



PSEA Network Myanmar:

Sexual Exploitation and Abuse by Aid Workers in Myanmar: A Risk Analysis

Introduction

An analysis of risks of sexual exploitation and abuse (SEA) by aid workers is necessary in order to prioritize areas of work that should be undertaken as part of a broader strategy for the protection against sexual exploitation and abuse (PSEA). In Myanmar, while a PSEA Network has been functioning since 2018, no risk analysis has been carried out. This risk analysis draws on existing available information on gender-based violence and gender norms in Myanmar, and makes overall conclusions regarding risk of sexual exploitation and abuse (SEA) according to the definition given in the Secretary General's Bulletin on special measures for the protection from sexual exploitation and sexual abuse.¹ Due to time pressures and sensitivities in conducting research on this topic, the analysis does not go into specific detail of the humanitarian or development contexts nor does it dive deeper into specific geographic regions, with the exception of a brief overview based on targeted focus-group discussions that were able to be carried out in five internally-displaced persons camps in Kachin state. Risks of SEA may also be identified through previous reports of SEA; however, there is still some way to go before PSEA Network members feel confident to provide non-confidential, summary information on allegations to the PSEA Coordinator and/or PSEA Network Co-Chairs as outlined in the *Reporting Framework for Allegations of Sexual Exploitation and Abuse*.² It is hoped that, in the future, this information may be shared in a confidential manner, to further inform risks of SEA and to tailor responses.

Two factors are often considered when analyzing SEA risk: 1) the risk of SEA occurring; and 2) the institutional capacity of organizations to handle allegations of SEA. There is a third, de-prioritized element, which is the risk of negative impact to an organization.

There are numerous organizational risk analysis tools however fewer guidance documents for drafting an overall risk analysis. This risk analysis combines key questions from Oxfam's *National Safeguarding Mapping Analysis* in addition to UNDP's draft *Risk Management Tool* (2019).

The risk of SEA occurring

Legal framework

The Myanmar Constitution 2008 does not explicitly enshrine gender equality, however it does provide for equal rights before the law (Section 347) and non-discrimination based on sex (Section 348).³ Regarding sexual exploitation and abuse, relevant provisions can be found in the *Penal Code*: sections 323 (causing hurt), 354 (sexual abuse against a woman), 376 (rape), 509 (sexual harassment) and 511 (attempt to commit an offence), among others⁴. There are, however, barriers to women and particularly survivors of GBV in terms of accessing the criminal justice system which are discussed below. The *Anti-Trafficking in Persons Law* criminalizes trafficking of women, children and youth including the use of trafficking victims for pornography;⁵ attempts to traffic and providing assistance to traffickers also constitutes an offence.⁶ The recently enacted *Child Rights Law* (2019)

¹ ST/SGB/2003/13.

² PSEA Network Myanmar, endorsed by Humanitarian Country Team, 6 March 2020.

³ *The Constitution of Myanmar* (2008).

⁴ *The Myanmar Penal Code* (1948).

⁵ *Anti-Trafficking in Persons Law* (2005), sections 24 and 25.

⁶ As above, sections 27 and 32.



raises the age of a child to 18, from previously 16.⁷ It also provides penalties for acts of sexual abuse against a child,⁸ employing a child in a nightclub, karaoke bar or massage parlor which may also be used as a place of sexual business,⁹ and making and distributing child pornographic photographs.¹⁰

Regarding sex workers, the *Suppression of Prostitution Act* (1949) remains in effect and criminalizes sex work. The law punishes those who engage in sex work or are suspected of engaging in sex work; clients of sex workers are not punished. As noted by UNAIDS, 'law enforcement practices often result in sex workers experiencing extortion, violence, arrest and incarceration.' A discussion on attitudes to sex workers is further below.

The *Majority Act* (1875) states that the age of majority, that is, to marry and divorce, is 18;¹¹ similarly, the *Child Rights Law* (2019) states that the minimum age to marry is 18 years.¹² The *Penal Code* states that the age of consent to sex is 14 years for females (Section 375), but does not provide a specific age restriction on males engaging in sex. As the legal system comprises of customary law, statutory law and judicial decisions, the age of majority may vary, but often place the female age lower than the male's; customary laws include Burmese Buddhist law, Hindu law, in addition to traditional customs of ethnic groups. According to the *Burma Laws Act* (1898), customary laws have the force of law.¹³ Specific laws govern the age of marriage between different religions,¹⁴ and those belonging to a certain religion.¹⁵

The draft *Prevention of Violence Against Women* law, under development since 2013, hopes to better protect women from all forms of violence, including domestic violence, marital rape, sexual violence, harassment and assault in the workplace and in public. Despite being submitted to Parliament in late 2017, it is still yet to be passed.¹⁶ In 2013, the Government launched its National Strategic Plan for the Advancement of Women, which recognizes the work needed across Government to progress towards gender equality.

The Myanmar National Human Rights Commission was established in 2011 with a mandate to conduct inquiries in respect of complaints of human rights violations;¹⁷ while providing an alternate avenue that victims may choose over the formal justice system, the lack of transparency and application of cultural norms and practices rather than international human rights principles only serves to further entrench attitudes towards gender while moving away from a survivor-centered

⁷ Pyidaungsu Hluttaw Law No. 22/2019 (Burmese version available at: <http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/national-league-for-democracy-2016/myanmar-laws-2019/pyidaungsu-hluttaw-law-no-22-2019-child-law-burmese.html>)

⁸ *Child Rights Law* (2019), section 100(c)(ii).

⁹ As above, section 101.

¹⁰ As above, section 105.

¹¹ *Majority Act* (1875), section 3.

¹² *Child Rights Law* (2019), section 23

¹³ *Burma Laws Act* (1898), section 13.

¹⁴ *Myanmar Buddhist Women's Special Marriage Law* (2015).

¹⁵ For example, the *Christian Marriage Act* (1872), section 60, states that the legal age of marriage is 13 years for girls and 16 years for boys.

¹⁶ Miedema, S. and Than, T., 'Myanmar debates women's rights amid evidence of pervasive sexual and domestic violence', *The Conversation*, 10 December 2018, available at: <http://theconversation.com/myanmar-debates-womens-rights-amid-evidence-of-pervasive-sexual-and-domestic-violence-104536>

¹⁷ Myanmar National Human Rights Commission Mandate 1(d), available at: <http://www.mnhrc.org.mm/en/about/mandate/>



approach. As such, the Commission has been the subject of controversy,¹⁸ although it should not be completely ruled out as a stakeholder in advancing gender equality.

International instruments

Myanmar is a signatory to the *Convention on Elimination of all forms of Discrimination Against Women*, which prohibits trafficking and exploitation of women for any purpose. It has also ratified the *Convention of the Rights of the Child*, the *Convention on the Rights of People with Disabilities* and the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*. Myanmar is also a member of the Association of Southeast Asian Nations (ASEAN) Committee on Women and the ASEAN Commission on Protection and Promotion of the Rights of Women and Children. However, statements by Parliament at UN forums still portray a denial that gender inequality is an issue in Myanmar.¹⁹ The fact that these attitudes persist within Government is indicative of the pervasive problem and that there is still a very long way to go in terms of changing attitudes towards women, women's rights, GBV and thus by default, SEA. Indeed, the Ministry of Social Welfare, Relief and Resettlement, the leading ministry for implementing women's advancement and empowerment, recognized that there are major challenges in advancing women's rights, including contradictory messages in the legal framework, the plural legal system with different gender equality and women's rights standards, policy-practice deficits, among others.²⁰

In December 2018, the Government signed a Joint Communiqué on prevention and response to conflict-related sexual violence and an implementation plan with the Special Representative of the Secretary-General on Sexual Violence in Conflict,²¹ in relation to 'allegations of widespread and systematic patterns of sexual violence allegedly committed by elements of the Myanmar Security Forces, Border Guard Police and Rakhine Buddhist militias against Rohingya women and children'.²² While the signing of the Joint Communiqué is positive in terms of a reflection of political will to implement change, it is nevertheless an indication of the systemic gender inequality issues that are exacerbated in ethnic groups, particularly vis a vis state actors.

Government institutions

The Department of Social Welfare under the Ministry of Social Welfare, Relief and Resettlement is the statutory authority for safeguarding of children and vulnerable adults. For children, according to the ratification of the *Convention on the Rights of the Child*, Committees on the Rights of the Child have been formed at national, regional, district and township levels to respond to cases of child abuse; however, there are gaps with regard to implementation of duties. For women, the Myanmar National Committee for Women's Affairs (MNCWA) has been established under the management of the Department of Social Welfare to respond to different issues related to women. The Myanmar Police Force also has the overall duty to ensure protection of all citizens including women and

¹⁸ Aung, S.Y., 'Four MNHRC Members Resign over Tailor Shop Abuse Case', *The Irrawaddy*, 6 October 2016.

¹⁹ See for example Statement by H.E. U Kyaw Tin, 57th Session on the Commission on the Status of Women, as cited in Gender Equality Network, *Raising the Curtain*, 2015, p 21.

²⁰ Asian Development Bank, UNDP, UNFPA, United Nations Entity for Gender Equality and the Empowerment of Women, Ministry of Social Welfare, Relief and Resettlement, *Gender Equality and Women's Rights in Myanmar: A situation analysis*, 2016.

²¹ Press Release, Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, 7 December 2018, <https://www.un.org/sexualviolenceinconflict/press-release/joint-communicue-signed-between-the-united-nations-and-the-government-of-myanmar-to-prevent-and-respond-to-conflict-related-sexual-violence-in-myanmar/>

²² As above.



children, however there are serious concerns regarding the rule of law and trust by the community (see below).

Weak rule of law

The risk of SEA occurring in Myanmar, perpetrated by both international and national aid and development workers, is high. The weak rule of law in the country and the lack of trust in judicial and law enforcement mechanisms mean that community members seldom report offences, and legal punishment does not serve as a deterrent to would-be offenders. In addition to weak institutional capacity, corruption and political influence hamper efforts to deliver justice where it has been sought. Coupled with this, victims of human rights violations are often harassed in and out of court, making it an unattractive avenue to pursue justice for survivors of gender-based violence (GBV).²³ There is a specific concern regarding offences perpetrated by the Myanmar Armed Forces, as offences are tried in military courts, which are closed to the public; this includes acts of GBV.

Justice Base found that women and families prefer traditional dispute resolution mechanisms for cases of sexual violence and that there was widespread distrust of the state legal system due to high costs, corruption, gender bias, lengthy trial delays and language barriers for ethnic minorities.²⁴ A UNFPA study in southeastern Myanmar states concluded that both formal and informal justice systems fell well short of meeting survivor needs: 'GBV survivors lack legal recourses. Both formal and informal systems fail to provide remedies which are sufficient to deliver justice and hold perpetrators accountable.'²⁵ The weak rule of law in Myanmar and lack of recourse for survivors of GBV foster an environment where perpetrators of GBV and SEA can operate without fear of repercussions, and where GBV and SEA survivors do not seek help due to fear or lack of trust.

Women's empowerment

The Ministry for Social Welfare, Relief and Resettlement noted that, despite progress in the economy, 'gendered occupational segmentation and women's concentration in the informal sector sustain concerns about job stereotyping, job quality, and sustainability.'²⁶ Data from the Myanmar Demographic Health Survey indicates that women in rural communities are less empowered than their urban counterparts when it comes to control over women's earnings, with only 28% of women in Kayah states reporting that they made independent decisions on their cash earnings.²⁷ The survey also found that child marriage is still quite common among Myanmar women: 19% of women aged 20-49 were married before the age of 18.²⁸ In terms of domestic violence, the survey found that 15% of women aged 15-49 have experienced physical violence since age 15; the highest prevalence was in Rakhine State and Tanintharyi Region (30% and 27% respectively).²⁹ Of the women who had experienced domestic violence, less than one quarter sought help (22%), while more than one third

²³ International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Myanmar: Baseline Study*, January 2018, available at: <https://www.icj.org/myanmar-reverse-laws-and-practices-that-perpetuate-military-impunity-new-icj-report/>

²⁴ Justice Base, *Violence from Intersection: Women's Access to Justice in the Plural Legal System in Myanmar*, 2016, p 9.

²⁵ UNFPA, *Powerful Myths, Hidden Secrets*, p IX.

²⁶ *Gender Equality and Women's Rights in Myanmar: A Situation Analysis*, p XIX.

²⁷ Ministry of Health and Sports, *Myanmar Demographic and Health Survey, 2015-16*, available at: <https://dhsprogram.com/publications/publication-fr324-dhs-final-reports.cfm>, p 242.

²⁸ Myanmar Demographic and Health Survey, p 55.

²⁹ Myanmar Demographic and Health Survey, p 263.



(37%) had never sought help or spoken to anyone about the violence.³⁰ It should be noted that GBV is consistently underreported and that the actual figures are likely to be higher. The figures were even more telling with regard to sexual violence: seven out of ten sexual violence survivors had never sought help and never told anyone.³¹ This information not only reflects societal attitudes towards women's empowerment, but also the normalization of child marriage (and thus sex with children) in some parts of Myanmar, as well as the prevalence of violence against women and the silence that follows.

Culture of silence

Moreover, cultural norms and attitudes not only to gender but also hierarchy within communities mean that victims of SEA are not empowered to speak out. The issue of SEA is an element of gender inequality as it affects women predominantly as opposed to men. In Myanmar, 'Deeply held views passed on over generations also mean that hierarchical gender relations have become internalized among both men and women, making them not only hard to see but also very hard to question'.³² As a result, claims to gender inequality and efforts to address it are often brushed aside, denied, or belittled.³³ A 2016 report by UNFPA found that in Kayah, Kayin and Mon states there was generally a culture of silence around all types of gender-based violence in communities.³⁴ As one community leader in Kayah said: 'The best course of action for a rape victim is to keep quiet, so no one will find out that she is not a virgin any more. Otherwise she can't get married'.³⁵ The combination of these factors contribute to an overall environment of impunity for GBV, of which SEA by aid workers is a subset.

Societal structures

An issue highlighted in five focus-group discussions (FGDs) in internally-displaced persons (IDP) camps in Kachin state is the fact that community leaders and decision-makers are often men. IDP camps in Kachin and Northern Shan State are generally managed by camp-management committees, and the majority of committee members are male. The FGDs sought information regarding provision of services and how IDP members would go about requesting additional or new services. IDPs from the five FGDs responded that they would first approach a camp leader or member of the camp-management committee.³⁶ Similarly, if IDPs thought that they should raise an issue of a staff member acting inappropriately, they would raise the issue with the same individuals.³⁷ A popular modality of raising concerns is through anonymous suggestion boxes in the camps, which are managed by camp management staff. Each of these points suggest that camp-management committees and camp staff wield considerable power vis a vis IDPs, and that, given the culture of silence in Myanmar surrounding GBV, there is little likelihood that allegations of SEA would be channeled to camp-management committees; if a complaint were brought to their attention, it is unlikely that a complaint made against a camp-management committee member would attract the necessary accountability measures required under the Secretary-General's Bulletin.

³⁰ Myanmar Demographic and Health Survey, p 268.

³¹ Myanmar Demographic and Health Survey, p 268.

³² Gender Equality Network, *Raising the Curtain*, 2015, p 17.

³³ As above.

³⁴ UNFPA, *Powerful Myths, Hidden Secrets*, 2016, pp 19, 37.

³⁵ *Powerful Myths, Hidden Secrets*, p 19.

³⁶ Findings from PSEA Risk Assessment in Myitkyina, Trocaire/Metta, 13 March 2020.

³⁷ As above.



Structural factors were also highlighted as one of many barriers to reporting complaints against organizations, as noted in Oxfam's report *Factors Influencing Misconduct Reporting in Kachin, Myanmar*,³⁸ which is an important document when considering the challenges in reporting SEA.

Similar structural issues are also present in IDP camps in Rakhine State. As noted in the *Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus*,³⁹ there is a lack of women's representation in camp management and coordination committees; even when Rohingya women were members of camp management committees, there were instances of them not being invited to meetings due to questioning from male community leaders.⁴⁰ The lack of women's participation as well as empowerment in camp decision-making among Rohingya IDPs in Rakhine State also presents concerns regarding reporting SEA allegations and appropriate response in terms of survivor assistance and perpetrator accountability.

Vulnerable groups

Particular vulnerabilities identified in the PSEA Network Action Plan workshop include: women, girls, persons with disabilities, children in institutional care, people in remote locations, internally displaced people, migrants, victims of trafficking, and female-headed households.⁴¹ In terms of specific programs with higher risk, these were identified as: programs relating to food, nutrition, health, cash-based interventions, livelihoods, water and sanitation, working with women and children, and programs with a distribution element.⁴² Conflict areas were cited as being at higher risk, in addition to short-term programs. In conflict-affected and post-conflict areas, there is also a high dependence on aid, potentially putting people at greater risk of exploitation and abuse. The Humanitarian Assistance and Resilience Programme Facility (HARP) scoping study also identified remote locations, water and sanitation interventions, food rations and nutrition programs as needing further inquiry in terms of SEA risk.⁴³

These vulnerabilities are echoed in the findings of the UNFPA report *Powerful Myths, Hidden Secrets*; GBV risk groups included daily wage workers, girls (particularly those left at home while adults were out working), and women living in border areas. Exacerbating factors to GBV included poverty, lack of knowledge of basic rights, drug and alcohol abuse, among others.⁴⁴ These risk factors and vulnerable groups are also relevant to the analysis of risk to SEA.

A report by Volunteer Services Overseas highlighted the risk of girls living with disabilities to GBV in Myanmar.⁴⁵ The study found that girls and young women living with disabilities in IDP camps were often left at home while parents left to seek livelihood opportunities. This rendered them at risk of GBV as they were left without carers or adult supervision. This is compounded by an inability to access complaints mechanisms, in addition to general stigmatization and seclusion within communities. The risk of girls with disabilities not only to violence but also sexual violence has also

³⁸ Oxfam, 12 November 2019, available at: <https://policy-practice.oxfam.org.uk/publications/factors-influencing-misconduct-reporting-in-kachin-myanmar-620893>.

³⁹ Draft as at February 2020.

⁴⁰ As above.

⁴¹ Notes from the PSEA Network Action Plan Workshop, 8-9 October 2019, Yangon

⁴² As above.

⁴³ The Humanitarian Assistance and Resilience Programme Facility (HARP-F), *Prevention of Sexual Exploitation and Abuse Scoping Study Report*, December 2018.

⁴⁴ *Powerful Myths, Hidden Secrets*, pp 17, 39.

⁴⁵ Volunteer Services Overseas, *Baseline Report: Stop Gender Based Violence – Capacity Strengthening of Local Women*, 12 August 2016.



been found globally; one study published in *The Lancet* found that girls and boys with disabilities are nearly three times more likely to be subjected to sexual violence, with girls at the greatest risk.⁴⁶

Attitudes towards sex workers

Little information is available regarding the general attitude towards sex workers in Myanmar. While a UNAIDS study found that for men, 'it is common and expected, though not officially sanctioned, that they have their first sexual experience with a sex worker',⁴⁷ sex with sex workers is nonetheless considered 'immoral behaviour' which attracts a certain stigma.⁴⁸ Indeed, numerous reports by UNAIDS discuss the issue of stigma surrounding sex workers as a main barrier to accessing health services; in a focus group discussion with sex workers, most respondents talked about stigma and discrimination through health services, law enforcement and their local community.⁴⁹ Many fear being labelled as a sex worker due to discriminatory attitudes associated with the profession.⁵⁰

The stigma associated with being a sex worker is inherently linked with cultural norms of women's sexuality in Myanmar. As noted in the GEN report *Raising the Curtain*, there is a 'clear conflict between norms that glorify men's sexual prowess and those that value chastity for women... it is evident that different standards apply to men and women'.⁵¹ Women in Myanmar are still expected to be virgins at the time of marriage, whereas there is a lesser expectation of men.⁵² This being the case, it is logical therefore that sex workers present the only practical outlet for sexual exploration among Myanmar men, particularly young men. As such, there may be a risk that humanitarian and aid workers in Myanmar, especially those in the younger age bracket, engage with sex workers. This does not exclude the possibility of married Myanmar men, in addition to international staff, engaging sex workers, particularly those who may be working and/or living away from family.

Reports by UNAIDS highlight that criminalization of sex work exposes sex workers to extreme vulnerability.⁵³ Examples of abuse by police include extortion of bribes, verbal and physical abuse, demanding sex for free in exchange for avoiding arrest, amongst others.⁵⁴ Transgender sex workers are even more exposed to extortion, arrest and incarceration due to the fact that same-sex acts are considered illegal under Section 377 of the *Penal Code*, which carries an exceptionally harsh imprisonment term of up to ten years. While prostitution is a criminal offence, buying sex is not,

⁴⁶ Jones, L. and others, 2012, 'Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies, *Lancet* 380, 899-907, as cited in: UNFPA and others, 2018, *Young Persons with Disabilities: Global study on ending gender-based violence, and realizing sexual and reproductive health and rights*, p 25.

⁴⁷ Roberts, J., *Gender Review of the National Strategic Plan on HIV 2006-2010*, as cited in *Raising the Curtain*, p 40.

⁴⁸ Gender Equality Network, *Raising the Curtain*, 2015, p 111.

⁴⁹ See for example UNAIDS, *Situational Analysis of the HIV Response Among Sex Workers in Myanmar*, April 2016, p 98.

⁵⁰ As above, p 99.

⁵¹ *Raising the Curtain*, p 40.

⁵² Interview with UNAIDS, 7 November 2019. See also UNFPA, *Powerful Myths and Hidden Secrets*, p 16. The report mentions a traditional practice among female survivors of rape to marry the perpetrator in order to maintain the woman/girl's dignity.

⁵³ Not only are sex workers at risk of arrest under the *Prostitution Suppression Act* 1949 but also may face charges or threats of arrest for loitering after dark (*Police Act* and *Rangoon Police Act*) and less commonly for public nuisance (Section 268 of the *Penal Code*). Abuse of the laws by police is reported as common especially in relation to arrest under Section 35 of the *Police Act* (loitering) and Section 54 (arrest without warrant) of the *Code of Criminal Procedure*. See UNAIDS, *National HIV Legal Review Report*, p 38.

⁵⁴ UNAIDS, *National HIV Legal Review Report*, p 36.



which exposes sex workers to violence by clients: ‘cases of rape and sexual assault are a daily occurrence... because clients know that sex work is criminal, they can be violent or refuse to use a condom and the sex worker can’t say no’.⁵⁵ Sex workers reported that ‘violence clearly emerged as routine and most sex workers experience it as a constant threat.’⁵⁶

Despite these risks, women and girls are engaged in this work due to economic necessity. In one UNAIDS study where sex workers were interviewed, ‘all respondents uniformly agreed that sex workers in Myanmar tend to choose their line of work for economic reasons, often to escape poverty.’⁵⁷ Throughout Myanmar, sex workers can be found in hotel bars, massage parlours,⁵⁸ karaoke bars,⁵⁹ at ‘fashion shows’,⁶⁰ and even along the Mandalay-Yangon highway.⁶¹ Brothels exist along the borders with Thailand and China⁶² where the risk of sex trafficking is high.⁶³

The Secretary General’s Bulletin prohibits UN and partner staff from engaging with sex workers due to the fact that the practice entrenches gender inequality and that it may include persons who have been trafficked for sexual exploitation. In Myanmar, the legal framework and social stigma associated with the profession render sex workers extremely vulnerable to abuse, harassment and physical violence. Designating certain locations ‘off limits’ to UN officials and aid workers in Myanmar may have some effect in terms of raising the profile of the issue, however it is clear from the above examples that it is easy to engage a sex worker should an individual choose to. A clear message must be sent to all aid workers that engaging in transactional sex with sex workers is a breach of the code of conduct and constitutes serious misconduct.

Domestic workers

UN international and national staff, in addition to most middle-income earners in Myanmar, often employ domestic workers in Myanmar. There is no legal framework protecting the rights of domestic workers and there have been calls by civil society and the International Labor Organization for the Government to provide better protection.⁶⁴ This has been recognized by the Government and a bill has reportedly been drafted.⁶⁵ The potential for aid workers to sexually exploit or abuse female and male domestic workers is high, given the fact that employer and domestic worker may be left alone in the residence of the employer, in addition to the significant power imbalances between employer and employee. While there is little information on the prevalence of abuse of domestic workers, and there are few civil society organizations focused on capacity-building of domestic workers, efforts should be made to not only to raise awareness among staff but also among domestic workers so that they are aware of standards of conduct and can access complaints

⁵⁵ As above.

⁵⁶ As above.

⁵⁷ UNAIDS, *Situational Analysis of the HIV Response Among Sex Workers in Myanmar*, April 2016, p 106.

⁵⁸ Wine, Aung Thet, ‘The Main Issue is Survival’, *The Irrawaddy*, February 2, 2012.

⁵⁹ Wine, Aung Thet, ‘Sex and the (Burmese) City’, *The Irrawaddy*, 2008, Vol. 16 No. 7.

⁶⁰ O’Connell, C., ‘Burma A La Mode’, *The Irrawaddy*, 2003, Vol. 11 No. 8.

⁶¹ Htwe, K., ‘Desolation Road’, *The Irrawaddy*, 2009, Vol. 17 No. 4.

⁶² Aung, T., ‘A Downward Spiral in Jiegao’, *The Irrawaddy*, 2010, Vol. 18 No. 4.

⁶³ UNWomen, ‘Tackling Human Trafficking in Myanmar’, 3 January 2019, available at: <https://www.unwomen.org/en/news/stories/2019/1/feature-tackling-human-trafficking-in-myanmar>.

⁶⁴ International Labor Organization, ‘Under age, under protected and undervalued, the grim situation of Myanmar domestic workers’, 11 May 2018, available at: https://www.ilo.org/yangon/press/WCMS_630258/lang-en/index.htm.

⁶⁵ Aung, S.T., ‘Domestic workers law could be enacted next year’, *Mizzima* 17 December 2019, available at: <http://mizzima.com/article/domestic-workers-law-could-be-enacted-next-year>.



mechanisms if necessary, particularly if these workers are also beneficiaries of assistance or affected populations.

Presence of underage staff/volunteers

Children are permitted to be engaged in wage-earning employment in Myanmar generally from the age of 14,⁶⁶ with the exception of hazardous work which is only legal after 18 years of age.⁶⁷ One recent case of sexual abuse in Myanmar occurred in the workplace environment between a member of senior management of an NGO and an underage trainee, which highlights the vulnerability of underage employees in the non-profit sector.⁶⁸ Despite the fact that such abuse may have started off initially as sexual harassment in the workplace, the fact that the survivor is a minor automatically renders the act one of sexual abuse as per the definitions in the Secretary General's Bulletin.⁶⁹ As such, both UN agencies and NGOs should be mindful of this risk factor.

Capacity of organizations to handle allegations of SEA

The HARP scoping study noted that both international and national NGO staff identified a gap in staff awareness and capacity-building in terms of understanding PSEA; moreover, awareness of reporting channels is low.⁷⁰ This, coupled with a general reluctance to report on a colleague, means that across the board, the capacity to properly handle an allegation of SEA is low. The HARP report also identified the lack of victim protection measures,⁷¹ which is of paramount importance in the Myanmar context where speaking out against government or military officials or those closely aligned with government or military can attract defamation proceedings, which, if successfully pursued, could result in jail time for the survivor or complainant.

A survey carried out by the Myanmar Information Management Unit (MIMU) and the PSEA Network between July and August 2018 yielded quite positive results amongst the 84 organizations that completed the survey, in that 80% had mechanisms in place to receive complaints or feedback from community members.⁷² Regarding SEA specifically, 82% had mechanisms in place for SEA cases and 60% of organizations reported that systems are being used to report SEA;⁷³ however, only 38% had specific mechanisms to support those reporting SEA.⁷⁴ The report noted that further research should be conducted as to why such a low number of respondents reported that they had mechanisms available to support those reporting SEA, and that efforts need to be made to ensure that agencies know how to refer survivors or support those complainants once a complaint has been made.

⁶⁶ *Factories Act* (1951) sections 2 and 76, and the *Shops and Establishments Law* (2016) section 14.

⁶⁷ *Child Rights Law* (2019) section 65(a).

⁶⁸ Goldberg, J., 'In Myanmar, a Nonprofit Icon Enjoyed Foreign Funding Despite Allegations of Sexual Abuse', *Vice News*, 14 October 2019, available at: https://www.vice.com/en_in/article/qvgwbd/myanmar-chan-nye-in-aung-sexual-harassment-abuse-non-profit.

⁶⁹ ST/SGB/2003/13.

⁷⁰ HARP-F, as above.

⁷¹ HARP-F, as above.

⁷² PSEA Mapping Survey: Overview of Results, 7 November 2018.

⁷³ As above.

⁷⁴ As above.



Recent cases of SEA and workplace sexual harassment have highlighted the risk of SEA perpetrated by national NGO staff.⁷⁵ Anecdotal information from PSEA Network members confirms that community workers, incentivized staff and grassroots advocacy organizations may have less awareness of SEA and also less robust (or even non-existent) complaints handling systems. These have been identified as higher risk due to the lack of oversight of activities, as well as an absence of an obligation or framework (in the case of community workers) to create a culture of zero tolerance.

In Rakhine State, the lack of freedom of movement is another significant barrier to ensuring an appropriate response with regard to survivor safety. Survivors of SEA, as well as organizations themselves, may not be able to relocate a survivor for their protection during the investigation process, thus putting their safety as well as the integrity of the investigation at risk.

Programmatic risk analyses

UN-funded partner organizations are expected to conduct SEA risk analyses each program cycle; however, the modality of these analyses is not specified, and it is unclear whether partner organizations carry these out. It is hoped that future risk analyses can be used to inform the situation of SEA, and paint a more nuanced picture according to programmatic risk (such as programs in remote locations, areas where staff may function at length with little or no supervision, etc.) as well as any differences between the states and regions.

Conclusions

In conclusion, the risk of SEA in Myanmar is high. Previous incidents of SEA as well as sexual harassment in the workplace illustrate the culture of impunity, as well as highlighting the barriers to reporting incidents. The handling of one recent case of sexual harassment, which was widely reported in the media, demonstrates the need for alternate reporting mechanisms where the existing systems are compromised and to avoid victims being shunted between agencies. The largely male-dominated decision-making structures in many communities in Myanmar, including in IDP camps in Kachin and Rakhine States also highlight the risks of abuse of power and impunity in these contexts. Specific attention should be paid to women and girls with disabilities as well as those living in remote locations and ensuring that they are able to feel confident and access complaints mechanisms.

The priority of the PSEA Network for 2019-2020 is therefore to build local NGO capacity by investing in time and resources to embed PSEA policy within the organizations, including adequate mechanisms for survivor support and protection. In addition, it is essential to create contextualized awareness-raising tools for community and front-line workers to understand power dynamics and how these can affect relations with community members. There is a need to address the issue of engaging sex workers, due to the fact that young men have few outlets to express and explore their sexuality. There is also a need to explore the particular vulnerability of domestic workers.

This needs to be put in context of the overall need to review and strengthen the legal framework to enhance access to justice for SEA survivors and act to deter would-be perpetrators, in addition to fostering social behavior change, addressing gender inequalities and use of power more broadly.

Version June 2020

⁷⁵ See for example Goldberg, J., 'In Myanmar, a Nonprofit Icon Enjoyed Foreign Funding Despite Allegations of Sexual Abuse', *Vice News*, 14 October 2019, available at: https://www.vice.com/en_in/article/qvgwbd/myanmar-chan-nyein-aung-sexual-harassment-abuse-non-profit.



Annex A: Sexual Exploitation and Abuse Risk Questions for Focus Group Discussion

SEA RISK QUESTIONS – COMMUNITY

Guidance for facilitators

These questions are designed to seek feedback from the community about whether or not sexual exploitation and abuse by aid workers occurs. Due to the sensitivities of speaking in a group, and issues concerning confidentiality, it is suggested that facilitators do not probe deeply if there are any incidents that come up during the discussion. The questions are intended to be quite broad and do not refer specifically to sexual exploitation and abuse, but rather favours in exchange for assistance. While it is still important to have information on fraud and corruption, the focus should be on in-kind favours instead of payment. This may include asking a female member of the community to spend time with a male aid worker, or asking her to perform household duties in exchange for aid.

Introduction

My name is and I am from organization. I have a few questions today about assistance and services in the camp/community. Your answers will help to guide future action about how we provide information to you and how we can ensure that all assistance and services are provided for free. I will be sharing this information with my colleagues, but I will not include any information about your names or locations. If you don't understand the questions or have any questions yourself, please feel free to interrupt me any time. If this is ok, shall we proceed?

IDENTIFYING RISK AREAS – QUESTIONS

1. What are the most important assistance and services that you receive? (example, without this support/assistance/service you may not be able to live)
သင်ဘာ အထောက်အပံ့မျိုး ရရှိလဲ
2. How do you receive this assistance / services? (example mobile phone, face to face, donation, queuing at night or early morning etc) (အထက်ပါ အထောက်အပံ့မျိုးကို
သင်ဘယ်လို ရရှိလဲ)
3. From whom do you receive assistance / services? (including NGOs, INGOs, UN as well as family support) (သင့်ကို အထောက်အပံ့ ပေးသူက ဘယ်အဖွဲ့အစည်းလဲ)
4. Let's say you need to increase or get a new service/assistance. Whom do you approach? (Do you have to get favour to get more assistance you or your family needs) သင့်အနေနဲ့
အထောက်အပံ့ ပိုရရှိလိုလျှင် ဘယ်သူ့ဆီကို သွားရောက် ချဉ်းကပ်ရမလဲ

(Is there anyone else you'd need to talk to or get approval from?)

5. What types of service/assistance providers do you have the most contact with?
သင့်အနေနဲ့ ဘယ်သူတွေနဲ့ ပိုပြီး ထိတွေ့ဆက်ဆံရလဲ
 - Incentive workers / camp focal points စခန်းထဲမှ သတ်မှတ်ထားသောသူ
 - Staff/leaders from the institution hosting you စခန်းမြေနေယာ ပိုင်ဆိုင်သော
ဘာသာရေးအဖွဲ့အစည်း



- Staff from government/administrative bodies အစိုးရ ဝန်ထမ်း
 - Local staff from organizations providing assistance အန်ဂျီအို ဝန်ထမ်း
မြန်မာနိုင်ငံသား
 - Foreign staff from organizations providing assistance အန်ဂျီအို ဝန်ထမ်း
နိုင်ငံခြားသား
6. Have you ever heard of anyone in your community being asked to provide things or favours in exchange for assistance/services (that were supposed to be free)? (example: Including you have to go out with staff or to sit near them) ပစ္စည်း သို့မဟုတ် တစ်စုံတရာ ပိုလိုချင်သောကြောင့် တမျိုးမျိုး အကြိုက်ဆောင် လုပ်ပေးရတာမျိုး သင်ကြားဖူးလား
- a. If yes, do you mind explaining what happened briefly? သိရင် ရှင်းပြပါ
 - b. How did the people affected respond? အဲ့လိုမျိုးကြားရရင် အကြိုက်ဆောင် လုပ်ပေးရသူက ဘယ်လို ပြန်တုံ့ပြန်လဲ
 - c. Are there certain groups of people or individuals who are more regularly be asked or expected to provide things or favours in exchange for assistance? If yes, which groups or individuals? အဲ့လိုမျိုး ပစ္စည်း တစ်စုံတရာ လိုချင်လို့ သူ့အကြိုက်ကို လုပ်ပေးရရင် ဘယ်လူအုပ်စုမျိုးမှာ ပိုဖြစ်လဲ
7. Let's say someone responsible for providing assistance or services is asking for things or favours from someone in your community (what are the best ways to deal with this issue?). Who would you ask to get help or raise your concern? အထက်ပါ ဖော်ပြတာမျိုး ဖြစ်ခဲ့ရင် သင့်အနေနဲ့ ဘယ်မှာ အကူအညီ တောင်းမလဲ
- a. Why not [other mechanisms/systems that respondents do not mention]? အကူအညီ မတောင်းဘူးဆိုရင်ရော ဘာကြောင့်လဲ
8. Are there any situations where any aid workers are with community members for long periods of time (for example, accompanying women to collect firewood or other activities beyond camp boundaries)? (Extremely Vulnerable Group such as orphans, the children, persons with disability) အဖွဲ့အစည်းမှ ဝန်ထမ်းများအနေနဲ့ စခန်းထဲက လူထုနဲ့ အကြာကြီး နေနေတာမျိုး ကြုံဖူးလား, ထင်းခွေတာတို့ ဘာတို့ စခန်းအပြင် အတူသွားတာမျိုး (အထူးသဖြင့် မိဘမဲ့ , ကလေးသူငယ် , မသန်စွမ်း)



Annex B: Findings from PSEA Risk Assessment in Myitkyina

13 March 2020

With the informed consents from the selected communities from camps, this below data collected from two different camps in Wine Maw site. One calls Mine Nar AG camp and another one is Khat Cho Camp. The discussion made with one men group, two women group and one camp leader and one group with committee member. There will total 9 Female and 4 male participated in the discussion. The participants selected randomly with the support from METTA.

What are the most important assistance and services that you receive? (Example, without this support/assistance/service you may not able to live)

In Myitkyina, IDPS camps receiving the assistance or services such as Food, Shelter, Nutrition, Hygiene Kit, GBV awareness, counselling services, PSN, mine risk education, mobile clinic and some assistance for pregnant women to take care their pregnancy, etc.

How do you receive this assistance / services? (Example mobile phone, face to face, donation, queuing at night or early morning etc.)

Most of IDPs communities are receiving food assistance through mobile phone (by using wave money). The other services are receiving face to face. Some of the communities have challenges to use wave money for receiving the assistance because they have limited education and not familiar with the system. Most of humanitarian workers visit to the camp mostly after 9:30 am in the morning. There has no one visiting to the camp at night or early morning. The agencies are mostly visiting for project at day time.

Agencies are timely in providing support to communities upon request through camp leader or CMC. On cash assistance, some staff from agencies stand by at the camp committee office for a day in a month to help the communities who couldn't access the wave money well. Most of their challenges are not receiving more assistance from agencies which makes their lives more of a struggle. Now much of the assistance is not available in the camp.

From whom do you receive assistance / services? (Including the NGOs, INGOs, UN as well as family support)

Most of camps are regularly receiving the assistance from UNHCR, WFP, World Vision, METTA, DRC, MMA, CHAD, Shalon, ICRC but sometimes, there are some other individual donors from host community.

Let's say you need to increase or get a new service/assistance. Whom do you approach? (Do you have to get favour to get more assistance you or your family needs)

If someone need to increase or get a new service/assistance, a person will approach firstly to camp leader and have discuss within the camp management committee then CMC raise the necessary assistance to the relevant organisation. There is a risk area seeing that the power relationship between camp leaders and community members are significantly imbalance and can potential cause the risk of a person approached. Most of the camp leaders are being men in management body and a few women are being in some camps.

Camp leaders and committee members are observed to be approachable and strengthen their awareness in identifying sensitive and non-sensitive cases which camp leaders are able to prioritize in taking action or follow up with support from agencies. If not, they are generally busy with other tasks.

What types of service/assistance providers do you have the most contact with?



Most of the people are contacting camp focal points as initial contact and then local staff from organisation for the assistances. Contacting to religious leaders are only for some exceptional case such as to discuss about any religious matters.

Have you ever heard of anyone in your community being asked to provide things or favour in exchange for assistance/services (that were supposed to be free)? (Example Including you have to go out with staff or to sit near)

Most of participants answered 'No' for section a. They haven't heard anything relating to provide things or favour in exchange for assistance. But one of the camp answered and pointed to UNHCR complaints handling mechanism which is very positive that the community in that camp are aware that all humanitarian assistance are volunteer and free for all beneficiaries.

The respondents think that the groups such as teenagers' girls, children and women have potential to face such kinds of risk and experience in their life because they are more vulnerable than the other groups.

Let's say someone responsible for providing assistance or services is asking for things or favour from someone in your community. (What are the best ways to deal with this issue?) Who would you ask to get help or raise your concern?

If the case happen in their community, most of respondents answered that they will directly report to the senior staff of relevant organisations to ask their help and aware that this is unacceptable behaviour. The community are comfortable to report in person reaching to the organisation offices, through mobile phone and using suggestion box as reporting mechanisms. In observation, the suggestion box in the camps are placing by each of implementation organisation and should set a strong communication to have referral among them when they found unrelated cases for their organisation in their suggestion box. The community are using the suggestion box to raise their concerns.

Most of the community are happy to write their feedback to share through the complaint box. If they can't, they request to their trusted person for help. Most of the community members are more comfortable talking directly with the relevant camp committee members. The camp committee members are well acquainted with the contact of senior staff from the organization. Some reporting mechanism information with contact details is taking place at some of the camps. Community mostly go to camp leaders and camp committee members with concerns.

Are there any situations where any aid workers are alone with community members for long periods of time (for example, accompanying women to collect firewood or other activities beyond camp boundaries)? (Extremely Vulnerable Group such as the orphans, the children, disability)

Some of the staff are conducting the activity by staying night over at the camp with the approval and informed to the ward administer officially. Sometimes, the organisations informed to camp committee when they organize wellbeing or self-care activity for some community volunteers or members. Other than this, there has no experience that the organisations staffs are accompanying or inviting the community to go with them or follow with the community with personal reason.