

Sector-Wide Impact Assessment (SWIA) of Myanmar's Oil & Gas Sector

Draft for Consultation
March 2014



Commenting on the Oil & Gas SWIA draft

- MCRB welcomes comments from all interested stakeholders on this draft to Thithi.thein@myanmar-responsiblebusiness.org with a subject line of "O&G SWIA Consultation Draft Feedback" by 30 April 2014.
- Please see the objectives of the consultation on the following page and please continue to monitor the MCRB website www.myanmar-responsiblebusiness.org for further updates on SWIA developments.
- Submission of written feedback to the e-mail above will be posted on the MCRB website with each commentator's submitted name and organisation unless you tell us that you do not want your comments posted on our website.
- In making comments, please be as specific as possible, including identifying the relevant section or example being discussed.

About this Draft for Consultation

This draft for consultation of the Impact Summaries of the Oil & Gas Sector-Wide Impact Assessment (SWIA), was produced by the Myanmar Centre for Responsible Business (MCRB) in cooperation with the Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR).

This consultation draft contains an introduction to the SWIA, description of the methodology used, key project-level findings around seven key areas concerning oil and gas in Myanmar, as well as cumulative-level findings around combined impacts from multiple projects/activities.

The final Oil & Gas SWIA will contain more analysis of the Myanmar context, more comprehensive background on the sector, more information on the policy and legal framework relevant to oil and gas in Myanmar, and a set of recommendations produced as an outcome of the multistakeholder consultations held during March and April 2014.

There are three objectives of the consultations:

- (i) to identify whether the key draft findings of the O&G SWIA are relevant and complete i.e. have we missed or misdiagnosed key issues?
- (ii) to elicit recommendations for actions by the Government, companies and other stakeholders (local and foreign) in relation to the O&G sector that will improve the outcomes of O&G projects for the benefit of Myanmar society and improve the framework for responsible investment.
- (iii) to further identify and highlight on-going or planned initiatives that are relevant to the O&G sector and could provide relevant linkages to the follow-up actions.

A draft or partial draft in Burmese will follow as soon as possible.

The indicative table of contents for the final SWIA Report:

- Executive Summary
- Introduction
- Sector Description
- National context
- Project level context
- Collective/Cumulative context
- Recommendations
- Annexes:
 - Process & Methodology
 - Land Acquisition

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PART I: INTRODUCTION

Background

This draft document presents the abbreviated findings of a Sector-Wide Impact Assessment (SWIA) of the human rights impacts of the oil and gas (O&G) sector in Myanmar. The final SWIA document will contain more chapters with further analysis from secondary research; this draft focuses primarily on presenting the findings from the primary (field) research. The O&G SWIA was conducted by the Myanmar Centre for Responsible Business (MCRB),¹ in collaboration with its partners, the Institute for Human Rights and Business (IHRB),² and the Danish Institute for Human Rights (DIHR),³ between August 2013 and February 2014, using both desk-based and field-based research (see Part II - Methodology).

Immediate Objectives of the SWIA

The immediate objectives of the SWIA are to:

- **Inform future project level impact assessments for O&G projects** about potential human rights impacts so that these issues are taken into account in forthcoming EIAs in the sector.
- **Provide Government and Parliamentarians with analysis and targeted recommendations** on shaping policy and law making, licensing and other initiatives to prevent and mitigate harms and enhance the potential for positive outcomes.
- **Enable development partners to align their support and policies** to the sector such that human rights are better respected and protected, such as offering technical assistance that helps the Myanmar Government incentivise businesses to make responsible choices when investing in Myanmar.
- **Support** local communities in understanding and engaging on O&G projects in their area in an informed way.
- **Build the capacity of civil society, trade unions and media** to participate in policy development and project planning and to leverage international standards and approaches in their interventions.

As the methodology set out below demonstrates, the O&G SWIA was conducted in accordance with established impact assessments processes and procedures (such as environmental, social and human rights impacts assessments). While it seeks to provide a sector-wide perspective across key active and prospective O&G producing areas of Myanmar, the O&G SWIA is not intended to be a substitute for site- and project-specific assessments of human rights impacts.

The Reference Framework for the SWIA

The MCRB's mandate is to promote a culture of responsible business conduct in Myanmar. "Responsible business conduct," and the standards that help define that conduct, require businesses to take responsibility for the impacts they have on society, where "impacts on society" is understood very broadly to include human rights, social, environmental, ethical, and consumer concerns. The more specific the standards are, the more guidance they provide to business while also providing specific benchmarks for Government and civil society to hold businesses to account.

This SWIA report does not address technical operating standards for the O&G industry and instead focuses on the international standards relevant to responsible business conduct, particularly with respect to the impacts of business on human rights. These include direct human rights impacts, as well as other types of impacts that can indirectly impact human rights, such as environmental and social impacts, impacts on wider governance issues,

including transparency and corruption, and the accountability systems needed to address those impacts. This SWIA uses as particular references the following international standards:⁴

- the **UN Guiding Principles on Business and Human Rights** (“the Guiding Principles” or “UNGP”)⁵
- the **OECD Guidelines on Multinational Enterprises** (which apply to companies domiciled in an OECD country and operating in Myanmar)⁶
- the **safeguard policies of international financial institutions** (Asian Development Bank and World Bank Group), and in particular, the **IFC Performance Standards and Environmental, Health and Safety (EHS) Guidelines**.⁷ The IFC Performance Standards and EHS Guidelines are designed to be applied by the private sector, contain quite detailed standards for many areas relevant to O&G operations, and specifically cover and are aligned with most human rights standards.

As the O&G SWIA is particularly focused on human rights, the UN Guiding Principles on Business and Human Rights (UNGPs) are its primary benchmark. The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011 and are now the authoritative global reference point on business and human rights. The UNGPs are applicable to all internationally recognized human rights. At a minimum this means business must ensure that its activities do not infringe the human rights set out in the International Bill of Human Rights (comprised of the UN Declaration on Human Rights⁸ and International Covenants on Civil and Political⁹ and Economic, Social and Cultural Rights¹⁰), as well as principles concerning fundamental rights set out in the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work,¹¹ as well as other relevant human rights instruments.¹²

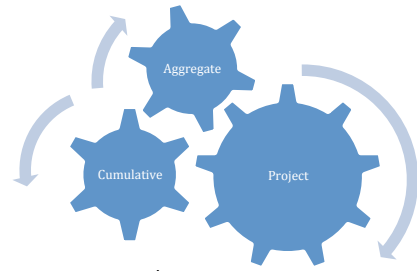
The UNGPs are intended to provide operational guidance to States and business for the implementation of the **UN “Protect, Respect and Remedy” Framework**, which clarifies and articulates the complementary but distinct roles of States and business in protecting and respecting human rights. The Protect, Respect and Remedy Framework is based on three pillars:

- **The State duty to protect** rights-holders against human rights abuses by third parties, including businesses, through effective policies, legislation, regulations and adjudication; states must prevent, investigate, punish and redress human rights abuses that occur as a result of domestic business operations.
- **The corporate responsibility to respect** human rights, meaning that companies should avoid infringing on the human rights of others and address negative impacts with which they are involved; companies must prevent, mitigate and, where appropriate, remedy human rights abuses that they cause or contribute to and must seek to prevent or mitigate impacts related to their operations, products or services through business relationships, even if these impacts have been carried out by suppliers or business partners.
- **Access to effective remedy** for victims of business-related human rights abuses, through both judicial and non-judicial means.

A Sector Wide-Impact Assessment

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

- **Aggregate level:** These are broader, country-wide impacts – positive and negative, including as a result of the specific collective actions of companies. In order to be able to address the root cause of potential negative impacts, the SWIA focuses on an analysis of the relevant policy and legal frameworks that help shape business conduct and the national context that businesses and civil society need to address in order to achieve more responsible business conduct. The SWIA will also draws out recommendations on opportunities to improve human rights outcomes at the sectoral level.
- **Cumulative level:** Where there are numerous O&G companies operating in the same area, this may create cumulative impacts on surrounding society and the environment that are different and distinct from impacts of any single company or project. Managing those impacts typically requires company–Government cooperation or at least company–company cooperation. The SWIA identifies potential areas or activities that may lead to cumulative impacts and identifies options for collective sectoral action to address the impacts observed in and predicted for Myanmar.
- **Project level:** The SWIA looks across a range of existing projects in the O&G sector in Myanmar. The findings represent “typical” project level impacts, recognising that impacts are often very context-specific and importantly can be shaped by (good and bad) company practices. In addition to looking at potential negative impacts from projects in the sector, the SWIA also catalogues positive impacts observed in Myanmar during the SWIA desk and field research

Relevance of the SWIA to Better Human Rights and Development Outcomes

The SWIA process is designed to support the implementation of the UN Guiding Principles within Myanmar as follows:

- **The State Duty to Protect:** As the Government of Myanmar and Parliamentarians develop sectoral policies and laws, they will be making choices about the future direction of the country, balancing potential negative and positive impacts of their decisions. The O&G SWIA provides an analysis that helps inform law, policy and administrative procedures in ways that prevent and mitigate harms and enhance positive outcomes. Foreign governments supporting economic development in Myanmar can also use the SWIA to better understand the human rights impacts of the O&G sector in Myanmar, and align their foreign direct investment support and policies.
- **The Corporate Responsibility to Respect:** The SWIA provides a review of the potential environmental, social and human rights dimensions of “typical” operations. This provides a preview of factors contributing to a sectoral “social license to operate” and a better understanding of potential human rights impacts at the project level. Businesses will be able to build on the significant information gathering and analysis already done in the O&G SWIA in order to better inform

their own impact assessments, and thereby incorporate attention to human rights issues in their investment decisions and operational activities.

- **Access to Effective Remedy:** Local communities surrounding O&G projects are the stakeholders most directly impacted by the O&G sector, but may not have the capacity and information to engage with companies and local authorities. While the O&G SWIA is not a comprehensive review of rule of law and access to justice in Myanmar, it is intended to support local communities in doing this. It is also intended to encourage businesses to put in place operational level grievance mechanisms that enable both communities and workers to raise their concerns regarding O&G sector impacts, in order that they can be addressed as early and effectively as possible.

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PART II: SECTOR-WIDE IMPACT ASSESSMENT METHODOLOGY

The SWIA Design

The methodology for this Oil & Gas (O&G) Sector Wide Impact Assessment (SWIA) has been developed by the Myanmar Centre for Responsible Business (MCRB) in cooperation with the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR).

It is built on well-established processes and procedures for environmental impact assessments (EIA) and social impact assessments (SIA), and emerging practices around human rights impact assessments (HRIA). HRIA are grounded in EIA/SIA methodologies but look at potential impacts through a human rights lens. EIA/SIA/HRIA approaches are used to understand the potential impacts of specific projects at particular sites in order to prevent or mitigate negative impacts as a project is designed and developed. Instead of being project specific, the SWIA takes a broader, forward-looking approach to potential investments from local or foreign businesses in a whole sector. A sectoral view should help stakeholders see the “bigger picture” of potential negative impacts, as well as potential opportunities for positive human rights outcomes, and to make choices based on a broader perspective.

What is Different about a SWIA?

- **Wider audience:** While project-level EIA, SIA or ESIA are typically carried out by or for a project developer, SWIA are intended for a much wider audience: Government and Parliamentarians, business, local communities, civil society, and workers and trade unions.
- **Aims to shape policy, law and projects:** SWIA look at the national context, national frameworks, the legal contracts (where available) and business practices, and identify what actions will help shape or impede better human rights outcomes for the sector. The findings inform the analysis and recommendations at the core of the SWIA, which identify prevention and mitigation steps for the Myanmar Government, Parliament, local and international O&G companies and their business partners, civil society actors and development partners to improve the development and human rights outcomes of the sector.
- **Information goes into the public domain:** HRIAs are typically confidential. The whole rationale behind the SWIA is to make the document a public good to improve practices and outcome of business investment for the population of Myanmar.
- **Looks at 3 Levels of Analysis:** The SWIA looks at the impacts of the sector and to do this uses three levels of analysis: aggregate, cumulative and project levels.

SWIA Phases

The SWIA process follows well-established impact assessment steps. For each step of the process specific tools or approaches have been developed, which are described below.^{xiii}



SWIA Phase	Objectives and Tasks	Key Outputs/Tools
I. Scoping the O&G sector in Myanmar	<p>Objective: Develop foundational knowledge base to target field research for validation and deepening of data</p> <p>Tasks:</p> <ul style="list-style-type: none"> • Commission expert background papers on: the O&G sector in Myanmar; Myanmar’s legal framework; land issues in Myanmar; and labour issues in Myanmar. • Stakeholder mapping 	<ul style="list-style-type: none"> • Scoping papers • SWIA “North Star” breaking down the research phases • SWIA work plan
II(a). Analytical Methodology Development	<p>Objective: Develop framework to assess the O&G sector’s actual and potential impacts in Myanmar</p> <p>Tasks:</p> <ul style="list-style-type: none"> • Survey of secondary research on HRIA methodologies • Consultations with HRIA experts on approaches to methodology development • Develop assessment approaches the three SWIA levels: Aggregate, Cumulative, Project 	<ul style="list-style-type: none"> • SWIA FAQs • Draft outline of SWIA report
II(b). Field Research Methodology Development	<p>Objective: Develop field research methodology, work plan and materials</p> <p>Tasks:</p> <ul style="list-style-type: none"> • Develop field research questionnaires (see Annex III below) and templates for recording interview findings • Develop training programme for field researchers, including local and international expert briefings, and developing fact sheets on business and human rights issues in Myanmar covering: <ul style="list-style-type: none"> ○ Livelihoods; Environment; Housing & Land; Community Consultation; Grievance Mechanisms; Public & Community Services; In-Migration; Cultural Rights; Vulnerable Groups; Labour; Security; and Worker Housing • Develop data compilation system 	<ul style="list-style-type: none"> • Questionnaires • Internal fact sheets on various business and human rights issues in Myanmar • Ethical research policy • Field safety guidelines
III. Consultation on Methodologies	<p>Objective: Validate the defined scope of the O&G SWIA, to receive input on locations and issues identified for the SWIA and to build networks with actors that work on issues relevant to the O&G sector in Myanmar</p> <p>Tasks:</p> <ul style="list-style-type: none"> • Meetings with Government, business, civil society, trade union and international organisations in Myanmar • Meetings with O&G company representatives in Europe <p>➤ See the overview of stakeholders consulted (below)</p>	<ul style="list-style-type: none"> • Briefings on SWIA
IV. Field Research	<p>Objective: Validate foundational knowledge base with primary data collected through field research from targeted locations across Myanmar</p> <p>Tasks:</p> <ul style="list-style-type: none"> • 2 rounds of field visits to three different locations each across Myanmar (team consisted of SWIA Manager, O&G Field Team Leader, and six field researchers), and one local facilitator supporting the field team at each location. • Fine tuning of field research approach following 1st 	<ul style="list-style-type: none"> • Interview summaries • Reports of stakeholders consulted • Initial synthesis reports of field findings

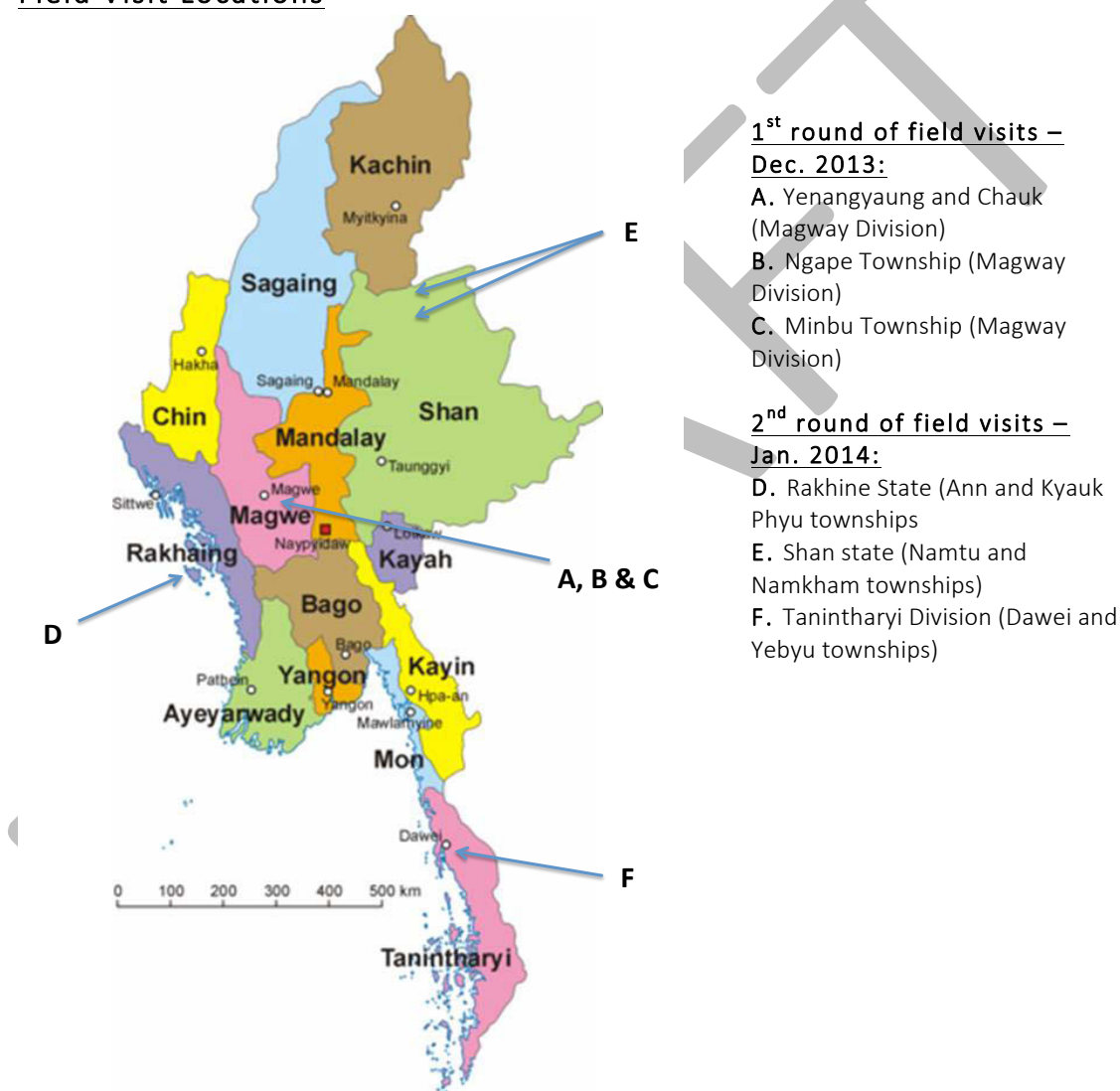
	<p>round (in advance of 2nd), including approaches to questionnaires and interview protocol, target stakeholders and interview summaries.</p> <ul style="list-style-type: none"> • Compile and synthesise field data, including IHRB/DIHR trips to intensively debrief with research teams in Yangon • Further desk research ➢ See field research location map, overview of stakeholders consulted and field research methodology (below) ➢ See the O&G SWIA Field Research Team (below) 	
V. SWIA drafting	<p>Objective: Present findings of desk and field research, consultations and recommendations for the O&G sector.</p> <p>Tasks:</p> <ul style="list-style-type: none"> • Iterative drafting of main SWIA chapters • Translations for consultations 	<ul style="list-style-type: none"> • Draft SWIA report in English and Burmese
VI. Consultation on draft SWIA and Finalisation	<p>Objective: Present SWIA findings and conclusions, as well as recommendations, to be validated through consultations with representatives of Myanmar government, O&G companies operating/planning to operate in Myanmar, and representatives of civil society organizations, some of whom represent those affected by O&G operations in Myanmar, trade unions, international organisations, donor governments.</p> <p>Tasks:</p> <ul style="list-style-type: none"> • Consultations in Yangon, Naypyitaw and Europe • Revisions to draft SWIA • Finalisation, publication and dissemination of the O&G SWIA 	<ul style="list-style-type: none"> • Final O&G SWIA report and dissemination programme

Limitations of the Oil & Gas SWIA Field Research

- The O&G SWIA field research focused on six O&G potential or producing regions that were representative of a range of O&G contexts in Myanmar, such as pipelines, onshore drilling and coastal facilities where offshore drilling comes in and also artisanal/ traditional oil drilling. While not all areas where current or future oil and gas explorations are taking place in Myanmar have been included in the SWIA field research, the Report's recommendations are representative enough to be generally applicable to oil and gas potential or producing regions of Myanmar that are not in conflict. The findings highlight trends seen across the six research locations and are therefore not meant to provide detailed analysis of particular types of projects or regions.
- It was specifically decided to do the field research in locations with existing O&G operations, rather than prospective areas for exploration or production. Given the tensions that have surrounded some O&G projects to date in Myanmar, there was a concern that asking about potential projects in certain areas (without knowing whether projects would actually materialise) might create concerns in communities and potentially build expectations (good or bad) that were not fulfilled.
- Offshore locations were not included in the O&G SWIA due to logistical and security constraints.

- In some instances no permission was granted to speak to workers of O&G companies or to community members, or permission was delayed, which resulted in limited time in order to conduct interviews. However generally both the authorities and most companies have been collaborative and open to granting access to the SWIA field teams and to sharing information.
- While the SWIA field teams tried to conduct workers' interviews outside of their workplaces and without the presence of management, this was not always possible. This may have led to different interview responses than if interviews were confidential.

Field Visit Locations



Overview of Stakeholders Consulted

The table below presents a breakdown of the discussions with 295 individuals from different stakeholder groups – 214 within individual interviews and 81 attending focus group discussions. Researchers often began visits to different towns by speaking with the local township or village authorities. This helped provide an initial understanding of some of the main issues affecting or concerning the community as a whole. Researchers then conducted individual interviews and focus group discussions to discuss in more detail those issues highlighted by the authorities and cover the issues in the questionnaires.

Around 20 individual meetings were held in Yangon with company representatives (both Myanmar and international) in addition to a group meeting with the socio-economic departments of 4 companies to explain about the SWIA project plan, to discuss their projects, policies, due diligence processes and grievance systems. Additional meetings were also held in Naypyitaw and Yangon with Government Ministers, MOGE, and MPs from field areas.

Stakeholder	Types of Interviews	
COMMUNITY 116 interviews and 40 focus group members overall	<p><u>Yenangyaung and Chauk:</u> 15 interviews / 6 in focus groups (9 Community members/groups; 2 Monks; 1 Media; 5 local businesses; 4 village administrators)</p> <p><u>Minbu:</u> 31 interviews / 7 in focus groups (19 Community members/groups; 5 Monks; 1 Pagoda trustee; 6 Local businesses; 7 village administrators)</p> <p><u>Ngaphe:</u> 11 interviews / 6 in focus groups (8 Community members/groups; 1 Monk; 2 local businesses; 7 village administrators)</p>	<p><u>Kyauk Phyu and Ann:</u> 24 interviews / 7 in focus groups (13Community members/groups; 4 Monks; 3 Local businesses; 4 village administrators)</p> <p><u>Tanintharyi:</u> 7 interviews / 9 in focus groups (10Community members/groups; 1 Monks; 2 Local businesses; 3 village administrators)</p> <p><u>Namtu and Namkhum:</u> 28 interviews / 5 in focus groups (25 Community members/groups; 2 Monks; 5 village administrators, 3 Local Businesses)</p>
WORKERS 4 interviews and 17 focus group members overall	<p><u>Yenangyaung and Chauk:</u> 1 interview / 4 in focus groups</p> <p><u>Minbu:</u> 2 interviews / 3 in focus groups</p> <p><u>Ngaphe:</u> 1 focus group / 1 interview</p>	<p><u>Kyauk Phyu and Ann:</u> 0 interviews / 5 focus group</p> <p><u>Tanintharyi:</u> 0 interviews / 4 in focus groups</p> <p><u>Namtu and Namkhum:</u> 0 interviews/0 focus groups</p>
GOVERNMENT 39 interviews overall	<p><u>Yenangyaung and Chauk:</u> 8 interviews</p> <p><u>Minbu:</u> 5 interviews</p> <p><u>Ngaphe:</u> 9 interviews</p>	<p><u>Kyauk Phyu and Ann:</u> 6 interviews</p> <p><u>Tanintharyi:</u> 6 interviews</p> <p><u>Namtu and Namkhum:</u> 5 interviews</p>
POLITICAL PARTIES 13 interviews and 4 focus group members overall	<p><u>Yenangyaung and Chauk:</u> 1 interview / 3 in focus groups</p> <p><u>Minbu:</u> 1 interview</p> <p><u>Ngaphe:</u> 2 interviews / 1 focus group</p>	<p><u>Kyauk Phyu and Ann:</u> 3 interviews</p> <p><u>Tanintharyi:</u> 1 interview</p> <p><u>Namtu and Namkhum:</u> 5 interviews</p>
CBOs, NGO, & INGOs 20 interviews and 7 focus group members overall	<p><u>Yenangyaung and Chauk:</u> 3 interviews / 5 in focus groups</p> <p><u>Minbu:</u> 3 interviews</p> <p><u>Ngaphe:</u> 2 interviews / 1 focus group</p>	<p><u>Kyauk Phyu and Ann:</u> 2 interviews</p> <p><u>Tanintharyi:</u> 5 interviews / 1 Focus Group</p> <p><u>Namtu and Namkhum:</u> 5 interviews</p>
O&G Company 22 interviews and 13focus group members overall	<p><u>Yenangyaung and Chauk:</u> 12 interviews / 5 in focus groups (10 local / 7 international)</p> <p><u>Minbu:</u> 1 interview / 4 in focus groups (5 local / 4 international)</p> <p><u>Ngaphe:</u> 2 interviews (1 local/ 1 International)</p>	<p><u>Kyauk Phyu and Ann:</u> 4 interviews / 3 in focus groups (5 local / 2 international)</p> <p><u>Tanintharyi:</u> 3 interviews / 1 focus group (3 local / 1 international)</p> <p><u>Namtu and Namkhum:</u> 0 interviews</p>

Field Research Methodology

The field teams used qualitative research methods that were applied sensitively to the local contexts while being sufficiently standardised to allow for coverage of all major human rights issues and comparison of findings. A set of assessment questionnaires served as conversation guides for the field researchers to structure the meetings (rather than as checklists). The questionnaires are based on DIHR’s Human Rights Compliance Assessment Tool (HRCA), a tool to enable companies to identify and assess human rights compliance in their operations. The questionnaires covered four overarching stakeholder groups: managers of O&G companies and sub-contractors; O&G and sub-contractor workers; communities; and other external stakeholders (local or national authorities, NGOs, international organizations, journalists, political parties, schools and monasteries).^{xiv} Interviews were held one on one, in small groups and through focus group discussions. The approach to the field assessments was fine-tuned following the first round of field trips to further improve the quality of data.

Open questions were used as much as possible, in order to allow respondents to answer using their own thoughts and words, and raise the issues they considered as important. All interviews were documented with written notes and in most cases voice recorded with permission of the interviewees. Most interviews were conducted in Burmese, while local intermediaries translated in meetings with local community representatives where regional languages were used. The table below describes the issues covered in the field research questionnaires.

Community Impacts, including consultation and participation	Labor (including working conditions and opportunities)	Security Arrangements	Land acquisition and resettlement practices
<ul style="list-style-type: none"> • Community impacts in construction phase of oil and gas projects • Community impacts of ongoing oil and gas operations • Provision of project information to communities in understandable language and content • Consultation and participation in understandable language and content • Consultation of various segments of community, e.g. fishing communities 	<ul style="list-style-type: none"> • Working conditions • Working hours • Seasonal workers • Wages and benefits • Leave and breaks • Contracts • Non-discrimination • Freedom of Association • Forced labor and child labor • Grievance mechanisms • Job creation • Vocational training <p>Health and Safety of employees</p> <ul style="list-style-type: none"> • Workplace health and safety • Health & safety training • Personal protective equipment (PPE) • Access to medical services • Emergency procedures • Occupational accidents and illnesses 	<ul style="list-style-type: none"> • General security situation • Security management procedures • Recruitment and training of security personnel • Use of force • Incidents between security personnel and employees • Community consultation on security arrangements • Incidents between security personnel and community members • Protests • Company follow up on handling by police 	<ul style="list-style-type: none"> • Community land acquisition and compensation • Land purchase • Verification of true land ownership • Community perceptions on land acquisition • Land acquisition and cultural heritage • Cost of land • Resettlement processes including consultation • Selection of resettlement location • Community complaint mechanisms regarding resettlement • Living conditions at resettlement location • Compensation due to resettlement • Resettlement and vulnerable groups

	<ul style="list-style-type: none"> Hazardous working conditions 		<ul style="list-style-type: none"> Rehabilitation of communal land
<p>Gender</p> <ul style="list-style-type: none"> Impacts on livelihood activities of women Change in girls' schools attendance Impacts on women's safety Incidents of sexual harassment Marginalization of women Women and land rights Creation of job opportunities for women Positive impacts on women 	<p>Children's Rights</p> <ul style="list-style-type: none"> Impacts on school attendance due to presence of oil and gas projects Child labor Child safety Impacts on access to food and water for children Health impacts on children Child abuse or exploitation Projects to promote children's rights 	<p>Impacts of in-migration and out migration on communities</p> <ul style="list-style-type: none"> Incidents of tensions in community Increase of conflict, violence, sexual exploitation, illnesses Increase in food/housing costs Impacts on public services Positive impacts due to in-migration or out migration 	<p>Environment and Ecosystem Services</p> <ul style="list-style-type: none"> Company assessment of environmental impacts Air, soil and water pollution Waste disposal, waste water treatment Environmental emergencies procedures Change in access to water Complaints mechanism on environmental impacts
<p>Social and cultural impacts on communities</p> <ul style="list-style-type: none"> Impacts on community traditions and cultural practices Impacts on traditional knowledge Increase of drug/alcohol use/abuse, gambling, sexual exploitation Cultural heritage sites 	<p>Conflict</p> <ul style="list-style-type: none"> Potential and actual conflicts between communities and companies due to presence of oil and gas projects Potential and actual conflicts between communities and authorities due to presence of oil and gas projects 	<p>Livelihoods of communities</p> <ul style="list-style-type: none"> General livelihood activities Company assessment of livelihoods of communities Positive and negative livelihood changes due to presence of oil and gas projects 	<p>Ethical business practices</p> <ul style="list-style-type: none"> Company policies on corruption and bribery Requests for or payment of bribes and facilitation payments Culturally respectful behavior
<p>Complaint mechanisms for communities</p> <ul style="list-style-type: none"> Company management processes on complaints handling Incidents between companies and communities Complaint resolution 	<p>Public services and community services</p> <ul style="list-style-type: none"> General public services and community services Changes to availability, accessibility or affordability of public and community services of due to presence of oil and gas projects 	<p>Indigenous peoples</p> <ul style="list-style-type: none"> General overview of indigenous peoples Status of indigenous peoples including laws and governance 	<p>Housing</p> <ul style="list-style-type: none"> General housing conditions Change in housing prices, availability of house building materials, availability of housing and quality of housing

The O&G SWIA Field Research Team

The O&G SWIA team consisted of a Myanmar SWIA manager (responsible for several current and future SWIA processes in Myanmar), one field team leader and six field researchers. The field team leader was an O&G sector expert and the field researchers had a background in conducting qualitative and quantitative social science research. All field staff received a thorough training before visiting the field. The training was carried out by local and international experts. It covered basic human rights and business training, an introduction to the practice of social impact assessment, sessions on typical human rights impacts of the oil and gas sector, sessions on how to conduct focus group discussions, ethical standards for conducting field research, discussion on environmental issues and ESIA, labour unions, foreign direct investment, and an introduction to the various SWIA questionnaires and desk research.

Following the first round of field visits, IHRB and DIHR experts debriefed the teams in Yangon to reflect on the team’s findings and fine-tune the research approach and the subsequent data compilation process. Following the 2nd round of field visits IHRB and DIHR experts again debriefed the teams to get a comprehensive “download” of the 2nd round findings and discuss some of the root causes of the impacts before the final data compilation was completed.



PART III: PROJECT-LEVEL IMPACT SUMMARIES

STAKEHOLDER CONSULTATION, ENGAGEMENT & GRIEVANCE MECHANISMS

NATIONAL CONTEXT

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Citizens' rights to speak freely were until recently forcefully suppressed over decades. The Government has historically placed itself as the main interface between companies and communities and this approach will take time to change. Ethnic diversity and varying experience of conflict provides different layers of perspectives which may be difficult to access and understand.

Since the reform process began in 2011 there have been significant improvements in the rights to freedom of expression, including loosening of restrictions on the media, and in peaceful assembly and the ability to stage peaceful protests.¹⁵ In December 2011 the Parliament enacted the Law Relating to Peaceful Assembly and Peaceful Procession, which permits peaceful assembly for the first time in over 20 years. However, Article 18 of the law provides for up to one-year imprisonment for those who demonstrate without prior permission from the government, and the requirements for seeking such permission are unduly onerous.¹⁶ Moreover, Article 18 has often been used to target activists and human rights defenders, many of whom have been arrested and imprisoned under its provisions. Although amendments were proposed in Parliament during February 2014, the reported changes, including the reduction of the one-year sentence to six months, still allow for the arrest of peaceful protesters and government denial of permission on vague grounds, including "national security" and threats to "public tranquillity".¹⁷

Protests, including against private sector projects, particularly in the extractive industries, have been suppressed in the past and continue to be suppressed sometimes violently, and participants arrested and subjected to ill-treatment^{18 19}. In the most notable example, during November 2012 the police violently broke up a peaceful protest against the Letpadaung Copper Mine near Monywa, Sagaing Region.²⁰

Key human rights considerations in the context of O&G Operations:

- In such a high-risk environment, it is all the more important to undertake consultation with local communities early, regularly and meaningfully (see also *Indigenous Peoples/Ethnic Minorities Project-Level Impact Summary*).
- The formal duty to consult its citizens rests with the State, and State authorities will play a role in implementation of mandated consultations, such as the forthcoming ESIA regulations. However, given the long-standing distrust between local communities and the Government and MOGE, they should not be the only conduit for engagement between local communities and O&G operators and sub-contractors. In particular, companies should consult with stakeholders as part of their human rights due diligence, separate and apart from government consultation with communities.²¹
- The ability of project-affected people to discuss issues and raise grievances with local companies is both a new concept within Myanmar, and one which needs to be viewed in the context of lack of trust of business, the Government and the reform process. There is

still a high level of fear and distrust among rural populations. While changes in attitude and political reforms may take some time to trickle down to local authorities, companies cannot move equally as slowly in adapting to the changes. Companies will have to work hard to build a rapport with local communities.

- Some government and company officials have been observed referring negatively to the emergence of ‘activists’ and others with ‘political motives’ as ‘stirring up opposition’ from the locals. However, this reflects newly empowered local communities making use of new freedoms of expression, and international groups who are working with them, to hold companies to account for negative impacts. Companies are encouraged to engage openly with these groups to understand their concerns and provide accurate information about the company’s approach. The emerging Extractive Industries Transparency Initiative (EITI) multistakeholder group also provides a forum for companies to engage with key civil society groups working on extractives issues.
- Media reports from 2011-2013 have reported the punishments that peaceful protestors have received for publicly opposing or demonstrating against O&G projects. This issue was raised with Government by civil society members of the emerging EITI multistakeholder group, and appears to have led to a lessening of arrests.
- At the same time, the population has a right to remedy for impacts on them, whether caused or contributed to by O&G companies, or directly linked to their operations through a business partner or the Government or military. There is – with good cause – little or no faith that the judicial system can currently deliver this.
- Most companies operating in Myanmar, local and foreign, are unfamiliar with stakeholder engagement, and opening their business up to receiving complaints directly from workers and local communities through operational-level grievance mechanisms (OLGM). As sub-contractors often have a large footprint in the local community, they will need training and incentives/disincentives from the earliest phase of exploration to develop a positive interface with local communities. Such grievance mechanisms should be operated according to the criteria established in the UN Guiding Principles on Business and Human Rights,²² and in tandem with ongoing consultation and engagement. They should feed into each other to ensure a robust awareness of how O&G activities are being perceived and impacting, positively or negatively, local communities.
- [IFC Performance Standard 1](#) is a relevant international standard on this topic.

ASSESSMENT FINDINGS

CONSULTATION & ENGAGEMENT

Human Rights Implicated:

- Right to freedom of opinion and expression; right to self-determination

Assessment Findings:

- Communities were **rarely consulted or provided information prior to the decision to develop an O&G project in their area** (see further in the *Land Issues Project-Level Impact Summary*). There were cases of company and Government surveyors walking through community villages and fields but not providing any information as to their activities when asked nor reporting back to communities with results. Many communities only heard of O&G projects once construction had begun.
- Given that there is little to no discussion with communities about which areas of their land would be used, there is a **high risk of failing to identify, value and where possible avoid areas of particular cultural relevance** to local communities that

may not be apparent to surveyors.

- Communities have had **very little opportunity to provide input into O&G project planning**, including the company's social investment. Nor were they informed about the systems companies may have in place to avoid impacts and receive complaints.
- There are **different practices amongst operators and their sub-contractors** when it comes to engaging and consulting communities. Some companies take an ad hoc approach or assign this issue to their CSR departments (often HQ-based). Other companies have set up specific village focal points for engagements and complaints, composed of local authorities, village heads and representatives, designated village representatives and company staff, which meet regularly and proactively seek and facilitate regular community engagement.
- A key challenge within Myanmar involves **requirements for Government permission and/or involvement in order to engage communities directly**, although practice varies among different operating locations. Some companies report they are unable to approach communities at all and instead have to communicate with government or MOGE representatives as the interface while others have regular, direct engagement with communities.
- **One company was noted by communities as particularly inaccessible** to communities and the public when a local impact or problem arises, and does not provide a complaints telephone number or office location to which to direct enquiries.

GRIEVANCE MECHANISMS

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

Assessment Findings:

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

SOCIAL INVESTMENTS

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

Assessment Findings:

- When asked by the assessment teams **what kinds of issues communities would like the opportunity to discuss** with O&G project developers, the following were typical:
 - infrastructure requests especially roads and electricity
 - reconstructing and restoring areas after construction
 - knowledge and training on more effective agriculture practice
 - support relating to education
 - training and jobs for unemployed youth and women
 - capacity development for better and longer-term job opportunities, especially for women and youth groups.
- **Social investment decisions**, for example for community and public services, were **commonly made through unilateral decision without first consulting communities** as to what they truly needed. Some companies provided school or health buildings without local consultation or a community needs assessment. (see the *Community Issues Project-Level Impact Summary* for further findings)
 - One company reported good cooperation with regional and local authorities, who shared with it a list of government plans regarding community development in order to avoid duplication of efforts and maximise positive outcomes. Another company developed village committees that provide a framework for community decision-making on priorities for social investment. One Myanmar company is preparing to conduct a community baseline assessment to support their social investment programme.

Where there was engagement, communities and village authorities also reported a **desire for increased transparency in community development funds**, including past and future spending.

COMMUNITIES

NATIONAL CONTEXT

Many Myanmar communities are characterized by low levels of education, high rates of poverty, and lack of adequate health care. The overall country poverty rate in the country is 26%.²³ UNICEF notes that in 2012-2013, as a percentage of GDP, government spending amounts to 0.76% for health, 1.46% for education and less than 0.01% for social welfare.² Primary school dropouts and low secondary school enrolment rates,²⁴ often due to poverty, are continuing challenges. Official literacy rates are over 90%; however, a survey found that one third of rural people in a small sample were functionally illiterate, which is likely indicative of a widely observed problem.²⁵ Women can be particularly at risk of negative impacts because they have fewer livelihood options than men, due to social status, family and cultural roles and expectations, and lower literacy levels. Access to safe drinking water and electricity varies significantly among different states and regions. On average, 69.4% of the population has access to safe drinking water.²⁶ Access to electricity in 2011 was 26% as a national average.²⁷ As of 2011 70% of the population is occupied in agriculture and related activities.²⁸

The 2010 poverty rates in coastal areas where offshore natural gas will come on shore were 44% in Rakhine State, 33% in Tanintharyi Region, 16.3% in Mon State, and 32% in the Ayeyarwady Region. The landlocked Shan State, which the South East Asia Gas/Oil Pipeline passes through, has a 2010 poverty rate of 33%.²⁹ Magwe Region in central Myanmar, a key area for onshore O&G operations, had a 2010 poverty rate of 27%.³⁰ Parts of Mon State and Tanintharyi Region have been affected by decades-long armed conflict between the central government and various armed ethnic armed groups. Although ceasefires between the Myanmar army and ethnic armed groups in these areas have been agreed, there is a legacy of distrust and continuing reports of human rights abuses by the Myanmar military around land rights and extortion for example.³¹ Rakhine State presents particular challenges, due to a disproportionately high poverty rate and continuing inter-communal violence between the Buddhist Rakhine ethnic majority and the one Muslim group who identify themselves as ethnic Rohingya, which has led to tens of thousands of displaced people and an uncertain security situation.³²

Key O&G sector implications of this human rights context:

- There are high expectations of employment from local communities but a lack of skills and education matching job requirements. It will be hard for companies to find skilled labour from among the national workforce (*see Labour Project-Level Impact Summary*).
- Given the limited range of unskilled labour opportunities, particularly post-construction period, there is high local competition for unskilled labour opportunities that could lead to tensions within the community and with the company and also risks of corruption/bribery in hiring.
- Inter-communal conflict in Rakhine state will make it very challenging to ensure non-discrimination in hiring and promotion. Inter-communal tensions elsewhere mean companies will need to be alert to the potential for discrimination and the interplay between competition for jobs and exacerbating tensions, recognising that who represents the company and in which positions, is an issue of high importance.³³
- There is a high vulnerability of local rural populations to social and environmental impacts due to their overwhelming dependence on land-based subsistence agriculture or local fishing. The vulnerability will be even higher within the additional at-risk groups within the community – women, minorities and the disabled.

- There is an expectation that the O&G business will provide public services. This can create a longer term situation of dependency by both the government and communities on O&G companies for infrastructure and services. The model Production Sharing Contract (PSC) does not require a social investment programme. It just requires the company signing the agreement with MOGE (“the Contractor”) to “expedite the Corporate Social Responsibility in the Contract Area according to the code of conduct for each Contractor Party.” (clause 17.2 dd).
- The frustration over lack of access to effective remedy for real or perceived damages to livelihoods can increase tensions between communities and O&G operators/contractors.
- There is long-standing frustration over lack of revenue sharing by the Union Government with the regional level or state level (*see the Stakeholder Engagement and Grievance Mechanisms Project-Level Impact Summary*). The ongoing peace process and discussions of constitutional changes has the potential to either resolve or heighten that frustration.
- There is the potential for increased crime in O&G areas due to increased wealth and company assets.
- [IFC Performance Standards 1, 4 and 8](#) are relevant international standards on this topic.

ASSESSMENT FINDINGS

LIVELIHOODS

Human Rights Implicated:

Right to an adequate standard of living; right to work; right to health, right to be free from unacceptable levels of harmful pollution and environmental degradation

Assessment Findings:

- **Inability of communities to obtain compensation for impacts to livelihoods caused by road and site construction** (e.g. changes to hydrology resulting in monsoon flooding to crop areas which had not occurred previously). While land disturbance is common in O&G operations, in the context of Myanmar, farmers often had no access to compensation through complaints procedures or grievance mechanisms or other processes. Where complaints were lodged, in some cases local authorities or companies failed to respond or explain why complaints would not be addressed. Farmers found it particularly difficult to obtain compensation for longer-term impacts to livelihoods resulting from environmental changes.
 - One company had put in place a system of local contacts within the community to provide a focal point to raise these kinds of issues.
 - Another company expressed interest in piloting a project on informing the communities about the grievance mechanisms and also encouraging communities to communicate with companies to inform and raise complaints.
- Some cases of fishermen having to **travel further off-shore to find fish stocks were reported, allegedly due to the impact of explosives used during construction** on fish populations. No prior consultation was taken with fishermen to notify them or mitigate the impact to livelihoods dependent on fishing. When reported to some companies and local authorities, communities were asked to provide statistical evidence of reduced fish populations, which they would not have.
- **Post-construction site rehabilitation and restrictions limiting farmer’s activities.** Land disturbances from construction were often improperly restored, with poorer soil (rocky and less fertile) than the original soil, requiring local farmers to either switch crops (which might be less nutritious or profitable) or to take great effort and time to sift out stones. Activities in restored areas restricted for safety reasons (prohibition on burning crop stubble to improve the soil) but with no compensation, for example to pay for

fertilizer. Cases of access to fields restricted by new infrastructure.

- **Inconsistent practice on allowing communities to replant on top of buried pipelines.** It is unusual to allow planting along pipeline routes, but in these cases where communities were unable to continue planting, there was no consultation to identify options that would prevent this loss of land. There was also no alternative land provided to continue planting. Where compensation was provided it was without negotiation (see *Land Issues Impact Summary*).
- In some areas, **farmers had difficulty in securing compensation or changes in operations to address destruction or impairment of agricultural fields by waste runoff and water use from operations.** (see above)
- **Very little local (i.e. from local villages) procurement of produce or local services was observed,** reducing opportunities for positive economic impact.
 - Reflecting this, some companies made an effort to source unskilled labour for construction and security from local communities.
- **Artisanal drillers (twin-zar, twin yoe) were largely blocked from extraction by the Government** when national oil fields were declared in the 1960's and 1970's. This impacted on their primary source of income as well as a cultural practice dating back many generations. There is still a strong desire from many communities to recommence these activities. Where such artisanal drilling is still taking place, the construction and fencing of project facilities sometimes restricted access to their drilling sites.

PUBLIC & COMMUNITY SERVICES

Human Rights Implicated:

- Right to an adequate standard of living; right to the highest attainable standard of physical and mental health; right to education; right to freedom of movement; right to liberty and security of the person

Assessment Findings:

- Damage caused to **local roads** from increased traffic due to one or more projects, reducing access for the local communities.
 - In some cases, construction or improvement of local roads for operations were made available to local communities. Some cases were observed of rapid responses to community complaints about increased dust from construction trucks, or example by paving dirt roads or removing blockages.
- Some company construction of **infrastructure** was of **poor quality, designed for the construction period but not a longer term contribution to the community.** One case of **bridge collapsing** shortly after building, another case of pipes providing community drinking water rusting a short period of time after installation and different quality piping used for water delivery to the community as compared to housing for workers.
 - Some cases were observed of new or improved bridges and access roads built for the construction phase directly benefitting nearby local communities.
- Access to **electricity** was a key demand from villagers. This had often been promised by the Government but not delivered on. In one case, electricity promised to villagers was diverted to a Government-run cement plant. In others, the Government promised generators that were not delivered.
 - A minority of communities have benefited from increased electricity provision due to the nearby presence of an O&G project. One operator provided subsidised solar panels to select villages. One company delivered a generator to each community, but the community were required to fund diesel usage.
- A number of cases were reported of **commitments being made by companies** to

local communities for roads to be built or electricity infrastructure improved that were reportedly **never fulfilled**, leading to community resentment and distrust of promises of local benefits to their economies.

- With some exceptions, most companies **did not adequately consult with communities** to understand their priorities and needs before embarking on their social investments, relying on discussions with local authorities (*see the **Stakeholder Engagement and Grievance Mechanisms Project-Level Impact Summary***).

COMMUNITY HEALTH & SAFETY

Human Rights Implicated:

- Right to health

Assessment Findings:

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

EDUCATION

Human Rights Implicated:

- Right to education

Assessment Findings:

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

CULTURAL HERITAGE

Human Rights Implicated:

- Right of everyone to take part in cultural life; right to freedom of religion

Assessment Findings:

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

LAND

NATIONAL CONTEXT

Reform of the land law and policy in Myanmar remains incomplete. There is a recognized need in Myanmar for a written comprehensive land use policy. The 2012 Farmland Law and the Vacant, Fallow, and Virgin Lands Management Law have been criticised for creating conditions for acquisition of large swathes of farmland and so-called “vacant land”. Moreover, there is a patchwork of new and old laws that lead to overlap, contradiction and confusion. Insecurity of tenure is a major problem. There has been consistent reporting of protests against “land grabs” in the press in many parts of the country. While some of these land grabs are new, many of them originate in land confiscations under the previous military government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the civilian government.

The 2008 Constitution provides that the State is the ultimate owner of all land in Myanmar, but the Constitution also provides for ownership and protection of private land property rights.³⁴ Land is often the most significant asset of most rural families. 70% of Myanmar’s population lives in rural areas and 70% of the population is engaged in agriculture and related activities.³⁵ The field assessments confirmed what is evident from secondary research: that for the vast majority of the Myanmar population dependent on access to land for livelihoods, where land is taken, even with monetary compensation, the impacts on an adequate standard of living can be significant. The government currently has no larger land planning process for the energy sector that would address the strategic fit between energy development and agriculture.

Key O&G sector implications of this human rights context

- Access to natural resources and the land base for carrying out extractive operations has often been a source of conflict in Myanmar, whether as a driver for violent ethnic conflicts, or a basis for local disputes. Pre-2011 approaches to land acquisition, especially through State or military expropriation are no longer acceptable to the public, even if still happening in practice. Land access for carrying out O&G-related activities is a key issue.
- There has been extensive reporting in the press over the years of villagers being deprived altogether of compensation for expropriation, receiving reduced payment for land, or being denied any recognition of ownership³⁶ by government authorities and business. Some of these incidents have been connected to O&G operations. In the complicated Myanmar land situation, there is therefore legitimate concern about “land grabs” in connection with O&G projects or anticipated projects. This creates risks for communities and for companies.
- Myanmar does not have detailed procedures on land acquisition and appears primarily to be using laws from the 19th and early 20th centuries as the basis for land acquisition and designation of oil field areas respectively.³⁷
- The new land laws³⁸ do not recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their “usufruct” rights.³⁹
- Myanmar does not have detailed regulations defining specific compensation levels for all types of land⁴⁰ or on involuntary resettlement processes (although it does have some restrictions on what appear to be involuntary resettlement);⁴¹ nor in many circumstances is there an effective process to object to acquisition or negotiate the level of compensation. There is also no hierarchy of compensation approaches, in line with international human rights law and other international standards. Such a hierarchy would provide priority to land-based compensation over monetary compensation⁴² in order to avoid loss of sustainable livelihood assets and the rapid dissipation of financial compensation.

- Companies should seek to develop longer-term relationships with the communities in their areas of operation. These relationships can be influenced early on, positively or negatively, by processes for land acquisition and use. Companies should exercise land acquisition due diligence to identify 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. Where deficiencies are identified in dealing with current and legacy claims, companies should engage as far as possible directly with the communities, rather than relying on land committees and government authorities, and encourage the Government to meet international standards, such as [IFC Performance Standards 1 and 5](#).

ASSESSMENT FINDINGS

CONSULTATION PRIOR TO LAND ACQUISITION

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

Assessment Findings:

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

DUE PROCESS IN ACQUISITION

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

Assessment Findings:

There was lack of basic due process in the procedures followed (generally by government authorities rather than the company) to inform villagers about the acquisition of their land, to seek to secure their consent to the land acquisition and to negotiate compensation.

Communities:

- **were not informed which government authorities or companies were involved** in the discussions with them about the acquisition of their land, on whose behalf action was being taken, or how further were information could be obtained, with the exception where "land committees" were put in place (see below).
- **were not consistently given written documentation** setting out the conditions of the purchase of their land.
- **were sometimes asked to sign documentation in a language that they did not understand**. The documentation was not translated from Burmese into a local language or was sometimes not even in Burmese (i.e. in foreign languages). (Some contracts were bilingual Burmese/English).
- were sometimes told that **by signing the documentation they were also agreeing not to object to or obstruct the project**.

- **were given a document where the Burmese translation of documentation did not match the English version of the document, or even reflect the same concepts.** In one village the binding English version of a document used the terms “compensation”, while the local Burmese version referred to the compensation as a “sympathy”, thus undermining the concept that compensation was owed as a matter of right.
- **were required to undergo additional, burdensome steps necessary to claim compensation** – e.g. to travel to the administrative capital to claim the compensation, claim compensation payments from local authorities (rather than being paid directly), or pay bribes to local authorities to recover some proportion of their compensation payment.
- In most of the villages, villagers were compensated on the basis of Form 7 (formerly Form 105, and or tax form showing tax paid on land or property), or sometimes alternative documentation or even testimony from neighbours. Given the lack of a uniform and accessible land registry, being able to provide alternative forms of documentation to prove ownership is a significant protection but can also be a significant risk if this is used to bypass customary owners. **As a result, establishing land ownership, including customary ownership, requires more detailed due diligence,** often including direct discussions with villagers and local authorities.

COMPENSATION FOR LAND ACQUISITION AND USE

Human Rights Implicated: Right to an adequate standard of living; right to an effective remedy

Assessment Findings:

Communities often complained of inadequate compensation for land, housing or crops, and in particular:

- **Lack of transparency and documentation of rates offered** for land and crops. In principle it appeared that land and crops were compensated at market value which is an appropriate standard. This results in variation throughout the country depending on the market price in that location.⁴³ In some cases however, there was little or no transparent documentation on rates, and no negotiation. Given that rates varied, in the absence of transparency about the basis for calculations, resentment was found amongst villagers in some areas upon hearing of higher amounts being paid for land elsewhere.
- **For many there was no breakdown of payments, just a lump sum offered, making it difficult to verify whether they were receiving an appropriate amount.**
- **There was variation in the types of assets that were being compensated,** depending on location and company. In some cases permanently occupied land was compensated as well as compensation for 5 years’ worth of crops if there was a crop in the plot. In other cases in the team heard reports of farmers only receiving land compensation and 3 years’ worth of crop compensation even for permanently occupied land. In the case of temporarily occupied land one operator provided 90% of the land value and 3 years’ worth of crops, while another did not compensate for land. For the most part compensation for crops was offered, for example where land was damaged by soil overspill and one company gave compensation for 1 year’s crop while another gave 150%, also continuing to compensate yearly if the damage continued.
- **There was less likelihood that loss of access to resource usage, customary land or communal land was compensated.** There was frequent denial of claims for economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) resulting from ongoing operations.
- **Some did not receive any compensation at all for their land despite claims of appropriate documentation.** Some complained about the level offered (sometimes based on specific information on comparisons). There were complaints of government officials soliciting or taking a cut in cash-based compensation for land.

- In other cases, some villagers were satisfied with compensation received.
- For one pipeline, “Land Committees” along the pipeline comprised of relevant authorities from different government departments, MOGE and the companies provided, in principle, a coordinated approach to land acquisition and a single point of enquiry for villagers.
- **In principle, there is no legal impediment to providing compensation to women or women-headed households**, but households are registered in the husband’s name and therefore **in general compensation was handed over to the husband in the family**. However, widows or single mothers would also be able to obtain compensation same way as male headed households.
- **Little consideration was given to alternative livelihoods for affected populations in the project areas or in designing appropriate compensation packages.**
- No alternative land was reported as offered to those with land-based livelihoods, resulting in major impacts on livelihoods for some without additional sufficient land in a nearby area (see *Impact Summary on Livelihoods*).
- Payments were made in cash. **Many in rural communities have no access to or knowledge of banking to safeguard cash and were also unfamiliar with how to manage money.** For some, compensation was spent quickly, leaving them with no livelihood or assets to fall back on and often few skills that would allow them to move into employment-based livelihood.
 - Some companies and local officials are seeking to improve transparency in the payment process, by making payments publicly, in front of the concerned group, providing a clear and transparent register of payments, or providing payments directly into bank accounts.

INVOLUNTARY RESETTLEMENT

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

Assessment Findings:

- **There appeared to be no large-scale resettlements directly attributable to operations.**
- The field assessments identified only limited, individual resettlement in the areas of the field work. **No assistance was provided in re-establishing the family in the new location.** Cash compensation was provided. However, it was up to those resettled to find a new location, move and build a new house.

ACCESS TO REMEDY FOR LAND GRIEVANCES

Human Rights Implicated: Right to an effective remedy

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

posted in companies are typically rotated into company operations for a short period of time and do not have the expertise or training to deal with community complaints.

- There have been a number of examples of localised protests around land acquisitions in connection with O&G projects, one particular resulted in the jailing of protestors.
- Following the raised political profile of the issue, Myanmar has established a number of non-judicial avenues to seek remedies for complaints related to land. These include the Government's Rule of Law Committee, the National Human Rights Commission and the Parliamentary Land Confiscation Inquiry Commission (established July 2012)). However all are overloaded, and many cases raised have not been addressed. None was known to or used by villagers covered during the field assessments.
 - MLAW, the Myanmar Legal Aid Network is currently administering two complementary Land Legal Aid (LLA) Mechanisms which are taking a few cases to court, partly as a means of policy advocacy and constructive non-confrontational engagement with local government and administrative bodies.

DRAFT

LABOUR

NATIONAL CONTEXT

Underemployment in Myanmar was at 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike.^{xliv} As such, one of the most consistent issues raised was the need for paid jobs for local community members surrounding O&G project locations. If there was local employment, it was largely unskilled, low wage and temporary. According to the Foreign Investment Law, all unskilled workers must be Myanmar nationals. Beyond construction periods where unskilled labour is needed, local communities often do not have the skill set to match requirements in operational periods.

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

While the Myanmar Government has enacted new labour laws regarding independent trade unions and labour disputes settlement, social security, employment and skills development, and health and safety, there is an overall lack of awareness by workers of these new legal rights and safeguards. Enforcement of the new laws is piecemeal, and full-scale implementation will be a long-term process. Working hours were generally very long but with new labour laws in place, there is a focus on reducing hours. While national law allows for one 24-hour rest period per week and 21 paid holidays per year, enforcement is rare.^{xlv} This was reflected in the findings of the field assessments where labour conditions and worker satisfaction were found to vary greatly, indicating a lack of consistency in enforcing labour laws – a recognised weakness in Myanmar. This was often dependent on whether the workers were working for an operator or their sub-contractors, where the risks to labour rights tend to increase with each tier of the supply chain. Most negative human rights impacts tend to occur to those workers in lower-skilled, lower paid, manual labour positions working on a temporary or irregular basis.

Key implications for business of the human rights context:

- There are high expectations of employment from local communities but a lack of skills and education matching job requirements. While companies may meet “local hire requirements” by hiring workers from other parts of Myanmar, for local communities “local” hiring means from within the very immediate area. This mismatch in terminology and perceptions may create longer-term tensions around projects, and genuinely “local” workers are likely to be frustrated with the limited numbers and levels of jobs available. Given the porous borders, there are unskilled workers from neighbouring countries competing for work.
- O&G companies may struggle to meet “local content” employment targets due to stiff competition for the limited pool of skilled Myanmar workers. The Foreign Investment Law

has requirements for the appointment of skilled citizens: 25% within 2 years, at least 50% within 4 years, and at least 75% percent within 6 years. The model Production Sharing Contract requires that the O&G company entering into the contract (the Contractor) to “endeavour to employ Myanmar citizens in accordance with the Foreign Investment Law and other laws, and to present a staffing plan” (clause 15.1). Contractors must spend a minimum of \$50,000 per year on data and/or training (clause 15.2). MOGE is encouraging O&G companies to recruit fresh graduates and women. Under similar circumstances in other emerging economies, this competition has driven wage and price inflation, disproportionately impacting low paid employees or the informal segment of the workforce.

- There is a need to provide relevant information and explanation to employees and other workers on their labour rights, particularly in light of the many new laws. Given nascent awareness of the right to freedom of association and collective bargaining, companies should ensure that their employees are aware of and able to exercise these rights, and engage constructively with trade unions where employees choose to establish them.
- Discrimination against women and girls in education and the workplace is widespread. Institutions relating to O&G, such as engineering, require female students to have higher marks than their male counterparts. The rate of female employment in the sector is low, as it is in many other countries.
- Employers need to be aware of the potential for ethnic tensions and discrimination in recruitment and the workplace, as employees’ ethnicity will not be readily apparent, particularly to non-Myanmar managers.
- The disabled are an invisible group in the population and even more invisible in the workforce. A Myanmar government study reported that 85% of disabled people were unemployed.^{xlvi}
- Given the potential lack of awareness or concern among both local and foreign goods and services providers (i.e. companies in the supply chain) in meeting national and international labour rights standards, companies should put in place specific contractual requirements together with monitoring, support, and relevant incentives and disincentives with business partners supplying goods and services (e.g. supplier codes of conduct).
- [IFC Performance Standard 2](#) and the [General Environmental, Health and Safety Guidelines](#) and the [Environmental, Health, and Safety Guidelines for Offshore Oil and Gas Development](#) and the [Environmental, Health, and Safety Guidelines for Onshore Oil and Gas Development](#) are relevant international standards on this topic.

ASSESSMENT FINDINGS

EMPLOYMENT STATUS

Human Rights Implicated: Right to just and favourable conditions of work; right to equal payment for equal work

Assessment Findings:

- Among workers with sub-contractors, **written employment contracts were not always provided, or where signed, given to the employee to retain.**
- **Wage slips** itemising pay and deductions **were not always provided**, other than for skilled, permanent staff.
 - One operator has introduced standard requirements for contracts and payslips by its subcontractors.
- **Long-term status as “temporary” staff was common.** In order to avoid the costs associated with pensions and social benefits of permanent workers, workers are often held in temporary positions for years, facing worse working conditions than permanent employees and without access to social benefits.

- There were common cases of **employment agencies and brokers**, which are regularly used during construction phases of O&G projects in Myanmar, and increasingly for other services, taking **large placement fees directly from workers** in direct contravention of international law and labour standards.
- **Operators are not commonly practicing heightened oversight of contractors' labour standards.**

WORKING HOURS, WAGES & BENEFITS

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

Assessment Findings:

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

HEALTH, SAFETY & ENVIRONMENT (HSE)

Human Rights Implicated:

- Right to health; right to life, liberty and security of the person

Assessment Findings:

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

FREEDOM OF ASSOCIATION & COLLECTIVE BARGAINING

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

Assessment Findings:

- **Only three labour organisations had been formed across the companies operating within the six project areas visited.**
- There appears to be a **lack of understanding amongst O&G workers regarding the role of trade unions (labour organisations)**, rather than complaints about active suppression or harassment as has been exhibited in other industries. Independent unions are new in Myanmar and labour is not yet well organized. **Workers also generally lacked of awareness about alternatives to trade unions where they could address their grievances.**
 - One company had the ILO present a pilot session about the concept of union with their workers last year.

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

NON-DISCRIMINATION AND EQUAL & FAIR TREATMENT

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

Assessment Findings:

- There was a fairly **clear and assumed gender division of roles** (for example regular sentiments of “women aren’t doing these jobs as these are for men”) that was rarely being challenged by local workers or the companies. The extractive sector typically has a very low percentage of women across a wide range of jobs and this was evident across the field assessments.
- While there is a cultural reticence to raise difficult issues, particularly those related to personal privacy, a few cases of **sexual harassment** were brought to the team’s attention. The cases most often revolved around claims involving foreign men, rather than locals, including one complaint that resulted in a foreign supervisor being returned to his country of origin.
- **Local communities in some cases noted the tensions that would be created in workplaces if Muslims were hired.** This indicates the level of challenge in trying to apply a non-discrimination policy in the workforce in Rakhine in particular, though documented discriminatory attitudes are also widespread throughout the country. One company had placed a local Muslim worker offshore as a preventive step. It was not possible to speak to the Muslim minority in the Rakhine State due to the security situation but the communal violence there has been well documented.
- The impact of the **influx of other workers from some surrounding countries**, as co-workers and as managers **was less remarked upon** than might be expected; instead comments tended to focus on particular incidents of discriminatory behaviour. However there was a recent well-publicised incident between foreign and local workers in a company which resulted in damage to property.

PROVISION OF FACILITIES TO WORKERS

Human Rights Implicated:

- Right to an adequate standard of living; right to just and favourable conditions of work; right to non-discrimination

Assessment Findings:

- **Housing was not consistently provided** around construction sites, but was generally provided in permanent sites. In some sites housing for Myanmar nationals was separate from housing for foreign workers, whereas in other sites, all workers were provided housing together of the same standard.
- Most workers stay in camps in order to be available for the daily job allocations each day. Field team also noted that at one site many workers reported having to **construct their own shelters**, the quality of which can be poor and inadequate to keep them dry, warm and protected. As such, workers **experience poor housing quality and sanitation levels**, for themselves as well as their families staying there.

FORCED LABOUR AND CHILD LABOUR**Human Rights Implicated:**

- Right to freedom from forced labour and servitude; freedom from child labour; right to an adequate standard of living; right to education

Assessment Findings:

- Occasional cases of **forced labour** have been reported locally by community-based organisations about forced labour by local authority on infrastructure related to O&G and not by companies, but the assessment team did not observe any cases directly. The ILO reports a reduction in occurrences generally throughout the country but notes that “forced labour remains a problem,” and that the “number of reported cases of forced labour in the private sector is relatively small ... but that this does not necessarily reflect the actual situation as there appears to be a general belief that forced labour is in some way an offence committed only by the Government.”^{xlvii}
- The assessment team did not observe cases of **child labour** within any of the sites visited. Nor was this expected, given industry practice and emphasis on health & safety. Child labour is a recognised common phenomenon in the Myanmar but would be more likely to be found in the tea shops and bars near O&G sites.
- **Age verification** of workers was routinely practiced by the projects observed.

WORKING WITH BUSINESS RELATIONSHIPS**Human Rights Implicated: Right to just and adequate conditions of work****Assessment Findings:**

- There was **lack of respect of labour rights among** workers in some parts of the value chain of business relationships, which took place in both foreign and Myanmar companies.
- The more rigorous **control of working conditions at operators is not consistently carried through** to business partners, even where there may be contractual conditions committing sub-contractors to meeting business partners’ standards. A number of operators noted that they have such commitments and monitoring systems in place, though it is often focused on principal, long-term business partners.
- Some companies noted the practice that recruitment agencies or sub-contractors **were taking a disproportionate share of the budget allocated for worker’s wages**, pocketing it as profit while leaving workers earning less than minimum or subsistence wages.

SECURITY

NATIONAL CONTEXT

Operating onshore oil blocks are located primarily in Magwe Region, central Myanmar. While there is no history of armed conflicts in this area, it is an important region in Myanmar history with close ties to the O&G sector. During the colonial period, demonstrations sparked by labourers at Burma Oil Company (BOC), swept the nation into a campaign against colonialist oppression. It is also the region where human rights incidents relating to land acquisition took place several decades ago. The existing oil and natural gas pipelines in the country also pass through areas with a history of conflict or inter-communal violence, accompanied by widespread human rights abuses. These areas, in Myanmar's borderlands, are characterized by large numbers of *tatmadaw* troops, militias, and armed ethnic minority-based opposition groups.

The Karen National Union (KNU) armed group is present in parts of Tanintharyi Region where the Yadana and Yetagun pipelines come on shore. Although ceasefires are now holding in Mon State and Tanintharyi Regions, they still experience high levels of militarisation, which includes the presence of the *tatmadaw*, its allied militias, and Mon and Karen armed groups. This has led to past and some continued human rights abuses, including land confiscation, extortion and arbitrary taxation, and sexual violence.^{xlviii xlix}

The more recently developed pipeline by the Southeast Asia Gas Pipeline Company (SEAGP)/ the Southeast Asia Crude Oil Pipeline Company (SEAOP) (also referred to as the Shwe Gas Pipeline), which comes on shore at Kyaukphyu in Rakhine State, travels through central Myanmar to northern Shan State and into China. International and Myanmar groups reported human rights violations by the government during the construction phase.ⁱ Rakhine State is characterized by ongoing inter-communal violence between Muslim and Buddhist groups and abuses against the Muslims who identify themselves as Rohingya.ⁱⁱ Northern Shan State is host to a number of ethnic minority armed groups, including the Kachin Independence Organization (KIO, a major armed opposition group) and the Ta-ang (Palaung) National Liberation Army (TNLA).ⁱⁱⁱ Fighting continues in northern Shan State between the *tatmadaw* on the one hand, and the KIO and TNLA on the other. Myanmar civil society groups have accused the *tatmadaw* of recent human rights violations against the civilian population, including forced portering and torture, amidst an increase in *tatmadaw* battalions in Palaung areas.ⁱⁱⁱⁱ

Key O&G sector implications of this human rights context:

- Under the model Production Sharing Contract (PSC) (clause 17.1) MOGE is responsible for providing "security protection ...as may be requested by the Contractor and made available from the resources under MOGE's control. In the event such ...personnel are not readily available, then MOGE shall promptly secure the use of such ... personnel from alternative sources. Expenses thus incurred at the Contractor's request shall be reimbursed to MOGE by Contractor."
- In addition, there are military (and as relevant) navy units present throughout the country, including all areas of O&G operations. Governments have the primary obligation of maintaining law and order, security and protection of human rights. The Voluntary Principles on Security and Human Rights (an international, multistakeholder standard)^{iv} highlights that companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. Security risks and appropriate responses to

risks should be covered in regular communications between companies and public security forces (military and police).

- Given the history of linkages between human rights abuses perpetuated by the military and given the low level of awareness of human rights standards and at times low level of training, O&G companies and contractors will need to be particularly attentive to ensuring that their security arrangements respect human rights, with constructive outreach to police and military through consultation, as well as training on human rights.
- Given the increasing freedom of expression in the country (though noting continuing concerns of detention of protestors – *see Stakeholder Engagement Project-Level Impact Summary*), there is a potential for increased protests around O&G projects, for which local authorities may be unprepared.
- Companies will need to be alert to newly emerging security scenarios, such as the unfolding developments involving the Rohingya, some of whom flee violence and extreme poverty by boat across the Bay of Bengal. Those boats may cross paths with the vessels conducting exploration in the area, or supplying goods and services to the offshore platforms. Companies will need to develop appropriate procedures to respond if they find the people on the boats are in distress and in need of assistance.^{iv} The cumulative impact of ships using Sittwe for O&G exploration activities may also interfere with logistics around the Rakhine State relief effort or lead to a more securitised Sittwe with negative implications for local populations.
- Companies appear to be contracting out to service providers for security guards. It is important to ensure that contracted security providers have had background checks to ensure security service owners, managers or guards have not been linked to past human rights abuses. They also need to have appropriate training on respecting human rights. Companies should ensure that working conditions and employment contracts are in line with labour rights is an integral part of the contract with the security provider. There is now an international code of conduct for private military providers (ICoC) that sets private security industry principles and standards based on international human rights and humanitarian law. The code is open to signature by companies.^{lv} This is a relevant reference for screening and to serve as a target for companies to commit to within a specified time period.
- Security guards are unarmed in Myanmar which lowers the level of risks to human rights posed by private security providers but does not eliminate all risks. Appropriate training in human rights will be needed.^{lvii}
- International humanitarian law regulates situations of armed conflict. Businesses carrying out activities that are ‘closely linked to’ an armed conflict (whether through the location or the nature of the business) are required to respect relevant aspects of international humanitarian law.^{lviii} This may therefore impose additional responsibilities on companies both with respect to security forces and to other dimensions of operations, including the acquisition of assets.
- [IFC Performance Standard 4](#) is a relevant international standard in this field.

ASSESSMENT FINDINGS

COMPANY SECURITY

Human Rights Implicated:

- Right to life, liberty and security of the person

Assessment Findings:

- **There were no complaints reported during the assessments from local communities about company-employed security guards.** In the pipeline areas,

companies typically employ unarmed security guards who are usually from the community. The security guards are therefore present in the community. The security incidents reported during the field assessments instead involved localised, unremarkable issues such as drunken fights among O&G workers. Pipeline security is monitored through sensors inside the pipeline. Pipeline walkers are sent out routinely (on a monthly or weekly rather than daily basis) to walk the pipeline route to inspect the area above buried pipelines.

- As a good practice, there were examples of **coordination between security staff and community engagement staff** to make sure that all grievances were logged and then referred to appropriate department in the company to address.
- There were some **complaints by workers towards their employer (sub-contractor) regarding long work hours and lower wages** compared to same ranking staff working in different departments employed by a different sub-contractor.
- One company reported that it specifically **integrated the Voluntary Principles on Security and Human Rights** into its security management, training material, procedures and assessment.

PUBLIC SECURITY

Human Rights Implicated:

- Right to life, liberty and security of the person

Assessment Findings:

- Designated oil field areas (OFA) are usually guarded by the Oil Field Area (OFA) Police, a detachment of the **Myanmar Police Force which liaises closely with MOGE** and can be armed. These special police forces are particularly focused on theft or unauthorized extraction of oil from OFA. **Complaints were aired about the OFA police attempting to attribute responsibility to local farmers** for monitoring local wells or for being complicit in thefts of oil.
- **No other complaints against the military or the MOGE security forces were mentioned to the researchers** but this also needs to be considered in light of continued reticence to speak out.
 - One company provided training for MOGE, the army, navy and township authorities on the Voluntary Principles on Security and Human Rights.

IMPACTS ON LIVELIHOODS DUE TO SECURITY RESTRICTIONS

Human Rights Implicated:

- Right to an adequate standard of living

Assessment Findings:

- Fishing communities informed that, for reasons of security, there can be restrictions on fishing near the sub-sea pipeline areas for long or indeterminate periods. The fish ban announcements are made by local authorities and sometimes by the Navy. **Fishing communities complained that these restrictions impact on their regular income and livelihood**

GENDER / AT RISK GROUPS

Human Rights Implicated: right to security of the person

- **Despite the presence of security guards, women indicated a rising sense of insecurity in some areas of O&G operations**, in light of the presence of the often predominantly male workforce, with a particular concern about foreign male workforces.
- Some community members remarked with concern on **the marked rise of bars in the areas of O&G operations**. They noted drinking at all hours of the day and a particular concern about young adolescents drinking in the bars. There was a worry that the introduction of readily available alcohol into the community would lead to a decrease in security with fights and petty crimes.

INDIGENOUS PEOPLES/ETHNIC MINORITIES

NATIONAL CONTEXT

Myanmar is one of the most culturally diverse countries in the region, and ethnicity is a complex, contested and politically sensitive issue where ethnic groups have long believed that the government manipulates ethnic categories for political purposes.⁵⁹ The Constitution makes no reference to ethnic minorities. It instead uses the term “national races”. However this term is not defined by the Constitution, and is probably to be interpreted by applying the 1982 Myanmar Citizenship Law. Under the Citizenship Law, nationals of Myanmar include the “Kachin, Kayah, Karen, Chin, Burmar, 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.”⁶⁰

There is a growing body of national and international law on the rights of indigenous peoples⁶¹ that recognises the cultural and other specificities of indigenous peoples; calls for special measures to be adopted to safeguard the persons, institutions, property, labour, cultures and environment of these peoples; recognises their right to freely determine their political status and freely pursue their economic, social and cultural development; and sets out processes for engaging with indigenous peoples and tribal peoples about their development, including through a process of free, prior and informed consent (FPIC). Indigenous peoples are recognised as being among the world’s most vulnerable, disadvantaged and marginalised peoples. Due to their general social and economic marginalisation, indigenous peoples are particularly vulnerable to human rights impacts connected to business activities and are often excluded from decision-making processes and other consultations regarding matters that may impact them.⁶²

The recognition of indigenous peoples’ rights has been a long contested process and remains so in several parts of the world, though with significant political movement in favour of recognising a distinct set of human rights with the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007.⁶³ There has also been increasing engagement from companies, including from the extractive sector, at policy and practical levels in recognising indigenous peoples’ rights and developing approaches while in many places indigenous peoples remain sceptical and even hostile to extractive industries, owing to negative experiences.⁶⁴ There are political, legal, policy and practical considerations to be taken into account in addressing indigenous peoples’ rights in the complex situation in Myanmar.

Key human rights considerations in the context of O&G Operations:

- Ethnic identity is an important dynamic in Myanmar society that will play out in many ways in relation to the intersection of extractive sector policy and projects, particularly in areas that are emerging from long-running conflict or inter-communal violence. Until very recently, ethnic identity was generally not expressed in terms of broader international standards on indigenous peoples’ rights, but that is changing and O&G companies (and others) are likely to see increased references to international standards on indigenous peoples as a framework for engagement.
- The global attention among indigenous peoples movements to extractive industries is already starting to focus on Myanmar.
- The current discussions on the Constitution are unlikely to result in changes in revenue sharing with ethnic states in the near future, so extractive companies should be sensitive and responsive to the prevalent view in the seven ethnic states that the ethnic minorities there see very little benefit from O&G extraction in their areas. Wherever possible, they should seek to engage with ethnic groups directly, while being careful not to undermine or contradict on-going peace processes.⁶⁵

- The latest available English translation of the draft Environmental Impact Assessment (EIA) Procedure provides for consultation but does not specifically refer to FPIC. It also explicitly states “This Procedure does not address specific matters in relation to resettlement or in relation to Projects that may have an Adverse Impact on Indigenous People. Projects involving resettlement or potentially affecting Indigenous People shall additionally comply with separate procedures issued by responsible ministries, and in the absence of such procedures all such Projects shall adhere to international best practice on Involuntary Resettlement and Indigenous People.”
- The complex set of Myanmar’s land laws fail to recognise customary land rights.
- The Government of Myanmar is involved in discussions with several international financial institutions (IFIs) including the Asian Development Bank (ADB) and the World Bank Group (WBG) on their safeguard policies, including on indigenous peoples.⁶⁶ This is expected to provide the most structured framework for examining approaches to protecting Myanmar ethnic groups’ rights in a manner that is consistent with these safeguards. Since there are unlikely to be major changes in national policy under the existing Constitution, the IFIs’ approach to indigenous peoples can provide practical lessons to O&G companies on applying these relevant international standards in the Myanmar context.
- [IFC Performance Standard 7](#) is a relevant international standard on this topic.

RECOGNITION OF INDIGENOUS PEOPLES

Human Rights Implicated: right to determine their own identity or membership in accordance with their customs and traditions; right to self-determination

Assessment

- **The recognition of certain groups living in Myanmar as “indigenous peoples” is unclear in law and contested in practice.**
- **The Myanmar Constitution and most domestic laws are steadfast in not acknowledging any concept of special minority or indigenous groups** who have additional or special rights.
- The Foreign Investment Law refers to “ethnic nationalities” or “native peoples” (depending on the translation) and specifically allows the Myanmar Investment Commission to restrict or prohibit foreign investment activities “which can affect the traditional culture and customs of the national races within the Union;” unless the investments is found to be “for the interest of the Union and citizen especially the native people with the approval of the Union Government”. This approval shall take into consideration the opinions from the local population and civil society, relevant regional administrative entities and the region or state government.⁶⁷
- **Myanmar has not ratified ILO Convention 169** - Indigenous and Tribal Peoples Convention. However, **Myanmar voted in favour of endorsement of the UN Declaration on the Rights of Indigenous Peoples in 2007**, while noting that it “would seek to implement it with flexibility.” The Myanmar statement did not take a position of whether there are or are not indigenous peoples in Myanmar.
- The standard working definition for qualification as an “indigenous peoples” uses several criteria: historical continuity; commitment to preserving ethnic identity; distinct differences from the prevailing sectors of society; and formation of non-dominant sectors of society⁶⁸, as well as the criteria of self-identification which is included in many definitions.
 - **There are ethnic minority groups in the O&G development areas that meet the criteria of indigenous peoples.**
- **The IFIs have already applied or indicated that they will apply their indigenous peoples safeguard policies to their operations in Myanmar.**
 - In 2013, the World Bank applied the World Bank Safeguard Policy on Indigenous Peoples in a project to upgrade the Thaton gas fired power plant in Mon State, noting that the overwhelming majority of people in the project area in Mon State are indigenous peoples.⁶⁹

LAND AND NATURAL RESOURCES

Human rights implicated: right to self-determination, right to autonomy or self-government in matters relating to their internal and local affairs, right to develop their own strategies for development.

Assessment

- **Foreign investors are prohibited from obtaining rights to lease and use “religious lands” or regions that are designated by the government as regions of cultural or natural heritage.**⁷⁰
 - How these lands are designated, and any role that ethnic minorities might play in such designation, is not clear from the Foreign Investment Law.
- Myanmar has a centralized (i.e. unitary) form of government.⁷¹ In particular, the Union-level government is given control over the administration of investment and appointments to region or state government.⁷² **The Union government does not need approval from state or regional governments for large-scale investments in their local jurisdictions, although they must be informed.**⁷³
- **Political boundaries in Myanmar are to some extent organised according to ethnic demographics:** Seven states named after seven large ethnic minority groups, (namely, Kachin, Kayah, Kayin, Chin, Mon, Rakhine, and Shan States). Although the Bamar do not have a specific state named after them, they are the dominant ethnic group living in the country. There are also 6 self-administered areas that are part of regions or states each named after the minority national race that forms the majority in the relevant area (Naga, Danu, Pa-O, Palaung, Kokang and Wa Self-Administered Areas)⁷⁴. Myanmar national law sets out rights of ethnic nationalities to representation in State parliaments.
- **Under Myanmar’s Constitution, all lands and natural resources belong to the State, and the State has exclusive jurisdiction to authorize the use of all lands and natural resources** – i.e. Myanmar’s recognition of the right of self-government in matters relating to internal and local affairs for some topics, does not extend to the jurisdiction (i.e. use and management) by ethnic nationalities over lands and natural resources within their claimed territories. However state and division legislatures have the power to regulate on environmental protection, within the boundaries of national legislation.
- **Myanmar is undergoing a transition to more devolved government.** The regional and state governments were only set up in 2011, and there are still ambiguities in the delegation and separation of responsibilities between Union-level and state or region-level government. There are unlikely to lead be changes in central government control over natural resources in the near future, although ultimately this will depend on the outcome of the ongoing peace talks and Constitutional amendment process. Ethnic minorities have called for amendments to the Constitution which would give them more control over their own resources and governance.
- **Once implemented, the Extractive Industries Transparency Initiative (EITI) process will bring some transparency** to the local or regional origin of extractive sector-generated government revenues.
- **Promoting the involvement of local indigenous communities in resource extraction is an emerging international approach** to ensuring the local communities can retain control over and benefit from use and management of natural resources within their (communal) lands.⁷⁵ Myanmar law limits on-shore O&G production to companies that meet requirements set out in tender requirements.
- **Myanmar has a long history of artisanal oil extraction which is currently pursued in a manner which is environmentally damaging and dangerous.** The practice of artisanal extraction has been strictly prohibited in certain areas of Myanmar, but tolerated in other areas. In no area is it supported with appropriate technical training, as has been the approach to artisanal mining in some other countries.

CONSULTATION, ENGAGEMENT AND FREE, PRIOR AND INFORMED CONSENT

Human Rights implicated: Right to consultation and cooperation, including through free prior free prior informed consent (FPIC) for certain actions

Assessment

- Under the Foreign Investment Rules 11/2013, the Myanmar Investment Commission must seek permission from relevant region or state government as to whether proposed measures to avoid or mitigate an impact on the environment or society are sufficient. While these consultation procedures with relevant region or state governments provide the opportunity for review from these bodies that may have strong representation from the majority and minority ethnic groups in the region, **this is not equivalent to or a substitute for long-term engagement by O&G companies with local communities, including local indigenous communities.** Furthermore, it may lead to conflict, for example where a company seeks to obtain regional government support through financial support to regional economic development initiatives against the wishes of the local community.
- **The Government has recognised the relevance of FPIC** in the context of REDD+ and more specifically, FPIC's importance in the context of extractive operations.⁷⁶
- **The SWIA field assessments indicated that, with limited exceptions, there has been virtually no meaningful consultation with local communities** around land use or relocation for recent O&G developments, much less any kind of wider discussion that could be characterised as FPIC or even “broad community support.” This partly reflects the absence of legal requirements to conduct impact assessments prior to the adoption of the 2012 Environmental Conservation Law.
- **The ADB, the World Bank (see above) and the IFC have all indicated that they will apply their safeguard policies on indigenous peoples to projects they finance in Myanmar.**
- **The forthcoming EIA Procedures are expected to require consultations with, and disclosure to, local communities.** According to the December 2013 draft, O&G exploration and production requires an EIA. The model Production Sharing Contract (PSC) also provides for EIAs and a social impact assessment (SIA) as an obligation and required step under the PSC (clause 17.2 bb). **However the EIA Procedures will not require more detailed consultation or even consent when indigenous peoples/ethnic minorities are involved.** The current draft states that “As part of the EIA investigations, the Project Proponent shall undertake the following consultation process:
 - a) timely disclosure of all relevant information about the proposed Project and its likely Adverse Impacts to the public and civil society through local and national media, the website of the Project Proponent, at public places such as libraries and community halls and sign boards at the Project site visible to the public.
 - b) arrange consultation meetings at national, state and local level with Project Affected Persons (PAPs), authorities, community based organizations, and civil society.”

LOCAL SHARING OF BENEFITS

Human rights implicated: rights to own, use, develop and control the lands, territories, and resources that they have traditionally owned, occupied or used.

Assessment

- **Myanmar currently does not have any agreed framework for sharing of benefits from O&G projects with communities from where those benefits derive.** The standard PSC has a few limited clauses that refer to preferential procurement of goods and services from Myanmar (subject to certain conditions) and to the need to “expedite ... Corporate Social Responsibility in the Contract Area.” None of the PSC provisions require a more in-depth engagement, or benefit-sharing, with local communities.

- **International good practice for resource extraction projects increasingly involves some form of a “Community Development Agreement” (CDA).⁷⁷** This may be based on specific national obligations imposed by governments on developers to formally enter into a CDA; or specific legal regimes that require developers seeking access to indigenous lands to negotiate conditions of access or use with the traditional custodians of that land. Companies may also propose a CDA where there has been significant conflict involving the developer and local communities, and an agreement has been negotiated in an effort to resolve these conflicts, or to strengthen their social license to operate.
 - The SWIA assessment team was informed of community development programmes that several companies had, or were putting, in place. Some programmes provide a framework for local communities to choose and develop their own priorities, which should be encouraged in Myanmar, but it is unclear if it was in the form of a CDA approach.

DRAFT

ENVIRONMENT

NATIONAL CONTEXT

The environmental issues faced by the O&G industry broadly include habitat damage or destruction and impacts on marine and terrestrial biodiversity, air pollution, including CO₂ emissions, marine and freshwater pollution, water use, waste disposal (including of toxic and other polluting substances), noise pollution, and soil and ground water contamination. O&G operations, both onshore and offshore, can have significant environmental impacts arising through depleting, displacing, disturbing and polluting the organisms and habitats that give rise to the benefits that people derive from the environment and from biodiversity (known as “ecosystem services”).

Many Myanmar citizens, and local and international civil society organisations, fear Myanmar’s biodiversity and natural habitats will be depleted and damaged by greater investment.⁷⁸ Reports of environmental damage and associated impacts on human rights, such as through impacts on safe drinking water and sanitation, have been reported by local and international civil society organisations for many years.⁷⁹ There are reports of deforestation along pipeline corridors across central Myanmar’s Mann, Minbu and Yenanchaung Reserved Forests and Shan State’s Naungcho, Gokteik and Moe Tae Reserved Forests.⁸⁰

The vast majority of the Myanmar population is engaged in agriculture and fishing. Environmental change created by O&G development can constrain its productivity. Altered hydrology can degrade or diminish a number of natural resources including fish stocks, natural nutrients, agricultural and forested land.

Many of the country’s onshore oil deposits are exploited with hand-dug wells operated by private owners.⁸¹ Artisanal O&G extraction employs many more people than large-scale projects but often engages some of the most poor and vulnerable, including women and children, and is associated with severe pollution, harsh working conditions and social problems.

The 1994 Environment Policy covers integration of environmental considerations into the development process and acknowledges that, while there is a sovereign right to use natural resources, environmental protection should be the primary objective at all times. Similarly the 2008 Constitution affirms the Government will conserve Myanmar’s natural environment, and that the national Parliament can enact environmental and other protective laws. Under the 2012 Environmental Conservation Law⁸² the Ministry of Environmental Conservation and Forestry (MOECA) is charged with regulation. It is in the process of formulating new Environmental Impact Assessment (EIA) regulations and procedures and other rules on environmental conservation and environmental quality standards.

The Model Production Sharing Contract (PSC) for O&G operations contains only brief provisions on environment protection in connection with operations, requiring an EIA and SIA and compliance with Myanmar laws and “in conformity with international petroleum industry’s practices with respect to the environmental protection and mitigation” (clause 17.2 bb). The Model PSC also permits the flaring of natural gas produced from Myanmar blocks without specific safeguards for the emissions (section 13.1 and 13.2).⁸³ At present, safeguards – in both law and enforcement – to prevent projects significantly impacting natural habitats and environmental quality are inadequate, as are requirements regarding the prevention of pollution.

As there is very limited Myanmar law on the environment, the IFC Performance Standards 3 and 6 and IFC Environment, Health and Safety Operational Guidelines for Onshore and Offshore operations

can provide valuable guidance. These cover industry impacts and management of air emissions, wastewater discharges, waste management, noise generation and spills, as well as performance indicators and monitoring, and further resources and references.⁸⁴

Key O&G sector implications of this human rights context:

- Inadequate protection of the environment can interfere with the full enjoyment of many human rights, including rights to life, health, food, water and housing. In 2012, the UN appointed the first Independent Expert on the issue of human rights relating to the enjoyment of a safe, clean, healthy and suitable environment to study the issues and identify the governance needed to achieve sustainable environmental protection.⁸⁵
- The key human, socio-economic and cultural impacts that arise from environmental issues associated with O&G operations⁸⁶ can include:
 - **Impacts on the right to health** and potentially the right to life: resulting from pollution and contamination, due to increased traffic and its associated effects (e.g. noise, accident risk), exposure to disease, reduced access to resources for traditional sources of food and medicine.
 - **Impacts on the right to an adequate standard of living** (including the right to food, water and housing): through direct impacts from pollution and contamination of water and/or soil, affecting crops, livestock and fish and marine life, through the reduction of and/or access to natural resources due to contamination or habitat destruction from exploration, operations, construction of access routes, facilities and worker camps.
 - **Impacts on the right to take part in cultural life:** impacts on cultural heritage and practices, due to pollution and contamination, habitat destruction, impacts on biodiversity and natural resources.
- The range of environmental impacts that can occur in O&G operations depend on the phase, size, complexity and design of the project, and the nature and sensitivity of the surrounding environment. Effective risk and impact assessment and management can play a significant role in preventing or mitigating and remediating impacts. As environmental impacts can occur throughout the O&G lifecycle, including as activities change, regular assessments and modifications are necessary. The government has yet to clarify whether EIAs and SIAs will be required only at the very early stages of a project, when they must be completed within six months (Model PSC, clauses 1.39 and 3.2). This would leave a very short period for an EIA and SIA and with no indication that updates will be required as there are changes in phases or activities.

ASSESSMENT FINDINGS

NOTE: The field assessments focused on environmental impacts of the O&G sector in Myanmar to the extent that this affected the livelihoods of surrounding communities and their ability to maintain an adequate standard of living and health, rather than looking at broader environmental impacts, such as on biodiversity.

WATER AND SANITATION

Human Rights Implicated:

- Right to an adequate standard of living, including the right to safe drinking water and sanitation; right to highest attainable standard of physical and mental health

Assessment Findings:

- **A number of cases were observed of failures to resolve and address damage to local community water supplies caused by construction or project activity.** Issues were left to linger for months unaddressed. This may have been because company did not view the minor infrastructure repairs needed to fix the problem as a priority, or it did not carry out

quality repairs. These included:

- **A pipeline at one site visited was built across a village's main water stream**, which was also used for hydropower, diminishing access to both safe drinking water and electricity. While the company involved sought to mitigate the problem once it was brought to its attention, the repairs were not satisfactory in delivering the quantity of water needed. An international NGO working in the area intervened on the community's behalf but was not able to persuade the company to provide a more appropriate solution.
- **A hydropower station built for one O&G project had a clear impact on the quantity of community water supplies**, requiring farmers to switch crops (from paddy crops to maize) to continue producing.
- One community water supply built as part of an O&G operation was found to have **used iron pipes, leading to water smelling of rust shortly after installation** (safe but poor quality). Villagers compared this to the plastic pipes used to supply the O&G project site itself, adding to feelings of resentment and mistrust by the community that they were not treated as equals to the project developers.
- **Cases were reported of waste and garbage disposed of in drinking water locations** within workers' housing areas, which in most cases are not built and supplied by operators (see the *Labour Issues Project-Level Impact Summary*).
- **Fears that naturally occurring mercury in gas will contaminate local water supplies** were reported to researchers.

COMMUNITY HEALTH & SAFETY

Human Rights Implicated: Right to health; right to information.

Assessment Findings:

- **Communities lack information on environmental impacts of O&G operations** and the potential consequences for human health, food production and livelihoods. They perceive adverse effects on health of local communities arising from environmental impacts of industrial activities on food crops, including pipeline leaks and waste emissions from project sites.
- **Communities are generally fearful of pipeline leaks with little reported outreach or education to assuage fears.** Pipeline leaks reported to research teams were commonly associated with MOGE operated pipelines. In such cases, communities were not notified of health and safety procedures beforehand or upon reporting the leak. The lines were regarded as poorly maintained, with infrequent and irregular monitoring. Instead, the practice appears to be to wait for leaks to be reported by communities rather than systematically maintaining the lines. The nearest emergency response/maintenance team is located far outside of the pipeline area, meaning the quickest spill response requires at least a day.

SOIL & AIR

Human Rights Implicated:

- Right to life; right to highest attainable standard of physical and mental health; right to an adequate standard of living.

Assessment Findings:

- **Farmers reported leakage or seepage from wells impacting on crop production.** At one onshore field, the monsoon would flood the area around the wells, and lead to pollution of local plantations. No compensation was provided for the damaged crops, and long-term measures to solve the problem were inadequate. Water treatment testing had to be done in Naypyitaw, due to inadequate local on-site facilities.
- **One severe case was reported of toxic waste being burned off the project site but near a local community.** The toxicity of the ash was so high that 19 cattle belonging to

two local farmers that licked ground contaminated with the ash died within a matter of hours. Local authorities were involved but no information was given to community members on the occasion. When an investigation was conducted, community members were not given full information. Compensation remained disputed at the time of writing.

- Construction of the pipeline across one river at the Myanmar border had required sandbagging and pumping out the riverbed in two phases to permit construction. **Sandbags were left in place following the completion of the construction which had led to erosion of the Myanmar bank and resulted in flooding of plantations and endangering of nearby houses.**
- **Road dust from vehicle traffic accessing project sites was a common complaint** of many villages who frequently reported little action was taken to suppress dust generated at worksites, on roads, some built by companies, and at other project installations. At one site, this was a cumulative impact attributable to a growth in road-users from multiple sources following construction of the road.

ARTISANAL EXTRACTION

Human Rights Implicated:

Right to life; right to highest attainable standard of physical and mental health

Assessment Findings:

Some artisanal extraction was observed in Rakhine region oil field areas, and referred to in Magway region; it is also practiced elsewhere in the country.

- Processes and methods observed were extremely basic, with no real capability to implement environmental safeguards.
- No protective equipment was worn by workers and health and safety procedures were absent.
- Safety issues are a concern, with workers smoking in the immediate vicinity of extraction, resulting in burns and other accidents.

NATURAL HABITAT IMPACTS

Human Rights Implicated: Right to an adequate standard of living; right to information.

Assessment Findings:

- **Several fishing communities complained about a general decrease in fish available to local fishermen in their traditional fishing grounds**, that they associated with the arrival of O&G operations and associated infrastructure in the area. Neither the local communities nor (apparently) the companies operating in the area have any baseline data on fishing populations as a basis for verifying impacts. One company also noted an increase in complaints from the local fisheries department about the impact of operations.
- A local naturalist expressed concern that offshore seismic operations were being conducted without the presence of Marine Mammal Observers who are required under best practice guidelines⁸⁷. This may have contributed to a stranding on Lampi Island, although the whale was destroyed and buried before an autopsy to determine the cause could be conducted.
- **The following examples were brought to the attention of the team as mitigation and enhancement measures for impacts on habitat:**
 - Partners within one project contribute substantial funding to a local nature reserve through which their pipeline passes to mitigate impacts identified in their EIA, conserve the region's forestry and biodiversity, and potentially compensate for some residual impacts of the pipeline and possible indirect impacts of the service track (e.g. access for hunting and encroachment). They are also running a biodiversity conservation project at a pipeline centre with a local NGO.
 - One company financially supported an environmental conservation programme focusing on mangrove restoration and protection in a township near its operations in order to improve local fisheries/hatchery and the livelihoods dependent on them, done through community plantation. The project currently covers 800 acres.

PART IV: CUMULATIVE-LEVEL IMPACTS OF O&G OPERATIONS

Cumulative environmental and social impacts are the successive, incremental and combined impacts from multiple projects or multiple activities located in the same region or affecting the same resource (e.g. a watershed or an air shed).⁸⁸ Each project (i.e. different projects or different phases of the same project) adds incremental impacts to other existing, planned, or reasonably predictable future projects and developments, leading to an accumulation of impacts. Often, environmental and social impacts from one project alone are not significant. Instead it is the building up of smaller impacts over time, or within the same physical footprint, that have a cumulative effect. Sometimes a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly (for example where there is a rapid influx of people seeking jobs at, or in the vicinity of, newly established projects (the “boomtown effect”)). They can also be triggered by poorly designed policies that prompt companies to make the same mistakes over and over again. The resilience of the environment or society to cumulative impacts depends upon both the nature of the impacts and the vulnerability (or sensitivity) of the society or ecosystem (i.e., the degree to which they are susceptible to and unable to cope with injury, damage, or harm).⁸⁹

Cumulative impacts can be negative (e.g. outmigration due to cumulative land acquisition results in government withdrawal of health services) or positive (e.g. cumulative economic developments in the area justifies opening of a public health clinic). In some cases, cumulative impacts can have both positive and negative effects.

If not managed, cumulative impacts can overwhelm environmental or social “carrying capacity” to withstand or recover from the changes because:

- **Institutionally** – the accumulated impacts overwhelm the local capacity to provide services, including protection or fulfillment of the population’s human rights, providing remedies, or managing or changing the course of events;
- **Socially** – the rapid onset and acceleration of the changes overwhelms societal structures and capacity to manage change, which may eventually lead to a rise in tensions or violence and a potential breakdown in law and order;
- **Environmentally** – the biophysical impact surpasses the environment’s carrying capacity.

Cumulative impacts are a clear area of concern from a **human rights point of view** for a number of reasons:

- Cumulative impacts are often much **harder to predict** than singular impacts from one project. Unless the hard work is done to assess and analyses the potential for such impacts, it is much **harder to prevent** environmental and social changes that can have long term impacts on human rights, such as the rights to life and security of person, health, education and an adequate standard of living.
- Cumulative impacts **can be severe** – both in terms of the type of impact (e.g. the cumulative burden on poor infrastructure causes it to collapse, killing hundreds) or the widespread nature of the impact (e.g. cumulative water use reduces water tables, resulting in drought with widespread effect on food security in the local community) or because repetition increases the severity (e.g. a singularly-occurring, minor impact may not pose a human rights risk, but a series of minor impacts may add up to a human rights impact).⁹⁰
- Even where a responsible party can be identified in the case of a singular negative

human right impact, there are often **challenges in holding the responsible party accountable**; where cumulative impacts are involved, responsibility for impacts is even more dispersed making it even harder to identify parties responsible for prevention, mitigation and remediation, and hold them accountable.

- Companies and regulators **may not consider they are responsible** for cumulative impacts since they make only a *contribution*. This is especially the case when their activities may individually fit within acceptable regulatory limits, but where the regulatory regime is not advanced enough to take account of accumulation of impacts over time or space.⁹¹
- It may often be **populations most at risk** who are affected by cumulative impacts, as they will have the least resilience to respond and the least capacity to demand a response from the authorities or businesses.
- Cumulative impacts are sometimes slow and build up incrementally over time, meaning it is **harder to draw attention to the issues and prompt action** from responsible parties.

National Context

Because project developers (exploration companies, operators) and regulators focus on assessing impacts of individual projects in a typical ESIA process, they often do not consider and miss the incremental impacts on areas or resources used or directly impacted by a project from other existing, planned or reasonably defined developments.⁹² Cumulative impacts are of growing importance in regions where environmental and social systems have reached their maximum capacity to absorb and adapt to additional impacts,⁹³ but they can also be equally as important to consider in regions that will undergo significant growth, as is the case in certain areas in Myanmar. The framework or expertise does not currently exist in Myanmar (or in many emerging markets). However, the current draft of the EIA Procedure includes references to cumulative impacts, especially for complex projects.⁹⁴

Myanmar does not currently have any detailed sector policy for the energy sector; the National Energy Management Committee (NEMC) is currently working on a National Energy Policy and is required to explore environmental and social impact assessment as part of its mandate.⁹⁵ It is unclear how detailed the policy will be and whether it will address the cumulative impacts of the sector. A more detailed plan for the sector would provide a useful starting point for identifying areas for potential cumulative impacts of the sector and therefore areas for potential collaboration between the local or regional governments and existing or new O&G operations and operators.⁹⁶ It will also be important for such sectoral plans to be matched to the regional plans where there will be sectoral operations to ensure coordination and consideration of cumulative impacts already at the planning stage.

Given the low government capacity, addressing these issues could start out with a small number of identified areas for collaboration between O&G operators and regional or local authorities, developing a joint understanding of some key potential cumulative impacts, their impact pathways and how these impacts may affect local communities.

Some Key Concerns around Cumulative Impacts in the O&G Sector in Myanmar:

Institutionally

- ✓ Overload of local and regional capacity to effectively consider EIA and monitor EMP, especially for managing cumulative impacts
- ✓ Overload of existing social services due to a rapid influx of people seeking work (e.g. childcare, healthcare and education)
- ✓ Overload of labour inspection capacity to deal with multiple operators, especially for offshore
- ✓ Overload local ports resulting in displacement of local fishermen

- ✓ Overload of Sittwe port, disrupting humanitarian operations

Socially

- ✓ Overloading the labour market, increasing competition for workers, attracting workers from less-well paid but important government services such as health and education
- ✓ Competition for workers drives up wages and inflation
- ✓ Successive construction of pipelines in the same areas repeatedly disrupts the same communities
- ✓ Successive land acquisitions within an area that rapidly diminishes the land available for livelihoods to local populations.⁹⁷
- ✓ Influx of predominantly male workers attracts sex workers, exploitation of at risk groups and potential increase in crime

Environmentally

- ✓ Increases in pollutant concentrations in a local water body or in the soil or sediments, or their bioaccumulation as a result of several projects in the same area.
- ✓ Reduced water quality (e.g. pollution discharge into rivers) and water quantity (groundwater draw and water table impacts) from multiple users all taking a modest amount of water
- ✓ Traffic congestion, road degradation and increased dust from multiple projects on one roadway⁹⁸
- ✓ Reduced fish catch, disruptions to marine mammals due to increased boat traffic for offshore seismic operations (noise, congestion, pollution)
- ✓ Increases in pollutant concentrations in offshore areas due to offshore operations (tanker discharges, discharges from operations)

Key Concerns Regarding Procedures for Addressing Cumulative Impacts in the Short-Term in Myanmar

- ✓ **Consultation overload of local communities:** The current onshore and offshore permitting process will require O&G operators to carry out EIAs within a condensed timeframe (i.e. six months). In both cases, those EIA will require consultations with local communities. This could result in multiple consultations and investigations with the same local communities, causing consultation fatigue and confusion within communities. Given the small number of sites where offshore exploration could impact, those sites should be subject to joint EIAs for those areas that also look at the potential for cumulative impacts, through a consolidated set of consultations. Depending on how proximate onshore blocks (i.e. new blocks in the same general area) are developed, it may make sense to include them in a coordinated impact assessment approach.
- ✓ **Wasted resources of having numerous EIAs** looking at the same areas but without considering the cumulative impacts of their operations. Again joint EIAs would avoid this.

Key Geographic Areas or Activities Potentially associated with Cumulative Impacts (past, present or future):

- There are several identifiable areas of operations where there will be multiple operations in the same area – both from onshore and offshore:
 - Landing offshore operations (e.g. Kyaukphyu, Sittwe in Rakhine State, Yebyu in Tanintharyi Division)
 - Offshore routes between landing areas and offshore platforms
 - Successive construction of parallel pipelines or other facilities (e.g. in Tanintharyi Region and from Rakhine to Shan States) that required or requires successive disruption to the same communities
 - Concentrated onshore O&G operations (e.g. Minbu, Chauk, Yenangyaung Townships, in Magway Division)
 - Areas of concentrated use of certain roadways or other transport corridors
 - Planned additions of O&G Operations to SEZs (eg. Kyauk Phyu, Dawei)

¹ <http://www.myanmar-responsiblebusiness.org/>

² <http://www.ihrb.org/>

³ <http://www.humanrights.dk/>

⁴ The UN Global Compact is based on the same core international standards as these other standards and therefore is a relevant reference, but does not provide as specific guidance so less reference is made to it in the SWIA

⁵ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶ <http://www.oecd.org/corporate/mne/>

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http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework++2012/Performance+Standards+and+Guidance+Notes+2012/ and
http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Environmental,+Health,+and+Safety+Guidelines/

⁸ <http://www.un.org/en/documents/udhr/>

⁹ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

¹¹ <http://www.ilo.org/declaration/lang--en/index.htm>

¹² <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

^{xiii} This table has been gratefully adapted from the presentation used in Kuoni's HRIA of the tourism sector in Kenya. See further: http://www.kuoni.com/docs/assessing_human_rights_impacts_0.pdf

^{xiv} For more information on DIHRs Human Rights Compliance Assessment Tool:

<https://hrca2.humanrightsbusiness.org/Default.aspx>

¹⁵ For further information please see National Context Summary. In January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See: The Republic of the Union of Myanmar, President Office, 28 January 2013, <http://www.president-office.gov.mm/en/?q=briefing-room/orders/2013/01/29/id-1492>. For the full text of Order No 2/88, see http://www.ibiblio.org/obl/docs3/SLORC_Order_2-88.htm

¹⁶ English translation of the law on file with IHRB.

¹⁷ "Myanmar: Token and insignificant changes to repressive anti-protest law", Amnesty International, 21 February 2014, <http://www.amnesty.org/en/news/myanmar-token-and-insignificant-changes-repressive-anti-protest-law-2014-02-21>

¹⁸ Norwegian Council on Ethics, Pension Fund Global, Recommendation on the exclusion of Daewoo International Corporation, Oil and Natural Gas Corporation Ltd., GAIL India and Korea Gas Corporation from the investment universe of the Government Pension Fund Global (2012), www.regjeringen.no/pages/38569191/Recommendation_Burma_2012.pdf but see also the Recommendation in 2013 concerning the post-construction phase of the project:

http://www.regjeringen.no/en/sub/styrrer-rad-utvalg/ethics_council/Recommendations/Recommendations/recommendations-on-human-rights/recommendations-from-2011-2012-and-2013-.html?id=748076

¹⁹ Myanmar country entry, Annual Report 2010, Amnesty International, <https://www.amnesty.org/en/region/myanmar/report-2010>; "The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy", Earthrights International, March 2011, <http://www.earthrights.org/sites/default/files/documents/the-burma-china-pipelines.pdf>.

²⁰ "Burma: Investigate Violent Crackdown on Mine Protesters", Human Rights Watch, 1 December 2012, <http://www.hrw.org/news/2012/12/01/burma-investigate-violent-crackdown-mine-protesters>

²¹ See UN Guiding Principle on Business & Human Rights, Principle 18 at:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf See

²² See UN Guiding Principle on Business & Human Rights, Principle 31 at:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²³ Interim Country Partnership Strategy: Myanmar 2012 – 2014, "Poverty Analysis (Summary)", <http://www.burmalibrary.org/docs14/mya-interim-poverty.pdf>, page 4

²⁴ For more inclusive growth and equitable opportunities, Multidimensional Review of Myanmar, Initial Observations, OECD, 2013

²⁵ "Creating a Future: Using Natural Resources for New Federalism and Unity, Harvard Kennedy School, Ash Center, July 2013, <http://www.ash.harvard.edu/extension/ash/docs/creating.pdf>

²⁶ "For more inclusive growth and equitable opportunities, Multidimensional Review of Myanmar, Initial Observations, OECD, 2013, <http://books.google.co.uk/books?id=ks43AAAAQBAJ&lpg=PA168&ots=pl5c91kPst&dq=access%20to%20electricity%20by%20states%20and%20regions%20Myanmar&pg=PA168#v=onepage&q=access%20to%20electricity%20by%20states%20and%20regions%20Myanmar&f=false>, page 168.

²⁷ "Myanmar in Transition: Opportunities and Challenges" Asian Development Bank, August 2012, <http://www.adb.org/sites/default/files/pub/2012/myanmar-in-transition.pdf>, p. 22.

²⁸ Myanmar Ministry of Labour Handbook on Human Resources; Development indicators 2009 Ministry of Labour Nay Pyi Taw 2011

²⁹ Interim Country Partnership Strategy: Myanmar 2012 – 2014, "Poverty Analysis (Summary)", <http://www.burmalibrary.org/docs14/mya-interim-poverty.pdf>, p. 4.

- ³⁰ Interim Country Partnership Strategy: Myanmar 2012 – 2014, “Poverty Analysis (Summary)”, <http://www.burmalibrary.org/docs14/mya-interim-poverty.pdf>, p 4.
- ³¹ For reports see Human Rights Foundation of Monland (HURFOM), <http://www.insightonconflict.org/conflicts/burma/peacebuilding-organisations/hurform/>
- ³² See Summary of National Context section for further information.
- ³³ From IHRB, Red Flags to Green Flags: The corporate responsibility to respect human rights in high risk countries, (2011), pp. 73-76.
- ³⁴ Myanmar Constitution (2008), Articles 35, 37, 356 and 372.
- ³⁵ Myanmar Ministry of Labour Handbook on Human Resources; Development indicators 2009 , Ministry of Labour Nay Pyi Taw 2011
- ³⁶ The Land Core Group, a subset of the Myanmar-based NGO-led Food Security Working Group, has documented 13 cases of land confiscations in central Myanmar in September 2012 (“13 Case Studies of Land Confiscations in Three Townships of Central Myanmar”, Land Core Group, September 2012, on file with IHRB.). Over the last several years the Transnational Institute has focused on land rights problems in Myanmar’s borderlands where ethnic minorities live. (See for example TNI reports “Financing Dispossession, China’s Opium Substitution Programme in Northern Burma, February 2012; “Developing Disparity: Regional Investment in Burma’s Borderlands”, February 2013, and “Access Denied: Land Rights and Ethnic Conflict in Burma”, May 2013). And Myanmar civil society, including those which are ethnic minority-based, have reported on land grabs without compensation or recognition of customary ownership. The Karen Human Rights Group has documented land disputes and land grabs in Karen areas over a number of years. (See KHRG website and “Losing Ground: Land conflicts and collective action in eastern Myanmar” March 2013). The Human Rights Foundation of Monland has also reported on such abuses, particularly at the hands of the military, in ethnic Mon areas. (See for example “Disputed Territory: Mon farmers’ fight against unjust land acquisition and barriers to their progress”, Human Rights Foundation of Monland, October 2013.)
- ³⁷ 1894 Land Acquisition Act and the 1918 Oilfield Fields Act; the 1894 Land Acquisition Act is the main framework, but there are also provisions relating to government acquisition in the more recent Vacant, Fallow and Virgin Lands Management Law (2012) and Farmland Law (2012).
- ³⁸ Vacant, Fallow and Virgin Lands Management Law (2012) and Farmland Law (2012) - see the National Context section for further description.
- ³⁹ -- “...the written and unwritten rules which have developed from the customs and traditions of communities Land Core Group, Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management, November 2012. pp 15-16.
- ⁴⁰ However, there are some limited protections: foreigners who lease land from private owners or users are required to pay the current market value and submit the lease to the Myanmar Investment Commission (MIC). Union Government Notification No. 39 of 2011, art. 15. The 1894 Land Acquisition Act provides for compensation at market value with adjustments, including for crops, Art. 23.
- ⁴¹ Interestingly, if foreign investors seek to lease land but “in place that public not desirous to transfer and vacate, it shall not have the right to lease the land and invest.” (sic) Union Government Notification No. 39 of 2011, art. 28. Given the wide scope of this provision, whether the government can or will enforce this veto is questionable.
- ⁴² International human right on the right to an adequate standard of living, which includes the right to housing, (see <http://www.ohchr.org/en/issues/housing/pages/housingindex.aspx>), Basic principles and guidelines on development-based evictions and displacement on and IFC Performance Standard 5. See also Asian Development Bank, Involuntary Resettlement Safeguards. These standards recognise that compensation should be provided when land (including housing) is acquired or used and when operations result in a loss of assets or access to assets and restrictions on land use that leads to loss of income sources or other means of livelihood.
- ⁴³ See IFC Performance Standard 5, Footnote 4.
- ^{xliii} <http://www.burmalibrary.org/docs14/mya-interim-poverty.pdf>, pg 3
- ^{xliii} The law prescribes a six-day, 44-hour workweek for private sector employees, with overtime paid for additional work. The law also allows for one 24-hour rest period per week and 21 paid holidays per year. Source: US State Department, “Burma 2013 Human Rights Report”. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>
- ^{xlvii} “In Burma, Children with Disabilities Struggle to Access Schools”, The Irrawaddy, 5 November 2013, <http://www.irrawaddy.org/photo/burmas-disabled-children-struggle-access-schools.html>.
- ^{xlvii} ILO, “Update on the operation of the complaint mechanism in Myanmar”, GB.319/INS/INF/2 (October 2013). Available at: http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_222546.pdf
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- lv For forthcoming guidance, see: <https://humanrightsatsea.com/Resources.html>
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- ⁵⁹ International Crisis Group, Myanmar Conflict Alert: “A Risky Census,” 12 Feb 2014
- ⁶⁰ Article 3, Myanmar Citizenship Law.
- ⁶¹ In particular, ILO Convention 169, (http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169) and the UN Declaration on the Rights of Indigenous Peoples, <http://daccess-ods.un.org/TMP/7098131.77585602.html>
- ⁶² See Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (focus on indigenous peoples), A/68/279 (2013), <http://www.ohchr.org/Documents/Issues/Business/A-68-279.pdf>
- ⁶³ UN Declaration on the Rights of Indigenous Peoples, www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- ⁶⁴ See Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Extractive industries and indigenous peoples, A/HRC/24/41, 1 July 2013, <http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples>.
- ⁶⁵ IPIECA, the global oil and gas industry association for environmental and social issues, Indigenous Peoples and the oil and gas industry: context, issues and emerging good practice, provides a summary of emerging practices in relation to the oil and gas industry interaction with Indigenous Peoples.
- ⁶⁶ The ADB is carrying out a “country systems safeguard” review, that covers the ADB safeguards on indigenous peoples. The World Bank has a safeguard policy on indigenous peoples and IFC as a Performance Standard on indigenous peoples.
- ⁶⁷ MIC Notification 11/2013, Art. 14.
- ⁶⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_118120.pdf
- ⁶⁹ <http://documents.worldbank.org/curated/en/2013/08/18190891/myanmar-electric-power-project-environmental-assessment>. “The Indigenous Peoples policy is triggered because of the presence of ethnic minorities (EMs)/Indigenous Peoples (IPs) within the project’s area of influence. The overwhelming majority (over 90 percent) of the beneficiaries and affected peoples in the Project influence area are IPs and, therefore, a separate Indigenous Peoples Plan (IPP) has not been prepared, but relevant elements of the policy will be integrated into project design.” P. 17.
- ⁷⁰ Rule 128(a), (b), 2013 Foreign Investment Rules.
- ⁷¹ Article 8 of the Constitution provides that “[t]he Union is constituted by the Union system.”
- ⁷² Article 262, Constitution. Ministers for border and security affairs are to be nominated by the Commander-in-Chief. Although the nominees must be approved by the Region or State Hluttaw, the said Hluttaw cannot refuse the appointment of the nominee “unless it can clearly be proved that the person concerned does not meet the qualifications of the Chief Minister of the Region or State”: Article 262(c), Constitution.
- ⁷³ “Access Denied: Land Rights and Ethnic Conflict in Burma”, Transnational Institute/Burma Centrum Nederland, May 2013, <http://www.tni.org/sites/www.tni.org/files/download/accesdenied-briefing11.pdf>.
- ⁷⁴ Article 56, Constitution.
- ⁷⁵ See Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Extractive industries and indigenous peoples, A/HRC/24/41, 1 July 2013, <http://unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples>.
- ⁷⁶ Reducing Emissions from Deforestation and Forest Degradation (REDD). “REDD+” goes beyond deforestation and forest degradation, and includes the role of conservation, sustainable management of forests and enhancement of forest carbon stocks. See: David Allen, Spectrum, presentation on Transparency and Accountability: <http://myanmar-oilgas.com/Become-a-speaker/full-programme/Presentations.aspx>, and US-Myanmar Joint statement for Good Governance and Transparency in the Energy Sector.
- ⁷⁷ EI Sourcebook, Good Practice Note on Community Development Agreements (2011), http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDIQFjAB&url=http%3A%2F%2Fwww.eisourcebook.org%2Fcms%2Ffiles%2Fgood_practice_notes_on_community_development_agreements%25E2%2580%2599.pdf&ei=ApwTU4SfIOLE7AaStYDQCg&usq=AFQjCNH3YcvDSI1Fz_QB0ayT972LiWBdQ&bvm=bv.62286460,d.ZGU&cad=rja
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- ⁷⁹ See for example ERI and Karen Environmental and Social Action Network, “Capitalising on Conflict: How Logging and Mining Contribute to Environmental Destruction in Burma” (2003), at: <http://www.earthrights.org/publication/capitalizing-conflict-how-logging-and-mining-contribute-environmental-destruction-burma>

- ⁸⁰ <http://www.irrawaddy.org/china/china-begins-receiving-natural-gas-from-shwe-pipeline.html>
- ⁸¹ <http://www.theguardian.com/world/2013/mar/05/burma-oil-rush> and <http://www.mmtimes.com/index.php/national-news/9747-on-the-hunt-for-black-gold.html>
- ⁸² http://www.burmalibrary.org/docs15/2012-environmental_conservation_law-PH_law-09-2012-en.pdf
- ⁸³ MIC Notification No. 39 of 2011 requires that a foreign investor who has leased land “has not right to carry out business that shall cause environmental pollution and water or air pollution at the land for which he is entitled to lease or use.” (sic). However as the Notification also prohibits land leased under the notification from being used for natural resource extraction, the Notification probably does not apply to O&G sector projects.
- ⁸⁴
- http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/Performance+Standards+and+Guidance+Notes+2012/
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- ⁸⁵ See: <http://ieenvironment.org/un-mandate/>
- ⁸⁶ UNEP, “Environmental Management in Oil & Gas Exploration & Production”. At: <http://www.ogp.org.uk/pubs/254.pdf>.
- ⁸⁷ International Association of Geophysical Companies ‘Recommended Mitigation Measures For Cetaceans during Geophysical Operations June 2011 <http://www.iagc.org/files/2682/> and Marine Mammal Observers Association position statement on Environmental Impact Assessments and Mitigation Plans <http://www.mmo-association.org/position-statements/109>
- ⁸⁸ Franks, Brereton and Moran, “Cumulative Social Impacts,” in Vanclay and Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, 2011. They are sometimes also referred to as collective impacts.
- ⁸⁹ IFC, *Good Practice Handbook on Good Practice Handbook, Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets* (2013), http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_cumulativeimpactassessment
- ⁹⁰ Rio Tinto, “Why Human Rights Matter: A resource guide for integrating human rights into Communities and Social Performance work at Rio Tinto”
- ⁹¹ OHCHR, <http://www.ohchr.org/Documents/Issues/Business/CumulativeImpactsUSA.docx>
- ⁹² <http://human-rights.unglobalcompact.org/dilemmas/cumulative-impacts/#.UxIV4YUXet8>
- ⁹³ Franks, Brereton and Moran, p. 202
- ⁹⁴ They key issues will be whether that provision remains in the finally adopted EIA Procedure, when it will be adopted and how it will be implemented. In the meantime, there may be numerous E(S)IA commissioned for the O&G sector that do not address cumulative impacts.
- ⁹⁵ The Republic of the Union of Myanmar President Office, Formation of National Energy Planning Committee and Energy Management Committee, 9, January 2013, <http://www.president-office.gov.mm/en/print/1385>
- ⁹⁶ The assumption is that it will be easier to prompt cooperation among companies in one sector than it will be to cross-sectoral collaboration among Myanmar companies where there is no common approach or experience in acting collectively. A sectoral plan would not address cumulative impacts arising where O&G operations are already adding to existing developments from other sectors where there may equally be cumulative impacts that must be managed.
- ⁹⁷ OHCHR, <http://www.ohchr.org/Documents/Issues/Business/CumulativeImpactsUSA.docx>
- ⁹⁸ CSR “Cumulative Impacts - A Good Practice Guide For The Australian Coal Mining Industry”