal proceedings are available to ensure access to remedy is readily available to victims of business activities. There are some newly emerging non-judicial mechanisms in Myanmar, but these are already overloaded with complaints and hindered by limited mandates.

### Key Points for Implementation:

- **Review and strengthen existing non-judicial grievance mechanisms** for victims of business-related human rights abuse, to enable those mechanisms to provide or require a remedy. Remedy can take a variety of forms: restitution, apologies, rehabilitation, financial and non-financial compensation and punitive sanctions (criminal or administrative such as fines).
- **Encourage or even require companies to develop operational level grievance mechanisms.** Such mechanisms cannot address wider systemic issues that must be dealt with by the Government or the Government in coordination with companies in the sector. But effective company mechanisms can address concerns or grievances early and directly, potentially preventing harms from continuing and grievances from escalating.

# Recommendations to Companies in the O&G Sector

This section is addressed to all companies – Myanmar and foreign – in the O&G sector, including operators, suppliers, and service providers. Recommendations 1-7 build on the steps in the UN Guiding Principles on Business and Human Rights,<sup>474</sup> which is a core framework for the SWIA.

There are several guides for O&G companies on implementing the UN Guiding Principles on Business and Human Rights:

- European Commission, [Oil & Gas Sector Guide on Implementing the UN Guiding Principles](#) (2013)
- IPIECA and the Danish Institute for Human Rights: [Integrating human rights into environmental, social and health impact assessments: a practical guide for the oil and gas industry](#) (2013)
- IPIECA: [Human rights due diligence process: a practical guide to implementation for oil and gas companies](#) (2012)
- IPIECA: [Operational level grievance mechanisms: good practice survey](#) (2014)

## 1. Adopt a policy commitment to responsible business conduct and respect for human rights, communicate and implement this.

The Government of Myanmar, numerous home governments of companies operating in the Myanmar O&G sector, and international and regional organisations have been explicit about their expectations that businesses conduct themselves responsibly in Myanmar. Delivery on those expectations will require a specific commitment. Several large, international O&G companies operating or awarded blocks in Myanmar already have public statements or policies on human rights at the global level. These and other policy commitments to other areas of responsible business conduct could be repeated locally and contextualised. A few Myanmar operators are also adopting human rights commitments. These can provide useful examples to build on for other local companies in the sector.

<sup>474</sup> As set out in Chapter 1, under the corporate responsibility to respect human rights companies are expected to: (i) adopt a policy commitment; (ii) carry out human rights due diligence which includes assessing, integrating and acting on assessment findings, tracking responses, and communicating with stakeholders; and (iii) remedying, including through operational level grievance mechanisms.



### Key Points for Implementation:

- **Make clear** in the commitment the expectation that the business, its staff and **business partners will respect human rights.**
- Consider whether the commitment should reflect **more specific guidance** for staff and business partners on key risks in operating in Myanmar including:
  - Appropriate community engagement and handling of grievances (see further Part 4.1)
  - land acquisition and use; compensation, resettlement (see further Parts 4.2 and 4.3)
  - the rights of workers to organise and collectively bargain; contracting temporary workers (see further Part 4.4)
  - the rights of ethnic minorities / indigenous peoples (see further Part 4.5)
  - challenges on ensuring non-discrimination, to both workers and communities, particularly to groups at risk (see further Part 4.6)
  - protection and security of operations (see further Part 4.7)
- **Embed** these commitments into company operational policies and procedures and business relationships, including through relevant contractual requirements, to ensure that the commitments are implemented.
- **Communicate** this commitment pro-actively within the company and to business partners, and make it publicly available..

## 2. Commit to applying international standards of responsible business conduct in the absence of developed national legal frameworks.

This SWIA has highlighted the current gaps in the Myanmar's evolving legal framework. Due to the rapid pace of change, lack of capacity and experience among legislators and Government ministries, there is no guarantee that once adopted, national laws will fully reflect the standards of responsible business conduct expected of companies operating in Myanmar. Nor will they necessarily protect workers, communities and the businesses themselves from the risks highlighted in the “Key Human Rights Implications for the O&G Sector” sections within the Project-Level Impacts ([Part 4](#)).

In addition to providing companies certainty at a time when the national legal landscape is in flux, using international standards also provides confidence to local and international stakeholders. This SWIA has identified several international standards of responsible business conduct; in particular the IFC Performance Standards and WBG Environmental, Health and Safety Guidelines (which provide detailed guidance on assessing and managing key environmental and social risks, including human rights) and the UN Guiding Principles on Business and Human Rights, that should be applied to operations in Myanmar. Companies based in the OECD are also expected to apply the OECD Guidelines on Multinational Enterprises, which are aligned with these other standards.

### Key Points for Implementation:

- Commit to applying international standards for responsible business conduct. This could be as part of the policy commitment (see Recommendation 1 above) and could

also be included in commitments made in, or as a side-letter to, the PSC signed with MOGE, and in the standards applied in conducting ESIAAs.

### 3. Take account of local complexities and legacies when assessing the impacts operations may have, and integrate and act on these findings

The forthcoming E(S)IA Procedure will require O&G operators to cover some but not all of the impacts relevant to understanding and managing the full impact of their operations in Myanmar. This SWIA has identified some key Myanmar-specific risks and some important upfront prevention and mitigation steps that should be relevant to companies' own due diligence and development of impact assessments and management plans (E(S)MP).

#### Key Points for Implementation:

- **Carry out ongoing, enhanced due diligence during the course of operations to understand the national, regional and local context and risks the company could pose, including to human rights.** This may include recognising that a situation may be considered a “legacy” issue from a company perspective, but could be very much “alive” from the perspective of affected stakeholders. It also requires understanding the makeup of the communities and the workforce, as a first step in identifying the potential for disproportional impacts or discrimination in community relations and employment conditions.
- **Design prevention and mitigation actions which reflect the local context, and take early steps to act on them.** These may include insisting on a consultative process for land acquisition, transparent and/or traceable process for any payment of compensation; establishing early contacts with local authorities, including police, to discuss security issues and responses in cases of disturbances; reviewing the use of, and working conditions for, temporary workers; ensuring that all workers (directly employed and in the value chain) have documented information on their employment status; and taking all necessary measures to ensure there is no benefit from any form of child or forced labour, including bonded labour, through sub-contractors.
- **Carry out enhanced due diligence on potential and existing business relationships.** Many of the services and goods for O&G operations will be provided by business partners (such as construction contractors, specialised technical services such as seismic, security and labour providers). It will be important to carefully assess the risk of business partners causing or contributing to impacts, including human rights impacts and their policies, systems and capacities for managing those impacts.
- **Ensure that the E(S)MP steps or supplemental management actions are also aligned with the process that will guide and bind business relationships.** This could include contracting arrangements, operational procedures, and additional supporting measures such training and capacity building for business partners.

## 4. Integrate consideration of conflict issues - latent, existing and potential - into all phases of operations.

This SWIA has highlighted the long history and interplay between extractive operations and conflict in Myanmar, and the continued possibility of inter-ethnic and inter-communal tensions and violence. Conflict sensitive business approaches will be needed, particularly in areas which have experienced armed conflict or which have ethnically diverse populations.

### Key Points for Implementation:

- **Take expert advice on how to engage with relevant ethnic armed groups, civil society groups, and other community leaders, including women leaders.** It should not be assumed that an armed group, or indeed any one group or organisation, is representative of the views of all of a community, and in some cases relations may be coercive.
- **Recognise the critical importance of land and natural resources issues in exacerbating conflict, or building peace.** They have a strong potential to contribute to grievances about economic exclusion.
- **Recognise that a key demand of ethnic groups** in the peace process is not only for constitutionally-enshrined **revenue-sharing arrangements** between the centre and the states/regions, but also much **greater local control of commercial activities in their areas.** Companies risk being caught in this dynamic if they are not proactive in trying to at least understand, if not managing conflicting requests.
- **Pursue a broader and more systemic response to the mitigating the risk of abuses by the military, police and other forces, rather than a narrow approach.** Avoid creating a “cordon sanitaire” around projects, which can have the effect of displacing abusive practices (such as demands for payments or labour) rather than addressing them.

## 5. Monitor and track responses to risks and impacts, involving workers and communities.

Given the rapidly changing situation in Myanmar, tracking performance will be important to understand whether adjustments need to be made to operating procedures by the company. Monitoring sub-contractors, including working conditions, will be particularly important. SWIA research showed that local communities are particularly interested in monitoring information on on-going operations and how companies are managing risks, including emergencies. The forthcoming E(S)IA Procedures will also require public disclosure of E(S)MP monitoring reports on the company website.

### Key Points for Implementation:

- **Consider carrying out joint monitoring of operational impacts with local communities.** To date this has not occurred in Myanmar, but models from other countries are available. Joint monitoring builds shared understanding of impacts and allows for more immediate resolution of disputes.

- **Consider sharing monitoring reports pro-actively with local communities, in an accessible form.** Even if joint monitoring is not carried out, companies can proactively share information with local communities (e.g. summaries, in local languages) as part of on-going engagement with local communities and to provide an evidence base for discussions.

## 6. Communicate with stakeholders, particularly workers and communities, to build understanding and demonstrate transparency and accountability.

Communication and engagement cuts across many recommendations but is integral to their success. Sincere, on-going two-way engagement with workers, workers representatives and communities is one of the most valuable things a company can do to prevent and mitigate risk. The SWIA field research highlighted that with a few exceptions, there was historically little interaction with communities around O&G operations, either by the Government or companies. This is now changing, including through the move to requiring ESIA's, and Myanmar's EITI candidacy. The SWIA also identified that communities wanted more direct contact with the companies running operations, rather than going through local authorities or MOGE. In particular, they wanted one focal point to turn to for information, covering the whole of the operations. There are some good examples of existing operators establishing community committees that serve as focal points for regular communication with other community members. In addition to this essential communication with stakeholders, some companies may also have specific reporting requirements to governments or investors.

### Key Points for Implementation:

- **Proactively invest in ongoing and meaningful engagement with workers, worker's representatives and communities throughout the project cycle.** Engagement should take place throughout the project cycle, including before the formal consultation required by the E(S)IA Procedure to enable stakeholders to engage effectively in that consultation and beyond. These formal consultations should be an important part, but only a part, of a broader strategy to engage workers, the local community, local government and civil society in on-going discussions about the changing face of operations and their impacts.
- **Communicate in a form and frequency that is accessible to local workers and communities, and does not put them at risk.** This will require an understanding of their ethnic makeup and identity, so as to be able to communicate in appropriate languages and channels as well as identify any literacy, cultural and physical barriers given the rudimentary infrastructure connecting most communities. Engaging with local civil society organisations will assist in understanding key risks, past mistakes and current practices.
- **Set up an accessible and local "one-stop shop" in the community for all issues concerning a project** e.g. basic information, emergencies, and grievances, whether the concern is about the company or other companies working on the project. Communities find it confusing and frustrating to be told to take their requests or complaints to others.

## 7. Be prepared for negative impacts by having mechanisms that can address grievances quickly and effectively.

One of the most systematic ways for a company to remediate impacts is through an operational-level grievance mechanism that is accessible directly to individuals and communities who may be adversely affected by the business. This may be administered by the company alone or in collaboration with others. Such a mechanism can provide an early warning system about issues that can be resolved directly if addressed early and effectively, but if ignored can escalate into protracted grievances. This SWIA identified few outlets in Myanmar for effective resolution of grievances either through judicial or non-judicial measures, thus making such alternatives all the more important.

### Key Points for Implementation:

- **Ensure that the “one stop shop” (see Recommendation 6) provides accessible and effective processes to address and resolve concerns** directly with the company, whether the grievance is about company or subcontractor operations. The UN Guiding Principles on Business and Human Rights set out criteria of an effective operational grievance mechanism.
- **Ensure that complainants are free to choose whether to use the company’s mechanism or remediation processes by state or third-party institutions.** Companies should be careful not to undermine the role of nascent Myanmar trade unions. Relevant state-based mechanisms for remedy may also evolve in coming years, such as Myanmar’s National Human Rights Commission or more effective local courts.
- **Prevent retaliation against complainants inside and outside the company.** Companies should respond to complaints, including demonstrations, in a manner that respects freedom of expression and assembly and other human rights. This includes raising cases with the authorities where individuals peacefully protesting against O&G operations are suppressed or mistreated.

## 8. Develop strategies for creating positive impacts at the local, regional and national level.

It is well recognised that in addition to longer-term contributions to national revenue, the extractives sector can create positive impacts in the shorter term, in local area of operations if planned carefully and with sufficient internal company support. There are a range of opportunities for companies operating in the O&G sector to contribute to more immediate positive impacts in Myanmar beyond the longer term payment of revenue that will take years to materialise for many of the new onshore and offshore blocks.

### Key Points for Implementation:

- **Develop immediate-, medium- and long-term strategies for addressing communities’ desire for jobs.** These may include supporting basic education and vocational training programmes for skills needed in the sector. They should also address increasing the participation in the sector of women and other ‘at risk’ groups.



- **Develop social investment programmes with, for and by communities** that will support them in developing their capacity to choose and manage small-scale developments. These programmes should maintain the strategic link between the social investment programme and the O&G operations, increase participation of at risk and excluded groups, and avoid philanthropy. Consider international good practices for resource extraction projects which increasingly involves some form of a “**Community Development Agreement**” (CDA).
- **Develop more systematic planning of quality project infrastructure**, together with local authorities, that can improve host community livelihoods while also serving the project.
- **Promote small business and entrepreneurship programmes** to improve the ability of local businesses to meet O&G operator requirements to provide goods and services to operators and their sub-contractors.
- **Work with financial institutions to provide banking facilities** supporting transparent and traceable compensation processes and support basic skills in financial management.

## 9. Take collective action where appropriate to address environmental, social and human rights issues.

Myanmar does not yet have a sector wide O&G industry association<sup>475</sup> that includes both foreign and domestic companies, but there is a strong case for creating one. In the meantime, some issues may be better addressed collectively, including those relating to the environmental, social and human rights dimensions of operations in Myanmar. In addition to promoting a level playing field and reducing the risk that ‘bad apples’ will spoil the reputation of the sector, approaching sensitive topics collectively, and sharing lessons learned on applying international standards in other comparable countries, can be more effective, less labour intensive for Government, and reduce exposure for individual companies. There are a number of areas where companies may find it relevant to act collectively in discussions with the Government and other stakeholders.

### Key Points for Collective Implementation:

- **Support the MEITI process.** Cooperation with the MEITI is already a requirement on companies under the model PSC. Companies with EITI experience from elsewhere, should support the O&G Multi-Stakeholders Group and help build knowledge of the sector and its financial performance. They should support the adoption of ‘encouraged’ and ‘recommended’ requirements under the 2013 EITI Standard, including disclosure of contracts and beneficial ownership as a part of MEITI.
- **Work with MOECAF, MOGE and the Myanmar Investment Commission (MIC) to improve the E(S)IA process.** Given scarce in-country resources to conduct ESIAAs and manage the process within the Government, collective business input could help the Government to improve the process and ensure it prioritises operations with the highest potential negative impacts.

<sup>475</sup> The one industry association, the [Myanmar Oil and Gas Services Society](#), currently has approximately 20 Myanmar companies and one foreign company.

- **Work together to encourage the Government to require all contractors from any country to meet the same environmental, social and human rights standards.** This could be addressed through changes to the PSCs, and would level the playing field. Since the PSC binds both the O&G operators and MOGE, bringing in international standards would build MOGE's capacity in the application of international standards as well. (See Recommendation 2 for Government above).
- **Promote learning between foreign and Myanmar companies.** This could build on an initiative previously taken by TOTAL to promote discussion and build capacity among O&G companies including of Myanmar companies, of best practices on issues such as safety,. A sector-wide industry association, once established, could take on this role and when it does, the positions it takes on future policy or law that can support or undermine responsible business practices, and the transparency of its positions, will be an important indicator of the potential aggregate impact of the sector.
- **Approach the Government regarding training for police and military on applying international human rights and humanitarian standards.** A number of the O&G blocks awarded in 2013-2014 went to companies who participate in the Voluntary Principles on Security and Human Rights (the VPs).<sup>476</sup> These companies could work with governments supporting the VPs to propose training and capacity building on human rights for the military and local authorities, based on the VPs. The EU has already begun training to the Myanmar Police Force in safe crowd control techniques, and this experience might be built on.
- **Work with development partners to adapt education and vocational training programmes to build skills for the O&G sector, and programmes to support SMEs.** Existing educational and vocational training programmes are not targeted at the O&G sector (See Recommendation 3 for Development Partners/Home Governments). Cooperation between companies, Government and development partners would help address skills shortages over the medium term, through education, technical education and certification programmes and could eventually lead to a more institutionalised structure for the sector.<sup>477</sup> SME programmes could focus on developing local company capacity to be able to provide relevant goods and services to O&G operations. These would help O&G operators to achieve local content requirements and increase local economic benefits. See Boxes 17-23 throughout this Report for Linked Initiatives that could serve as partners.

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<sup>476</sup> See [The Voluntary Principles on Security and Human Rights](#).

<sup>477</sup> See as an example the [Petroleum Institute of Thailand](#).

# Recommendations to Civil Society

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## **1. Engage actively in ESIA consultations and disclosure processes, analyse and comment on the documents and hold companies to account.**

There is a risk that thousands of pages of ESIA reports will be written simply to meet government requirements, but never read. Since their purpose is to facilitate monitoring of performance, and promote corporate accountability, CSOs need to develop the expertise to study ESIA and ESMPs and invest time in engaging on them with companies and the Government to ensure that companies are held to account in operating according to commitments made.

## **2. Continue to engage actively in the Myanmar Extractives Industries Transparency Initiative (MEITI) and press for MEITI to adopt the full range of options under the 2013 EITI Standard.**

Myanmar CSOs have organised themselves throughout the country to participate in the MEITI process, which is impressive in a country with limited internet and telecommunications access or experience in interaction with international agendas. With the candidacy application and work programme now completed, there is now a long road of choices and difficult negotiations ahead to keep the Initiative on track to deliver on its promises of much needed improvements in governance of the O&G sector that will require continued commitment and perseverance of CSO participants. The 2013 EITI Standard includes a number of 'encouraged' or recommended 'options' such as disclosure of contracts and disclosure of beneficial ownership, which if included in MEITI will build confidence in the sector.

## **3. Encourage companies and Government to engage in multi-stakeholder discussions on other extractive sector issues that are not part of the EITI mandate.**

Given the previous absence of engagement between companies, Government and civil society on the problems associated with the extractives industries in the country, some CSOs are keen to expand the remit of MEITI to address other sectors and a wider range of issues beyond revenue transparency, such as respect for human rights and the environment. Although the 2013 EITI reforms encouraged local multi-stakeholder groups

to identify local priorities, for a new candidate country like Myanmar, implementing EITI's basic revenue transparency agenda for O&G, and mining, is likely to prove challenging in itself. Instead, other avenues for multi-stakeholder dialogues are needed to address the broader issues of concern to civil society, many of which are covered in this SWIA. The Myanmar Centre for Responsible Business (MCRB) stands ready to support such dialogues.

#### **4. Increase media reporting on the O&G sector.**

Given the importance of the O&G sector to Myanmar, Myanmar media outlets should step up informed reporting of the sector and its impacts to improve transparency, company and government accountability, and public understanding.

# Recommendations to Development Partners / Home Governments

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## 1. Support better governance and management of the O&G sector and programmes to ensure potential positive impacts are realised.

### Key Points for Implementation:

- **Support the MEITI process and encourage it to adopt the full range of transparency options under the 2013 EITI Standard.**
- **Support civil society in promoting transparency, including through MEITI.** This includes adoption of a Freedom of Information Law and an end to the criminalisation of protests under the Law Relating to Peaceful Assembly and Peaceful Procession so that those affected by potential and actual O&G operations and their representatives can protest without fear of retribution or imprisonment.
- **Coordinate guidance and capacity-building to help prepare Myanmar for the next stages of O&G development** to avoid confusion and duplication of efforts.<sup>478</sup> This includes work on an energy policy framework by ADB and JICA that should be grounded in a sustainable development approach and is coordinated and coherent with UNDP's forthcoming work on a natural resource policy framework.
- **Provide funding for professional international legal support to the Government** to update its model contracts for the sector in line with international standards and best practice as set out in the recommendations in this SWIA (see [Part 7.1](#) and the [Annex to the Recommendations](#)) and to support negotiations with O&G companies.
- **Support work to develop comprehensive land policies.** This includes support for Government capacity to do strategic, long-term land use planning that protects small holder farmers and helps balance multiple uses of land, including for O&G extraction.
- **Support private sector development** programmes to improve the capacity of local companies to provide supplies and services to the extractive industries in order to maximise the benefits of the sector.
- **Support educational and vocational training reform that will develop the range of skills necessary for the country to benefit more fully from the sector.** This could build on the work of the Comprehensive Education Sector Review (CESR) technical and vocational education and training (TVET) sector group and the existing ILO programme to enhance the employment generation content of new investment strategies.

<sup>478</sup> See further: Chatham House, "[Guidelines for Good Governance in Emerging Oil Producers](#)" (2013).



## 2. Support the strengthening of environmental, social and human rights policy and legal frameworks.

### Key Points for Implementation:

- **Support the Government in the introduction of an effective framework for ESIAAs.** A number of partners including the ADB, JICA, and the World Bank are working on the E(S)IA Procedure.
- **Increase support for the preparation of environmental and social laws necessary to regulate O&G operations and other business activity.** This should include public consultation with experts, civil society and business on options before laws are drafted.
- **In the interim, development partners should encourage the government to include references to international standards (for example IFC Performance Standards and WBG Environmental, Health and Safety Guidelines) in investment contracts.**
- Support the Government, including through the ILO, to **strengthen its inspection capacity for labour and environmental protection.**
- Support rule of law changes that also have some “**quick wins**” for the population through **better grievance mechanisms**, especially around land.
- Support programmes to **develop civil society capacity** to engage effectively with O&G companies and media capacity to report on O&G operations, including implementation of ESIAAs.

## 3. Support implementation of the corporate responsibility to respect human rights in Myanmar by international companies.

### Key Points for Implementation:

- **Home country governments should proactively express their expectations of companies domiciled in their country which invest in Myanmar.** This should include clear expectations that they should apply the UN Guiding Principles on Business and Human Rights and, where relevant, the OECD Guidelines on Multinational Enterprises, including the on disclosure. They should encourage companies to apply the IFC Performance Standards and WBG Environmental, Health and Safety Guidelines in the absence of Myanmar laws that provide for a higher standard.
- **Consider adopting reporting requirements modeled on the US Reporting Requirements on Responsible Investment in Burma.**

#### 4. Ensure investment and free trade agreements negotiated with the Government of Myanmar reinforce responsible business practices.

##### Key Points for Implementation:

- **Ensure that investment/free trade agreements are coherent** with each country's international obligations (including its international human rights treaty obligations) and makes reference to the UN Guiding Principles on Business and Human Rights.
- **Ensure that each side has preserved sufficient policy space** for further changes to domestic policy that can improve environment, social and human rights protection. Governments should ensure that those agreements reinforce rather than restrict responsible business practices.

## Part 7.5

# Recommendations to Investors

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### **1. Conduct enhanced due diligence on companies in their portfolios that are involved in the O&G sector in Myanmar.**

This should include **enhanced due diligence** regarding their policies, systems, reporting and responses to specific human rights challenges in Myanmar.

### **2. Engage with investee companies involved in the O&G sector in Myanmar to ensure that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar.**

This might involve **direct engagement** or participation in shareholder actions.

### **3. Urge companies doing business in the O&G sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.**

The **US Government's Reporting Requirements on Responsible Investment in Burma** could be used as a **framework** for such disclosures.

# Recommendations to all Stakeholder Groups on Cumulative Impacts

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## 1. Regional/State governments, companies and relevant national ministries should work together to plan for and prevent or mitigate potential cumulative impacts.

As this SWIA has highlighted, a range of cumulative impacts are anticipated in Myanmar due to the development of the O&G sector. They may also occur through O&G investments interaction with other developments at the national and local level, such as increased foreign investment in other sectors, and Special Economic Zones. The risk of cumulative impacts from natural resource projects should be acknowledged and addressed in the forthcoming Energy Policy, Energy Master Plan and Natural Resource Policy. Cumulative impacts need to be proactively prevented and mitigated. This requires collective action from the multiple companies involved, preferably in collaboration with – and where relevant led by - Regional/State Governments, MOECAAF and other national ministries.

### Key Points for Implementation:

- **Collaboration** between companies, MOECAAF (and other national ministries as relevant) and relevant Region/State governments **to identify and map areas of potential cumulative impact.**
- **Commission joint baseline studies** in key areas where there will be multiple O&G activities, such as offshore seismic activities, and provide relevant data to Government in a standardised format to allow for easy consolidation.
- **Share plans for project-level ESIA in related areas.** This would facilitate the identification of key concerns highlighted in several ESIA. Such concerns could be an indicator of potential cumulative impacts. A joint ESIA, or closely coordinated ESIA, might be one option to ensure that cumulative impacts are effectively addressed in the assessment. It would also facilitate the ability of government agencies at national and regional/state level to manage their parts of the process.
- **Adopt a coordinated approach to consultation with relevant stakeholders to avoid repeating consultations with the same stakeholders.** This should include a coordinated response to the cumulative impacts of highest concern to stakeholders, including, potentially, a social joint investment programme.

## Annex to the Recommendations

# Suggested Changes to the Model Production Sharing Contract (PSC)

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The suggestions below cover proposed revisions to the Myanmar model Production Sharing Contracts (PSC) to strengthen environmental, social and human rights requirements in order to achieve the Myanmar Government's desire for investment to meet international standards. They are presented in two groups – high priority and lower priority in the order in which they appear in the PSC. Within each group the suggestions are presented in the order in which they appear in the model PSC. The capitalised terms below are defined in the PSC.

### High Priority Changes

#### 1. Require more specific standards on employment. (PSC clauses 15 & 17.2 u)

- Require that all workers hired or employed by the Contractor or its sub-contractors in connection with the Petroleum Operations, including temporary workers, are employed in accordance with relevant Myanmar law and relevant international standards (or their equivalent) – i.e. [IFC Performance Standard 2](#) (which is aligned with relevant ILO and UN conventions) and WBG Environmental, Health and Safety Guidelines for [Offshore Oil & Gas Development](#) or [Onshore Oil & Gas Development](#).

#### 2. Revise the provision on security so that MOGE is not arranging or requiring payment for security protection. (PSC clause 17.1 c)

- Security protection will be a very sensitive subject for most O&G companies. The PSC should provide flexibility on how security protection is arranged, and to do so in a way that permits companies some control over the arrangements for security protection where needed. Companies should be explicitly permitted to have their own security guards. Ideally the PSC should also refer to the [Voluntary Principles on Security and Human Rights](#).

#### 3. Require compliance with recognised and identified international standards on environmental and social performance. (PSC clause 17.2)

The PSC currently contains numerous references to “international petroleum industry practices” without specifying a source organisation(s) (international organisation or industry association). References to more specific standards will assist the parties to clearly understand what is required of the Contractor.



- Require adherence to identifiable standards, namely: [IFC Performance Standards](#) and WBG Environmental, Health and Safety Guidelines for [Offshore Oil & Gas Development](#) and [Onshore Oil & Gas Development](#) (as appropriate).<sup>479</sup>

#### 4. Require Contractors to commit to applying the UN Guiding Principles on Business and Human Rights and where applicable, the OECD Guidelines on Multinational Enterprises (see also the OECD Recommendations below). (PSC clause 17.2 e)

- It should be clear from the PSC provisions that MOGE is equally bound by those same standards.

#### 5. Revise the local content provisions to provide for more specificity. (PSC clause 17.2 o)

The PSC requires Contractors to give preference to goods and services which are available in Myanmar and from Myanmar nationals as a method of spreading the economic benefits of Petroleum Operations. Given the need to build the capacity of local businesses to meet appropriate quality, environmental, health and safety standards and to provide incentives to Contractors to restructure procurement over time, more targeted provisions are required.

- Include realistic but specific targets over time on local content.
- The current (informal) practice of providing Contractors with a list of MOGE-approved companies for certain services e.g. food and beverages, should be abandoned as it is a barrier to entry to the market for new food and beverage companies, and reduces transparency.

#### 6. Include clear allocations of responsibility and assignment of liability. (PSC clause 17.2 w)

The PSC currently only *excludes* certain types of liability for the Contractor but does not clearly specify what the Contractor is liable for. Existing laws do not provide a clear basis for holding companies responsible for environmental damage, nor does the PSC. In the interim, until an appropriate regulatory framework, is in place, the PSC should address these issues, and can be made applicable on a transitional basis until the relevant national laws are in place.

- Clearly state that the Contractor is responsible for the actions or omissions of its sub-contractors.
- Exclude costs to remedy non-compliance with relevant standards or laws or compensation for harm to third parties as a recoverable cost.

<sup>479</sup> Note that the 24 December 2013 draft of the EIA Procedure makes a similar suggestion with respect to addressing indigenous peoples and involuntary resettlement: "Projects involving resettlement or potentially affecting Indigenous People shall additionally comply with separate procedures issued by responsible ministries, and in the absence of such procedures all such Projects shall adhere to international best practice on Involuntary Resettlement and Indigenous People." (clause 7)(emphasis added).

- Ensure that costs to restore the environment, individuals, communities or workers to baseline conditions are not included as part of the social investment costs.
- Provide for specific penalties for non-compliance with the IFC Performance Standards highlighted above and indicate conditions in which serious or repeated non-compliance would be considered a material breach of the PSC.

**7. Include references to specific international standards on ESIA, ensure that social issues are covered in the EMP and that ESIA and ESMPs are updated where relevant. (PSC clause 17.2 bb)**

- Revise the PSC to require that the EIA, SIA and the development of the EMP as specified in the PSC are carried out in accordance with the [IFC Performance Standards](#).
- Clarify that social issues should be included in the Environmental Management Plan.
- As conditions can change over the course of operations, require that ESIA are conducted (or updated) when there are major changes in operations, which may include moving from one phase of operations to another; at the moment, the PSC seems to require only a 1-time EIA, completed in the Preparation Period (clause 3.2).

**8. Revise the “CSR” requirements of the PSC, requiring a social investment programme within the Work Programme. (PSC clause 17.2 dd)**

- Allow expenditure on social investment programmes to be cost recoverable but on condition that it is specified in the Work Programme budget.
- Specify that social investment programmes, or relevant elements of them, should be developed together with the local communities impacted by exploration and development.
- Require an annual budget that is communicated to the local communities and is clearly identified in its reports to MOGE and that does not include expenditures to remedy environmental and social harms which should be met separately by the Contractor..
- The social investment programme should include capacity building for the community in managing their participation in the social investment programme – such as prioritising, administering, budgeting, planning.
- Include clear provisions for when a Contractor fails to live up to its social obligations. This might include a specific grievance mechanism that is accessible to the community. One option for structuring this is through a separate “community development agreement” that specifies obligations of both sides – the Contractor and the community - which provides some recourse for failure or poor performance.<sup>480</sup>

**9. Exclude identifiable changes in the social and environmental legal framework from coverage under the stabilisation clause. (PSC clause 27.7)**

The PSC currently contains an economic equilibrium stabilisation clause that permits adjustments to maintain the economic benefit if laws, decrees, rules and regulations, amendments or reinterpretations affect the economic benefit of the PSC. Myanmar is in the process of a very wide ranging revision of its legal framework (some of it dating back to the last century), with a whole list of laws relevant to the O&G sector that will shortly be

<sup>480</sup> EI Sourcebook, “[Good Practice Note on Community Development Agreements](#)” (2011).

adopted, including in particular new laws in the environmental area, new health and safety laws, and other social laws. Compliance with such laws should be an expected and normal cost of business in an extractive operation.

- Exempt current and forthcoming environmental, social and human rights laws from the scope of the stabilisation provision; or
- At a minimum, set a floor on the stabilisation commitments stating that they apply only to the extent that the new Myanmar laws impose requirements that are stricter than accepted international environmental and social standards – i.e. [IFC Performance Standards](#) and WBG Environmental, Health and Safety Guidelines for [Offshore Oil & Gas Development](#) and [Onshore Oil & Gas Development](#) (as appropriate).

#### **10. Require that all arbitration hearings and decisions concerning PSCs are open to the public, that decisions are made publicly available and third party interventions will be permitted. (PSC clause 22.2)**

The model PSC provides for UNCITRAL arbitration. The new UNCITRAL Rules on Transparency, which came into effect on April 1, 2014, provide for a significant degree of openness throughout the arbitral proceedings.

- Specify that the Government wishes to opt-in to the new UNICTRAL Rules on Transparency to ensure that any arbitral proceedings under a PSC are open to the public, in the public interest.

#### **11. Require environmental insurance to bring the PSC in line with the Environmental Conservation Law (2012).**

The Environmental Conservation Law (Chapter XI) requires that any business that requires prior permission, (which includes O&G operations), must have insurance cover for impacts on the environment.

- The PSC should cross-reference this requirement from the Environmental Conservation Law and make it an explicit requirement of the PSC.

#### **12. Strengthen the anti-bribery and corruption provisions in accordance with the newly adopted law on anti-bribery and corruption**

- The Government recently ratified the UN Convention against Corruption (UNCAC) and adopted an Anti-Corruption Law. The current PSC has only very limited provisions on bribery and corruption; these should be strengthened to bring them in line with UNCAC and the EITI Standard. For example, clause 17.2 q) permits the parties to waive international tendering requirements, without any limitations on what procedures should be used to replace international tendering or how transparent they must be.

### 13. Add provisions on monitoring and reporting on environmental, social and human rights issues.

The model PSC does not require the Contractor to specifically monitor and report on its environmental, social and human rights performance, apart from what might be generally covered in the Work Programme.

- Require reporting on a regular e.g. annual basis against the E(S)MP (which should cover both environmental and social issues and incorporate human rights issues), including relevant activities of sub-contractors that provide goods and services as part of the Petroleum Operations.
- Require that the reports are made available in an accessible way to the local communities and wider general public.

### 14. Require that companies put operational level grievance mechanisms in place.

In the short term, Myanmar will have neither regulatory / inspection authorities throughout the country nor a readily accessible and well-functioning judicial system in place to hear complaints about O&G operations.

- Require Contractors to put in place operational level grievance mechanisms that provide an early warning system that should permit actual or potential adverse impacts to be addressed and remediated early. They should guarantee non-retaliation and be based on relevant international standards – i.e. [UN Guiding Principles on Business and Human Rights](#) (principles 29-31).

## Further suggestions

### 15. Permit the training funds to be spent on a wider group of Government departments involved with Petroleum Operations. (PSC clause 15.2)

The model PSC contains useful requirements on training to improve the skills of Myanmar national staff and MOGE personnel.

- A certain percentage of funds should be allocated to providing training for the wider range of Government personnel who are involved in regulating Petroleum Operations, including MOECAAF and regional/state and local government authorities.

### 16. Require clear and specific limits on use of other resources within the Contract Area.

- The Work Programme should specify the proposed quantities of resources to be used in the Contract Area – eg water, land and construction materials and should be in line with predicted use and impacts covered in the EMP. Where additional use is made of local resources, these should be compensated for. Where the EMP has indicated that these resources are used by local communities, specific mitigation measures should be put in place to ensure that local communities retain access to necessary resources.

**17. Specify the access to and use by the public to non-operation specific infrastructure.**

- The PSC should specify what types of infrastructure will be accessible to local communities and the terms for their use -- eg free and unfettered, at a cost, none, who regulates access, etc.

**18. Exclude strikes by the employees of the Contractor or its subcontractors from the definition of force majeure. (PSC clause 20.2)**

- Force majeure provisions should only deal with unpredictable issues genuinely beyond the Contractor's control; the clause should not deal with employer-employee disputes and strikes involving the Contractor as this does not provide any incentive to resolve such disputes quickly and effectively.

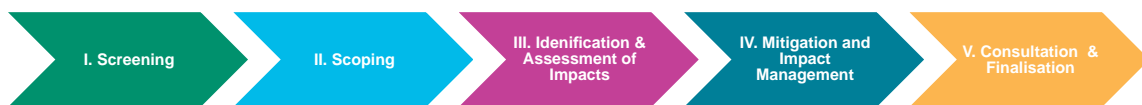


## Annex A:

# Additional Information on SWIA Methodology

## A. SWIA Phases

The SWIA process follows well-established impact assessment steps. For each step of the process specific tools or approaches have been developed, which are described below.<sup>481</sup>



Box 26: SWIA Phases

### I. Screening

**Objective:** Select economic sectors for a SWIA based on several criteria:

- the importance of the sector to the Myanmar economy
- the complexity and scale of human rights risks involved in the sector
- the diversity of potential impacts looking across the sectors
- human development potential
- geographical area

**Tasks:**

- Informal consultations were held inside and outside Myanmar to develop and verify the selection of sectors.

**Key Outputs / Tools**

- Selection of 4 sectors for SWIA: Oil & Gas, Tourism, ICT and Agriculture

### II. Scoping the O&G sector in Myanmar

**Objective:** Develop foundational knowledge base to target field research for validation and deepening of data collection.

**Tasks:**

- Commission expert background papers on: the O&G sector; the legal framework; land and labour issues
- Stakeholder mapping

**Key Outputs / Tools**

- Scoping papers
- SWIA work plan

### III. Identification and Assessment of Impacts

**Objective:** Validate foundational knowledge base with primary

**Key Outputs /**

<sup>481</sup> This table has been gratefully adapted from the presentation used in [Kuoni's HRIA of the tourism sector](#) in Kenya.

data collected through field research from targeted locations across Myanmar.

**Tasks:**

- Two rounds of field team visits to three different locations each time collecting qualitative data on:
  - Livelihoods; Environment; Housing & Land; Community Consultation; Grievance Mechanisms; Public & Community Services; In-Migration; Cultural Rights; Vulnerable Groups; Labour; Security; and Worker Housing
- Compile and synthesise field data, including IHRB/DIHR trips to debrief with research teams in Yangon
- Further desk research

**Tools**

- Questionnaires
- Internal fact sheets on various business and human rights issues in Myanmar
- Ethical research policy
- Field safety guidelines
- Interview summaries
- Reports of stakeholders consulted

**IV. Mitigation and Impact Management**

**Objective:** Identify measures that will help avoid, minimise, mitigate potential impacts of the sector.

**Tasks:**

- Synthesise information on potential impacts at the three levels: sector, cumulative and project in order to identify considerations for companies and Government to prevent or mitigate potential impacts

**Key Outputs / Tools**

- Initial synthesis reports of field findings

**V. Consultation & Finalisation of the SWIA Report**

**Objective:** Present SWIA findings and conclusions, as well as recommendations to be validated through consultations with representatives of Myanmar Government, O&G companies operating/planning to operate in Myanmar, and representatives of civil society organisations, some of whom represent those affected by O&G operations in Myanmar, trade unions, international organisations, donor governments.

**Tasks:**

- Iterative drafting of main SWIA chapters
- Translations for consultations
- Consultations in Yangon, Naypyitaw and Europe
- Revisions to draft SWIA
- Finalisation, publication and dissemination of the O&G SWIA

**Key Outputs / Tools**

- Draft SWIA report in English and Burmese
- Slide pack summarising the SWIA findings for consultation
- Consultation report
- Final O&G SWIA report and dissemination programme

## B. What is Different about a SWIA compared to a Project Level Assessment

- **Wider audience:** A project-level EIA, SIA or ESIA is typically carried out by or for a project developer to fulfill a regulatory requirement as a step in gaining permission to operate. SWIA are intended for a much wider audience: Government and Parliamentarians, business, local communities, civil society, and workers and trade unions.
- **Aims to shape policy, law and projects:** SWIA look at the national context, national frameworks, the legal contracts (where available) and business practices, and identifies what actions will help shape or impede better human rights outcomes for the sector. The findings inform the analysis and recommendations at the core of the SWIA for a range of audiences.
- **Information goes into the public domain:** Company-led HRIA are typically confidential, and ESIA may be also unless disclosure is required. The whole rationale behind the SWIA is to make the document a public good for the purpose of informing and thereby improving practices and outcome of business investment.
- **Looks at 3 Levels of Analysis:** The SWIA looks at the impacts of the sector and to do this uses three levels of analysis: sector, project and cumulative levels.
- **Does not replace a project-level ESIA/HRIA:** The SWIA does not replace the need for a project-level ESIA where such an ESIA is required or desirable. Nor would it substitute for a project-level HRIA if a company chooses to do one. Instead the SWIA helps *inform* a project level assessment, as it gives an indication of the kinds of human rights impacts that have arisen in the past in the sector. This helps to forecast what future impacts may be. A SWIA may be particularly relevant at the project scoping stage. The SWIA also alerts to potential legacy issues that incoming operations may face. Such assessments will have to examine the specific situation of the forthcoming project within the particular local context and in doing so, may also uncover new potential impacts that were not picked up in the SWIA. It is therefore not a checklist but a guide for considerations in subsequent impact assessments.
- **Does not replace a project-level conflict risk assessment:** Given the history of conflict in certain areas of the country, companies operating in those areas might want to carry out project level conflict risk assessments. The limited number of people interviewed and places visited within the framework of this SWIA is not sufficient to develop a comprehensive analysis of drivers of conflict. However, such a limitation is inevitable in the rationale for the SWIA, which cannot expect to get this level of detail across the country. Furthermore, the types of interviewees would need to be expanded in order to more effectively capture conflict impacts, including conflict experts, ethnic armed group and community leaders.
- **Takes a broad view of what a human rights impact includes.** As HRIA methodology evolves, there has been an accompanying discussion about what distinguishes a human rights impact from other types of social impacts in particular. The SWIA takes a broad view of what constitutes a human rights impact, as there are a wide variety of actions that can ultimately result in human rights impacts and because it is intended to support an approach to responsible business conduct in the country which will require addressing all these issues.
- **Takes a practical view on distinguishing different types of impact assessments.** In sectors such as O&G where ESIA's are often a routine requirement, there has been

discussions on what distinguishes an SIA from an HRIA, potentially diverting attention from getting on with the process of assessing and addressing potential impacts. The approach taken in this SWIA is that the labels that are given to the process are less important than getting the process and the content covered in a manner that is compatible with human rights and that a lot depends on the quality of the ESIA/SIA. A good quality ESIA/SIA comes close to addressing many human rights issues but may not pay sufficient attention to civil and political rights, and in considering risks to human rights defenders, which can be relevant to extractive projects.<sup>482</sup> See Box 27 below.

- **Does not establish a baseline but instead describes the situation for the sector at a moment in time.** The SWIA does not purport to set out a baseline of conditions at the project level; this is a task for operator’s project-level ESIA. [Part 3](#) on Sector Level Impacts, and the national context discussions at the beginning of each of the eight chapters of [Part 4](#) Project-Level Impacts and at the beginning of [Part 5](#) on Cumulative-Level impacts, sets out the current context around the enjoyment of human rights at the national level, and gives some indication regarding future trends as well as particular areas that are high-risk based on past in-country experiences.
- **Would provide relevant information for a sector master plan or strategic ESIA.** Sectoral master plans or strategic impact assessments have not been used to date in Myanmar but the Government is reported to be working on an energy master plan. The SWIA provides relevant information for consideration in such a master plan.

### Box 27: Six Key Criteria for Assessing Human Rights Impacts

In order to adequately assess human rights impacts, the impact assessment process and content should reflect the six criteria listed below<sup>483</sup>

#### Standards

The impact assessment needs to be based on international human rights standards. Human rights constitute a set of standards and principles that have been developed by the international community. This establishes an objective benchmark for impact identification, severity assessment, mitigation and remedy.

#### Scope

The scope of an assessment should include actual and potential human rights impacts caused or contributed to by a company, including cumulative impacts, as well as impacts directly linked to a project through business relationships such as with contractors, suppliers, joint-venture partners, government and non-government entities.

#### Process and engagement

The impact assessment, including associated engagement and consultation activities, should apply the human rights principles of participation, non-discrimination, empowerment, transparency and accountability. This promotes

<sup>482</sup> See: OHCHR, “[Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya](#)”, A/HRC/19/55 (2011), sections III & IV.

<sup>483</sup> Developed by the Danish Institute for Human Rights.

attention to process, not just outcome, and can help to create "buy-in" in the impact assessment among relevant stakeholders. Inclusive engagement throughout the impact assessment process is a key component, in a manner that is gender sensitive and takes into account the needs of vulnerable individuals and groups, providing capacity building or assistance where needed to promote their meaningful participation.

#### **Assessing and addressing impacts**

Impacts should be assessed according to the severity of their human rights consequences. This means including the assessment criteria of scope, scale and ability to remedy the impact, and taking into account the views of rights-holders and/or their legitimate representatives in determining impact severity. Addressing identified impacts should follow the standard mitigation hierarchy of "avoid-reduce-mitigate-remedy". Where it is necessary to prioritise actions to address impacts, severity of human rights consequences should be the core criterion.

#### **Accountability and transparency**

The impact assessment should consider the differentiated but complementary duties and responsibilities of government and non-government responsible parties for addressing identified impacts. For company responsibilities, this would include assigning to relevant staff members actions to avoid, mitigate and remedy impacts. The impact assessment process and its associated communications should be transparent and provide for effective ways for rights-holders to hold the responsible parties to account for how impacts are identified, prevented, mitigated and/or remedied.

#### **Interrelated impacts**

Identification and management of impacts should take into account the interrelatedness of various environmental, social and human rights impacts. For example, depleting a community water supply will have an impact on the right to water, but may also have interrelated impacts on the right to education of children who may need to walk longer distances to collect water and are therefore less able to attend school.

## **C. Limitations of the Oil & Gas SWIA**

- **Non-attribution:** The team made a decision not to attribute practices, good or bad, to particular places, companies, or individuals and therefore have not listed specific stakeholders engaged during the research. The SWIA uses existing experiences to identify opportunities to improve new and existing projects in the sector.
- **Six locations visited:** The O&G SWIA field research focused on six regions where O&G is currently being produced that are representative of a range of O&G contexts in Myanmar: onshore drilling and production, coastal facilities where offshore drilling comes onshore, pipelines transporting O&G and also artisanal/ traditional oil drilling. While this does not include all areas where current or future O&G explorations are taking place, the Report's recommendations are representative enough to be generally applicable to O&G potential or producing regions of Myanmar that are not in conflict.



The findings highlight trends seen across the six research locations and are therefore not meant to provide detailed analysis of particular types of projects or regions.

- **Upstream & midstream focus:** This SWIA for the O&G sector looks at upstream and midstream (transportation) activities but not processing and sale as these are currently fairly limited activities in Myanmar.
- **Existing, not planned, operations:** It was specifically decided to do the field research in locations with existing O&G operations, rather than prospective areas for exploration or production. Given the tensions that have surrounded some O&G projects to date in Myanmar, there was a concern that asking about potential projects in certain areas (without knowing whether projects would actually materialise) might create concerns in communities and potentially build expectations (good or bad) that were not fulfilled. In addition, given the inexperience of many Myanmar communities with being able to express their concerns publicly, the relative lack of experience with O&G or other large footprint projects in the country to date, the project team decided that research with communities that had experience with nearby O&G projects would be able to provide more relevant data for the research. In addition, as Government permission was needed to carry out the research and given sensitivities surrounding the sector, it was considered more likely that Government permission would be granted to review existing rather than prospective projects.
- **Rapidly changing dynamics:** A challenge of conducting a SWIA at this moment of time in Myanmar is that the country is undergoing rapid social, economic, political and regulatory changes. As a result, changes mean that past experiences, both good and bad, may not always be relevant to future operations. Examples of good practice from the previous era where companies would rightly try to insulate themselves from interaction with the Government are far less likely to be appropriate in a new era of openness. Prompting the Government to support responsible business approaches may be a more appropriate approach.
- **Conflict expertise:** The interviewers were experienced social science researchers but did not have sufficient experience or training in questions of diversity and exclusion to sufficiently explore ethnic grievances and the dynamics of conflict (both armed conflict and inter-communal violence). Given Myanmar's recent history, addressing this would require very careful selection and intensive training of interviewers, and even then there would likely be remaining limitations with gathering all required information through qualitative information.
- **Offshore visits:** Offshore locations were not included in the O&G SWIA due to logistical and security constraints.
- **Limitations due to lack of permission:** In some instances no permission was granted to speak to workers of O&G companies or to community members, or permission was delayed, which resulted in limited time in order to conduct interviews. However generally both the authorities and most companies have been collaborative and open to granting access to the SWIA field teams and to sharing information.
- **Access limitations:** While the SWIA field teams tried to conduct workers' interviews outside of their workplaces and without the presence of management, this was not always possible. This may have led to different interview responses than if interviews were confidential.
- **No artisanal extraction focus:** Apart from having observed artisanal oil extraction and interviewed some of those working in the area, the research did not focus on

artisanal oil extraction.

## D. Field Research Methodology & Interviews

### Field Research Methodology

The O&G SWIA is comprised of both primary and secondary research. For the primary research, three teams of two researchers (plus a local facilitator, translator and driver as needed) visited six different locations (see location map below).

The field teams used qualitative research methods that were adapted to the local contexts to take account of the sensitivities of localised issues (such as potential conflict or tensions) while being sufficiently standardised to allow for coverage of all major human rights issues and comparison of findings.

The field researches used a set of assessment questionnaires to structure their meetings and guide their conversations (rather than as checklists). The questionnaires are based on DIHR's Human Rights Compliance Assessment Tool (HRCA),<sup>484</sup> a tool to enable companies to identify and assess human rights compliance in their operations (a more generalised copy of the interview questionnaires will be on the MCRB website).<sup>485</sup>

The questionnaires covered four overarching stakeholder groups and interviews were held one-to-one, in small groups and through focus group discussions:

- Managers of O&G companies and sub-contractors;
- Workers of O&G companies and sub-contractor;
- Communities;
- Other external stakeholders (local or national authorities, NGOs, international organisations, journalists, political parties, schools and monasteries).

Open questions were used as much as possible, in order to allow respondents to answer using their own thoughts and words, and raise the issues they considered as important. All interviews were documented with written notes and in most cases voice recorded with permission of the interviewees. Most interviews were conducted in Burmese, while local intermediaries translated in meetings with local community representatives where regional languages were used. The issues in Box 28 below were covered in the field research questionnaires.

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<sup>484</sup> DIHR, "[Human Rights Compliance Assessment](#)" (accessed 15 July 2014).

<sup>485</sup> <http://www.myanmar-responsiblebusiness.org/>

### Box 28: Topics Covered in SWIA Questionnaires

- |   |  |
|---|--|
| ■ Community Impacts, including consultation and participation                                   | ■ Grievance mechanisms for communities   |
| ■ Land acquisition and resettlement practices   | ■ Public services and community services |
| ■ Livelihoods of communities  | ■ Women and Children                     |
| ■ Impacts of in-migration and out migration on communities                                      | ■ Indigenous Peoples                     |
| ■ Housing   | ■ Security Arrangements                  |
| ■ Labour issues, including health and safety of employees, working conditions and opportunities | ■ Conflict                               |
|   | ■ Environment and Ecosystem Services     |
|   | ■ Ethical Business Practices             |

### O&G Field Visit Locations

The SWIA field research was carried out in the following locations:



#### 1<sup>st</sup> round of field visits – Dec. 2013:

- A. Yenangyaung and Chauk (Magway Division)
- B. Ngape Township (Magway Division)
- C. Minbu Township (Magway Division)

#### 2<sup>nd</sup> round of field visits – Jan. 2014:

- D. Rakhine State (Ann and Kyauk Phyu townships)
- E. Shan state (Namtu and Namkham townships)
- F. Tanintharyi Division (Dawei and Yebyu townships)

## Overview of Stakeholders Consulted

Researchers often began visits to different towns by speaking with the local township or village authorities. This helped provide an initial understanding of some of the main issues affecting or concerning the community as a whole. Researchers then conducted individual interviews and focus group discussions to discuss in more detail but without the authorities present in order to gain insights from other perspectives. The interviews generally covered the issues in the questionnaires.

The table below presents a breakdown of the discussions with 295 individuals from different stakeholder groups – 214 within individual interviews and 81 attending focus group discussions. Approximately 20 individual meetings were held in Yangon with company representatives (both Myanmar and international) in addition to a group meeting with the socio-economic departments of four companies to explain about the SWIA project plan, to discuss their projects, policies, due diligence processes and grievance systems. Additional meetings were also held in Naypyitaw and Yangon with Government Ministers, MOGE, and MPs from field areas.

In addition, meetings were held with various O&G companies, industry associations, civil society groups and governments outside of Myanmar to explain the SWIA methodology and provide the opportunity to give input on the research.

### Box 29: Stakeholder Interviews Conducted

<b>COMMUNITIES</b>	
116 interviews and 40 focus group members overall	
<p><b><u>Yenangyaung and Chauk:</u></b></p> <ul style="list-style-type: none"> <li>■ 15 interviews / 6 in focus groups               <ul style="list-style-type: none"> <li>• 9 Community members/groups</li> <li>• 2 Monks</li> <li>• 1 Media</li> <li>• 5 local businesses</li> <li>• 4 village administrators</li> </ul> </li> </ul> <p><b><u>Minbu:</u></b></p> <ul style="list-style-type: none"> <li>■ 31 interviews / 7 in focus groups               <ul style="list-style-type: none"> <li>• 19 Community members/groups; 5 Monks; 1 Pagoda trustee; 6 Local businesses; 7 village administrators</li> </ul> </li> </ul> <p><b><u>Ngaphe:</u></b></p> <ul style="list-style-type: none"> <li>■ 11 interviews / 6 in focus groups               <ul style="list-style-type: none"> <li>• 8 Community members/groups</li> <li>• 1 Monk</li> <li>• 2 local businesses</li> <li>• 7 village administrators</li> </ul> </li> </ul>	<p><b><u>Kyauk Phyu and Ann:</u></b></p> <ul style="list-style-type: none"> <li>■ 24 interviews / 7 in focus groups               <ul style="list-style-type: none"> <li>• 13 Community members/groups</li> <li>• 4 Monks</li> <li>• 3 Local businesses</li> <li>• 4 village administrators</li> </ul> </li> </ul> <p><b><u>Tanintharyi:</u></b></p> <ul style="list-style-type: none"> <li>■ 7 interviews / 9 in focus groups               <ul style="list-style-type: none"> <li>• 10 Community members/groups</li> <li>• 1 Monks</li> <li>• 2 Local businesses</li> <li>• 3 village administrators</li> </ul> </li> </ul> <p><b><u>Namtu and Namkhum:</u></b></p> <ul style="list-style-type: none"> <li>■ 28 interviews / 5 in focus groups               <ul style="list-style-type: none"> <li>• 25 Community members/groups</li> <li>• 2 Monks</li> <li>• 5 village administrators</li> <li>• 3 Local Businesses</li> </ul> </li> </ul>

<b>WORKERS</b>	
4 interviews and 17 focus group members overall	
<b><u>Yenangyaung and Chauk:</u></b> ■ 1 interview / 4 in focus groups <b><u>Minbu:</u></b> ■ 2 interviews / 3 in focus groups <b><u>Ngaphe:</u></b> ■ 1 focus group / 1 interview	<b><u>Kyauk Phyu and Ann:</u></b> ■ 0 interviews / 5 focus group <b><u>Tanintharyi:</u></b> ■ 0 interviews / 4 in focus groups <b><u>Namtu and Namkhum:</u></b> ■ 0 interviews/0 focus groups
<b>GOVERNMENT</b>	
39 interviews overall	
<b><u>Yenangyaung and Chauk:</u></b> ■ 8 interviews <b><u>Minbu:</u></b> ■ 5 interviews <b><u>Ngaphe:</u></b> ■ 9 interviews	<b><u>Kyauk Phyu and Ann:</u></b> ■ 6 interviews <b><u>Tanintharyi:</u></b> ■ 6 interviews <b><u>Namtu and Namkhum:</u></b> ■ 5 interviews
<b>POLITICAL PARTIES</b>	
13 interviews and 4 focus group members overall	
<b><u>Yenangyaung and Chauk:</u></b> ■ 1 interview / 3 in focus groups <b><u>Minbu:</u></b> ■ 1 interview <b><u>Ngaphe:</u></b> ■ 2 interviews / 1 focus group	<b><u>Kyauk Phyu and Ann:</u></b> ■ 3 interviews <b><u>Tanintharyi:</u></b> ■ 1 interview <b><u>Namtu and Namkhum:</u></b> ■ 5 interviews
<b>CSOs, NGO, &amp; INGOs</b>	
20 interviews and 7 focus group members overall	
<b><u>Yenangyaung and Chauk:</u></b> 3 interviews / 5 in focus groups <b><u>Minbu:</u></b> 3 interviews <b><u>Ngaphe:</u></b> 2 interviews / 1 focus group	<b><u>Kyauk Phyu and Ann:</u></b> 2 interviews <b><u>Tanintharyi:</u></b> 5 interviews / 1 Focus Group <b><u>Namtu and Namkhum:</u></b> 5 interviews
<b>O&amp;G Company</b>	
22 interviews and 13 focus group members overall	
<b><u>Yenangyaung and Chauk:</u></b> ■ 12 interviews / 5 in focus groups • 10 local / 7 international <b><u>Minbu:</u></b> ■ 1 interview / 4 in focus groups • 5 local / 4 international <b><u>Ngaphe:</u></b> ■ 2 interviews • 1 local/ 1 International	<b><u>Kyauk Phyu and Ann:</u></b> ■ 4 interviews / 3 in focus groups • 5 local / 2 international <b><u>Tanintharyi:</u></b> ■ 3 interviews / 1 focus group • 3 local / 1 international <b><u>Namtu and Namkhum:</u></b> ■ 0 interviews



## The O&G SWIA Field Research Team

One of the objectives of the SWIA programme is to build the capacity of Myanmar researchers to understand human rights issues and their connection to business and to begin to develop researchers in Myanmar with this skill set. The intention was to equip the researchers to participate in assessing and contributing to consultations on issues of responsible business following their work with MCRB.

The O&G SWIA team consisted of a Myanmar SWIA manager (responsible for several current and future SWIA processes in Myanmar), one field team leader and six field researchers. The field team leader was an O&G sector expert and the field researchers had a background in conducting qualitative and quantitative social science research. All field staff received a thorough training before visiting the field. The training was carried out by local and international experts. It covered basic human rights and business training, an introduction to the practice of social impact assessment, sessions on human rights impacts of the O&G sector, sessions on how to conduct focus group discussions, ethical standards for conducting field research, discussion on environmental issues and ESIA, labour unions, foreign direct investment, and an introduction to the various SWIA questionnaires and desk research.

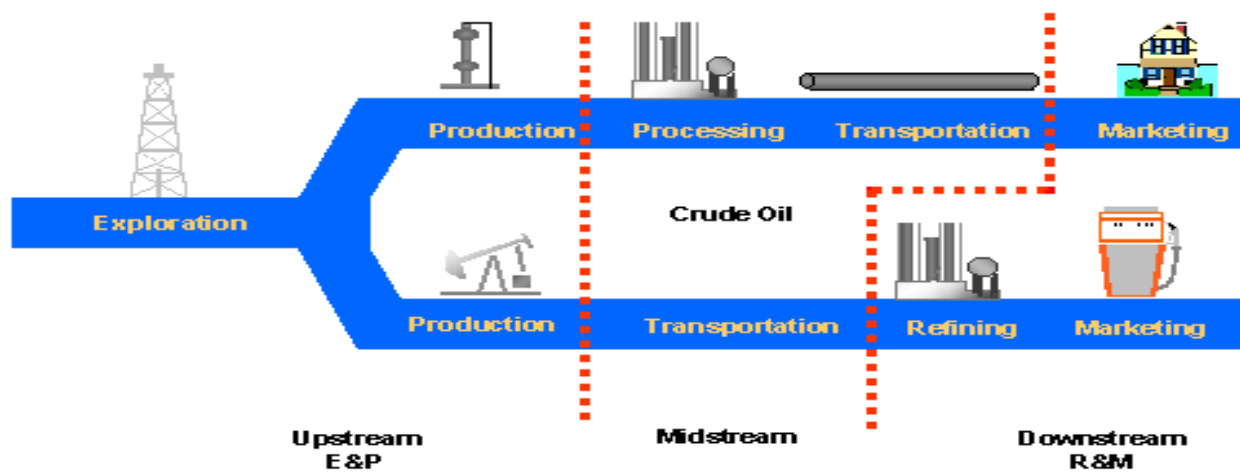
Following the first round of field visits, IHRB and DIHR experts debriefed the teams in Yangon to reflect on the team's findings and fine-tune the research approach and the subsequent data compilation process. Following the 2<sup>nd</sup> round of field visits IHRB and DIHR experts again debriefed the teams to get a comprehensive "download" of the 2<sup>nd</sup> round findings and discuss the root causes of the impacts before the final data compilation was completed.



*The O&G and Tourism SWIA field researchers outside the MCRB office in Yangon (2013).*

# O&G Operations and Operators in Myanmar

## A. The O&G Value Chain



**Upstream work**, during the exploration and production process, accounts for over 75% of an oil company's capital output. The upstream process involves a large capital investment of equipment and technology to find the resource and to bring it to the surface. It consists of a number of sub-activities:<sup>486</sup>

- **Geological investigations/evaluating potential concessions to bid for or buy**
  - Interaction with Government authorities/other oil companies and review of geology, legal and commercial frameworks.
- **Pre-feasibility**
  - Exploration studies and surveys to plan exploration drilling within acquired concessions.
  - At this stage the company has paid any signature bonus associated with the contract, is developing a commercial strategy for the asset should exploration be successful, and is also planning for exploration.
- **Feasibility**
  - Exploratory and appraisal drilling. This stage aims to assess and quantify if there are commercially viable reserves. For onshore concessions, exploration and appraisal drilling is the first stage at which there is an extensive local footprint. Where concessions are offshore, the on-shore footprint may still be much smaller and limited to logistics support activities only.

<sup>486</sup> Based on information in World Bank Institute, "[Contract Monitoring Roadmap](#)" (accessed 25 July 2014).

### ■ **Field Development/Construction**

- This is the stage when the development of the field is planned in detail and then executed. Includes deciding where temporary and permanent facilities will be located and the route of pipelines, hiring contractors to supply equipment and undertake construction. Environmental and social impact assessments and associated studies on oil spill and emergency response planning, potentially any resettlement and compensation plans are being completed. Decision about location and further development of impact mitigation and management plans are underway.
- On-shore activities reach a peak of visible activity and include: Site preparation, wellheads, separation/treatment facilities, power plant, increased oil storage, facilities to export, flares, gas production plant, accommodation, infrastructure, drill rigs.

### ■ **Operation/production**

- For both onshore and offshore projects this is the stage at which there is likely to be less visible activity than was the case during construction. Typically Government revenues will be low during initial years of production because exploration and development costs are being offset, but they will then start to rise. In many cases, fields are developed in stages, or other exploration blocks are let nearby, so that alongside production in some areas there is exploration or development activity also being carried out. Accompanying production, this is the stage where the greatest concentration of social investment activity typically occurs.

### ■ **Closure/Decommissioning and rehabilitation**

- Decommissioning and rehabilitation can occur after each of the above steps if wells prove unviable, or other risks are realised. In line with any previously agreed upon closure plan, activities are the plugging of wells, demolishing and removing installations, and restoring sites.

**Midstream** is the transportation and processing of oil and gas that can be done with tankers, trucks, or pipelines.

**Downstream** involves the processing, refining, and marketing of oil and gas products.

## B. The O&G Industry Players in Myanmar

The industry is composed of a number of different companies and organisations that contribute to supplying refined products and natural gas to the end consumer. It is composed of:

- **Fully-integrated O&G companies**, which work in upstream, midstream, and downstream spectrum, often called supermajors. See the block lists below.
- **Independent producers** that are exploration and production companies and focus their expertise to compete with the fully-integrated companies and are often bought out or brought into production sharing agreements and/or subsumed by the supermajors.
- **Refiners and marketers**. In Myanmar, the Myanmar Petrochemical Enterprise (MPE) runs the country's three oil refineries in Chauk, Thanbayagan, and Thanlyin. There are both publicly and private run gas stations throughout Myanmar, such as Max Myanmar Company, and Htoo Trading Company.

- **Pipeline operators** that transport crude oil, refined products, natural gas and natural gas liquids using networks of pipes and pumping/compressor stations. Between 1963 and 1988 there were 17 pipelines in operation and after 1988 there were 36 O&G pipelines in Myanmar. The majority of these pipelines are operated by MOGE for local use while the international pipelines are foreign operated. For example, the Myanmar-China O&G pipelines are operated by CNPC (SEAGP/SEAOP); the Yadana and Yetagun gas pipelines are operated by Total, Chevron, PTTEP, and MOGE; and the Zawtika pipeline is operating by PTTEP.
- **Service companies** that provide specialised services into all aspects of the O&G value chain as well as include accounting and information management firms, financial institutions, and law firms. Given the wide scope of various services companies, they can range from enormous multinational companies to very small local companies. In 2013, the Energy Planning Department registered a list of 139 local service companies that could work with foreign firms. On the list are O&G focused service companies like Parami Energy along with specialist seismic companies like Suntac Technologies, and large construction firms like Shew Taung Developments.
- **Industry Associations.** Industry associations are nascent in Myanmar. There were no known industry associations at the start of the SWIA research in early 2013. More recently, a group of local O&G companies formed the Myanmar Oil and Gas Services Society (MOGSS).

## C. Onshore Blocks and Companies

2011 Onshore Bid Winners<sup>487, 488</sup> (see map below)

Block (Area)	Winner	Country	Local Partner
EP-5 (Inbin-Tegyigone)	Pt Istech Resources Asia	Indonesia	Smart Technical Services
PSC-G, EP-2 (Taungdwingyi)	PTT E&P	Thailand	Win Precious Resources
RSF-9 (Pyalo-Paukkong)	Geopetrol	Switzerland	A-1 Construction
RSF-2 (Tuyintaung, MyingS), RSF-3 (Gwegyo-Ngashadaung)	Petronas Carigali	Malaysia	UNOG
PSC-E (Myingyan)	Nobel Oil	Russia	Alister
PSC-1 (Hintada)	Jubilant	India	Parami Energy
RSF-10 (Kanma-Nattaung)	EPI Holding Ltd	Hong Kong	Aye Myint Khine

<sup>487</sup> Mandalay Capital Research, "[Myanmar Oil and Gas Sector](#)" (Oct. 2013).

<sup>488</sup> Geopetrol International might not be a Swiss company but a registered Panamanian company according to; The Irrawaddy, "[Burma's Frontier Appeal Lures Shadowy Oil Firms](#)" (9 May 2013).

## B

## Annex

October 2013 Onshore Bid Winners<sup>489</sup> (see map below)

Onshore Block (Area) <sup>490</sup>	Winner	Country	Local Partner
PSC B2 (Zebyutaung-Nandaw)	ONGC Videsh Limited	India	Machinery and Solution Co. Ltd.
PSC C1 (Indaw-Yenan)	Pacific Hunt Energy Corp.	Canada	Young Investment Group
PSC H (Taungoo-Pyinmana)	Pacific Hunt Energy Corp.	Canada	Young Investment Group
PSC J (Mawlamyine)	Petroleum Exploration (PVT) Ltd.	Pakistan	Parami Energy Development Co. Ltd.
PSC K (Yamethin)	Eni	Italy	Myanmar Petroleum Exploration and Production Co. Ltd.
PSC O (Pathein)	Petroleum Exploration (PVT) Ltd.	Pakistan	Parami Energy Development Co. Ltd. + Precious Stone Mining Co. Ltd.
EP 1 (Kyaukkyi-Mindon)	Brunei National Petroleum Company Sdn. Bhd.	Brunei	IGE Pte. Ltd.
EP 3 (Thegon-Shwegu)	ONGC Videsh Limited	India	Machinery and Solution Co. Ltd.
EP 4 (Mayaman)	JSOC Bashneft	Russia	Sun Apex Co. Ltd.
RSF 5 (Ondwe)	Eni	Italy	Myanmar Petroleum Exploration and Production Co. Ltd.
IOR 4 (Pyay)	MPRL E&P Pte. Ltd.	Singapore	Myanmar Petroleum Exploration and Production Co. Ltd.
IOR 5 (Htantabin)	Petronas Carigali	Malaysia	UNOG Pte. Ltd.
IOR 6 (Myanaung)	MPRL E&P Pte. Ltd.	Singapore	Myanmar Petroleum Exploration and Production Co. Ltd.
IOR 7 (Shwepyitha)	Petronas Carigali	Malaysia	UNOG Pte. Ltd.

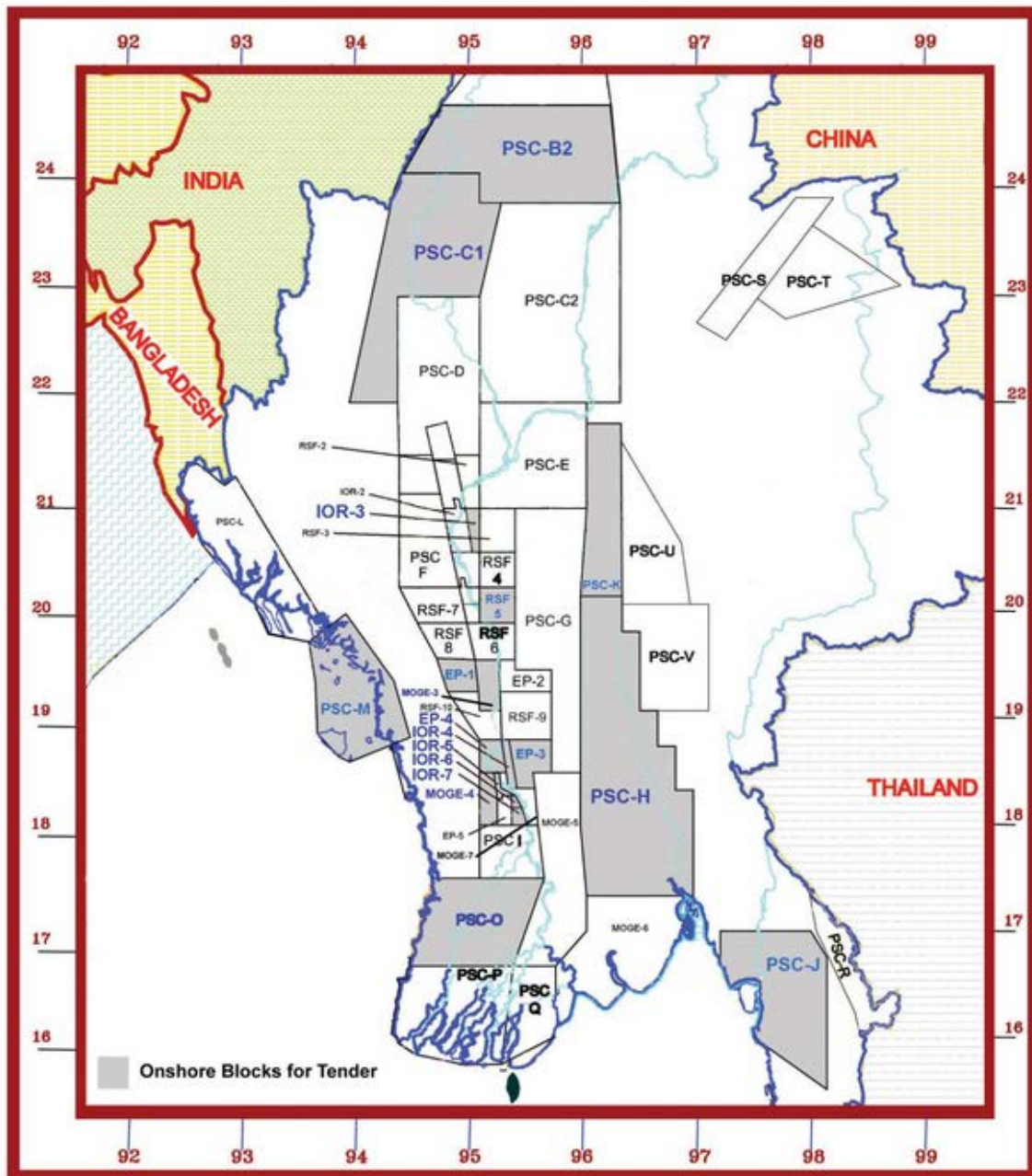
<sup>489</sup> Deloitte, "Myanmar Offshore Blocks Second Bidding Round 2013" (accessed 25 July 2014):

<sup>490</sup> "PSC": Production Sharing Contract Blocks; "EP": Exploration Blocks; "RSF": Reactivation of Suspended Fields Blocks; "IOR": Improved Petroleum Recovery Blocks



MOGE 3 (Padaukpin-Natmi)	PTTEP South Asia Ltd. + Palang Sophon Offshore	Thailand	Win Precious Resources Pte. Ltd.
MOGE 4 (Myintha)	CAOG S.a r.l	Luxembourg	Apex Geo Services Co. Ltd.

**2013 International Bidding Round for Onshore Blocks<sup>491</sup>**



<sup>491</sup> Ministry of Energy, “[Invitation for bids to conduct petroleum operations in Myanmar onshore areas](#)” (2013)

## D. Offshore Blocks and Companies

Offshore Activities as of June 2012<sup>492</sup> (see map below)

Block	Company	Country
M-5, M-6 (Yadana Project)	Total	France
M-12, M-13, M-14 (Yetagun Project)	Petronas	Malaysia
A-1, A-3 (Shwe Project)	Daewoo International	South Korea
M-3, M-11	PTTEP	Thailand
M-10	CNOOC	China
AD-1, AD-6, AD-8	CNPC	China
A-6	MPRL E&P	Singapore
M-1	Rimbunan Petrogas	
M-2	Petrovietnam	Vietnam
AD-7	Daewoo International	South Korea
MD-4, MD-5, MD-6	Petronas	Malaysia
A-5, A-7, (Rakhine) M-15, M-16 (Taninthayi)	Korea-Myanmar Development Corporation (KMDC)	South Korea

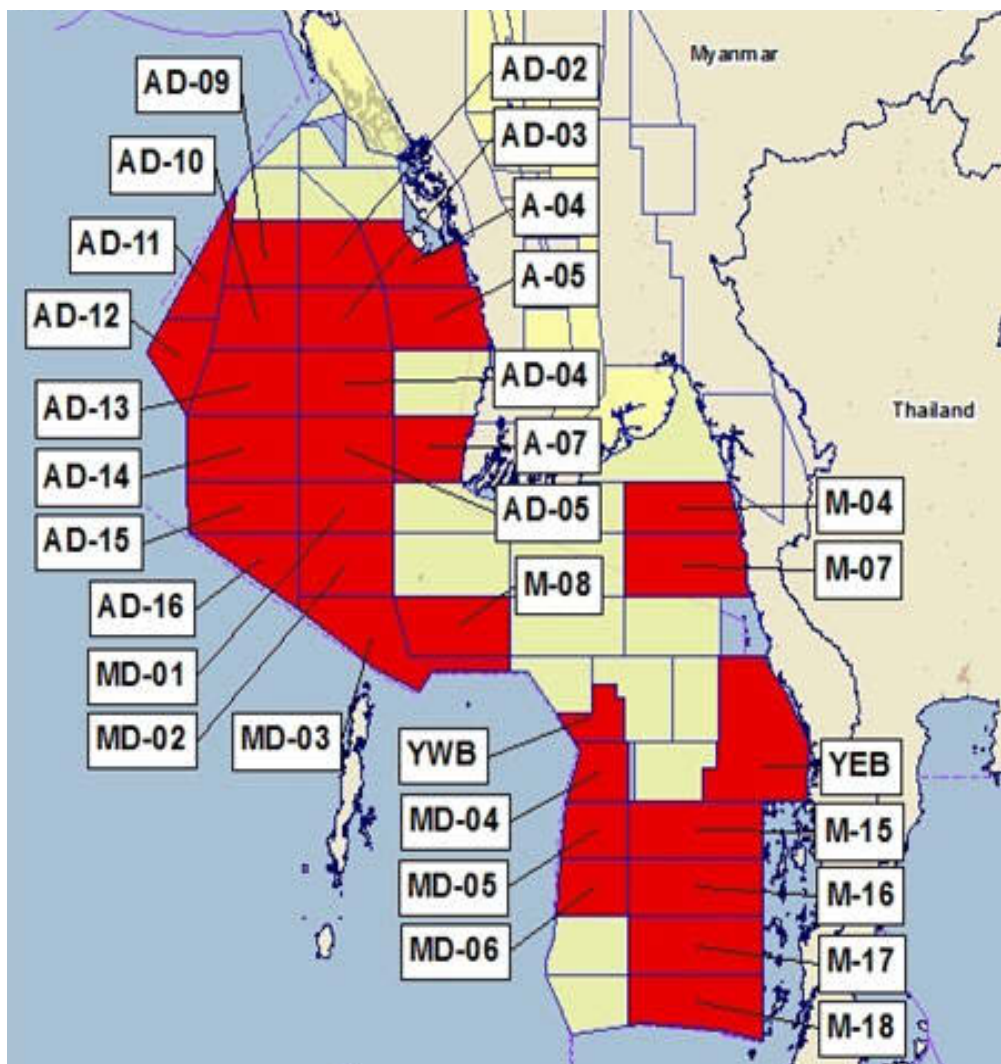
March 2014 Offshore Block Winners (see map below)

Block	Companies	Area
<b>Shallow Water Blocks</b>		
A-04	BG + Woodside	Rakhine Offshore Area
A-05	Chevron (Unocal)	Rakhine Offshore Area
A-07	Woodside + BG	Rakhine Offshore Area
M-04	Oil India + Mercator Petroleum + Oilmax Energy	Moattama Offshore Area
M-07	ROC Oil + Tap Oil	Moattama Offshore Area
M-08	Berlanga Holding	Moattama Offshore Area
M-15	Transcontinental Group	Tanintharyi Offshore Area
M-16	M-16	Tanintharyi Offshore Area
M-17	M-17	Tanintharyi Offshore Area
M-18	Reliance Industries	Tanintharyi Offshore Area
YEP	Oil India + Mercator + Oilmax Energy	Tanintharyi Offshore Area
<b>Deep Water Blocks</b>		
AD-02	BG + Woodside	Rakhine Offshore Area
AD-03	Ophir	Rakhine Offshore Area
AD-04	No award/no bids	Rakhine Offshore Area
AD-05	Woodside + BG	Rakhine Offshore Area
AD-09	Shell Myanmar + MOECO	Rakhine Offshore Area
AD-10	Statoil + ConocoPhillips	Rakhine Offshore Area

<sup>492</sup> MOE, "[Opportunities for Cooperation in Myanmar Petroleum Energy Sector](#)" (June 2012), slide 12.

AD-11	Shell Myanmar + MOECO	Rakhine Offshore Area
AD-12	No award/no bids	Rakhine Offshore Area
AD-13	No award/no bids	Rakhine Offshore Area
AD-14	No award/no bids	Rakhine Offshore Area
AD-15	No award/no bids	Rakhine Offshore Area
AD-16	No award/no bids	Rakhine Offshore Area
MD-01	No award/no bids	Moattama Offshore Area
MD-02	Eni Myanmar	Moattama Offshore Area
MD-03	No award/no bids	Moattama Offshore Area
MD-04	Eni Myanmar	Tanintharyi Offshore Area
MD-05	Shell Myanmar + MOECO	Tanintharyi Offshore Area
MD-06	No award/no bids	Tanintharyi Offshore Area
YWB	Total E&P Myanma	Tanintharyi Offshore Area

### March 2014 International Bidding Round for Offshore Blocks<sup>493</sup>



<sup>493</sup> Deloitte, as above.



**The Myanmar Centre for Responsible Business (MCRB)** was set up in 2013 by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, capacity, and dialogue amongst businesses, civil society organisations (CSO) and governments to encourage responsible business conduct throughout Myanmar. Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.

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