Human Rights and Business Country Guide

Myanmar

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Myanmar Centre for Responsible Business

THE DANISH INSTITUTE FOR HUMAN RIGHTS

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How to Use this Guide

This Human Rights and Business Country Guide contains information regarding the potential and actual human rights impacts of businesses operating in Myanmar. The information in this Guide is gathered from publicly available sources, and is intended to help companies respect human rights and contribute to development in their own operations and those of their suppliers and business partners.

About the Human Rights and Business Country Guide

The Human Rights and Business Country Guide provides country-specific guidance to help companies respect human rights and contribute to development.

For companies to manage their potential human rights impacts, they must have comprehensive information about the local human rights context in which they operate. The Country Guide provides a systematic overview of the human rights issues that companies should be particularly aware of. For each issue, it provides guidance for companies on how to ensure respect for human rights in their operations or in collaboration with suppliers and other business partners.

The Country Guide is not only a resource, but a process. This Guide was produced through a systematic survey carried out by the Danish Institute for Human Rights (DIHR) and the Myanmar Centre for Responsible Business (MCRB). The aim of this Guide is to improve the human rights practices of companies operating in Myanmar, including through facts-based dialogue regarding the issues presented here.

How the Human Rights and Business Country Guide can be used by companies

- Develop company policies and procedures related to human rights issues in the local environment.
- Assess and track the potential human rights impacts of your own operations or in suppliers, business partners and investments.
- Raise awareness among staff, suppliers and other business partners.
- Engage with workers, potentially affected communities, consumers and other stakeholders whose human rights might be affected by your operations.
- Engage with civil society organisations, government bodies or international organisations on human rights-related issues.
- Provide background information for auditors.
- Establish or collaborate with mechanisms for workers, communities and other whose human rights might be affected by your operations.
- Contribute to development initiatives that align with human development needs and priorities in the local context.

How the Human Rights and Business Country Guide can be used by governments

- Review and reform public policy and legislation relevant to the human rights impacts of business, including in the areas of labour, environment, land, equal treatment, anti-corruption, taxation, consumer protection or corporate reporting.

- Ensure respect for human rights in the state's own business affairs such as state-owned companies, sovereign wealth funds and other investments, public procurement, development assistance, export credit and other activities.
- Build awareness and capacity on human rights and business issues within relevant areas of public administration.
- Provide targeted advice to domestic companies.
- Inform the development of trade policy, trade and investment agreements and trade and investment promotion.
- Improve effective access to judicial and non-judicial remedies for victims of business-related human rights abuses.
- Enhance the contribution of the private sector in national and regional development programmes relevant to human rights.

How the Human Rights and Business Country Guide can be used by civil society organisations

- Inform human rights research and monitoring related to business operations.
- Work with affected workers and communities to define human rights and human development priorities related to the role of business.
- Provide capacity-building to government, business and civil society stakeholders on human rights and business.
- Work with local stakeholders to provide recommendations to business and government.
- Facilitate dialogue and engagement with, including multi-stakeholder forums, with state agencies and businesses.

DIHR and SAHRC aim to work with all stakeholders to promote, monitor and expand the activities described above. We request that all stakeholders who use the findings of the Country Guide in their work notify the Country Guide team of their activities and lessons learned. These experiences will be included in the Country Guide website, HRBCountryGuide.org.

Country Guide Process

The Myanmar Country Guide was produced by the Danish Institute for Human Rights (DIHR) and the Myanmar Centre for Responsible Business (MCRB).

The Country Guide is a compilation of publicly available information from international institutions, local NGOs, governmental agencies, businesses, media and universities, among others. International and domestic sources are identified on the basis of their expertise and relevance to the Myanmar context, as well as their timeliness and impartiality.

The initial survey of publicly available, international sources was carried out by DIHR from September to December 2014. The draft was then updated and localized by MCRB. In January 2015, in-country stakeholder consultations were conducted. About 20 stakeholders—businesses, trade unions, NGOs, international organisations and the National Human Rights Commission—were asked to identify the main challenges to operating in Myanmar with respect to human rights, and were asked to contribute

comments and ongoing initiatives to the Guide. These contributions have been incorporated into the present document.

The completed Country Guide aims to provide a comprehensive overview, on the basis of the information available, of the ways in which companies do or may impact human rights in Myanmar. The current Country Guide is not meant as an end product, or a final determination of country conditions. It is intended to be the basis, and the beginning, of a process of dissemination, uptake and modification. DIHR and MCRB seek further engagement with local stakeholders, and intend to update the Country Guide on that basis.

Country Guide Content

The Myanmar Country Guide contains the following information:

Areas for Attention

Each section of the Country Guide identifies areas for particular attention by businesses. The Country Guide identifies these areas through an analysis of the country's legal framework for human rights protection; enjoyment of human rights in practice; and the proximity of third-party human rights violations to company operations.

The headline and risk description describe the relevance of each issue for businesses. The text that follows the risk description presents the quantitative and qualitative information upon which this determination was based.

- **Background & Context** gives an overview of economic, political and demographic characteristics.
- **Rights Holders at Risk** identifies groups that may be vulnerable to workplace discrimination or community impacts.
- **Labour Standards** identifies areas for attention related to employees and working conditions. This section includes child labour, forced labour, trade unions, occupational health & safety and working conditions.
- **Community Impacts** identifies areas for attention related to communities whose human rights may be affected by company operations. This section includes impacts related to environment, land& property, revenue transparency &management and security & conflict.
- **Sector Profiles** identifies human rights and business impacts related to a particular industry sector, such as extractive operations, manufacturing or agriculture.
- **Region Profiles** identifies regions of the country where the risk of adverse human rights impacts differs markedly from the national profile. This may include underdeveloped regions, export processing zones or conflict areas.

Cases

Each rights issue includes cases from media and law where the rights issue in question has been allegedly violated. These cases are drawn from the Business and Human Rights Resource Centre, international and local NGOs and stakeholder consultations. The cases presented here should not be considered comprehensive.

Access to Remedy

Victims of corporate human rights abuses have the right under international law to mechanisms that provide for remedy. The UN Guiding Principles on Business and Human Rights explicitly obligate governments and businesses to provide and/or participate in such mechanisms.

The Country Guide includes information under each rights area about the remedy mechanisms available to redress violations of the right. Where possible, this also includes practice information about the effectiveness of such bodies, and the number of cases they have heard and redressed.

Human Rights Guidance for Businesses

This section includes guidance for businesses to prevent and mitigate their adverse human rights impacts. This guidance is drawn from the Danish Institute for Human Right's (DIHR) existing library of human rights due diligence recommendations, as well as international frameworks, principles and guidelines. Where available, this section includes recommendations issued by local NGOs and directed specifically at companies operating in the country.

This section also includes examples of initiatives carried out by companies to mitigate their human rights impacts. These are organized into Due Diligence Initiatives—activities that aim to meet the company's responsibility not to violate human rights—and Beyond Compliance Initiatives—activities that aim to contribute to development beyond this baseline obligation.

Engagement Opportunities

Companies have a responsibility to prevent negative human rights impacts, but they also have an opportunity to contribute to positive human rights impacts. Each section of this Guide includes information for companies to link their policies and community engagement processes to ongoing governmental and institutional efforts to promote and fulfil human rights.

This includes Public Sector Initiatives—activities where the government is aiming to fulfil or promote the right in question through discrete programmes—as well as Development Priorities—themes identified by international institutions as warranting deliberate attention, or where companies could have the greatest impact with their development initiatives.

The purpose of the information in this section is to inspire further efforts and engagement by businesses, as well as to identify existing programmes that companies could support or take part in.

About the Danish Institute for Human Rights

The Danish Institute for Human Rights is a National Human Rights Institution accredited under the UN Paris Principles, and carries out human rights and development programmes in Denmark and around the world. Since 1999, the Danish Institute has worked closely with the business and human rights communities to develop tools and standards for better business practice.

For more information, see humanrights.dk.

About the Myanmar Centre for Responsible Business

Myanmar Centre for Responsible Business (MCRB) is a Yangon-based initiative funded by the governments of the UK, Denmark, Norway, Switzerland, Netherlands and Ireland, and is based on a collaboration between the Danish Institute for Human Rights and the UK-based Institute for Human Rights and Business.

The Centre was established in 2013 to provide an effective and legitimate platform for the creation of knowledge, capacity and dialogue concerning responsible business in Myanmar, based on local needs and international standards, which results in more responsible business practices. It is a neutral platform working with businesses, civil society and government.

For more information, see myanmar-responsiblebusiness.org

Background & Context

Overview of political and socio-economic conditions in which businesses operate. This information is designed to inform businesses of the broader political and development trends in the country.

Political Context

Governance structures and political developments

Myanmar gained independence from the British in 1948.[1] It was ruled by successive military-dominated governments after a 1962 coup led by General Ne Win, including the State Law and Order Restoration Council which took power in 1988.[2] During this period, the government suppressed political opposition and carried out human rights violations, resulting in a broad range of sanctions by the European Union and other Western governments,[3] as well as restrictions by the International Labour Organization (ILO).[4]

In March 2011, the military handed power over to a nominally civilian government led by the Union Solidarity and Development Party. In the 2012 bye-elections, the National League for Democracy (NLD), the main opposition party, won 43 out of 45 parliamentary seats.[5]

As a result of this reform process, the majority of economic sanctions and ILO restrictions were lifted in 2012.[6] The arms embargo by the EU remained in place as of 2014.[7] In 2013, the U.S. Department of State required US companies operating in Myanmar in the oil and gas sector, and those investing more than US$500,000, to report annually on the steps they have taken to respect human rights, specifically labour, land, environmental protection and anti- corruption.[8] In 2014, the Special Rapporteur on the Situation of Human Rights in Myanmar called for the establishment of a truth commission to ensure accountability for past human rights violations.[9] The next general elections are expected in late 2015.[10]

The 2008 Constitution provided the country with a new organisational structure, consisting of seven states, seven regions, six Self-Administered Zones and Self-Administered Divisions and one union territory comprising the capital, Nay Pyi Taw and surrounding townships.[11] Myanmar is currently administratively divided into villages; village tracts; urban wards; towns; townships (where the lowest levels of government offices are generally located); districts; and regions or states.[12]

Despite the reforms, there are a number of unresolved armed conflicts. Since 1948, armed ethnic minority opposition groups in the border areas have been fighting the central, ethnic-majority Bamar government for greater rights, as well as access to and management of natural resources.[13] In 2011, the government began to negotiate ceasefire agreements with 16 ethnic armed groups as part of a comprehensive national peace process.[14] Fighting in Kachin and Northern States, however, has intensified since June 2013, with confrontations between the government and the Kachin Independence Army and the Ta'ang (Palaung) State Liberation Army respectively.[15] Furthermore, in Rakhine State, inter-communal and religious violence between Buddhists and the Muslim minority worsened in 2012.[16]

Despite the greater press freedom after the 2011 reforms, including the lifting of pre-publication censorship, journalists continued to fear arbitrary arrests and intimidation, according to the UN

Special Rapporteur in 2014.[17] Reporters Without Borders noted that this situation had worsened since June 2014, and reported arbitrary detentions and prosecution of journalists.[18] Due to the vague provisions of the 2014 Printers and Publishers Regulation Bill and broad powers of a government registrar to grant or revoke publishing licenses, the issue of press self-censorship continued to be raised by journalists in 2014.[19]

In June 2014, the parliament passed amendments to the Right to Peaceful Assembly and Peaceful Procession Act. According to the NGO Article 19, the revised law does not comply with international standards, as it failed to fully abolish the pre-authorisation requirement.[20] The law also provided for up to six months' imprisonment for those who demonstrate without prior permission.[21]

The Special Rapporteur also reported that little progress had been made in reforming the judiciary to strengthen its impartiality and independence.[22] The Special Rapporteur also noted the need to reform the 2008 Constitution to include civilian oversight of the military, the inclusion of ethnic minorities in the decision-making process and wider distribution of benefits from resources on ethnic-minority lands.[23]

The Framework for Economic and Social Reforms for 2012-2015 defines the government's priorities for improving governance, namely anti-corruption, decentralisation and transparency. The framework includes increasing citizen participation in national budget discussions and expresses a desire to improve revenue transparency by joining the Extractive Industries Transparency Initiative.[24]

Major donors and development banks have also resumed their activities in Myanmar as a result of the country reform process.[25] The Asian Development Bank resumed its operations in the country in 2013 and developed an Interim Country Partnership Strategy for 2012-2014[26], focusing on fiscal transparency and accountability.[27]

Socio-Economic Context

Human development indicators and trends

Myanmar began shifting in 1989 from a centrally directed economy to a market-oriented one.[28] Though the country had an economic growth rate of 7.3 percent in 2013,[29] it was classified in the low human development category, with a 2013 Human Development Index value of 0.5, lower than the regional average of 0.7.[30] With 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, a number of sources have noted that Myanmar has the potential to establish a growing and dynamic economy. In 2013, the McKinsey Global Institute estimated the country could quadruple the size of its economy, from $45 billion in 2010 to more than $200 billion in 2030.[31]

Despite a lower income inequality than other countries in the region, access to basic services varied significantly between rural and urban areas, according to the Asian Development Bank in 2014.[32] Addressing inequalities and ensuring inclusive growth in the neglected rural and border areas remained the main challenges in 2014, according to the Myanmar Centre for Responsible Business.[33]

In relation to health issues, the UN Development Programme (UNDP) reported in 2014 that Myanmar had contained the HIV epidemic with relative success, and had a national prevalence rate below 1 percent. The tuberculosis rate was also falling.[34] Myanmar recorded higher malaria and tuberculosis rates, however, than neighbouring countries in 2014.[35]

Ongoing socio-economic challenges included limited access to education and health and poor infrastructure, with less than 30 percent of the population having access to electricity.[36] The poverty rate was 26 percent nationally, but as high as 73 percent and 44 percent in Chin and Rakhine states,

respectively.[37] In 2013, unemployment was estimated at 3.4 percent by the World Bank[38] and underemployment at 37 percent by the ILO[39]. However, there is a recognised lack of accurate statistics on labour issues in Myanmar, which the government and the ILO is addressing by conducting a labour force survey, especially focused on youth employment, child labour, forced labour, and social security.[40]

The Framework for Economic and Social Reforms for 2012-2015 identified the following national priorities: fiscal, tax and monetary reforms; private sector development; health and education; agricultural growth; telecommunications; and infrastructure development.[41]

The Asian Development Bank Interim Country Partnership Strategy for 2012-2014 focused on environmental sustainability, private sector development and women's access to employment.[42] In 2012, the World Bank re-engaged in the country after a 25-year absence and developed the Interim Strategy for 2012-2014, focusing on health, education, social protection and telecommunication systems.[43]

Health, education and inclusive growth through support for micro and small enterprises were the main focus area of the United Nations Development Assistance Framework for 2012-2015.[44]

Political, Economic & Development Statistics

Quantitative indicators and country rankings

Demographic Overview	
Population	51,419,420 (2014 census)
Ethnic Groups	Major groups include Bamar/Burman, Shan, Mon, Karen/Kayin, Kachin, Kayah/Karenni, Danu, Akha, Kokang, Lahu, Naga, Palaung, Wa, Pa-O, Rakhine, Tavoyan, Chinese, Indian, Rohingya Mon, Chin
Religious Groups	Buddhist, Christian (Baptist, Roman Catholic), Muslim, Animist
Languages	Burmese/Myanmar (official). Minority groups have their own languages.

Trends

	2010	2012	2014
Reporters Without Borders: Press Freedom Index score *(Where 0 indicates the highest degree of freedom, 100 the lowest)*	95	85	70
Freedom House: Map of Freedom - Political Rights *(On a scale of 1 through 7, where 1 indicates the highest level of freedom)*	7	7	6
Freedom House: Map of Freedom - Civil Liberties *(On a scale of 1 through 7, where 1 indicates the highest level of freedom)*	7	6	5
Form of government	Parliamentary government		
Most recent general election	7 November 2010		
Current head of state	President Thein Sein		
Ruling party	Union Solidarity and Development Party (USDP)		
Other major parties	• All Mon Region Democracy Party (AMRDP) • National Democratic Force (NDF) • National League for Democracy (NLD) • National Unity Party (NUP) • Rakhine National Party • Shan Nationalities Democratic Party (SNDP) • Shan Nationalities League for Democracy or (SNLD)		
Institutional reports related to good governance	• Framework for Economic and Social Reforms for 2012-2015 • Asian Development Bank Interim Country Partnership Strategy for 2012-2014		

Development

	2008	2010	2013
GDP growth	12.0[45]	5.1[46]	6.8[47]
GDP growth in region (East Asia and Pacific)	8.5[48]	9.7[49]	7.1[50]
GDP per capita ($US, PPP)	1,110[51]	1,198[52]	1,700[53]
Human Development Index rank	132[54]	132[55]	150[56]
Human Development Index score	0.583[57]	0.451[58]	0.524[59]
Human Development Index score – Regional Average	0.771[60]	0.643[61]	0.703[62]
Institutional reports related to development priorities	• Framework for Economic and Social Reforms for 2012-2015 • United Nations Development Assistance Framework for 2012-2015 • World Bank Interim Strategy for 2012-2014 • Asian Development Bank Interim Country Partnership Strategy for 2012-2014		

International Legal Commitments

Accession and ratification of international human rights instruments

Not Signed: Myanmar has not signed an international convention and is generally not bound by its principles under international law.

Signed: Myanmar has signed an international convention, and has expressed the intention to become legally bound by it through ratification.

Ratified: Myanmar has ratified the international convention, is bound by the articles of the convention and must conform to its principles under international law.

Acceded: Accession is another form of ratification of an international convention. It enables countries that have not been present at the signing of the convention to ratify and become formal parties to the convention.

UN Conventions	
International Covenant on Economic, Social and Cultural Rights	**NOT SIGNED**
International Covenant on Civil and Political Rights	**NOT SIGNED**
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty	**NOT SIGNED**
Convention Against Corruption	**RATIFIED (2012)**
Convention Against Torture	**NOT SIGNED**
Convention on the Elimination of All Forms of Racial Discrimination	**NOT SIGNED**
Convention on the Elimination of All Forms of Discrimination Against Women	**ACCEDED (1997)**
Amendment to Article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women	**NOT ACCEPTED**
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	**NOT SIGNED**
Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (1968)	**NOT SIGNED**
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	**RATIFIED (1956)**
Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (1992)	**NOT ACCEPTED**[63]
Convention on the Rights of Persons with Disabilities	**ACCEDED (2011)**
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	**NOT SIGNED**
Convention on the Rights of the Child	**ACCEDED (1991)**
Amendment to article 43 (2) of the Convention on the Rights of the Child (1995)	**ACCEPTED (2000)**
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	**NOT SIGNED**
Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	**ACCEDED (2012)**

International Convention for the Protection of All Persons from Enforced Disappearance (2006)	**NOT SIGNED**
International Convention on the Protection of All Migrant Workers and Members of Their Families	**NOT SIGNED**
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime	**ACCEDED (2004)**

ILO Conventions

ILO Hours of Work (Industry) Convention (C1, 1919)	**RATIFIED (1921)**
ILO Forced Labour Convention (C29, 1930)	**RATIFIED (1955)**
ILO Labour Inspectors Convention (C81, 1947)	**NOT RATIFIED**
ILO Freedom of Association and Protection of the Right to Organise Convention (C87, 1948)	**RATIFIED (1955)**
ILO Right to Organise and Collective Bargaining Convention (C98, 1949)	**NOT RATIFIED**
ILO Equal Remuneration Convention (C100, 1951)	**NOT RATIFIED**
ILO Social Security (Minimum Standards) Convention (C102, 1952)	**NOT RATIFIED**
ILO Abolition of Forced Labour Convention (C105, 1957)	**NOT RATIFIED**
ILO Discrimination (Employment and Occupation) Convention (C111, 1958)	**NOT RATIFIED**
ILO Medical Care and Sickness Benefits Convention (C130, 1969)	**NOT RATIFIED**
ILO Minimum Wage Fixing Convention (C131, 1970)	**NOT RATIFIED**
ILO Holidays with Pay (Revised) Convention (C132, 1970)	**NOT RATIFIED**
ILO Workers' Representatives Convention (C135 of 1971)	**NOT RATIFIED**
ILO Minimum Age Convention (C138, 1973)	**NOT RATIFIED**
ILO Migrant Workers (Supplementary Provisions) Convention (C143, 1975)	**NOT RATIFIED**
ILO Occupational Safety and Health Convention (C155, 1981)	**NOT RATIFIED**
ILO Indigenous and Tribal Peoples Convention (C169, 1989)	**NOT RATIFIED**
ILO Worst Forms of Child Labour Convention (C182, 1999)	**SIGNED (2013)**[64]
ILO Maternity Protection Convention (C183, 2000)	**NOT RATIFIED**

Regional Instruments

ASEAN Human Rights Declaration	**ADOPTED**

Other International Instruments

Rome Statute of the International Criminal Court	**NOT SIGNED**
UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	**ACCEPTED (1994)**

Rights Holders at Risk in the Workplace

Societal groups and workers who may be at particular risk of employment-related discrimination and poor labour conditions

Operating Environment		
	Myanmar	**East Asia & Pacific Average**
HIV/AIDS prevalence (ages 15-49)	0.6 (2012)[65]	0.2 (2012)[66]
Female labour participation rate, percentage	85.7 (2012)[67]	62.8 (2012)[68]
Labour force	34.31 million (2013 est.)[69]	
Percentage of population between 15-24 years	18.3 (2013)[70]	
Sectors contributing to GDP	Agriculture: 38% Industry: 20.3% Services: 41.7% (2013 est.)[71]	
Major ethnic groups	Bamar 68%, Shan 9%, Karen 7%, Rakhine 4%, Chinese 3%, Indian 2%, Mon 2%, other 5% (est.)[72]	
Major indigenous group	n/a (term 'indigenous people' not used in Myanmar)[73] ILO Convention no. 169 not ratified.	
Major religious groups	Buddhist 89%, Christian 4% (Baptist 3%, Roman Catholic 1%), Muslim 4%, Animist 1%, other 2% (est.)[74]	
Persons with disabilities	2.3%[75]	
Maternity leave	14 weeks	
Constitution prohibits discrimination on the grounds of	Race, birth, religion, official position, status, culture, sex, and wealth[76]	
Relevant legislation	• Constitution (2008)	

	• Minimum Wage Act (2013) • Social Security Law (2012) • Employment and Skill Development Law (2013) • Prevention and Control of Communicable Diseases Law (1995) • Rehabilitation and Employment of persons with disabilities law (1958)
Recognition of indigenous groups in law	No
Responsible ministries and other state bodies responsible	• Ministry of Labour, Employment and Social Security • Ministry of Social Welfare, Relief and Resettlement • Myanmar Council of People with Disabilities
Local NGOs addressing this issue	• Action Labor Rights • Arakan Project • Equality Myanmar • Myanmar Deaf Community Development Association • Deaf Resources Centre • Myanmar Independent Living Initiative • LGBT Rights Network • Women's League of Burma • Gender Equality Network • The 88 Generation

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Ethnic Minorities

Ethnic minorities may be at risk of discrimination in the workplace. Particular attention should be given to discrimination in hiring.

The 2008 Constitution provides protection from discrimination on the basis of race only to citizens.[77] The 1982 Citizenship Law recognises as nationals of Myanmar 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".[78] Several ethnic minorities, including almost all Rohingya, people of Chinese, Indian and Nepali heritage do not qualify, and the Myanmar Centre for Responsible Business reported in 2014 that the majority of them were without official citizenship.[79]

In 2013, the Transnational Institute reported that ethnic minorities made up about 30 to 40 percent of the population.[80] Ethnic minorities live mostly in the seven states located along the border, making up almost 60 percent of national territory. The ethnic majority Bamar people live mostly in the seven regions in the middle of the country.[81]

Myanmar is one of the most culturally diverse countries in South East Asia, and ethnic identity remains contested and politicised. According to a 2014 report by International Crisis Group, ethnic minorities have long believed that the government manipulated ethnic categories and statistics for political purposes, and distrust of the government's approach toward ethnicity is widespread.[82]

In 2013, the Forest Peoples Programme reported discrimination against ethnic groups at the workplace.[83]

Persons with Disabilities

Persons with disabilities may be at risk of limited access to employment and workplace discrimination. Particular attention should be given to the areas of hiring, wages and informal employment..

Myanmar acceded to the UN Convention on the Rights of Persons with Disabilities in December 2011.[84] A draft law on disabilities, revising the 1958 Law, was published by the Parliament on 22 December 2014. It was drafted by a group of disability advocacy organisations and the Department of Social Welfare, and includes requirements for the workplace.[85] No hiring quota for people with disabilities was set by the 1958 law.[86]

In 2013, about 2.3 percent of the population (or 1.3 million people) was estimated to be disabled, according to the Department of Social Welfare.[87] The MCRB and the Deaf Resources Centre (DRC) reported that 68 percent suffered from physical impairments, 13 percent had visual impairments, 10 percent had hearing impairments and 8 percent had some form of intellectual disability.[88] Disability criteria due to age, chronic disease, HIV/AIDS or clinical depression were not recognised in Myanmar.[89] In 2015, DRC reported that people with hearing impairments were *de facto* denied promotions, as they could not fully participate in workplace activities, such as meetings, and companies did not provided them with tools to ease their integration at the workplace.[90]

MCRB and DRC reported in 2014 that about 85 percent of persons with disabilities were unemployed[91] and that job descriptions often required 'physical strength'.[92] Persons with disabilities reportedly had to rely on casual jobs, such as collecting plastic or bottles.[93] Poor access to education for persons with disabilities played an important role in the high rates of unemployment and the low quality and poorly remunerated jobs offered to persons with disabilities, as reported by the Irrawaddy in 2013.[94]

Persons Living with Health Conditions

Persons living with health conditions may be at risk of workplace discrimination. Particular attention should be given to persons living with HIV/AIDS and the areas of workplace harassment and termination of contract.

In 2013, UNAIDS estimated that about 190,000 people were living with HIV/AIDS in Myanmar.[95] Though the constitution recognises the right to health care, only slightly more than 40 percent of people living with HIV/AIDS were being treated.[96] Sagaing Region was reported to have the highest HIV/AIDS rate in the country in 2013.[97]

In 2013, according to a survey by the People Living with HIV Stigma Index, 25 percent of respondents reported unfair dismissal due to their HIV status.[98]

Religious Minorities

Religious minorities may be at risk of discrimination in the workplace. Particular attention should be given to the areas of access to employment for Muslims, especially those who self-identify as Rohingya.

The 2008 Constitution provides protection from discrimination on the basis of religion only to citizens, and allows the state to restrict religious expression for, among other reasons, 'community peace and tranquillity'.[99]

The Rohingya, a Muslim minority mainly residing in Rakhine State, are not one of the 135 ethnic groups recognised by the state, and are not recognised as citizens, leaving many of them stateless.[100] According to the UN Human Rights Council, restrictions on the movement of Rohingya,[101] as well as access to higher education,[102] limited their ability to access employment. In 2013, Associated Press reported that Rohingya children were particularly vulnerable to child labour in the construction sector.[103]

Sexual Minorities

Lesbian, gay, bisexual or transgender persons may be denied access to employment or discriminated against in the workplace. Particular attention should be given to the areas of hiring, privacy and workplace harassment.

The Myanmar penal code criminalises homosexual acts and provides for life imprisonment or 10 years' imprisonment and the payment of a fine.[104] The potential punishment impairs the ability of sexual minorities to access remedies when subject to discrimination or when other violations of their human rights occur.

The U.S. Department of State reported in 2013 that sexual minorities faced limited access to job opportunities and discrimination in employment, including denial of promotions and dismissal.[105]

Women

Women may be at risk of discrimination in the workplace. Particular attention should be given to the areas of access to employment opportunities, equal pay and informal employment.

Myanmar ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1997.[106] The constitution provides for equal pay for similar work, while the international standard refers to 'equal pay for work of equal value'.

The 2013 Minimum Wage Act provides that men and women should receive the minimum wage without discrimination.[107] According to the law, women must work for a minimum of one year, and contribute to social insurance for six months, before they are entitled to 14 weeks of maternity leave (six weeks before and eight weeks after the birth) at 70 percent of their salary.[108] In 2015, various labour rights organisations reported that pregnant women did not enjoy their rights in practice, as they were typically not paid during maternity leave, and were not reintegrated in the same position/level and were to start as "new staff".[109]

In general, data on labour rights by women is scarce.[110] According to the World Bank in 2013, women did not receive equal pay for work of equal value.[111] According to Oxfam, women earned 20 percent less than their male counterparts in agriculture in two townships in Mandalay and Magwe.[112] In 2012, the World Bank reported that 75 percent of women were active in the labour market, compared to 82 percent of men.[113]

High illiteracy rates among women, as high as 80 percent in remote mountain border areas, reportedly resulted in difficulties accessing employment and in women being employed in low salary positions.[114] The oil and gas sector was reportedly male dominated, partly due to the test score in subjects such as engineering required by educational institutions being set higher for women than for men, according to a 2014 MCRB report.[115]

Women represented half of the workforce in the tourism sector and some occupied unpaid positions in 'family tourism enterprises', such as small hotels, guest houses, souvenir shops and restaurants, according to MCRB.[116] Family businesses were reportedly not necessarily comprised of only family members as employees, making it more challenging for employees to claim their rights.[117]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Disputes occurring at the workplace are referred to the workplace coordinating committee for five days, then to the township conciliation body for three days. If an agreement is not reached, individual disputes are referred to the competent court. Collective dispute cases go through an additional negotiation process at the regional or state arbitration body for seven days before reaching a tribunal, formed by the arbitration council.[118] Failure to comply with the terms of an agreement reached through the conciliation body results in a fine, according to the law.[119] Employers failing to comply with decisions by arbitrations bodies enjoyed impunity, according to the Principles of Responsible Investment in 2013.[120]

Victims of discrimination at work can address the Myanmar National Human Rights Commission, which has investigatory powers.[121] Although the Myanmar National Human Rights Commission was set up in 2011, its governing law was only adopted in March 2014.[122] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[123]

International Grievance Mechanisms

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including discrimination at the workplace (Chapters IV and V), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute.[124]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[125]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- 2013 Human Rights Watch: Monks from the Buddhist Sangha (clergy) in Rathedaung township in Rakhine State, issued a 12 point statement outlining 'the Arakan Ethnic Cleansing Program', which encouraged people not to employ Rohingya as day workers, carpenters, masons or farmers. It further asserted that Rohingya should not be able to work in government offices or in NGOs in the area.[126]
- *October 2012, Mizzima:* Up to 150 workers at the Aung ceramic tile factory in Shwepyitha Township, Yangon, protested against discriminatory practices at the factory.[127]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015*):** [128] The organisation recommends the following to companies in the tourism sector:

- Implement non-discriminatory policies and practices between female and male employees as well as employees of different ethnicities and religions in relation to recruitment, training, the terms and conditions of employment, remuneration (equal pay for equal work), promotion and the provision of grants, loans, goods or services. Ensure managers are aware of local sensitivities around ethnic and religious diversity. Put in place clear company policies on non-discrimination, reinforce these messages and model an approach to equal opportunities.
- Consider the gender aspects of employee safety, such as arrangements for female tour guides.
- Have mechanisms in place through which employees can report labour-related grievances anonymously, including specific mechanisms to report cases of sexual harassment.

Myanmar Centre for Responsible Business and Deaf Resources Centre (2014): [129] In relation to persons with disabilities, the organisations recommend that companies:

- Openly adopt an equal treatment commitment at the highest corporate level so that all the company's stakeholders are aware of it;
- Include people with disabilities in its declaration of values or in its code of ethics to make clear that they as a group form part of its general commitment towards non-discrimination and diversity;
- Complement the general commitment with a clear policy and specific procedures that ensure non- discrimination in all company areas. This policy will specifically include people with disabilities;
- Design and carry out training and internal awareness actions to eliminate prejudices, low expectations and ignorance, which are some of the main obstacles people with disabilities face;
- Favour suppliers that comply with the employment regulations for people with disabilities;

- Consider the option of excluding from suppliers list any companies that do not comply with employment regulations for people with disabilities. The suppliers would be informed of this decision and would be given a reasonable time to be assessed and supported to comply with the regulation;
- Favour purchases from sheltered workshops (companies with workforce predominantly made of persons with disabilities).

European Parliament (2012): [130] The institution issued a resolution that 'Calls on large European companies doing business with Burma/Myanmar to report on their due diligence policies and procedures relating to human rights, workers' rights and the environment, along with the application of those policies and procedures.'

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Discrimination

Does the company ensure that employment-related decisions are based on relevant and objective criteria?

- The company identifies different types of discrimination, including those rooted in formal structures and cultural traditions.
- It is company policy to ensure that decisions concerning hiring, wages, promotion, training, discipline, retirement and termination are based only on unbiased criteria, and are not linked to any of the discriminatory characteristics listed in the description for this question.
- Each job category in the company has a written description stating the salary level and the qualifications required for that job category.
- The company ensures that employment advertisements do not reference discriminatory criteria, such as race, gender or age (unless listed as part of a legal equal opportunities promotion).
- The company ensures that job applicants are not asked to give information about their marital status, pregnancy, intent to have children, number of dependents, or similar information that may lead to discriminatory hiring decisions.
- All hiring managers receive training regarding the company's non-discrimination policies.
- The company has established a procedure, accessible and known to all workers, where workers can safely report incidents of workplace discrimination.
- The company takes reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheel chair access, flexible working hours, longer breaks etc.

Fair Treatment

Does the company protect workers from workplace harassment including physical, verbal, sexual or psychological harassment, abuse, or threats?

- The company has a commitment to prevent workplace harassment.

- The company actively informs workers of their obligations to refrain from violent, threatening or abusive conduct.
- Managers receive training on how to identify and deal with instances of harassment in the workplace.
- The company investigates all complaints of workplace harassment and takes appropriate preventative and disciplinary action including reporting of criminal actions to the appropriate authorities.
- Does the company respect the privacy of its employees whenever it gathers private information or monitors the workplace?

The company has a procedure stating which kinds of workplace monitoring are allowed; what kind of personal worker information is retained; where it is stored; who has access; and why the information is necessary.

- Workers are made aware of all workplace monitoring, including cameras and Internet or e-mail monitoring, and the specific purpose of the monitoring.
- The company obtains the worker's prior written consent before gaining information from an individual with whom the worker has a privileged relationship, including a former employer, doctor or lawyer.
- Workers have access to all personal data collected about them, including data concerning disciplinary decisions and data obtained through monitoring, but excluding confidential management specific information related to performance evaluations, salary negotiations, promotions, rotation and similar employment decisions.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **International Labour Organization Core Labour Standards on Non-discrimination and the ILO Bureau for Gender Equality:** Non-discrimination comprises one of the four core areas of the ILO Declaration on Fundamental Principles and Rights at Work, which comprises the ILO core labour standards. The ILO integrates gender throughout its work, with the objective of achieving gender equality as an essential feature of decent work. This can include advisory services, research and information dissemination, training and capacity building.
- **Oxfam Australia:** Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (2009): This Guide is intended to inform mining company staff of potential gender impacts of mining projects and introduces some tools and approaches that can be used to conduct a gender impact assessment.
- **Women's Empowerment Principles (2010):** Developed in collaboration between UN Women and the UN Global Compact, the Women's Empowerment Principles are a set of principles for businesses offering guidance on how to empower women in the workplace, marketplace and community.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

The Coca-Cola Company: The Company developed a grievance policy that was translated into Burmese and distributed to employees in July 2014. The company also established a Workplace Coordinating Committee at each of its plants, where employees could raise concerns and provide suggestions and recommendations to management. In March 2014, company managers in Myanmar were trained on workplace rights and grievance mechanisms.[131]

MAX Myanmar Holding: In 2014, the company issued its Human Rights Policy. The company also has a Whistle Blowing Policy, a Grievance Handling Policy and an Equality and Diversity Management Policy. The policies are part of the orientation training for the new employees and oversight committees are set up to monitor the implementation of the policies and to conduct regular training.[132]

Company Beyond Compliance Initiatives

The Coca-Cola Company: The Company established a Women's Council and Network to empower women at the workplace and promote their employment in senior managerial positions.[133] The Company's foundation sponsors the Swan Yi project, which provides microcredit and village-based banking opportunities to 24,500 women in Myanmar by 2015.[134] Since 2013, more than 25,000 women from eight townships took part in the programme, delivered by PACT, an international NGO.[135]

The Gap: The company developed the PACE (Personal Advancement & Career Enhancement) Programme for women working in subcontractor factories in Myanmar. PACE aims at developing the skills of female workers to empower them at work.[136]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

NGO Initiatives

Association of Aid and Relief (AAR) Japan: In 2000 the organisation set up a Vocational Training Center for people with disabilities providing courses on tailoring, hairstyling and computer skills. From 2012 to 2014 344 people with disabilities were trained. Graduates from the programme opened their own shops or have been employed by factories, companies, banks, call centres and NGOs. [137]

Development Priorities

Asian Development Bank Interim Country Partnership Strategy (2012-2014): The strategy prioritises women's empowerment through access to employment, entrepreneurship opportunities and capacity building.[138]

ILO Decent Work Programme Framework (2012-2014): ILO prioritises employment creation in conflict-afflicted and ethnic-minority areas, as well as creating employment opportunities for young people through public-private partnerships by developing skills needed by the private sector.[139]

Rights Holders at Risk in the Community

Societal groups who may be at particular risk of adverse human rights impacts by businesses or who may be excluded from benefits generated by businesses activities

Operating Environment		
	Myanmar	**East Asia & Pacific Average**
Percentage urban population	33.8 (2013)[140]	50.8 (2013)[141]
Percentage rural population	67 (2013)[142]	49 (2013)[143]
Human Development Index score	0.524 (2013)[144]	0.703 (2013)[145]
HDI adjusted for inequality	n/a	0.564 (2013)[146]
Literacy rate, 15-24 years old *(%)*	96.1 (2012)[147]	98.8 (2012)[148]
Maternal mortality ratio *(*per 100,000 births)	200 (2010)[149]	72 (2010)[150]
Seats held by women in national parliament	4.6 (2013)[151]	18.7 (2013)[152]
HDI Gender Equality Gap Index	0.430 (2013)[153]	0.331 (2013)[154]
OECD Social Institutions and Gender Rank	44 (2012)	
Life expectancy	65.2 (2013)[155]	
Constitution prohibits discrimination on the grounds of:	Race, birth, religion, official position, status, culture, sex and wealth[156]	
Recognition of indigenous groups in law	No ILO Convention No. 169 not ratified	
Relevant Laws	• Citizenship Law (1982) • Rehabilitation and Employment of persons with disabilities law (1958)	
Responsible agencies	• Ministry of Social Welfare, Relief and Resettlement • Myanmar Council of People with	

	Disabilities • Ministry of Health
Local NGOs addressing this issue	• Arakan Project • Equality Myanmar • Myanmar Deaf Community Development Association • Deaf Resources Centre • Myanmar Independent Living Initiative • SMILE • LGBT Rights Network • Gender Equality Network • Women's League of Burma • Karen Environment and Social Action Network • Kachin Development Network • Mon Women's Organisation

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Ethnic Minorities

Companies may affect the health, livelihoods or material well-being of ethnic minorities. Particular attention should be paid to this issue when purchasing land and operating in conflict-affected areas.

Myanmar is one of the most culturally diverse countries in South East Asia, and ethnic identity remains contested and politicised. According to a 2014 report by International Crisis Group, ethnic minorities have long believed that the government manipulated ethnic categories and statistics for political purposes, and distrust of the government's approach toward ethnicity is widespread.[157]

The 2008 Constitution provides protection from discrimination on the basis of race only to citizens.[158] The 1982 Citizenship Law recognises as nationals of Myanmar 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".[159] Several ethnic minorities, including almost all Rohingya, people of Chinese, Indian and Nepali heritage do not qualify, and the Myanmar Centre for Responsible Business reported in 2014 that the majority of them were without official citizenship.[160]

International Crisis Group (ICG) reported that the 2014 census only included the 135 officially recognised ethnic groups, leaving those outside of those categories denied the right to self-identification.[161] The exclusion of unrecognised ethnic minorities from the Census was strongly contested as was the list itself by several groups included in it who believed themselves to be miscategorised.[162]

In 2013, ethnic minorities comprised up to 40 percent of the population, according to estimates by the Transnational Institute (TNI).[163] The Shan and the Karen ethnic groups represented about 16 percent of the population in 2009, according to Minority Rights Group International; the rest included the Mon, Rakhine, Chin, Kachin, Karenni, Kayin (e.g. Karen), Chinese, Indian, Danu, Akha, Kokang, Lahu, Naga, Palaung, Pao, Rohingya, Tavoyan, and Wa groups.[164]

Ethnic minorities were concentrated in the seven states located along the border, including Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shan States, making up almost 60 percent of national territory.[165] The ethnic majority Bamar lived mostly in the seven regions in the middle of the country.[166]

Despite the concentration of the country's natural resources in those states, they were characterised by high levels of poverty, environmental and land degradation, high concentrations of smallholder farmers, and conflicts between ethnic minority armed groups and the national army.[167] The poverty rate in Chin State, according to the Asian Development Bank in 2014, was almost 75 percent. In ethnic Bamar areas, the poverty rate was below 20 percent.[168] TNI reported in 2013 that ethnic minorities were mostly subsistence farmers.[169]

Since 1949, armed ethnic minority opposition groups in border areas had been fighting the central Bamar-dominated government over greater rights, as well as access to and management of natural resources.[170] TNI reported that ethnic minority leaders believed that the government had instituted a policy of 'Burmanisation', which had suppressed ethnic minority cultures, languages and religions.[171] Major armed groups included the Kachin, Wa, Karen, Mon, Karenni, Shan and Chin ethnic groups.[172]

Since 2011, the government has negotiated ceasefire agreements with 14 ethic rebel groups, including the New Mon State Party, Karen National Union, Shan State Army North and Shan State Army South.[173] However, a 1994 ceasefire with the Kachin Independence Organization (KIO) broke down in June 2011 and fighting in Kachin and Shan States continues. As of 2015, a nationwide peace process was ongoing.[174]

Human Rights Defenders

Companies may negatively impact human rights defenders. Particular attention should be paid to this issue when conducting community consultations.

The 2008 Constitution grants freedom of expression, though it applies only to citizens.[175] However, the constitution allows the government to suppress speech on the grounds of 'community peace and tranquillity[176], a clause that numerous sources reported had been used to stifle free expression.

In 2014, human rights defenders, especially those involved in identifying land confiscations and environmental issues linked to large investment projects, were reportedly harassed and arrested by law enforcement authorities, often under provisions of the 2014 Peaceful Assembly and Peaceful Procession Act, the 1923 Official State Secrets Act and the 1950 Emergency Provisions Act.[177]

Indigenous Peoples

Companies may disrupt the traditional livelihoods of indigenous communities. Particular attention should be paid to this issue when conducting community consultations.

The recognition of certain groups living in Myanmar as 'indigenous peoples' was unclear in law and contested in practice, according to a 2014 report by the Myanmar Centre for Responsible Business (MCRB).[178] The government did not take a position on whether indigenous peoples resided in Myanmar, through MCRB noted that some ethnic minority groups, especially in areas near the operations of oil and gas companies, would fit the definition for qualification as indigenous under the UN Declaration on the Rights of Indigenous People.[179]

Persons with Disabilities

Companies may negatively impact the health, livelihoods or ability to access public services for persons with disabilities. Particular attention should be paid to this issue when conducting community consultations.

Myanmar acceded to the UN Convention on the Rights of Persons with Disabilities in December 2011.[180] A new draft law to protect the rights of persons with disabilities, replacing the current legislation, from 1958,was submitted to the Parliament in December 2014.[181]

In 2013, about 2.3 percent of the population (or 1.3 million people) was estimated to be disabled, according to the Department of Social Welfare.[182] The MCRB and the Deaf Resources Centre (DRC) reported that 68 percent suffered from physical impairments, 13 percent had visual impairments, 10 percent had hearing impairments and 8 percent had some form of intellectual disability.[183] Disability criteria due to age, chronic disease, HIV/AIDS or depression were not recognised in Myanmar.[184]

In 2013, Action Aid reported discrimination against people with disabilities in Myanmar society.[185] In 2014, The Irrawaddy reported a widely held superstitious belief that disabled persons were made disabled as punishment for bad deeds in a previous life. This belief reportedly resulted in persons with disabilities being stigmatised.[186] The poverty rate of households with a disabled person was reportedly more than 37 percent higher than those without persons with disabilities.[187] In 2014, MCRB reported that about 50 percent of persons with disabilities received little or no education[188] and about 62 percent were landless.[189]

In 2015, various NGOs reported a lack of access to information, transportation and facilities for people with disabilities.[190] Sign language was reportedly not widespread and services, including public ones, were available to people with disabilities only against payment of fees.[191] The Asia Internships Programme and the Hussman Foundation reported in 2012 that people with hearing impairment were *de facto* denied the right to open a bank account.[192]

Persons Living with Health Conditions

Companies may negatively impact persons living with health conditions. Particular attention should be paid to this issue when conducting community consultations.

In 2013, UNAIDS estimated that about 190,000 people were living with HIV/AIDS in Myanmar,[193] amounting to a national prevalence rate of less than 1 percent.[194]

Sagaing Region reportedly had the highest HIV/AIDS rate in the country in 2013.[195] Sex workers, men having sex with men and drug addicts were the most affected by the disease, according to the Ministry of Health.[196] Although the constitution recognises every citizen's right to health care, only slightly more than 40 percent of people living with HIV/AIDS were being treated.[197]

In 2013, people living with HIV/AIDS reportedly experienced discrimination and stigma.[198] According to the People Living with HIV Stigma Index, 31 percent of people living with HIV/AIDS were excluded from social gatherings due to their status and 45 percent had been physically or verbally assaulted during the last year.[199]

Religious Minorities

Companies may affect the health, livelihoods or material well-being of religious minorities. Particular attention should be paid to this issue when identifying stakeholders for community consultation, purchasing land, operating in conflict-affected areas, recruiting local employees or operating in proximity to Rohingya communities.

The 2008 Constitution provides protection from discrimination on the basis of religion only to citizens, and allows the state to restrict religious expression for, among other reasons, 'community peace and tranquillity'.[200]

The 2014 census was criticised amongst others by the International Crisis Group for the way data on ethnicity, religion and citizenship status were collected, denying Rohingyas the right to self-identification. ICG also noted that census-taking led to violence in Rakhine, Kachin and northern Shan States.[201] Figures for the Muslim population from the 2014 census have not yet been released and will be extremely sensitive in the light of Buddhist fears of an increasing Muslim population, according to MCRB.[202]

In 2014, anti-Muslim sentiment and discrimination were reportedly widespread.[203] Violence between Muslim and Buddhist communities broke out in 2012 in Rakhine State and spread to Mandalay Region in 2013, particularly Meiktila, and continued in 2014, resulting in killings and destruction of Muslim property. International Crisis Group reported in 2013 that police were complicit in anti-Muslim violence.[204]

Inter-communal violence was also reported in Shan State, and Yangon and Bago Regions during 2013.[205] Hate speech against Muslims in the media exacerbated the situation, according to the Special Rapporteur on the Situation of Human Rights in Myanmar.[206] Human Rights Watch reported in 2014 that Buddhist monks of the 969 movement urged Buddhist girls not to marry Muslims to avoid conversions.[207] A law restricting inter-faith marriages was submitted to Parliament in 2014.[208]

The Rohingya, a Muslim minority mainly residing in Rakhine State, are not one of the 135 ethnic groups recognised by the state, and are not recognised as citizens, leaving many of them stateless.[209] Rohingyas required travel documents to move from one village to another, and were not allowed to move outside of North Rakhine State.[210] Rohingya were also required to obtain authorisation to marry and had to comply with a two-child policy.[211] According to the UN Human Rights Council, these restrictions[212] and restricted access to higher education,[213] limited Rohingyas' ability to access employment.

Violence since 2012 between Muslims and Buddhists in Rakhine State[214] reportedly displaced about 140,000 Rohingya in 2012.[215] The Thomson Reuters Foundation reported that about 9,000 Rohingya were trafficked during 2011-2012, some of whom ended up in forced labour on fishing boats in Thailand.[216] In September 2014, the government offered citizenship to some Rohingya, but required them to register as Bengali rather than Rohingya, a term which the government refuses to recognize.[217]

In 2014, the Special Rapporteur noted that Christians, including from the Kachin and Chin ethnic groups, were forcibly converted to Buddhism, including through the Government Border Areas National Development Training Schools.[218] Permits for building churches and large religious gatherings were reportedly difficult to obtain from the authorities. Instances of arbitrary arrest and detention, ill-treatment and torture of church workers and priests were also reported.[219]

In 2013, the U.S. Commission on International Religious Freedom reported that ethnic minority Christians were particularly vulnerable to abuses in the context of the armed conflict in Kachin and northern Shan States.[220]

Sexual Minorities

Companies may negatively impact the security of lesbian, gay, bisexual or transgender persons. Particular attention should be paid to the issues of privacy and personal security.

The Myanmar penal code criminalises homosexual acts and provides for life imprisonment or 10 years' imprisonment and the payment of a fine. [221] The potential punishment impairs the ability of sexual minorities to access remedies when subject to discrimination or when other violations of their human rights occur.

Freedom House reported in 2014 that stigma and harassment against sexual minorities was widespread.[222]

Women

Companies may disproportionately affect the health, livelihoods or material well-being of women, or may exacerbate already-existing gender disparities in development. Particular attention should be paid to the areas of under-representation of women in traditional structures and access to land.

Myanmar ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1997.[223] Sexual violence is prohibited by the Penal Code and carries a penalty of fines or up to one year's imprisonment. Despite systematic under-reporting, various sources noted that sexual harassment was considered widespread.[224]

The 2014 Social Institutions and Gender Index included Myanmar in the high level of discrimination against women and girls category.[225] In 2014, women held less than 5 percent of parliamentary seats.[226]

Despite laws granting equal rights to enter into land tenure contracts and to administer property, joint husband and wife property ownership was not provided for.[227] The law was also silent on women's right to inherit land or be granted use rights for vacant, fallow or virgin land, according to USAID in 2013.[228]

Buddhist, Muslim and Hindu and various ethnic minority customary laws govern matters of succession, inheritance and marriage for their respective populations and men were reportedly provided with greater decision-making power within the family.[229] Women reportedly lacked awareness of their inheritance rights or ability to own family land,[230] and were less likely to have formal ownership titles.[231] Access to credit for small-scale farmers was reportedly a challenge, especially for women used the informal money-lending sector.[232]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

People whose rights have been violated can address township or district courts, appeal the judgment to state courts and ultimately to the Supreme Court.[233] The 2008 Constitution provides for the separation of legislative, executive and judicial powers. The International Commission of Jurists reported in 2013 that the judiciary lacked independence due to the control of the executive over courts. Judges were reportedly engaging in corrupt practices, resulting in the dismissal of cases submitted by poorer and politically disempowered populations.[234]

Victims of discrimination can address the Myanmar National Human Rights Commission, which has investigatory powers.[235] Although the Myanmar National Human Rights Commission was set up in

2011, its governing law was only adopted in March 2014.[236] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[237]

International Grievance Mechanisms

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including adverse impact on communities (Chapters IV and VIII), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute.[238]

Abuses linked to investments funded by the Asian Development Bank (ADB) can be referred to the ADB Accountability Mechanism, which has the power to mediate and investigate cases.[239]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[240]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *January 2014, Irrawaddy*: About 1,000 Rohingya university students were restricted from returning to campus, after universities re-opened following closure in 2012, due to violent clashes in Rakhine State. Non-Rohingya students were reportedly allowed back into the university.[241]
- *November 2013, FIDH*: The leader of the Movement for Democracy Current Force was sentenced to six months' imprisonment under the Peaceful Gathering and Demonstration Law for his involvement in protests against land confiscations.[242]
- *July 2013, Asian Human Rights Commission*: In Mandalay Region, a group of gay and transgender people was reportedly harassed, arrested, detained and tortured by the police due to their sexual orientation.[243]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015)*:**[244] The organisation recommends the following to companies in the tourism sector:

- Include local communities, particularly in ethnic minority regions, and vulnerable or excluded groups in those communities in the decision-making, planning and development of tourism projects;

- Design tourism activities with the consent and support of local communities and in a manner which reflects their right to take part in cultural life and right to privacy. Provide advice on culturally appropriate behaviour by tourists to tourists;
- Disseminate Do's and Don'ts for Tourists[245] amongst staff and clients to promote understanding of culturally appropriate behaviour and respect for cultural traditions;
- Prioritise local candidates in recruitment and take individual or collective action to support vocational training in communities;
- Maximise local sourcing from farmers and SMEs, and actively promote 'local' products on menus. Support may be necessary in the form of credit, technology transfer and mentoring to raise product quality, reliability and quantity;
- Ensure social investment projects are based on community needs, following consultation with and the participation of communities. Be guided by the IFC Performance Standard 8 relating to Cultural Heritage, which aims to protect cultural heritage from the adverse impacts of project activities and support its preservation. Promote the equitable sharing of benefits with local communities from the use of cultural heritage, including intangible heritage.

UN Human Rights Council (2014) [246]***:*** The Council made the following recommendation to companies:

- Ensure that their investment and related activities respect human rights in accordance with the Guiding Principles on Business and Human Rights.

Myanmar Centre for Responsible Business and Deaf Resources Centre (2014): [247] In relation to persons with disabilities, the NGOs recommend that companies:

- Include the 'design for all' concept in production processes, especially in design. Allow users with disabilities to test products;
- When marketing products made by others, demand that its suppliers comply with the 'design for all' concept;
- Provide training courses for customer care staff to guarantee adequate treatment of people with disabilities;
- Demand that suppliers implement 'design for all' on the products or services purchased by the company.

Myanmar Centre for Responsible Business (2014) [248]: The organisation recommends the following to oil and gas companies:

- 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.
- Proactively invest in ongoing and meaningful engagement with workers, worker's representatives and communities throughout the project cycle, including before the formal consultation required by the Environmental and (Social) Impact Assessment 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.
- 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 without close consultation with affected communities. 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.

***The European Parliament (2012)*:**[249] The institution issued a resolution that calls on large European companies doing business with Burma/Myanmar to report on their due diligence policies and procedures relating to human rights, workers' rights and the environment, along with the application of those policies and procedures.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Community Engagement

Does the company engage with local communities on the actual or potential human rights impacts of its operations?

- The company has a commitment to engage openly with communities in and around its area of operations, prior to, during and after commencing activities that may negatively impact their access to resources (e.g. water, food, land) or livelihoods (e.g. fishing or hunting grounds).
- The company communicates and consults with local communities prior to, during and after commencing activities to prevent, reduce and mitigate impacts.
- The company takes steps to remedy the legitimate concerns of local communities regarding any negative impacts of the company's operations on the access to resources or livelihoods.
- Does the company seek to avoid involvement in human rights abuses owing to government or societal practices?

Country Risk

Does the company seek to avoid involvement in human rights abuses owing to government or societal practices?

- If operating in a country or region with systematic human rights abuses, the company seeks to become aware of and avoid the risk of contributing to, endorsing or benefiting from such abuses.
- Where the company risks involvement in systematic human rights abuses owing to government or societal practices, the company seeks to identify solutions through dialogue with other businesses, civil society organisations, experts and other relevant stakeholders, including where possible with the authorities.
- The company ensures that it does not endorse any state imposed discriminatory limitations on the right to vote, and does not pass along information concerning religious, racial, political affiliations or other characteristics of employees which could be used by the government as a reason to restrict the right to vote.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **The Forest Peoples Programme:** Established in 1990, the Programme is dedicated to supporting Indigenous Forest Peoples protect their land rights and human rights. The Programme works directly with indigenous communities, assisting them in building their own capacities and exercising their human rights.

- **IFC Performance Standard 7:** Indigenous Peoples (2012): The IFC PS7 and its accompanying guidance offer directions on how private sector projects can respect the human rights of Indigenous Peoples through following the stated requirements.
- **International Council on Mining and Metals Good Practice Guide:** Indigenous Peoples and Mining (2010): The ICMM is the industry organisation for the mining and metals sector. The Guidance provides advice to companies on how they can build effective relationships with Indigenous Peoples, as well outlining ways in which companies can effectively engage throughout the lifecycle of a project.
- **International Working Group for Indigenous Affairs (est. 1968):** IWGIA is an international human rights organization specialising in Indigenous Peoples' rights. IWGIA works to further the understanding, knowledge, and engagement with the rights of Indigenous Peoples through publications, advocacy programmes and support of local projects.
- **The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples (2009):** The Declaration is a statement on behalf of Indigenous Peoples and support organisations from 35 countries that calls on different stakeholder groups, such as extractive companies, communities and civil society organisations, to respect and uphold the recognised rights of Indigenous Peoples.
- **Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education):** The Foundation's main purpose is to work for the respect, protection and fulfilment of Indigenous Peoples' rights and the operationalisation of Indigenous Peoples' self-determined sustainable development. The Foundation offers a number of relevant resources on issues such as traditional knowledge and traditional livelihoods, biodiversity and climate change.
- **UN Permanent Forum on Indigenous Issues (est. 2000):** The Forum was formed to advise the United Nations Economic and Social Council on a number of Indigenous Peoples' rights issues, such as economic and social development, culture, education, environment, health and human rights.
- **UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (est. 2001):** The Special Rapporteur mandate is to advise on and monitor the human rights situation of Indigenous Peoples. This includes country reports, promoting good practice, addressing relevant human rights violations and contributing to thematic study on topics related to Indigenous Peoples.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

The Coca-Cola Company: The Company has a community engagement plan in place and holds regular consultations with local community leaders, as well as the township office. As a result of these consultations, the company constructed noise reduction barriers for the generators and implemented a parking plan so as not to hinder the traffic on the road.[250]

Company Beyond Compliance Initiatives

The Coca-Cola Company: The Company's Foundation funded the Swan Yi project, which is implemented by the NGO PACT and aims to empower 25,000 local women through financial literacy training, village-based banking and microenterprise development. In its second year, 2014, nearly 14,000 women participated in the project.[251]

MAX Myanmar Holding: In Bilin area, Mon State, where one of Max Group subsidiaries, Shwe-Yaung-Pya Agro Co., established its 3,500 acres rubber plantation, the company built four schools in 2013[252] and additional three schools and a clinic were inaugurated in 2014. The inauguration was attended by local community members, the military and representative of ethical minorities armed groups in a peaceful atmosphere.[253]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

National Strategic Plan and Operational Plan on HIV and AIDS (2011-2015): The government plan focuses on prevention among the most affected populations, care, treatment and provision of impact mitigation services. The plan sets out the following targets for 2015: 1) less than 5,000 new infections; 2) 70,000 people receiving anti-retroviral (ARV) treatment; 3) 2,680 women receiving ARV prophylaxis; 4) 48,500 people receiving community home-based care; and 5) over 80 percent of female sex-workers to use condoms, over 70 percent of men who have sex with men using condoms, and over 80 percent of people injecting drugs using non-contaminated injection equipment.[254]

NGO Initiatives

Targeted Outreach Programme: This organisation promotes access to services for sex workers through nine drop-in centres across Myanmar, reaching about 50,000 sex workers each year.[255]

Women's League of Burma: The organisation established the 'Political Empowerment School', which has trained 40 women through the six-month Emerging Leadership programme since 2011.[256]

Myanmar Maternal and Child Welfare Association: The organisation runs a diagnostic centre and maternity clinic in Yangon and 133 maternity homes throughout the country, each providing reproductive health and neonatal services.[257]

Development Priorities

Framework for Economic and Social Reforms (2012-2015): One of the government priorities under this framework is facilitating access to maternal and child health care, especially in rural areas; as well as infectious disease control.[258]

National Strategic Plan for the Advancement of Women (2013-2022): The government identified twelve priority areas for achieving gender equality, including health, education, poverty reduction, including women in decision-making and reducing gender based violence.[259]

World Bank Interim Strategy (2012-2014): The strategy prioritises access to health, maternal and new-born health, tuberculosis, malaria and HIV/AIDS.[260]

United Nations Development Assistance Framework (2012-2015): The United Nations Country Team (UNCT) developed the UNDAF to support the government in improving access to health in remote areas for vulnerable groups and promoting access to reproductive health care and HIV prevention and treatment. The UNDAF also focuses on increasing information and participation of communities in social service delivery.[261]

Labour Standards

Child Labour

Work that interferes with the health, development, education or family life of persons under 18

Operating Environment		
	Myanmar	**East Asia & Pacific Average**
Net Enrolment Ratio in Primary Education (% both sexes)	n/a	97 (2011)[262]
Percentage of pupils starting grade 1 and reaching last grade of primary	74.8 (2009)[263]	n/a
One-year-old children immunised against measles (%)	84 (2012)[264]	94 (2012)[265]
Mortality rate of children under 5 years old (per 1,000 live births)	52 (2012)[266]	20 (2012)[267]
Percentage of population below 14	25 (2013)[268]	
Restrictions on children under 18 from working	Children from 13-17 are limited to do 'light duties' for not more than 4 hours per day and night shifts between 6 a.m. to 6 p.m. are not allowed. Recruitment to the military is prohibited for under 18s by law.	
Minimum age of employment	13	
End of compulsory education	Age 10 (after fourth standard)	
Relevant laws	• Constitution (2008) • Child Law (1993) • Factories Act (1951) • Oilfields Act (1951) • Wards and Village Tracts Administration Act (2012)	
Responsible ministries	• Ministry of Labour, Employment and Social Security • Ministry of Education • National Education Committee	

	• Committee for the Prevention of Military Recruitment of Underage Children
Local NGOs addressing this issue	• Action Labor Rights • Equality Myanmar • Labour Rights Defender and Promoter • Child Development Association • Social Care Volunteer Group

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Companies may employ persons under 18 to the detriment of their health, development, education or family life. Particular attention should be given to the informal sector, agriculture, construction and services.

The constitution provides that the state should 'care' for children.[269] Laws regulating child labour set the minimum age for the employment 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.[270]

The 1993 Child Law classifies children between the age of 14 and 17 as youths, and allows them to engage in 'light duties', [271] though this term is not defined by law. Although the law regulates working hours and tasks for children and provides for paid leave, those regulations were largely disregarded in practice, according to the organisation Woman and Child Rights Project in 2013.[272]

The 2014 Child Labour Index ranked Myanmar as the country with the third-highest prevalence of child labour out of 197 countries.[273] The ILO estimated that 10.6 percent of children were engaged in work in 2012, a 3 percent drop from 2008.[274] However, 18 percent of children from poor households aged 10 to 14 were working, according to UNICEF in 2012.[275] Girls reportedly accounted for about 41 percent of child labour and were subject to the extra burden of household chores.[276]

In 2012, UNICEF noted a lack of data on child labour and reported that according to the latest available data (2006), children were employed in services (i.e. tea shops and restaurants, domestic work, hotels, bus driver helpers, delivering snacks and as stevedores), construction (i.e. carpentry, mason, painting, small electrical jobs), agriculture, fishery, forestry, food processing, light manufacturing (i.e. metal and paper factories and, for girls, textiles), as well as street vendors, beggars, tour guides and waste collectors.[277] Children were reportedly paid less than adults.[278]

In 2012, UNICEF reported that children living in rural areas were more vulnerable to entering work, especially in agriculture, due to higher poverty rates and lack of access to healthcare and education.[279]

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative. Particular attention should be paid to the informal sector, agriculture and services.

In 2013, Myanmar ratified ILO Convention 182 on the Worst Forms of Child Labour, which entered into force in December 2014.[280]

The ILO reported that certain activities conducted by children in agriculture may amount to the worst forms of child labour, as the work was likely to harm their health, safety or morals.[281] In 2015, various labour rights organisations reported that children employed in factories and in the service sector, mainly restaurants and tea shops, were working long hours,[282] in difficult working conditions and with little pay.[283]

In 2014, the U.S. Department of State reported that Myanmar was a source country for children trafficked, mainly to Thailand and China, for forced labour.[284] Children trafficked within Myanmar were reportedly forced to work in teashops, agricultural plantations and as beggars,[285] as well as in the fishing industry, factories and domestic services, according to UNICEF in 2012. [286]

In 2013, the Associated Press reported that Rohingya children, as young as 10 years old, were particularly vulnerable to work in the construction sector, earning as little as 1,000 kyat (US$1) per eight-hour work day collecting and carrying rocks.[287]

Although the law prohibits underage recruitment by the army, the UN Special Representative on Children and Armed Conflicts stated in 2014 that children were recruited as soldiers by military and armed groups, especially in Kachin and Shan States,[288] where children were also used as porters by the military in conflict zones, according to a 2012 Human Rights Watch report.[289]

In 2015, Child Soldiers International reported that child soldiers were subject to physical and psychological ill-treatment,[290] and were underpaid, malnourished and in poor health.[291] The U.S. Department of State reported that orphans and street children were at particular risk of recruitment in the army.[292]

Company operations may not be inspected for child labour. Particular attention should be given to the informal sector, agriculture and the restaurant sector.

The Child Law provides the Ministry of Labour with the responsibility to ensure the safety of children in the workplace.[293] In 2012, the UN Committee on the Rights of the Child reported a lack of systematic labour inspections,[294] and that a limited number of inspectors monitored child labour.[295] In 2015, the 88 Generation reported that when labour inspections were conducted, children were hidden away at the workplace.[296]

Education

Employees under 18 may be unable to access primary education. Companies may not pay adult employees wages sufficient to afford to send their children to school.

The constitution recognises the right to education only for citizens.[297] Compulsory schooling starts at age 5 and ends at age 10 (after fourth standard).[298] Although the majority of children attended primary school, the dropout rate was 25 percent, and only 50 percent of children entered secondary school, according to the UN Development Programme's (UNDP) 2014 Human Development Report.[299]

In 2012, UNICEF reported that although education was free, parents were asked to pay for enrolment, textbooks, uniforms and exams.[300] Students from poor families were more likely to experience difficulties in accessing basic education and had higher drop-out rates.[301]

In 2011, the Australian Council for International Development reported that the education system was characterised by poor learning and the use of corporal punishment, which is not prohibited by law.[302] The same year, several national and international organisations reported restrictions by the government over the teaching of ethnic languages in schools.[303]

In 2014, the lack of education opportunities, among other factors, reportedly pushed children into work.[304] In 2012, UNICEF reported that only 11 percent of children involved in work attended school.[305]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Instances of child labour can be referred to township or district courts. Judgments can be appealed to state high courts and ultimately to the Supreme Court.[306]

In case of underage recruitment in the military, a complaint can be lodged at the nearest military recruitment centre, basic training school or military camp.[307] The U.S. Department of State reported in 2014 that cases of children recruited by the army were not prosecuted or judged in civil courts due to the influence of the military over the judiciary and the police.[308]

In case a complaint cannot be filed, victims of underage military recruitment can address the International Labour Organization forced labour complaints mechanism to seek redress or remedy. The mechanism is operated in collaboration with the Government Ministerial Working Group for the Elimination of Forced Labour.[309]

At the end of 2014, the ILO reported that since 2007, 1,260 complaints of underage recruitment had been received and 485 child soldiers were released by the military.[310] In the majority of cases, disciplinary measures against the perpetrator were taken by the military. However, the ILO noted that those disciplined were often non-commissioned officers and no punishment was taken against commanders.[311]

Victims of child labour can also address the Myanmar National Human Rights Commission, which has investigatory powers.[312] Although the Commission was set up in 2011, its governing law was only adopted in March 2014.[313] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[314]

International Grievance Mechanisms

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including instances of child labour (Chapters IV and V), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[315]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[316]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *September 2014, Dawei Development Association:* Some of the families evicted from their lands in relation to the Dawei Special Economic Zone project could no longer afford to send their children to school. Children had to drop-out of school and find a job to contribute to the family's income.[317]
- *August 2014, Telenor:* Cases of child labour were reported among Telenor's suppliers in Myanmar as a result of over 700 unannounced health and safety inspections. Five cases involved children aged 12 to 14. Nineteen cases involved children between 15 and 18 being involved in hazardous construction work. Some of the 15 to 18 years old children were offered office works instead.[318]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015*):** [319] The organisation recommends the following to companies in the tourism sector:

- Monitor the labour performance of subcontractors, in particular high risk suppliers, such as construction contractors, transport providers, maintenance staff, concerning various labour issues, including child labour.

***Woman and Child Rights Project (2013)*:**[320] The organisation made the following recommendations to companies:

- Adhere to strict labour standards and monitoring policies that ensure development projects, business ventures, and corporate collaborations are free from child labour.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

- The company does not employ workers under 15 years of age for full-time work, 13 years of age for light work and 18 years of age for hazardous work (please see the question description for exceptions).
- If the company employs minors below the age of 18, the company has a list of job functions that can safely be performed by minors.
- The company is aware of local age-levels for completion of compulsory education and does not employ workers under that age for work that may interfere with such education.

- The company has a reliable procedure to check the age of young job candidates by birth certificate, other official forms of identification, or by alternative means such as physical appearance or knowledge of historic events.
- Company apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), and do not interfere with the child's compulsory education.
- If the company becomes aware that it is employing young workers below minimum age, it ensures that they are enrolled in education programme, and that their dependents are compensated for the resulting loss of income.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **Business and Human Rights Resource Centre, Business & Children Portal:** The Portal is an information hub developed to give practical assistance to people from all business sectors in their work and decision-making, leading to better protection of the rights and welfare of children. The Portal has sections on: issues, positive initiatives, alleged abuses, lawsuits and guidance.
- **Children's Rights and Business Principles (2012):** Developed by UNICEF, UN Global Compact and Save the Children, these Principles are the first comprehensive set of principles to guide companies on the full range of actions that they can take in the workplace, marketplace and community to respect and support children's rights.
- **ILO Programme on the Elimination of Child Labour (est. 1992):** The Programme has the overall goal of the progressive elimination of child labour, to be achieved through strengthening the capacity of countries to address it and promoting a worldwide movement to combat child labour.
- **UN Committee on the Rights of the Child General Comment No.16 on State obligations regarding the impact of the business sector on children's rights (2013):** The Committee is the body of independent experts that monitors the implementation of the Convention on the Rights of the Child and the Optional Protocols. In April 2013, the Committee issued a general comment on business and children's rights. The objective of General Comment No.16 is to provide States parties with a framework for implementing the CRC, particularly with regard to the business sector.
- **Children's Rights in Impact Assessment – A Tool For Companies (2013):** Developed by UNICEF and the Danish Institute for Human Rights, this checklist is a practical tool intended to help companies to identify and manage their impact on children's rights. The checklist contains a set of questions and indicators covering the 10 Children's Rights and Business Principles, addressing different aspects of company policies and operations and the impact on children's rights.
- **Better Work (ILO, IFC): Guidance Sheet on Child Labour (2009)**

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

Telenor Group: The company conducted 700 unannounced visits to its suppliers in Myanmar and uncovered child labour in several sites. Some children were removed from the job and some of the 15 to 18 year olds were given office work.[321]

The Gap: The company has a human rights policy and in 2013 formed a steering committee of senior executives that developed a plan on how to conduct human rights due diligence in Myanmar. The company's Code of Vendor Conduct prohibits child labour and applies to all sub-contractors.[322]

Myanmar Garment Manufacturers Association (MGMA): The Associations issued a voluntary Code of Conduct for its members in February 2015, which focus on child labour among other issues.[323]

Company Beyond Compliance Initiatives

Telenor Group: The company launched in November 2014 the Mobile Classroom project targeting children from 13 to 16 working in Telenor branded tea-shops around Mandalay and Yangon. Over 200 children will be offered six hours of class per week in ten tea-shops in Yangon and in six in Mandalay during its pilot phase and more than 850 children will be reached during the scaling-up of the project.[324]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

National Action Plan to Combat Human Trafficking (2012-2016): The plan includes provisions for the release of all children held by armed forces and the establishment of labour migrant help centres in Thailand for people trafficked from Myanmar.[325]

Monitoring mechanism of ILO Convention No. 182: Since mid-2014, the working group monitoring the country's compliance with ILO Convention No. 182 started meeting. The working group is chaired by the Director General of Factories Labour and Inspection Department under the Ministry of Labour and is composed of various ministries, CSOs and UNICEF, with the ILO providing technical assistance. As of January 2015, the working group was developing its 2015 workplan.[326]

National Schools Grants and Student Stipends Programmes: In October 2014, the World Bank and the Australian Government agreed to fund the National Schools Grants and Student Stipends Programmes of the Ministry of Education. This would allow 100,000 students in 40 townships to receive "stipends" to attend school and 8.2 million students from poor and rural areas to benefit from better-financed schools.[327]

Myanmar-Thailand Cooperation Agreement: In March 2013, the two governments signed an agreement using common standard operating procedures for cross-border returns. This measure was aimed at combatting human trafficking, including child trafficking.[328]

NGO Initiatives

Human Rights Foundation of Monland: The organisation runs the Woman and Child Rights Project to monitor child rights in Mon areas and to provide training to children on their rights.[329]

***Scholarships for Street Kids*:** This organisation provides non-formal education to street children working as garbage collectors, manual workers, vendors and teashop waiters in North Okkalapa, Mingaladon, Intai, Hleku, and Bago. Since June 2013, nine teachers were running 13 classes with 140 children, aged 9 to 14. By the end of 2013,however, the number of children dropped to 110 due to pressure to earn a living to support their families.[330]

Myanmar Red Cross: Together with UNICEF, this organisation support community level projects to protect children across Myanmar. The Child Protection Project targets infants to 18-years-old from all forms of abuse, exploitation and violence. This project includes capacity building, training on child rights, advocacy meetings, education and healthcare support, and technical assistance to establish and strengthen community support groups in project villages. Pilot areas are Dawei, Kyaukpyu, Laputta, Manaung, Nyaung Oo, Pyin Kha Yaing, Sittwe, and Thandwe.[331]

The Code: This organisation runs the Protecting Children from Child Sex Tourism Program, which provides awareness, tools, and support to the Myanmar tourism industry to prevent sexual exploitation of children. During two years, starting in 2014, the Programme aims at conducting a series of workshops in Yangon, Nay Pyi Taw, Mandalay and Bagan, together with UNICEF.[332]

Development Priorities

National Action Plan on Elimination of Child Labour (2014-2017): The plan prioritises raising awareness on child labour.

ILO Decent Work Programme Framework (2012-2014): The ILO prioritises the identification, release and re-integration of child soldiers.[333]

Forced Labour

Debt bondage, human trafficking or other coercion that makes workers unable to freely leave employment

Operating Environment	
U.S. Department of Labour Trafficking in Persons Tier Placement	Tier 2 Watch List in 2013 (Tier 3 in 2009)
Relevant laws	• Constitution (2008) • Penal Code • Wards and Village Tracts Administration Act (2012) • Law on Anti-Trafficking in Persons (2005)
Responsible agencies	• Ministry of Labour, Employment and Social Security • Ministry of Home Affairs - Central Body for the Suppression of Trafficking in Persons
Local NGOs addressing this issue	• Action Labor Rights • The 88 Generation • Foundation for Education and Development • Migrant Worker Rights Network (MWRN) • Yaung Chii Oo Workers Association (YCOWA)

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Companies may deny workers the ability to freely enter and leave employment. Particular attention should be paid to the agriculture, construction and extractive sectors.

Under military rule, civilians were forced to work by the military and civilian authorities, including in the construction of military camps and infrastructure, as agricultural workers and as army porters and in logging activities undertaken by the military or public authorities.[334]

In 2000, the International Labour Organization (ILO) imposed restrictions on Myanmar for failing to comply with recommendations to align its legislation with the ILO Convention No 29 on Forced Labour, which the government had ratified in 1955. Restrictions included a suspension of technical cooperation and a call on member states to take appropriate measures to ensure that Myanmar complied with its international obligations.[335] Those restrictions were lifted in 2012 in light of actions

taken by the government to combat forced labour, including amendment of laws and the president's public commitment to end forced labour by 2015.[336]

The constitution prohibits forced labour, though the broadness of the exception of 'hard labour as a punishment for crime duly convicted and duties assigned by the Union' may allow breach of international standards.[337] The law prohibits forced labour and provides for up to one year's imprisonment and/or the payment of a fine.[338]

Myanmar ranked 61st out of 160 countries in the 2014 Global Slavery Index, where number one is the worst performing country, and ranked number 10 in the Asia and Pacific region, with estimated 231,600 people held in some form of bondage in 2014.[339]

Although the prevalence of forced labour has decreased, several local and international organisations reported that civilians, especially from ethnic minorities, were forced to work with little or no pay in infrastructure construction, as military porters and as land-mine detectors in 2011.[340] In the context of the conflict between government forces and the Kachin Independence Army, Human Rights Watch reported the use of civilians as porters by the army in 2012.[341]

In 2013, the ILO highlighted that the 'relatively small' number of forced labour cases in the private sector did not necessarily reflect the scope of the problem, as the perception of forced labour in Myanmar was that it primarily took place in the public sector, e.g. by the authorities.[342]

Lax enforcement allowed forced labour to continue in the production of bamboo, beans, palm, physic nuts, rice, rubber, sesame, sugarcane and sunflowers, according to a 2013 report by the Forest Peoples Programme.[343] Indeed, following land confiscations for large agribusiness investments, farmers belonging to ethnic communities were reportedly forced to work on plantations with little or no salary.[344]

In 2010, the UN Special Rapporteur on the Situation of Human Rights in Myanmar received reports of forced labour in which civilians were being forced to carry supplies for the military and in extractive projects, including the Shwe gas pipeline project in Rakhine State. The military reportedly provided security for the pipeline.[345]

Human Trafficking

Companies may employ workers who are subject to exploitative labour conditions through internal or external trafficking. Particular attention should be paid to trafficking of Myanmar nationals who are outside the country.

The constitution prohibits human trafficking.[346] The 2005 Anti-Trafficking in Persons Law prohibits sex and labour trafficking and provides for stringent penalties.[347]

The U.S. Department of State reported in 2014 that corruption of law enforcement officials hampered the implementation of the law.[348] Internal trafficking, with the purpose of forced labour in palm oil and rubber plantations in Kawthaung, Tanintharyi Region, reportedly took place.[349]

However, Myanmar was primarily a source country for human trafficking, with victims primarily trafficked to Thailand, China, Malaysia and Singapore, according to the United Nations Inter-Agency Project on Human Trafficking.[350]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Victims of forced labour can address township or district courts, and can appeal judgments to state high courts and ultimately to the Supreme Court.[351]

In 2013, the ILO reported that intermediaries facilitating the recruitment of child soldiers into the army enjoyed impunity.[352] Civil officers were reportedly rarely disciplined, either criminally or administratively.[353]

Victims of forced labour should first file a complaint to the relevant village, township or district authorities. If the complaint cannot be filed or if the response is unsatisfactory, victims can file a complaint to the ILO forced labour complaints mechanism. The mechanism is operated in collaboration with the Government Ministerial Working Group for the Elimination of Forced Labour.[354]

In 2012, the ILO reported that since 2007, 462 valid complaints of forced labour were received.[355] From May to September 2013, 54 complaints were received, including 38 regarding forced labour and eight concerning human trafficking.[356] The ILO reported an increase in complaints of forced labour linked to land expropriations since 2007.[357] As of 2013, complaints filed to the ILO mechanism had resulted in 241 perpetrators (237 members of the military and four civilians) receiving either judicial or administrative punishment, including 15 (13 members of the military and two civilians) being sentenced to prison. However, those data are not disaggregated by forced labour and underage recruitment complaints.[358]

Victims of forced labour can also address the Myanmar National Human Rights Commission, which has investigatory powers.[359] Although the Myanmar National Human Rights Commission was set up in 2011, its governing law was only adopted in March 2014.[360] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[361]

International Grievance Mechanisms

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including instances of forced labour (Chapters IV and V), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[362]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[363]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *August 2014, Myanmar Centre for Responsible Business*: Local communities in Mon State living in the vicinity of the construction works on the road to the Kyaikhtiyo Golden Rock pagoda were forced to provide one person per family to work or pay a fee. Work included demolishing and carrying heavy limestone.[364]
- *2012, Human Rights Watch*: Several men and women from Kachin State reported that they were forced to carry ration, bullets and mortars for the military.[365]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015*):** [366] The organisation recommends the following to companies in the tourism sector:

- Publicly commit to zero tolerance of forced labour and other forms of labour exploitation in the prevalent in the tourism sector.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

- Workers can give notice and leave employment within a reasonable length of time. This is clearly communicated to workers prior to starting employment.
- The company (or its recruitment agencies) ensures that it does not withhold wages or bonuses and that it pays them in a timely and regular manner.
- The company ensures it does not make deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Within normal working hours workers are able to earn a living wage sufficient to meet the basic needs of themselves and their closest dependents.
- Overtime work is paid, voluntary and not compelled through threat of pay deductions, termination or other sanctions.
- The company (or its recruitment agencies) ensures that it does not retain identity cards, passports, travel documents or other personal items without which workers cannot leave employment. If letters of release or other documents are needed for the worker to leave employment, such letters are issued without delay.
- All workers are allowed to leave company premises during breaks and at the end of their shifts, and workers in company housing may freely enter and exit their accommodation at any time.

- The company (or its recruiting agencies) ensures that it does not require workers to pay recruitment fees or lodge money deposits.
- Loans or salary advancements to workers are based on fair terms that are clearly explained to the worker, are not granted to cover basic living expenses, are limited in size, and do not require the worker to remain with the company until repayment is completed.
- If the company uses prison labour it ensures that all prison workers have been convicted by a court of law, and that the work is voluntary and supervised by a public authority.
- The company ensures that it does not use labour from agencies or firms involved in human trafficking or other forms of bonded labour.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

The Gap: The company has a human rights policy and in 2013 formed a steering committee of senior executives that developed a plan on how to conduct human rights due diligence in Myanmar. The company's Code of Vendor Conduct prohibits forced labour and applies to all sub-contractors.[367]

Company Beyond Compliance Initiatives

***City Mart*:** The company, through its City Love & Hope Foundation, run in 2013 an awareness raising campaign against human trafficking, called "Wall of Pledge".

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

***National Plan of Action to Combat Human Trafficking 2012-2016*:** This is the second five-year Action Plan developed by the Central Body for Suppression of Trafficking in Persons. In 2007, the first plan established a network of Anti-Trafficking Task Forces throughout the country.[368] The second plan focuses on prevention, prosecution, protection and rehabilitation of victims though cooperation with several actors, including the private sector. Prevention and awareness-raising activities were scheduled for 42 townships with the highest rates of human trafficking cases and 36 townships with moderate rates. The establishment of a National Anti-Trafficking Data Centre was also scheduled.[369]

Government Ministerial Working Group on the Elimination of Forced Labour: Within the framework of the ILO forced labour complaint mechanism, the inter-ministerial working group was established. After receiving a complaint of forced labour, which had been previously reviewed by the ILO, the

Working Group orders an enquiry to verify the facts and to recommend appropriate action to achieve justice for the victim and punishment for the perpetrator.[370]

Development Priorities

ILO Decent Work Programme Framework (2012-2014): The ILO prioritises increased awareness on forced labour, including media and communication campaign and training of journalists.[371]

Occupational Health & Safety

Unsafe or unhealthy working conditions that expose workers to the risk of accidents or occupational illnesses

Operating Environment	
Relevant laws	• Factories Act (1951) • Oilfields Act (Labour and Welfare Act) (1951) • Workmen's Compensation Act (1923) • Settlement of Labour Dispute Law (2012) • Social Security Law (2012)
Responsible agencies	• Ministry of Labour, Employment and Social Security - Factories and General Labour Laws Inspection Department • Ministry of Agriculture and Irrigation- Myanmar Agriculture Service • Ministry of Construction • Ministry of Health- Occupational Health Division • Ministry of Industry- Department of Industrial Supervisory and Inspection • Ministry of Mines- Planning and Inspection Department • Yangon City Development Committee
Local NGOs addressing this issue	• Action Labor Rights • The 88 Generation • Myanmar Red Cross

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Companies may not adequately prevent accidents and long-term health effects in the workplace. Company operations may not be subject to effective health and safety inspections. Particular attention should be paid to informal operations and the extractive and manufacturing sectors.

The Factory Act provides that any accident inside or outside an industrial establishment above a threshold of number of workers[372] must be reported to the Factories and General Labour Laws Inspection Department.[373] In 2014, 17,100 factories fell under this reporting obligation.[374]

According to the 2012 Social Security Law, victims of workplace accidents are entitled to 12 months' pay at 70 percent of their last four months' average salary. In case of permanent disability, the employee is entitled to the same cash benefit for five, seven or nine years, depending on severity of the injury. In case of the death of a worker, his dependents are entitled to receive his invalidity or pension fund benefits for 36 months.[375]

Laws related to occupational health and safety date back to the 1950s, and a comprehensive new law was being drafted as of 2015.[376] In 2014, the Myanmar Engineering Society submitted a draft and voluntary Myanmar National Building Code to Parliament which included provisions to enhance safety and reduce disaster risk in the construction industry.[377]

In 2012, 33 deaths were reported at the workplace.[378] However, underreporting of accidents was widespread, hence it remained unclear to what extent figures are indicative of actual conditions.[379]

In 2014, the Asian Development Bank (ADB) reported that poor air quality resulted in respiratory diseases among workers in mining and manufacturing.[380] In 2015, the increase in tuberculosis cases among blue-collar workers was linked due to the lack of proper equipment at the workplace, such as masks, especially in cement factories, according to several labour rights organisations.[381] Even when masks were provided, those were not adequate or comfortable for breathing.[382] Factory workers worked in poor health and safety conditions with little lighting, overcrowded facilities and unsafe machinery, according to a 2013 report by the news organisation Mizzima.[383]

The accident rate at oil and gas operations in Myanmar was not publicly available as of 2014.[384] A 2014 report by the Myanmar Centre for Responsible Business (MCRB) noted that artisanal oil extraction was carried out with few health and safety protections.[385] Some sub-contractors of oil and gas companies reportedly had poor health and safety conditions.[386]

The report also noted a limited number of labour inspectors,[387] as well as corruption[388]. According to the ADB, some inspectors did not speak the languages of the workers and managers where they carried out inspections.[389]

In 2015, poor health and safety procedures and a general lack of training were also reported in the tourism sector, especially in local hotels, guesthouses and tour operators.[390]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Disputes occurring at the workplace are referred to the workplace coordinating committee for five days, then to the township conciliation body for three days. If an agreement is not reached, individual disputes are referred to the competent region or state high court. Collective dispute cases go through an additional negotiation process at the regional or state arbitration body for seven days before reaching a tribunal, formed by the arbitration council.[391] Failure to comply with the terms of an agreement reached through the conciliation body results in a fine, according to the law.[392]

Victims of occupational and health hazards can address the Myanmar National Human Rights Commission, which has investigatory powers.[393] Although the Myanmar National Human Rights Commission was set up in 2011, its governing law was only adopted in March 2014.[394] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[395]

International Grievance Mechanisms

Abuses linked to investments funded by the Asian Development Bank (ADB) can be referred to the ADB Accountability Mechanism, which has the power to mediate and investigate cases.[396]

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including instances of occupational health and safety violations (Chapters IV and V), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[397]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[398]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *January 2015, Irrawaddy:* At least four small-scale miners died in Kachin State following a rockslide at a jade mine in Hpakant.[399]
- *August 2014, Mizzima:* A worker died and two workers, aged 13 and 14 respectively, were injured inside the compound of the rattan factory in Yangon, due to unsecured electric wires. The company provided 500,000 kyat (US$474) to one of the injured workers and 600,000 kyat (US$569) to the second one, while 400,000 kyat (US$380) were paid for the funeral of the worker fatally injured. The case of one of the injured workers was taken to the township arbitration body, which decided the company should pay a compensation of additionally 350,000 kyat (US$332), although the law does not protect workers younger than 16 years old.[400]
- *August 2014, Gap Inc.*: An audit conducted at the two subcontracting garment factories of the American company Gap reported that workers did not wear safety equipment when handling cleaning chemicals and that the ventilation at the workplace was inadequate.[401]
- *November 2013, Myanmar Times:* One worker was killed and five were seriously injured while cleaning a blocked pipe at a cement factory owned by the Myanmar Economic Corporation (MEC) in Kayin State. The company allegedly did not stop production activities when the maintenance took place. MEC paid around 3.5 million kyat (US$3,323) to the family of the fatally injured worker and 300,000 kyat (US$285) to each of the other injured workers.[402]
- *May 2013, Irrawaddy:* The collapse of a gold mine in Kalaw, Shan State, following heavy rains resulted in the death of 36 people.[403]
- *November 2012, Mining.com:* Six people died and 11 were injured after the collapse of a gold mine in Sintku township due to an earthquake.[404]
- *December 2011, Safety News:* Seventeen people died and 80 were injured following a fire in an explosives warehouse in Mingalar Taung Nyunt, Yangon Region.[405]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015*):** [406] The organisation recommends the following to companies in the tourism sector:

- Monitor the labour performance of subcontractors, in particular high risk suppliers, such as construction contractors, transport providers, maintenance staff, concerning various labour issues, including health and safety.

- Conduct health and safety training and ensure safe working conditions through provision of adequate personal protective equipment (PPE) to employees, particularly in the construction and transport sectors. Consider providing H&S training and PPE to local suppliers and contractors.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company ensure that its workers are provided safe, suitable and sanitary work facilities?

- Responsibilities for health and safety tasks are clearly defined.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- Workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction.
- The workplace is maintained to ensure clean and comfortable conditions including a suitable temperature, ventilation and lighting; suitable washing and sanitation areas appropriate for both genders.
- Residential or overnight facilities are safe and sanitary and meet the basic needs of workers including with regard to safety, space, temperature, lighting, ventilation, food, water, sanitary facilities, privacy, and affordability.
- The company provides safe drinking water for workers and facilities for clean and sanitary food storage and eating.
- Where relevant the company has put in place special health and safety precautions for pregnant women, employees with disabilities, night workers, young workers and other vulnerable groups.

Does the company ensure that workers are provided with the protective equipment and training necessary to perform their tasks safely?

- The company has a procedure to ensure that all workers are provided, free of charge or deposits, with the protective equipment necessary to safely perform their job functions.
- The company is committed to ensuring that workers use the protective equipment provided and understand why it is necessary to use the equipment.

- The company ensures that all workers have the necessary training to safely perform their job functions and keeps workers fully informed, in a language and form understandable to them, of the health and safety procedures.
- An accurate record is kept of who has been trained and for what tasks.
- On a regular basis and when assigned to new tasks, workers receive training in the safe use of equipment and processes.
- A company function or member of staff is responsible for keeping informed of scientific and technological developments regarding health and safety risks and protective equipment.

Does the company actively involve workers in health and safety work?

- The company consults employees on health and safety issues either directly or through a freely elected safety representative(s) for relevant groups of employees.
- A health and safety committee has been established including employee safety representatives and representatives from management.
- Health and safety accidents are reported and investigated including involving the relevant worker(s), and actions are taken to prevent recurrences.
- Health and safety near-misses (accidents not resulting in injury) are reported and investigated to help improve safety.
- Health and safety accidents are monitored including hours lost as a result of injury or illness and e.g. compared to total hours worked (lost time injury frequency).

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **IFC Performance Standard 2: Labour and Working Conditions (2012):** FC PS2 is guided by the international labour standards as outlined by the ILO and covers health and safety.
- **Portal for Responsible Supply Chain Management:** The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- **Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009):** The Ethical Trading Initiative is an alliance of business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

The Gap: The company has a human rights policy and in 2013 formed a steering committee of senior executives that developed a plan on how to conduct human rights due diligence in Myanmar. The company's Code of Vendor Conduct, which sub-contractors have to obey, states that workers must be provided with a safe and healthy environment.[407]

The company conducted training on the use of personal protective equipment and procedures for segregating hazardous chemicals at its sub-contracted factories in Myanmar. Maintenance teams were formed to conduct regular checks for electrical and chemical safety problems. The company also installed exhaust fans in factories for better air circulation. Fire safety and on-site fire protection assessments were conducted at the two sub-contracted factories and, as a result, alternative exit routes for fire safety were created and additional exit signs were posted.[408]

Telenor Group: As of 15 August 2014, Telenor Myanmar conducted 728 unannounced health, safety, security and the environment (HSSE) inspections at sites, which were supplemented by weekly visits by the Network Rollout Team.[409] As of 15 August 2014, the company also trained 2,736 employees in it supply-chain on occupational health and safety.[410]

Company Beyond Compliance Initiatives

***Heineken*:** In February 2015, the company, together with the Ministry of Rail Transportation, organised a road and safety workshop. During the workshop, a public awareness campaign on road safety to be launched in May 2015.[411]

***Society of Petroleum Engineers*:** Since the establishment of the Myanmar section in 2013, courses, including in the OHS field, have been offered to students in the oil & gas sector.[412]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

NGO Initiatives

Interdisciplinary Centre for Road Safety: This organisation provides first aid, road safety and ISO 39001 compliance training for companies.[413]

Institute of Safety Health and Environment: This organisation provides health and safety courses for companies operating in Myanmar [414]

Development Priorities

ILO Decent Work Programme Framework (2012-2014): The ILO focuses on capacity building of labour inspectors through training activities.[415]

Trade Unions

Restrictions on the right of workers to collectively represent their interests

Operating Environment	
Largest trade unions and union confederations	• Confederation of Trade Unions of Myanmar (former FTUM): 627 affiliated unions with 43,337 members[416] • Agriculture and Farmer Federation of Myanmar (AFFM): 628 affiliated unions with 51,890 members[417] • Myanmar Trade Union Federation (MTUF): 120 affiliated unions with about 10,000 members[418]
Relevant laws	• Constitution (2008) • Labour Organization Law (2011) • Settlement of Labour Dispute Law (2012)
Responsible agencies	• Ministry of Labour, Employment and Social Security
Local NGOs addressing this issue	• Action Labor Rights • The 88 Generation • Labour Rights Defender and Promoter

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Unionisation

Workers may be prevented from forming or joining independent worker's associations. Particular attention should be given to administrative barriers.

For 50 years trade unions were illegal in Myanmar.[419] As part of the reform process, the Labour Organisation Law was passed by parliament in 2011 and came into force in March 2012. When independent trade unions were legalised by this law, over 400 trade unions were registered in the garment, agricultural and heavy industry sectors, according to the International Trade Union Confederation (ITUC),[420] with the number reaching 1,455 in January 2015.[421]

The International Labour Organization (ILO) reported in 2012 that trade unions were small and lacked resources, training and understanding of the laws and their own role.[422] The leaders of the Confederation of Trade Unions of Myanmar (CTUM), formerly known as Federation of Trade Unions Myanmar and previously as the Federation of Trade Unions Burma, were allowed to return to Myanmar in 2012 after decades in exile.[423]

The constitution grants the right to peaceful assembly and freedom of association, though it also allows the government to claim an exception to this right to preserve 'community peace and tranquillity'.[424]

The Labour Organisation Law requires authorisation by government authorities to establish a trade union,[425] as well as a minimum of 30 workers and the support of at least 10 percent of all workers in that workplace. According to the ILO Committee of Experts on the Application of Conventions and Recommendations and the ITUC, this was an excessive requirement.[426] The law provides for a single trade union for each sector, and workers can only join the trade union related to their field. Workers are also restricted from contributing more than 2 percent of their salary to their trade union.[427] The law also limits the number of representatives belonging to the trade union executive committee, as well as their time in office.[428] Moreover, administrative authorities have the power to discretionally de-register a trade union.[429]

The law provides trade union federations to be formed at national level after organising basic unions from the same industry at lower levels. However, the CTUM and the Agriculture and Farmer Federation of Myanmar (AFFM) first established themselves as federations and later established basic unions or persuaded basic unions to join them. This resulted in several labour rights organisations regarding them as illegitimate in 2015.[430]

Collective Bargaining

Both workers and employers lacked knowledge about the process of collective bargaining.

Collective bargaining was illegal in Myanmar until the new labour law entered into force in March 2012.[431] From March to May 2012, 50 collective bargaining actions were undertaken, according to the U.S Department of State.[432] According to a 2014 report by the FTUM, workers lacked knowledge on the role of trade unions and trade union leaders lacked capacity in industrial negotiations and collective bargaining.[433]

Strikes

Workers may be prevented from, or improperly sanctioned for, participating in strike actions.

Strike actions were illegal in Myanmar until the new labour laws entered into force.[434]

The law states that 'a majority' must approve of strike actions before they can be carried out, though the ITUC reported that the law was unclear on whether this clause refers to the majority of members taking part in voting or a majority of trade union members overall.[435]

The law also requires trade unions to provide information on the date, place, time, period and number of participants in the strike. According to the ITUC, this was an excessive requirement. Prior approval by the relevant labour federation is also required by law. Strikes that do not comply with these requirements are considered illegal.[436] All strike actions related to working conditions are a priori illegal under the law.[437]

Since the entry into force of new labour laws in 2012, the 88 Generation reported strike actions of factory workers, mainly the apparel, manufacturing, and food processing sectors, in Yangon industrial zone. [438] The 2012 strikes were largely related to working conditions (i.e. wages, long working hours and lack of social security), and poor occupational health and safety conditions.[439] According to the Department of Labour Records, 447 strikes actions in the garment sector were recorded between 2012 and 2014.[440] A spate of strikes also took place in garment factories outside Yangon, in

Shwepyithar Industrial Zone, in February 2015 asking for higher wages, some of which were violently suppressed.[441]

Anti-Union Discrimination

Workers who engage in trade union activities may be subject to harassment or retaliation.

The law prohibits anti-union discrimination, though, according to a 2013 report by the ITUC, this was not enforced, and retaliation against trade union leaders was widespread.[442] In the public sector, workers that engaged in the process of establishing a trade union were reportedly forcibly transferred to distant locations.[443]

In 2013, the Business and Human Rights Resource Centre reported that workers involved in trade union activities were dismissed by companies and were reportedly not reinstated following arbitration in their favour.[444] According to several labour rights organisations, trade union leaders and members were dismissed as they were perceived to challenge the patriarchal power of the employer by bringing up cases mainly regarding unfair working conditions.[445]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Disputes occurring at the workplace are referred to the workplace coordinating committee for five days, then to the township conciliation body for three days. If an agreement is not reached, individual disputes are referred to the competent region or state high court. Collective dispute cases go through an additional negotiation process at the regional or state arbitration body for seven days before reaching a tribunal, formed by the arbitration council.[446] Failure to comply with the terms of an agreement reached through the conciliation body results in a fine, according to the law.[447]

Victims of abuses related to freedom of association can address the Myanmar National Human Rights Commission, which has investigatory powers.[448] Although the Myanmar National Human Rights Commission was set up in 2011, its governing law was only adopted in March 2014.[449] The Commission reportedly lacked independence and has been criticised by civil society for its inefficiency in dealing with cases.[450]

International Grievance Mechanisms

Trade unions and employers' organisations can submit complaints to the ILO Committee on Freedom of Association.[451] As of 2014, the committee had no active cases, but since 1952 it had dealt with 10 cases concerning freedom of association in Myanmar.[452]

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including abuses of the right to freedom of association (Chapters IV and V), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[453]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[454]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *January 2015, the 88 Generation*: Garland Ocean fish processing factory in Hlaingtharyar industrial zone fired the female trade union leader, as she attended a two-day training organised by the Ministry of Labour on the survey to define the minimum wage. The case was submitted to the arbitration council.[455]
- *January 2015, DVB*: More than 150 workers at Yess Candy factory in Yangoon were blocked from entering their living quarters after having taken part in a strike action demanding an increase in their monthly salary and paid rest periods.[456]
- *November 2014, Eleven:* Over 30 workers of the Ford Glory garment factory in Industrial Zone No.1 in Shwe Pyitha Township, Yangon Region, protested after the company failed to comply with the decision of the local tribunal. The court ordered the company to compensate and re-integrated the five trade union members that were unfairly dismissed.[457]
- *October 2014, the 88 Generation:* According to a complaint letter lodged at the 88 Generation Labour Affairs Committee, trade union members were subject to harassment, discriminatory treatment by the management and unfair dismissals at the Belmond Governor's Residence hotel in Yangon. Some of the discriminatory practices allegedly included assigning union members to tasks not suitable for their skills, forcing them to move to other departments, forcing women staff to work during the night, no salary increase, serious and disproportionate actions, such as demotion, taken against minor faults and threats of losing their jobs or of taking serious actions or pushing them to leave their job if they were not satisfied. As a result of those discriminatory practices, several trade union members quit their jobs. Although a basic union was formed at the hotel with 70 staff members in June 2012, only 30 members were left, as of October 2014.[458]
- *June 2014, DVB:* Twelve trade union leaders and negotiators were arrested for taking strike action at the Chinese-owned Lucky Treasure woodcutting factory in Sinkkaing Township, Mandalay Region. This action was the fourth strike since June 2012, and was carried out after the company allegedly imposed a three-month probatory period for all workers regardless of how long they had been employed. Workers viewed this as amounting to the company claiming the right to arbitrarily dismiss any of its workers.[459]
- *May 2014, ITUC:* For more than one year, the Labour Department refused registration to the Myanmar Maritime Trade Unions. During this period other unions were granted registration in the same sector, allegedly demonstrating the government's favouritism to certain unions.[460]
- *2013, ITUC:* Though an arbitration council ruled in favour of the workers' request for increased wages, the owner of the Taw Win embroidery factory allegedly did not comply with the ruling and retaliated against workers who filed the complaint. The owner of the factory also reportedly prevented the collection of dues for the trade union.[461]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015*):** [462] The organisation recommends the following to companies in the tourism sector:

- Respect workers' rights to freedom of association and collective bargaining in accordance with the Labour Organization Law (2011), which permits the exercise of freedom of association and respect working hours and rest.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company recognise the rights of its workers to freedom of association and to bargain collectively?

- The company has a commitment to recognise the rights of its workers to freedom of association and collective bargaining, including the right to freely form and/or join independent trade unions, and this commitment is clearly communicated to all employees.
- The company recognises workers' organisations for collective bargaining purposes and has procedures in place to ensure regular collective bargaining with authorised worker representatives concerning all workplace related issues.
- The company allows worker representatives access to collective bargaining agreements, company premises, employees and other relevant documentation needed to fulfil their duties.
- The company prohibits discrimination or adverse actions against worker representatives or employees for participating or refraining to participate in lawful trade union activities.
- The company has agreed with workers' representatives about the requirements of a fair hearing to be followed in relation to all disciplinary cases and employee grievances.
- The company has a committee, with participation of employee-elected representatives, which is responsible for hearing, processing, and settling disciplinary cases and employee grievances.

If independent trade unions are either discouraged or restricted, does the company enable workers to gather independently to discuss work-related problems?

- The company allows employees to engage in regular employee-only meetings within normal working hours, where employees can discuss concerns regarding working conditions.
- Where allowed by local legislation, and if independent trade unions are not present, the company informs employees of their right to form independent collective representation at the workplace.
- Where allowed by local legislation, the company informs workers of their right to engage in regular collective bargaining concerning all workplace issues.

- Company management meets regularly with worker representatives to discuss work-related problems and any concerns/complaints employees may wish to raise.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

The Gap: The company has a human rights policy and in 2013 formed a steering committee of senior executives that developed a plan on how to conduct human rights due diligence in Myanmar. The company's Code of Vendor Conduct requires sub-contractors to uphold workers' rights to freedom of association and collective bargaining.[463]

Myanmar Garment Manufacturers Association (MGMA): The Associations issued a voluntary Code of Conduct for its members in February 2015. The Code focuses on forced labour, child labour, freedom of association and collective bargaining, working conditions (i.e. wage and working hours), discrimination at the workplace and environment (i.e. wastewater management).[464]

Company Beyond Compliance Initiatives

TOTAL: In January 2015, the company signed a global agreement with IndustriAll on unionisation and social dialogue with workers. The company also pledged to promote the content of the agreement among its supply chain.[465]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Promoting Freedom of Association and Social Dialogue: The project was launched by the ILO in October 2013 and aims at promoting constructive relations between trade unions and employers' organisations. The project also assists the government in its regulatory and enforcement tasks.[466]

NGO Initiatives

***Action Labor Rights*:** Since February 2012, this organisation trained about 4,000 workers, mainly in Yangon, Pathein, Bago and Mandalay, on freedom of association, collective bargaining, trade union elections, and democratic participation in trade unions, among other issues.[467]

Myanmar Trade Union Federation (MTUF): On 10 November 2014, MTUF and the Myanmar Garment Manufacturers Association (MGMA) signed a MoU regarding joint working activities (i.e. training). Since the agreement, the problems between employers and employees were reported to be settled more easily.[468]

Development Priorities

ILO Decent Work Programme Framework (2012-2014): The ILO focuses on strengthening freedom of association through capacity building of both employers' associations and trade unions.[469]

Working Conditions

Employment status, wages, working hours and social security

Operating Environment	
Minimum wage	No national minimum wage
Relevant laws	• Minimum Wage Act (2013) • Social Security Law (2012) • Settlement of Labour Dispute Law (2012) • Law on Fundamental Workers' Rights (1964) • Factories Act (1951) • Shops and Establishments Act (1951) • Oilfields Act (Labour and Welfare Act) (1951) • Mines Law (1994) • Labour Organisation Law (2012) • Leave and Holidays Amendment Act (2014)
Responsible ministries/committees/agencies	• Ministry of Labour, Employment and Social Security
Local NGOs addressing this issue	• Action Labor Rights • The 88 Generation • Labour Rights Defender and Promoter • Labour Rights Clinic

National Law		
	Myanmar	**International Minimum Standard**
Maximum workweek	44 (factory workers and oil field workers)[470] 48 (shops and establishment workers)[471]	48
Overtime pay rate	2x	1.25x
Holidays with pay, per year	24 days[472]	3 weeks
Maximum daily working hours	8[473]	8 (10 flexi time)
Maximum weekly working hours	44 (factory workers and oil field workers)[474] 48 (shops and establishment workers)[475]	48
Uninterrupted weekly rest period	24 hours per 7 days[476]	24 hours per 7 days

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Wages

Workers may not be able to earn a living wage sufficient to meet basic needs for themselves and their dependents. Particular attention should be given to the agriculture and tourism sectors, and factory work, particularly garments.

The law on minimum wage, passed in March 2013, provides for the establishment of a tripartite minimum wage committee to set minimum wages based on a survey of workers' living costs every two years.[477] Once the survey is conducted, the Ministry of Labour will submit a minimum wage proposal to the Parliament. In January 2015, the government started conducting a survey on the cost of living across 22,000 households in 108 townships.[478]

Following disputes in the garment sector, including due to low wages, the Ministry of Labour decided in 2012 to set a temporarily minimum wage at 56,000 kyat (US$57) per month.[479] A 2013 survey among factory workers reported by the Irrawaddy newspaper stated that the average wage amounted between US$25 and US$37 per month.[480]

A joint 2013 report by Michigan State University and the Myanmar Development Resource Institute noted that agricultural workers earned between 1,500 and 2,500 kyat (US$1.50 - US$2.50) per day, with women earning less than men.[481]

According to a 2014 report by the Myanmar Centre for Responsible Business (MCRB), labour brokers' fees resulted in temporary construction workers earning less than a living wage. Sub-contractors were reportedly two to three months late in paying wages. Unskilled workers were reluctant to complain about unpaid or inadequate salaries due to fear of losing their jobs.[482]

In the tourism sector, wages were low, especially for restaurant staff and low-level hotel staff, according to a 2015 MCRB report. Some workers earned 30,000 kyat (US$30) per month, making them dependant on service charges, which were sometimes held by management, to earn a living wage.[483]

Working Hours

Workers may be subject to excessive working hours and may be denied compensation for overtime work. Particular attention should be given to the manufacturing and tourism sectors and informal and temporary workers.

The Factories Act provides for eight working hours per day and 44 hours per week. Other laws regulate exceptions for: Government officials, 35 hours per week; underground mine workers, 40 hours; and shops and service workers, 48 hours.[484] The factories act allows a maximum of 12 hours per week of overtime, whereas the shops and establishment act provides for 60 hours per year of overtime[485]. Although overtime should be paid at a double rate by law, in practice this was rarely the case according to a 2014 report by the business magazine Inside Counsel.[486]

In 2013, a Stanford University study reported that garment factory workers in Yangon and Mandalay worked on average about 62 hours per week[487], although media reports indicated working hours in Yangon factories reached 66 hours weekly.[488] IHRB reported that in the garment sector workers were subject to working hours for seven days a week, which was beyond legal limits.[489]

The 2014 MCRB report stated that temporary workers in the oil and gas sector felt pressured to work longer than prescribed by law to maximise their income.[490]

In the tourism sector, working hours regulations were reportedly rarely implemented and workers consistently worked more than 48 hours per week, according to MCRB. In some cases, during the high season, hotel and cruise ship staff worked up to 16 hours per day, seven days a week. Tour guides and drivers worked up to 18 hours per day.[491]

Social Security

Workers may not have access to social security benefits. Particular attention should be given to the informal sector.

Before the Social Security Law came into force in April 2014, no comprehensive social safety net existed in Myanmar.[492] The law provides for a health and social care insurance system, a family assistance insurance system; an invalidity benefit, superannuation benefit and survivors' benefit insurance system; and an unemployment benefit insurance system.[493]

Companies with two or more employees in the manufacturing, entertainment, transportation, ports, extractive, or financial sectors, as well as foreign companies, are required to contribute to the social security scheme.[494] The head of the Social Security Board reported, however, that only one percent of the population was registered in the social security system in 2014.[495]

Informal Sector

Workers may lack written employment contracts or may otherwise lack the protection of labour laws. Particular attention should be given to the tourism sector.

In 2014, the Asian Development Bank estimated that almost 75 percent of the workforce was employed in the informal sector.[496] According to the Federation of Trade Unions Myanmar, employees in the informal sector were subject to long working hours and poor working and living conditions.[497]

A 2012 report by the Project 2049 Institute stated that small farmers and petty traders operated in the informal sector primarily due to lack of access to credit and weak lend tenure systems.[498] The informal financial sector was reported to have almost the same size as commercial banks, according to a UNCDF report in 2014.[499]

In 2014, MCRB reported that long-term status as 'temporary' staff was common among companies in the oil and gas sector to avoid paying costs associated with pensions and social benefits for permanent workers. Oil and gas sub-contractors did not always provide written employment contracts to their employees, and when they did so, a copy of the contract was not always given to the worker.[500]

In the tourism sector, with the exception of workers in Yangon or employed by large tourism companies, most workers had no written contract according to MCRB in 2015, including those employed by sub-contractors such as maintenance staff, gardeners and construction workers.[501]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Disputes occurring at the workplace are referred to the workplace coordinating committee for five days, then to the township conciliation body for three days. If an agreement is not reached, individual disputes are referred to the competent region or state high court. Collective dispute cases go through an additional negotiation process at the regional or state arbitration body for seven days before reaching a tribunal, formed by the arbitration council.[502] Failure to comply with the terms of an agreement reached through the conciliation body results in a fine, according to the law.[503]

Victims of abuses related to working conditions can address the Myanmar National Human Rights Commission, which has investigatory powers.[504] Although the commission was set up in 2011, its governing law was only adopted in March 2014.[505] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[506]

International Grievance Mechanisms

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including abuses related to working conditions (Chapters IV and V), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[507]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[508]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *February 2015, MCRB:* In one hotel in Mandalay, workers had 3,000 kyat (US$3) deducted from their monthly salary for the construction of new workers' accommodation.[509]
- *January 2015, RFA News*: More than 300 workers were locked in JCK, a Chinese garment factory, in Yangon Industrial Zone (1). Workers were allegedly forced to work overtime or else threatened with dismissal.[510]
- *December 2014, Reality*: The Basic Labour Organization (BLO) reported that the death of a worker at the Hsin Min cement factory in Mandalay Region was settled only after reporting it to the Ministry of Labour. The Ministry provided for 3.6 million kyat (US$3,410) compensation and 166,500 Kyats (US$158) for funeral expenses. Compensation and social security insurance were reported to be paid with long delays in the past.[511]

- *December 2014, Eleven:* More than 1,000 workers from the Chinese garment factory, Myanmar York Fashion, in Industrial Zone 4 in Hlaingthayar Township, Yangon Region, protested against unpaid wages. Workers allegedly did not receive full salaries, corresponding to the number of days worked in a month.[512]
- *August 2014 Gap Inc.*: An audit conducted at the two subcontracting garment factories of the American company Gap found regular overtime work beyond legal limits without payment at premium rates.[513]
- *March 2014, IndustriALL:* A trade union managed to collectively bargain a US$26 increase per month in salary for 1,600 garment workers of the Korean Yes 1 factory in Hlaing Thar Yar industrial zone in Yangon Region.[514]
- *February 2014, Eleven:* Six hundred workers of the Korean Master Sport Shoe factory in Hlaing Thar Yar industrial zone, in Yangon Region, went on strike over working conditions grievances, primarily regarding wages and leave.[515]
- *January 2014, Irrawaddy:* The labour conditions agreement negotiated by Mandalay Labour Department, was allegedly breached by the owner of a biscuit factory, Thazin, in Pyigyidagun industrial zone in Mandalay. The agreement contained provisions on overtime pay and rest periods, including for not working on Sunday. However, 26 workers were fired for not having worked on Sunday.[516]
- *November 2013, Mizzima:* Two hundred workers at a garment factory in Dagon Seikkan township, Yangon, went on strike after the dismissal of a worker who refused to work overtime. Complaints also included the installation of a CCTV camera outside a women's toilet.[517]
- *August 2013, International Trade Union Confederation:* Workers at the Inlay shoe factory in Bago were reportedly physically abused by the management; were not paid overtime and had wage deductions for sick days.[518]
- *2013, International Trade Union Confederation:* After an Arbitration Council ruled in favour of workers' request for increase wages, the owner of the Taw Win embroidery factory allegedly did not comply with the ruling.[519]
- *October 2012, Mizzima:* About 150 workers at the Aung ceramic tile factory in Shwepyitha township, Yangon protested, demanding an increase in their monthly salaries in line with salaries in other ASEAN countries.[520]
- *May 2012, AFP:* About 300 workers at a wig factory in Hlaing Thar Yar industrial zone, Yangon Region, went on strike to demand an increase in their monthly salary from US$12 to US$38.[521]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015*)**:[522] The organisation recommends the following to companies in the tourism sector:

- Monitor the labour performance of subcontractors, in particular high risk suppliers, such as construction contractors, transport providers, maintenance staff, concerning various labour issues, including working conditions.

- Formalise employment contracts and payment for day labourers, temporary/seasonal workers and migrant workers and employees in family businesses.

Oxfam and Grow (2013) [523]***:*** The two organisations recommend that companies:

- Adhere to core ILO standards and conventions on labour rights and the OECD guidelines for multinational enterprises; ensure that workers are paid decent wages; and that both employees and line management are made aware of rights and responsibilities. Private sector companies should also provide independent feedback mechanisms for reporting abuse of labour rights and work closely with the government to report failure to uphold these rights.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Working hours

Does the company ensure that the workweek is limited to 48 hours; that overtime is infrequent and limited; and that workers are given reasonable breaks and rest periods?

- Normal company working hours are limited to 48 per week by both company policy and practice, or fewer if provided by national law, collective agreement or industry standards.
- Overtime is infrequent, remunerated at premium rate, and does not exceed 12 hours in any one week, or 36 hours per month.
- The company has a system to plan, record and monitor hours worked by each employee, and regularly evaluates whether the number of workers is sufficient to meet production targets without resorting to overtime.
- Where overtime per worker systematically exceeds 12 hours per week, the company increases its workforce to correspond to production targets, or puts in place measures to increase worker productivity and reduce overtime.
- Workers are allowed at least 24 consecutive hours of rest (or more if provided by national law or industry standards) in every seven day period.
- The company ensures that workers have no less than a 30-minute break for every 4 hours of work (or more if provided by national law or industry standards) and that workers are allowed to use toilet facilities whenever necessary and not just during designated breaks.

Wages

Does the company provide a living wage that enables workers to meet the basic needs of themselves and their dependents?

- It is company policy to provide workers with a living wage sufficient to meet basic food, clothing and housing needs and provide some discretionary income for themselves and their dependents.
- The company is aware of whether the legal minimum wage in the country of operation meets the requirement for a living wage.
- If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of workers and their dependents, the company calculates a living wage based on the cost of living in its area of operation.

- Part-time workers receive wages and benefits that are proportionate to those of full-time workers, and receive overtime compensation at a minimum of 1.25 times their hourly salary.
- The company pays wages at regular intervals and does not take deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Bonus and piece-rate payment systems are monitored to ensure that the total salary paid meets living wage requirements without resort to overtime.

Leave

Does the company ensure that workers are paid holiday leave, sick leave, and parental leave in accordance with international minimum standards?

- Workers are granted at least three weeks of paid holiday leave per year or more if required by national law or collective agreements. Part-time and short-term workers are provided with paid holiday leave proportionate to the number of hours worked, at a rate equal to that of permanent full time employees.
- Workers are entitled to paid sick leave in accordance with the applicable national law. If sick leave is not provided for in national law, the company consults with union or worker representatives to establish alternative means of protection in case of illness or injury.
- The company ensures that sick leave is not deducted from workers' vacation time.
- Female workers are entitled to no less than fourteen weeks of paid maternity leave per child.
- The company grants compassionate or parental leave to workers who have recently adopted a child or children, or have taken on the responsibility to care for foster children or other dependent children.

Employment status

Does the company ensure that all workers have an official employment status?

- The company ensures that all employees receive employment contracts prior to starting work for the company, and that contracts are understood by each employee.
- Contracts detail each employee's rights and obligations of employment, including clear job description, bonus and salary systems, and reasonable notice periods.
- Reference to company handbooks or other relevant documents on employment terms are integrated into the contract.
- The company ensures that contractors provide workers operating within company premises with an official employment status in line with company standards.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009):** The Ethical Trading Initiative is an alliance of different business stakeholders promoting the

implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

- **Institute for Human Rights and Business and Global Business Initiative on Human Rights, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012):** The Report examines how the UN Guiding Principles can contribute and guide the complex network of business relationships that now exist in a global economy. It explores how companies of all sizes are now beginning to implement human rights considerations and the UN Guiding Principles into both traditional and contemporary business relationships.
- **Portal for Responsible Supply Chain Management (est. 2008):**The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- **IFC Performance Standard 2: Labour and Working Conditions (2012):** IFC PS2 is guided by the international labour standards as outlined by the ILO and covers a range of aspects, including: terms and conditions of employment, non-discrimination, health and safety, and forced labour. The Standard addresses employees, contracted workers and supply chain workers.
- **International Labour Organization:** The International Labour Organization (ILO) is the UN agency responsible for preparing and overseeing international labour standards. The mission and objectives of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.
- **OECD Guidelines for Multinational Enterprises (2011):** The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Chapter 5 is on employment and industrial relations, aligning with the international labour standards of the ILO.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

The Coca-Cola Company: In 2014, during inspections at Coca-Cola work sites in Myanmar, overtime work above legal limits was identified. To address the problem, workers' shift patterns where changed, a third shift was introduced and additional staff were hired.[524]

The company developed a grievance policy that was translated into Burmese and distributed to employees in July 2014. The company also established a Workplace Coordinating Committee at each of its plants, where employees could raise concerns and provide suggestions and recommendations to management. In March 2014, company managers in Myanmar were trained on workplace rights and grievance mechanisms.[525]

The Gap: In 2013, during inspections at the two sub-contractor factories in Myanmar, excessive working hours and insufficient overtime payment were identified. The company conducted trainings for employees on promotion and wage policies and eradicated arbitrary payroll deductions and punitive fines from workers' salaries.[526]

Both sub-contracted factories adopted grievance policies and procedures, and trained workers on grievance channels. A formal written grievance procedure for workers was introduced, and an investigation process and dedicated committee for addressing grievances was created.[527]

***City Mart*:** The company developed a Code of Conduct with commitments on labour rights, including working conditions. The Code also contains a clause for suppliers, which states that in case of non-compliance, the company would take action against the supplier, which in some cases can include the cessation of any business activities.[528]

Company Beyond Compliance Initiatives

The Gap: In 2014, the company launched the P.A.C.E. (Personal Advancement & Career Enhancement) programme in Myanmar, which aims at the empowerment of women in the garment sector by providing technical skills training. As a result, trained female workers advance faster to management positions, improving their working conditions.[529]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

NGO Initiatives

***Action Labor Rights*:** Since February 2012, this organisation trained about 4,000 workers, mainly in Yangon, Pathein, Bago and Mandalay, on minimum wages, working hours and rest periods, and social security, among other issues.[530]

Development Priorities

European Union (EU) Comprehensive Framework for the EU's policy and support to Myanmar/Burma (2013-2016): The EU decided to focus on the promotion of the highest standards of integrity and corporate social responsibility (CSR), in line with the OECD Guidelines, UNGPs and the EU CSR strategy 2011-2014. Aligned with this priority, the EU funded the SMART Myanmar, a three-year project (2013-2015) to improve the working conditions in 16 garment factories.[531]

Community Impacts

Environment

Company impacts on the environment that affect the health or livelihoods of local communities

Operating Environment	
Percentage of population with access to improved water sources *MDG: 100% by 2015*	86 (2012)[532]
Environmental Performance Index rank	164 out of 178 countries (2014)
Food Security Index rank[533]	86/109 (2014)
Relevant laws	• Constitution (2008) • Environmental Conservation Law (2012) • Notification No. 50/2014 (2014) • Conservation of Water Resources and Rivers Law (2006)
Responsible agencies	• Ministry of Environmental Conservation and Forestry- Environmental Conservation Department • Natural Resources and Environmental Conservation Committee • Myanmar Investment Committee
Local NGOs addressing this issue	• Myanmar Environment Institute • Ecodev/ALARM • FREDA • BANCA • Myanmar Green Network • Sein Yaung Soe • Burma Environmental Working Group • KESAN • MEENet • Dawei Development Association

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The 2008 Constitution provides for the conservation of the environment.[534] Although the 2012 Environmental Conservation Law provides a protection framework, according to the Asia Foundation, the law lacks clarity on the penalties for its infringement and lacks requirements for public participation and information disclosure.[535]

Myanmar is particularly vulnerable to the effects of climate change, including frequency and magnitude of droughts, cyclones and floods.[536] In 2008, Cyclone Nargis caused about 140,000 deaths.[537]

Participation & Access To Information

Communities may not have access to relevant information regarding the environmental impacts of company operations that may affect their health or livelihoods. Particular attention should be paid to the area of public disclosure of emissions data and air, soil and water discharges.

The Environmental Conservation Law establishes, for the first time, an environmental impact assessment (EIA) system.[538] The EIA procedures, operationalising the law and the 2014 related Rules, were being drafted process by the Ministry of the Environment, as of 2014. The draft procedures require an Initial Environmental Examination or EIA for some projects, depending on their classification, as well as environmental approval by the Environmental Impact Assessment Committee. Consultations with local communities are required in the draft EIA procedure.[539]

The Environment Conservation Department lacked human resources and the capacity to ensure implementation of environmental laws, according to a 2014 report by the Myanmar Centre for Responsible Business (MCRB).[540] Local communities reportedly lacked information on the environmental impact of oil and gas projects. Artisanal oil extractions were reportedly carried out with little or no protection for the environment, especially in Rakhine State.[541]

Food & Livelihoods

Companies may adversely impact the access of local populations to adequate and affordable food sources. Particular attention should be paid to the areas of increasing food prices, and reduced access to land and fishing.

In 2013, about three-quarters of the population depended on farmland and forests for their livelihood, according to the Forest Peoples Programme.[542] The Asian Development Bank reported that, as of 2010, food poverty affected 5 percent of the population, though this rate was as high as 25 percent in Chin State. Rural areas accounted for 85 percent of food poverty in Myanmar. [543]

According to a 2013 USAID report, government approval of large-scale monoculture plantations for cassava, sugar cane, paddy rice, jatropha, palm oil and rubber, for companies linked to the military has increased since 2008. This resulted in farmers losing their access to land, livelihoods and food security. [544]

According to a 2014 MCRB report, the oil and gas sector impacted the livelihoods of rural populations dependent on subsistence agriculture and fishing, especially women, ethnic minorities and persons with disabilities.[545] Road and site constructions reportedly changed hydrology, resulting in fields previously not subject to floods during monsoon season being flooded.[546]

Boat traffic, seismic activities, exclusion zones and security restrictions linked to offshore oil and gas operations reportedly had an adverse impact on fish habitat and resources, on which local communities relied on for fishing.[547]

The report noted, however, that given the pervasive lack of baseline data for much of the country, communities and companies were not able to assess claims of impacts due to project activities. This further contributed to difficulties in adjudicating disputes and assigning compensation for damages.[548]

In some areas, tourism developments reportedly increased the price of food and land. This was particularly pronounced at Inle Lake and Chaungtha.[549]

Deforestation

Companies may reduce forest resources to the detriment of the health or livelihoods of local populations. Particular attention should be paid to the agriculture, fisheries, extractive and construction sectors.

Almost half of Myanmar's land area is covered with forest,[550] and 43 officially recognised protected areas cover 7.3 percent of the country. Information on Myanmar's protected areas, according to a 2011 report by Oikos and BANCA, was poor, scattered and not up to date.[551]

From 1990 to 2010 the deforestation rate was as high as 20 percent, according to a 2013 report by the Forest Peoples Programme.[552] USAID reported in 2013 that deforestation was linked to logging, including illegal timber trade to China,[553] hunting, mining and other extractive industrial activities, and resulted in soil erosion, landslides, increased dry season water and decreased topsoil fertility. All of these impacts had a detrimental effect on agriculture and communities' access to food and livelihoods.[554]

From 2003 to 2010, an additional 4 million hectares were cultivated, resulting in deforestation in favour of small-scale agriculture, according to a 2014 report by the Asian Development Bank.[555] Deforestation was reportedly also exacerbated by road construction, which increased by about 5 percent from 1990 to 2010.[556]

Water

Companies may adversely impact the access of local populations to safe and affordable water. Particular attention should be paid to the areas of water pollution and contamination of drinking water.

The Conservation Of Water Resources and Rivers Law contains a general prohibition on polluting surface water, and the 1994 Myanmar Investment Commission guidelines require new investment projects to have wastewater treatment systems.[557]

In 2012, the Water Environment Partnership in Asia reported high levels of phosphate and nitrate and the presence of E. coli bacteria in Inle Lake due to fertilizers and discharge of untreated waste.[558] Municipal wastewater, solid waste, and industrial agrochemical solid and liquid wastes reportedly represented the main source of pollution of surface waters.[559]

A 2014 MCRB report stated that waters were contaminated by oil and gas operations, both by oil leaks and wastewater.[560] The Asian Development Bank (ADB) reported that dam development projects, especially hydropower, had an impact on water availability. In 2014, 88 hydropower projects were operating or in the process of being built or proposed.[561]

Air Pollution

The health and livelihoods of local populations may be adversely impacted by company operations.

Myanmar lacks regulations on air quality.[562] According to the 2014 Environmental Performance Index, Myanmar ranks 164th out of 178 countries, with air pollution the worst performing area.[563] In 2014, the ADB reported that vehicle emissions were one of the main causes of air pollution.[564]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

The Natural Resources and Environmental Conservation Committee of the lower house of parliament can investigate complaints and petition letters concerning natural resources and environment.[565] However, the existing mechanisms were reported to be limited, slow and unsatisfactory, according to a 2014 report by the Asia Foundation.[566]

Victims of environmental rights abuses can address the Myanmar National Human Rights Commission, which has investigatory powers.[567] Although the Myanmar National Human Rights Commission was set up in 2011, its governing law was only adopted in March 2014.[568] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[569]

International Grievance Mechanisms

Abuses linked to investments funded by the ADB can be referred to the ADB Accountability Mechanism, which has the power to mediate and investigate cases.[570]

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including environmental abuses (Chapters III, IV and VI), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[571]

On this basis, a case was filed in 2008 to the NCP of South Korea regarding an alleged breach of the OECD Guidelines by South Korean companies Daewoo International and Korea Gas Corporation, the operators of the Shwe Gas project in Rakhine State. The project allegedly failed to conduct an EIA and consult local communities.[572] The complaint was rejected by the South Korean NCP, and several organisations voiced concerns over conflict of interest due to the NCP being housed in the Ministry of Knowledge Economy.[573]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[574]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *September 2014, MCRB:* A company in the oil and gas sector allegedly burned toxic waste 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 the ground died within hours. When local authorities conducted an investigation, community members were reportedly not given full information. Compensation remained disputed as of September 2014.[575]
- *September 2014, Radio Free Asia:* About 3,000 farmers protested against the Ngwe Kabar Kyaw company' silica mining projects in Namkham Township, Shan State. The mine allegedly polluted surface water and the soil, damaging the surrounding farmland planted with corn and rice. Farmers demanded compensation for the damaged farmland and a stop to mining operations.[576]
- *July 2014, Irrawaddy:* Farmers from eastern Shan State, Tachileik Township, opposed gold mining operations in the area. Since 2007, ten mining companies operated in the area and allegedly polluted waters with their waste, which resulted in more than 300 acres farmland not being cultivable.[577]
- *May 2014, Business and Human Rights Resource Centre:* Myanmar Pongpipat and the state-owned Mining Enterprise 2 allegedly polluted the water in the vicinity of the Heinda tin mining project in Dawei district, Taninthayi Region. The wastewater from the mine reportedly damaged houses, plantations and farmland in the area, and contaminated surface water. The case is being heard by the district court.[578]
- *February 2015, Amnesty International*: Following the use of force by the police, including white phosphorous, against local communities opposing the Letpadaung copper mine in Sagaing Region in November 2012,[579] an Investigation Commission was established to investigate the events. The Commission acknowledged the project's adverse environmental impacts especially due to waste waters and waste sand and stones and made recommendations for the continuation of the project, including the conduct of an Environmental and Social Impact Assessment (ESIA) and the development of an Environmental Management Plans.[580] As a result, an ESIA was conducted by Knight Piésold Consulting on behalf of the Chinese company Wanbao and made it public in 2014 by the company. The ESIA reported that Letpadaung copper mine posed extremely high environmental risk to surface and groundwater due to wastewater emissions.[581] However, in 2015 Amnesty international criticised the ESIA for failing to assess the cumulative impact of the Sabetaung and Kyisintaung (S&K) and the Letpadaung copper mines and the Sulphuric Acid factory, which have the same ownership and are interrelated projects.[582] In 2014, communities living in proximity to the mine continued to oppose the company's operations due to its alleged adverse impacts on the environment and lack of consultation with the communities.[583] In 2015, Amnesty International reported that information on environmental dangers and risks failed to be shared with local communities.[584]
- *May 2014, Democratic Voice of Burma:* The factories in the Mandalay industrial zone allegedly polluted drinking waters by releasing toxins into the Dokhtawaddy river. This resulted in the end of fish breeding activities and consequently adverse impact on the economy of the villagers.[585]

- *February 2014, Democratic Voice of Burma:* The use of heavy trucks in industrial operations by PTTEP, PETRONAS and Total in Kanbauk, Tenasserim Division, was allegedly tearing up dirt roads and creating dust clouds.[586]
- *2014, Environmental Justice Organisations, Liabilities and Trade:* The plan of constructing the Hatgyi Dam in Kayin State has faced resistance by local communities since the inception of the project in 1999. The project affects the Thai Karen and the Shan ethnic groups. In 2009, tensions led to confrontations between the army and an armed ethnic minority, the Democratic Karen Buddhist Army, resulting in refugees fleeing to Thailand. Allegations included the adverse impact on the livelihood of local communities, which depend on fishing and agriculture, and would increase the risk of earthquakes.[587]
- *November 2013, Irrawaddy:* Local communities in Kawthaung district, Tanintharyi Region, reported that 100 people suffered from respiratory problems due to increased air pollution linked to the coal-fired power plant owned by Than Phyo Thu Coal Excavation Company.[588]
- *February 2013, Global Policy Forum*: In September 2011, President Thein Sein suspended the Myitsone Hydropower Dam in Kachin State following public protests and concerns over the project, including adverse impacts on soil fertility and increased floods due to the hydrological changes resulting from the construction of the dam.[589]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

Amnesty International (2015) [590]: The organisation recommend the following to companies involved in the Monywa copper mine project, made up of the Sabetaung and Kyisintaung (S&K) and the Letpadaung copper mines:

- Wanbao Mining should address the shortcomings in the Environmental and Social Impact Assessment (ESIA), including through sharing final designs of key infrastructure and undertaking a comprehensive assessment of environmental, social and human rights impacts in consultation with all affected people.
- Myanmar Yang Tse should undertake an assessment of existing pollution at the S&K site and clean it up. It should remediate any negative impacts caused by current and past operations in consultation with affected communities.
- Union of Myanmar Economic Holdings (UMEHL) should relocate the Moe Gyo Sulphuric Acid Factory, fully disclose and remediate any negative impacts caused by its operations. In the interim, it should stop its operations as a precaution.
- Turquoise Hill Resources (Ivanhoe Mines) should disclose all the information it holds on pollution from the S&K mine and clean-up undertaken by Myanmar Ivanhoe Copper Company Limited (MICCL). It is responsible for compensating people for environmental damage linked to its joint venture and should put aside funds for such compensation and engage with the government of Myanmar to ensure that compensation is paid.

***Myanmar Centre for Responsible Business (2015*):** [591] The organisation recommends the following to companies in the tourism sector:

- Commit to applying international social, environmental and human rights standards and undertake due diligence in the business and its supply chain:
    - Study and implement Myanmar's EIA framework to determine whether existing projects will require an IEE or EIA. Businesses should refer to Strategic Impact Assessments carried out at the regional level if they exist. In any case have an internal plan to manage environmental and social impacts appropriate to the size and scope of the business. This should include effective waste management systems (for solid waste and waste water), including recycling, composting and water efficiency, as well as conservation measures such as providing advice to tourists to reduce water consumption, investing in rain harvesting and the recycling of waste water, energy efficiency and where cost-effective, renewable energies.
    - Report publicly and directly to those affected the findings of impact assessments and actions taken to address and mitigate adverse impacts.
- Encourage government to conduct a Strategic Impact Assessment of tourism's impacts in the destination area. Failing that, work with other major tourism businesses to commission a joint impact assessment to capture cumulative impacts, and minimise the likelihood of 'consultation fatigue'. Share environmental impact assessments, management plans and best practices.
- Conduct joint advocacy with local government bodies on issues such as the adoption and implementation of waste management and water management plans.
- Collaborate with other local businesses on voluntary initiatives to address cumulative impacts, such as sponsoring the provision and emptying of garbage bins in tourist areas and the collection of litter; or the creation of a joint fund for community investment for projects designed jointly with communities.

Special Rapporteur on the Situation of Human Rights in Myanmar (2014) [592]***:*** The Special Rapporteur recommends that:

- Environmental and social impact assessments are undertaken and recommendations implemented consistently;
- Information about development projects be made widely available and accessible;
- Concerned communities are able to participate actively, freely and meaningfully in the assessment and analysis, design and planning, implementation, monitoring and evaluation of large-scale development projects.

***Myanmar Centre for Responsible Business (2014*):** [593] The organisation recommends the following to oil and gas companies:

- Commit to applying international standards for responsible business conduct. This could be as part of the policy commitment 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 Environmental and Social Impact Assessments (ESIAs);
- Ensure that the Environmental and (Social) Management Plans (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;

- 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.
- Work with MOECAF, MOGE and the Myanmar Investment Commission (MIC) to improve the E(S)IA process. Given scarce in-country resources to conduct ESIAs 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.

Oxfam and Grow (2013) [594]***:*** The organisations recommend that companies:

- Practise complete transparency by publishing all consultations, agreements and plans, including social and environmental impact assessments, on websites and through other mediums, such as newspapers and through radio announcements in a manner and language accessible to local communities.

Burma Environmental Working Group (2012) [595]***:*** This alliance of grass-root based organisations make the following recommendations to companies:

- Investors should respect the widely accepted global standards for environmental and human rights law while following international best practices in human rights, social and environmental impact assessments. Investors should meet or exceed international standards for environmental and human rights laws to ensure that decision making is consultative and inclusive of all stakeholders. Following Free, Prior and Informed Consent (FPIC) and consultation standards is necessary to ensure that the rights of local communities are protected.

European Parliament (2012) [596]***:*** This institution issued a resolution with the following recommendation to European companies operating in Myanmar:

- Report on due diligence policies and procedures relating to human rights, workers' rights and the environment, along with the application of those policies and procedure.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Precautionary Approach

Does the company support a precautionary approach to environmental issues?

- The company provides information to stakeholders about uncertainties and potential risks to workers, consumers, the public and the environment of the company's products and processes.
- The company identifies any soil and water contamination at its site or sites, assesses the environmental impacts and remedies any significant contamination.
- The company tries to avoid environmental damage by regular maintenance of production processes and environmental protection systems (air pollution control, waste water treatment systems etc.).

- The company conducts systematic risk assessments of materials used, products and processes to apply the precautionary approach.
- The company ensures transparency and engages in regular stakeholder dialogue with neighbours, civil society organisations and others with an interest in the company on critical environmental issues.
- If relevant, the company supports scientific research on environmental issues relating to the company's products and processes.

Emergency Response

Does the company have emergency procedures in place to prevent and address accidents affecting the environment and human health?

- The company has identified the hazardous operations and the potential consequences on human health and the environment if an accident occurs.
- The company has detailed procedures, plans, equipment and training programmes to prevent accidents and emergencies.
- The company has detailed procedures, plans and equipment to effectively respond to accidents and emergencies if they occur.
- The company trains workers to respond to accidents and emergencies, including carrying out emergency drills at least once a year involving all workers.
- Where there is significant risk of impacts on local communities, the company has a procedure that enables it to immediately notify affected local communities about industrial emergencies, and informs about emergency response, evacuation plans and medical response.

Energy Consumption and Climate Change

Does the company take measures to reduce energy consumption and emissions of greenhouse gasses?

- The company complies with regulation regarding use of energy resources and emissions of greenhouse gases.
- The company has a climate strategy that identifies opportunities to reduce the company's energy consumption and/or emissions of greenhouse gases.
- The company has initiated practical activities to reduce energy consumption and/or greenhouse gas emissions.
- The company provides information and trains employees to implement energy reduction measures.
- The company monitors its energy consumption and/or emissions of greenhouse gases.
- The company has defined a baseline for its greenhouse gas emissions, which includes a definition of the business operations and activities, and the greenhouse gases that are accounted for e.g. as described in the Greenhouse Gas Protocol.
- The company has targets for reducing its energy consumption and/or emissions of greenhouse gases.

- The company engages with the government and civil society organisations to develop policies and measures that provide a framework for the business sector to contribute to building a low carbon economy.

Water and Waste Water

Does the company take measures to reduce water consumption and treat waste water?

- The company has the necessary permits to extract water or obtain water from the public water supply and for any waste water discharges.
- The company treats waste water before discharge to reduce adverse environmental impacts. If waste water treatment takes place outside the company's premises, the company is aware of the effectiveness of the treatment.
- The company monitors waste water discharges, including types, limit values and quantities of pollutants in the waste water.
- The company has targets for reducing water consumption and/or increasing the amount of water reused or recycled in different business operations and activities.
- The company provides information and trains workers to implement measures to reduce water consumption and reduce the need for waste water treatment.
- The company's use of water and its waste water discharges do not negatively affect the sustainability of water resources, the natural environment or the availability of water for drinking and sanitation purposes.

The company engages with national, regional and local public authorities, and civil society organisations to address water sustainability issues related to affected water resources.

Waste Management

Does the company take measures to prevent and reduce the production of waste and ensure responsible waste management?

- The company has the necessary permits for the handling, storage, recycling and disposal of waste, and, if relevant, complies with requirements for transporting hazardous waste across borders.
- The company has a strategy to manage waste responsibly and continuously attempts to prevent and reduce the production of waste.
- The company ensures that waste relevant for recycling is sorted and handed over to a recycling company.
- The company monitors the types and quantities of waste produced, including where and how waste is recycled, treated or disposed of.
- The company has targets for reducing waste production and/or increasing waste reused/recycled and measures its progress against these targets.
- The company provides information and trains workers on the safe handling, storage, transport and disposal of hazardous and special waste types.
- The company marks areas used for storage of waste, and properly labels all containers for storing waste, including a relevant symbol of danger for hazardous waste.

- The company requests recycling/treatment/disposal receipts from transport contractors.
- The company uses licensed contractors for the transport, recycling, treatment and disposal of hazardous waste.

Air Emissions

Does the company prevent, reduce and treat air emissions?

- The company has the necessary permits for emissions to air, and complies with legal requirements (e.g. air pollution standards and limit values).
- The company provides information and trains workers on how to manage air emissions.
- The company monitors the types and quantities of relevant emissions to air.
- The company treats relevant pollutants before they are emitted to the atmosphere (e.g. by using filters).
- The company continuously attempts to prevent and reduce air emissions.

Noise, Odour, Light and Vibrations

Does the company prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations?

- The company has the necessary permits for levels of noise, odour, light and vibrations, and complies with legal requirements (e.g. standards or procedures).
- The company provides information and trains workers to manage noise, odour, light and vibrations.
- The company monitors levels of noise, odour, light and vibrations on the surrounding environment.
- The company treats/minimises impacts to ensure that there are no significant levels of noise, odour, light and vibrations.
- The company continuously attempts to prevent and minimise the levels of noise, odour and light (e.g. enclosed production, shielding, etc.).

Chemicals and Other Dangerous Substances

Does the company minimise the use and ensure safe handling and storage of chemicals and other dangerous substances?

- The company has the necessary permits and complies with legal requirements for the handling, use and storage of chemicals and other dangerous substances.
- The company does not manufacture, trade and/or use chemicals and other dangerous substances subject to national or international bans or phase-outs.
- The company provides information and trains workers on the safe handling and use of chemicals and other dangerous substances.
- The company monitors the quantities of all chemicals and other dangerous substances used in production and maintenance.
- The company marks areas used for storage of chemical substances and products.

- The company properly labels all chemical substances and products including name of the chemical and a relevant symbol of danger.
- The company considers substitution important and continuously tries to use less harmful chemicals and substances.

Biodiversity

Does the company prevent, minimise and remedy significant impacts on biodiversity?

- The company has the necessary permits to operate in or alter the natural environment, and complies with legal requirements.
- The company is committed to operating within the framework of international conventions addressing biodiversity (e.g. the Convention on Biological Diversity, Cartagena Protocol on Bio-safety and the CITES Convention).
- The company has assessed important positive and negative impacts of its operations and activities on the natural environment and biodiversity (e.g. IUCN's Red List of Threatened Species and no alien invasive species).
- The company has previously and/or is currently taking measures to prevent and reduce the impacts of its operations and activities on biodiversity.
- The company clearly labels products containing GMOs and indicates if GMOs have been used in the production process.
- The company ensures that it has not had any unintended releases of GMOs.
- The company documents that workers have been adequately trained to handle GMOs.

Natural Resources

Does the company ensure that natural resources are used in a sustainable manner?

- The company has the necessary permits and complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc).
- The company complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc.).
- The company ensures that workers are trained in the sustainable cultivation, harvesting, extraction and/or use of natural resources.
- The company continuously attempts to prevent, minimise and remedy significant impacts on natural resources through environmentally friendly methods and alternative resource use.
- The company ensures that its use of renewable resources does not negatively affect the sustainability of the resource (i.e. the resource's ability to regenerate).
- The company demonstrates efforts to substitute non-renewable resources used in production with renewable resources.
- The company works with local and national public authorities as well as with international institutions to address sustainability issues related to natural resources (e.g. wood, water, fish, metals, oil etc.).

Environmentally Friendly Technologies

Does the company encourage the development and use of environmentally friendly technologies?

- The company uses environmentally friendly technology.
- The company regularly evaluates its processes and technologies to see if there are more environmentally friendly alternatives.
- When developing new technologies and products, the company focuses on developing environmentally friendly technology e.g. by using life cycle assessments (LCA), design for sustainability or a cradle-to-cradle approach.
- When planning new investments in technology, the company considers the best available technology and stipulates minimum environmental criteria.
- When investing in new buildings, the company implements environmentally responsible and resource-efficient materials and/or technologies.
- The company makes information describing the environmental performance and benefits of using environmentally friendly technologies available to stakeholders.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **CEO Water Mandate (2011):** Launched as a collaborative initiative of the UN, UN Global Compact, the Government of Sweden and a dedicated group of companies, the CEO Water Mandate is a public-private initiative designed to assist companies with the development, implementation and disclosure of policies and practices relating to water sustainability. It covers six core elements: direct operations, supply chain and watershed management, collective action, public policy, community engagement and transparency.
- **IFC Performance Standards on Environmental and Social Sustainability (2012):** The IFC Performance Standards provide directions to businesses on due diligence on environmental and social matters. Several of the standards are pertinent to environment, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Resource Efficiency and Pollution Prevention (PS3), Community Health, Safety, and Security (PS4), and Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).
- **Institute for Human Rights and Business, Business, Human Rights & the Right to Water—Challenges, Dilemmas and Opportunities:** This report summarises the views of various stakeholders on issues pertaining to the right to water, including consideration of the scope of a company's responsibility to respect the human right to water; the applicability of the human rights-based approach to management of water-related issues; and the business case for engaging with water-related issues.
- **ISO 14000 Standards on Environmental Management Systems**: Developed by the International Organisation for Standardisation, the ISO 14000 Standards provide businesses and organisations with a number of tools to assist in their environmental management systems. The key objective of the standards is to encourage different actors to reduce the negative impact that their activities may have on natural resources such as air, water or land.

- **United Nations Special Rapporteur on the Human Right To Safe Drinking Water and Sanitation (est. 2008):** Amongst a range of issues, the mandate of the Special Rapporteur includes consideration of the regulation of the private sector in the context of private provision of safe drinking water and sanitation.
- **Global Water Tool (2007):** Developed by the World Business Council for Sustainable Development, this tool is designed for companies and organisations to map their water use, including risks associated with water use in global supply chains.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

Wanbao Mining: As a result of protests by local communities, an environmental and social impact assessment of the contested Letpadaung copper mine project was conducted in 2013 and made available to the public.[597] As a result, the company installed high-density polyethylene sheets to prevent the pollution of waters with acid solutions. The company also initiated the backfilling, pit closing and reclamation plan, which addresses the recovery of the area after the closure of mining process.[598]

Company Beyond Compliance Initiatives

Ooredoo Myanmar: The company claims to use solar energy as an alternative to fuel consumption at its telecommunication tower sites. The company also elaborated 'Go Green' environmentally friendly guidelines for their office employees.[599]

City Mart: The company developed green construction techniques to reduce air conditioning, water and electricity requirements in its supermarkets. Electricity, water, diesel and other resource usage are monitored to identify where additional environmental savings can be made. In 2014, the company offered reusable bags at a reduced price to its customers and started a 'No Plastic Bag Day' in some branches.[600]

MAX Myanmar Holding: In 2015, Max Highway installed about 50 solar panels at the Aung Lan toll gate with plans to expand the initiative to toll plazas in remote areas of Myanmar.[601]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

NGO Initiatives

Forest Resource Environment Development and Conservation Association: The organisation is running a programme involving local communities to address the environmental degradation of the Ayeyarwady river basin. The organisation is also supporting students in environmental sciences through scholarships. Since 1999, 40 undergraduate students in forestry have been awarded scholarships.[602]

***Green Lotus*:** This organisation established the Myanmar Platform for Dialogue on Green Growth in 2014 with the aim of developing a National Action Plan for Green Growth for Myanmar. The platform is articulated in three committees including various stakeholders (ministries, political parties, private sector, universities, etc.). [603]

Development Priorities

Asian Development Bank Interim Country Partnership Strategy (2012-2014): The strategy prioritises the promotion of green growth and the inclusion of environmental safeguards in infrastructure projects.[604]

World Bank Interim Strategy (2012-2014): The strategy prioritised sustainable Ayeyarwady river basin management and renewable energy for electric supply.[605]

Land & Property

Human rights impacts related to company acquisition, use and management of land

Operating Environment	
Heritage Foundation: Economic Freedom Index Property Rights score	46.5 (2014)
Relevant laws	• Constitution (2008) • Farmland Law (2012) • Foreign Investment Law (2012) • Vacant, Fallow, and Virgin Land Management Law (2012) • Land Acquisition Act (1894) • Government Notification No.39 (2011)
Responsible ministries	• Ministry of Agriculture and Irrigation: - Settlement and Land Records Department - Farmland Management Body - Central Land Management Committee (Central Committee for the Management of Vacant, Fallow and Virgin Lands) • National Land Resources Management Central Committee • Ministry of National Planning and Economic Development: Myanmar Investment Commission
Local NGOs addressing this issue	• Land Core Group (and its members) • Myanmar Legal Aid Network • The Karen Human Rights Group • Paung Ku • Ecodev/ALARM • Dawei Development Association • Badeithamoe • Pandita • Land in our Hands • AFFM

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Land Administration

Companies may disrupt the livelihoods of local populations if they do not establish the ownership and use of land before it is purchased. Particular attention should be paid to customary tenure and communal land use.

The 2008 Constitution affirms that all land belongs to the state and provides for the right to private property and inheritance.[606] The state grants leasehold, user rights and rights to cultivate land subject to prior approval from the local government.[607]

As all land belongs to the state, tenure rights depend on the type of land, according to the following classifications:[608]

- freehold land (i.e. ancestral land) is transferrable and not subject to taxes;
- grant land is allocated by the state for ten, thirty or ninety years and is transferrable;
- agricultural land can be used only by those holding a land-use certificate. This type of land can – since 2012 - be transferred through sale, lease, inheritance and donation, and the transfer should be registered. Farmland should be used only for agricultural purposes and for 'regular crops' (not defined by law) unless otherwise authorised by the state;
- town land is transferrable;
- village land is transferrable;
- cantonment land, reserved for military use, for which the state must pay compensation when expropriated;
- monastery land, which can be allocated (with compensation) by the Ministry of Home Affairs;
- vacant, fallow or virgin land, which cannot be transferred, sold or divided without prior approval from the Cabinet of the Union Government, though farms considered vacant can be allocated to companies by the Central Committee for the Management of Vacant, Fallow and Virgin Lands.[609]

The law provides foreigners with user rights over farmland only through joint ventures with local investors.[610] According to a 2014 report by the Myanmar Centre for Responsible Business (MCRB), land classification did not reflect realities on the ground, and the same land could be classified in a contradictory manner on different maps.[611]

The 2012 Farmland Law requires that users of agricultural land have a land use certificate; pay the certification fee; and duly register the land. Failure to comply with these provisions exposes users (i.e. farmers) to expropriation of their land by the state.[612]

The free transfer or conversion of farmland through private negotiations and agreements was problematic, according to a 2012 report by Displacement Solutions, as short-term gains could tempt poor farmers into giving up their land and livelihoods.[613] According to the 2014 joint report, the problem was the level of protection offered by the law, as Myanmar contract law does not provide protection against unfair terms and conditions and agreements made under duress or undue influence, mistake, or misrepresentation for example.[614]

The Farmland Law allows the right to use land only to those with a land use certificate. In 2014, the Organisation for Economic Cooperation and Development (OECD) reported that the land registration system was inefficient, with complex requirements. [615] This resulted in smallholder farmers, representing most of Myanmar's population, struggling to register their land and exposing themselves to the risk of having their land registered by more powerful interests.[616]

The Japan International Cooperation Agency reported in 2014 that more than 50 percent of farmers did not possess a land title,[617] Global Witness reported, also in 2014, that at least one-quarter of farmers in government-controlled areas were landless,[618] with the highest rates in Bago and Mandalay Regions, Rakhine, Kachin and Mon States.[619]

Land Research Action Network reported in 2012 that bribery was a major impediment for farmers in securing land tenure,[620] as farmland authorities reportedly required bribes to issue land certificates to farmers in Bago Region in 2014.[621]

Although customary land tenure was not fully recognised by law, it was common practice in rural areas, especially among ethnic minority groups, according to a 2013 report by USAID.[622] The law does not recognise traditional upland swidden (*taungya*) cultivation, up to 40 percent of all farming in Myanmar, exposing farmers to the risk of their land being classified as vacant and then expropriated.[623]

The lack of legal recognition of customary land tenure and the fact that rural communities often lacked formal land titles, exposed those communities, especially in ethnic minority areas, to land expropriation, according to a 2013 report by Forest Peoples Programme.[624]

In 2013, Oxfam reported that women lacked awareness of their rights to inherit or jointly own family land[625] and were less likely to have formal ownership titles.[626]

Land Distribution

Companies may adversely impact access to land for local populations, including land for production of food.

In 2013, about three-quarters of the population depended on farmland and forests for their livelihood, according to the Forest Peoples Programme.[627] Global Witness reported that 85 percent of the country's poor people lived in rural areas in 2014.[628]

According to USAID, 17 percent of the country's land was arable, of which 2 percent was dedicated to permanent cropland and about 0.5 percent to meadow and pastureland.[629] States with ethnic minorities reportedly make up 57 percent of the country's land.[630] In 2013, about 25 percent of agricultural land was irrigated and the majority of irrigated land was owned by large-scale farmers, according to Oxfam and Grow.[631]

In 2013, USAID reported that the average farm size was about seven acres, with Ayeyarwady Region averaging the biggest farms (11 acres) and Chin State the smallest (two acres).[632] Land distribution dynamics were reportedly changing, with smallholder land being allocated to large-scale agricultural projects by the state, especially in Ayeyarwady and Yangon Regions, as well as in the central dry zone.[633]

Large-scale monoculture plantations promoted by the government were primarily located in Mon State and recently expanded in Kachin State and in the northern part of Shan State.[634]

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies. Particular attention should be paid to the areas of community engagement, customary land ownership and usage, subsistence farmers, gender disparity over ownership and land concessions granted by the government.

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'. The government is responsible for carrying out the acquisition and distributing compensation, but the funds for compensation are to be provided by the company acquiring the land.[635]

Any agreement between a company and the government should be disclosed in the National Gazette and made public. According to a 2013 report by USAID, the law lacked clarity on how the public would be notified, and had no requirement to directly notify those owning or occupying land.[636]

As a result, local land owners or users were reportedly often unaware that their land had been allocated, as the notice in the Gazette was insufficient and they were not able to lodge an objection during the short window mandated under the law, according to MCRB in 2014.[637]

The 2012 Foreign Investment Law provides that investments in land shall be done in the national economic interest. The Myanmar Investment Commission is empowered to lift foreign investment restrictions provided by law on certain sectors, such as agriculture.[638]

The discretionary power of this institution, as well as land administration bodies such as the Farmland Administration Body, resulted in a lack of transparency and accountability in the land allocation process, Transnational Institute reported in 2013.[639]

The 2012 Foreign Investment Law grants foreign investors leases for 50 years, extendable for 10 years twice, depending on the type of business and amount of investment. Leases can be even longer for land in 'the least developed and less accessible regions'.[640]

Foreign investors are prohibited from leasing religious lands or areas of cultural or natural heritage.[641] Significantly the law provides that foreign investors are not permitted to lease land 'in a place that the public is not desirous to transfer and vacate.' If a foreign investor wants to purchase occupied land, it must submit to the MIC a statement by the owner agreeing to the transfer and resettlement, as well as the compensation amount.[642] However, these protections against abuses apply only to leases by foreign investors under the MIC permit regime. Whether the government can or will enforce this veto is questionable.[643]

Beginning with the 1960s nationalisation under the socialist government and continuing after 1988, land was widely confiscated by the government and the military.[644] Since 2011, some land has been returned to farmers, but tens of thousands of rural people were reportedly still waiting for the return of their land. [645]

According to a 2013 report by Forest Peoples Programme, large-scale land acquisitions had been undertaken by army-affiliated national companies and joint ventures with connections to the military.[646] The Asian Human Rights Commission reported in 2013 on three main cases of land expropriation, in the Sagaing, Ayeyarwaddy and Bago Regions, by partnerships between the army and private companies.[647]

The Karen Human Rights Group reported an increased number of land confiscations from 2011 to 2012 in Kayin and Mon States, and Bago and Tanintharyi Regions. Confiscations were reportedly mostly made by companies, mainly domestic, and the military, and to a lesser extent by the government, the Karen National Union and the Democratic Karen Buddhist Army.[648] In 2013, USAID

reported that large-scale projects in the oil and gas, extractive, agricultural and logging sector, as well as dam building, resulted in the forced displacement of small farmers and ethnic minority communities.[649]

The Forest Peoples Programme reported that, since the late 2000s, 2 million acres were given in agricultural concession to 204 national companies, half of which were allocated in Tanintharyi Region and Kachin State. After having been granted agricultural concessions, companies reportedly left 70-80 percent of the land uncultivated in Wa-controlled areas, speculating on its value.[650]

According to a 2014 Global Witness report, large-scale rubber plantations promoted by the government, on land previously cultivated by smallholder farmers, mainly in Mon State, expanded into Rakhine, Kayin and Mon States and Tanintharyi Region. Much of this land had been classified by the government as 'wastelands'.[651]

People living in areas these areas, mostly ethnic minorities, lost their land rights and consequently became 'squatters' under the law and vulnerable to further land confiscation. This resulted in loss of access to fishponds, waterways, forests and grazing land, with severe adverse impact on their livelihoods, according to a 2013 report by the Transnational Institute (TNI). [652]

Since the beginning of the reform period in 2011, rural communities have begun to resist large-scale agricultural investments.[653] However, according to a 2013 report by the Forest Peoples Programme, people resisting forced eviction were subject to intimidation, prosecution and jail.[654] Protests about land were also met with excessive use of force by the police, according to the 2014 report of the Special Rapporteur on the Situation of Human Rights in Myanmar.[655]

In 2013, the Karen Human Rights Group reported that communities were generally not consulted or informed before the beginning of companies operations, including dam construction, infrastructure development, logging, mining and plantation agriculture in Kayin and Mon States, and Bago and Tanintharyi Regions.[656] In the few instances when communities were consulted, the process was reported to involve only village head or elder, partial or inadequate information was provided, or communities were approached only once land had already been confiscated.[657] The Dawei Development Association reported that local communities around the area of the Dawei Special Economic Zone were not adequately informed or consulted on the project in 2014. The few that were provided with information were told only about the positive impacts of the project and the few that attended the "focus groups" reported meaningless consultations, as meetings were not interactive.[658] In the oil and gas sector, local communities were often not informed about the acquisition of their land, including who the authorities and companies involved were, according to a 2014 report by MCRB.[659] Written documentation on the conditions of the purchase was reportedly not provided, or was not in a language understandable by local communities. When translation into Burmese was provided, this did not match the English version.[660]

Agricultural and fishing communities and individuals adversely affected by oil and gas operations lacked access to compensation and grievance mechanisms for the loss of their livelihoods, according to the MCRB report.[661] Due to lack of access to, or knowledge about, the banking system and how to manage large amounts of money, cash compensation for loss of land was often quickly spent, leaving farmers without livelihoods.[662]

Land confiscations have also been linked to the establishment of Special Economic Zones (SEZs), including the Dawei SEZ in Taninthayi Region, the Kyaukpyu SEZ in Rakhine State and the Thilawa SEZ in Yangon Region.[663]

In 2015, the price of land increased in some tourist areas, such as Inle Lake and Tada-Oo Mandalay, according to MCRB. Communities were reportedly not consulted regarding the location of tourism development projects.[664]

Land owners and users may receive inadequate compensation for loss of or damage to land or property caused by company operations. Particular attention should be paid to the areas of ethnic minorities, smallholder farmers and women.

The law provides for compensation for land acquired by the state under compulsory acquisition. In practice, according to a 2013 report by USAID, little or no compensation was typically paid.[665] In July 2012, a Parliamentary Land Confiscation Inquiry Commission was established to review state acquisition cases in the last 20 years. The commission is not a grievance mechanism, however, and its findings can only be used to inform the parliament's land reform discussions.[666] In 2014, the country lacked core principles or a hierarchy of compensation approaches, which was contrary to international human rights law and other international standards.[667] The 1894 Land Acquisition Act contained no provisions concerning resettlement.[668]

For the majority of the population of Myanmar dependent on access to land for livelihoods, land expropriations, even where compensation was provided, led to significant negative impacts, according to a 2014 MCRB report. Compensation did not keep up with rapidly escalating land prices, meaning displaced farmers were unable to acquire new land in nearby areas.[669]

In 2011, the International Federation for Human Rights and the Alternative Asean Network on Burma reported on the forced relocation of ethnic minority populations living in resource-rich areas. Hydropower projects reportedly displaced communities in Kachin, Shan, Kayah, and Kayin States, with little or no compensation.[670]

In 2013, the Forest Peoples Programme reported that land expropriation without prior consultation or compensation resulted in forced internal displacement and led to the loss of livelihoods. Following land expropriations for large agribusiness investments, farmers belonging to ethnic minority communities were reportedly forced to work on plantations with little or no salary.[671]

Local fishing communities in Chaungtha and Ngwesaung were evicted without fair compensation and were relocated away from coastal areas due to the construction of hotels, according to a 2015 assessment by MCRB. Communities in the Inle Lake region reportedly received compensation below market value for land which had been confiscated and those who did not accept the payments were threatened and brought to court.[672] In 2014, the Dawei Development Association reported that the compensation received for the land on the Dawei Special Economic Zone was inadequate to ensure a sustainable livelihood in the future and the process lacked transparency.[673]

Instances of speculators moving in to acquire land cheaply from land users in areas where it was thought that investment projects would be implemented were also reported by MCRB in 2014.[674] A 2014 MCRB survey of 60 local companies reported that only one company made its compensation arrangements publicly available on its website.[675]

In the oil and gas sector, some local communities were required to undertake burdensome steps to claim their compensation, according to MCRB in 2014.[676] Instead of being paid directly, local communities had to travel to the regional administrative centre, and reportedly had to pay bribes to recover some proportion of their compensation payment. Although men and women are equally entitled to receive compensation under the law, in the oil and gas sector, compensation was reportedly generally paid to the man, as households were registered in the husband's name.[677]

Since the ceasefires in Kayin State between the government and ethnic minority armed groups, land confiscations by companies increased, according to a 2013 report by TNI.[678] Land formerly occupied by populations displaced by armed conflict was classified as 'vacant'.[679] Local armed leaders would

sometimes grant logging and mining concessions and plantation agriculture without the knowledge of their headquarters, according to a 2013 report by Karen Human Rights Group.[680]

Large swathes of the borderlands were reportedly polluted by landmines and other explosive remnants of war, restricting their use by communities and other potential land users.[681]

Free, Prior & Informed Consent

Companies may fail to obtain the free, prior and informed consent of indigenous communities when accessing or impacting on their lands and natural resources. Particular attention should be paid to the lack of legal and administrative protection.

The term 'indigenous people' has not been widely used in Myanmar,[682] and the law does not recognise indigenous people or their right to free, prior and informed consent (FPIC).[683] Myanmar has not ratified ILO Convention 169, which recognises the rights of indigenous peoples.

However in 2007 Myanmar voted in favour of the UN Declaration on the Rights of Indigenous Peoples.[684] Moreover, the government recognised the relevance of FPIC in the context of the Reducing Emissions from Deforestation and Forest Degradation (REDD+) programme, especially with regard to extractive operations.[685]

In 2014, MCRB reported that in the oil and gas sector, there has been virtually no meaningful consultation with local communities around land use, relocation or FPIC. This was reportedly partly due the absence of legal requirements to conduct environmental impact assessments prior to the adoption of the 2012 Environmental Conservation Law.[686]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

According to the 2012 Farmland Law, disputes regarding allocation or use of farmland should be addressed by government farm management bodies and not by the judiciary.[687] However, in 2013 USAID reported that farmers were not represented at the Central Farmland Management Body, which is not only responsible for addressing certain land disputes, but also approves, issues and revokes land use rights.[688]

Similarly, the 2012 Vacant, Fallow and Virgin Land Management Law provides neither procedures for objections to land acquisition or compensation, nor judicial review of the decisions of the Central Committee for the Management of Vacant, Fallow and Virgin Lands.[689]

The Foreign Investment Rules provide certain protections against abuses regarding leases by foreign investors under the Myanmar Investment Commission 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 does not carry out any provision in the agreement. MIC can thereafter investigate disputes and terminate the lease, if an investor is found to have violated the contract or national law.[690]

Corruption cases involving land issues can be brought to the attention of the Anti-Corruption Commission.[691] Following an investigation, the Commission will decide whether to refer a case to the

competent Region or State high court. Should the accused hold a political post, the investigatory team must obtain approval from the government to undertake legal proceedings.[692] From March to August 2014, the Commission received 533 complaints,[693] of which 170 concerned land issues.[694]

The Myanmar National Human Rights Commission (MNHRC) receives complaints from the public, including those related to land issues. In 2011, the Asian Legal Resource Centre reported that the majority of about 1,700 complaints received by MNHRC during its first six months of existence concerned land expropriations.[695] However, the Commission reportedly failed to conduct independent and effective investigations into the cases received.[696]

In 2012, the Parliamentary Land Acquisition Investigation Commission was established and by the end of the year had received 4,000 land expropriation cases, and investigated 300.[697] In 2013, the International Labour Organization complaints mechanism reported an increased number of forced labour complaints related to land expropriation, where people who traditionally occupied land were forced to work on it after it was expropriated and converted.[698]

International Grievance Mechanisms

Abuses linked to investments funded by the Asian Development Bank (ADB) can be referred to the ADB Accountability Mechanism, which has the power to mediate and investigate cases.[699]

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including abuses related to land rights (Chapter IV), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[700]

On this basis, a case was filed in 2008 to the NCP of South Korea regarding an alleged breach of the OECD Guidelines by South Korean companies Daewoo International and Korea Gas Corporation, the operators of the Shwe Gas project in Rakhine State. The project allegedly failed to conduct an EIA and consult local communities.[701] The complaint was rejected by the South Korean NCP, and several organisations voiced concerns over conflict of interest due to the NCP being housed in the Ministry of Knowledge Economy.[702]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[703]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *February 2015, Amnesty International:* Although land confiscation related to the Monywa copper mine project started in the late 1990s, further forced evictions were conducted from 2011 to 2014 in relation to the constructions of the Letpadaung copper mine in Sagaing Region. The Letpadaung Investigation Commission acknowledged a lack of transparency in dealing with land expropriation and that compensation paid to people was below land market prices, making it difficult for them to buy other farmland in the area. The resettlement provided was also reported to be inadequate in terms of the quality of housing and for the impossibility of keeping cattle.[704]

- *February 2015, MCRB:* Protesters demonstrating against an alleged land confiscation near Inle Lake for the construction of a hotel were brought in front of a court for obstruction and disrespectful behaviour toward the police.[705]
- *January 2015, Eleven:* 19 farmers were convicted by a court from four to seven years in prison for protesting against the seizure of their lands by the government in favour of a state-run newspaper in Webyan village, Zeyathiri Township, Naypyidaw Union Territory. Some farmers allegedly received compensations below market value and others received no compensation for the confiscated land.[706]

- *November 2014, Eleven:* In August 2014, ten farmers were arrested for trying to stop the construction of the Mandalay Myotha Industrial Zone Park, which allegedly destroyed crops on land confiscated to farmers without adequate compensation. In November 2014, around one thousand farmers from 14 villages staged a protest against the Mandalay Myotha Industrial Development Company demanding the release of the arrested farmers and fair compensation for their farmlands.[707]

- *July 2014, Irrawaddy:* The Thilawa Special Economic Zone project, supported by the Japanese International Cooperation Agency (JICA), allegedly involved the displacement of local communities near Yangon. Thilawa residents filed a complaint to JICA over the compensation and relocation of 81 households.[708]
- *June 2014, Democratic Voice of Burma:* In Dawei, Tanintharyi Region, 300 acres were allegedly expropriated from farmers by the government in 1990. However, farmers found out about the expropriation only in 2012, when they decided to register the land. Twenty farmers were arrested for protesting the confiscation.[709]
- *May 2014, Democratic Voice of Burma:* Ten miners in Mandalay Region were sentenced to one and half years in prison for protesting against the contract awarded by the government to the Myanmar National Prosperity company for the Moehti Moemi mines, which were worked independently by small-scale miners. The private company, awarded the 6,015 acre site, allegedly failed to honour an agreement to work with small-scale miners, severely impacting their income.[710]
- *February 2014, Irrawaddy:* Twelve farmers were sentenced from six months to three years in prison by a court in Bago Region for having trespassed the land they used to cultivate with rice, which had been assigned by the Forestry Department to the National Resources Development Company for teak cultivation. Farmers allegedly received no compensation for the confiscated land.[711]
- *September 2013, Bangkok Post:* The company Italian-Thai Development allegedly failed to compensate villagers affected by the construction of new roads for the Dawei deep-sea port and industrial project. The villagers claim that the company's operations negatively affected their livelihoods, as betel nut, rubber, and cashew nut plantations were destroyed.[712] 20,000 people are reportedly at risk of displacement by the construction of the Dawei SEZ, according to the International Federation for Human Rights.[713]

- *June 2013, Kachin Development Networking Group:* Some local communities in Kachin State were relocated to inadequate housing with insufficient drinking water and received little compensation for the land confiscated due to the Myitsone dam project and the Yuzana cassava plantation project. As a consequence, severe adverse impact on their health and livelihood was reported.[714]

- *March, 2013, Irrawaddy:* About 250 farmers from Pathein Township, Ayeyarwady Region, petitioned President Thein Sein against the confiscation of their farmland to build a luxury hotel. Although the land was seized in 2000, farmers allegedly did not receive adequate compensation, resulting in an adverse impact over their economic means, which lead to their children having to drop-out of school beforehand.[715]

- *September 2012, Land Core Group*: The land traditionally cultivated (e.g *taungya*) by small-holder farmers belonging to the Shan ethnic group in Par Pauk Village, Naung Cho Township, was considered "wasteland" in June 2012. Consequently, the government gave the land to two companies, Aye Nyein Khaing and Min Oo, without providing farmers with any compensation. Framers did not hold land use certificates. The 82 affected households were confiscated a total of about 613 acres of land, without notification and despite having paid taxes to the Settlement and Land Record Department for their lands. Confrontations between farmers and the two companies lead to the imprisonment for six moths of a frmer accused of "posing threat to government staff".[716]
- *2012, MCRB:* In the context of the Southeast Asia games, land was allegedly confiscated from villagers in Ngwesaung, Ayeyawady Region, and no compensation was paid by the company.[717]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

Amnesty International (2015) [718]: The organisation recommend the following to companies involved in the Monywa copper mine project, made up of the Sabetaung and Kyisintaung (S&K) and the Letpadaung copper mines:

- Wanbao Mining and Union of Myanmar Economic Holdings (UMEHL) should make a public commitment to suspend plans for extending the project area and construction for the Letpadaung mine until human rights and environ- mental concerns are resolved in genuine consultation with affected communities.
- Myanmar Wanbao and UMEHL should ensure that conditions in the resettlement villages where people have already been relocated comply with international standards on adequacy of housing and that people who have been evicted from their homes and farmlands receive adequate repa- ration, including full compensation for all losses, and restitution of land wherever possible.
- Turquoise Hill Resources (Ivanhoe Mines) is responsible for compensating people for forced evictions linked to its joint venture and should put aside funds for such compensation and engage with the government of Myanmar to ensure that compensation is paid.

***Myanmar Centre for Responsible Business (2015*)**: [719] The organisation recommends the following to companies in the tourism sector:

- Practice enhanced human rights due diligence:
    - Investigate land use, and current and previous ownership and usage, including customary usage prior to land acquisition, through engagement with a variety of stakeholders including civil society organizations.

- Consider the impact of acquisition of land on the landless, since they may rely for their livelihoods on farming the land of others.
- Carry out detailed due diligence where land has previously been acquired by the military or companies with close ties to the former military regime (who may be the local partner for a foreign company). Due diligence should 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.
- Where deficiencies are identified in dealing with current and legacy claims, engage directly, as far as possible, with communities to understand the land ownership and use situation and to resolve claims and concerns, rather than relying on land committees and Government authorities.
- Ensure that adequate compensation for physical and economic displacement and loss of livelihoods is paid. In cases where land is taken from land owners and users relying on land for their livelihoods, such land should ideally be replaced by alternative land, allowing them to maintain the same or achieve a better livelihood. Where resettlement is taking place, tourism business involved should encourage the Government to apply IFC Performance Standard 5 and be guided by it themselves.
- US companies or persons with aggregate new investment in Myanmar over USD 500,000 should be transparent about how land is acquired and used and the compensation rates paid, in line with the US State Department Reporting Requirements. Non US companies could use the reporting requirements as a benchmark for good practice.

***Dawei Development Association (2014)*:** The organisation made the following recommendations to the Italian-Thai Development (ITD) company concerning the Dawei Special Economic Zone (DSEZ) project:[720]

- Ensure compliance with the principles of free, prior and informed consent, and engage affected communities in full, frank and meaningful consultation and participation, as well as provide all relevant information to affected communities in advance of any decisions taken within this process;
- Ensure conduct of full and transparent environmental, health and human rights impact assessments prior to the commencement of any further operations related to the DSEZ. Ensure that impact assessment recommendations are carried out in ways to avoid, minimize or mitigate potential impacts;
- Act responsibly and do not cause harm to the local people;
- Abide by the UN Guiding Principles on Business and Human Rights in all DSEZ project operations and policies;
- Abide by ITD own commitments to international standards on involuntary resettlement as well as all human rights obligations related to forced evictions and rights to adequate food and housing;
- In cases where resettlement may be justified, ensure just and fair compensation to all individuals and communities evicted. Ensure proper process of relocation and adequate preparations for an alternative site with equivalent land, services and access to livelihoods;

- ITD should reveal its records on compensation payments to indicate who has received how much for what;
- New investors should refuse to engage with the Dawei SEZ project as long as the human rights of affected communities' are not being protected or respected.

***Myanmar Centre for Responsible Business (2014*):**[721] The organisation recommends the following to oil and gas companies:

- Adopt a policy commitment to responsible business conduct and respect for human rights, communicate and implement this. Consider whether the commitment should reflect more specific guidance for staff and business partners on key risks in operating in Myanmar, including land acquisition and use, compensation and resettlement.
- Take account of local complexities and legacies when assessing the impacts operations may have, and integrate and act on these findings. 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.
- Integrate consideration of conflict issues - latent, existing and potential - into all phases of operations. 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.

Oxfam and Grow (2013)*[722]*: The organisations make the following recommendations to companies:

- For any investments involving land acquisition, conduct consultation processes that are understood by all as engaging with and seeking the support of those who could be affected by decisions, prior to decisions being taken, and responding to their contributions (in line with the UN Voluntary Guidelines on the Responsible Governance of Tenure);
- Recognise that any proposed operation/investment that affects the tenure of indigenous peoples must, in addition to the full range of other safeguard measures, respect their right to give or withhold their free, prior and informed consent;
- Fulfil their responsibility to respect human rights, as set out under the UN Guiding Principles on Business and Human Rights.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Precautionary Approach

Does the company support a precautionary approach to environmental issues?

- The company provides information to stakeholders about uncertainties and potential risks to workers, consumers, the public and the environment of the company's products and processes.
- The company identifies any soil and water contamination at its site or sites, assesses the environmental impacts and remedies any significant contamination.

- The company tries to avoid environmental damage by regular maintenance of production processes and environmental protection systems (air pollution control, waste water treatment systems etc.).
- The company conducts systematic risk assessments of materials used, products and processes to apply the precautionary approach.
- The company ensures transparency and engages in regular stakeholder dialogue with neighbours, civil society organisations and others with an interest in the company on critical environmental issues.
- If relevant, the company supports scientific research on environmental issues relating to the company's products and processes.

Emergency Response

Does the company have emergency procedures in place to prevent and address accidents affecting the environment and human health?

- The company has identified the hazardous operations and the potential consequences on human health and the environment if an accident occurs.
- The company has detailed procedures, plans, equipment and training programmes to prevent accidents and emergencies.
- The company has detailed procedures, plans and equipment to effectively respond to accidents and emergencies if they occur.
- The company trains workers to respond to accidents and emergencies, including carrying out emergency drills at least once a year involving all workers.
- Where there is significant risk of impacts on local communities, the company has a procedure that enables it to immediately notify affected local communities about industrial emergencies, and informs about emergency response, evacuation plans and medical response.

Energy Consumption and Climate Change

Does the company take measures to reduce energy consumption and emissions of greenhouse gasses?

- The company complies with regulation regarding use of energy resources and emissions of greenhouse gases.
- The company has a climate strategy that identifies opportunities to reduce the company's energy consumption and/or emissions of greenhouse gases.
- The company has initiated practical activities to reduce energy consumption and/or greenhouse gas emissions.
- The company provides information and trains employees to implement energy reduction measures.
- The company monitors its energy consumption and/or emissions of greenhouse gases.
- The company has defined a baseline for its greenhouse gas emissions, which includes a definition of the business operations and activities, and the greenhouse gases that are accounted for e.g. as described in the Greenhouse Gas Protocol.

- The company has targets for reducing its energy consumption and/or emissions of greenhouse gases.
- The company engages with the government and civil society organisations to develop policies and measures that provide a framework for the business sector to contribute to building a low carbon economy.

Water and Waste Water

Does the company take measures to reduce water consumption and treat waste water?

- The company has the necessary permits to extract water or obtain water from the public water supply and for any waste water discharges.
- The company treats waste water before discharge to reduce adverse environmental impacts. If waste water treatment takes place outside the company's premises, the company is aware of the effectiveness of the treatment.
- The company monitors waste water discharges, including types, limit values and quantities of pollutants in the waste water.
- The company has targets for reducing water consumption and/or increasing the amount of water reused or recycled in different business operations and activities.
- The company provides information and trains workers to implement measures to reduce water consumption and reduce the need for waste water treatment.
- The company's use of water and its waste water discharges do not negatively affect the sustainability of water resources, the natural environment or the availability of water for drinking and sanitation purposes.

The company engages with national, regional and local public authorities, and civil society organisations to address water sustainability issues related to affected water resources.

Waste Management

Does the company take measures to prevent and reduce the production of waste and ensure responsible waste management?

- The company has the necessary permits for the handling, storage, recycling and disposal of waste, and, if relevant, complies with requirements for transporting hazardous waste across borders.
- The company has a strategy to manage waste responsibly and continuously attempts to prevent and reduce the production of waste.
- The company ensures that waste relevant for recycling is sorted and handed over to a recycling company.
- The company monitors the types and quantities of waste produced, including where and how waste is recycled, treated or disposed of.
- The company has targets for reducing waste production and/or increasing waste reused/recycled and measures its progress against these targets.
- The company provides information and trains workers on the safe handling, storage, transport and disposal of hazardous and special waste types.

- The company marks areas used for storage of waste, and properly labels all containers for storing waste, including a relevant symbol of danger for hazardous waste.
- The company requests recycling/treatment/disposal receipts from transport contractors.
- The company uses licensed contractors for the transport, recycling, treatment and disposal of hazardous waste.

Air Emissions

Does the company prevent, reduce and treat air emissions?

- The company has the necessary permits for emissions to air, and complies with legal requirements (e.g. air pollution standards and limit values).
- The company provides information and trains workers on how to manage air emissions.
- The company monitors the types and quantities of relevant emissions to air.
- The company treats relevant pollutants before they are emitted to the atmosphere (e.g. by using filters).
- The company continuously attempts to prevent and reduce air emissions.

Noise, Odour, Light and Vibrations

Does the company prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations?

- The company has the necessary permits for levels of noise, odour, light and vibrations, and complies with legal requirements (e.g. standards or procedures).
- The company provides information and trains workers to manage noise, odour, light and vibrations.
- The company monitors levels of noise, odour, light and vibrations on the surrounding environment.
- The company treats/minimises impacts to ensure that there are no significant levels of noise, odour, light and vibrations.
- The company continuously attempts to prevent and minimise the levels of noise, odour and light (e.g. enclosed production, shielding, etc.).

Chemicals and Other Dangerous Substances

Does the company minimise the use and ensure safe handling and storage of chemicals and other dangerous substances?

- The company has the necessary permits and complies with legal requirements for the handling, use and storage of chemicals and other dangerous substances.
- The company does not manufacture, trade and/or use chemicals and other dangerous substances subject to national or international bans or phase-outs.
- The company provides information and trains workers on the safe handling and use of chemicals and other dangerous substances.

- The company monitors the quantities of all chemicals and other dangerous substances used in production and maintenance.
- The company marks areas used for storage of chemical substances and products.
- The company properly labels all chemical substances and products including name of the chemical and a relevant symbol of danger.
- The company considers substitution important and continuously tries to use less harmful chemicals and substances.

Biodiversity

Does the company prevent, minimise and remedy significant impacts on biodiversity?

- The company has the necessary permits to operate in or alter the natural environment, and complies with legal requirements.
- The company is committed to operating within the framework of international conventions addressing biodiversity (e.g. the Convention on Biological Diversity, Cartagena Protocol on Bio-safety and the CITES Convention).
- The company has assessed important positive and negative impacts of its operations and activities on the natural environment and biodiversity (e.g. IUCN's Red List of Threatened Species and no alien invasive species).
- The company has previously and/or is currently taking measures to prevent and reduce the impacts of its operations and activities on biodiversity.
- The company clearly labels products containing GMOs and indicates if GMOs have been used in the production process.
- The company ensures that it has not had any unintended releases of GMOs.
- The company documents that workers have been adequately trained to handle GMOs.

Natural Resources

Does the company ensure that natural resources are used in a sustainable manner?

- The company has the necessary permits and complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc).
- The company complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc.).
- The company ensures that workers are trained in the sustainable cultivation, harvesting, extraction and/or use of natural resources.
- The company continuously attempts to prevent, minimise and remedy significant impacts on natural resources through environmentally friendly methods and alternative resource use.
- The company ensures that its use of renewable resources does not negatively affect the sustainability of the resource (i.e. the resource's ability to regenerate).
- The company demonstrates efforts to substitute non-renewable resources used in production with renewable resources.

- The company works with local and national public authorities as well as with international institutions to address sustainability issues related to natural resources (e.g. wood, water, fish, metals, oil etc.).

Environmentally Friendly Technologies

Does the company encourage the development and use of environmentally friendly technologies?

- The company uses environmentally friendly technology.
- The company regularly evaluates its processes and technologies to see if there are more environmentally friendly alternatives.
- When developing new technologies and products, the company focuses on developing environmentally friendly technology e.g. by using life cycle assessments (LCA), design for sustainability or a cradle-to-cradle approach.
- When planning new investments in technology, the company considers the best available technology and stipulates minimum environmental criteria.
- When investing in new buildings, the company implements environmentally responsible and resource-efficient materials and/or technologies.
- The company makes information describing the environmental performance and benefits of using environmentally friendly technologies available to stakeholders.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **CEO Water Mandate (2011):** Launched as a collaborative initiative of the UN, UN Global Compact, the Government of Sweden and a dedicated group of companies, the CEO Water Mandate is a public-private initiative designed to assist companies with the development, implementation and disclosure of policies and practices relating to water sustainability. It covers six core elements: direct operations, supply chain and watershed management, collective action, public policy, community engagement and transparency.
- **IFC Performance Standards on Environmental and Social Sustainability (2012):** The IFC Performance Standards provide directions to businesses on due diligence on environmental and social matters. Several of the standards are pertinent to environment, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Resource Efficiency and Pollution Prevention (PS3), Community Health, Safety, and Security (PS4), and Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).
- **Institute for Human Rights and Business, Business, Human Rights & the Right to Water—Challenges, Dilemmas and Opportunities:** This report summarises the views of various stakeholders on issues pertaining to the right to water, including consideration of the scope of a company's responsibility to respect the human right to water; the applicability of the human rights-based approach to management of water-related issues; and the business case for engaging with water-related issues.

- **ISO 14000 Standards on Environmental Management Systems**: Developed by the International Organisation for Standardisation, the ISO 14000 Standards provide businesses and organisations with a number of tools to assist in their environmental management systems. The key objective of the standards is to encourage different actors to reduce the negative impact that their activities may have on natural resources such as air, water or land.
- **United Nations Special Rapporteur on the Human Right To Safe Drinking Water and Sanitation (est. 2008):** Amongst a range of issues, the mandate of the Special Rapporteur includes consideration of the regulation of the private sector in the context of private provision of safe drinking water and sanitation.
- **Global Water Tool (2007):** Developed by the World Business Council for Sustainable Development, this tool is designed for companies and organisations to map their water use, including risks associated with water use in global supply chains.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

***Telenor Group*:** The company includes the respect of land rights in its contractual obligations with tower companies, has established a complaint system and conducts unannounced inspections visiting land owners and community members. As of August 2014, Telenor Myanmar's Business Assurance Team conducted 678 unannounced visits.[723]

MAX Myanmar Holding: From 2013, the Group adopted a more consistent approach to the compensation of farmers from whom land was acquired, including addressing grievances and legacy issues. Land acquired in Chaungtha area was compensated at 45,000 kyats per acre but where farmers opted to have land returned, this was provided together with the original land deeds. The Group has also published details of compensation paid in other locations.[724]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

***Land Administration and Management Programme (2014-2015)*:** The Settlement and Land Records Department (SLRD) of the Ministry of Agriculture and Irrigation and UN-Habitat established a programme to strengthen Myanmar's land administration and management system. The programme aims to set up a system for updating existing land records and provide training to SLRD and Farmland Administrative Body staff.[725]

Returning Land to Farmers: In May 2014, the vice president handed over temporary ownership certificates to almost 4,000 farmers who had been relocated off of their lands in Ayeyawady Region.[726]

Draft Land Use Policy: In 2014, the government opened the draft policy for public consultation. The land use policy aims at strengthening land tenure security. Multi-stakeholder consultations on land issues started in 2012 with the National Dialogue on Land Tenure and Land Use Rights.[727]

NGO Initiatives

Land Core Group: This NGO network conducts awareness-raising activities on land tenure, such as the 2012 National Land Symposium, as well as capacity building activities for farmers on land laws.[728]

***Economically Progressive Ecosystem Development (EcoDev)*:** In June 2014, the organisation trained 25 civil society representatives on Forest Law Enforcement, Governance and Trade to form a coalition of trainers on this topic in Myanmar.[729]

***Land In Our Hands*:** This network organizes knowledge sharing workshops for CSOs on land tenure issues, such as the one conducted in February 2015 in conjunction with the visit of Professor Dr Jun Borras, the leader of the International Peasant Movement.[730]

Development Priorities

Swiss Cooperation Strategy Myanmar (2013-2017): The strategy prioritises on improved land governance to ensure equitable and secure access to land for rural population, especially women, and ethnic minorities.[731] In line with the above, Switzerland funds the Mekong Regional Land Governance programme, launched in 2014, which covers also Myanmar.[732]

Revenue Transparency & Management

Human rights impacts related to transparency of government revenues received from business and the distribution of such revenues

Operating Environment	
World Economic Forum Global Competitiveness Ranking	139 (2013-2014)
Ease of Doing Business Index *(of 183, where 1 indicates greatest ease for doing business)*	182 (2013)
Transparency International: Corruption Perceptions Index *(of 177, where 1 indicates the lowest level of corruption)*	Score: 21 (2013) Ranking: 157/177
Government revenue	2014-2015 budget: 16.891 billion Kyat (US$16.154 billion)[733]
Government expenditure	2014-2015 budget: 19.443 billion Kyat (US$18.594 billion)[734]
EITI Country	Candidate
Payments by companies to government	n/a (first EITI report due in January 2016)
Relevant law	• Union Tax Law (2014) • Anticorruption Law (2014) • Special Fund Law (2011)
Responsible ministries/agencies/ committees	• Anticorruption Commission • Ministry of Energy • Ministry of Finance: Internal Revenue Department • Ministry of Home Affairs • Myanmar Oil and Gas Enterprise
Local NGOs addressing this issue	• Myanmar Alliance for Transparency and Accountability

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Corruption

Companies may pay bribes or use other coercive measures to unjustly influence government officials.

Myanmar's 2014 anti-corruption law includes a vague definition of bribery and its provisions were rarely enforced, according to a 2014 report by the law firm VDB. The Anti-Corruption Commission has search and seize powers.[735] Its 15 members are elected by the Parliament, which chooses from a list of possible members provided by the president. It began operations in March 2014.[736]

The U.S. Department of State reported in 2013 that payment of bribes was endemic and partially caused by low salaries of government officers. Corruption was reportedly most prevalent in taxation, issuance of investment permissions and licences and land administration.[737]

A 2014 survey conducted by the Myanmar Centre for Responsible Business (MCRB) on 60 private local companies reported that only 11 companies had publicly available anti-corruption policies or mechanisms.[738]

Public Procurement

Companies may engage in corruption when bidding on public tenders.

In 2013, the World Bank reported that public procurement procedures varied depending on the ministries involved, increasing the chances of corrupt practices.[739]

According to the 2014 Global Competitiveness Report, produced by the World Economic Forum, government officials awarded contracts to well-connected companies. Myanmar scored 2.2 out of 7 on the public procurement dimension, where 1 indicates that the government 'always shows favouritism' to well-connected companies and 7 indicates that it 'never shows favouritism'.[740]

Revenue Transparency

There may be lack of public access to information concerning the size of public revenues generated from taxes, royalties and other fees paid by companies. Particular attention should be paid to transparency in natural resource revenues and public budgets.

In 2013, Revenue Watch reported a lack of transparency in relation to the government authorities in charge of receiving payments from companies in the extractive sector. Myanmar released no information on licensing processes, which reportedly lacked an oversight mechanism, or contract terms for the extractive sector.

Myanmar was the worst performing country in the 2013 Resource Governance Index.[741]

In July 2014 the country was accepted as a candidate to the Extractive Industry Transparency Initiative,[742] a move that, according to the World Bank, is expected to increase transparency in resource management.[743]

In 2014, Global Witness reported a lack of transparency in the ownership of joint ventures. International and local companies were awarded 36 major oil and gas blocs in 2013, and 18 out of 46 companies (seven national and 11 international) did not declare their ownership.[744]

A 2014 survey conducted by MCRB of 60 local private companies reported that only one company made its financial report publicly available and only one company published its tax payments.[745]

Revenue Sharing

There may be lack of public access to accountability concerning the usage and distribution of public revenues generated from taxes, royalties and other fees paid by companies.

The 2011 Special Fund Law provides for the military commander-in-chief to use public money for defence and security without being subject to parliamentary scrutiny or auditing.[746]

KPMG reported in 2014 that while companies residing in Myanmar were subject to 25 percent income tax, non-resident companies were taxed at 35 percent.[747] Overall tax revenues, however, accounted for only 4 percent of the country's GDP,[748] and tax evasion was widespread among large taxpayers, according to a 2014 report by the Organisation for Economic Cooperation and Development (OECD).[749] This resulted in the government relying on natural resources income for revenues.[750]

In 2012, the Project 2049 Institute reported a history of misappropriation of extractive revenues by the military regime.[751] The constitution provided no obligation of equitable sharing of revenues obtained from natural resources among citizens.[752] In 2014, MCRB reported that the standard Production Sharing Contract in the oil and gas sector did not contain any provision for benefit-sharing with local communities.[753] Human Rights Watch reported in 2012 that revenues from the oil and gas sector were not reinvested in health and education.[754] In 2013, UNICEF reported that nine days of natural gas revenues would ensure one teacher per each primary school grade and 0.87 percent of revenues from new natural gas projects would provide for the purchase of all the vaccines needed annually in Myanmar.[755]

Resource-rich states, predominantly in ethnic minority areas, were among the poorest in the country.[756] The appropriation of resource extraction revenues, according to a 2014 report by The Asia Foundation, was a driver of much of the armed conflict in Myanmar.[757]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Corruption cases can be brought to the attention of the Anti-Corruption Commission.[758] Following investigations, the Commission can decide whether to refer a case to the competent Region or State high court. Should the accused hold a political post, the investigatory team must obtain approval from the government to undertake legal proceedings.[759] From March to August 2014, the Commission received 533 complaints.[760] According to a report in The Irrawaddy, as of September 2014 only three cases had been dealt with, and MPs had raised concerns over the Commission's perceived lack of capacity and effectiveness.[761]

In November 2012, the Special Investigation Bureau and Financial Intelligence Unit of the Ministry of Home Affairs established a mechanism to receive complaints regarding corruption.[762] In 2013, 119 complaints of official corruption were received by the Union Minister in the President's Office, which resulted in the imprisonment of one person and the punishment of 362 civil servants.[763]

International Grievance Mechanisms

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including corruption (Chapters III, IV, VII and XI), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[764]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *February 2015, MCRB:* Despite the legal prohibition on building hotels higher than 30 feet in the cultural heritage area in Bagan, permission was allegedly granted to a developer with political connections and who had reportedly engaged in corruption.[765]
- *2013, Burma Action Ireland:* The government awarded a contract to Pioneer Aerodrome Services, a subsidiary of Asia World, to modernise Yangon International Airport. Asia World's owner, Steven Law, was allegedly involved in illegal drugs trade. The Burmese Department of Civil Aviation was under no obligation to provide information on its choice.[766]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

Amnesty International (2015) [767]: The organisation recommend the following to companies involved in the Monywa copper mine project, made up of the Sabetaung and Kyisintaung (S&K) and the Letpadaung copper mines:

- Turquoise Hill Resources (Ivanhoe Mines) and Rio Tinto should disclose all transactions related to the Trust and divestment of its Myanmar Assets.
- All the companies should ensure that they have put in place processes to ensure human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights.

Global Witness (2014) [768]***:*** The organisation recommends that:

- All oil, gas and mining companies operating in Myanmar should publish details of the individuals who ultimately own and control them.

Myanmar Centre for Responsible Business (2014): [769] The organisation recommends the following to oil and gas companies:

- Support the Myanmar Extractive Industries Transparency Initiative (MEITI) process.
- 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.

Burma Environmental Working Group (2012): [770] The alliance of grassroots organisations makes the following recommendations:

- Investors should have a zero-tolerance policy on corruption and should uphold full revenue and contract transparency. It is well-documented that corruption in Burma contributes directly to poverty, underdevelopment, human rights abuses and the financing of military action against ethnic groups. Corruption is worsened by the lack of transparency of revenue and contracts from foreign investment. Investors must disclose with appropriate scope and scale high quality information regularly, transparently and thoroughly that covers all benefit streams and company activities, and that is easily accessible to stakeholders including a majority of the affected population and public. As energy and extractive resources are depleted in Burma, investors, governments and communities must manage revenue transparently to support a long-term sustainable strategy for economic and social development. Investors can actively support well-managed benefit streams on all levels by fully complying with external revenue disclosure regulations and by applying thorough supply chain management oversight and strong internal anti-corruption policies to all third party contractors.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Signalling a Non-Corrupt Environment

Does the company take a clear stand against corruption?

- The company's CEO, director or president has declared that the company will not engage in corruption at any time or in any form.
- The company has a policy rejecting corruption and requiring all directors, managers and workers worldwide to behave ethically and in conformity with the law.
- The company anti-corruption policy includes how to handle requests for facilitation payments, giving and receiving gifts, engaging in sponsorships, giving political contributions, and how to conduct responsible lobbying.
- The company has defined benchmarks and indicators regarding its anti-corruption initiatives and reports these to the public (e.g. in its annual CSR report)

Anti-Corruption Risk Assessment

Does the company assess the risk of corruption when doing business?

- The company evaluates the potential areas of corruption including factors such as type of transaction, countries of operation, industries, and customers or business partners involved.
- The company evaluates the risk of corruption when workers, agents, intermediaries or consultants deal with public officials (including workers of state owned companies).
- The company evaluates the risk of internal and external conflicts of interest in relation to business partners.
- The company has developed an action plan to address the risk of corruption, and has defined responsibilities for each task, as a minimum for high-risk areas.

- The company has identified internal functions with the highest risk of corruption within the company and seeks to address these weaknesses.

Awareness Raising

Does the company ensure that relevant workers are properly trained?

- The company informs all workers about its anti-corruption commitment.
- The company provides regular anti-corruption training for all relevant workers within the organisation e.g. procurement and sales staff.
- Information on disciplinary procedures for violations of company anti-corruption policies is available to workers.
- The company actively seeks worker feedback and dialogue on its anti-corruption initiatives.
- The company has and promotes a function by which workers can safely report suspicion of corruption related cases (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.

Anti-Corruption Procedures

Do the company's internal procedures support its anti-corruption commitment?

- The company has assigned different individuals or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.
- The company mentions 'anti-corruption' and/or 'ethical behaviour' in its contracts with business partners.
- The company prohibits informal employment and any 'off the books' record-keeping
- The company performs internal audits and has checks in place in connection with all anti-corruption commitments.
- The company's procurement, financial and internal audit personnel have clear instructions to look for and to identify alarms, report them to management, and follow-up counter measures.
- The company requests external auditors to maintain a critical eye and follow all alarms and irregularities.
- Any alarm or irregularity reported by external auditors is systematically addressed by management.
- The company monitors compliance and continuously identifies strengths and weaknesses in the anti-corruption initiatives to remain effective and up-to-date in addressing changing risks.

Agents and Other Associates

Does the company's anti-corruption initiative cover agents, intermediaries and consultants?

- The company conducts an inquiry and/or attentiveness (e.g. financial, legal, labour, tax, IT, environment, market/commercial) on all agents, intermediaries and consultants.
- All agreements with agents, intermediaries and consultants are fully documented in written, signed contracts.

- The selection and terms of reference of agents, intermediaries or consultants are approved at the senior management level or at a level above that of the management involved in the operations for which the intermediary is hired.
- Contracts with agents, intermediaries and consultants include a section on anti-corruption and that the contract-holder must comply with all applicable laws and regulations.
- Agents, intermediaries and consultants are provided with information on the company's anti-corruption commitment, anti-corruption policies, training material on anti-corrupt behaviour and information on disciplinary procedures for violations of company anti-corruption policies.
- The company ensures that payment to agents, intermediaries and consultants are in line with standard payments for other service providers of similar ranking.
- The company only makes payments by bank transfer or check – never in cash – in the country of the agent, intermediary and consultant and never to a third party without prior examination.

Communicate

Does the company communicate progress on the Global Compact principles with stakeholders?

- The company identifies stakeholders who affect or can be affected by the company's activities, products and services e.g. a person, group, organisation, authority.
- The company communicates progress openly about how issues covered by the Global Compact principles are managed, including performance results as well as forward-looking information on strategy and management approach, challenges, and dilemmas.
- The company regularly engages in dialogue with stakeholders to keep up-to-date with stakeholder expectations.
- The company communicates openly about how issues covered by the Global Compact principles are managed including challenges, dilemmas, success and failures.
- The company's communication on progress and other performance reporting on issues covered by the Global Compact principles is publically available and communicated to external stakeholders e.g. via the company's and Global Compact website.

Joint Actions

Does the company take joint actions with others to engage in and promote anti-corruption initiatives?

- The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks etc.
- The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.
- The company stimulates multi-stakeholder dialogue on challenges of corruption.
- The company encourages the local business community and business partners to initiate cooperation to fight corruption.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **Transparency International Business Principles for Countering Bribery** provide a checklist for companies to identify and reduce bribes and facilitation payments in their operations.
- **The OECD Guidelines for Multinational Enterprises**, applicable to enterprises in OECD Member States (and some others), require companies to respect human rights, including through due diligence. The OECD Guidelines constitute recommendations by OECD member states to multinational enterprises operating in or from adhering countries. The OECD Guidelines include competition, fiscal systems and anti-corruption.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

The Coca-Cola Company: The Company trains employees in Myanmar on its Code of Business Conduct and Anti-Bribery Policy. The company monitors all petty cash transactions in Myanmar and carries out screening of potential third party business partners to ensure full compliance with the Anti-Bribery Policy.[771]

Telenor Group: The company adopted a guide to help prevent corruption in its supply chain, focusing on the existence of preventive measures to minimise corruption risks. The company also provides suppliers with training on the guide.[772]

***Parami Energy*:** In April 2014, the company issued its anti-corruption policy, which applies to employees and subsidiaries, and prohibits receiving gifts with a value above 50,000 kyat (US$40).[773]

***City Mart*:** The company developed a Code of Conduct with commitments on anti-corruption. The Code also contains a clause for suppliers, which states that in case of non-compliance, the company would take action against the supplier, which in some cases can include the cessation of any business activities.[774]

MAX Myanmar Holding: In 2014, the Group issued its anti-corruption policy, which is included in the orientation training to new employees and in regular follow-up training sessions to high-risk groups every six months. The anti-corruption policy applies to sub-contractors and suppliers.[775]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Top Taxpayers List: The Internal Revenue Department of the Ministry of Finance issued the list of the country's top taxpayers since 2011. Myanmar Brewery, Rothmans of Pall Mall Myanmar and Dagon Beverages were the top three commercial taxpayers in 2012-2013.[776]

***Open Government Partnership*:** In 2013, the government formed two Committees to help Myanmar meet the criteria for membership of the Open Government Partnership, which the government committed to join by 2016.[777]

NGO Initiatives

***Spectrum*:** In 2013, the NGO organised, together with Global Organization of Parliamentarians Against Corruption (GOPAC), a two-day workshop on anti-corruption for MPs. In 2014, the NGO translated into Myanmar language GOPAC's guide for good parliamentarian's governance and against corruption.[778]

Security & Conflict

Human rights impacts related to company interaction with public and private security providers and related to the impact of business on societal conflict.

Operating Environment	
Failed States Index	26 (2013)
Freedom House: Map of Freedom - Political Rights *(On a scale of 1 through 7, where 1 indicates the highest level of freedom)*	6
Freedom House: Map of Freedom - Civil Liberties *(On a scale of 1 through 7, where 1 indicates the highest level of freedom)*	6
Relevant law	• Constitution (2008) • Penal Code
Responsible ministries/agencies/ committees	• Ministry of Defence • Ministry of Home Affairs • Union Peace-making Central Committee • Myanmar Peace Centre
Local NGOs addressing this issue	• Assistance Association for Political Prisoners • Karen Human Rights Group • Chin Human Rights Organization • Kachin Peace Network • Myanmar Alliance for Transparency and Accountability (MATA) • KESAN • Tharckabaw • Myanmar-China Pipeline Watch Committee • SHWE GAS movement • Ar Yone Oo • POINT • Shalom • Metta

Country Context

Key human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Public Security Forces

Public security forces may infringe on the human rights of workers or local populations when protecting company sites and installations. Particular attention should be paid to excessive use of force and violent dispersal of protests.

The 2008 Constitution does not recognise the right to security of person and the right of arrested persons to be informed promptly of the nature and cause of the charge against them.[779] Although the prohibition of 'hurt and grievous hurt' during interrogations is provided by the penal code, the Assistance Association for Political Prisoners noted in 2011 that the lack of a clear definition of torture as a grave crime resulted impunity in instances of torture.[780]

The police force is administered by the Ministry of Home Affairs.[781] In 2014, the Special Rapporteur on the Situation of Human Rights in Myanmar stated that the police used excessive force against demonstrators protesting forced evictions, land expropriations and the environmental impacts of large-scale development projects.[782]

Local community activists were reportedly harassed and arrested by the police using various laws, including the Penal Code and the Peaceful Assembly and Peaceful Procession Act.[783] In 2013, various sources reported arrests and detention of people protesting against the Shwe Gas pipeline in Rakhine State. In 2012 police violence was reported against peaceful protests against the Letpadaung Copper Mine in Sagaing Region, including the use of white phosphorous, causing severe burns.[784]

Since 2011, hundreds of political prisoners have been released as part of the reform process.[785] In 2013, 380 political prisoners were freed under conditional releases[786], but in 2014 new arrests were made, leaving 81 political prisons in December 2014, according to the Assistance Association for Political Prisoners. Among those still detained, the large majority were reportedly land activists, especially farmers fighting against land confiscation.[787]

Over 50 years of military rule were characterised by human rights violations, including forced displacement, extrajudicial killings, arrest and imprisonment of political prisoners, torture, deaths in custody, forced labour and recruitment of child soldiers.[788] In 2013, the Special Rapporteur reported arbitrary arrests; and torture and conditions amounting to cruel, inhuman or degrading treatment, including poor hygiene, and a lack of nutrition and medication in detention facilities.[789] The same year, Amnesty International reported that some prisoners were held incommunicado.[790]

As per the Production Sharing Contract, security of oil and gas operations was to be provided by the Myanmar army, known as the *tatmadaw*. According to a 2014 report by Myanmar Centre for Responsible Business (MCRB), this represented a risk for companies being directly linked to *tatmadaw* actions.[791]

Though few complaints against the military or the Myanmar Oil and Gas Enterprise (MOGE) security forces were noted in the 2014 Sector Wide Impact Assessment, this must be considered in light of the continued reticence of communities to report violations, according to the joint report.[792]

Private Security Forces

Private security forces may infringe on the human rights of workers or local populations when protecting company sites and installations.

Private security forces were reportedly unarmed in Myanmar, as firearms licences were generally not issues to private security forces by the government. Consequently, private security forces were only using batons. Private security companies were to be wholly owned by Myanmar nationals, although could be managed by foreigners through joint venture agreements. In 2015, businesses reportedly resorted to the military for securing their operations only for large-scale development projects with State investments, such as the Shwe Gas pipeline.[793]

Social Conflict

Companies may contribute to social conflict with or within communities where they operate, particularly in conflict-affected areas. Particular attention should be paid to ethnic and religious minorities.

Since the beginning of the reform period in 2011, Myanmar has increasingly attracted foreign investment, especially in the extractive sector.[794] Many large-scale investments have led to disputes between rural communities and private companies as communities claimed their rights after land expropriations.[795]

The Kyaukpyu, Dawei and Thilawa Special Economic Zones, the Shwe Gas project, the Myitsone Dam, the Monywa copper mine, including the Letpadaung mine, and Salween River hydropower projects including Hatgyi Dam have all been associated with tensions between local communities and investors over land confiscations.[796]

Armed Conflict

Companies may exacerbate community tensions and violent conflict in areas affected by armed conflict. Particular attention should be paid to ethnic and religious minorities.

Myanmar ranks 26th out of 178 countries in the 2013 Failed States Index, with one being the least stable state.[797] In 2013, Global Policy Forum reported that Myanmar's resources were concentrated in ethnic minority areas, some of them affected by armed conflict.[798] Land and resource management were common causes of conflict,[799] as ethnic armed groups perceived that communities did not benefit from large-scale development projects.[800] Some armed groups administered and controlled areas with natural resources in Kayin and Kachin States.[801]

Internal armed conflict broke out shortly after independence in 1949 and, although the 2011 government managed to negotiate ceasefire agreements with 14 ethnic minority armed groups, fighting in Kachin and northern Shan States have intensified since June 2013.[802] The military and, to a lesser extent, ethnic armed groups reportedly used civilians for forced labour and committed various human rights violations, including forced displacement, torture and killings.[803] In 2012, 400,000 people remained displaced due to conflict, according to Amnesty International.[804] In 2013, the Swedish Burma Committee highlighted the lack of women's involvement in the peace-building process.[805]

In 2013, the Transnational Institute reported a lack of transparency in business deals negotiated during the ceasefire negotiation process. Since the ceasefires in Kayin State, land confiscations by companies have reportedly increased, as land from which residents still displaced by fighting was classified as 'vacant'.[806]

In 2011, a 17-year-old ceasefire with the Kachin Independence Army (KIA) broke down when the military attacked the KIA near a disputed hydropower dam site.[807] Following public protests in September 2011, President Thein Sein suspended the Myitsone Hydropower Dam, a joint venture between the government and state-owned China Power Investment.[808]

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

National Grievance Mechanisms

Disputes regarding security issues can be addressed by township or district courts. Decisions can be appealed region or state courts and ultimately to the Supreme Court.[809]

Victims of human rights abuses can address the Myanmar National Human Rights Commission, which has investigatory powers.[810] Although the Myanmar National Human Rights Commission was set up in 2011, its governing law was only adopted in March 2014.[811] The Commission reportedly lacks independence and has been criticised by civil society for its inefficiency in dealing with cases.[812]

International Grievance Mechanisms

Although Myanmar is not an OECD member and currently has no OECD National Contact Point (NCP), complaints about breaches of the OECD Guidelines for Multinational Enterprises, including abuses related to security (Chapter IV), by companies registered in OECD countries can be filed to the NCP of that country. The NCP mediates among parties to find a conciliatory solution to the dispute. Should mediation fail, the NCP can make an assessment of the alleged violations in its final statement.[813]

On this basis, a case was filed in 2008 to the NCP of South Korea regarding an alleged breach of the OECD Guidelines by South Korean companies Daewoo International and Korea Gas Corporation, the operators of the Shwe Gas project in Rakhine State. The project allegedly failed to conduct an EIA and consult local communities.[814] The complaint was rejected by the South Korean NCP, and several organisations voiced concerns over conflict of interest due to the NCP being housed in the Ministry of Knowledge Economy.[815]

Adverse impacts related to projects of the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). The CAO has indeed both a dispute resolution function and an investigatory one.[816]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *February 2015, MCRB:* Protesters demonstrating against alleged land confiscation in Inle Lake Region were tried for obstruction and disrespectful behaviour towards the police.[817]
- *December 2014, Mizzima:* During clashes between the police and local farmers in the area of the Letpadaung copper mining project in Sagaing Region, one farmer was shot and killed by the police and several other people were injured. A case of manslaughter was filed at the Salingyi police station. The protest was staged after Wanbao fenced in land disputed between the company and local farmers. The Myanmar National Human Rights Commission investigated the incident and recommended the case filed to be pursued in accordance to the law, action against responsible police personnel to be taken, and to review the implementation of the mine' security activities.[818]
- *October 2014, Amnesty International:* Five media workers were sentenced to two years in prison for a July article claiming that Aung San Suu Kyi and ethnic leaders had been elected in an interim government.[819]
- *September 2014, Irrawaddy:* A court in Ann Township, Rakhine State, sentenced 17 Chin workers of the China National Petroleum Corporation (CNPC) to between six and ten years in prison for destroying the company's property and attacking Chinese workers. The dispute surged when Chin workers were allegedly poured a liquid, possibly urine, by their Chinese colleagues living on the upper part of the living quarters. In the riot that followed, a CNPC building and an oil container on the site were set on fire.[820]
- *August 2014, Asian Human Rights Commission:* Police allegedly used force against farmers protesting land confiscations in Nyaung Wine Village, Mandalay Region, which resulted in a local woman passing by the demonstration being killed.[821]
- *May 2014, The Economist:* Three workers at a contractor of the Chinese company Wanbao were abducted near Letpadaung copper mine in Sagaing Region by opponents to the project. Local communities opposed the project based on its environmental impact and lack of fair compensation for confiscated land.[822] The two workers were held for 30 hours and released unharmed.[823]
- *May 2014, Asian Human Rights Commission*: The police allegedly assaulted farmers protesting a 1997 land seizure by the army in Thegon Township, Bago Region. Four farmers were arrested for protesting without authorisation and an additional five farmers were arrested for allegedly 'upsetting the public tranquillity' following another protest in April.[824]
- *February 2014, Mon News:* A soldier in Thanbyuzayat Township, Mon State, allegedly assaulted and tried to rape a local woman, while she was working in a rubber plantation.[825]
- *January 2013, Global Policy Forum:* Civil society organisations argued that the World Bank rushed a loan of US$440 million to the government to implement community driven development

projects, including in conflict areas. Little consultation and information was made available to the public, especially in ethnic minority areas.[826]

- *November 2012, Amnesty International:* The police used force, including white phosphorus, against local communities opposing the Letpadaung copper mine in Sagaing Region, resulting in more than 100 people injured with lifelong disabilities.[827]
- *February 2012, Forest Peoples Programme:* Nine farmers were allegedly injured by the police in the south-west of the country while protesting against the confiscation of their land for the company Orchard Agriculture and Animal Husbandry without compensation.[828]

Human Rights Guidance for Business

Recommendations for companies to ensure respect for human rights.

Local Recommendations

***Myanmar Centre for Responsible Business (2015*)**:[829] The organisation recommends the following to companies in the tourism sector:

- Conduct enhanced due diligence in conflict and post-conflict areas to establish any connections to persons displaced by inter-communal violence. Companies should avoid contributing to the problem of displaced persons, or appearing to give tacit support to, or benefiting from activities that have resulted in displacement. Companies should obtain advice from local experts including relief agencies and civil society organizations operating in the area before deciding how to proceed.
- Provide training to security personnel engaged by tourism businesses that adequately reflects international human rights principles, and includes real-life scenarios and relevant human rights dilemmas to equip security guards to peacefully settle conflicts, without using force.

***Myanmar Centre for Responsible Business (2014*)**:[830] The organisation made the following recommendations to oil and gas companies:

- Take expert advice on how to engage with relevant ethnic minority 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 minority 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 conflicting requests;
- Pursue a broader and more systemic response to 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;

- 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). 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.

***UN Human Rights Council (2014)*:**[831] The organisation recommends that companies:

- Ensure that their investment and related activities respect human rights in accordance with the Guiding Principles on Business and Human Rights.

International Federation for Human Rights and Altsean-Burma (2013)[832]***:*** The organisations make the following recommendations to companies:

- Avoid business relationships with individuals or companies that have been connected to human rights abuses in Burma/Myanmar;
- Carry out and disclose the process and results of human rights impact assessments of their activities, as well as those of their business partners in Burma/Myanmar, prior to, during, and after their operations;
- Disclose any measures taken to prevent, mitigate and address adverse impacts; and
- Collaborate fully with legitimate and effective remedy mechanisms for victims of human rights abuses that may be linked to their operations.

Burma Environmental Working Group (2012):[833] This alliance of grass-root based organisations made the following recommendations to companies:

- Investment should not exacerbate natural resource and land-based conflict in Burma. Burma's political situation is growing increasingly sensitive as ethnic groups and the government enter the early stages of new peace talks to advance national reform and reconciliation. The interests of investment projects and investors can directly interfere with the political peace process and have already increased violence and the loss of life and livelihoods in conflict areas where investment projects are taking place. Lasting and genuine peace in project areas is essential and cannot be created instantaneously.
- Completely addressing all aspects of ethnic conflict and not just concurrently signing peace and business deals with armed groups, will take considerable time and effort. In the pursuance of peace, investors must fully understand the historical and modern day connection of specific projects, government actors and business partners to conflict, and ensure that project security is a result of the rule of law and not regional militarisation. Investors must carry out best practices in conflict risk assessments and must follow risk management strategies to avoid renewed conflict or complicity in security-related human rights abuses.

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company take steps to ensure that company security arrangements are in accordance with international principles for law enforcement and the use of force?

- The company regularly conducts security risk assessments, and ensures that company security arrangements, including the deployment of private guards or public security personnel, are proportionate to the security risk.
- Company security risk assessments include the risk of human rights abuses by private and public security personnel.
- The company selects private security firms based on information about professional ability, level of staff training, quality of equipment, past involvement in human rights abuses, links with political factions or organisations and other relevant criteria.
- Contracts with private security firms include requirements related to international human rights standards for law enforcement and use of force; require the investigation and discipline of any unlawful or abusive conduct by security guards; and allow for termination of the contract in case of such conduct.
- There is a manual defining the duties of security personnel, and all security personnel receive training on rules of conduct based on international human rights standards for law enforcement and the use of force.
- Where public security personnel are assigned to company facilities, the company seeks to ensure transparency concerning its interactions with public security agencies, and the company communicates to the relevant public security agencies its desire that security functions be conducted in accordance with international human rights standards for law enforcement and the use of force.
- The company has a procedure for recording security-related incidents, including a mechanism for handling complaints from staff or local communities related to the conduct of security personnel, and forwards credible allegations of human rights abuses to the relevant authorities.
- The company has a procedure for monitoring and evaluating its security arrangements, including the proportionality of the security arrangement; impact on local communities; impact on existing local tensions or conflicts; security incidents recorded; and credible allegations of human rights abuses by company security personnel. Representatives from the local community are consulted as part of the monitoring.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **International Alert, Conflict Sensitive Business Practices:** Guidance for Extractive Industries (2005): International Alert is a peace-building NGO working with civilians and other affected stakeholders in conflict areas. This Guidance is intended for companies in the extractive

industries sector, providing advice on conflict-sensitive business practices and the ways in which they can contribute to peace-building.

- **International Alert and Fafo Institute, Red Flags:** Liability Risks for Companies Operating in High-Risk Zones (2008): The Red Flags address illicit business activities under international and national law. The initiative's objective is to clearly define what types of activities, when committed or aided by businesses, represent breaches of international humanitarian law and international criminal law.
- **International Commission of Jurists, Report of the Expert Legal Panel on Corporate Complicity in International Crimes (2008):** This three volume report outlines the ICJ Expert Legal Panel's findings and recommendations with regard to corporate legal responsibility for complicity in international crimes, under both civil and criminal law.
- **The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010):** Section 1502 of the Act requires public and private companies to disclose the use of any conflict minerals in their products. This promotes greater transparency and dissuades companies from engaging in trade that may support regional conflicts.
- **International Committee of the Red Cross, Business and International Humanitarian Law (2006):** The Guidance explains the obligations of businesses under international humanitarian law, including noting relevant distinctions between international human rights law and international humanitarian law.

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

Total: The company integrated the Voluntary Principles on Security and Human Rights into its security management, training material, procedures and assessment.[834]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

NGO Initiatives

Women's League of Burma: Since 2000, the 'Peace and Reconciliation Program' has delivered peace-building activities in 26 locations in Myanmar, reaching more than 3,000 people.[835]

Smile Education & Development Foundation: In the framework of promoting inter-faith dialogue and peace building, the Interfaith Peace Training program was organised in 2013 in Yangon for local communities to bridge their differences and promote mutual understanding.[836]

Development Priorities

European Union (EU) Comprehensive Framework for the EU's policy and support to Myanmar/Burma (2013-2016): The EU prioritises the development of an accountable, responsible police trusted by the community by providing training.[837]

United Kingdom International Defence Engagement Strategy: In line with its strategy published in 2013, the UK has been training Myanmar public security forces, namely the military, on human rights in 2014.[838]

Sector Profiles

Extractive

For further information on the oil and gas sector, please consult the Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014

Operating Environment	
Sector contribution to GDP (%)	8% (2010)[839]
Sector contribution to employment (%)	100,000 (2010)[840]
Major products	Natural gas, oil, jade, rubies, copper, gold, gems, coal, tin, tungsten and nickel
Relevant laws	• Mines Law (1994) • Oilfields Act (1918) • Oilfield Rules (1936) • Petroleum Act (1934) • Petroleum Rules (1937) • Essential Supplies and Services Act (Law No. 13/2012) • Water Power Act (1927) • Oilfields (Labour and Welfare) Act (1951) • Petroleum Resources (Development Regulation) Act (1957) • Law Amending the Petroleum Resources (Development Regulation) Act (1969) • Oilfield (Workers and Welfare) Act (1951) • Myanmar Petroleum Concession Rules (1962) • State Owned Economic Enterprise Law (1989)

Myanmar has a long history of extractive operations, with oil exports beginning as early as 1853.[841] Following the 1962 coup, the sector was nationalised. In 1988, the State Law and Order Restoration Council opened the door for international joint ventures and production sharing contracts.[842] Due to serious human rights violations in the country and the sanctions imposed by several Western governments and the EU in the 1990s, few Western companies invested in Myanmar, and Asian companies acquired a number of offshore blocks in their absence. Significant natural gas deposits are present in Myanmar territorial waters off the coasts of Rakhine and Mon States and Tanintharyi and Ayeyarwady Regions.[843]

Several oil and gas companies had been accused of complicity in serious human rights violations by the military. After the suspension or removal of sanctions in 2012, external investment in the extractive sector increased significantly.[844]

In 2010-2011, 99 percent of foreign direct investment coming into Myanmar was from the extractive sector.[845] Although investment patterns were changing, and prices were falling, as of 2014, oil and gas were expected to remain major contributors to the Myanmar economy.[846]

While requiring business to meet 'high social and environmental standards', Myanmar's Framework for Economic and Social Reform recognises that 'there will be unavoidable trade-offs' for natural resource extraction. The document proposes a number of ways to mitigate those effects, including early consultations with stakeholders, stricter requirement for environmental and social impact assessments, public consultations, and specific attention to guidelines concerning resettlement, relocation and compensation.[847]

Areas for Attention

Women

Women may be at risk of discrimination in the workplace.

The oil and gas sector was reportedly male dominated, partly due to the test score required for relevant subjects such as engineering being set higher for women than for men, according to a 2014 report by MCRB.[848]

Indigenous Peoples

Companies may disrupt the traditional livelihoods of indigenous communities.

The government did not take a position on whether indigenous peoples resided in Myanmar, through MCRB noted that some ethnic minority groups, especially in areas near the operations of oil and gas companies, would fit the definition for qualification as indigenous under the UN Declaration on the Rights of Indigenous People.[849]

Forced Labour

Companies may deny workers the ability to freely enter and leave employment.

In 2010, the UN Special Rapporteur on the Situation of Human Rights in Myanmar received reports of instances of forced labour where civilians were being forced to carry supplies for the military, in extractive industry projects, including in the Shwe gas pipeline project, in Rakhine State, where the military provided security to the pipeline.[850]

Occupational Health and Safety

Companies may not adequately prevent accidents and long-term health effects in the workplace.

The accident rates at oil and gas operations in Myanmar was not publicly available as of 2014.[851] A 2014 report by the Myanmar Centre for Responsible Business (MCRB) noted that artisanal oil

extraction was carried out with few health and safety protections.[852] Sub-contractors of oil and gas companies reportedly had poor health and safety conditions.[853]

In 2014, the Asian Development Bank reported respiratory diseases, due to low air quality, among mining workers.[854]

Wages

Workers may not be able to earn a living wage sufficient to meet the basic needs for themselves and their dependents.

According to a 2014 report by the Myanmar Centre for Responsible Business (MCRB), labour brokers' fees resulted in temporary unskilled construction workers on a pipeline earning less than a living wage in some cases. Sub-contractors were reportedly two to three months late in paying wages. Unskilled workers were reluctant to complain about unpaid or inadequate salaries due to fear of losing their job.[855]

Working Hours

Workers may be subject to excessive working hours and may be denied compensation for overtime work.

The 2014 MCRB report stated that temporary workers in the oil and gas sector felt pressured to work longer than prescribed by law to maximise their income.[856]

Employment status

Workers may lack written employment contracts or may otherwise lack the protection of labour laws.

In 2014, MCRB reported that long-term status as 'temporary' staff was common among companies in the oil and gas sector to avoid paying costs associated with pensions and social benefits for permanent workers. Oil and gas sub-contractors did not always provide written employment contracts to their employees, and when they did so, a copy of the contract was not always given to the worker.[857]

Participation & Access to Information

Potentially affected communities may not have access to relevant information regarding environmental impacts of company operations that may affect their health or livelihoods.

According to a 2014 MCRB report, local communities lacked information on the environmental impact of oil and gas projects. Artisanal oil extractions were reportedly carried out with little or no protection for the environment, especially in Rakhine State.[858]

Food & Livelihoods

Companies may adversely impact the access of local populations to adequate and affordable food sources.

According to a 2014 MCRB report, the oil and gas sector impacted the livelihoods of rural populations dependent on subsistence agriculture and fishing, especially women, ethnic minorities and persons with disabilities.[859] Road and site constructions reportedly changed hydrology, resulting in fields previously not subject to floods during monsoon season being flooded.[860]

Boat traffic, construction, exclusion zones and security restrictions linked to offshore oil and gas operations including shooting seismic reportedly had an adverse impact on fish habitat and resources, on which local communities relied on for fishing.[861]

The report noted, however, that given the pervasive lack of baseline data for much of the country, communities and companies were not able to assess claims of impacts due to project activities. This further contributed to difficulties in adjudicating disputes and assigning compensation for damages.[862]

Deforestation

Companies may reduce forest resources to the detriment of the health or livelihoods of local populations.

From 1990 to 2010 the deforestation rate was as high as 20 percent, according to a 2013 report by the Forest Peoples Programme.[863] USAID reported in 2013 that deforestation was linked to logging, including illegal timber trade to China,[864] hunting, mining and other extractive industrial activities, and resulted in soil erosion, landslides, increased dry season water and decreased topsoil fertility. All of these impacts had a detrimental effect on agriculture and communities' access to food and livelihoods.[865]

Water

Companies may adversely impact the access of local populations to safe and affordable water for personal or other use.

A 2014 MCRB report stated that waters were contaminated by oil and gas operations, both by oil leaks and waste water.

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

In 2013, USAID reported that large-scale extractive projects resulted in the forced displacement of small farmers and ethnic minority communities.[866]

In 2013, the Karen Human Rights Group reported that communities were generally not consulted or informed before the beginning of companies operations, including mining in Kayin and Mon States, and Bago and Tanintharyi Regions.[867] In the few instances when communities were consulted, the process was reported to involve only village head or elder, partial or inadequate information was provided, or communities were approached only once land had already been confiscated.[868] In the oil and gas sector, local communities were often not informed about the acquisition of their land, including who the authorities and companies involved were, according to a 2014 MCRB report.[869] Written documentation on the conditions of the purchase was reportedly not provided or was in a language not understandable by local communities. When translation into Burmese was provided, this did not match the English version.[870]

Agricultural and fishing communities and individuals adversely affected by oil and gas operations lacked access to compensation and grievance mechanisms for the loss of their livelihoods, according to the MCRB report.[871] Due to lack of access to, or knowledge about, the banking system and how to

manage large amounts of money, cash compensation for loss of land was often quickly spent, leaving farmers without livelihoods.[872]

Land owners and users may receive inadequate compensation for loss of or damage to land or property caused by company operations.

In the oil and gas sector, some local communities were required to undertake burdensome steps to claim their compensation, according to MCRB in 2014.[873] Instead of being paid directly, local communities had to travel to the regional administrative centre, and reportedly had to pay bribes to recover some proportion of their compensation payment. Although men and women are equally entitled to receive compensation under the law, in the oil and gas sector, compensation was reportedly generally paid to the man, as households were registered in the husband's name.[874]

Free, Prior & Informed Consent

Companies may fail to obtain the free, prior and informed consent of indigenous communities when accessing or impacting on their lands and natural resources.

In 2014, MCRB reported that in the oil and gas sector, there has been virtually no meaningful consultation with local communities around land use, relocation or FPIC. This was reportedly partly due the absence of legal requirements to conduct environmental impact assessments prior to the adoption of the 2012 Environmental Conservation Law.[875]

Revenue Transparency

There may be lack of public access to information concerning the size of public revenues generated from taxes, royalties and other fees paid by companies.

In 2014, Global Witness reported a lack of transparency in the ownership of joint ventures. International and local companies were awarded 36 major oil and gas blocs in 2013, and 18 out of 46 companies (seven national and 11 international) did not declare their ownership.[876]

A 2014 survey conducted by MCRB on 60 private local companies reported that only one company made its financial report publicly available and only one company published its tax payments.[877]

In July 2014 the country was accepted as a candidate of the Extractive Industry Transparency Initiative.[878]

Revenue Sharing

There may be lack of public access to accountability concerning the usage and distribution of public revenues generated from taxes, royalties and other fees paid by companies.

In 2014, MCRB reported that the standard Production Sharing Contract in the oil and gas sector did not contain any provision for benefit-sharing with local communities.[879] Indeed, Human Rights Watch reported in 2012 that revenues from the oil and gas sector were not reinvested in health and education.[880] In 2013, UNICEF reported that nine days of natural gas revenues would ensure one teacher per each primary school grade and 0.87 percent of revenues from new natural gas projects would provide for the purchase of all the vaccines needed annually in Myanmar.[881]

Public Security Forces

Public security forces may infringe on the human rights of workers or local populations when protecting company sites and installations.

Over 50 years of military rule were characterised by human rights violations, including forced displacement, extrajudicial killings, arrest and imprisonment of political prisoners, torture, deaths in custody, forced labour and recruitment of child soldiers.[882]

As per the Production Sharing Contract, security of oil and gas operations was to be provided by *tatmadaw* military force. According to a 2014 report by Myanmar Centre for Responsible Business (MCRB), this represented a risk for companies to be directly linked to *tatmadaw* actions.[883]

Though few complaints against the military or the Myanmar Oil and Gas Enterprise (MOGE) security forces were noted in the 2014 Sector Wide Impact Assessment, this must be considered in light of the continued reticence of communities to report violations, according to the joint report.[884]

In 2013, various sources reported arrests and detention of people protesting against the Shwe Gas pipeline in Rakhine State. In 2012 police violence was reported against peaceful protests against the Letpadaung Copper Mine in Sagaing Region, including the use of white phosphorous, causing severe burns.[885]

Social Conflict

Companies may contribute to social conflict with or within communities where they operate in particular in conflict-affected areas.

Since the beginning of the reform period in 2011, Myanmar has increasingly attracted foreign investment, especially in the extractive sector.[886] Many large-scale investments have led to conflicts between rural communities and private companies as communities claimed their rights after land expropriations.[887]

The Shwe Gas project and associated pipeline, and the Monywa/Letpadaung copper mine, have all been associated with tensions between local communities and investors over land confiscations.[888]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *January 2015, Irrawaddy:* At least four small-scale miners died in Kachin State following a rockslide at a jade mine in Hpakant.[889]
- *December 2014, Mizzima:* During clashes between the police and local farmers in the area of the Letpadaung copper mining project in Sagaing Region, one farmer was shot by the police and several other people were injured. A case of manslaughter was filed at the Salingyi police station. The protest was staged after Wanbao fenced in land disputed between the company and local farmers. The Myanmar National Human Rights Commission investigated the incident and recommended the case filed to be pursued in accordance to the law, action against responsible police personnel to be taken, and to review the implementation of the mine' security activities.[890]
- *September 2014, Irrawaddy:* A court in Ann Township, Rakhine State, sentenced 17 Chin workers of the China National Petroleum Corporation (CNPC) to between six and ten years in prison for

destroying the company's property and attacking Chinese workers. The dispute surged when Chin workers were allegedly poured a liquid, possibly urine, by their Chinese colleagues living on the upper part of the living quarters. In the riot that followed, a CNPC building and an oil container on the site were set on fire.[891]

- *September 2014, MCRB:* A company in the oil and gas sector burned toxic waste 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. When local authorities conducted an investigation, community members were not given full information. Compensation remained disputed as of September 2014.[892]
- *September 2014, Radio Free Asia:* About 3,000 farmers protested against the Ngwe Kabar Kyaw company' silica mining projects in Namkham Township, Shan State. The mine allegedly polluted surface water and the soil, damaging the surrounding farmland planted with corn and rice. Farmers demanded compensation for the damaged farmland and a stop to mining operations.[893]
- *July 2014, Irrawaddy:* Farmers from eastern Shan State, Tachileik Township, opposed gold mining operations in the area. Since 2007, ten mining companies operated in the area and allegedly polluted waters with their waste, which resulted in more than 300 acres farmland not being cultivable.[894]
- *May 2014, Business and Human Rights Resource Centre:* The companies Myanmar Pongpipat and the state-owned Mining Enterprise 2 allegedly polluted the water in the vicinity of the Heinda tin mining project, Dawei District, Taninthayi Region. The wastewater from the mine allegedly damaged houses, plantations and farmlands in the area, and contaminated surface water. The case was before the district court.[895]
- *May 2014, The Economist*: In November 2012, the police used force, including white phosphorous, against local communities opposing the Letpadaung copper mine in Sagaing Region.[896] Following this event, an Investigation Commission, headed by Aung San Suu Kyi, was established to investigate the events. The Commission acknowledged the project's adverse environmental impacts especially due to waste waters and waste sand and stones, and a lack of transparency in dealing with land expropriation and relocations. It also made recommendations for the continuation of the project, including the conduct of an Environmental and Social Impact Assessment (ESIA) and the development of an Environmental Management Plans and an Occupational Health and Safety Assessment Systems, land compensation to be increased to market prices, and a renegotiation of the terms determining the state's profits, which should be increased.[897] As a result, an ESIA was conducted by Knight Piésold Consulting on behalf of the Chinese company Wanbao and made public in late 2013. The ESIA reported that Letpadaung copper mine posed extremely high environmental risk to surface and groundwater due to wastewater emissions.[898] In 2014, communities living in proximity to the mine continued to oppose the company's operations due to its alleged adverse impacts on the environment and lack of consultation with the communities.[899]
- *May 2014, Democratic Voice of Burma:* Ten miners in Mandalay Region were sentenced to one and half years in prison for protesting against the contract awarded by the government to the Myanmar National Prosperity company for the Moehti Moemi mines, which were worked independently by small-scale miners. The private company, awarded the 6,015 acre site,

allegedly failed to honour an agreement to work with small-scale miners, severely impacting their income.[900]

- *November 2013, Irrawaddy:* Local communities in Kawthaung District, Tanintharyi Region, reported that 100 people suffered of respiratory problems due to increased air pollution linked to the Than Phyo Thu Coal Excavation Company coal-fired power plant.[901]
- *May 2013, Irrawaddy:* The collapse of a gold mine in Kalaw, Shan State, following heavy rains resulted in the death of 36 people.[902]
- *November 2012, Mining.com:* Six people died and 11 were injured after the collapse of a gold mine in Sintku township, due to a 6.8 magnitude earthquake.[903]
- *November 2012, Amnesty International:* The police used force, including white phosphorus, against local communities opposing the Letpadaung copper mine in Sagaing Region, resulting in more than 100 people injured with lifelong disabilities.[904]

Apparel

Operating Environment	
Sector contribution to GDP (%)	10.5% (2012)[905]
Sector contribution to employment	240,000 (garment workers)[906]
Major products	Coats, suits, jackets, swimwear, trousers, shirts, dresses, skirts and shoes
Relevant laws	• Factories Act (1951) • Leave and Holiday Amendment Act (2014) • Payment of Wages Act (1936) • Minimum Wages Law (2013) • Employment and Skill Development Law (2013) • Labour Organization Law (2011) • Settlement of Labour Disputes Law (2012)

The textile sector was nationalised in 1964, and only in 1994 were private garment factories re-established.[907] Economic sanctions imposed by the United States in 2003 had a strong impact on the garment industry in Myanmar, resulting in the closure of factories and the loss of 85,000 jobs. At that time, the United States were replaced by Japan as main export market.[908]

In 2014, Myanmar had more than 266 garment factories, although the number was rapidly growing, with the majority employing more than 100 employees each and mostly located in Yangon and nearby industrial zones.[909] Some garment factories were present in Mandalay, Bago and Pathein.[910]

In 2015, about 93 percent of workers in the garment sector were women.[911]

Areas for Attention

Strikes

Workers may be prevented from, or improperly sanctioned for, participating in strike actions.

Since the entry into force of new labour laws in 2012, the 88 Generation reported strike actions of factory workers, mostly in the apparel sector, in Yangon industrial zone.[912] The 2012 strikes were largely related to working conditions (i.e. wages, long working hours and lack of social security), and poor occupational health and safety conditions.[913] According to the Department of Labour Records, 447 strikes actions in the garment sector were recorded between 2012 and 2014.[914] A spate of strikes also took place in garment factories outside Yangon in February 2015, some of which were violently suppressed.[915]

Wages

Workers may not be able to earn a living wage sufficient to meet the basic needs for themselves and their dependents.

Following disputes in the garment sector, including due to low wages, the Ministry of Labour decided in 2012 to set a temporarily minimum wage at 56,000 kyat (US$57) per month.[916]

Working Hours

Workers may be subject to excessive working hours and may be denied compensation for overtime work.

In 2013, the Institute for Human Rights and Business (IHRB) reported that garment sector workers were subject to working hours for seven days a week, which was beyond legal limits.[917]

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

The land on which apparel factories are built, including in established industrial and special economic zones, may have been the subject of improper or inadequate land acquisition and compensation.[918]

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media

- *January 2015, RFA News*: More than 300 workers were locked in JCK, a Chinese garment factory, in Yangon Industrial Zone (1). Workers were allegedly forced to work overtime or else threatened with dismissal.[919]
- *December 2014, Eleven:* More than 1,000 workers from the Chinese garment factory, Myanmar York Fashion, in Industrial Zone 4 in Hlaingthayar Township, Yangon Region, protested against unpaid wages. Workers allegedly did not receive full salaries, corresponding to the number of days worked in a month.[920]
- *November 2014, Eleven:* Over 30 workers of the Ford Glory garment factory in Industrial Zone No.1 in Shwe Pyitha Township, Yangon Region, protested after the company failed to comply with the decision of the local tribunal. The court ordered the company to compensate and re-integrated the five trade union members that were unfairly dismissed.[921]
- *August 2014, Gap Inc.*: An audit conducted at the two subcontracting garment factories of the American company Gap reported regular overtime work beyond legal limits and without consistent payment at premium rate. The audit also reported that workers did not wear safety equipment when handling cleaning chemicals and that workplace ventilation was inadequate.[922]
- *July 2014, Irrawaddy:* The Thilawa Special Economic Zone project, supported by the Japanese International Cooperation Agency (JICA), allegedly involved the displacement of local communities near Yangon. Thilawa residents filed a complaint to JICA over the compensation and relocation of 81 households.[923]

- *March 2014, IndustriALL:* A trade union managed to collectively bargain a US$26 increase per month in salary for 1,600 garment workers of the Korean Yes 1 factory in Hlaing Thar Yar industrial zone in Yangon Region.[924]
- *November 2013, Mizzima:* Two hundred workers in a garment factory in Dagon Seikkan township, Yangon, went on strike after the dismissal of a worker who refused to work overtime. Complaints regarded also the installation of a CCTV camera outside a women's toilet.[925]

Company Initiatives

Private-sector efforts to respect human rights and contribute to development.

Company Due Diligence Initiatives

Myanmar Garment Manufacturers Association (MGMA): The Associations issued a voluntary Code of Conduct for its members in February 2015. The Code focuses on forced labour, child labour, freedom of association and collective bargaining, occupational health and safety, working conditions (i.e. wage and working hours), discrimination at the workplace and environment (i.e. wastewater management).[926]

Company Beyond Compliance Initiatives

The Gap: In 2014, the company launched the P.A.C.E. (Personal Advancement & Career Enhancement) programme in Myanmar, which aims at the empowerment of women in the garment sector by providing life and technical skills training.[927]

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

NGO Initiatives

BSR: In 2014, this organisation started an industry-wide dialogue on responsible sourcing in the garment sector for its network of more than 250 member companies. This initiative is based on four principles: 1) sustainability, 2) due diligence, 3) wide stakeholder engagement, and 4) transparency. The main focus areas are: labour, industrial relations, health and safety, community, and environment.[928]

SMART Myanmar (2014-2015)*:* The organisation launched in September 2014 the Social Compliance Advisory and Training package for ten garment factories, members of MGMA. The training sessions focus on various labour issues, including forced labour, child labour, freedom of association and collective bargaining, occupational health and safety, working conditions (i.e. wage and working hours), discrimination at the workplace and environment (i.e. wastewater management).[929]

Additional Sectors

Agriculture

Women

Women may be at risk of discrimination in the workplace.

According to Oxfam, women earned 20 percent less than their male counterparts in agriculture in two townships in Mandalay and Magwe townships.[930]

Child Labour

Companies may employ persons under 18 to the detriment of their health, development, education or family life.

In 2012, UNICEF reported that children living in rural areas were more vulnerable to entering work, especially in agriculture, due to higher poverty rates and lack of access to healthcare and education.[931]

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative.

The ILO reported that certain activities conducted by children in agriculture may amount to the worst forms of child labour, as the work was likely to harm their health, safety or morals.[932] The Woman and Child Rights Project reported in 2013 that children working in Mon State in furniture factories and agriculture, mainly rubber plantations, were subject to long working hours, lack of rest and little pay.[933]

In 2014, the U.S. Department of State reported that children trafficked within Myanmar were forced to work in agricultural plantations, among other sectors.[934]

Forced Labour

Companies may deny workers the ability to freely enter and leave employment.

Lax enforcement allowed forced labour to continue in the production of bamboo, beans, palm, physic nuts, rice, rubber, sesame, sugarcane and sunflowers, according to a 2013 report by the Forest Peoples Programme.[935] Following land confiscations for large agribusiness investments, farmers belonging to ethnic communities were reportedly forced to work on plantations with little or no salary.[936]

Human Trafficking

Companies may employ workers who are subject to exploitative labour conditions through internal or external trafficking.

In 2014, the U.S. Department of State reported cases of internal trafficking for forced labour in palm oil and rubber plantations in Kawthaung, Tanintharyi Region.[937]

Food & Livelihoods

Companies may adversely impact the access of local populations to adequate and affordable food sources.

According to a 2013 USAID report, government approval of large-scale monoculture plantations for cassava, sugar cane, paddy rice, jatropha, palm oil and rubber, for companies linked to the military has increased since 2008. This resulted in farmers losing their access to land, livelihoods and food security. [938]

Monoculture plantations promoted by the government were reportedly largely present in Mon State and recently expanded in Kachin State and in the northern part of Shan State.[939]

Water

Companies may adversely impact the access of local populations to safe and affordable water for personal or other use.

In 2012, the Water Environment Partnership in Asia reported high levels of phosphate and nitrate and the presence of E. coli bacteria in Inle Lake due to fertilizers and discharge of untreated waste by agriculture.[940] Municipal wastewater, solid waste, and industrial agrochemical solid and liquid wastes reportedly represented the main source of pollution of surface waters.[941]

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

The Forest Peoples Programme reported that, since the late 2000s, 2 million acres were given in agricultural concession to 204 national companies, half of which were allocated in Tanintharyi Region and Kachin State. After having been granted agricultural concessions, companies reportedly left 70-80 percent of the land uncultivated in Wa-controlled areas, speculating on its value.[942]

According to a 2014 Global Witness report, large-scale rubber plantations promoted by the government, on land previously cultivated by smallholder farmers, mainly in Mon State, expanded into Rakhine, Kayin and Mon States and Tanintharyi Region. Much of this land had been classified by the government as 'wastelands'.[943] In 2013, the Karen Human Rights Group reported that communities were generally not consulted or informed before the beginning of companies operations, including plantation agriculture in Kayin and Mon States, and Bago and Tanintharyi Regions.[944] In the few instances when communities were consulted, the process was reported to involve only village head or elder, partial or inadequate information was provided, or communities were approached only once land had already been confiscated.[945]

People living in areas these areas, mostly ethnic minorities, lost their land rights and consequently became 'squatters' under the law and vulnerable to further land confiscation. This resulted in loss of

access to fishponds, waterways, forests and grazing land, with severe adverse impact on their livelihoods, according to a 2013 report by the Transnational Institute (TNI). [946]

Since the beginning of the reform period in 2011, rural communities have begun to resist large-scale agricultural investments.[947] However, according to a 2013 report by the Forest Peoples Programme, people resisting forced eviction were subject to intimidation, prosecution and jail.[948] Protests about land were also met with excessive use of force by the police, according to the 2014 report of the Special Rapporteur on the Situation of Human Rights in Myanmar.[949]

Tourism

For further information on the oil and gas sector, please consult the Myanmar Tourism Sector Wide Impact Assessment, February 2015

Women

Women may be at risk of discrimination in the workplace. Particular attention should be given to the areas of informal employment and small businesses.

Women represented half of the workforce in the tourism sector and some occupied unpaid positions in 'family tourism enterprises', such as small hotels, guest houses, souvenir shops and restaurants, according to MCRB.[950] Family businesses were reportedly not necessarily comprised of only family members as employees, making it more challenging for employees to claim their rights.[951]

Occupational Health & Safety

Companies may not adequately prevent accidents and long-term health effects in the workplace. Company operations may not be subject to effective health and safety inspections. Particular attention should be paid to the informal sector and small businesses.

In 2015, poor health and safety procedures and a general lack of training were also reported in the tourism sector, especially in local hotels, guesthouses and tour operators.[952]

Wages

Workers may not be able to earn a living wage sufficient to meet basic needs for themselves and their dependents. Particular attention should be given to the service sector.

In the tourism sector, wages were low, especially for restaurant staff and low-level hotel staff, according to a 2015 MCRB report. Some workers earned 30,000 kyat (US$30) per month, making them dependant on service charges, which were sometimes held by management, to earn a living wage.[953]

Working Hours

Workers may be subject to excessive working hours and may be denied compensation for overtime work. Particular attention should be given to high season periods.

In the tourism sector, working hours regulations were reportedly rarely implemented and workers consistently worked more than 48 hours per week, according to MCRB. In some cases, during the high season, hotel and cruise ship staff worked up to 16 hours per day, seven days a week. Tour guides and drivers worked up to 18 hours per day.[954]

Employment status

Workers may lack written employment contracts or may otherwise lack the protection of labour laws. Particular attention should be given to the lack of written contracts.

In the tourism sector, with the exception of workers in Yangon or employed by large tourism companies, most workers had no written contract according to MCRB in 2015, including those employed by sub-contractors such as maintenance staff, gardeners and construction workers.[955]

Food & Livelihoods

Companies may adversely impact the access of local populations to adequate and affordable food sources. Particular attention should be paid to the areas of increasing food prices, and reduced access to land.

In some areas, tourism developments reportedly increased the price of food and land. This was particularly pronounced at Inle Lake and Chaungtha.[956]

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies. Particular attention should be paid to the areas of community engagement and consultation.

In 2015, the price of land increased in some tourist areas, such as Inle Lake and Tada-Oo near Mandalay, according to MCRB. Communities were reportedly not consulted regarding the location of tourism development projects.[957]

Land owners and users may receive inadequate compensation for loss of or damage to land or property caused by company operations. Particular attention should be paid to the areas of ethnic minorities and smallholder farmers.

Local fishing communities in Chaungtha and Ngwesaung were evicted without fair compensation and were relocated away from coastal areas due to the construction of hotels, according to a 2015 assessment by MCRB. Communities in the Inle Lake region reportedly received compensation below market value for land which had been confiscated and those who did not accept the payments were threatened and brought to court.[958]

Region Profiles

Areas where human rights conditions or impacts differ markedly in nature or scale from the national profile.

Rakhine

For further information on Rakhine, please consult Part 6.1 of the Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014

Religious Minorities

Religious minorities may be at risk of discrimination in the workplace.

The Rohingya, a Muslim minority mainly residing in Rakhine State, are not one of the 135 ethnic groups recognised by the state, and are not recognised as citizens, leaving many of them stateless.[959] According to the UN Human Rights Council, restrictions on the movement of Rohingya,[960] as well as access to higher education,[961] limited their ability to access employment. In 2013, Associated Press reported that Rohingya children were particularly vulnerable to child labour in the construction sector.[962]

In 2012, Human Rights Watch reported that monks from the Buddhist Sangha (clergy) in Rathedaung township in Rakhine State, issued a 12 point statement outlining 'the Arakan Ethnic Cleansing Program', which encouraged people not to employ Rohingya as day workers, carpenters, masons or farmers. It further asserted that Rohingya should not be able to work in government offices or in NGOs in the area.[963]

Companies may affect the health, livelihoods or material well-being of religious minorities.

Violence between Muslim and Buddhist communities broke out in 2012 in Rakhine State and continued in 2014, resulting in killings and destruction of Muslim property. International Crisis Group reported in 2013 that police were complicit in anti-Muslim violence.[964]

Rohingyas required travel documents to move from one village to another, and were not allowed to move outside of North Rakhine State.[965] Rohingya were also required to obtain authorisation to marry and had to comply with a two-child policy.[966] According to the UN Human Rights Council, these restrictions[967] and restricted access to higher education,[968] limited Rohingyas' ability to access employment.

Forced Labour

Companies may deny workers the ability to freely enter and leave employment.

In 2010, the UN Special Rapporteur on the Situation of Human Rights in Myanmar received reports of instances of forced labour where civilians were being forced to carry supplies for the military in extractive industry projects. This included the Shwe gas pipeline project in Rakhine State, where the military provided security to the pipeline.[969]

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

In ethnic minority areas, land confiscations have been linked also to the establishment of Special Economic Zones, including Kyaukpyu in Rakhine State.[970]

Public Security Forces

Public security forces may infringe on the human rights of workers or local populations when protecting company sites and installations.

In 2013, various sources reported arrests and detention of people protesting against the Shwe Gas pipeline in Rakhine State.[971]

Tanintharyi and Mon

For further information on Rakhine, please consult Part 6.2 of the Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014

Child Labour

Companies may employ persons under 18 to the detriment of their health, development, education or family life.

The loss of livelihood due to land confiscation by the military and companies in Mon State pushed children into labour to support their family's income, according to a 2013 report by the Human Rights Foundation of Monland.[972]

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative.

The ILO reported that certain activities conducted by children in agriculture may amount to the worst forms of child labour, as the work was likely to harm their health, safety or morals.[973] The Woman and Child Rights Project reported in 2013 that children working in Mon State in furniture factories and agriculture, mainly rubber plantations, were subject to long working hours, lack of rest and little pay.[974]

Human Trafficking

Companies may employ workers who are subject to exploitative labour conditions through internal or external trafficking.

In 2014, the U.S. Department of State reported cases of internal trafficking for forced labour in palm oil and rubber plantations in Kawthaung, Tanintharyi Region in 2014.[975]

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies.

According to a 2013 report by the Human Rights Foundation of Monland, land confiscations in Mon State were perpetrated by the military, ethnic armed groups, the local government and private companies working on public projects.[976]

Monoculture plantations promoted by the government were reportedly present in Mon State.[977] According to a 2014 Global Witness report, many of these plantations were previously cultivated by smallholder farmers in areas classified by the government as 'wastelands'.[978]

People living in these areas, mostly ethnic minorities, lost their land rights and consequently became 'squatters' under the law and vulnerable to further land confiscation. This resulted in loss of access to fishing ponds, waterways, forests and grazing land, with severe adverse impact on their livelihoods, according to the Transnational Institute (TNI) in 2013.[979]

Since the beginning of the reform period in 2011, rural communities started protesting against large-scale agricultural investments.[980] However, according to a 2013 report by the Forest Peoples Programme, communities resisting forced eviction were subject to intimidation, prosecution and jail.[981] Protests about land were also met with excessive use of force by the police, according to the Special Rapporteur on the Situation of Human Rights in Myanmar in 2014.[982]

Social Conflict

Companies may contribute to social conflict with or within communities where they operate in particular in conflict-affected areas.

The Dawei Special Economic Zone project, among others, was reportedly a cause of tension with local communities over land confiscations.[983]

Kachin

Religious Minorities

Companies may affect the health, livelihoods or material well-being of religious minorities. Particular attention should be paid to this issue when identifying stakeholders for community consultation, purchasing land, operating in conflict-affected areas, recruiting local employees or operating in proximity to Christian communities.

In 2013, the U.S. Commission on International Religious Freedom reported that ethnic minority Christians were particularly vulnerable to abuses in the context of the armed conflict in Kachin and northern Shan States.[984]

Worst Forms of Child Labour

Companies may employ children under 18 under conditions of forced labour or in work that is hazardous, harmful or exploitative. Particular attention should be paid to the recruitment of child soldiers.

Although the law prohibits underage recruitment by the army, the UN Special Representative on Children and Armed Conflicts stated in 2014 that children were recruited as soldiers by military and armed groups, especially in Kachin and Shan States,[985] where children were also used as porters by the military in conflict zones, according to a 2012 Human Rights Watch report.[986]

Forced Labour

Companies may deny workers the ability to freely enter and leave employment. Particular attention should be paid when security to companies' operations is provided by the military.

In the context of the conflict between government forces and the Kachin Independence Army, Human Rights Watch reported the use of civilians as porters by the army in 2012.[987]

Land Acquisition

Local populations may be improperly deprived of land ownership and usage rights as a consequence of land acquisition by companies. Particular attention should be paid to the agricultural sector.

The Forest Peoples Programme reported that, since the late 2000s, 2 million acres were given in agricultural concession to 204 national companies, many of which were allocated in Kachin State.

Land owners and users may receive inadequate compensation for loss of or damage to land or property caused by company operations. Particular attention should be paid to the areas of ethnic minorities.

Hydropower projects reportedly displaced communities in several ethnic minority areas, including Kachin State, with little or no compensation.[988]

Armed Conflict

Companies may exacerbate community tensions and violent conflict in areas affected by armed conflict. Particular attention should be paid to ethnic and religious minorities.

Land and resource management were common causes of conflict,[989] as ethnic armed groups perceived that communities did not benefit from large-scale development projects.[990] Some armed groups administered and controlled areas with natural resources, including Kachin State.[991]

In 2011, a 17-year-old ceasefire with the Kachin Independence Army (KIA) broke down when the military attacked the KIA near a disputed hydropower dam site.[992] Following public protests in September 2011, President Thein Sein suspended the Myitsone Hydropower Dam, a joint venture between the government and state-owned China Power Investment.[993] Confrontations in northern Kachin State have intensified since June 2013.[994]

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	• Ministry of Environmental Conservation and Forestry
	• Ministry of Finance:
	  - Internal Revenue Department
	• Ministry of Health:
	  - Occupational Health Division
	• Ministry of Home Affairs:
	  - Central Body for the Suppression of Trafficking in Persons
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