

# Sector-Wide Impact Assessment (SWIA) of Myanmar's Tourism Sector

*Partial draft for consultation*  
August 2014

## Commenting on the Tourism SWIA partial draft

- MCRB welcomes comments on this draft from all interested stakeholders to be sent to [Thithi.thein@myanmar-responsiblebusiness.org](mailto:Thithi.thein@myanmar-responsiblebusiness.org) with a subject line of "Tourism SWIA Consultation Draft Feedback" by 26 September 2014.
- Please see the objectives of the consultation on the following page and please continue to monitor the MCRB website [www.myanmar-responsiblebusiness.org](http://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.

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LINKED INITIATIVES IN THE MYANMAR TOURISM SECTOR

RESPONSIBLE TOURISM PRACTICES

## **PART I: INTRODUCTION TO THE CONSULTATION DRAFT**

This draft document presents part of the findings of a Sector-Wide Impact Assessment (SWIA) of the human rights impacts of the tourism sector in Myanmar. The Tourism SWIA was conducted by the Myanmar Centre for Responsible Business (MCRB), in collaboration with its partners, the Danish Institute for Human Rights (DIHR) and the Institute for Human Rights and Business (IHRB) between August 2013 and May 2014, using both desk-based and field-based research (see Annex I - Methodology).

This consultation draft contains an introduction to the tourism sector and the SWIA, a chapter on tourism in ethnic minority areas, the main project-level findings around nine areas concerning tourism in Myanmar, mostly derived from primary (field) research, as well as cumulative-level findings relating to combined impacts from multiple projects/activities.

The consultation draft also contains a description of the methodology used, a chapter, 'Linked initiatives', which are Myanmar-based initiatives by various stakeholders such as the Government of Myanmar, donors, civil society organizations and the tourism industry with an actual or potential connection to developing a responsible tourism sector. The draft concludes with a chapter with examples of responsible tourism practices in other parts of the world.

The final Tourism SWIA will contain further analysis of the Myanmar context, comprehensive background on the sector, additional information on the policy and legal framework relevant to the tourism industry in Myanmar, and a set of recommendations developed from the multi-stakeholder consultations which will be held in August 2014.

### **The indicative table of contents for the final SWIA Report:**

- Executive Summary
- Introduction
- Sector Description
- National context
- Tourism in Ethnic Minority Areas
- Project level impacts
- Cumulative impacts
- Recommendations
- Annexes:
  - Process & Methodology
  - Linked Initiatives
  - Responsible tourism lessons learnt from elsewhere
  - Outcomes of Tourist Survey

There are three objectives of the consultations:

- (i) To identify whether the key draft findings of the Tourism SWIA are relevant and complete i.e. have we missed or misdiagnosed key issues?
- (ii) To elicit recommendations for actions by the Government, the tourism industry and other stakeholders (local and foreign) in relation to the tourism sector that will improve the outcomes of tourism 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 developing a responsible tourism sector.

## Immediate Objectives of the SWIA

- **Inform future project level impact assessments for tourism projects** about potential human rights impacts so that these issues are taken into account in forthcoming Environmental Impact Assessments (EIA) and Social Impact Assessments (SIA) in the sector.
- **Provide Government and Parliamentarians with analysis and targeted recommendations** on shaping and adapting 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 technical assistance** to the sector so that human rights are better respected and protected
- **Support local communities** in understanding and engaging on tourism projects in their areas 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 (Annex I) demonstrates, the Tourism 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 current and future tourism locations in Myanmar, the Tourism 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 establishing specific benchmarks for Government and civil society to hold businesses to account.

This SWIA report does not address technical operating standards for the tourism 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<sup>1</sup>:

- The **UN Guiding Principles on Business and Human Rights** ("the Guiding Principles" or "UNGPs")<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> *The UN Guiding Principles on Business and Human Rights*, United Nations, June, 2011, available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (hereinafter "UN Guiding Principles")

- The **OECD Guidelines on Multinational Enterprises** (which apply to companies domiciled in an OECD country and operating in Myanmar)<sup>3</sup>
- 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**.<sup>4</sup> The IFC Performance Standards and EHS Guidelines are designed to be applied by the private sector. They comprise detailed standards for many areas relevant to tourism operations. They specifically cover and are aligned with most human rights standards.

As the Tourism 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 an 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 Rights<sup>5</sup> and International Covenants on Civil and Political<sup>6</sup> and Economic, Social and Cultural Rights<sup>7</sup>), comprising the UN Declaration on Human Rights<sup>8</sup> and International Covenants on Civil and Political<sup>9</sup> and Economic, Social and Cultural Rights<sup>10</sup>); principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work,<sup>11</sup> as well as other relevant human rights instruments.<sup>12, 13</sup> and other relevant human rights instruments.<sup>14</sup>

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;

<sup>3</sup> *OECD Guidelines for Multinational Enterprises*, OECD, 2001 edition, available at: <http://www.oecd.org/corporate/mne/> (hereinafter "OECD Guidelines")

<sup>4</sup> *IFC Performance Standards*, International Finance Corporation, World Bank Group, 2012 edition, available at: [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/](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/](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Environmental,+Health,+and+Safety+Guidelines/) (hereinafter "IFC Standards").

<sup>5</sup> *The Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc A/810, 1948, available at: <http://www.un.org/en/documents/udhr/> (hereinafter "UDHR").

<sup>6</sup> *The International Covenant on Civil and Political Rights*, UN General Assembly, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (hereinafter "ICCPR").

<sup>7</sup> *The International Covenant on Economic, Social and Cultural Rights*, UN General Assembly, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (hereinafter "ICESCR").

<sup>8</sup> UDHR, *Supra* note 5.

<sup>9</sup> ICCPR, *Supra* note 6.

<sup>10</sup> ICESCR, *Supra* note 7.

<sup>11</sup> *The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work*, International Labour Organization, 1998, available at: <http://www.ilo.org/declaration/lang-en/index.htm> (hereinafter "ILO Declaration").

<sup>12</sup> *The Core International Human Rights Instruments and their Monitoring Bodies*, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (hereinafter "HR Instruments").

<sup>13</sup> ILO Declaration, *Supra* note 11.

<sup>14</sup> HR Instruments, *Supra* note 12.

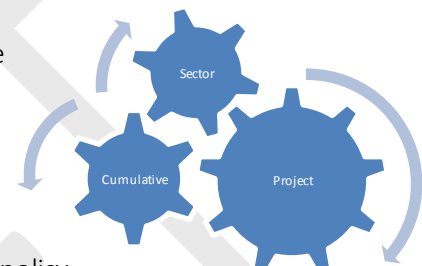
states must prevent, investigate, punish and redress human rights abuses that occur as a result of domestic business operations.

- **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

Being sector-wide, a SWIA looks at potential impacts at three levels of analysis: aggregate, cumulative and project level.

- **Sector 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 causes 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 draw out recommendations on opportunities to improve human rights outcomes at the sectoral level.
- **Cumulative level:** Managing cumulative impacts typically requires cooperation between different stakeholders. The SWIA identifies potential areas or activities in the tourism sector that may lead to cumulative impacts and options for government action to address these impacts at the regional level.
- **Project level:** The SWIA looks across a range of existing ‘projects’ (e.g. a hotel) in the tourism 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 through 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 are developing and updating 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 Tourism 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 tourism 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 operational level. Businesses will be able to build on the significant information gathering and analysis in the Tourism SWIA in order to better inform their own impact assessments, including human rights impacts.

- **Access to Effective Remedy:** Local communities near tourism projects are the stakeholders most directly impacted by the tourism sector, but may not have the capacity and information to engage with companies and local authorities. While the Tourism SWIA is not a comprehensive review of the rule of law and access to justice in Myanmar, it is intended to support local communities in obtaining remedy. 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 tourism sector or operational impacts, in order that they can be addressed as early and effectively as possible.

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## PART II: SECTOR DESCRIPTION/NATIONAL CONTEXT

Myanmar's tourism sector has barely developed over the last decades, first as a result of restrictive visas and limited destination/transport options, and later as a consequence of a tourism boycott called for by opposition groups inside the country and in exile, prompted partly by the military government's declaration that 1996 should be Visit Myanmar Year.

In 2011, after five decades of military rule, the government of Republic of the Union of Myanmar initiated political, social and economic reforms. Daw Aung San Suu Kyi's party the National League for Democracy (NLD) released a statement<sup>15</sup> that the tourism boycott should be lifted and it would "welcome visitors who are keen to promote the welfare of the common people and the conservation of the environment and to acquire an insight into the cultural, political and social life of the country while enjoying a happy and fulfilling holiday in Burma." In 2013, the government announced a much longer list of permitted areas for tourists to visit without, and in some cases with, prior permission.<sup>16</sup>

As a result of these changes, the country has seen an unprecedented growth in international tourist arrivals. Visitor numbers surpassed the 1 million mark in 2012 and are projected to reach 3 million visitors per year by 2015, and 7 million by 2020.<sup>17</sup> Recognizing the country's unique situation, in February 2012 a responsible tourism week was held in Naypyitaw involving 22 government ministries as well as private sector organisations and experts. Following extensive consultation, supported by Hanns Seidel Foundation (HSF), a Responsible Tourism Policy was published in September 2012<sup>18</sup> (see below). This was followed by the government of Myanmar unveiling a Tourism Master Plan (2013-2020) in June 2013, completed with ADB technical assistance and financial support from Norway, to promote economic growth while attempting to safeguard Myanmar culture and the environment.<sup>19</sup> In May 2013, a policy<sup>20</sup> on Community Involvement in Tourism was launched<sup>21</sup>, the fruit of further work with HSF. The tourism sector can therefore be considered to have more widely consulted on, adopted and published government policies relating to responsible business and sustainability than any other economic sector in Myanmar. The challenge now is to make them a reality.

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<sup>15</sup> NLD Statement Regarding Tourism in Burma, National League for Democracy, N 10/05/11, May 10, 2011, available at: <http://www.burma.no/noop/page.php?p=Artikler/4795.html&d=1>

<sup>16</sup> Permitted Areas, Ministry of Hotels and Tourism of The Republic of the Union of Myanmar, available at: [http://myanmartourism.org/index.php?option=com\\_content&view=article&id=419&Itemid=393](http://myanmartourism.org/index.php?option=com_content&view=article&id=419&Itemid=393)

<sup>17</sup> Myanmar Opening to Tourism, Investment—and Reform?, National Geographic, 17 August, 2013, available at: [http://news.nationalgeographic.com/news/2013/08/130817-myanmar-burma-tourism-democracy-culture/?user\\_id=12800301&email=tuli.bansal%40gmail.com&conf=16cf1dcb-15d4-407d-8ec8-f000e58cd064](http://news.nationalgeographic.com/news/2013/08/130817-myanmar-burma-tourism-democracy-culture/?user_id=12800301&email=tuli.bansal%40gmail.com&conf=16cf1dcb-15d4-407d-8ec8-f000e58cd064)

<sup>18</sup> Myanmar Responsible Tourism Policy, Ministry of Hotels and Tourism of The Republic of the Union of Myanmar, 27 September, 2012, available at: [http://www.hss.de/fileadmin/media/downloads/Berichte/121015\\_Myanmar\\_Tourism\\_English.pdf](http://www.hss.de/fileadmin/media/downloads/Berichte/121015_Myanmar_Tourism_English.pdf) (hereinafter "Responsible Tourism Policy").

<sup>19</sup> Myanmar Tourism Master Plan, 2013-2020, Ministry of Hotels and Tourism of The Republic of the Union of Myanmar, Final Draft Report, June 2013, available at: <http://www.harrison-institute.org/Myanmar%20Tourism%20Master%20Plan%202013-2020.pdf> (hereinafter "Tourism Master Plan").

<sup>20</sup> Policy on Community Involvement in Tourism, Ministry of Hotels and Tourism of The Republic of the Union of Myanmar, available at: <http://www.hss.de/fileadmin/suedostasien/myanmar/downloads/130530-Community-Involvement-in-Tourism.pdf> (hereinafter "Policy on Community Involvement in Tourism").

<sup>21</sup> Hanns Seidel Foundation, Myanmar, Official launch of the Policy on Community Involvement in Tourism, available at: <http://www.hss.de/southeastasia/en/myanmar/news-events/2013/official-launch-of-the-policy-on-community-involvement-in-tourism.html>

## Legal and institutional environment for tourism in Myanmar

### Ministry of Hotels and Tourism (MoHT)

The MoHT's main functions are<sup>22</sup>:

- Implement systematic development of Myanmar's tourism industry.
- Encourage national and international investment in the tourism industry.
- Develop opportunities for wide participation of private entrepreneurs in tourism.
- Promote Myanmar as a world-renowned tourist destination.
- Determine hotel and tourism zones.
- Coordinate with relevant government departments and organizations to formulate and define the functions of tourism and hotel supervisory bodies in states, regions, districts and towns.
- Upgrade quality, standards and technical skills of the tourism industry.
- Create jobs and raise standards of living through tourism development.
- Cooperate with ASEAN and other countries in tourism.

### Myanmar Tourism Federation

The Myanmar Tourism Federation (MTF) was formed in 2012 in order to communicate between the government and private sector about challenges in the tourism sector. The MTF counts 11 business associations as its members, including the Union of Myanmar Travel Association (UMTA), the Myanmar Hotelier Association (MHA), the Myanmar Marketing Committee, the Myanmar Tourist Guides Association and the Myanmar Restaurants Association.<sup>23</sup>

### Myanmar Investment Commission (MIC)

The MIC is a government-appointed body comprising both Ministers and independent Myanmar experts that appraises foreign and investment proposals made under the Foreign Investment Law and Citizens Investment Law. In May 2014 MIC was reorganized and Union Minister of Hotels and Tourism U Htay Aung was appointed as Vice Chairman.<sup>24</sup>

### Myanmar Hotels and Tourism Law

A Myanmar Hotels and Tourism Law was first adopted in 1990 and then replaced by the 1993 Myanmar Tourism Law, which is in effect today.<sup>25</sup> The objectives of the law are:

- systematic development of the hotel and tourism industry,
- enabling tourists to observe Myanmar cultural heritage and natural scenic beauty,
- preventing destruction and damage of cultural heritage and natural scenic beauty due to the hotel and tourism industry,
- contributing to international friendship and understanding through the hotel and tourism industry,
- developing technical knowledge and understanding through the hotel and tourism industry and
- providing security and satisfaction for tourists.

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<sup>22</sup> Tourism Master Plan, *Supra* note 19.

<sup>23</sup> Myanmar Tourism Federation, available at: <http://www.myanmar.travel/index.php/about-us/36-mtf/myanmar-tourism-federation>

<sup>24</sup> Myanmar reforms investment commission to boost foreign investment, Consult Myanmar, 30 May 2014, available at: <http://consult-myanmar.com/2014/05/30/myanmar-reforms-investment-commission-to-boost-foreign-investment/>

<sup>25</sup> Myanmar Hotel and Tourism Law, 1993, available at: <http://mm.myanmars.net/laws/index.php/1988-2011/664-1993-14-the-myanmar-hotel-and-tourism-law>

The Law provides for some penalties for business practices that damage the environment.<sup>26</sup>

Following the adoption of the Responsible Tourism Policy, and as part of the Tourism Master Plan, the Myanmar Tourism Law is currently being reviewed to determine where amendments are needed.<sup>27</sup>

### The Myanmar Responsible Tourism Policy 2012

The Myanmar Responsible Tourism Policy (MRTP) was published in September 2012<sup>28</sup>. It states that responsible tourism can lead to 'maximizing economic, social and environmental benefits and minimizing costs to destinations'. The MRTP includes 9 aims (and 58 action points):

- Tourism is a national priority sector (planning, investment, hospitality training and development)
- Broad based local social-economic development (distributing the benefits with equity)
- Maintain cultural diversity and authenticity
- Conservation and enhancement of the environment
- Compete on product richness, diversity and quality – not just price
- Ensure health, safety and security of our visitors
- Institutional strengthening to manage tourism
- A well trained and rewarded workforce
- Minimizing unethical practices<sup>29</sup>

### The Myanmar Tourism Master Plan 2013

The objectives of the Tourism Master Plan (TMP) are:

- Strengthen the institutional environment
- Build human resource capacity and promote service quality
- Strengthen safeguards and procedures for destination planning and management
- Develop quality products and services
- Improve connectivity and tourism related-infrastructure
- Build the image, position and brand of Tourism Myanmar

The Tourism Master Plan also focuses on gender equity, environmental sustainability, partnerships, innovative financing, regional cooperation, ensuring access for disabled people, consultation and participation.<sup>30</sup>

### Policy on Community Involvement in Tourism 2013

The Policy on Community Involvement in Tourism (CIT) was published by the MoHT in 2013 and to promote equitable distribution of benefits gained from the tourism sector amongst communities. Additionally, the policy outlines the importance of the 'do no harm' approach and of participation of communities in various processes.<sup>31</sup> The CIT policy's objectives are:

- Strengthening the institutional environment and civil society

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<sup>26</sup> *Economic Aspects of Sustainable Development in Myanmar*, United Nations Commission on Sustainable Development, United Nations, 8th Session, available at: <http://www.un.org/esa/agenda21/natlinfo/countr/myanmar/eco.htm>

<sup>27</sup> Tourism Master Plan, *Supra* note 19.

<sup>28</sup> Responsible Tourism Policy, *Supra* note. 18, p. 4.

<sup>29</sup> This refers to 'applying ethical standards through tourism development to minimise social, economic and environmental harm'.

<sup>30</sup> Tourism Master Plan, *Supra* note 19.

<sup>31</sup> Policy on Community Involvement in Tourism, *Supra* note 20.

- Capacity building for community related activities in tourism
- Developing safeguards, systems and procedures to strengthen community planning and management in tourism
- Encouraging local entrepreneurship through micro- and local enterprises
- Diversifying and developing quality products and services at community level
- Monitoring positive and adverse impacts of community involvement in tourism

The policy includes a review mechanism for the objectives and action points, involving an Advisory Committee chaired by the MoHT in cooperation with MTF and with representation from state/regional government.

#### Bilateral Tourism Agreements

The Ministry of Hotels and Tourism has signed several bilateral tourism agreements, which emphasize tourism development with states with Asian countries including Thailand, China, Vietnam, Laos, Singapore, Cambodia, Malaysia and Sri Lanka.<sup>32</sup>

### PART III: TOURISM IN ETHNIC MINORITY AREAS

Many post-conflict ethnic minority areas have considerable tourist potential. There are areas of historical and cultural significance (war cemeteries; the Burma Railway; pagodas and ethnic heritage buildings, such as those at Loikaw; and many culturally interesting ethnic minority groups), great scenic beauty (the Thandaung hill station in Karen/Kayin State, for example, and many other mountain areas), and ecological significance (many nature reserves are in conflict-affected areas). However, in some areas there is ongoing insecurity as well as landmine contamination which will have to be addressed; poor infrastructure will hamper tourism; and tourism development and division of revenues could potentially impact – positively, but also negatively – on conflict dynamics. Human rights issues are also a particularly relevant concern in these areas.

Non-international armed conflict between ethnic minority armed opposition groups in the border areas and the central Bamar-dominated Government broke out shortly after independence in 1948.<sup>33</sup> Bitter and protracted conflict has continued since then. A nationwide peace process is currently ongoing, with involvement of the Government and 16 ethnic armed groups. A nationwide ceasefire accord is under negotiation, with the aim of signing the accord by end-September 2014; however, this timeframe may not be met. The next step of the process, which may proceed in tandem, will be a structured political dialogue involving not only ethnic armed groups, but other national stakeholders.

In its decades-long counter-insurgency campaigns against various ethnic minority armed opposition groups, the Myanmar army has committed a wide range of human rights violations and violations of international humanitarian law. As troops entered ethnic minority villages, they seized foodstuffs, destroyed villages, used civilians for forced labour, particularly portering, killed and tortured civilians, and forcibly displaced

<sup>32</sup> List of Bilateral Tourism Agreements, Ministry of Hotels and Tourism of Myanmar, available at: [http://www.myanmar-tourism.org/index.php?option=com\\_content&view=article&id=318&Itemid=309](http://www.myanmar-tourism.org/index.php?option=com_content&view=article&id=318&Itemid=309)

<sup>33</sup> At the same time, armed conflict broke out between the government and the Burman-led Burma Communist Party.

them. Armed ethnic minority opposition groups have also committed abuses, although to a lesser degree.<sup>34</sup>

Ethnic grievances have centred on these abuses as well as the lack of self-governance and resource sharing with the central Government; discrimination and marginalisation; freedom of religion; and lack of education in ethnic minority languages. Many ethnic minority leaders believe that the Burman-dominated central government instituted a policy of “Burmanisation”, which has resulted in suppression of ethnic minority cultures, languages and religions and ethnic people being treated as “second-class citizens”.<sup>35</sup>

Conflict has greatly inhibited economic development in the ethnic border areas, and poverty rates in these areas are high. For example 73% of the population in Chin State lives below the poverty line, 44% in Rakhine State (though the World Bank’s reinterpretation of the data suggests a rate of 77.9%) and 33% in Shan State; the national poverty rate is 26% (the World Bank’s reinterpretation of the data reveals a 37.5% rate).<sup>36</sup> At the same time ethnic minority states are rich in natural resources, including minerals and gems, hardwoods, hydropower as well as land and water resources for agriculture.

Ceasefires have made land more available to commercial interests, some of which are linked to the central Government and the military. Ethnic minority armed groups also have business interests in their territories. At the same time these areas are highly militarised, including by Myanmar army troops and allied militias,<sup>37</sup> ethnic minority armed groups, and armed criminal elements. This has resulted in very poor land governance, with a heightened risk of land grabs, instability and a climate of fear.<sup>38</sup> Future demining operations that make land more accessible and commercially viable will likely exacerbate these risks.

Kayin and Mon State and Tanintharyi Region are all areas which have been affected by conflict for decades which have a high potential for tourism, due to their natural landscape with mountains, long coastline and islands, rich cultural heritage and their proximity to Thailand. Since August 2013, four border checkpoints with Thailand including at Mae Sot-Myawadi have been open to tourists for through travel to Yangon which could open up the area significantly both to Thai and foreign tourists coming from Thailand<sup>39</sup>. However infrastructure including transport links and hotels remains very limited and security is still problematic in some areas.

Businesses, non-state armed groups (NSAGs) such as the Karen National Union and New Mon State Party, and civil society organisations in Kayin (Karen) and Mon States have mixed views about the appropriate timing of opening up the region to tourism, with some Kayin NSAGs in particular opposed to development

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<sup>34</sup> For a full discussion of the human rights situation in the counter-insurgency context, see reports from Amnesty International from 1988 – 2008, and Human Rights Watch and the reports of the Special Rapporteur on the situation of human rights in Myanmar, OHCHR, available at: <http://www.ohchr.org/en/countries/asiaregion/pages/mmindex.aspx>

<sup>35</sup> For a further explanation and discussion of these issues, please see *Transnational Institute/Burma Centrum Netherlands Reports* from 2011 to 2013.

<sup>36</sup> “*Interim Country Partnership Strategy: Myanmar 2012 – 2014, Poverty Analysis (Summary)*”, ADB, 2012, available at: <http://www.adb.org/documents/myanmar-interim-country-partnership-strategy-2012-2014> and *Data tweaks change face of poverty*, Myanmar Times, 19 May 2014, available at: <http://www.mmtimes.com/index.php/opinion/10400-data-tweaks-change-face-of-poverty.html>

<sup>37</sup> There are dozens of militias formed by the government; some of them known as “people’s militias”. These groups are armed and operate in ethnic minority states.

<sup>38</sup> “*Access Denied: Land Rights and Ethnic Conflict in Burma*”, Transnational Institute/Burma Centrum Nederland, May 2013, available at: <http://www.tni.org/sites/www.tni.org/files/download/accesdenied-briefing11.pdf>; see other reports by Transnational Institute from 2011 to 2013, and also reports by the International Crisis Group, the Karen Human Rights Group, the Shan Human Rights Foundation, and the Human Rights Forum of Monland.

<sup>39</sup> *Opening of Overland Border Gates Could Boost Burma Tourism, Investment*, The Irrawaddy, 29 August 2013, available at: <http://www.irrawaddy.org/democracy/opening-of-overland-border-gates-could-boost-burma-tourism-investment.html>.

until a nationwide ceasefire and political dialogue are in place. While tourism is generally viewed as having less potential for negative impacts than extractive or agricultural concessions, they also fear that the Tatmadaw will use the excuse of providing security for tourists to extend their military presence.

In Kayin areas there are also generally more negative views about who has and will benefit from tourist concessions, with a widespread view that this will mainly be crony businesses with local military connections, rather than local Karen. Another concern expressed is the lack of consultations with civil society organizations and communities with regard to tourism projects. A recent hotel project built on a football ground in Hpa-an was halted in 2013 due to protests about lack of consultation<sup>40</sup>.

In February 2014 representatives of the Ministry of Hotels and Tourism, the Kayin State Government, armed ethnic group the Karen National Union (KNU), local civil society and the private sector came together to discuss how responsible and inclusive economic development of the tourism sector in post-conflict areas could strengthen the peace process in Kayin State.<sup>41</sup> During this forum meaningful stakeholder consultation was mentioned as a prerequisite for local communities supporting future tourism development.

Leaders of other ethnic communities, may be more positive than the Karen, and some have already established local businesses and eco-tourism projects, and see tourism as a way to give recognition to and preserve heritage sites. However, in Mon State there are also concerns that the tourism sector currently is dominated by businesses associated with the government. Indeed, it would not be surprising if these concerns were felt by local communities nationwide.<sup>42</sup>

#### *Key human rights considerations for the tourism sector:*

- To the extent that they are ready to accept tourism development, ethnic community leaders want to see more economic benefit from, and local control of, commercial activities in their areas, including tourism.
- Tourism companies with activities in post-conflict areas will need to undertake detailed consultations with ethnic armed groups who are the de facto authority in many of these areas. Wherever possible, they should seek to engage with ethnic representatives directly, while being careful not to undermine or contradict on-going peace processes.
- However, as these groups do not necessarily represent the interests and concerns of all communities in these areas, such consultation should not be seen as a substitute for wider community consultation. In the ethnic states, trust-building will require a greater effort and longer-term trust building. Engagement in local languages will be important.
- It should be recognised that in conflict-affected areas, such consultation is difficult. People may not always feel free to speak openly, and there can be serious risks to people if consultations are mishandled. It is advisable that such consultations be facilitated by individuals or organisations with a strong track record of conducting such consultations in these areas, and with detailed knowledge of local political, ethnic and conflict dynamics. In addition, companies may need specialist advice from anthropologists or other social scientists with expertise in ethnic minority cultures in Myanmar.
- In some areas, there is likely to be hostility towards Bamar involved in the tourism sector in post-conflict regions, including those visiting as guides.

<sup>40</sup> *Hpa-an Monks and Residents Battle to Win Back Town's Football Ground*, Karen News, 30 September, 2013, available at: <http://karennews.org/2013/09/hpa-an-monks-and-residents-battle-to-win-back-towns-football-ground.html/>

<sup>41</sup> *Pilot Workshop in Kayin State on Community Involvement in Tourism and the Peace Process*, Hpa-an, 24th & 25th February 2014, available at: <http://www.hss.de/fileadmin/suedostasien/myanmar/downloads/2014/140224-EN-Workshop-in-Hpa-an.pdf>.

<sup>42</sup> The above section is based on interviews conducted with local government representatives, non-state armed groups, local and international NGOs/CSOs, international organizations and businesses in Mon and Karen State by Polina Lenkova, Johns Hopkins MA student/MCRB intern, July/August 2014.



#### **Relevant international standards and guidelines:**

- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET)<sup>43</sup>, Article 1 (Tourism's contribution to mutual understanding and respect between peoples and societies, Article 2 (Tourism as a vehicle for individual and collective fulfilment) and Article, 4 Tourism, a user of the cultural heritage of mankind and a contributor to its enhancement
  - Guidance on Responsible Business in Conflict-Affected and High -Risk Areas: A Resource for Companies and Investors<sup>44</sup>
  - International Alert Practice Note 3: Foreign Direct Investment in conflict-affected contexts<sup>45</sup>

## **PART IV: PROJECT-LEVEL IMPACT SUMMARIES**

### **STAKEHOLDER CONSULTATION, ENGAGEMENT & GRIEVANCE MECHANISMS**

#### **National Context**

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Until recently citizens' rights to speak freely had been forcefully suppressed for 50 years and as a result many individuals are still reluctant, even fearful, to speak out against the Government or military in particular. That is beginning to change. Furthermore, the Government has historically placed itself as the main interface between companies and communities and this approach will take time to change. This is also the case for the tourism sector, where communities are often not warned or consulted about the acquisition of land for large scale tourism projects or other impacts tourism projects may have on them. Ethnic diversity, and experience of armed conflict and inter-communal violence provide different perspectives which may be difficult for outsiders to access and understand.

#### **Freedom of Expression, Assembly and Association**

Since the reform process began in 2011 there have been some improvements in the rights to freedom of expression, including loosening of restrictions on the media, and in peaceful assembly and the ability to stage peaceful protests.<sup>46</sup>

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

<sup>43</sup> UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), available at: <http://dtxtg4w60xqpw.cloudfront.net/sites/all/files/docpdf/gcetbrochureglobalcodeen.pdf> (hereinafter "UNWTO GCET")

<sup>44</sup> Guidance on Responsible Business in Conflict-Affected and High -Risk Areas: A Resource for Companies and Investors, UN Global Compact, available at: [http://www.unglobalcompact.org/docs/issues\\_doc/Peace\\_and\\_Business/Guidance\\_RB.pdf](http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf).

<sup>45</sup> Practice note 3: Foreign Direct Investment in Conflict-affected Contexts, International Alert, 2010, available at: [http://www.international-alert.org/sites/default/files/publications/practice\\_note3\\_march2010.pdf](http://www.international-alert.org/sites/default/files/publications/practice_note3_march2010.pdf).

<sup>46</sup> In January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See: *The Republic of the Union of Myanmar*, President Office, 28 January, 2013, available at: <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](http://www.ibiblio.org/obl/docs3/SLORC_Order_2-88.htm)

labour for their reporting.<sup>47</sup> Moreover, some arbitrary media laws remain on the books, including the 2004 Electronics Transaction Act. And although pre-publication censorship has been abolished, media outlets must submit their publications to the Ministry of Information after the fact.<sup>48</sup> The Media Law and the Printers and Publishers Registration Law were passed in March 2014. The vague provisions of the latter law and broad powers of a Registrar to grant or revoke publishing licenses, lead to fears of press self-censorship.<sup>49</sup>

The right to speak out is guaranteed by the 2008 Constitution, but with significant restrictions. Article 354 of the Constitution guarantees the rights to freedom of expression, peaceful assembly, and association; however exercising such rights must not contravene “community peace and tranquility”, which permits expansive interpretations that require only a low threshold for justifying infringements to the guaranteed right.<sup>50</sup> Moreover, many laws which greatly restrict these freedoms have not been repealed and the authorities continue to use them to arrest and imprison people for their peaceful activities. These include but are not limited to the 1908 Unlawful Associations Law; the 1950 Emergency Provisions Act; the 1975 State Protection Law, and various articles of the Penal Code, especially Article 505(b).<sup>51</sup>

In December 2011 the Parliament enacted the Law Relating to Peaceful Assembly and Peaceful Procession, which permits peaceful assembly for the first time in several decades. However, prior permission from the Government (in this case the Township Police) is still required for an assembly/procession of more than one person and the requirements for seeking such permission are onerous. Moreover, Article 18 of the current law has been used to target activists and human rights defenders, many of whom have been arrested and imprisoned under its provisions which allowed for up to one-year imprisonment for those who demonstrate without prior permission.<sup>52</sup> Parliament amended the law on 19 June 2014; new amendments now reportedly oblige the authorities to grant permission for peaceful demonstrations unless there are “valid reasons” not to do so, and punishment for failing to seek prior permission and holding a demonstration without such permission was reduced from one year to six months.<sup>53</sup> However, the amended law still provides for the arrest and imprisonment of peaceful protesters.

While the vast majority of political prisoners have been released, dozens still remain behind bars and others are at risk of arrest and imprisonment under these and other laws. Among those still detained are many land activists, especially farmers demonstrating against land grabs.<sup>54</sup>

In 2012 a local protest against a tourism project was held by the community in Bagan Nyaung Oo Township who objected to the plans for hotels and restaurants in the cultural heritage site in Bagan.<sup>55</sup> In February

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<sup>47</sup> “Burma Resorting to Police State Tactics’ in Unity Trial: US Official”, The Irrawaddy, 17 July 2014, available at: <http://www.irrawaddy.org/burma/burma-resorting-police-state-tactics-unity-trial-us-official.html>.

<sup>48</sup> “Burma falters, backtracks on press freedom”, Committee to Protect Journalists, 13 June 2013, available at: <http://www.cpi.org/reports/2013/06/burma-falters-backtracks-on-press-freedom-1.php#more>.

<sup>49</sup> “Burma Clampdown Gathers Pace as Legislation Passed”, The Irrawaddy, 17 March 2014, available at: <http://www.irrawaddy.org/contributor/burma-clampdown-gathers-pace-legislation-passed.html>.

<sup>50</sup> Legal Background paper commissioned for IHRB, Appendix 2.

<sup>51</sup> For a discussion of these and other laws, see Amnesty International, “Justice on Trial”, July 2003, available at: <http://www.amnesty.org/en/library/asset/ASA16/019/2003/en/be1bd333-d6b2-11dd-ab95a13b602c0642/asa160192003en.pdf>

<sup>52</sup> Pyidaungsu Hluttaw, *The Right to Peaceful Assembly and Peaceful Procession Act*, Dec. 2011, available at: [http://www.burmalibrary.org/docs15/2011-Peaceful\\_Assembly\\_and\\_Procession\\_Act-en.pdf](http://www.burmalibrary.org/docs15/2011-Peaceful_Assembly_and_Procession_Act-en.pdf). Requirements include an application form submitted at least five days in advance; the biographies of assembly leaders and speakers; the purpose, route, and content of “chants; approximate number of attendees etc., Chapter 3, 4.

<sup>53</sup> “Peaceful Assembly Bill passed, now awaits President’s signature”, DVB, 19 June, 2014, available at: <http://dvh.no/news/peaceful-assembly-bill-passed-now-awaits-presidents-signature-burma-myanmar/41639>.

<sup>54</sup> “Despite Amnesty, Political Prisoners Remain”, Myanmar Times, 17 January, 2014, available at: <http://www.mmtimes.com/index.php/national-news/9273-despite-amnesty-political-prisoners-remain.html>



2013 seven villagers in Nyaungshwe Township, near Inle Lake were charged with obstruction following a protest demonstration against the development of a hotel zone.<sup>56</sup> In June of the same year a number of those protesters had to go into hiding due to threats of being arrested.<sup>57</sup>

Since 2011 Myanmar civil society groups have been granted a greater degree of latitude by the Government and have taken that opportunity to increase their activities to help people claim their rights, including those affecting local communities. The draft Association Registration Law originally required all groups to be formally registered, with severe penalties for failing to do so. The law was adopted in July 2014 with this provision removed<sup>58</sup>. It retains another provision of concern to CSOs, which requires groups who do decide to register to do so at township, state or national level, thereby potentially restricting their area of operation.<sup>59</sup>

### *Corruption and the Lack of Transparency*

Corruption and the lack of transparency are long-entrenched problems in Myanmar in both the Government, including the judiciary, and in business. While the Union Government has acknowledged the problem of corruption and begun to take steps to address it, it remains a major risk for companies investing in Myanmar, as it will take some time for corruption to be significantly reduced in all levels of Government<sup>60</sup>.

Interactions between the Government and the people of Myanmar have been marked by a lack of transparency on the part of the authorities, including about business operations. Recently the Government has begun to take steps to improve transparency through Government-controlled media and the President's and Ministry websites.<sup>61</sup> For example the Ministry of Labour, Employment, and Social Security publishes the text of recent laws and provides information about benefits;<sup>62</sup> and the Directorate of Investment and Company Administration's website which contains a Myanmar Investment Guide and a list of proposals approved by the Investment Commission has recently been upgraded.<sup>63</sup> However, there is currently no freedom of information law in Myanmar, although civil society is advocating for such legislation.

Tax evasion is a widespread problem in all sectors of the Myanmar economy. The Commercial Tax rate on hotel, lodging and restaurant services is 10%. However with a high number of unreceipted cash transactions for services, the tourism and hospitality industry is prone to tax evasion, as it is in many countries. In Myanmar, business owners are reluctant to reveal accurate customer figures. SWIA researchers heard that there were discrepancies between the actual number of tourist nights spent in Inle Lake region and the numbers reported by hotels to the government, in order to avoid paying taxes. A

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<sup>55</sup> *The Run on Myanmar, Stumbling Blocks on the Way to Responsible Tourism*, Tourism Watch, available at: <http://www.tourism-watch.de/node/1920>.

<sup>56</sup> *Seven charged over Inle Lake Hotel Zone protest*, Myanmar Times, 25 February, 2013, available at: <http://www.mmtimes.com/index.php/national-news/4195-seven-charged-over-hotel-zone-protest.html>.

<sup>57</sup> *Farmers in hiding near Inle Lake as officials crackdown on 'plough protests'*, Democratic Voice of Burma, 16 June, 2013, available at: <https://www.dvb.no/news/farmers-in-hiding-near-inle-lake-as-officials-crackdown-on-%E2%80%98plough-protests%E2%80%99/28738>.

<sup>58</sup> *"NGO Law Monitor: Myanmar (Burma)"*, ICNL, 25 July, 2014, available at: <http://www.icnl.org/research/monitor/Myanmar.html>.

<sup>59</sup> *"Activists relay worries of draft association law to parliament"*, DVB, 5 June, 2014, available at: <http://www.dvb.no/news/activists-relay-worries-of-draft-association-law-to-parliament-burma-myanmar/41268>.

<sup>60</sup> See for example *"Responsible Investment in Myanmar"*, The Coca Cola Company, Dec., 2013, available at: <http://photos.state.gov/libraries/burma/895/pdf/TCCCStateDepartmentResponsibleInvestmentinMyanmarReport121213.pdf>

<sup>61</sup> See for example: <http://www.president-office.gov.mm/en/> and <http://www.modins.net/myanmarinfo/ministry/home.htm>.

<sup>62</sup> Available at: <http://www.mol.gov.mm/en/>.

<sup>63</sup> Available at: <http://dica.x-aas.net/dica/permitted-investment-company>

separate transparency issue arises around donations at some religious sites. In Kyaikhtiyo, the team heard concerns from locals that the management of these funds was not transparent, but that it was unwise to ask too many questions.

### *Accountability*

The previous Government was characterised by a lack of accountability for human rights violations and violations of international humanitarian law. Those who dared to make complaints about the authorities or companies were at risk of reprisals, including arrest, torture, and imprisonment. Since the reform process began in 2011, there has been a marked increase in calls by communities to provide redress for abuses, particularly around land grabs and labour rights. The Government's response has been contradictory, which may be partially explained by the different levels of government involved in responses. On one hand the Union Government has responded by creating the Myanmar Human Rights Commission or forming investigative bodies to deal with complaints; but without giving them powers to resolve the many hundreds of complaints they have received, for example on land disputes. Yet protesters, particularly those involved in land disputes, are still being arrested and charged for peaceful activities by local authorities.

Given the inefficiencies and acknowledged corruption in the judiciary and the inability of even the ad hoc commissions to resolve complaints, there is a clear lack of access to effective avenues for individuals and communities to express their grievances, engage with responsible parties in the Government or to seek redress if harms have occurred - especially at the local level.

### *Stakeholder Engagement in Conflict-Affected Areas*

Many areas of natural beauty, nature reserves, historical and cultural sights, beaches and other potential tourist destinations are in areas that have been affected by armed conflict. Ethnic minority areas more generally, even if they have not recently been directly affected by armed conflict, are impacted by many of the same grievances and contested political authority as former conflict areas.

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

In areas where there have been inter-communal tensions and violence, such as parts of Rakhine State, similar challenges exist. In some cases, one community may even object in principle to consultations with another community, due to concerns that this may give legitimacy to that community and its viewpoints. Such situations need to be handled with great delicacy, and require a detailed understanding of local dynamics; local authorities are often not neutral.

The fact that local authorities are either not neutral or not perceived as such underlies one of the main challenges in developing tourism in a participatory manner in ethnic and post-conflict areas. The Myanmar Tourism Master Plan and the Policy on Community Involvement in Tourism (CIT) include principles of stakeholder consultation and participation. In the Master Plan ‘consultation and participation’ is one of the seven cross-cutting themes; the Plan says that steps will be taken to ensure prior and informed consultations are made with relevant stakeholders, as well as the provision of timely and accurate disclosure of information, to promote gender and ethnic inclusiveness, and enable the incorporation of stakeholder views into decision-making processes.<sup>64</sup> It also promotes the development of a policy for equitable participation of ethnic groups in tourism in consultation with community leaders and civil society organizations and information sharing on the policy with ethnic groups.<sup>65</sup>

In the CIT Policy community participation is considered a core principle; it states that local communities should be provided with sufficient information about the tourism industry to be able to make informed decisions regarding how their future may be impacted before any involvement in tourism. Local communities should be willing to participate in tourism and should be aware of the potential impacts as well as learn about mechanisms to manage the impacts from the start. A second core principle talks about decision-making. The CIT Policy recognizes that the course of negotiation and decision-making within local communities is generally lengthy and requires broader consultation processes within communities and with other traditional owners.<sup>66</sup> Lastly, the Myanmar Responsible Tourism Policy addresses the issue of participation of communities in tourism management; it calls for an increased understanding of tourism management at the local level through tourism awareness training in local communities and establishing the role of local communities in the management of tourism.<sup>67</sup>

### Key human rights considerations for the tourism sector:

- In such a high-risk environment, it is all the more important to undertake consultation with local communities early, regularly and meaningfully.
- The formal duty to consult the Myanmar people rests with the State, and State authorities will play a role in implementation of consultations mandated by the ESIA process. However, companies - and development partners involved in tourism related activities - should consult with stakeholders as part of their human rights due diligence, separate and apart from government consultation with communities.<sup>68</sup>
- 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 the lack of trust of business, the Government and the reform process felt by many communities, particularly rural populations. 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 and Myanmar 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 population has a right to remedy for impacts on them, whether caused or contributed to by the tourism sector, or directly linked to their operations through a business partner or the Government or

<sup>64</sup> Tourism Master Plan, *Supra* note 19, p. 26

<sup>65</sup> Tourism Master Plan, *Supra* note 19, Key objective 3.2.3, p. 47.

<sup>66</sup> Policy on Community Involvement in Tourism, *Supra* note 20, p. 14-15.

<sup>67</sup> Responsible Tourism Policy, *Supra* note 18, Aim 7, p. 17.

<sup>68</sup> UN Guiding Principles, *Supra* note 2, Principle 18.

military. There is – with good cause – little or no faith that the judicial system can currently deliver this. Businesses can however establish operational-level grievance mechanisms (OLGM) to allow them to receive complaints directly from workers and local communities and address them promptly. Such grievance mechanisms should be operated according to the criteria established in the UN Guiding Principles on Business and Human Rights.<sup>69</sup>

**Relevant international standards and guidelines:**

- IFC Performance Standard 1<sup>70</sup>
- IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets<sup>71</sup>
- UN Declaration on the Rights of Indigenous Peoples<sup>72</sup>
- BSR, Back to Basics: How to Make Stakeholder Engagement Meaningful for Your Company<sup>73</sup>
- Corporate Social Responsibility Initiative, Harvard University, Kennedy School of Government, Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders<sup>74</sup>

## Assessment findings

### Consultation & Engagement

**Human Rights Implicated:** Right to seek and receive information, right to participation, Right to freedom of opinion and expression; right to self-determination

**Assessment Findings:**

Consultation of, or engagement with local communities by governmental bodies or companies was in general found to be poor or lacking.

- **In none of the locations had the government or companies conducted EIAs, IEEs or SIAs** with the participation of communities before tourism development projects started.
- In the majority of the cases **communities were not consulted in advance** of projects and no information was provided about tourism projects and their consequences prior to the decision to develop a tourism project.
- In one hotel zone the head of the hotel zone committee **only discussed positive impacts and not the potential negative impacts of the hotel zone** when he met with community members.
- Before acquiring community or community members' land in for example Inle Lake region, **neither the government nor companies consulted the community to try to find out who the true owners or users**

<sup>69</sup> UN Guiding Principles, *Supra note 2*, Principle 31.

<sup>70</sup> IFC Performance Standards on Environmental and Social Sustainability, *Supra note 4*.

<sup>71</sup> *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*, IFC, May 2007, available at: [http://www.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC\\_StakeholderEngagement.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES).

<sup>72</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, UN General Assembly, 13 September, 2007, available at: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

<sup>73</sup> *Back to Basics: How to Make Stakeholder Engagement Meaningful for Your Company*, Business for Social Responsibility, January, 2012, available at: [http://www.bsr.org/reports/BSR\\_Five-Step\\_Guide\\_to\\_Stakeholder\\_Engagement.pdf](http://www.bsr.org/reports/BSR_Five-Step_Guide_to_Stakeholder_Engagement.pdf).

<sup>74</sup> *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders*, Corporate Social Responsibility Initiative, John F. Kennedy School of Government, Harvard University, January, 2008, available at: [http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper\\_41\\_Rights-Compatible%20Grievance%20Mechanisms\\_May2008FNL.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf).

of the land were.

- Many authorities are **reluctant to permit or accept direct engagement by companies with communities**. One Yangon-based tour operator submitted a request to The Union of Myanmar Tourism Association to consult communities around a specific tourist site, but this request was denied.
- When asked by the assessment teams **what kinds of issues communities would like to discuss** with the tourism businesses operating in their region, they mentioned:
  - infrastructure requests, especially access to electricity (Bagan, Chaungtha, Inle Lake and Mawlamyine) and access to water (Bagan)
  - training and capacity development for local communities for better and long-term job opportunities in the tourism industry (in all locations)

### Grievance Mechanisms

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

**Assessment Findings:**

- It was commonly reported that **communities are reluctant to complain**, especially to the Government. They often do not do so because they have to go through local bureaucracy which is not always responsive
- Complaints and grievance mechanisms are in general uncommon in Myanmar. In **none of the locations** were company-level **mechanisms** in place for community members to lodge a complaint.
- In Inle Lake region some villagers did not accept the compensation offered for crops and land for the construction of the hotel zone. When no solution was found, **villagers held peaceful protests against the land confiscation**. A number of protesters were brought to court for obstruction and disrespectful behavior towards the police. At the time of writing two persons are still facing charges in court.
- **Access to courts** to solve disputes related to land confiscation for hotel zones was generally considered too **bureaucratic, time consuming and too expensive**.

### Examples of Emerging Good Practice In Myanmar

**Assessment Findings:**

- Until 2010 land for the construction of hotels in Ngwesaung and Chaungtha was acquired by the authorities without consultation with communities. However this is now increasingly done through **negotiations with communities**.
- In one case in Bagan **communities were consulted and involved** in the analysis of the **environmental impacts of tourism** on their community. They were also involved in a discussion around the **needs of the community** with regard to water, electricity and infrastructure. This discussion conducted by the Ministry of Hotels and Tourism and a development group led to consent of the community for the proposed tourism project.
- In Inle Lake region, land was acquired for the development of the hotel zone. The project developers left **the monastery located on the acquired land intact** on the request of the community.
- A number of Yangon-based tour operators have **conducted community consultations and educated the community** on tourism related issues.
- In Ngwesaung the local authorities brought villagers and a company together to **help with negotiations regarding the acquisition of land**.

- In Mandalay a **Community Based Organization raised awareness in the community of how to conduct negotiations regarding land** and land prices. This improved education of villagers led to an increased desire for knowledge about the hotel zone.

## COMMUNITY IMPACTS

### National Context

Many Myanmar communities are characterized by low levels of education, high rates of poverty, and lack of adequate health care. The UNDP has reported that the national poverty rate is 26% and poverty rates are twice as high in rural than in urban areas.<sup>75</sup> However, more recent information reported in May 2014 by the World Bank in Myanmar suggests a national poverty rate of 37.5%, using a higher number of minimum calories per day as a cut-off point for poverty, and a higher rate of urban poverty.<sup>76</sup> UNICEF notes that in 2012-2013, as a percentage of GDP, government spending amounted to 0.76% for health, 1.46% for education and less than 0.01% for social welfare.<sup>77</sup> Low secondary school enrolment rates,<sup>77</sup> often due to poverty, are continuing challenges. Official literacy rates are over 90 percent, however, a survey found that one third of rural people in a small sample was functionally illiterate, which is indicative of a widely observed problem.<sup>78</sup> 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.<sup>79</sup> Access to electricity in 2011 was 26% as a national average.<sup>80</sup> As of 2011 about 70% of the population is occupied in agriculture and related activities.<sup>81</sup>

The 2010 poverty rates in some of the main tourist areas in Myanmar were: 16.1% in Yangon Region, 16.3% in Mon State where Mawlamyine and the Golden Rock are located, 26.6% in Mandalay Region, (includes Bagan and Pyin Oo Lwin/Maymyo), 44% in Rakhine State (Ngapali beach, Mrauk-U) 32.2% in Ayeyarwady Region (Chaungtha and Ngwesaung beaches) and 33% in Shan State (Inle Lake, Taunggyi).<sup>82</sup>

Tourism is a sector that could have a very positive impact on community livelihoods and poverty reduction in Myanmar. With little capital investment, tourism can yield high levels of employment and income for the poor, particularly in rural communities.<sup>83</sup> Tourism can be a driving force for environmental protection, generate foreign exchange earnings, and enhance economic values of natural and cultural heritage assets.<sup>84</sup>

<sup>75</sup> *Interim Country Partnership Strategy: Myanmar 2012 – 2014, Poverty Analysis, Summary*, p. 4, available at: <http://www.burmalibrary.org/docs14/mya-interim-poverty.pdf>.

<sup>76</sup> *Data tweaks change face of poverty*, Myanmar Times, 19 May, 2014, available at: <http://www.mmtimes.com/index.php/opinion/10400-data-tweaks-change-face-of-poverty.html>.

<sup>77</sup> *Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar*, UNICEF, p.10, available at: [http://www.unicef.org/eapro/Social\\_Sector\\_Public\\_Budget\\_Allocations\\_and\\_Spending\\_in\\_Myanmar.pdf](http://www.unicef.org/eapro/Social_Sector_Public_Budget_Allocations_and_Spending_in_Myanmar.pdf).

<sup>78</sup> *Creating a Future: Using Natural Resources for New Federalism and Unity*, Harvard Kennedy School, Ash Center, July, 2013, available at: <http://www.ash.harvard.edu/extension/ash/docs/creating.pdf>.

<sup>79</sup> For more inclusive growth and equitable opportunities, *Multidimensional Review of Myanmar, Initial Observations*, OECD, 2013, p. 168, available at:

<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>

<sup>80</sup> *Myanmar in Transition: Opportunities and Challenges*, Asian Development Bank, p. 22, August, 2012, available at: <http://www.adb.org/sites/default/files/pub/2012/myanmar-in-transition.pdf>.

<sup>81</sup> *Myanmar Ministry of Labour Handbook on Human Resources; Development indicators 2009*, Ministry of Labour Nay Pyi Taw, 2011.

<sup>82</sup> *Interim Country Partnership Strategy*, *Supra* note 76.

<sup>83</sup> Mekong Tourism Coordinating Office, available at: <http://mekongtourism.org/website/sustainable-tourism-knowledge-center/responsible-tourism/>

<sup>84</sup> *Tourism Sector in the Greater Mekong Subregion*, Asian Development Bank, SAP: REG 2008-58 Sector Assistance Program Evaluation, December 2008, available at: <http://www.oecd.org/countries/mongolia/42221951.pdf>



It can also support disaster relief: after Cyclone Nargis in 2008, a number of tour operators and hotels worked together to collect donations to help affected communities.<sup>85</sup>

The Myanmar Responsible Tourism Policy (M RTP) stresses the need to empower and engage host communities in tourism skills training, planning and management. This will allow for maximized opportunities for people from local communities to gain employment in the tourism sector and for selling goods and services to visitors.<sup>86</sup> Of less high priority, but another key aim in the Responsible Tourism Policy is the promotion of purchase of local products in order to promote local economic development and the development of local transport infrastructure to maximise local economic benefits in major destinations.<sup>87</sup>

The Policy on Community Involvement in Tourism (CIT) sets out a number of guidelines for community involvement contributing towards rural development and poverty alleviation.<sup>88</sup> The Myanmar Tourism Master Plan includes actions related to community involvement and empowerment in the planning and management of tourism, tourism awareness training to local communities and increasing local participation. The development of community based tourism projects and the facilitation of networks between local communities and other stakeholders is another goal. The Tourism Master Plan also aims to improve linkages between the tourism industry and local producers and communities as suppliers of goods and services such as farm products, handicrafts, food and beverages, cultural performances, and transportation services.<sup>89</sup>

#### Key human rights considerations for the tourism sector:

- There are high expectations of employment from local communities but there is currently a lack of skills and education which match job requirements. It will be challenging for companies in the tourism sector to find skilled labour from among the workforce in the communities they operate.
- There is high local competition for limited unskilled labour opportunities that could lead to tensions within the community and with companies in the tourism sector and could also increase 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, and companies will need to be alert to this.
- Local rural populations are at a high risk of being exposed to negative social and environmental impacts. Where they depend on land-based subsistence agriculture or local fishing, there is a risk they may lose access to land or sea due to the influx of hotel zones and other tourism projects. The impacts may be higher for more vulnerable groups – such as women, children, minorities, the disabled and the landless.
- Where the tourism sector is driving increased land and housing prices, this has a negative impact on locals, particularly vulnerable populations.
- The frustration over lack of access to effective remedy for damages to livelihoods can increase tensions between communities and companies, in particular around the construction of large hotels, resorts, roads, and airports.
- In the current more open climate, communities are expressing grievances, for example regarding land confiscations that have taken place years ago. Such grievances can affect tourism businesses that invest in legacy projects, such as the upgrading of a hotel or taking over the management of an existing hotel. These businesses may have to address the concerns of communities.

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<sup>85</sup> *Travel companies in Myanmar provide cyclone relief*, Los Angeles Times, 10 May, 2008, available at: <http://www.latimes.com/travel/la-la-trw-myanmar10-2008may10-story.html>; *Donations for Myanmar Cyclone Victims*, Exotissimo Travel Asia, 19 August, 2008, available at: [http://www.exotissimo.com/exotravel/myanmar\\_cyclone\\_victims](http://www.exotissimo.com/exotravel/myanmar_cyclone_victims)

<sup>86</sup> Responsible Tourism Policy, *Supra* note 18, p. 10.

<sup>87</sup> Responsible Tourism Policy, *Supra* note 18, Aim 2, p. 11-12.

<sup>88</sup> *Official launch of the Policy on Community Involvement in Tourism*, *Supra* note 21.

<sup>89</sup> Tourism Master Plan, *Supra* note 19, p. 11, pp. 49-50.

- There is the potential for increased crime in tourist areas due to disparities in wealth between local population and tourists and between local communities who are benefitting from the tourism industry and those who are not.
- There is a risk of increased spread of HIV/AIDS and other sexually transmitted diseases from an influx of visitors and inward migration.

**Relevant international standards and guidelines:**

- IFC Performance Standards 1,3, 4,7 and 8<sup>90</sup>
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 1, 4 and 5<sup>91</sup>
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A6, A7, A8, B1-B10<sup>92</sup>
- OHCHR/UN Habitat - The Right to Adequate Housing, Fact Sheet<sup>93</sup>

## Assessment Findings

### Livelihoods

**Human Rights Implicated:** Right to an adequate standard of living.

**Assessment findings:**

- Tourism has led to **increased economic opportunities for communities**, with more demand for local goods and services e.g. bike rental services, brick making for construction, and higher incomes for fishermen in Ngwesaung. Tour guides are now opening their own tour agencies, souvenir shops are seeing increased business and fishermen get better prices for their fish in tourist locations.
- **However small local businesses have challenges in competing with businesses that have greater access to capital.** For example horse-cart drivers in some tourist destinations can no longer compete against other businesses such as electric bikes and have to find alternative livelihoods.
- **The price of food has increased** in some locations (e.g. Inle Lake, Chaungtha) due to demand from tourists, benefitting producers but affecting local consumers.
- **Land prices have gone up in many areas**, which has negatively impacted locals, who often cannot afford to buy land anymore.
- **The planned construction of hotels and hotel zones in Inle Lake and Tada-Oo Mandalay is having a negative impact on farmers' livelihoods.** Although some farmers have been compensated for their land, they may not be able to acquire new land to resume farming, as the plans for hotel zones is driving land price inflation. They may also not find jobs in the tourism sector, particularly if hotels and jobs take time to materialize, or demand particular skills and literacy.

<sup>90</sup> IFC Performance Standards on Environmental and Social Sustainability, *Supra* note 4.

<sup>91</sup> UNWTO GCET, *Supra* note 43.

<sup>92</sup> *Global Sustainable Tourism Criteria for Hotels and Tour Operators*, Global Sustainable Tourism Council, available at: <http://www.gstcouncil.org/sustainable-tourism-gstc-criteria/criteria-for-hotels-and-tour-operators.html> (hereinafter "Global Sustainable Tourism Criteria").

<sup>93</sup> *The Right to Adequate Housing, Fact Sheet No. 21*, OHCHR and UN Habitat, available at: [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)



- In addition to the loss of farming land for hotel zones, many communities depend on the use of firewood as a source for cooking. However, because of Inle Lake hotel zone construction, trees have been cleared. This **impacts both on their ability to cook but also the income they received from sales of firewood**. Villagers have requested the local government to pave a road to the forest for access to more distant firewood, but at the time of the field assessments this had not yet happened.
- In one village in Bagan 80 percent of the villagers make and sell bricks for a living. **The Archeological Department has prohibited the baking of bricks inside the archeological zone** as this practice damages the landscape. This has directly impacted the livelihoods of the villagers.
- Construction of a road for cars and buses to the foot of the Golden Rock in Kyaikhtiyo has resulted in fewer pilgrims on foot. Therefore **many souvenir sellers and other shopkeepers dependent on tourism have closed their shops**. Porters also took part in the construction of the road, having been encouraged to believe it would lead to better job opportunities. Instead the **porters can no longer make a living** by carrying the luggage of pilgrims.
- In Chaungtha and Ngwesaung, land was previously taken from communities without adequate compensation for the construction of hotels, leading to the **resettlement of fishermen away from beach areas, with poor access to the beach and limited permission to access fishing grounds**.

### *Public and 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:**

- In general communities in tourism locations have enjoyed **improved roads, bridges and transport facilities** as a result of increased tourism. However **no meaningful consultations on** infrastructure improvements had been conducted based on the needs of the community.
- Access to **electricity** was **identified as a key demand from most communities**. They reported that the government promised electricity to Ngwesaung in 2000 and again in the period leading up to the SEA Games in December 2013, but they did not receive it.
- In all locations there were examples of **a lack of proper waste management including waste water management** by hotels and restaurants. Proper functioning municipal waste systems were lacking in a number of locations.
  - o One hotel in Bagan **failed to prevent its waste water overflowing and affecting surrounding communities**. While it could not solve the problem, the hotel supported community livelihoods by allowing a horse cart station outside the hotel, providing approximately 100 villagers with an income.
- In **Kyaikhtiyo availability of water was identified** as a problem. There was only one nearby water source which has led to fears in the community of severe water shortages in the future.
- In **Inle Lake region some roads were damaged due to trucks carrying heavy loads to and from the hotel zone**.

**Community participation in tourism business**

**Human Rights Implicated:** Right to participation, right to work

**Assessment Findings:**

- Tourism has led to an **emergence of SMEs** in tourist areas such bicycle rentals in Bagan and Ngwesaung, official money changers in large cities like Yangon and Mandalay, small lacquer ware shops in Bagan and the establishment of more small independent tour operators in Yangon. This has led to **more jobs and more stable incomes**.
- However in Inle Lake region it was reported that **local communities were not able to participate sufficiently in decision-making processes related to the hotel zone development and that they felt that they did not benefit from the tourism industry**.
- In a number of locations communities indicated that it was often **difficult to obtain the licenses** needed to operate a tourism business.
- People who wanted to open up competition in the tourist transport sector in Kyaikhtiyo were **obstructed from doing so by the local government and an influential, well-established local business**.
- In Mandalay there is competition among the 55 boats offering tourist boat trips on the Ayeyarwady River. The boats need to undergo annual inspections to obtain permits to operate, and in some cases boat operators had **to pay bribes to have an inspection conducted**.
- In Yangon a number of tour operators indicated that **payment of small fees or gifts was needed in order to obtain permits or license extensions** from the relevant authorities.
- It was reported that to obtain one of the 200 places in the **Yangon Tourist Guide**

**Training School** a bribe sometimes needed to be paid.

### *Community health and safety*

**Human Rights Implicated:** Right to health

**Assessment Findings:**

- Communities reported a **fear of actual and potential negative health impacts linked to an increase of hotels and tourism**. Concerns were raised about illnesses due to lack of proper waste management by hotels, including burning of waste in Ngwesaung, and shortage of clean drinking water.
- In some communities there was a **fear that there would be increased risk of sexually transmitted diseases** as a result of tourism leading to increased demand for prostitution which could then spread to local communities by via local male clients.
- Events possibly related to the tourism industry, such as **late night karaoke in hotels, were found to be disturbing to the surrounding communities** near a hotel in Yangon.

### *Housing*

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

**Assessment Findings:**

- In some locations the **costs of construction materials increased** due to more demand for materials by hotel project developers. Bamboo for housing in Inle Lake region has become scarcer and villagers have to buy bamboo in other locations which led to increased construction costs.
- In all locations tourism projects were contributing to rising costs of land and housing, which could lead to an expansion of illegal housing and slums on the fringes of urban areas.

## Examples of emerging good practice in Myanmar

### Assessment Findings:

- Due to an increase in tourism in Chaungtha **secondary education facilities have improved**. There is a realization among parents and youth that there is a need for educated community members who can work in the tourism sector, so parents encourage their children to attend high school.
- In Inle Lake region a hospitality vocational training centre has opened. The Centre is providing **partial scholarships** covering the tuition fees to students from the local community. In Yangon a vocational training center has been opened as well
- One Yangon-based tour operator **provides Russian language training** to promote jobs for Russian speaking tour guides.
- Some **tour operators have initiated small clinic projects for communities** near the tourist sites which they partially fund including through tourist donation, and in Chaungtha **the Hotel Owners Association** provided an **ambulance for community use**.

## LAND

### National context

Land is often the most significant asset of most rural families. 70% of Myanmar's population lives in rural areas and 70% of the population is engaged in agriculture and related activities.<sup>94</sup> Many farmers use land communally under a customary land tenure system, especially in upland areas inhabited by ethnic minorities. Customary use and ownership of land is a widespread and longstanding practice.<sup>95</sup> The field assessments confirmed what is evident from secondary research: that for the vast majority of the Myanmar population dependent on access to land for livelihoods, where land is taken, even with monetary compensation, the impacts on an adequate standard of living can be significant. Compensation is often not keeping up with rapidly escalating land prices, meaning displaced farmers are unable to acquire new land in nearby areas.

If tourism expands at the rate envisaged in the Myanmar Tourism Master Plan, more areas of land will be required for tourism infrastructure, including accommodation, and the upgrading and construction of airports. Land grabs related to the development of the tourism industry have occurred in the past. The most notorious is probably that which took place in 2000 in Ngwesaung, where fishermen and farmers' beachfront properties and land were confiscated to develop the hotels in the new resort.<sup>96</sup> Another famous example, which the government justified as a cultural conservation measure, was the forced relocation of all residents living among ancient pagodas in Old Bagan to Bagan Myo-Thit (new town) in 1990.<sup>97</sup>

<sup>94</sup> *Supra* note 82.

<sup>95</sup> Access Denied: Land Rights and Ethnic Conflict in Burma, *Supra* note 28.

<sup>96</sup> *Ngwesaung: A Tourist Paradise at the Expense of the Locals*, The Irrawaddy, 27 December, 2013, available at: <http://www.irrawaddy.org/burma/ngwe-saung-tourist-paradise-expense-locals.html>

<sup>97</sup> *New projects infringing on Old Bagan*, Myanmar Times, Jan., 2014, available at: <http://www.mmtimes.com/index.php/business/property-news/9371-new-projects-infringing-on-old-bagan.html>

## Land regime

Reform of land policy and law in Myanmar remains incomplete. There is a recognized need in Myanmar for a written comprehensive land use policy. The Land Allotment and Utilisation Scrutiny Committee, a Cabinet-level committee, was established in July 2012. Its remit is to focus on national land-use policy, land use planning, and allocation of land for investment that allows a better balance between competing demands for land-use that will inevitably increase with further economic development and investment.<sup>98</sup> A working group of the Committee, which includes civil society representation and external experts, is currently formulating a draft land policy. The final policy is not expected to reach Parliament until 2015 or 2016. Once adopted, the policy will presumably guide the drafting of an overarching land law in 2016.

Meanwhile, the land regime in Myanmar is characterised by a patchwork of new and old laws that leads to overlap, contradiction and confusion. Insecurity of tenure is a major problem. Moreover, the land registration system is considered inefficient, with complex requirements and lack of benefits for registering land.<sup>99</sup> UN Habitat recently announced new cooperation with the Government on the implementation of a land administration and management programme.<sup>100</sup> The cadastral (land mapping) system is weak, which further exacerbates the problem of land disputes, as land classifications and mapping may overlap or not reflect true land use patterns. For example one map may classify a plot of land as forest land, whereas another map may classify the same plot as farmland, leading to confusion about land use rights and possible disputes about whether the land can be sold or not, depending on the classification. Participatory land use planning, that balances the needs of all land users, is needed.

As the recent OECD Investment Policy Review of Myanmar notes: “[I]and tenure remains insecure for most smallholder farmers for a wide range of reasons: i) a complex and long registration process resulting in low land registration rates; ii) rigid land classifications that do not reflect the reality of existing land use; iii) lack of recognition of customary land use rights; iv) weak protection of registered land use rights; v) inefficient land administration; and vi) active promotion of large-scale land allocations without adequate safeguards.”<sup>101</sup> The OECD has also recommended the use of free, prior and informed consent (FPIC) for all land acquisitions, not just those involving ethnic minorities / indigenous peoples, a position which goes further than the IFC Performance Standard, which is based on UNDRIP.<sup>102</sup>

## Land disputes

Since the recent reform process began, there has been consistent reporting of protests against “land grabs” in the press and by non-governmental organisations in many parts of the country. In addition, large-scale land allocation has increased significantly in the past decade.<sup>103</sup> While some of these land grabs are new, many of them originate in land confiscations under the previous military Government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the Government. Some land in Myanmar has been returned to farmers and others since the reform process began. In January 2014 the military reportedly apologised for previous land confiscations, pledged to stop the practice, and said it

<sup>98</sup> “Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law”, Food Security Working Group’s Land Core Group, Nov. 2012, available at: [http://www.forest-trends.org/documents/files/doc\\_3274.pdf](http://www.forest-trends.org/documents/files/doc_3274.pdf)

<sup>99</sup> “OECD Investment Policy Reviews: Myanmar 2014”, OECD, March 2014, p. 108, available at: <http://www.oecd.org/countries/myanmar/investment-policy-reform-in-myanmar.htm>

<sup>100</sup> “UN-Habitat to help strengthen land administration and management in Myanmar”, UN-Habitat, June 2014, available at: <http://unhabitat.org/un-habitat-to-help-strengthen-land-administration-and-management-in-myanmar/>

<sup>101</sup> *Supra* note 102, pg. 292.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Supra* note 102, pg. 324.

would begin to return some of the land.<sup>104</sup> However, there are still tens of thousands of rural people who have lost their land due to Government confiscation.

In recognition of the problem of land disputes, the Government has established two bodies to deal specifically with land issues. The Land Allotment and Utilisation Scrutiny Committee (as noted above) and the Parliament's Farmland Investigation Commission (with a mandate to accept complaints from the public) were both established in July 2012. In February 2014 the Parliamentary Commission set a deadline for the Government to resolve cases of land grabs of farmland by September 2014, stating that the executive branch had not adequately responded to their March 2013 report outlining the severity of land grabs.<sup>105</sup> The Myanmar National Human Rights Commission, established by the President in September 2011 to deal with a broader range of issues, has noted that most of the complaints they receive are in relation to land grabs. The Myanmar Legal Aid Network is currently administering two complementary Land Legal Aid Mechanisms, which are taking a few cases to court.

### *Resettlement*

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

A recent case of land expropriation and resettlement provides one example of the challenges of larger scale resettlement where there are no detailed requirements and little Government experience in carrying out resettlement to international standards. The Japanese International Cooperation Agency (JICA) is supporting the development of the Thilawa Special Economic Zone outside of Yangon. Sixty-eight households have already been resettled under Phase 1 of the project; however, many resettled from this farming community do not currently have access to livelihoods options and there are also concerns about sanitation in the new resettlement site.<sup>106</sup> A delegation of the resettled communities recently visited Japan to present their complaints directly to JICA, including the claim that it had not been effective in applying its guidelines.

The Tourism Master Plan and the Policy on Community Involvement in Tourism (CIT) both include the issue of involuntary resettlement. The Master Plan includes several activities to strengthen tourism-related social and environmental safeguards, including a review of social safeguard policies related to involuntary resettlement.<sup>107</sup> The CIT Policy states that in order to avoid and minimize involuntary resettlement resulting from the tourism projects, safeguards must be formulated for involuntary resettlement. Where resettlement cannot be avoided, displaced persons should get a legal guarantee that their livelihoods will be improved or at least restored to pre-project levels. The CIT Policy includes another core principle related to land, namely respect for the relationship of ethnic communities to land and landownership.<sup>108</sup>

<sup>104</sup> "Vice President defends land seizures by Tatmadaw", Mizzima, 12 May, 2014, available at: <http://mizzima.com/mizzima-news/myanmar/item/11173-vice-president-defends-land-seizures-by-tatmadaw>

<sup>105</sup> "Parliament Sets Deadlines for Govt to Resolve Land Disputes", The Irrawaddy, 20 February, 2014, available at: <http://www.irrawaddy.org/burma/parliament-sets-deadlines-govt-resolve-land-disputes.html>

<sup>106</sup> JICA dismisses accusations of negligence, DVB, 10 June 2014, available at: <http://www.dvb.no/news/jica-dismisses-accusations-of-negligence-burma-myanmar/41406>; Displaced villagers descend on Tokyo, DVB, 6 June 2014, available at: <http://www.dvb.no/dvb-video/displaced-thilawa-villagers-descend-on-tokyo-burma-myanmar-sez/41295>

<sup>107</sup> Tourism Master Plan, *Supra* note 19, key objective 3.2.2. p. 48.

<sup>108</sup> Policy on Community Involvement in Tourism, *Supra* note 20, Core Principles Linked to All Objectives, p. 16.

## *Legal framework for the acquisition or lease of land*

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

The 2008 Constitution provides that the State is the ultimate owner of all land in Myanmar, but also provides for ownership and protection of private land property rights.<sup>109</sup> As set out below, the Government can carry out compulsory acquisitions in the state or public interest. A private investor may acquire land or land use rights from either the Government or from a private land rights owner. A foreign investor can lease land.

With respect to lands not covered by other, more specific land laws (either “Vacant, Fallow and Virgin Land” or “Farmland” – see below), land acquisition is governed by a 120 year old law, a holdover from the former British colonial period. The 1894 Land Acquisition Act provides that the Government can carry out land acquisitions for a company when the acquisition is “likely to prove useful to the public” (Article 40(1)(b)). The Government has responsibility for carrying out the acquisition and distributing compensation but the funds for compensation are to be provided by the company acquiring the land. Land in kind can be provided in place of monetary compensation. It sets out basic procedures governing the acquisition of the land, including undertaking preliminary investigations on the land, and a procedure for notification of, and objections to be raised by, persons interested in the land (Article 5A). The agreement between the company and the Government is to be disclosed in the National Gazette and notice given to the public (Art 42). However, the Gazette has limited circulation (although it is now available online<sup>110</sup>). While this could be seen as a protection for land owners, in practice this has meant that local land owners or users are often unaware their land is being taken because notice in the Gazette is insufficient and there is no requirement to directly notify those owning or occupying the land. They therefore are not able to lodge an objection during the short window mandated under the law, while those who do publish a correct notice in the Gazette can claim compliance with the law.

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

The VFV and Farmland Law and Rules (see below), are clearly aimed at providing a legal framework for implementing Government land policies to maximise the use of land as a resource for generating agricultural income and tax revenues. Tenure security is deliberately circumscribed to allow the Government the flexibility to do what they believe is needed for development. Civil society groups and farmers organisations have pointed out that land regarded as vacant, fallow and virgin may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices, but which the Government classifies as VFV. The complicated registration procedures under the new agricultural laws mean that smallholder farmers, which is most of Myanmar’s population, will struggle to register their land and are at risk of having their land registered by more powerful interests. Potentially developers could register in their names as owners of farmland and so-called VFV land, which has in fact long been occupied. By not recognising informal land rights, and formalising land rights through titling, despite pre-existing informal claims, the new laws may reinforce existing inequality and/or create new injustices, potentially creating or exacerbating tensions or even conflict.<sup>111</sup>

With respect to land designated as vacant, fallow and virgin (VFV), investors may acquire land by applying to the Government for land rights over VFV lands. Foreign investors with Myanmar Investment Commission (MIC) permits, those in joint ventures with Government bodies, or citizen and Myanmar citizen

<sup>109</sup> *Myanmar Constitution*, Articles 35, 37, 356, 372.

<sup>110</sup> Available in Myanmar from <http://www.moi.gov.mm/ppe>

<sup>111</sup> Access Denied: Land Rights and Ethnic Conflict in Burma, *Supra* note 38.



investors are permitted by the 2012 VFV Law to apply to the Central Committee for the Management of VFV Lands for the rights to cultivate and use VFV land (Article 5(a), (d), and (e)). Foreign investors without MIC permits do not appear to be permitted to do the same. These VFV land rights are temporary and not transferable.

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

### Farmland

With respect to farmland, the 2012 Farmland law makes clear that applicants who are individuals must be citizens (Articles 6(a) (iv), 7 (a), (iv)). However, it also states that “organisations” include Government departments or organisations, non-governmental organisations and companies (Articles 6(b), 7(b), who are also permitted to apply. This appears to include foreign companies, as there is no statement in the English translation of the law that a company that may be granted a right to use farmland must be a Myanmar company. Farmland rights under the 2012 Farmland Law are freely transferable (subject to discrete restrictions such as transfers to foreign investors). This has been seen as problematic, since it exposes poor farmers to the temptation to sell their land use rights for short term gain, potentially leaving them landless and without a livelihood.<sup>112</sup> The problem is not the fact that farmland rights may be transferred through private negotiations and agreements, as this gives land rights owners the ability to convert their property assets into cash value when they choose. The issue is to what extent protection should be provided (many states’ contract laws commonly provide protections against unfair terms and conditions and agreements made under duress or undue influence, mistake, or misrepresentation). The 2012 Farmland Law also allows for the “repossession of farmland “in the interests of the state or the public”<sup>113</sup> provided that “suitable compensation and indemnity is to be paid; the farmland rights holder must be compensated “without any loss” (Article 26). As with the VFV law, the Farmland Law and Rules do not provide for procedures for objections to be made to the acquisition or compensation awarded or for judicial review.

### Non-Citizens’ Use of Land

With respect to foreign investors, the Restriction on the Transfer of the Immoveable Property Law (1987) had restricted foreign companies from buying land or leasing land for a term exceeding one year. Private investors may now acquire land rights from private persons through ordinary contractual agreement, subject to the following legal restrictions. First, land ordinarily cannot be sold or transferred to a foreigner through private transaction.<sup>114</sup> The Government may however allow exemptions from these restrictions

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<sup>112</sup> Myanmar at the HLP Crossroads, Displacement Solutions, Oct., 2012, available at: <http://displacementsolutions.org/wp-content/uploads/MYANMAR-AT-THE-HLP-CROSSROADS.pdf>

<sup>113</sup> The distinction drawn between interests of the state and interests of the public is troubling, but it may be premature to draw conclusions without knowing the nuances of the provision in Burmese.

<sup>114</sup> The 1987 Transfer of Immoveable Property Restriction Act prohibits the sale or transfer of immoveable property, and the lease of such immoveable property for more than one year, to a foreigner or foreigner-owned company (Articles 3-5).



and Union Government Notification No. 39 of 2011<sup>115</sup> set out the circumstances in which a foreign investor may lease land. Second, private investors cannot acquire VFV land rights or farmland through private transactions without the permission of the Government (Article 16(c) VFV Law) (Article 14 Farmland Law). Under the newer Foreign Investment Law, the foreign investors can obtain leases for an even longer period - 50 years, extendable for 10 years twice, depending on the type of business, industry and amount of investment. Leases can be even longer for land in “the least developed and less accessible regions.”<sup>116</sup>

The Foreign Investment Rules provide certain protections against abuses but these apply only to leases by foreign investors under the MIC permit regime. Leases must be submitted to the MIC and the person leasing the land can make a complaint to MIC if the investor fails to pay the promised lease payment or carry out any provision in the agreement. MIC can thereafter terminate the lease. MIC is also entitled to terminate the lease after necessary investigations if the investor violates a law on the land. Interestingly, a foreign investor shall not be permitted to lease land “in a place that the public is not desirous to transfer and vacate.”<sup>117</sup> If there are occupants, the foreign investor must submit to MIC the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement, including payment of the current price plus and damages.<sup>118</sup> This indicates that with respect to leased land that is privately negotiated, involuntary resettlements in theory cannot be compelled. Given the wide scope of this provision, whether the Government can or will enforce this veto is questionable. Foreign investors are prohibited from leasing religious lands or areas of cultural or natural heritage.<sup>119</sup>

### *Concerns with the current legal framework*

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

### *Hotel Zones*

The SWIA research shows that despite the new government’s public commitment to addressing land grabbing, there is still a risk of tourism-connected land grabs. The main driver of this current risk is government plans for ‘hotel zones’, large areas of land which are cleared and subdivided into adjacent plots for hotel construction.

In 2012 the government announced plans for ‘hotel zones’ with associated infrastructure in many areas, including Yangon (Htaukkyan, Hlegu, Mingaladon and in 2013 Dagon Myothit East), Mandalay, Bagan, Taunggyi, Chaungtha, Inle Lake, Rakhine, Mawlamyine, the Golden Triangle, Bago, Ngwesaung and

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<sup>115</sup> Notification 39, 2011 on the Right to Use of Land relating to the Republic of the Union of Myanmar, Foreign Investment Law, available at: <http://www.dica.gov.mm/30-2011.htm>

<sup>116</sup> Notification 11/2013, Foreign Investment Rules, Ministry of Planning and Economic Development, 31 Jan., 2013, available at: [http://www.dica.gov.mm/includes/FIL%20RulesEnglish%20Versions\\_31.5.13\\_Latest\\_.pdf](http://www.dica.gov.mm/includes/FIL%20RulesEnglish%20Versions_31.5.13_Latest_.pdf)

<sup>117</sup> *Ibid.*, Chapter 15, par. 126.

<sup>118</sup> *Ibid.*, Chapter 15, para 126.

<sup>119</sup> *Ibid.*, Chapter 15, para. 125.

Naypyitaw.<sup>120</sup> According to the Tourism Master Plan, these zones are being promoted by MoHT and Myanmar Tourism Federation (MTF). MTF has established the Myanmar Tourism Development Company to accelerate development of designated zones in Yangon, Mandalay, and Bagan. Other bodies have been formed to coordinate development of the other zones. Although not a designated zone, at destinations in Mon State, the development of beach resorts is raising concerns that ‘vacant’ land will be taken from community use by the government to give to hotel developers<sup>121</sup>.

The government’s 2013 Tourism Master Plan (Key Objective 3.3)<sup>122</sup> recognised the importance of improving ‘zoning’ in tourism destinations, to address land use questions. However ‘zoning’ does not inevitably imply the creation of distinct hotel zones, but the protection of key habitats and cultural assets. The Master Plan underlines the need for participatory approaches to zoning which should be aligned with the MRTTP. Action point 3.3.1 of the Master Plan<sup>123</sup>, for action in 2014-2015 also identifies the need to ‘Review the status of hotel zone development’. It is unclear whether these reviews have begun.

Meanwhile several disputes have arisen between communities and investors over compensation for hotel zone development.<sup>124</sup> At Inle Lake, seven villagers who protested against inadequate compensation for their farm land were charged for obstruction.<sup>125</sup> Land that was taken by the military from villagers in Ngwesaung in 1997 was later used for the development of a yacht club. When villagers tried to claim back their land in October 2012 they were sentenced to two months of hard labour for trespassing on the land.<sup>126</sup>

Farmers who live in villages where the Tada Oo hotel zone about 40 km south of Mandalay is being developed have stated that they have no desire to give up their land and their lives as farmers since they make a good living. Farmers are also worried that their land will be confiscated without compensation if they don’t agree to sell it.<sup>127</sup> In 2012 villagers staged a protest to win back land which they claim was confiscated in 1989 without adequate compensation for a hotel project on Chaungtha Beach.<sup>128</sup> In 2000 the military seized 36 acres of land from locals in Ngapali beach, with the understanding that it would be

<sup>120</sup> <http://www.myanmar-business.org/2013/01/myanmar-plans-new-hotel-zone-in-yangon.html>

<sup>121</sup> *Tourism raises fears of land grabs*, Burma News International, 18 October, 2013, available at: <http://www.bnionline.net/index.php/news/phophtaw/16362-tourism-raises-fears-of-land-grabs>.

<sup>122</sup> *Key Objective 3.3: Improve Zoning In Tourism Destinations* states that: ‘All tourism infrastructure projects will seek to avoid and minimize negative impacts on the physical environment and respect the cultural landscape. The planning process will include mapping and zoning of sites and destinations to ensure the protection of key habitats and natural and cultural assets. Zoning regulations will allocate land for infrastructure and commercial activities, including hotel construction. Participatory processes will underpin this approach and ensure developments are aligned with the Responsible Tourism Policy, and comply with EIA and SIA standards and safeguards. Activities include a status review of hotel zones. Capacity building programs for destination managers are central to the success of zoning and to enhance stakeholder understanding of planning concepts and processes’.

<sup>123</sup> Action point 3.3.1 of the Master Plan: ‘Review the status of hotel zone development (e.g., Mandalay, Bagan, and Inle): review progress and issues with hotel zone development within context of Myanmar’s responsible tourism policy; develop a planning framework that harmonizes hotel zone planning with national objectives to protect natural and cultural heritage and promote the well-being of local residents’.

<sup>124</sup> *Hotel zones hold promise but acquiring land difficult*, Bangkok Post, 22 April, 2013, available at: <http://www.bangkokpost.com/print/346455/>

<sup>125</sup> *Seven charged over Inle Lake Hotel Zone protest*, Myanmar Times, 25 February, 2013, available at: <http://www.mmmtimes.com/index.php/national-news/4195-seven-charged-over-hotel-zone-protest.html>

<sup>126</sup> *Yachting federation boss deflects criticism over venue land dispute*, Myanmar Times, 27 October, 2013, available at: <http://www.mmmtimes.com/index.php/national-news/8599-yachting-federation-boss-deflects-criticism-over-venue-land-dispute.html>

<sup>127</sup> *Tada Oo hotel zone brings sleepless nights*, Myanmar Times, 15 May, 2014, available at: <http://www.mmmtimes.com/index.php/national-news/10361-tada-oo-hotel-zone-brings-sleepless-nights.html>

<sup>128</sup> *Protests Continue for Confiscated Farms and Land*, The Irrawaddy, 2 November, 2012, available at: <http://www.irrawaddy.org/protest/protests-continue-for-confiscated-farms-and-land.html>

returned if the military was no longer using it. This promise was broken in early 2014 when the land was leased to a number of large Myanmar hotel groups.<sup>129</sup>

Some of the recent efforts by the Myanmar Government to address past land confiscations have related to tourism. The President's Office announced in April 2014 that unused land which was taken for various development projects would be handed over to the owners.<sup>130</sup> In the early 1990s land had been seized by the military for the construction of Mandalay International Airport, which opened in 2000, but almost 9000 acres of land remained unused.<sup>131</sup> The authorities have returned more than half of the unused farmland, approximately 5000 acres, to residents of four villages in the Tada Oo district in Mandalay Division. One local company with interests in both agriculture and tourism has revisited previous land acquisitions and negotiated a higher rate of compensation to the original users of the land.<sup>132</sup>

### Key human rights considerations for the tourism sector:

- Enhanced due diligence is needed wherever a tourism business acquires or makes use of land. This needs to establish the current and previous ownership and usage of any land, including customary usage. Particular attention should be paid where land has previously been acquired by military or so-called 'crony' companies, who are players in the tourism sector.
- Given the lack of a uniform and accessible land registry establishing land ownership, a lack of awareness by small-holder farmers of the 2012 Laws which leaves those who do not yet have official land titles at risk of their land being designated by the government as VFV, the lack of recognition of customary ownership, and the significance of land based livelihoods and attachment to ancestral lands, any approach to land use and acquisition should recognise customary rights and deal with the holders on an equal basis as more formal land owners. This requires detailed due diligence, with direct consultation with villagers and local authorities. Companies should be sensitive to the continuing fear of many villagers in raising concerns about land acquisition processes, meaning concerns may remain hidden and unresolved.
- It cannot be taken for granted that land acquired or reallocated by the Government or a local company has been done in a manner in line with national law, international standards and community expectations. Where the acquisition has been carried out by the Government, due diligence should also focus on identifying whether there have been deficiencies in Government consultations with communities (or indeed, more likely, any consultations at all). It should also identify deficiencies in expropriation and compensation processes, including with respect to customary owners or users of land, benchmarked against both national law and international standards.
- Land acquisition processes will be complicated by fluctuating market prices, and gaps in the law. The current legal framework provides only general authorisations on expropriation "in the public interest" with no further procedural or substantive restrictions, leaving this process open to abuse, particularly if it is not conducted transparently. Myanmar also does not have detailed regulations defining specific compensation levels for all types of land.<sup>133</sup> There are also no core principles or hierarchy of

<sup>129</sup> *Ngapali at a crossroads?*, Mizzima, 4 May, 2014, available at: <http://www.mizzima.com/opinion/features/item/11141-ngapali-at-a-crossroads/11141-ngapali-at-a-crossroads>

<sup>130</sup> *Vice-President returns unused farmland to farmers*, The New Light of Myanmar, 13 May, 2014, available at: <http://www.burmalibrary.org/docs17/NLM2014-05-13.pdf>

<sup>131</sup> *Tada-U farmers win back half their land, vow to fight on*, Democratic Voice of Burma, 1 July, 2014, available at: <http://www.dvb.no/dvb-video/tada-u-farmers-win-back-half-their-land-vow-to-fight-on/41972>

<sup>132</sup> *Land Compensation in Agriculture Sector*, Max Myanmar Ltd., 19 August, 2013, available at: <http://www.maxmyanmargroup.com/index.php/news-room/news-release/111-land-compensation-in-agriculture-sector>

<sup>133</sup> However, there are some limited protections: foreigners who lease land from private owners or users are required to pay the current market value and submit the lease to the Myanmar Investment Commission (MIC). DICA, *Notification 39/2011, 2011*, Art. 15, available at: <http://www.dica.gov.mm/30-2011-1.htm> The 1894 Land Acquisition Act provides for compensation at market value with adjustments,

compensation approaches, which is contrary to international human rights law and other international standards. The objective for resettlement in line with international standards<sup>134</sup> is full livelihood restoration, not simply compensation for assets, with priority to land-based compensation over monetary compensation<sup>135</sup> in order to avoid loss of sustainable livelihood assets and the rapid dissipation of financial compensation.

- There is a lack of national laws on voluntary or involuntary resettlement, including where there is economic but not physical displacement (although DICA does have some restrictions on what appears to be involuntary resettlement).<sup>136</sup> Companies should encourage the Government to apply IFC Performance Standards 1 and 5 and be guided by those standards themselves. The latest available English translation of the draft Environmental Impact Assessment (EIA) Procedures explicitly states that it does not apply to resettlement; instead projects involving resettlement or potentially affecting Indigenous People shall comply with separate procedures issued by responsible ministries, “and in the absence of such procedures all such Projects shall adhere to international best practice on Involuntary Resettlement...” If these procedures are adopted, adherence to international best practice will become a requirement, not just an option.
- There are reports of speculators acquiring land cheaply from original land users who are unaware of proposed development, hoping to profit from higher compensation payments. This can create tensions with the original users, who may feel cheated when land compensation is subsequently paid.
- Enhanced due diligence is particularly necessary in areas where original inhabitants may have been displaced by civil war, ethnic or inter-communal conflict, since displaced populations should be entitled to return to their homes. It is important for companies to avoid contributing to the problem, or appear to give tacit support to, or benefit from, the activities which have resulted in the displacement.
- Many lands in previously conflict-affected areas are not included in the national cadaster, or are considered VFV land by default. Some ethnic armed group administrations have their own systems of land registration, including recognition of communal rights, customary rights, and shifting cultivation. Weaknesses in these systems, corruption and lack of transparency mean that local populations are not always consulted on decisions to allocate land concessions. In some areas of contested authority, communities are sometimes not aware that such concessions have been granted, or by whom. Local armed group commanders may give authorisations without the knowledge of their headquarters.<sup>137</sup>
- Tour agents conducting due diligence on hotels in their supply chains should also include questions on land acquisition.

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including for crops, Art. 23, (unofficial translation) available at: <http://displacementsolutions.org/wp-content/uploads/THE-LAND-ACQUISITION-ACT-1894.pdf>

<sup>134</sup> IFC, *Performance Standard 5: Land Acquisition and Involuntary Resettlement*, 2012, available at: [http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES)

<sup>135</sup> International human rights on the right to an adequate standard of living, which includes the right to housing. See IFC, “*Performance Standard 5*”, as above. See also Asian Development Bank, “*Involuntary Resettlement Safeguards*” (2012). Available at: <http://www.adb.org/site/safeguards/involuntary-resettlement>. These standards recognize that compensation should be provided when land (including housing) is acquired or used and when operations result in a loss of assets or access to assets and restrictions on land use that leads to loss of income sources or other means of livelihood.

<sup>136</sup> Interestingly, if foreign investors seek to lease land but “in place that public not desirous to transfer and vacate, it shall not have the right to lease the land and invest.” (sic) DICA, *Notification No. 39/2011*, Art. 28., Given the wide scope of this provision, whether the government can or will enforce this veto is questionable.

<sup>137</sup> *Losing Ground: Land conflicts and collective action in eastern Myanmar*, Karen Human Rights Group, Mar., 2013, available at: <http://www.khrg.org/2013/03/losing-ground-land-conflicts-and-collective-action-eastern-myanmar>; and *Financing dispossession*, TNI, Feb., 2012, available at: <http://www.tni.org/briefing/financing-dispossession>

### Relevant international standards and guidelines:

- IFC Performance Standards 1 and 5<sup>138</sup>
- FAO, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security
- UN Special Rapporteur on Adequate Housing, Basic Principles and Guidelines on Development-based Evictions and Displacement<sup>139</sup>
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 3 and 5.3<sup>140</sup>
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A6.1, B10 and D3.4<sup>141</sup>

## 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 has been **inadequate consultation and information** on existing and future projects affecting villagers and the acquisition of their land e.g. in relation to the construction of hotel zones. In most locations communities only learned about tourism projects such as hotel zones in their area when the physical preparation of the project was commenced.
- In most locations **communities were not consulted on issues related to locations of hotel zones, development of roads and other potential impacts and thus did not participate in the plans** for the community and its future.
- For the development of the Tada-Oo hotel zone, villagers were told by township administrators and hotel zone planners that the **hotel zone area was infertile ground** and therefore not suitable for cultivation and could be sold, while in fact communities demonstrated that the land was fertile and they were doing agriculture there.
- Before acquiring community or community members' land in for example Nyaungshwe, **neither the government nor companies consulted the community to try to find out who the true owners or users of the land were.**

### Due Process In Land 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:

- The instability and land tenure insecurity due to the process of land acquisition by the government and large companies has affected communities and their livelihoods.
- In most locations communities were **excluded from decisions and plans surrounding the acquisition of land for tourism purposes.**
- In one location a village leader, appointed by the villagers, was **asked to step down by the local**

<sup>138</sup> IFC Performance Standards on Environmental and Social Sustainability, *Supra* note 4.

<sup>139</sup> *Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, UN Special Rapporteur on Adequate Housing, A/HRC/4/18, available at:

[http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf)

<sup>140</sup> UNWTO GCET, *Supra* note 43.

<sup>141</sup> *Global Sustainable Tourism Criteria*, *Supra* note 95.

government as he did not manage to convince the farmers in his village to sell their land to the hotel zone Development Committee.

- In Mawlamyine there was a case where **land was arbitrarily confiscated from communities by the government, despite having documentation proving land ownership and rights to use land.**
- There was a commonly held view that political connections or payments could be used to circumvent restrictions. In Bagan **concessions to build hotels in the cultural heritage ancient zone above the permitted maximum height of 30 feet were granted to a powerful developer,** despite this being prohibited by law.
- In Ngwesaung, farmers indicated that since the reforms they **felt more empowered to claim back their land** which was taken from them before the reforms.
- In Inle there were indications that the **authorities were delaying or changing court hearings.** The date of the hearing was changed or postponed at very short notice or the place of the court proceeding was changed to prevent supporters or journalists being present.

### *Physical violence and security of the person*

**Human Rights Implicated:** Right to security of the person; right to freedom of expression, right to peaceful assembly

**Assessment Findings:**

- One case was reported of **use of violence by the local police** during the arrest of a person who protested against land acquisition for the development of the hotel zone. When villagers tried to intervene, the persons involved were arrested. During the time of writing, the case against 2 persons was still pending in court.

### *Compensation For Land Acquisition And Use*

**Human Rights Implicated:** Right to an adequate standard of living; right to an effective remedy, right to equality before the law.

**Assessment Findings:**

- The processes of compensation for land acquisition and use were characterized by inconsistencies, lack of freedom of expression and transparency in the negotiations and granting of compensation.
- In 2012, before the SEA Games **villagers in Ngwesaung were offered less compensation than they requested for plots of land.** When no agreement could be reached between the project developers and the villagers, their land was taken anyway.
- Communities in Ngwesaung and Inle Lake reported **increased tension within the community** between villagers whose land was confiscated without adequate compensation and villagers who initially did not sell their land, but then were able to sell their land at higher price.
- In Inle Lake region:
  - Communities were **only offered compensation for land below market value and estimated losses of crops during a limited time span** of three years, but not for the loss of their livelihoods in the future.
  - Communities were **deprived of their freedom of expression and right to peacefully protest against forced land confiscation.** A number of protesters were threatened with imprisonment if they did not comply with the terms of compensation given to them.
  - Protesters against the land confiscation were **accused of being an instigator of conflict and disorder in the community,** when complaining and refusing to accept the unsatisfactory conditions of compensation. The villagers argued that the compensation for crops and not the value of the land, did not provide a remedy for their loss of livelihood and the difficulties they



would face in the future by having to change their way of living.

- In Chaungtha **some of the confiscated land was not used for the planned purpose of building hotels and was left vacant**. Only one local hotel had given compensation for the land to the owners. However, when villagers claimed back their land so that they could cultivate or live on it, they were denied access to the land as well as their rights to compensation.
- In Ngwesaung **communal pasture land**, acquired for tourism purposes, **was not replaced by another piece of land** and **no compensation** was given to the users of the land.

### *Involuntary Resettlement*

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

**Assessment Findings:**

- A number of **resettlements** were reported during the field assessments. Communities indicated that some resettlements were involuntary and criticized the conditions, standards and location of the resettlements.
  - In Ngwesaung some fishing **communities were resettled further away from their place of origin near to the beach** which made it more difficult for them to sustain their livelihoods.
  - Some communities in Chaungtha were **resettled in areas with poorer conditions, like land with unfertile or poor soil or to houses of poor quality or small size**.

### *Access To Remedy For Land Grievances*

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

**Assessment Findings:**

- In a few locations **communities tried to claim back confiscated land, but their applications were denied by the authorities and the companies involved**. In Inle Lake region, some community members mentioned they had faced threats for not accepting the compensation offered for the land and were brought to court.

### *Examples of emerging good practice in Myanmar*

**Assessment Findings:**

- In one resettlement zone near Chaungtha where communities were resettled after land acquisition, **each quarter had a primary school, there was one middle school and access to water**.
- In some cases **communities in Bagan were supported and assisted by government representatives in the pursuit for fair compensation for land acquisition**. Communities were then given rightful compensation and conflicting issues related to the confiscated land were to some extent resolved.
- **In Mandalay a local community based organization** raised awareness and educated the villagers on land price negotiations.

## **LABOUR**

### *National Context*

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

common; and child labour is still an ongoing problem. Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth but the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited by the Constitution, but leaving significant gaps in protection against discrimination.

An estimated 70% of the population is engaged in agriculture or related activities; 23% in services, and 7% in industry.<sup>142</sup> Underemployment<sup>143</sup> in Myanmar was 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike, as well as young people in particular.<sup>144</sup> However, there is a lack of reliable statistics and other accurate data in Myanmar with regard to labour. The Ministry of Labour, Employment and Social Security, with International Labour Organisation (ILO) support, will undertake a comprehensive national labour force survey in the third quarter of 2014.<sup>145</sup>

The tourism sector is labour-intensive with a wide range of skilled and unskilled jobs. According to the 2012 Foreign Investment Law, all unskilled workers must be Myanmar nationals.<sup>146</sup> It is estimated that at least 50 percent of the workforce in the tourism sector in Myanmar are female.<sup>147</sup>

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

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

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 laws however promote 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 labour laws.<sup>148</sup> The ILO has recommended a number of amendments to the new laws on freedom of association to

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<sup>142</sup> Labour Background Paper commissioned for IHRB, p. 2 (on file with IHRB).

<sup>143</sup> Underemployment refers to people who worked or had a job during the reference week but were willing and available to work more. *Underemployment Statistics*, ILO, accessed 25 July, 2014, available at: <http://www.ilo.org/global/statistics-and-databases/statistics-overview-and-topics/underemployment/lang-en/index.htm>

<sup>144</sup> Interim Country Partnership Strategy: Myanmar, 2012–2014, available at: <http://www.burmalibrary.org/docs14/mya-interim-poverty.pdf>, page 3

<sup>145</sup> ILO, *Myanmar sign agreement on National Labour Force Summary*, ILO, November 14, 2013, available at: [http://www.ilo.org/global/about-the-ilo/activities/all/WCMS\\_229675/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/activities/all/WCMS_229675/lang-en/index.htm). The survey is intended to inform national labour policy and will examine youth employment, child labour, forced labour, and social security.

<sup>146</sup> *Foreign Direct Investment Law*, Article 24(a), 2 November 2012, available at: [http://export.gov/thailand/static/Foreign%20Investment%20Law\\_Latest\\_eg\\_th\\_055982.pdf](http://export.gov/thailand/static/Foreign%20Investment%20Law_Latest_eg_th_055982.pdf)

<sup>147</sup> *The union of Myanmar travel association report*, Overseas Development Institute (ODI), p.6, May 2014, available at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8956.pdf>

<sup>148</sup> International Labour Office, *Governing Body 316th Session*, Geneva, 1–16 November 2012, p. 11, available at: [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—relconf/documents/meetingdocument/wcms\\_192453.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_192453.pdf)



improve the way the laws function, including an obligation on parties to engage in collective bargaining in good faith, and to strengthen the enforceability of decisions of the labour arbitration bodies.<sup>149</sup>

### *Forced Labour*

A major concern in Myanmar has been the widespread and systematic use of forced labour of civilians by the *Tatmadaw* (the Myanmar army) and the civilian administration for several decades, despite the fact that the Government ratified ILO Convention 29 against forced labour in 1955. Since the reform process began in 2011, many observers, including the ILO, have welcomed the decrease in forced labour, but noted that the practice is still continuing in some areas<sup>150</sup>. President Thein Sein has made a public commitment to end forced labour by 2015.

While there is now less risk to companies of forced labour being used in relation to projects, such as road construction, there is a need to remain vigilant, as it was a common practice for several decades, and local government and other authority figures still sometimes use it.<sup>151</sup> The ILO noted that while there are relatively few complaints of forced labour in the private sector, this may be because in Myanmar forced labour is generally associated with the Government.<sup>152</sup>

### *Labour Laws*

In addition to the laws on freedom of association and collective bargaining noted above, new laws with regard to labour passed by Parliament include the Employment and Skill Development Law (30 August 2013), the Social Security Law (August 2012), and the Minimum Wage Law, 2013. Other laws are believed to be in draft form or in the process of being drafted, including the Shops and Enterprises Act, 2013, the Occupational Health and Safety Act and the Factories Act Amendment Bill, 2013. The ILO is currently working with the Government to come up with an overall legal and policy framework, with the aim of drafting one comprehensive labour law. The new Minimum Wage Law provides for salaried workers to have one day off per week with pay, and for the payment of over-time if a salaried worker works on the day of leave (Article 16d).

Working hours are generally very long but with new labour laws in place, there is a focus on reducing hours. Standard working hours in Myanmar are 44 hours per week. However, while government employees enjoy a 35-hour workweek, the 1951 Leave and Holidays Act stipulates 48 hours of work per week for employees of 'companies, trading centres and factories'. This same law provides every employee with public holidays with full wages or pay. The number of public holidays is 14 days. Earned paid leave is 10 days in a year and causal leave with wages aggregate 6 days in a year.<sup>153</sup> While the 1951 Factories Act allows for one 24-hour rest period per week and 21 paid holidays per year, enforcement is rare.<sup>154</sup>

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<sup>149</sup> ILO Governing Body, 317th Session, Geneva, 6–28 March 2013. Article 30 a), p.15, available at: [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—relconf/documents/meetingdocument/wcms\\_207599.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_207599.pdf)

<sup>150</sup> Extract from Record of Proceedings, ILO Committee on the Application of Standards par., 18 June, 2012, available at: [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—normes/documents/publication/wcms\\_190828.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—normes/documents/publication/wcms_190828.pdf)

<sup>151</sup> Meeting with ILO, 5 December 2013.

<sup>152</sup> ILO, "Update on the operation of the complaint mechanism in Myanmar", report of the ILO Liaison Officer to ILO Governing Body, 319<sup>th</sup> Session, Geneva, 16–31 October 2013, GB.319/INS/INF/2, available at: [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—relconf/documents/meetingdocument/wcms\\_222546.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_222546.pdf). Please note that complaints include underage military recruitment.

<sup>153</sup> Myanmar Leave and Holidays Act, 1951, available at: [http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_isn=88687](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=88687)

<sup>154</sup> The 1951 Factories Act 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. US State Department, Burma 2013 Human Rights Report. See: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

Protections for daily wage workers is predictably less. However, if a worker in a daily wage job works less than the set hours per day not because of the worker, but because of the employer, the worker should still receive the full wage for the day (Article 16(e)). The law covers part-time work, hourly jobs and piecework (Article 16c) and provides that both men and women should receive the minimum wage without discrimination (Article 16f). The Minimum Wage Law also provides for penalties if the employer fails to pay the minimum wage<sup>155</sup> but the minimum wage rate, or rates, have not yet been set. The Labour Minister announced in January 2014 that it would be established by the end of the year.<sup>156</sup> Labour experts have noted that both employers and workers in Myanmar do not fully understand the concept of a minimum wage.

The new Social Security Law (August 2012) provides for a health and social care insurance system; a family assistance insurance system; invalidity benefit, superannuation benefit and survivors' benefit insurance system; and an unemployment benefit insurance system from a social security fund, which both employers and workers pay into. The Law revokes the Social Security Act 1954<sup>157</sup>, and came into effect on 1 April 2014.<sup>158</sup> Currently only 1% of the population is registered in the social security system, according to the head of the Social Security Board.<sup>159</sup> Social security rules and regulations were also due to be promulgated on 1 April, making it mandatory for most companies to cover its employees regardless of income. Companies with two or more employees in the manufacturing, entertainment, transportation, extractive industries, foreign enterprises, and financial sector are required to pay social security.<sup>160</sup> The Ministry of Labour announced that some benefits from the new social security scheme would be paid beginning in April.<sup>161</sup>

The Employment and Skills Development Law provides for skills training and a fund into which employers pay. The Law also provides for the establishment of an employment and labour exchange office by the Ministry of Labour, Employment and Social Security. Significantly, written employment agreements between employer and employee will now be required under Chapter 3 of the law. The law went into effect on 30 November 2013 and revoked the Employment and Training Act, 1950.<sup>162</sup>

The new Occupational Health and Safety Act is expected to be passed by Parliament in the latter part of 2014. There is a recognised need for an increase in the number of Government labour inspectors on workplace safety and health.

The review of the Myanmar Tourism Law, including segments related to labour standards, is one of the objectives in the Tourism Master Plan.<sup>163</sup> The Policy on Community Involvement in Tourism recognizes that

<sup>155</sup> *The Minimum Wage Law draft 2012*, Ministry of Labour, Employment and Social Security, available at: [http://www.mol.gov.mm/en/wp-content/uploads/downloads/2012/06/Minimum-Wages-Law- Draft\\_Eng.pdf](http://www.mol.gov.mm/en/wp-content/uploads/downloads/2012/06/Minimum-Wages-Law- Draft_Eng.pdf)

<sup>156</sup> Eleven Media, *Myanmar to announce minimum wage by end of year*, 17 January, 2014, available at: [http://www.elevenmyanmar.com/index.php?option=com\\_content&view=article&id=4770:myanmar-to-announce-minimum-wage-by-end-of-year&catid=44:national&Itemid=384](http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=4770:myanmar-to-announce-minimum-wage-by-end-of-year&catid=44:national&Itemid=384)

<sup>157</sup> *The Social Security Law*, 2012, on file with IHRB.

<sup>158</sup> *State is also exerting efforts to ensure fair protections without affecting the interest of both workers and employers*, New Light of Myanmar, 1 May 2014, available at: <http://www.moi.gov.mm/npe/nlm/content/1-may-14>

<sup>159</sup> *Burma's Social Security Enrollees to See Benefits Boosted by April*, The Irrawaddy, 29 January 2014, available at: <http://www.irrawaddy.org/burma/burmas-social-security-enrollees-see-benefits-boosted-april.html>

<sup>160</sup> *Social security scheme in the pipeline*, Myanmar Times, 24 March, 2014, available at: <http://www.mmtimes.com/index.php/business/9949-social-security-to-be-compulsory-for-enterprises-next-month.html>

<sup>161</sup> *Supra* note 163.

<sup>162</sup> *Employment and Skill Development Law*, 30 August 2013, unofficial translation on file with IHRB.

<sup>163</sup> Tourism Master Plan, *Supra* note 19, Key objective 1.5.4, p. 44.

all tourism activities should be carried according the approach of ‘Decent Work’; which include employment in conditions of freedom, equity, human security and dignity.<sup>164</sup>

To address the need of a better skilled workforce in the tourism sector, the MoHT has set out in the Myanmar Tourism Policy as one of its objectives to build national hospitality training centres<sup>165</sup>. The Tourism Master Plan recognizes the need to build a more skilled workforce.<sup>166</sup>

### *Awareness and Enforcement of Labour Rights*

There is an overall lack of awareness by workers of these new rights and safeguards, including in the tourism industry. Enforcement of the new laws is piecemeal and inconsistent, and full-scale implementation will be a long-term process. In the past working hours were generally very long but with the new labour laws in place, there is a focus on reducing them.

This was reflected in the findings of the field assessments, where labour conditions and worker satisfaction were reported to vary greatly. In the tourism sector the enforcement of maximum working hours, rest days and overtime is uncommon. The risk of violations of labour rights tends to increase among sub-contractors to the tourism sector. Most negative human rights impacts tend to occur to those workers in lower-skilled, lower paid, manual labour positions working on a temporary, seasonal or irregular basis.

### *Key human rights considerations for the tourism sector:*

- There is a need to **provide relevant information and explanation to employees of their labour rights**, particularly in light of the many new laws. Employment in the tourism sector is often characterised by low pay, long hours and poor working conditions, as well as seasonal periods of unemployment.<sup>167</sup> Given nascent awareness of labour rights, companies in the tourism sector should ensure that their employees are aware of and able to exercise these rights.
- The rights to **freedom of association and collective bargaining** are relatively new rights in Myanmar and there are still gaps in protecting freedom of association in both the Constitution and the laws.<sup>168</sup> Companies in the tourism sector should allow employees the freedom to form and join trade unions where employees choose to establish them.
- The risks of labour rights violations tend to increase with each tier of the **supply chain**. Local Myanmar companies will need support in meeting a wider range of contracting requirements around quality, health and safety, anti-corruption, etc. Companies should put in place specific contractual requirements or supplier codes of conduct in place, together with monitoring, support, and relevant incentives and disincentives with business partners supplying goods and services to prompt uptake and respect for relevant international, national and company standards. In the tourism sector, subcontractors in the construction sector are likely to be high risk suppliers, concerning working conditions, health and safety and child labour.
- The lack of job opportunities in many of the poorest parts of Myanmar can create the possibility of **exploitative working conditions** and practices that can in some cases fall within the definition of forced labour – where work is exacted from a person under the menace of a penalty. Workers indicated they are keen for any kind of paid work, so they are often very reluctant to speak out about what can be exploitative working conditions.

<sup>164</sup> Policy on Community Involvement in Tourism, *Supra note* 20, Core Principles Linked to All Objectives, p. 16.

<sup>165</sup> Responsible Tourism Policy, *Supra note*. 18, p. 10.

<sup>166</sup> Tourism Master Plan, *Supra note* 19, p.28.

<sup>167</sup> *Putting Tourism to Rights*, Tourism Concern, 2009, p. 32, available at:

[http://www.tourismconcern.org.uk/uploads/file/campaigns/LowRes\\_Putting%20Tourism%20to%20Rights\\_A%20report%20by%20Tourism%20Concern2.pdf](http://www.tourismconcern.org.uk/uploads/file/campaigns/LowRes_Putting%20Tourism%20to%20Rights_A%20report%20by%20Tourism%20Concern2.pdf)

<sup>168</sup> *The Labour Organization Law* (2011) permits the exercise of freedom of association and the *Settlement of Labour Dispute Law* (2012) provides for disputes resolution institutions and mechanisms.

- Companies will need to pay careful attention to the **working arrangements and conditions for day labourers or temporary workers engaged through a third party** to ensure that they are not directly linked to situations of exploitation. International labour standards prohibit labour brokers from taking fees from workers for job placements; instead, any placement fees should be paid by the employer. While the Myanmar Government has not ratified this particular international labour convention,<sup>169</sup> it is a global standard in this emerging area of human rights risk that serves a relevant guide for company practice. Employers should set in place a clear recruitment policy for hiring of staff or use of labour brokers; ensure that supervisors and managers are aware of the signs of exploitation; and understand that accepting payments or other inducements from labour brokers or workers is prohibited; monitor the allocation of jobs and use of agencies for signs of suspicious practices; and ensuring that all workers, including temporary workers, have access to the grievance mechanism.
- The **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.<sup>170</sup> A draft Law protecting the rights of people with disabilities is under discussion and will include requirements on the workplace. As in many other countries, it will take positive, active steps by employers to recruit and maintain disabled workers, and making them an integrated part of a workforce not used to disabled co-workers.<sup>171</sup> Where possible, companies may consider incorporating the principles of universal design (defined as the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design)
- Employers need to be aware of discrimination against **lesbian, gay, bisexual and trans-gender** (LGBT) people in the workplace and society more generally, and the fact that same-sex relationships are still criminalized in Myanmar.
- Employers need to be aware of the potential for **ethnic and religious tensions and discrimination** (particularly Buddhist/Muslim) in recruitment and the workplace, as workers' ethnicity/religion may not be readily apparent, particularly to non-Myanmar managers. Companies will need to be alert to the potential for discrimination particularly by those with recruitment responsibilities.<sup>172</sup>
- Finding the best way to understand the ethnic make-up of the workplace is challenging; surveys of nationalities in mixed settings may create more tensions than they solve and many Myanmar citizens are of mixed origin or self-identify in various ways. A better approach may be **management awareness of the sensitivities, clear company policies on non-discrimination, reinforcement of those messages and modelling an approach to equal opportunities** that includes active measures to achieve those outcomes. There are few easy answers on how to address hostility that may spill over into the workplace; specialised expertise and re-emphasising a commitment to non-discrimination are a good place to start.
- In ethnic minority areas, it is also essential that companies are aware of the ethnic composition of communities where they operate and from where they may recruit. One location may have a mixture of ethnicities. Different ethnicities have different languages and traditions, which need to be taken into account in the workplace.
- There are high expectations of **employment** from local communities but without active training programmes by tourist operations, there is likely to be a lack of skills and education matching job

<sup>169</sup> C181 - Private Employment Agencies Convention, ILO, No. 181, 1997, available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326)

<sup>170</sup> In Burma, Children with Disabilities Struggle to Access Schools, The Irrawaddy, 5 November 2013, available at: <http://www.irrawaddy.org/photo/burmas-disabled-children-struggle-access-schools.html>.

<sup>171</sup> See forthcoming MCRB/Deaf Resources Centre bilingual guide on CSR and disability, available from August 2014 on [www.mcrb.org.mm](http://www.mcrb.org.mm). See also, ILO, Disability in the Workplace: Company Practices, 2010, available at: [http://www.businessanddisability.org/images/pdf/disability\\_workplace.pdf](http://www.businessanddisability.org/images/pdf/disability_workplace.pdf)

<sup>172</sup> From Red Flags to Green Flags: The corporate responsibility to respect human rights in high risk countries, IHRB, 2011, pp. 73-76, available at: [http://www.ihrb.org/pdf/from\\_red\\_to\\_green\\_flags/complete\\_report.pdf](http://www.ihrb.org/pdf/from_red_to_green_flags/complete_report.pdf)

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.

- For labour issues relating to **children**, and **women**, see sections below.

**Relevant international standards and guidelines:**

- ILO Core Labour Conventions<sup>173</sup>
- IFC Performance Standard 2<sup>174</sup>
- UN World Tourism Organization’s (UNWTO) Global Code of Ethics for Tourism (GCET), Article 2 and 9<sup>175</sup>
- IFC Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development<sup>176</sup>
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A2, A3, B7 and B8<sup>177</sup>

## 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 in small hotels, guesthouses and restaurants, **written employment contracts were generally not provided**, or if they were, the contracts were not always given to the employee to retain.
  - In Yangon however, most hotels have written contracts for their staff.
- It was found that hotels often used **temporary staff in high season, whom they dismissed during low season**.
- **Contracts often contained clauses to retain staff** and there were cases where workers were forced to sign such contracts stating that they would have to pay back a part of their salary if they would leave before a certain length of time had passed.
- In all locations hotels, tour operators and restaurants were **not commonly exercising oversight of sub-contractors’ labour standards**. These included gardeners, maintenance workers, and construction workers who did not have contracts.

### Working hours, wages, leave and benefits

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

<sup>173</sup> ILO Fundamental Labour Conventions, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_095895.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095895.pdf)

<sup>174</sup> IFC Performance Standards on Environmental and Social Sustainability, *Supra* note 4.

<sup>175</sup> UNWTO GCET, *Supra* note 43.

<sup>176</sup> Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development, IFC, available at: <http://www.ifc.org/wps/wcm/connect/e9f48800488559c0840cd66a6515bb18/Final%2B-%2BTourism%2Band%2BHospitality%2BDevelopment.pdf?MOD=AJPERES&id=1323162543953>

<sup>177</sup> Global Sustainable Tourism Criteria, *Supra* note 95.

#### Assessment Findings:

- **Workers in the tourism sector in all locations**, in particular hotel staff, guides and workers on cruise ships, regularly exceeded the maximum working hours of 48 hours per week. Employees sometimes worked up to 16 hours per day and seven days a week particularly in the high season.
- **Workers often did not get the mandatory rest day per week** as stipulated in the Factory Act and the Shops and Establishment Act.
- **Tour guides** (often employed as freelancers) **and drivers** often worked **extremely long hours**, from very early in the morning (4:00am) till late in the evening (10:00pm) and had to be on call 24 hours a day. This could also lead to an increased risk of accidents.
- **Temporary daily wage workers in the hotel sector, such as maintenance workers, typically worked every day possible** to maximize income while work was available, thereby exceeding the maximum working hours limits.
- **Overtime pay was rarely paid** to hotel, guesthouse and restaurant employees. In most locations there was no time registration system to keep track of working hours. In most cases workers get extra time off during the low season (March-October) to compensate for the high number of hours worked in the high season. It was mentioned that the pay during this time off was usually not enough to get by since basic pay amounts of approximately 1 USD a day.
  - One hotel in Mawlaymyine gave a set additional amount of 2000 Kyat per day for overtime.
  - In one hotel in Mandalay workers received double their hourly rate if they worked overtime.
- **Basic wages in the tourism sector are low**, especially for low-level hotel staff, tour guides and restaurant staff. In some cases salary for restaurant staff was as low as 30,000 Kyat/month. Staff in the tourism sector often depend on service charges (a percentage usually charged to the room or restaurant bill and divided amongst staff based on staff position)), since basic salary is not enough to get by. Service charges can be 5-10% of total hotel revenues. However, service charges are not always distributed and in some cases are kept by management.
- **Some hotels and restaurants recover some of their costs through deductions from their employees.** At a restaurant in Yangon service charges were not shared with employees for a period of time to cover the rent of the hotel and at a hotel in Mandalay workers who lived in had to pay 3000 Kyat per month for the construction of new worker accommodation.
- In many cases **there was no proper system of leave in place.** In particular workers in smaller hotels and guesthouses were not granted leave on public holidays due to the nature of the work. Leave was only granted in case of family emergencies and during the low season.
- Except in major tourist destinations such as Yangon and Bagan, **provision of social security to workers was not common.**
- **Awareness of the right to fair wages and benefits is low.** Many workers admitted to a **low level of understanding of their rights** vis-à-vis employers or the government. There was little to no information regarding labour rights or working conditions shared proactively by most hotels and tour operators with their workers.



## Health and safety

### Human Rights Implicated:

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

### Assessment Findings:

- **Health and Safety practices varied between international and local hotels, guesthouses, tour operators and cruise ships**; some of the international hotel groups had robust Health and Safety procedures and practices in place, but many local hotels, guesthouses and tour operators, in particular smaller establishments, had weak practices, including weak procedures on first aid and safety.
- While airlines had proper **health and safety policies in place**, in practice a number of accidents of airline ground staff were reported, for example a loader injured his spine when luggage fell on him and one employee fell ill due to working in an environment with very low temperatures. There was a general **lack of health and safety training** for managers and workers in hotels, guest houses, tour operators and restaurants. Some good examples however were reported:
  - A hotel in Ngwesaung provided training to lifeguards
  - Cruise ships departing from Mandalay provide thorough health and safety training to employees and have signs posted on how to deal with emergencies
- In one hotel in a coastal area the assessment team found that hotel staff **was not provided with clean drinking water**, which could lead to potential negative health impacts.
- In a number of cases when hotel **employees fell ill**, they did not get paid leave to see a doctor.
  - However, one hotel in Ngwesaung had an in-house doctor and nurse that staff could also use. The doctor could provide written certificates that staff needed time off work in case of illness.
  - In Bagan a number of hotel managers would pay for medical expenses of staff and there was no deduction of salary in case of leave for medical reasons.
- Freelance tour guides generally operated without a contract with the tour company. They **were not covered by health and/or worker compensation insurance** in case of an accident during working hours and any costs related to an accident would have to be paid out of own pocket.
- **Health and safety was observed as a particular issue with subcontractors**. There was a lack of health and safety training, provision of Personal Protective Equipment (PPE) (for example kitchen staff and construction workers) and a lack of awareness around good health and safety practices among contractors and workers. These included local construction, maintenance, and cleaning staff who work on hotel premises as contracted staff.

## Freedom of association and collective bargaining

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

### Assessment Findings:

- There appeared to be a **lack of understanding among employees regarding the role of trade unions**.



- Employees in the tourism sector indicated that they were afraid to join a union due to the lack of trade union rights in the past, rather than because of any direct experience of suppression or harassment of union organisers.
- The presence of trade unions in the tourism sector is low. **Only four trade unions had been formed** across all the establishments engaged with: two hotels in Bagan; one hotel in Mandalay and one porters' union in Kyaikhtiyo.
- Workers in general were not able to complain to management about working conditions out of fear of losing their jobs. Hotel workers felt that if they were treated in an unfair manner, they did not **dare raise the issue with management due to fear of being 'black-listed'**. It was mentioned that hotel owners could spread rumours about the worker in question which would make it very difficult to find a job in the sector.
- Complaint or suggestion boxes existed in hotels with a large number of staff. However, workers **often lacked awareness about mechanisms to raise workplace grievances**.
- **The Myanmar Tour Guide Association has advocated for better benefits for guides from tour operators**, including a minimum day rate of \$50, contracts and provision of accommodation allowance and medical insurance.

### *Non-discrimination, equal and fair treatment*

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

#### **Assessment Findings:**

- In a number of cases in Yangon and Mawlamyine it was mentioned that **tensions would occur in workplaces if Muslims** were hired. Some hotel owners indicated that they are afraid of hiring Muslims due to a fear of social conflict.
- **In a few locations external tour guides were not allowed to enter hotel lobbies where their clients were staying** and had to wait outside. Tour guides indicated that they felt they were discriminated against.

### *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:**

- In one case, the receptionists at a hotel in Mandalay were **not provided with a chair** and had to stand all day during a 10-hour shift.
- **Accommodation is provided to employees working in hotels and guesthouses**, in particular to migrant workers. Workers living in the same region return to their homes after work. While in some hotels employees had their own room, in others **small rooms were provided, shared with 3-4 people and washroom facilities were not hygienic**.
  - In one case in Kyaikhtiyo the hotel **receptionist was not provided with a room and had to sleep behind the reception**.
  - In one hotel in Mandalay, **3000 Kyat/month was deducted from the salaries of workers for the construction of new workers' accommodation**.
  - On one cruise ship in Mandalay, **30 workers shared one berth**.
- **Accommodation was not provided to tour guides during the night**. Tour guides received

a small amount of money from the tour operator for accommodation. They often had to spend the night far from the guests' accommodation since they could not afford the same accommodation. This has led to safety issues, in particular for female guides, as well as high costs of commuting and staying elsewhere.

- **Meals were provided to employees** of hotels, guesthouses, restaurants and cruise ships. In some cases workers receive a meal allowance. While in most cases the meals were of adequate nutritious quality, staff at a hotel in Mandalay and in Kyaikhtiyo complained that it was not.

### Forced labour

**Human Rights Implicated:** Right to freedom from forced labour and servitude.

#### Assessment Findings:

- The assessments **did not directly identify any cases of companies involved in any forced labour cases**, other than compulsory overtime practices which could amount to forced labour under ILO standards.
- One relatively recent case of **forced labour by local authorities** was reported by local communities, involving the construction of road to the Kyaikhtiyo Golden Rock Pagoda in 2013. **Every family had to provide one person for the construction of the road, or provide monetary compensation.** Tasks included demolishing and carrying heavy limestone.

### Examples of emerging good practice in Myanmar

#### Assessment Findings:

- **Vocational training centers for youth have been founded in Inle Lake region and Yangon** which provide hospitality and catering skills, and language training.
- Some hotels **provided training** (for example English language classes) to their staff during the low season, which is beneficial for the hotel as well as the workers.
- While there are still not many **trade unions** established in the tourism sector, a few good practices were observed:
  - **A porter's union was formed legally in Kyaikhtiyo** to represent porters who carry pilgrims' luggage up to the Golden Rock. **The union members have attended an ILO meeting to gain better understanding of labour standards.**
  - One trade union had been formed at a hotel in Bagan, where **workers collectively complained about the low wage levels.** This prompted the Head office in Yangon to consider a group-wide wage policy.

## GENDER

### National Context

Women tend to occupy low paid and low-status jobs in the global tourism sector and often perform unpaid work in family tourism businesses.<sup>178</sup> It is estimated that at least 50 percent of the workforce in the tourism sector in Myanmar is female.<sup>179</sup>

Myanmar acceded to the UN Convention against All Forms of Discrimination Against Women (CEDAW) in July 1997.<sup>180</sup> In 1996, the Myanmar National Committee for Women's Affairs (MNCWA) was established with the main aim to ensure development and security for women.<sup>181</sup> In October 2013 the Government launched a 10 year action plan for the advancement of women.<sup>182</sup>

One of the main causes for gender inequality in Myanmar is the traditional gender norms and due to the fact that women are on the whole less educated since girls in rural areas may not be able to attend school or education in monasteries, leading to a lower literacy rate. Without access to education, women cannot access the jobs market and remain in low paid positions and are more prone to exploitation.<sup>183</sup> The ADB is supporting the Government in carrying out a gender situational analysis that will provide a far more detailed assessment of the status of women in the country.<sup>184</sup>

The 2008 Constitution does not include an effective constitutional guarantee of substantive equality; Article 350 of the 2008 Constitution guarantees that women have the enforceable right to the "same rights and salaries" as that received by men "in respect of similar work." The use of "similar work" will not achieve the same equalities outcome as the principle of equal pay for work of equal value used in CEDAW.<sup>185</sup> In practice, women do not receive equal pay for work of equal value.<sup>186 187</sup> Although the law guarantees equality between men and women, enforcement is weak and women are underrepresented in Government and in most traditionally male occupations.

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<sup>178</sup> *Global Report on Women in Tourism 2010*, United Nations World Tourism Organization (UNWTO), available at: <http://www.e-unwto.org/content/j133q0/fulltext?p=b056aa00e78e4c1287f5257c8844f1a1&pi=0#section=959726&page=1>; *International Perspectives on Women and Work in Hotels, Catering and Tourism*, ILO Working Paper 1/2013, p. 16, available at: [http://www.ilo.org/wcmsp5/groups/public/-dgreports/-gender/documents/publication/wcms\\_209867.pdf](http://www.ilo.org/wcmsp5/groups/public/-dgreports/-gender/documents/publication/wcms_209867.pdf)

<sup>179</sup> *The Union of Myanmar travel association report*, Overseas Development Institute (ODI), p.6, May, 2014, available at: <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8956.pdf>

<sup>180</sup> Committee on the Elimination of Discrimination against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, 25 June 1999, available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw22/mmr.pdf>

<sup>181</sup> Committee on the Elimination of Discrimination against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined second and third periodic reports of States parties, Myanmar*, 4 September 2007, available at: [http://www.ibiblio.org/obl/docs4/CEDAW-Myanmar\\_state\\_party\\_report\\_2007.pdf](http://www.ibiblio.org/obl/docs4/CEDAW-Myanmar_state_party_report_2007.pdf)

<sup>182</sup> UNDP, *Women's National Strategic Plan for Women Advancement Released*, 4 October 2013, available at: <http://www.mm.undp.org/content/myanmar/en/home/presscenter/pressreleases/2013/10/strategicplanwomen/>

<sup>183</sup> *Sex workers struggle in Myanmar*, Myanmar Times, 11 August 2013, available at: <http://www.mmtimes.com/index.php/in-depth/7815-sex-workers-struggle-in-mandalay.html>

<sup>184</sup> 46484-001: *Support to the Preparation and Dissemination of the Myanmar Gender Situational Analysis*, ADB, Dec. 2012, available at: <http://www.adb.org/projects/46389-001/main>

<sup>185</sup> *Myanmar Legal Framework Background Paper for IHRB*, p 83, on file with IHRB.

<sup>186</sup> *The 100th International Women's Day celebrated in Yangon, Myanmar*, UNFPA Myanmar, 8 March 2011, Available at: [http://countryoffice.unfpa.org/myanmar/2011/03/10/3130/the\\_100th\\_international\\_women\\_s\\_day\\_celebrated\\_in\\_yangon\\_myanmar/](http://countryoffice.unfpa.org/myanmar/2011/03/10/3130/the_100th_international_women_s_day_celebrated_in_yangon_myanmar/)

<sup>187</sup> For example, in Coca Cola's report to the US State Department on its activities in Myanmar, the company highlighted that it found that women were being paid approximately 11% less than male colleagues for the same work. Available at: <http://www.ihrb.org/commentary/staff/coca-cola-report-myanmar-operations.html>

Maternity leave is provided to female employees covered by the Social Security Act 1954 for six weeks before and six weeks after the expected date of childbirth on the condition that the employees have to have contributed 26 weeks to the social insurance system during the 52 weeks before confinement.<sup>188</sup> Sexual harassment is prohibited by the Penal Code and carries a penalty of fines or up to one year's imprisonment. However, such crimes go largely unreported due to the sensitivity of the topic in Myanmar.<sup>189</sup>

Gender inequality is relevant to the tourism sector, as it can affect female employees and tour guides, female sex workers who cater to tourists, and women living in communities close to tourist attractions. The government has also identified its relevance. Gender is one of the seven cross-cutting themes mainstreamed in the Tourism Master Plan<sup>190</sup> and will be included in all tourism policies and development planning. Men and women will be ensured equal access to economic opportunities, skills training, employment, resources, and decision-making.<sup>191</sup>

One of the core principles of the Myanmar Policy on Community Involvement in Tourism (CIT) states that gender aspects should always be taken into consideration when planning the involvement of local communities in tourism activities and in the distribution of tourism benefits. Under objective 3 of the CIT policy a key action point is the implementation of support programs for vulnerable groups including women at community level related to tourism activities.<sup>192</sup> Lastly, the CIT Policy recognizes that enhancing employment opportunities for women is a fundamental determinant in realizing fruitful development impacts from tourism and therefore needs to ensure that equal employment conditions for women and men are being established and implemented.<sup>193</sup> The Myanmar Responsible Tourism Policy sets out a number of actions related to women including training of disadvantaged groups to obtain jobs in the tourism sector, support to local female artisans and awareness raising and prevention of sexual exploitation of women.<sup>194</sup>

Prostitution is illegal in Myanmar and those convicted under Burmese law on prostitution charges face up to three years in prison.<sup>195</sup> However massage parlors, model shows and karaoke lounges serve as disguised brothels in many Myanmar towns and cities.<sup>196</sup> While traditionally Myanmar was not a destination for sex tourism, human-trafficking networks have long operated in Myanmar, funneling thousands of women and girls into Thailand to fuel its sex industry catering to Western and Asian sex tourists. There are fears that Myanmar will become a new destination.<sup>197</sup> There are already Japanese and English websites advertising sex tourism in Myanmar. Some websites feature lists of hotels willing to help arrange it, other websites feature nightlife entertainment places including prices for women. Hotel owners in Myanmar also provide tourists with phone numbers for prostitutes when asked.<sup>198</sup> The government of Myanmar recognizes the

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<sup>188</sup> Labour Laws in Myanmar, Asian Monitor Resource Centre, May 2014, available at: <http://www.amrc.org.hk/node/1369>

<sup>189</sup> *Supra* note 184.

<sup>190</sup> Tourism Master Plan, *Supra* note 19, p.11.

<sup>191</sup> Tourism Master Plan, *Supra* note 19, p.10.

<sup>192</sup> Policy on Community Involvement in Tourism, *Supra* note 20, p.15, 19 and 47, 2013.

<sup>193</sup> *Ibid.*, p.15, 24.

<sup>194</sup> Responsible Tourism Policy, *Supra* note. 18, p. 12, 18 and 19.

<sup>195</sup> *The Suppression of Prostitution Act*, 1949, available at: [http://www.humantrafficking.org/government\\_law/12](http://www.humantrafficking.org/government_law/12)

<sup>196</sup> *No Changes to Burma's 60-Year-Old Prostitution Law, Police Chief Says*, The Irrawaddy, 10 July 2013, available at: <http://www.irrawaddy.org/democracy/no-changes-to-burmas-60-year-old-prostitution-law-police-chief-says.html>

<sup>197</sup> *Burmese Are Wary of Tourism's Dark Side*, New York Times, 10 April 2012, available at: [http://rendezvous.blogs.nytimes.com/2012/04/10/burmese-are-wary-of-tourisms-dark-side/?\\_php=true&\\_type=blogs&\\_r=0](http://rendezvous.blogs.nytimes.com/2012/04/10/burmese-are-wary-of-tourisms-dark-side/?_php=true&_type=blogs&_r=0)

<sup>198</sup> *Can Burma Avoid the Curse of Sex Tourism?*, Time Magazine, 12 April 2013, available at: <http://world.time.com/2013/04/12/can-burma-avoid-the-curse-of-sex-tourism/>

risk that Myanmar may become a new destination for sex tourism and has therefore included combatting all forms of sex tourism, sexual exploitation and human trafficking as one of the key objectives in the Responsible Tourism Policy<sup>199</sup> and in the Tourism Master Plan (key objective 3.2.) through collaboration between MoHT and other internal and external agencies, awareness raising and prevention.<sup>200</sup>

### Key human rights considerations for the tourism sector:

- Companies should adopt steps to avoid discrimination against women in the workplace, including ensuring women receive equal pay for work of equal value.
- Human rights due diligence and EIA assessments should consider the differentiated impacts of projects on women, including through separate consultations.

#### Relevant international standards and guidelines:

- Convention on the Elimination of Discrimination against Women (CEDAW)<sup>201</sup>
- ILO – Toolkit Promoting Equality in Diversity<sup>202</sup>
- IFC - Discrimination Good Practice Note<sup>203</sup>
- UNIFEM and UN Global Compact – Women's Empowerment Principles<sup>204</sup>
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 2.2<sup>205</sup>
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria B6 and B7<sup>206</sup>

### Assessment Findings:

#### Non – discrimination and equal and fair treatment

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

#### Assessment Findings:

- In various cases **women occupied unpaid positions** in 'family tourism enterprises', such as small hotels, guest houses, souvenir shops and restaurants. Family businesses were not necessarily businesses with only family members as employees, but they were often called this to create a working environment of 'parents', 'siblings' and 'children' working together, which made it more challenging for employees to claim their rights.
- In one occasion in a hotel in Mawlamyine, **female employees had to sign a form**

<sup>199</sup> Responsible Tourism Policy, *Supra note* 18, p. 19.

<sup>200</sup> Tourism Master Plan, *Supra note* 19, Key objective 3.2.1, p. 47 and Key objective 6.3.3, p. 54.

<sup>201</sup> The Convention on the elimination of Discrimination Against Women, available at: <http://www.un.org/womenwatch/daw/cedaw/reports.htm>

<sup>202</sup> Toolkit Promoting Equality in Diversity, ILO, available at: <http://www.ilo.org/migrant/lang-en/index.htm>

<sup>203</sup> Discrimination Good Practice Note, IFC, available at:

<http://www.ifc.org/wps/wcm/connect/629b648048865944b8aafa6a6515bb18/NonDiscrimination.pdf?MOD=AJPERES&CACHEID=629b648048865944b8aafa6a6515bb18>

<sup>204</sup> Women's Empowerment Principles, UNIFEM and UN Global Compact, available at: [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/WEP\\_EMB\\_Booklet.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/WEP_EMB_Booklet.pdf)

<sup>205</sup> UNWTO GCET, *Supra note* 43.

<sup>206</sup> Global Sustainable Tourism Criteria, *Supra note* 95.

**certifying that they would not get married or that they would quit if they did so**, which was mentioned by the hotel manager to be a way to avoid having to pay maternity benefits.

- However in most hotels and among tour operators, paid **maternity leave of 3 months** was provided to female workers, in line with national laws and international standards.

### *Safe working conditions*

**Human Rights Implicated:** Right to just and favourable conditions of work, Right to life

**Assessment Findings:**

- In a number of cases female tour guides were exposed to safety and security risks because they were unable to stay in the same accommodation as their guests and had to travel late at night to find affordable accommodation.
- There have been occasional incidents where **tourists requested their female tour guides to provide sexual services**
- Across all locations there are **no grievance mechanisms for female workers in hotels and tour operators against sexual harassment**. Awareness raising training related to gender issues was absent.

### *Sex tourism*

**Human Rights Implicated:** Right to just and favourable conditions of work; right to life, Rights of the child, Right to health, Right to freely choose an occupation, Freedom from forced labour

**Assessment Findings:**

- Tour guides reported receiving requests from tourists for sex workers. Tour guides sometimes received a commission for providing tourists with a sex worker.
- There was a perception that cities with established prostitution catering to locals such as Yangon, Mandalay and Mawlamyine could become frequented by sex tourists, although the assessment was unable to obtain evidence that this was already happening.

## **CHILDREN'S RIGHTS**

### **National context**

The Myanmar Government ratified the Convention on the Rights of the Child (CRC) in 1991, and acceded to the CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in January 2012<sup>207</sup> and ILO Convention 182 on the Worst Forms of Child Labour in December 2013.

Nonetheless Myanmar law diverges from the CRC in some significant areas. For example, the provisions of the 1993 Child Law define a child as becoming an adult at 16 years rather than 18 years, and sets the minimum age of criminal responsibility at seven years old. Although the Government has stated that it will reform the law to bring it into line with the CRC, this has reportedly not yet occurred. A National Plan of Action for Children (2006-2015) was developed in 2006 by the National Committee on the Rights of the

<sup>207</sup> United Nations Treaty Collections, available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtldsg\\_no=IV-11-c&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtldsg_no=IV-11-c&chapter=4&lang=en)



Child to facilitate the implementation of the CRC, but challenges remain, which can be linked amongst others, to weak monitoring.<sup>208</sup>

The 2008 Constitution reaffirms the State's responsibility to provide free basic education and health care for children.<sup>209</sup> A wide range of enrolment figures for primary education exist with some estimating it to be as high as 97 percent.<sup>210</sup> However, others estimate that more than half of Myanmar children do not complete primary school<sup>211</sup>. A reason for dropping out of school are the high transportation costs, especially in rural areas, with some remote areas having only one primary school for up to 25 villages.<sup>212</sup>

### *Child Labour*

Not all work done by children should be classified as "child labour" such as helping parents around the home, assisting in a family business or earning money outside school hours and during school holidays. "Child labour" is work that: 1) is mentally, physically, socially or morally dangerous and harmful to children; and 2) interferes with their schooling. In its most extreme forms, child labour involves children being enslaved, exposed to serious hazards and illnesses, or used as child soldiers. In December 2013 Myanmar ratified the ILO Convention 182 on the Worst Forms of Child Labour<sup>213</sup> and has vowed to implement the Convention which comes into force on 18 December 2014.<sup>214</sup>

In Myanmar the minimum age for the employment of children is set at 13 years, which is in line with international standards for light work, but not in line with the international standard of 15 years for regular work.<sup>215</sup> Ascertaining someone's age in Myanmar is not always straightforward. Birth registration in urban areas was reported at 94%, but in rural areas the rate was only 64%.<sup>216</sup>

Children work in various sectors throughout Myanmar, including construction, the service industry (such as teashops), domestic work, as waste collectors, in food processing and light manufacturing, and on farms in rural areas often with permission from their parents. Children also end up begging on the streets, bus and railway stations and at tourist attractions.<sup>217</sup> One survey found that one third of child labourers worked as street vendors.<sup>218</sup> They are frequently victims of economic exploitation, as employers generally pay less to

<sup>208</sup> Myanmar National Plan of Action for Children 2006-2015, available at: <http://www.ovcsupport.net/s/library.php?id=1066> and Situation Analysis of Children in Myanmar, UNICEF, July 2012. Available at: [http://www.unicef.org/eapro/Myanmar\\_Situation\\_Analysis.pdf](http://www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf)

<sup>209</sup> *Ibid.*, p. 4-5.

<sup>210</sup> EU Development Cooperation with Burma/Myanmar, European Union, 2012, available at: [http://www.eu-un.europa.eu/articles/en/article\\_11847\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_11847_en.htm)

<sup>211</sup> What to do for Burma's Children? The National Bureau of Asian Research (NBR), A. Kirkwood, 2009, available at: [http://www.nbr.org/Downloads/pdfs/ETA/BMY\\_Conf09\\_Kirkwood.pdf](http://www.nbr.org/Downloads/pdfs/ETA/BMY_Conf09_Kirkwood.pdf)

<sup>212</sup> Economic Development of Burma, A vision and a strategy. (Stockholm: Olof Palme International Center), Khin Maung Kyi, Finley, R., Sundrum, R.M., Mya Maung, Myo Nyunt, Zaw Oo, et al., 2000, available at: <http://www.burmalibrary.org/docs3/Vision-strategy.ocr.pdf>

<sup>213</sup> Myanmar ratifies the Worst Forms of Child Labour Convention, 19 December 2013, available at: [http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS\\_233060/lang-en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_233060/lang-en/index.htm)

<sup>214</sup> Myanmar vows to implement ILO Convention on child labor, Global Post, 7 July 2014, available at: <http://www.globalpost.com/dispatch/news/xinhua-news-agency/140717/myanmar-vows-implement-ilo-convention-child-labor>

<sup>215</sup> The Global State of Workers' Rights - Burma, Freedom House, 31 August 2010, available at: <http://www.unhcr.org/refworld/docid/4d4fc805c.html> and Minimum Age Convention, 1973 (No. 138) Article 7, ILO. Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

<sup>216</sup> Situation Analysis of Children in Myanmar 2012, *Supra* note 211

<sup>217</sup> No Horsing Around for Beach Boys along Mon State Coast, The Irrawaddy, 29 May 2013, available at: <http://www.irrawaddy.org/culture/no-horsing-around-for-beach-boys-along-mon-state-coast.html>, In Bagan, Child Guides Eke Out a Living for Their Families, The Irrawaddy, 28 September 2013, available at: <http://www.irrawaddy.org/tourism/bagan-child-guides-eke-living-families.html>, Spotlight on Poverty and Child Labor in Burma, Rehmonnya, 22 January 2014, available at: <http://rehmonnya.org/archives/3050>, Rampant child labour in Burma: "11 years old and waiting tables", France24, 27 June 2013, available at: <http://observers.france24.com/content/20130627-waiter-children-burma-labour-work>

<sup>218</sup> Situation Analysis of Children, *Supra* note 211, p 116.



children despite their similarly high labour contribution in comparison to adults.<sup>219</sup> Many children are working in the cities' informal sector,<sup>220</sup> where they are exposed to drugs and petty crime, risk of arrest and trafficking for sex and labour exploitation.

In January 2014 the Myanmar Government introduced a four-year plan to eliminate child labour, which includes five steps; focusing on raising awareness of child labour, promoting efficiency of government personnel and stakeholders who will participate in the drive for elimination of child labour and reviewing local laws to assess whether they are in conformity with international laws. Together with UNICEF, the government plans to collect data on child labour.<sup>221</sup>

The Myanmar Responsible Tourism Policy has set out a plan to address child exploitation including awareness raising and prevention of child labour in the tourism sector, led by the Ministry of Home Affairs and the MoHT. Other objectives, led by the Ministry of Social Welfare, include promotion of the collaboration between local tourism operators, service providers and local authorities to discourage children from begging and missing school. Lastly, detection and prevention of child abuse and awareness raising and prevention of sexual exploitation of children are key action points.<sup>222</sup> Under the Myanmar Tourism Master Plan, one of the key objectives (3.2.1) is the implementation of actions to combat sexual exploitation of children.<sup>223</sup> The Policy on Community Involvement in Tourism also addresses children's rights; the policy calls for support programmes for children and youth related to tourism activities and to provide awareness programs on prevention of child labour.<sup>224</sup>

As in Cambodia, Myanmar is vulnerable to the attentions of paedophiles and awareness needs to be raised of the growing risk.<sup>225</sup> In recent years 13 foreigners have been blacklisted by the government after engaging in or attempting to engage in child sex while visiting Myanmar.<sup>226</sup> Since 2012 warning signs have been posted in some hotel rooms by the Central Body for Suppression of Trafficking in Persons (CBTIP) to address the issue of child sex tourism and to let foreigners know that child sexual exploitation is a crime in Myanmar.<sup>227</sup>

Snapshots of smiling children are a staple of most visits to Myanmar. Myanmar has many monastic education schools and 'orphanages' (in which most children are not orphans). Those on the tourist route have understandably benefitted from tourists keen to support Myanmar children. However, there is a risk that Myanmar could follow Cambodia down the path of 'orphanage tourism' which has driven unscrupulous practices and trafficking of children, unless visitors understand the consequences of treating children as tourism attractions.<sup>228</sup>

### Key human rights considerations for the tourism sector:

<sup>219</sup> *Child Rights Forum of Burma*, CRC Shadow Report Burma, 29 April 2011, available at: <http://www.burmapartnership.org/2011/04/crc-shadow-report-burma-the-plight-of-children-under-military-rule-in-burma/>

<sup>220</sup> Union of Myanmar Country data, Education International, Myanmar, 2011, available at: [http://www.ei-ie.org/barometer/en/profiles\\_detail.php?country=Myanmar](http://www.ei-ie.org/barometer/en/profiles_detail.php?country=Myanmar)

<sup>221</sup> *Myanmar, Unicef to collect data on child labour*, Business Standard, 3 July 2014, available at: [http://www.business-standard.com/article/news-ians/myanmar-unicef-to-collect-data-on-child-labour-114070200527\\_1.html](http://www.business-standard.com/article/news-ians/myanmar-unicef-to-collect-data-on-child-labour-114070200527_1.html)

<sup>222</sup> Responsible Tourism Policy, *Supra note* 18, p. 19.

<sup>223</sup> Tourism Master Plan, *Supra note* 19, key objective 3.2.1., p. 47.

<sup>224</sup> Policy on Community Involvement in Tourism, *Supra note* 20, Objective 3, action points e) and h), p.19.

<sup>225</sup> Available at: <http://www.mmtimes.com/index.php/opinion/8815-let-s-talk-about-sex.html>

<sup>226</sup> *Can Burma Avoid the Curse of Sex Tourism?* Time Magazine, 12 April 2013, available at: <http://world.time.com/2013/04/12/can-burma-avoid-the-curse-of-sex-tourism/>

<sup>227</sup> *Myanmar warns visitors on child sex tourism*, ETN Global Travel Industry News, 21 November 2012, available at: <http://www.eturbonews.com/32393/myanmar-warns-visitors-child-sex-tourism>

<sup>228</sup> *Children are not tourist attractions*, available at: <http://www.thinkchildsafe.org/thinkbeforevisiting/>

- Assessments and due diligence should include a specific focus on impacts on different vulnerable groups including children. There are an increasing range of tools available to assist companies.<sup>229</sup>
- Given the prevalence and general acceptance of child labour in Myanmar due to widespread poverty, and the difficulties of validating age, companies should be alert to the possibility of child labour being used in supplying products or services, such as in construction, directly linked to their operations. However responses to child labour should take into account the impact on children,
- There is a need to raise tourists' awareness of how tourism can contribute to exploitation of children.<sup>230</sup>

**Relevant international standards and guidelines:**

- The UN Convention on the Rights of the Child<sup>231</sup>
- ILO Convention 182 on the Worst Forms of Child Labour and ILO Convention 138 on the Minimum Age for Admission to Employment and Work<sup>232</sup>
- The Children's Rights and Business Principles<sup>233</sup>
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 2.2 and 2.3<sup>234</sup>
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria B6 and B7<sup>235</sup>
- The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism<sup>236</sup>

**Assessment Findings:**

**Child labour and child begging**

**Human Rights Implicated:** Rights of the Child

**Assessment Findings:**

- **Age verification** of workers was practiced by hotels, guesthouses, tour operators and other large companies in the sector.
- However, in the tea shops, restaurants, smaller shops and family-run business, age verification was not practiced and in all locations young **children were found working in teashops and restaurants** frequented by tourists.
- In Kyaikhtiyo it was mentioned that **children between the ages of 14-17 were working fulltime in souvenir shops throughout the high season** and laid off during the low

<sup>229</sup> *Children's Rights in Impact Assessments - A guide for integrating children's rights into impact assessments and taking action for children* (2013), UNICEF and the Danish Institute for Human Rights, available at:

[http://www.unicef.org/csr/css/Children's\\_Rights\\_in\\_Impact\\_Assessments\\_Web\\_161213.pdf](http://www.unicef.org/csr/css/Children's_Rights_in_Impact_Assessments_Web_161213.pdf)

<sup>230</sup> *Childsafe Traveler Tips*, available at: <http://www.thinkchildsafe.org/index.html>

<sup>231</sup> UN Convention on the Rights of the Child, available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>232</sup> The Minimum Age Convention 1973 (No. 138), *Supra* note 219

<sup>233</sup> *Children's Rights and Business Principles*, Unicef, UN Global Compact and Save the Children, available at: [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/CRBP/Childrens\\_Rights\\_and\\_Business\\_Principles.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf)

<sup>234</sup> UNWTO GCET, *Supra* note 43.

<sup>235</sup> *Global Sustainable Tourism Criteria*, *Supra* note 95.

<sup>236</sup> *The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*, available at: <http://www.thecode.org/>

season.

- **Children as young as 9 years old were working as informal tour guides, selling postcards or carrying shoes and bags for tourists** in four out of the six locations including Bagan, Mandalay and Kyaikhtiyo or **begging**, in order to earn money for their families instead of attending school.

### *Children's health and safety*

**Human Rights Implicated:** Rights of the Child, Right to health

**Assessment Findings:**

- **Children and young people working in the tourist sector, sometimes engage in harmful practices** such as glue sniffing and alcohol consumption. In Kyaikhtiyo **child workers between the age of 13-16 years old have started drinking alcohol** when they work and it was reported that some boys started **using marijuana**.
- At Golden Rock, **children who work as tour guides or carry shoes and bags for tourists were mistreated by security staff** who suspected them of stealing or shoplifting. There have been cases of child workers being arrested, taken to the police station and having to do large numbers of sit-ups.
- In the Tada Oo Hotel zone in Mandalay fears were expressed that **children could have accidents due to increased vehicle traffic during the construction of the hotels**

### *Child sex tourism*

**Human Rights Implicated:** Rights of the Child

**Assessment Findings:**

- It was reported that in **Yangon children, both male and female, were increasingly engaged in sex work**, with foreign tourists as their clients. It was mentioned that **foreign tourists preferred younger sex workers** to older women. **Some of them were as young as 15 years**.
- In Mawlamyine and Kyaikhtiyo **a few cases of child prostitution were mentioned**. Fears of increase of child prostitution and child sex tourism in the region were expressed due to its proximity to Thailand.

### *Examples of emerging good practice in Myanmar*

**Assessment Findings:**

- Seven **companies (mostly tour operators)** in the tourism sector in Myanmar have **signed up to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism ('The Code')** This is an industry-driven initiative that provides awareness, tools and support to the tourism industry to prevent the sexual exploitation of children, including underage girls. It was launched in Myanmar in May 2014<sup>237</sup>.

<sup>237</sup> Myanmar's tourism boom may put children at risk, The Code, 15 July 2014, available at: <http://www.thecode.org/myanmars-tourism-boom-may-put-children-at-risk/>

## CULTURE

### National context

Strong national identities and years of isolation, both self-imposed and externally imposed have resulted in Myanmar being far less exposed to foreign cultural influence than neighbouring countries in SE Asia, which represents one of its selling points as a tourist destination. However, with greater international travel by Myanmar citizens and exposure to foreign media, as well as foreign visitors and investors, this is starting to change, particularly in the cities. This is creating generational tensions, and a fear among more conservative older generations that ‘Myanmar culture’ and ‘Myanmar values’ may be overwhelmed.

The growth of the tourism industry and the influx of tourists – including Myanmar tourists travelling within the country - can have positive cultural impacts on a country and its population, including the promotion and preservation of tangible and intangible cultural heritage and traditions, development of new forms of cultural expression and promotion of exchanges with other languages and cultures. Intangible cultural heritage includes oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; performing arts; social practices, rituals and festive events; knowledge and practices concerning nature and the universe; and traditional craftsmanship. Tourism can increase demand for traditional handicrafts such as Myanmar art and paintings, lacquerware, silverware, woodcarving and weaving.

However, tourism also brings cultural changes, not all of them neutral or positive. Tourism can cause a loss of local identity and values and a commodification of culture. ‘The human zoo’ phenomenon can already be observed in Inle Lake and Bagan, where Padaung women are exhibited for a fee for tourists to take photographs, at locations far away from their home villages, with the potential for negative impacts on their right to privacy and freedom of movement<sup>238</sup>. The traditional fishing culture of the Moken, an ethnic minority group from the Myeik Archipelago, may also be negatively impacted by the influx of large numbers of tourists, as it has in Thailand.<sup>239</sup>

Tourist behaviour can have negative social and cultural impacts. These can include the lack of respect for local traditions, customs and religion, including respect for religious buildings<sup>240</sup>, the consumption of alcohol and drugs, as well sex tourism in a country where prostitution is illegal and culturally frowned upon. Tourism may also contribute to or reinforce economic inequality, which can fuel conflicts or an increase in crime.

The Myanmar Responsible Tourism Policy recognizes that tourism may bring negative impacts to Myanmar’s culture and promotes cultural diversity and authenticity by ensuring that visitors know the social norms when visiting cultural heritage sites.<sup>241</sup> One of the core principles in the Policy on Community Involvement in Tourism (CIT) sets out that tourists as well as the private and public sector need to respect the cultural heritage, traditions and beliefs of every individual in Myanmar.<sup>242</sup>

<sup>238</sup> *Women from Padaung Tribe in Bagan*, Myanmar Tourism Watch, 3 April 2011, available at: <https://www.myanmar-tourism-watch.org/reports/view/17>

<sup>239</sup> *Tourism threatens Moken people of Myanmar's Mergui archipelago*, South China Morning Post, 23 March 2014, available at: <http://www.scmp.com/news/asia/article/1455037/tourism-threatens-moken-people-myanmars-mergui-archipelago>

<sup>240</sup> *Tourists dining on Bagan Pagoda compounds*, Myanmar Tourist Watch, 15 October 2012, available at: <https://www.myanmar-tourism-watch.org/reports/view/31>, *Tourists asked to respect rules when visiting heritage sites*, Eleven News Media Myanmar, 28 November 2013, available at: [http://www.elevenmyanmar.com/index.php?option=com\\_content&view=article&id=4253:tourists-asked-to-respect-rules-when-visiting-heritage-sites&catid=35&Itemid=358](http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=4253:tourists-asked-to-respect-rules-when-visiting-heritage-sites&catid=35&Itemid=358)

<sup>241</sup> Responsible Tourism Policy, *Supra note* 18, Aim 3, p. 13.

<sup>242</sup> Policy on Community Involvement in Tourism, *Supra note* 20, Core Principles Linked to All Objectives, p. 14.

Tourism may have a positive or negative impact on the built and natural environment (See also Environment below). Tourism may allow an economic value to be attached to the protection of historic buildings or protected areas. The Yangon Heritage Trust has advocated for heritage protection in the former capital<sup>243</sup> and in 2012 the government put a number of buildings up for tender<sup>244</sup>. But the process is slow<sup>245</sup> and controversies have arisen about whether certain historical buildings, such as the High Court, should be converted into hotels as a means of preserving their facades but not their original function.

There is some tension between the ambitions of the hotels and tourism sector and the Ministry of Culture which has a duty under the Protection and Preservation of Cultural Heritage Regions Law.<sup>246</sup> Under this law the Ministry of Culture has the duty to scrutinize applications of permission for construction and assess a) whether it can cause obstruction of the view of the cultural heritage region or not; b) it is clear of the ancient monument or ancient site or not; c) whether it can obstruct the surrounding natural landscape or not; d) whether it can undermine the grandeur of the ancient monument or not; e) whether it can affect the security of the cultural heritage or not; and f) whether it can cause environmental pollution or not. The Law also prohibits destroying an ancient monument, willfully altering the original ancient form and structure or original ancient workmanship of an ancient monument; excavation to search for antiques and exploration for petroleum, natural gas, precious stones or minerals in a cultural heritage site. Lastly, it is prohibited to plough and cultivate or carry out any activity, which may cause damage to the cultural heritage.<sup>247</sup> In November 2013 the Ministry of Culture declared that unauthorized construction of buildings in any of 46 cultural heritage zones in Myanmar was punishable by law.<sup>248</sup>

Since 2012 UNESCO has worked with the Ministry of Culture on conserving and managing heritage sites, establishing cultural heritage information management systems using Geographic Information Systems (GIS), and assisting the government to develop nominations for submission to the World Heritage List.<sup>249</sup>

World Heritage Status was achieved in June 2014 for the ancient Pyu cities of Sri Ksetra, Halin and Beikthano<sup>250</sup>. However Bagan has not yet achieved such status. It has been on a “UN Heritage Site Tentative List” since 1996, partly because of culturally inappropriate restoration and tourism infrastructure development<sup>251</sup>. The government halted hotel construction there in March 2014<sup>252</sup> and is working with Japan to develop sustainable tourism in Bagan.<sup>253</sup>

<sup>243</sup> Yangon Heritage Trust, available at: <http://yangonheritagetrust.org/mission>

<sup>244</sup> Govt tender winner details released, Myanmar Times, 16 – 22 July, 2012, available at: <http://www.mmtimes.com/2012/business/635/biz63502.html>

<sup>245</sup> Conservation projects in Yangon face long road ahead, Myanmar Times, 3 November 2013, available at: <http://www.mmtimes.com/index.php/business/property-news/8658-conservation-projects-in-yangon-face-long-road-ahead.html>

<sup>246</sup> The Myanmar Protection and Preservation of Cultural Heritage Regions Law (1998) Amended by Law. No.1/2009, available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=182058](http://www.wipo.int/wipolex/en/text.jsp?file_id=182058)

<sup>247</sup> *Ibid.*, section 17, 20 and 23.

<sup>248</sup> Ministry bans building within Bagan, other heritage sites, Democratic Voice of Burma, 28 November 2013, available at: <http://www.dvb.no/news/ministry-bans-building-within-bagan-other-heritage-sites/34749>

<sup>249</sup> UNESCO to Launch Project for Safeguarding Cultural Heritage in Myanmar, 30 March 2012, available at: <http://www.travel-impact-newsire.com/2012/03/unesco-to-launch-project-for-safeguarding-cultural-heritage-in-myanmar/#ixzz2yJ9GdlKg>

<sup>250</sup> Burma's Culture Ministry Vows to Limit Building in Pyu Cities, The Irrawaddy, 24 July 2014, available at: <http://www.irrawaddy.org/burma/burmas-culture-ministry-vows-limit-building-pyu-cities.html>

<sup>251</sup> Myanmar Tourism's 'Crown Jewel' Feels Strains of Growth, The Irrawaddy, 31 March 2014, available at: <http://www.irrawaddy.org/burma/magazine-development/myanmar-tourisms-crown-jewel-feels-strains-growth.html>

<sup>252</sup> New Hotels banned in ancient Bagan, Democratic Voice of Burma, 20 March 2014, available at: <http://www.dvb.no/news/new-hotels-banned-in-ancient-bagan-burma-myanmar/38701>

<sup>253</sup> Japan Supports Bagan Tourism, TTR Weekly, 26 May 2014, available at: <http://www.ttrweekly.com/site/2014/05/japan-supports-bagan-tourism/>

## Ethnic minority cultures

Myanmar is one of the most culturally diverse countries in the region. Myanmar's ethnic minorities make up an estimated 30- 40% of the population, and ethnic states occupy some 57% of the total land area along most of the country's international borders.<sup>254</sup> The government actively promotes the unique and dominant Bamar/Burman Buddhist culture, including through its tourism publicity. But there are multiple other cultures, ethnicities, languages and religions present throughout the country which is part of its attraction as a tourism destination.

Ethnicity is a complex, contested and politically sensitive issue (see Part III - Tourism in Ethnic Minority Areas). The Constitution makes no reference to ethnic minorities. It instead uses the term "national races". However this term is not defined by the Constitution, and is generally interpreted by applying the 1982 Myanmar Citizenship Law, which defines the 135 national races in its 1983 Procedures.<sup>255</sup> This categorisation – also used in the 2014 Census - is contested by many of the ethnic groups, as they believe it does not accurately represent their true ethnicity or the prevalence of particular groups.<sup>256</sup> Furthermore almost all Rohingya<sup>257</sup> are denied citizenship under the 1982 Citizenship Law – either because they do not meet its stringent and discriminatory citizenship requirements (including currently a requirement to not self-identify as Rohingya), or where they do, because they lack the documentary evidence required. People of Chinese, Indian or Nepali heritage are mostly denied full citizenship under this law because they do not automatically qualify under "national races".

Furthermore the concept of 'indigenous peoples' who should enjoy a distinct set of human rights in the UN Declaration on the Rights of Indigenous Peoples in 2007 and in particular their right in certain circumstances to grant or withhold Free, Prior and Informed Consent to business activities, is neither recognized nor well understood.<sup>258</sup>

Both the Myanmar Responsible Tourism Policy and the Myanmar Tourism Master Plan recognize the cultural diversity of Myanmar; under aim 3 of the Responsible Tourism Policy local guides are trained to value the culture of ethnic groups<sup>259</sup> and the Tourism Master Plan recognizes that tourism development should promote full respect for the cultural uniqueness of ethnic peoples.<sup>260</sup>

## Key human rights considerations for the tourism sector:

- Tourism businesses should be guided by relevant IFC Performance Standards relating to Cultural Heritage which aim to protect cultural heritage from the adverse impacts of project activities and support its preservation, and to promote the equitable sharing of benefits from the use of cultural heritage.
- Tourism activities need to be developed and designed with the consent and support of local communities and in a manner which reflects their right to take part in cultural life and right to privacy.

<sup>254</sup> Access Denied: Land Rights and Ethnic Conflict in Burma, *Supra* note 38.

<sup>255</sup> "Burma Citizenship Law of 1982". Available at: <http://www.ibiblio.org/obl/docs/Citizenship%20Law.htm>

<sup>256</sup> *Myanmar Conflict Alert: A Risky Census*, International Crisis Group, (Feb. 2014), available at: [http://www.crisisgroup.org/en/publication-type/alerts/2014/myanmar-conflict-alert-a-risky-census.aspx?utm\\_source=wu10feb14&utm\\_medium=myanmar-alert&utm\\_campaign=wuemail](http://www.crisisgroup.org/en/publication-type/alerts/2014/myanmar-conflict-alert-a-risky-census.aspx?utm_source=wu10feb14&utm_medium=myanmar-alert&utm_campaign=wuemail)

<sup>257</sup> The Myanmar government does not recognize the term 'Rohingya' and refers to those self-identifying as Rohingya as 'Bengali' or 'Bengali muslim'.

<sup>258</sup> *Free, prior and informed consent in Myanmar*, International Alert, Oct. 2012), available at: <http://www.international-alert.org/news/free-prior-and-informed-consent-myanmar>

<sup>259</sup> Responsible Tourism Policy, *Supra* note. 18, Aim 3, p. 13.

<sup>260</sup> Tourism Master Plan, *Supra* note 19, key objective 3.2.3, p. 48.



- Due diligence on a tourism activity should involve consulting vulnerable groups such as ethnic minorities where relevant, including in their local language, and be guided where relevant by IFC Performance Standard 7 on Indigenous Peoples.
- Tourism operations should promote understanding of culturally appropriate behavior and respect for cultural traditions, including among their own staff where they are transferred from other locations and/or of a different ethnicity to local populations.
- The tourist economy can help to promote the safeguarding of intangible cultural heritage such as handicrafts.

**Relevant international standards and guidelines:**

- International Covenant on Economic, Social and Cultural Rights<sup>261</sup>
- The UNESCO Convention Concerning the Protection of World Cultural and National Heritage (1972)<sup>262</sup>
- The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, (2003) ratified by Myanmar in May 2014<sup>263</sup>
- IFC Performance Standard 7 on Indigenous peoples and 8 on Cultural Heritage<sup>264</sup>
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 1.1, 2.5, 4, 5.1, 7 and 9.5<sup>265</sup>
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A1, A3, A6.1, A6.2 and B1<sup>266</sup>

## Assessment findings

### Traditions, social and cultural practices

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

**Assessment Findings:**

- In certain tourist areas, particularly in Bagan, so-called **'Temple Dinners' have been introduced**, where tourists had dinner and drinks inside the pagoda compounds. The sale and **consumption of alcohol** is prohibited around pagodas according to local customs, **and this practice was not accepted by Myanmar people**, since pagodas are considered sacred.
- At Kyaikhtiyo, locals associated an **increase in theft, gambling, alcohol consumption, and associated family problems** with the loss of portering and sales jobs on traditional footpaths as result of construction of the road to develop tourist and pilgrim access to Kyaikhtiyo.
- Locals considered it disrespectful when foreign tourists **did not respect local customs**

<sup>261</sup> ICCPR, *Supra* note 6.

<sup>262</sup> UNESCO Convention Concerning the Protection of World Cultural and National Heritage, available at: <http://whc.unesco.org/archive/convention-en.pdf>

<sup>263</sup> UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, available at: <http://www.unesco.org/culture/ich/index.php?pg=00006>

<sup>264</sup> IFC Performance Standards on Environmental and Social Sustainability, *Supra* note 4.

<sup>265</sup> UNWTO GCET, *Supra* note 43.

<sup>266</sup> Global Sustainable Tourism Criteria, *Supra* note 95.



**around dress code when entering a pagoda**, for example by not removing their shoes or not covering their legs and arms.

- Increased tourism by Myanmar nationals, coupled with income inequality, was believed to be contributing to **prostitution** in locations such as Yangon, Mandalay and Mawlamyine.

## Cultural heritage

**Human Rights Implicated:** Right of everyone to take part in cultural life

**Assessment Findings:**

- **Hotel construction** is threatening the nature of Myanmar's heritage sites. It was alleged that permission to build hotels in Bagan which infringed cultural preservation laws were a result of payments and connections of certain businesses.
- Better **coordination is desirable between the Ministry of Hotels and Tourism and the Ministry of Culture** regarding protection of cultural heritage sites, since it was mentioned that the two ministries could have diverging interests regarding construction of hotels and other activities in and around cultural heritage sites.
- Consistent with the absence of wider community consultation, communities were not invited to identify their intangible and tangible cultural heritage.

## Examples of emerging good practice in Myanmar

**Assessment Findings:**

- UNESCO is working on the **preservation and documentation of non-tangible culture**, such as the knowledge on how to produce handicrafts, which is often undocumented.
- One Yangon-based **tour company has conducted seminars and educates tourists and communities** in many tourist sites in Myanmar about tourism, **cultural heritage and Myanmar traditions**.
- A booklet on '**Do's and Don'ts for Tourists in Myanmar**' developed by MoHT and Hanns Seidel Foundation is available in hotels and other outlets<sup>267</sup>

## PHYSICAL SECURITY

### National context

Myanmar's main tourism destinations have generally been considered a safe place for tourists to visit. In 2013, the Tourist Police was established to ensure the safety and security of visitors and tourists throughout the country, as set out in the Tourism Master Plan key objective 1.4.; developing systems to promote visitor safety.<sup>268</sup> Tourist police training has been conducted in all major tourist regions in the country.<sup>269</sup> Under aim 6 of the Responsible Tourism Policy, health, safety and security provisions for visitors are promoted.<sup>270</sup>

<sup>267</sup> *Do's and Don'ts for Tourists: How can you visit Myanmar Responsibly*, Hanns Seidel Foundation, available at: <http://www.hss.de/fileadmin/suedostasien/myanmar/downloads/121001-Dos-and-Donts-for-Tourists-in-Myanmar.pdf>

<sup>268</sup> Tourism Master Plan, *Supra note* 19, key objective 1.4, p. 43.

<sup>269</sup> *Tourist Police deployed next month*, The Nation, 26 March 2013, available at: <http://www.nationmultimedia.com/aec/Tourist-police-deployed-next-month-30202711.html>

<sup>270</sup> Responsible Tourism Policy, *Supra note*. 18, Aim 6, p. 15.

In October 2013 a spate of bombings in Yangon and Mandalay at public places, including hotels and restaurants, dented the image of Myanmar as a safe destination.<sup>271</sup> New procedures and an elevated level of security at special events have been implemented. Hotels are now obliged to have CCTV cameras, and some also pass luggage through scanners<sup>272 273</sup> although checks appear somewhat piecemeal. Smaller businesses have complained of the burden of increased security measures.

Inter-communal violence targeting Muslims has affected tourist destinations in the recent past, leading to their closure or the imposition of curfews and is likely to continue to do so for the foreseeable future, deterring some visitors, particularly to Rakhine state.<sup>274</sup> Inter-communal anti-Muslim violence at Thandwe near Ngapali beach left five dead and many homes destroyed in October 2013 and an increased security presence.<sup>275</sup> Mrauk-U in Rakhine State was declared closed to tourists twice in 2012 after communal clashes. Tourists who want to visit Mrauk-U have to use Sittwe, Rakhine State's capital as their entry point. Aung Mingalar quarter in Sittwe, the last Muslim area of Sittwe town and therefore a possible site of future anti-Muslim violence, is close to guesthouses and streets frequented by tourists.<sup>276</sup> The tourist travel advice from the UK's Foreign and Commonwealth advises (as of August 2014) against all but essential travel to Rakhine State except for the tourist resort of Ngapali and travel to/from the resort via Thandwe airport<sup>277</sup>.

Seven aviation incidents are recorded on the Aviation Safety Network database since 2007, although only one resulted in (2) fatalities.<sup>278</sup>

#### Key human rights considerations for the tourism sector:

- The safety and security of tourists may not be guaranteed in certain parts of Myanmar for reasons of ongoing armed conflict or inter-communal violence. Some Western governments have advised against travel to certain areas in Myanmar (e.g. Rakhine State, Kachin State).
- Insufficient training of security personnel in hotels constitutes a risk to all parties i.e. security personnel, the community and tourists.
- The safety records of Myanmar's domestic airlines are not open to the public, nor is public information available concerning the Myanmar government's oversight of domestic airlines. These factors raise concerns about aviation safety for all Myanmar domestic air carriers.<sup>279</sup>

#### **Relevant international standards and guidelines:**

- IFC Performance Standard 4: Community Health, Safety, and Security<sup>280</sup>
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 1

<sup>271</sup> *Fear Rises in Rangoon After Bomb Blast*, The Irrawaddy, 15 October 2013, available at: <http://www.irrawaddy.org/burma/fear-rises-rangoon-bomb-blasts.html>

<sup>272</sup> *Security Plan upgraded for this year's Thingyan Festival*, ElevenMyanmar, 19 March 2014, available at: [http://elevenmyanmar.com/index.php?option=com\\_content&view=article&id=5426:security-plan-upgraded-for-this-year-s-thingyan-festival&catid=44&Itemid=384](http://elevenmyanmar.com/index.php?option=com_content&view=article&id=5426:security-plan-upgraded-for-this-year-s-thingyan-festival&catid=44&Itemid=384)

<sup>273</sup> *You're safe with us: Government seeks to allay security fears*, Myanmar Times, 21 October 2013, available at: <http://www.mmmtimes.com/index.php/national-news/8531-you-re-safe-with-us-government-seeks-to-allay-security-fears.html>

<sup>274</sup> *Rakhine violence does not stall Myanmar's tourism*, Myanmar Times, 22 November 2012, available at: <http://www.mmmtimes.com/index.php/lifestyle/travel/3272-rakhine-violence-does-not-stall-myanmar-s-tourism.html>

<sup>275</sup> *Burma's beach paradise still safe despite riots, say officials*, Democratic Voice of Burma, 9 October 2013, available at: <https://www.dvb.no/dvb-video/burmas-beach-paradise-still-safe-despite-riots-say-officials/33239>

<sup>276</sup> *Medical gap threatens lives in Rakhine*, Myanmar Times, Myanmar Times, 11 March 2014. Available at: <http://www.mmmtimes.com/index.php/national-news/9804-medical-gap-threatens-lives-in-rakhine.html>

<sup>277</sup> UK Government, Foreign travel advice, Burma, available at: <https://www.gov.uk/foreign-travel-advice/burma/safety-and-security>

<sup>278</sup> Aviation Safety Network, Aviation Safety Database, available at: <http://aviation-safety.net/database/>

<sup>279</sup> US Passports and International Travel, *Burma*, US Department of State, Bureau of Consular Affairs, available at: <http://travel.state.gov/content/passports/english/country/burma.html>

<sup>280</sup> IFC Performance Standards on Environmental and Social Sustainability, *Supra* note 4.

(Tourism's contribution to mutual understanding and respect between peoples and societies), 1.4 and 1.6<sup>281</sup>

- Voluntary Principles on Security and Human Rights.<sup>282</sup>

## Assessment Findings

### Company and Public Security

**Human Rights Implicated:** Right to life, liberty and security of the person

**Assessment Findings:**

- Companies, hotels and other tourist facilities generally employed private security guards on their property. In most cases these **guards and security personnel did not receive any training or education** on how to act in situations of violence, tensions, and threats.
- In many cases businesses were found to have **insufficient policies and capacity on security arrangements**, in particular at smaller hotels and guesthouses.
- In most cases there were **good relations** between security guards and the surrounding communities and there was **no mention of conflicts** between guards and the local community.

### Examples of emerging good practice in Myanmar

**Assessment Findings:**

- Most large **hotels improved their security procedures and practices** to ensure better security for their staff and guests. Hotels in large cities had security gates and CCTV cameras installed.

## ENVIRONMENT & ECOSYSTEM SERVICES

### National context

Environmental sustainability is one of the seven cross-cutting themes of the Myanmar Tourism Master Plan. Key Objective 3.3 of the Myanmar's Tourism Master Plan states that all tourism infrastructure projects will seek to avoid and minimize negative impacts on the physical environment and respect the cultural landscape.<sup>283</sup> The planning process is set to include mapping and zoning of sites and destinations to ensure the protection of key habitats and natural and cultural assets.<sup>284</sup> The Master Plan also addresses the issue of tourism and climate change and the storage and treatment of solid waste and waste water.<sup>285</sup> Lastly, green technologies are promoted in order to reduce energy use under key objective 3.5.1.<sup>286</sup>

Conservation and enhancement of the environment is also stated as a key aim of Responsible Tourism Policy. Action points include efficient management of energy in the tourism sector, improvement of waste

<sup>281</sup> UNWTO GCET, *Supra note* 43.

<sup>282</sup> The Voluntary Principles on Security and Human Rights, available at: <http://www.voluntaryprinciples.org/>

<sup>283</sup> Tourism Master Plan, *Supra note* 19, p. 25.

<sup>284</sup> Tourism Master Plan, *Supra note* 19.

<sup>285</sup> *Ibid.*, p. 52.

<sup>286</sup> *Ibid.*, Key objective 3.4 and 3.5.1., p. 48-49.

management, monitoring of water supplies and supporting the establishment and improvement of management of protected areas.<sup>287</sup> One of the action points in the Policy on Community Involvement in Tourism is the establishment of educational programmes for environmental and sustainability awareness, waste management and resource utilization to enable safe and efficient use of resources and ease visitor-host competition over them in remote areas.<sup>288</sup>

The rapid rise of tourism poses a threat to numerous natural habitats in Myanmar, such as Inle Lake, Bagan, coastal areas such as Ngwesaung and the remote Myeik Archipelago off of the Tanintharyi coast. The tourism industry's impact on these environments can result in soil erosion, increased pollution, discharges into the sea, natural habitat loss, and increased pressure on flora and fauna. Research has indicated that due to its increasing economic growth Myanmar will experience the cascading effects of climate change on its forests and coastlines.<sup>289</sup>

Waste disposal and poor waste management also constitute a serious threat to the environment, as does pollution created by sewage from hotels, recreational and other facilities connected to the tourism sector.<sup>290</sup> Litter from Myanmar tourists accrues at many sites including U Bein Bridge and Taungthaman Lake in Mandalay in spite of signs put up by the archaeological department.<sup>291</sup>

At Inle Lake, lack of adequate conservation management has led to the lake silting up and drying out, poor water quality and soil erosion<sup>292</sup>. Villagers living near the lake now have to travel up to 1.5 hours by boat to fetch water for their households.<sup>293</sup> Tourism is only one of the cumulative impacts on this fragile ecosystem: poor agricultural practices, including poorly controlled expansion of Inle's famous 'floating gardens' and excessive use of pesticides all contribute.<sup>294</sup> Future expansion of hotel accommodation including the new hotel zone on the hillside has a negative impact on the landscape. The Myanmar government has pledged to spend US\$35 million to tackle the ecosystem loss of Inle Lake caused by the tourism boom.<sup>295</sup>

There are reports of strong interest in investing in and expanding the tourism industry in the largely unspoiled Myeik or Mergui Archipelago<sup>296</sup>. In June 2014 the Myeik Public Corporation (MPC) said it is planning to invest US\$ 4 million in the development of a resort hotel on Kadan Island, one of the islands close to Myeik town on the mainland in Tanintharyi Region.<sup>297</sup>

There are only few laws in place concerning the protection and conservation of the environment, natural resources and wildlife. The 1994 National Environment Policy covers integration of environmental

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<sup>287</sup> Responsible Tourism Policy, *Supra note*. 18, p. 14.

<sup>288</sup> Policy on Community Involvement in Tourism, *Supra note* 20, p. 18.

<sup>289</sup> *Myanmar faces new conservation challenges as it opens up to the world*, Mongabay.com, 3 October 2013, available at: <http://news.mongabay.com/2013/1004-salisbury-myanmar-new-conservation-challenges.html#Y609tHLLok7e25mi.99>

<sup>290</sup> *The paradox of Tourism*, Exo Foundation. Available at: <http://www.exofoundation.org/the-paradox-of-tourism>

<sup>291</sup> *Travel industry slams Myanmar tourists over rubbish*, Myanmar Times, 24 June 2013, available at: <http://www.mmtimes.com/index.php/national-news/7214-travel-industry-slams-myanmar-tourists-over-rubbish.html>

<sup>292</sup> *Inle Lake struggles amid tourism boom*, Myanmar News Links, 31 August 2013, available at: <http://www.mmtimes.com/index.php/national-news/8000-inle-lake-struggles-amid-tourism-boom.html>

<sup>293</sup> *Inle water shortage*, Democratic Voice of Burma, 24 May 2013, available at: <http://www.dvb.no/dvb-tv/inle-water-shortage/28449>

<sup>294</sup> *Inle report highlights tourism impact*, Myanmar Times, 12 November 2012, available at: <http://www.mmtimes.com/index.php/in-depth/3045-inle-report-highlights-tourism-impact.html>

<sup>295</sup> *Myanmar's Tourism Boom Endangers Fragile Ecosystems*, National Geographic, 7 April, 2014, available at: <http://news.nationalgeographic.com/news/2014/04/140407-myanmar-tourism-inle-lake-pollution-fish-environment/>

<sup>296</sup> *Burma's Marine Eden Braces for Tourism*, *The Irrawaddy*, 22 March 2014, available at: <http://www.irrawaddy.org/burma/burmas-marine-eden-braces-tourism.html>

<sup>297</sup> *Thura NewsViews*, Issue 118, June 12, 2014, available at: [http://www.thuraswiss.com/sites/default/files/newsviews\\_12\\_06\\_2014.pdf](http://www.thuraswiss.com/sites/default/files/newsviews_12_06_2014.pdf)

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.<sup>298</sup> Similarly the 2008 Constitution affirms that the Government will conserve Myanmar's natural environment, and that the National Parliament can enact environmental and other protective laws. The 1993 Myanmar Hotel and Tourism Law includes one objective related to tourism and environmental protection is included; under chapter II of the law one of the objectives is to prevent destruction and damage of Myanmar cultural heritage and natural scenic beauty, due to the hotel and tourism industry.<sup>299</sup>

The Ministry of Environmental Conservation and Forestry (MOECF) is charged with establishing a regulatory framework under the 2012 Environment Conservation Law. However to date regulations regarding air, water and soil quality have not been enacted.

### *Environmental Impact Assessment*

The 2012 Environment Conservation Law and 2014 Regulations<sup>300</sup> also introduced a requirement for the Ministry of Environment, Conservation and Forestry (MOECF) to establish a system for Environmental Impact Assessment (EIA).<sup>301</sup> With the support of the Asian Development Bank (ADB), MOECF has designed a multi-step process that follows standard EIA practice. The recent Environmental Conservation Rules include some basic provisions on EIAs that are supplemented by more detailed provisions on EIA under the draft EIA Procedures, including the 'Projects Categorization for Initial Environmental Examinations and Environmental Impact Assessments (IEE/EIAs)'. This categorization sets out what type of investment projects requires IEE and EIA. For tourism sector related development projects the requirements (subject to the final adoption of the Procedures) are as follows:

- Hotel or resort construction projects near rivers or coastal areas of 80 or more rooms require an EIA.
- Resorts in the uplands or resort/hotel construction projects with 80-200 rooms and a utilization area of 4000-10.000 hectares (ha) require an IEE. An EIA is required for resorts with 80-200 rooms with an utilization area of 4000 ha or more, or for any resort or hotel covering more than 10,000 ha.
- Tourism and resort development projects in national or provincial protected areas of 50 ha or larger require an EIA.
- Golf course construction projects of 9 holes require an IEE and of 18 holes an EIA.
- All tourism projects on islands which are gazetted as national marine parks require an EIA.
- Other tourist service centres that have a waste water volume of 500 m<sup>3</sup> or more require and EIA.
- Restaurants of more than 500 seats require an EIA.
- Projects for the improvement of river channel for boats of 200 tonnes or more require an EIA
- All airport related projects, no matter what size, require an EIA.<sup>302</sup>

<sup>298</sup> Environmental Law Development in the Union of Myanmar, Singapore Journal of International & Comparative Law (1997) 1 pp 609 – 614, p 612, available at: <http://law.nus.edu.sg/sybil/downloads/articles/SJICL-1997-2/SJICL-1997-609.pdf>

<sup>299</sup> Myanmar Hotels and Tourism Law 1993, *Supra* note 25, Chapter II

<sup>300</sup> Draft - Environmental Impact Assessment Rules, The Government of the Union of Myanmar Ministry of Environmental Conservation and Forestry, available at: [http://www.gms-eoc.org/uploads/resources/362/attachment/EIA%20Procedures%20\(4th%20draft\)-English.pdf](http://www.gms-eoc.org/uploads/resources/362/attachment/EIA%20Procedures%20(4th%20draft)-English.pdf)

<sup>301</sup> Environmental Conservation Law (2012), Article 7. See: [http://www.dica.gov.mm/includes/FIL-notification%20\\_English\\_%20A4.pdf](http://www.dica.gov.mm/includes/FIL-notification%20_English_%20A4.pdf)

<sup>302</sup> The draft "Projects Categorization for IEE/EIAs" mentions that tourism and resort development projects in the national or provincial protected area of 50 ha or larger require an EIA. Hotel or resort construction projects near rivers or coastal areas of 80 or more rooms also require an EIA. Hill station resorts or resort/hotel construction projects with 80-200 rooms and an utilization area of 4000-10.000 ha require an IEE and an EIA when larger than 200 rooms/10,000 ha. Golf course construction projects of 9 holes require an IEE and of 18 holes an EIA. All tourism projects on islands which are gazetted as national marine parks require an EIA. Restaurants of 500 or more seats require an EIA and lastly, all airport related projects require an EIA, no matter what size, require an EIA."

Projects Categorization for IEE/EIAs – Draft (Myanmar). Available at: [http://www.gms-eoc.org/uploads/resources/221/attachment/IEE-EIA%20project%20categorization-draft%20\(Eng\).pdf](http://www.gms-eoc.org/uploads/resources/221/attachment/IEE-EIA%20project%20categorization-draft%20(Eng).pdf)

### *Directives for Coastal Beach Areas*

Since 2004, several directives aiming at regulating construction, operation and management of coastal beach areas have been circulated to the private sector. The guidelines also point out that it is of crucial importance to 'adhere to the rules and regulations issued by the Ministry of Hotels and Tourism regarding cultural norms, natural environment and environmental greening facilities, safety and security, child wise recreational activities, entertainment, emergency management, crisis communication etc'.<sup>303</sup>

### *Ecotourism*

The 2011 National Biodiversity Strategy and Action Plan makes a number of references to the tourism sector, such as the Five-year Action Plan towards Sustainable Ecotourism and suggestions to include tourism companies in site stewardship in protected areas.<sup>304</sup>

The Ministry of Hotels and Tourism, MOECAF and the International Centre for Integrated Mountain Development are currently developing an Ecotourism Management Strategy which will set out practical actions to promote sustainable ecotourism products and services in and around Myanmar's protected areas.<sup>305</sup>

The Asian Development Bank's (ADB) Greater Mekong Sub region Core Environment Programme (CEP) is supporting MOECAF and the Ministry of Hotels and Tourism (MOHT) to develop ecotourism in Myanmar at both policy and project levels, including helping create an Ecotourism Management Strategy for Protected Areas. An assessment of the ecotourism potential of 21 potential protected areas will be conducted at the end of 2014.<sup>306</sup>

### **Key human rights considerations for the tourism sector:**

- Governmental bodies or companies in tourism sector do not adequately consult local communities about potential environmental impacts; very few IEEs, EIAs or SIAs with the participation of communities have been conducted for tourism development projects.
- 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 Human Rights Council appointed the first Independent expert on 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.<sup>307</sup> The key socio-economic and cultural impacts that arise from environmental issues associated with tourism development projects include:
  - Impacts on the right to health and potentially the right to life: resulting from pollution and contamination, due to increased traffic by tour buses, taxis and flights and its associated effects (e.g. increased noise, emissions and accident risks), exposure to diseases due to increased pollution and contaminated water; and reduced access to resources for traditional sources of food and medicine.
  - Impacts on the right to adequate standard of living (including the right to food and housing): through direct impacts from pollution and contamination of soil, affecting crops, livestock and

<sup>303</sup> Directives for Coastal Areas. Available at: [http://myanmartourism.org/aboutus/coastal\\_beach.htm](http://myanmartourism.org/aboutus/coastal_beach.htm)

<sup>304</sup> National Biodiversity Strategy and Action Plan (NBSAP), The Republic of the Union of Myanmar, 2011. Available at: <http://www.cbd.int/doc/world/mm/mm-nbsap-01-en.pdf>

<sup>305</sup> *Ecotourism Support to Myanmar (2014-2016)*, Asian Development Bank Greater Mekong Subregion Core Environment Program. Available at: <http://www.gms-eoc.org/resources/ecotourism-support-to-myanmar>

<sup>306</sup> *Ibid*

<sup>307</sup> Independent Expert on human rights and the environment, United Nations Office of the High Commissioner for Human Rights, available at: <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/IEEnvironmentIndex.aspx>



marine life; and through the reduction of and/or access to natural resources due to contamination or habitat destruction from construction of hotels and other tourist infrastructure.

- Right to water: through direct impacts from pollution and contamination of water, affecting marine life and freshwater resources; communities selling their access to wells to hotels; and water from dams being used for hotel swimming pools and irrigation of golf courses, particularly in water stressed areas such as Ngapali beach in Rakhine State or Bagan, which is located in Myanmar's dry zone.<sup>308</sup>
- Impacts on the right to take part in cultural life: impacts on cultural heritage and traditional practices, due to pollution and contamination, habitat destruction, impacts on biodiversity and natural resources.
- Rights of ethnic minorities/ indigenous peoples relying on natural resources: Impacts on the livelihoods of ethnic minority groups who particularly rely on land, forest and water for their livelihoods and cultural practices, such as the Moken in the Myeik Archipelago.

#### **Relevant international standards and guidelines:**

- IFC Performance Standards 3 and 6<sup>309</sup>
- Convention on Biodiversity Guidelines on Biodiversity and Tourism Development<sup>310</sup>
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 1.5, 3.1, 3.3, 5.4 and 10.2<sup>311</sup>
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, section D<sup>312</sup>
- Manual on the right to water and sanitation<sup>313</sup>

## Assessment findings

### 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:**

In general, there was insufficient management of waste disposal and a lack of control over pollution and chemical waste by the companies assessed. Examples of this included:

- In many cases there was **no sewage treatment system in tourist areas**. Waste water and garbage was often disposed into the city drainage system, which then went untreated into nearby rivers or lakes. This was due to a poor municipal system and the inconsistent service provided by the city.
- In several cases, communities were **dependent on only one or very few water sources**, which made communities living close to tourist areas more at risk of water shortages when tourist facilities used communities' water sources.
  - In one case in Inle Lake region a water pipeline was destroyed by a hotel project, causing water shortages for the locals.

<sup>308</sup> How does tourism affect the demand for water? Tourism Concern, available at: [http://www.tourismconcern.org.uk/uploads/educational\\_resources/Unit2%20Resource%20A.pdf](http://www.tourismconcern.org.uk/uploads/educational_resources/Unit2%20Resource%20A.pdf)

<sup>309</sup> IFC Performance Standards on Environmental and Social Sustainability, *Supra* note 4.

<sup>310</sup> Convention on Biodiversity, Guidelines on Biodiversity and Tourism, available at: <http://www.cbd.int/tourism/guidelines.shtml>

<sup>311</sup> UNWTO GCET, *Supra* note 43.

<sup>312</sup> *Global Sustainable Tourism Criteria*, *Supra* note 95.

<sup>313</sup> Manual on the Right to Water and Sanitation. Centre of Housing Rights and Eviction, 2008, available at: <http://www.righttowater.info/wp-content/uploads/Manual-on-the-Right-to-Water-and-Sanitation-AAAS.pdf>



- In Kyaikhtiyo, due to water shortages, the nearest additional source of water was at a considerable distance from the community.
- In numerous hotels and restaurants in Yangon, the kitchen and laundry sections as well as the garden **used chemicals. Untreated waste water went through drainage pipelines directly into the nearby river**, potentially causing environmental damage and impacting the health of the local population.
- In many cases there was **no municipal plan for waste management**.
  - One hotel in Mawlamyine hired a person to collect the garbage and bring it to the city garbage collection site.
- Even when there was a sewage system in place, there were reports in Chaungtha of **pipes being blocked by waste, causing water to stagnate and creating breeding grounds for mosquitoes**, thus increasing the risk of insect and water-borne diseases.

### Soil and air

**Human Rights Implicated:** Right to life, right to highest attainable standard of physical and mental health, right to an adequate standard of living, right to be free from unacceptable levels of harmful pollution and environmental degradation

#### Assessment Findings:

- Due to the scarcity of electricity, many hotels and restaurants in Ngwesaung and Mawlamyine frequently used **generators powered by diesel** in order to supply tourists with food, lighting and power. This has led to air pollution.
- Construction to improve the infrastructure for tourism, such as **the clearing of forests in Inle Lake region, road building and ground clearing**, has contributed to soil erosion
- The **haphazard or in some cases non-existent management of waste** has resulted in the **burning of waste by many hotels in Chaungtha and Kyaikhtiyo leading to air pollution and bad smell**. Communities have expressed **fear about the consequences for the health of people** living in this environment; in Kyaikhtiyo there is a primary school nearby.
- Due to the rise in tourist numbers across the country, **a greater number of tour buses and taxis** are in areas of historic, cultural or environmental significance, **contributing to air pollution**.
- Another example highlighted the heavy load that unregulated tourist activity and too many climbers posed on **limestone rocks in Kyaikhtiyo**, leading to their **gradual erosion** and increasing risks to the safety of visitors.
- The poor management of waste in Chaungtha and Ngwesaung has led to the **pollution of beaches**.

### Natural habitat impacts

**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; right to information

#### Assessment Findings:

- **No EIAs or IEEs were conducted** by any of the hotel projects or authorities met by the assessment team.
- When asked about the tourism sector and its environmental impacts, **communities in Inle lake region and Chaungtha expressed fears of losing their subsistence farming livelihoods which would affect their traditional way of living** due to the depletion of natural resources including

forests, mountains and lakes.

- In Inle Lake region communities feared that the development of hotel zones and projects would **spoil or destroy the natural scenery**, thereby removing the foundation for sustainable tourism.
- In Kyaikhtiyo, **villagers feared water shortages** in the future, since there was only one source of water. Some communities were already facing water shortages and had to fetch water from a source 2 miles away.

### Examples of emerging good practice in Myanmar

#### Assessment Findings:

- A number of hotels in Mawlamyine had **systematic water systems and water purification systems in place**. One example was the use of storage tanks for waste water or the purification of water through a purification machine. Two hotels in Ngwesaung had a waste water treatment system.
- Reports indicated that in a few locations, hotels and restaurants had implemented their own systematic and environmentally friendly **systems of waste disposal and waste management**, such as a regular waste pick up to the municipal waste collection.
- **UNDP and Save the Children helped set up sewage tanks for waste water in Inle Lake region** which was previously disposed into the lake.
- A number of hotels in Inle Lake region **spoke to locals about managing their waste and ran a cleanup day**.
- **The Myanmar Tour Guides Association** together with a community based organization in Mandalay organized a **cleanup day twice a month** with hotel staff, tour companies and volunteers.
- A number of Mandalay-based cruise ship operators have **raised awareness about waste** and have encouraged villagers to clean up and not dispose waste in the river.
- One hotel in Kyaikhtiyo **made compost out of food waste and used it as fertilizer**.
- Local NGOs in Bagan initiated projects related to sustainable environmental practices and minimizing the negative impacts of the tourism industry on the surrounding environment, such as **tree planting initiatives and collection of waste**.
- **Tour guides in Bagan** have also taken the initiative to **collect waste** in the communities.
- In Inle Lake region a **hotel encouraged reduced pesticide use** by local farmers; if farmers stopped using pesticides the hotel would buy produce from them.
- **The use of solar panels in main tourist areas is on the increase**. In Bagan **JICA donated solar panels to provide electricity to villagers** and some **hotels in Ngwesaung and Inle Lake** have started using solar panels.
- In June 2014 Conservation group Flora and Fauna International (FFI), MOECF and MOHT agreed to implement a **community-based ecotourism project at Indawgyi Lake** in central Kachin State.<sup>314</sup> This aims to support local livelihoods through the development of ecotourism. Young villagers have been trained in ecotourism and provided with kayaks and mountain bikes that can be rented to tourists to explore the lake and its surrounding forests.

## PART V: CUMULATIVE-LEVEL IMPACTS OF TOURISM OPERATIONS

<sup>314</sup> Community-Based Ecotourism Project Launched at Indawgyi Lake, The Irrawaddy, 18 June 2014, available at: <http://www.irrawaddy.org/burma/community-based-ecotourism-project-launched-indawgyi-lake.html>

## What are cumulative impacts?

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 airshed).<sup>315</sup> Different projects or different phases of the same project add 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 necessarily significant. Instead it is the building of smaller impacts over time or within the same physical footprint, which 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. A response can also be triggered by poorly designed policies that prompt companies to make the same mistakes over again. The resilience of the environment or society to cumulative impacts depends upon the nature of the impacts and the vulnerability (or sensitivity) of the society or ecosystem. In other words, resilience is the degree to which society is susceptible to and able to cope with injury, damage, or harm.<sup>316</sup>

Cumulative impacts can be negative (e.g. multiple hotels take water from dams, reducing access to water for local communities) or positive (e.g. cumulative economic developments in the area justifies opening of a public health clinic or a secondary school). In some cases, cumulative impacts can have both positive and negative effects. Cumulative impacts are particularly relevant in the tourism sector which involves and fragmented actors operating in the same region.

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 of law and order;
- **Environmentally** – the biophysical impact surpasses the environment’s carrying capacity.

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<sup>315</sup> Cumulative Social Impacts, by Franks, Brereton and Moran, in Vanclay and Esteves (Eds), New Directions in Social Impact Assessment: Conceptual and Methodological Advances, 2011. Cumulative impacts are sometimes also referred to as collective impacts.

<sup>316</sup> IFC, Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets (2013). See: [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_cumulativeimpactassessment](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_cumulativeimpactassessment)

**Cumulative impacts** are areas 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 by businesses and the authorities to assess and analyse 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 due to tourism development 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).
- 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. Suppliers of hotels and restaurants can also have a severe human rights impact when they collectively act irresponsibly.
- Populations **most at risk** 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 and regulators focus on assessing impacts of individual projects in a typical Environmental and Social Impact Assessment (ESIA) process, they often do not consider the incremental impacts on areas or resources used or directly impacted by a project from other existing, planned or reasonably defined developments.<sup>317</sup> 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.<sup>318</sup> But they can also be important in regions that have not yet reached maximum capacity but will undergo significant growth, as is the case in certain areas of Myanmar.

<sup>317</sup> Human Rights and Business Dilemmas Forum, Cumulative impacts, available at: <http://human-rights.unglobalcompact.org/dilemmas/cumulative-impacts/#.UxIV4YUXet8>

<sup>318</sup> *Cumulative Social Impacts*, by Franks, Brereton and Moran, in Vanclay and Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, 2011. Cumulative impacts are sometimes also referred to as collective impacts.

The current draft of the Myanmar Environmental Impact Assessment (EIA) Procedure includes references to cumulative impacts, especially for complex projects.<sup>319</sup>

For individual large scale tourism and resort development projects EIAs will have to be carried out.<sup>320</sup> However for hotel zones, where multiple hotels and other tourism businesses will operate, it would be more effective if the government commissioned strategic environmental assessments (SEAs) before such hotel zones are established to assess actual and potential environmental and social impacts, and reduce the risk of consultation fatigue for local communities. Currently SEAs have not been conducted in Myanmar. SEAs can subsequently inform individual tourism project developers.<sup>321</sup>

Both the Responsible Tourism Policy and the Tourism Master Plan have included the roles of different actors, departments and ministries to achieve the aims set out by the policy and action plan.<sup>322</sup> Under Key objectives 1.2 and 3.1 of the Tourism Master Plan the initial focus is the establishment of local destination management organizations and the development of integrated destination management plans for all flagship destinations. These management plans aim to address the cumulative impacts of tourism. Destination management plans will be prepared for all of the main and secondary tourism destinations, but Bagan, Inle, Kyaikhtiyo and the main domestic beach destinations have been prioritized for immediate action because these locations face the greatest challenges from rapid tourism growth.<sup>323</sup> A regional tourism destination management plan for the greater Inle Lake region has been launched in April 2014 to ensure proper coordination and management of the lake and the surrounding area.<sup>324</sup>

## Potential Cumulative Impacts of the Tourism Sector in Myanmar:

### *Institutional*

- ✓ Overload of labour inspection capacity to deal with inspections of tourism operations such as hotels, resorts, cruise ships, airports and airlines
- ✓ Increased pressure on municipal systems for drainage, sewage treatment, garbage disposal, roads, and other municipal services due to new tourism infrastructure
- ✓ Overload of local and regional government capacity to effectively consider EIA, especially for managing cumulative impacts

### *Social and cultural*

- ✓ Competition for workers drives up wages and inflation
- ✓ Increased prices for food and goods makes them unaffordable for local population
- ✓ Successive construction of hotels in the same areas repeatedly disrupts communities
- ✓ Successive land acquisitions for hotel zones within one area rapidly diminishes the land available for livelihoods to local populations<sup>325</sup>

<sup>319</sup> Environmental Impact Assessment Procedure, Asian Development Bank Greater Mekong Subregion Core Environmental Program, available at: [http://www.gms-eoc.org/uploads/resources/362/attachment/EIA%20Procedures%20\(4th%20draft\)-English.pdf](http://www.gms-eoc.org/uploads/resources/362/attachment/EIA%20Procedures%20(4th%20draft)-English.pdf) See: [http://www.gms-eoc.org/uploads/resources/362/attachment/EIA%20Procedures%20\(4th%20draft\)-English.pdf](http://www.gms-eoc.org/uploads/resources/362/attachment/EIA%20Procedures%20(4th%20draft)-English.pdf)

<sup>320</sup> Draft - Environmental Impact Assessment Rules, The Government of the Union of Myanmar Ministry of Environmental Conservation and Forestry, *Supra note* 298

<sup>321</sup> For an example of a Strategic Environmental Assessment study of tourism development in the Province of Guizhou, China, see: [http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/Guizhou\\_SEA\\_FINAL.pdf](http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/Guizhou_SEA_FINAL.pdf)

<sup>322</sup> Tourism Master Plan, *Supra note* 19, p. 11.

<sup>323</sup> *Ibid.*, p. 27, 31.

<sup>324</sup> 100,000 international tourists visited Inle lake in Myanmar, ETN Global Industry Travel News, 8 April 2014, available at: <http://www.eturbonews.com/44467/100000-international-tourists-visited-inle-lake-myanmar>

<sup>325</sup> Expert Roundtable on Cumulative Human Rights Impacts, Office of High Commissioner for Human Rights, 8 May 2013, available at: <http://www.ohchr.org/Documents/Issues/Business/CumulativeImpactsUSA.doc>

- ✓ Land price speculations due to high demand for land for hotel construction leads to unaffordability of land for local communities and future generations
- ✓ Gentrification, i.e. the shift in an urban community towards tourism businesses and increasing property values, leading to displacement of poorer residents who are unable to pay increased rents
- ✓ Large influx of tourists with possible lack of respect for local culture affects traditional culture, values and cultural heritage sites

### **Environmental**

- ✓ Increases in pollutant concentrations in soil or sediments, as a result of several hotels operating in the same area, impacting the livelihoods of farmers and fishermen
- ✓ Increases in pollutant concentrations in Myanmar's lakes, rivers and beaches due to increased operation of cruise ships and small boat operations
- ✓ Reduced water quality due to pollution discharge into rivers, lakes or sea by hotels, restaurants and tourists
- ✓ Reduced water quantity (groundwater draw and water table impacts) from multiple users such as hotels, golf courses and restaurants
- ✓ Traffic congestion, road degradation and increased noise and dust from multiple construction projects in one area<sup>326</sup> or increased tourism-related traffic such as tour buses and taxis
- ✓ Reduced fish catch, disruptions to marine environment in coastal areas and lakes due to waste disposal by hotels, restaurants and tourists, affecting the livelihoods of fisher folk

## **ANNEX I : SECTOR-WIDE IMPACT ASSESSMENT METHODOLOGY**

### **The SWIA Design**

The methodology for this Tourism Sector Wide Impact Assessment (SWIA) is built on well-established processes and procedures for environmental impact assessments (EIA) and social impact assessments (SIA), and emerging practices around human rights impact assessments (HRIA). HRIA are grounded in EIA/SIA methodologies but look at potential impacts through a human rights lens. 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.

### **What is Different about a SWIA?**

- **Wider audience:** A project-level EIA, SIA or ESIA is typically carried out by or for a project developer to fulfill a regulatory requirement as a step in gaining permission to operate. SWIA are intended for a

<sup>326</sup> Cumulative Impacts - A Good Practice Guide For The Australian Coal Mining Industry, CSRM, available at: [http://www.academia.edu/3258678/Cumulative\\_impacts\\_a\\_good\\_practice\\_guide\\_for\\_the\\_Australian\\_coal\\_mining\\_industry\\_Industry\\_Publication](http://www.academia.edu/3258678/Cumulative_impacts_a_good_practice_guide_for_the_Australian_coal_mining_industry_Industry_Publication)



much wider audience: Government and Parliamentarians, business, local communities, civil society, and workers and trade unions.

- **Aims to shape policy, law and projects:** SWIA look at the national context, national frameworks, the legal contracts (where available) and business practices, and identifies what actions will help shape or impede better human rights outcomes for the sector. The findings inform the analysis and recommendations at the core of the SWIA for a range of audiences.
- **Information goes into the public domain:** Company-led HRIA are typically confidential, and ESIA may be also unless disclosure is required. The whole rationale behind the SWIA is to make the document a public good for the purpose of informing and thereby improving practices and outcome of business investment.
- **Looks at 3 Levels of Analysis:** The SWIA looks at the impacts of the sector and to do this uses three levels of analysis: sector, project and cumulative levels.
- **Does not replace a project-level ESIA/HRIA:** The SWIA does not replace the need for a project-level ESIA where such an ESIA is required or desirable. Nor would it substitute for a project-level HRIA if a company chooses to do one. Instead the SWIA helps *inform* a project level assessment, as it gives an indication of the kinds of human rights impacts that have arisen in the past in the sector. This helps to forecast what future impacts may be. A SWIA may be particularly relevant at the project scoping stage. The SWIA also alerts to potential legacy issues that incoming operations may face. Such assessments will have to examine the specific situation of the forthcoming project within the particular local context and in doing so, may also uncover new potential impacts that were not picked up in the SWIA. It is therefore not a checklist but a guide for considerations in subsequent impact assessments.
- **Does not replace a project-level conflict risk assessment:** Given the history of conflict in certain areas of the country, companies operating in those areas might want to carry out project level conflict risk assessments. The limited number of people interviewed and places visited within the framework of this SWIA is not sufficient to develop a comprehensive analysis of drivers of conflict. However, such a limitation is inevitable in the rationale for the SWIA, which cannot expect to get this level of detail across the country. Furthermore, the types of interviewees would need to be expanded in order to more effectively capture conflict impacts, including conflict experts, ethnic armed group and community leaders.
- **Takes a broad view of what a human rights impact includes.** As HRIA methodology evolves, there has been an accompanying discussion about what distinguishes a human rights impact from other types of social impacts in particular. The SWIA takes a broad view of what constitutes a human rights impact, as there are a wide variety of actions that can ultimately result in human rights impacts and because it is intended to support an approach to responsible business conduct in the country which will require addressing all these issues.
- **Takes a practical view on distinguishing different types of impact assessments.** In the tourism sector where ESIA's are often a routine requirement, there have been discussions on what distinguishes an EIA or SIA from an HRIA, potentially diverting attention from getting on with the process of assessing and addressing potential impacts. The approach taken in this SWIA is that the labels that are given to the process are less important than getting the process and the content covered in a manner that is compatible with human rights and that a lot depends on the quality of the ESIA/SIA. A good quality ESIA/SIA comes close to addressing many human rights issues but may not pay sufficient attention to civil and political rights, and in considering risks to human rights defenders, which can be relevant to extractive projects.<sup>327</sup> See the Box below.

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<sup>327</sup> See: "Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya", A/HRC/19/55 (2011), sections III & IV. Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf)

- **Does not establish a baseline but instead describes the situation for the sector at a moment in time.** The SWIA does not purport to set out a baseline of conditions at the project level; this is a task for project-level ESIA.
- **Would provide relevant information for a sector master plan or strategic ESIA.** Sectoral master plans or strategic impact assessments have not been used to date in Myanmar. SWIAs could be used as a basis to develop sectoral plans and strategic impact assessments.

## SWIA Phases

The SWIA process follows well-established impact assessment steps. For each step of the process specific tools or approaches have been developed, which are described below.<sup>328</sup>



SWIA Phase	Objectives and Tasks	Key Outputs/Tools
<b>I. Scoping the Tourism sector in Myanmar</b>	<p><b>Objective:</b> Develop foundational knowledge base to target field research for validation and deepening of data</p> <p><b>Tasks:</b></p> <ul style="list-style-type: none"> <li>• Commission expert background papers on: the Tourism sector in Myanmar; Myanmar's legal framework; land issues in Myanmar; and labour issues in Myanmar.</li> <li>• Stakeholder mapping</li> </ul>	<ul style="list-style-type: none"> <li>• Scoping papers</li> <li>• SWIA work plan</li> </ul>
<b>II. Identification and Assessment of Impacts</b>	<p><b>Objective:</b> Validate the defined scope of the Tourism SWIA, to obtain input on locations and issues identified for the SWIA and to build networks with actors that work on issues relevant to the Tourism sector in Myanmar</p> <p><b>Tasks:</b></p> <ul style="list-style-type: none"> <li>• Two rounds of field team visits to three different locations each time collecting qualitative data on:               <ul style="list-style-type: none"> <li>• Livelihoods; Environment; Housing &amp; Land; Community Consultation; Grievance Mechanisms; Public &amp; Community Services; In-Migration; Cultural Rights; Vulnerable Groups; Labour; Security; and Worker Housing</li> </ul> </li> <li>• Compile and synthesise field data, including IHRB/DIHR trips to debrief with research teams in Yangon</li> <li>• Further desk research</li> <li>• See field research location map, overview of stakeholders consulted and field research methodology</li> </ul>	<ul style="list-style-type: none"> <li>• Questionnaires</li> <li>• Internal fact sheets on various business and human rights issues in Myanmar</li> <li>• Ethical research policy</li> <li>• Field safety guidelines</li> <li>• Interview summaries</li> <li>• Reports of stakeholders consulted</li> </ul>
<b>III. Mitigation and Impact Management</b>	<p><b>Objective:</b> identify measures that will help avoid, minimise, mitigate potential impacts of the sector</p> <p><b>Tasks:</b></p> <p>Synthesise information on potential impacts at the three levels: sector, cumulative and project in order to identify</p>	<ul style="list-style-type: none"> <li>• Initial synthesis reports of field findings</li> </ul>

<sup>328</sup> This table has been 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](http://www.kuoni.com/docs/assessing_human_rights_impacts_0.pdf)

	considerations for companies and Government to prevent or mitigate potential impacts	
IV. Preparation of the SWIA report	<b>Objective:</b> Present findings of desk and field research, consultations and recommendations for the tourism sector. <b>Tasks:</b> <ul style="list-style-type: none"> <li>• Iterative drafting of main SWIA chapters</li> <li>• Translations for consultations</li> </ul>	<ul style="list-style-type: none"> <li>• Draft SWIA report in English and PPT presentation in Burmese</li> </ul>
V. Consultation on draft SWIA and Finalisation	<b>Objective:</b> Present SWIA findings, conclusions, and recommendations to representatives of Myanmar government, Tourism companies operating/planning to operate in Myanmar, and representatives of civil society organizations, some of whom represent those affected by Tourism operations in Myanmar, trade unions, international organisations, donor governments. <b>Tasks:</b> <ul style="list-style-type: none"> <li>• Consultations in Yangon, Naypyitaw and Europe</li> <li>• Revisions to draft SWIA</li> <li>• Finalisation, publication and dissemination of the Tourism SWIA</li> </ul>	<ul style="list-style-type: none"> <li>• Slidepack summarising the SWIA findings for consultation</li> <li>• Consultation report</li> <li>• Final Tourism SWIA report and dissemination programme</li> </ul>

### Limitations of the Tourism SWIA Field Research

- The SWIA's recommendations aim to be generally applicable to tourism regions of Myanmar, particularly those that have not experienced ethnic conflict. However not all areas where current or future tourism development activities are taking place in Myanmar have been included in the SWIA field research. Field research focused on six regions that are already major or emerging tourist destinations. The locations were selected as representative of a range of tourism contexts in Myanmar, such as cities, coastal areas, cultural heritage destinations and religious/pilgrimage sites. 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 decided to conduct field research in existing tourism locations, rather than potential new areas. There was a concern that asking about the potential for tourism in certain areas might create concerns in communities and potentially build expectations (good or bad) about situations that may not occur.
- As far as possible, the assessment sought to understand the impacts of the tourism sector on vulnerable groups, particularly children. On some occasions children were interviewed individually. During the second round of field work a separate focus group discussion with children was conducted.
- Generally, authorities and companies were willing to grant access to the SWIA field teams and share information. In some instances no permission was granted to speak to individual workers.
- While the SWIA field teams tried to conduct workers' interviews away from the workplace and without the presence of management, this was not always possible. This may have resulted in different responses than if interviews had been held offsite.

## Field visit locations



### 1<sup>st</sup> round of field visits – Dec. 2013:

- A. Yangon
- B. Bagan
- C. Inle Lake (Shan State)

### 2<sup>nd</sup> round of field visits – Jan. 2014:

- D. Mawlamyine and Kyaikhtiyo
- E. Ngwesaung and Chaungtha
- F. Mandalay

## Overview of Stakeholders Consulted

The assessment team conducted approximately 200 interviews with individuals and over hundred focus groups discussions. Researchers often began visits to different towns by speaking with the local township or village authorities. This helped provide an initial understanding of what the authorities thought were some of the main issues affecting or concerning the community as a whole. Researchers then conducted individual interviews and focus group discussions to discuss these issues in more detail and also other issues covered in the questionnaires. On the company side researchers met owners and workers of hotels (small, medium, large, international and local hotels), guesthouses, tour operators, tour guides, restaurants and souvenir shops, and the management of airlines.

Meetings were held in Yangon with various relevant stakeholders including international intergovernmental organizations such as the Asian Development Bank, UNICEF, and UNESCO, non-profit organizations such as The Code, Travelife, Hanns Seidel Foundation and Swisscontact. Meetings were also held with the Myanmar Tourism Federation and its business associations and local and international tourism experts. Meetings were also held in Naypyitaw and Yangon with the Ministry of Hotels and Tourism and MPs and local government officials from field areas.

In addition to the field team research, in July-August 2014 MCRB was assisted by a researcher interning with the Centre who was studying the challenges of tourism development in the context of the ongoing peace process, and the perspectives of various civil society organizations, non-state armed groups, and business stakeholders in Mon and Karen states. She met regional representatives of nine international NGOs, sixteen local NGOs/CSOs, Myanmar Peace Center, and members of the NMSP, KNU, PNLO, the Mon National Party and Karen political parties, as well as seven tourism companies.

### **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 drew 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 companies in the tourism sector (hotels, guest houses, tour operators, souvenir shops etc.) and sub-contractors; workers; communities; and other external stakeholders (local or national authorities, NGOs, international organizations, journalists, political parties, schools and monasteries).<sup>329</sup> Interviews were held one on one, in small groups or 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 rather than yes-or-no 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.

<b>Community impacts, including consultation and participation</b>	<b>Labour (including working conditions and opportunities)</b>	<b>Security arrangements</b>	<b>Land acquisition and resettlement practices</b>
<ul style="list-style-type: none"> <li>Community impacts in construction phase of tourism projects</li> <li>Community impacts of ongoing tourism projects</li> <li>Provision of project information to communities in understandable language and content</li> <li>Consultation and participation in understandable language and</li> </ul>	<ul style="list-style-type: none"> <li>Working conditions</li> <li>Working hours</li> <li>Seasonal workers</li> <li>Wages and benefits</li> <li>Leave and breaks</li> <li>Contracts</li> <li>Non-discrimination</li> <li>Freedom of association</li> <li>Forced labour and child labour</li> <li>Grievance mechanisms</li> <li>Job creation</li> <li>Vocational training</li> </ul> <p><b>Health and safety of employees</b></p>	<ul style="list-style-type: none"> <li>General security situation</li> <li>Security management procedures</li> <li>Recruitment and training of security personnel</li> <li>Use of force</li> <li>Incidents between security personnel and employees</li> <li>Community consultation on security arrangements</li> <li>Incidents between security</li> </ul>	<ul style="list-style-type: none"> <li>Community land acquisition and compensation</li> <li>Land purchase</li> <li>Verification of true land ownership</li> <li>Community perceptions on land acquisition</li> <li>Land acquisition and cultural heritage</li> <li>Cost of land</li> <li>Resettlement processes including consultation</li> <li>Selection of resettlement location</li> <li>Community complaint mechanisms</li> </ul>

<sup>329</sup> For more information on DIHRs Human Rights Compliance Assessment Tool: <https://hrca2.humanrightsbusiness.org/Default.aspx>

<p>content</p> <ul style="list-style-type: none"> <li>• Consultation of various segments of community, e.g. fishing communities</li> </ul>	<ul style="list-style-type: none"> <li>• Workplace health and safety</li> <li>• Health &amp; safety training</li> <li>• Personal protective equipment (PPE)</li> <li>• Access to medical services</li> <li>• Emergency procedures</li> <li>• Occupational accidents and illnesses</li> <li>• Hazardous working conditions</li> </ul>	<p>personnel and community members</p> <ul style="list-style-type: none"> <li>• Protests</li> <li>• Company follow up on handling by police</li> </ul>	<p>regarding resettlement</p> <ul style="list-style-type: none"> <li>• Living conditions at resettlement location</li> <li>• Compensation due to resettlement</li> <li>• Resettlement and vulnerable groups</li> <li>• Rehabilitation of communal land</li> </ul>
<p><b>Gender</b></p> <ul style="list-style-type: none"> <li>• Impacts on livelihood activities of women</li> <li>• Change in girls' schools attendance</li> <li>• Impacts on women's safety</li> <li>• Incidents of sexual harassment</li> <li>• Marginalization of women</li> <li>• Women and land rights</li> <li>• Creation of job opportunities for women</li> <li>• Positive impacts on women</li> </ul>	<p><b>Children's rights</b></p> <ul style="list-style-type: none"> <li>• Impacts on school attendance due to presence of tourism projects</li> <li>• Child labour</li> <li>• Child safety</li> <li>• Impacts on access to food and water for children</li> <li>• Other health impacts on children</li> <li>• Child abuse or exploitation</li> <li>• Projects to promote children's rights</li> </ul>	<p><b>Impacts of inward and outward migration on communities</b></p> <ul style="list-style-type: none"> <li>• Incidents of tensions in community</li> <li>• Increase of conflict, violence, sexual exploitation, illnesses</li> <li>• Increase in food/housing costs</li> <li>• Impacts on public services</li> <li>• Positive impacts due to in-migration or out-migration</li> </ul>	<p><b>Environment and ecosystem services</b></p> <ul style="list-style-type: none"> <li>• Company assessment of environmental impacts</li> <li>• Air, soil and water pollution</li> <li>• Waste disposal, waste water treatment</li> <li>• Environmental emergencies procedures</li> <li>• Change in access to water</li> <li>• Complaints mechanism about environmental impacts</li> </ul>
<p><b>Social and cultural impacts on communities</b></p> <ul style="list-style-type: none"> <li>• Impacts on community traditions and cultural practices</li> <li>• Impacts on traditional knowledge</li> <li>• Increase of drug/alcohol use/abuse, gambling, sexual exploitation</li> <li>• Cultural heritage sites</li> </ul>	<p><b>Conflict</b></p> <ul style="list-style-type: none"> <li>• Potential and actual conflicts between communities and companies due to presence of tourism projects</li> <li>• Potential and actual conflicts between communities and authorities due to presence of tourism projects</li> </ul>	<p><b>Livelihoods of communities</b></p> <ul style="list-style-type: none"> <li>• General livelihood activities</li> <li>• Company assessment of livelihoods of communities</li> <li>• Positive and negative livelihood changes due to presence of tourism projects</li> </ul>	<p><b>Ethical business practices</b></p> <ul style="list-style-type: none"> <li>• Company policies on corruption and bribery</li> <li>• Requests for or payment of bribes and facilitation payments</li> <li>• Culturally respectful behavior</li> </ul>
<p><b>Complaint mechanisms for communities</b></p> <ul style="list-style-type: none"> <li>• Company management processes on</li> </ul>	<p><b>Public services and community services</b></p> <ul style="list-style-type: none"> <li>• General public services and community services</li> <li>• Changes to availability, accessibility or affordability</li> </ul>	<p><b>Indigenous peoples</b></p> <ul style="list-style-type: none"> <li>• General overview of indigenous peoples</li> <li>• Status of indigenous peoples including laws and</li> </ul>	<p><b>Housing</b></p> <ul style="list-style-type: none"> <li>• General housing conditions</li> <li>• Change in housing prices, availability of house building</li> </ul>



complaints handling <ul style="list-style-type: none"> <li>Incidents between companies and communities</li> <li>Complaint resolution</li> </ul>	of public and community services of due to presence of tourism projects	governance	materials, availability of housing and quality of housing
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### **The Tourism SWIA Field Research Team**

The Tourism SWIA team consisted of a Myanmar SWIA manager (responsible for managing several sector-wide impact assessments), one tourism field team leader and six field researchers. The field team leader was a tourism 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 tourism 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, DIHR and IHRB experts debriefed the teams in Yangon to reflect on the team's findings and fine-tune the research approach and the subsequent data compilation process. Following the 2<sup>nd</sup> round of field visits, DIHR and IHRB experts again debriefed the teams to get a comprehensive "download" of the 2<sup>nd</sup> round findings and discuss some of the root causes of the impacts before the final data compilation was completed.