

Cumulative and Project Level Impacts



CUMULATIVE AND PROJECT LEVEL IMPACTS

Cumulative Impacts and Impact Assessment

In the following chapters:

This chapter first presents an introduction to cumulative impacts of the tourism sector in Myanmar, followed by an overview of the impacts associated with a range of existing projects, recognizing that impacts are often very context-specific and, importantly, can be avoided or shaped by (good and bad) company practices. Since there is an overlap between the cumulative impacts of the tourism sector and project-level impacts, where relevant the cumulative impacts are integrated into the impact summaries for each of the eight issues identified below.

The information presented draws from desk and field research in six regions where tourism activities are currently being undertaken or are expected to increase. The six regions represent a range of different tourism areas such as cities, coastal areas and pilgrimage destinations.

Each chapter presents common project level impacts that are relevant to the tourism sector, as well as a section on cumulative impacts, structured around **eight issues**:

- 4.1 Stakeholder Engagement & Grievance Mechanisms
- 4.2 Communities
- 4.3 Land
- 4.4 Labour
- 4.5 Groups at Risk
- 4.6 Culture
- 4.7 Physical Security
- 4.8 Environment & Ecosystem Services

Each of the above chapter follows the same structure, presenting the:

- A. National Context
- B. Cumulative Impacts
- C. Assessment Findings
- D. Examples of Emerging Good Practices in Myanmar
- E. International Standards and Guidance

Examples of **responsible tourism initiatives from other countries** have been included when relevant.

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).³⁵⁷ Different projects or different phases of the same project contribute 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 may not necessarily be significant. Instead, it is the building of smaller impacts over time or within the same physical footprint, that have a cumulative effect. Sometimes a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly. A response can also be triggered by poorly designed policies that prompt companies to repeat the same mistakes. 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.³⁵⁸

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 various 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.

³⁵⁷ “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.

³⁵⁸ [Good Practice Handbook on Cumulative Impact Assessment and Management](#): Guidance for the Private Sector in Emerging Markets, International Finance Corporation, 2013.

Box 17: Human Rights Concerns Regarding Cumulative Impacts

4.1

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) 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. Ultimately the government has the responsibility to protect against human rights violations. When it comes to cumulative impacts this is particularly relevant, given the difficulty to hold individual businesses accountable.
- Companies **may not consider themselves responsible** for cumulative impacts as they make only a *contribution* to these impacts. This may especially be the case where their activities individually fit within acceptable regulatory limits, but 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 are likely to 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 may build up incrementally over time. Accordingly, it may be more **difficult to draw attention to the issues and prompt action** from responsible parties.

Because project developers and regulators focus on assessing impacts of individual projects through 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.³⁵⁹ 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.³⁶⁰ 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.

The current draft of the Myanmar Environmental Impact Assessment (EIA) Procedure includes a requirement for assessment of cumulative impacts in the EIA report, especially for complex projects³⁶¹ and MOECAP is expected to issue EIA guidelines providing further details about how these should be assessed.

For individual large scale tourism and resort development projects, EIAs will have to be carried out, as described in the Projects Categorization for IEE-EIAs, an annex to the Environmental Impact Assessment Procedure. However, for hotel zones, where multiple hotels and other tourism businesses will operate in the same location, it would be more effective if the government commissioned Strategic Impact Assessments (SIAs)³⁶² before such hotel zones are established, to assess actual and potential environmental and social impacts, and to reduce the risk of consultation fatigue for local communities. Such SIAs can subsequently inform individual tourism project developers.³⁶³ To date, SIAs have not been conducted in Myanmar, unlike Cambodia.³⁶⁴

Both the Responsible Tourism Policy and the Master Plan establish the role of different actors, departments and ministries in achieving the aims set out by the policy and action plan.³⁶⁵ Under Key objectives 1.2 and 3.1 of the Tourism Master Plan the initial focus is on the establishment of local destination management organizations (DMOs), which incorporate representation from public, private and civil society organizations and promote grassroots participation in tourism planning and decision making.

Key objective (3.1) of the Tourism Master Plan calls for the development of integrated destination management plans for all flagship destinations. These management plans are intended to include a monitoring program to evaluate the positive and negative social and economic impacts of tourism, especially on local communities, and should therefore be a tool to address the cumulative impacts of tourism. Destination management plans will be prepared for all of primary and secondary tourism destinations. But Bagan, Inle, Kyaikhtiyo

³⁵⁹ [Human Rights and Business Dilemmas Forum, Cumulative impacts](#)

³⁶⁰ *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.

³⁶¹ Draft Myanmar [Environmental Impact Assessment Procedure](#), Asian Development Bank Greater Mekong Subregion Core Environmental Program.

³⁶² Strategic Impact Assessment (SIA), also known as strategic environmental assessment (SEA), is the assessment of the wider environmental, social and economic impacts of alternative proposals at the beginning of a project, at the policy, planning or program level.

³⁶³ 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

³⁶⁴ A [Strategic Impact Assessments in the tourism sector](#) has been carried out in Cambodia by the Asian Development Bank (2009).

³⁶⁵ [Tourism Master Plan](#), p. 11.

and the main domestic beach destinations have been prioritized for immediate action because these locations face the greatest challenges from rapid tourism growth.³⁶⁶

4.1

To date only two such destination management plans have been or are in the process of being developed and no Destination Management Organizations have yet been established yet. A regional tourism destination management plan for the greater Inle Lake region was launched in April 2014 to ensure proper coordination and management of the lake and its surrounding area.³⁶⁷ Subsequently a Destination Management Plan for the Inle Lake Region was elaborated by Myanmar Institute for Integrated Development and launched in September 2014. The aim of the Destination Management Plan is to provide a framework for the development of a Destination Management Organization (DMO) that will coordinate responsible and sustainable development in the Inle Lake region.³⁶⁸

Bagan has been selected for Japan International Cooperation Agency (JICA)'s technical assistance in developing a Pilot Model for Regional Tourism Development in Myanmar. The pilot study has taken into consideration issues such as local people's involvement in tourism, capacity development and job creation, and heritage conservation.³⁶⁹

In Mon State, where tourism has increased six-fold since 2011, a committee composed of hoteliers association, travel industries association, souvenir shop owners association and tour guides association was formed in early 2014 in Mawlamyine by the state minister for planning and economy. The committee aims to develop the tourism sector in the region in order for the state to gain revenues from the sector.³⁷⁰ Destination management is badly needed for Kyaikhtiyo in Mon State, where the Golden Rock is situated, which is under severe environmental stress from domestic pilgrimage visitors. This stress will increase as more international visitors expected to access it via the Thai border.

International Guidance on Cumulative Impacts

Box 18: Relevant International Guidance on Cumulative Impacts

- IFC, "[Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets](#)"
- UN Global Compact, "[Business & Human Rights Dilemmas Forum: Cumulative Impacts](#)"

³⁶⁶ *Ibid.*, pp. 27, 31.

³⁶⁷ [100,000 international tourists visited Inle lake in Myanmar](#), ETN Global Industry Travel News, 8 April 2014.

³⁶⁸ Destination Management Plan for the Inlay Lake Region, 2014-2019, Ministry of Hotels and Tourism, *op. cit.*, October 2014.

³⁶⁹ [The Detailed Planning Survey on Establishment of the Pilot Model for Regional Tourism Development in the Republic of the Union of Myanmar](#), *Final Report*, Japan International Cooperation Agency, August 2014.

³⁷⁰ [CSR: A new popular word](#), Acumen, Myanmar B2B Management Magazine, 36–37 March 2014.



Cumulative & Project Level Impacts
**Stakeholder Engagement
& Grievance Mechanisms**

Kinnari Travels

Stakeholder Engagement & Grievance Mechanisms

In this section:

- A. National Context
- B. Assessment Findings
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A. National Context

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Until recently, citizens' rights to speak freely had been forcefully suppressed for 50 years and, as a result, many individuals remain reluctant, even fearful, to speak out against the Government, and the military in particular. That is beginning to change. Further, the Government has historically placed itself as the main interface between companies and communities and this approach persists in some areas. This has often been the case in the tourism sector, where communities are frequently not warned or consulted about the acquisition of land for large scale tourism projects or other impacts that tourism projects may have on them.

Box 19: Case Study – Participation of Local Leaders in Tourism Development, India

Three civil society organizations in India working in the field of responsible tourism collaborated on a study on Panchayati Raj Institutions (councils of local village leaders) and tourism with the objectives of studying the role of Panchayats at every stage of tourism development and to examine role of elected women representatives in tourism. The study was conducted in Goa. Initial findings of the study indicate the lack of awareness among people about Panchayats as an institution, the link between Panchayats and tourism and lack of social and political support for elected women representatives.³⁷¹

Consultation and participation with diverse stakeholders are vital for inclusive and sustainable growth of the tourism sector. Integrating local communities, farmers' associations, labour unions, religious organisations, women's groups, research institutes,

³⁷¹ [Consultation on Panchayati Raj Institutions and Tourism](#), Equations, 2014.

ethnic groups, and NGOs into all planning processes will allow the government to design better solutions to development needs, give its approaches stronger local ownership, and help create more sustainable development. 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 significant improvements in the rights to freedom of expression, including loosening of restrictions on the media, and in peaceful assembly and the ability to stage peaceful protests.³⁷²

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, and on the military, remains problematic, as shown by the arrests of journalists as recent as July 2014, some of whom were sentenced to years of hard labour for their reporting.³⁷³ 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.³⁷⁴ 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, contribute to fears of press self-censorship.³⁷⁵

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. Moreover, many laws that 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).³⁷⁶

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

³⁷² In January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See: The Republic of the Union of Myanmar President’s Office, “[Order No. 3/2013](#)” (28 January 2013) and “[Order No 2/88](#)”.

³⁷³ [Burma Resorting to Police State Tactics’ in Unity Trial: US Official](#), *The Irrawaddy*, 17 July 2014.

³⁷⁴ [Burma falters, backtracks on press freedom](#), Committee to Protect Journalists, 13 June 2013

³⁷⁵ [Burma Clampdown Gathers Pace as Legislation Passed](#), *The Irrawaddy*, 17 March 2014.

³⁷⁶ For a discussion of these and other laws, see [Justice on Trial](#), Amnesty International, July 2003.

imprisoned under its provisions, which allowed for up to one-year imprisonment for those who demonstrate without prior permission.³⁷⁷ 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.³⁷⁸ 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.³⁷⁹

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.³⁸⁰ In February 2013, seven villagers in Nyaungshwe Township, near Inle Lake were charged with obstruction following a protest demonstration against the development of a hotel zone.³⁸¹ In June of the same year, a number of those protesters went into hiding due to threats of being arrested.³⁸²

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 removed³⁸³. It retains another provision of concern to CSOs, which requires groups who do decide to register to do so at the township, state or national level, thereby potentially restricting their area of operation.³⁸⁴

Transparency and the Right to Information

There is currently no freedom of information law in Myanmar, although civil society organizations are advocating for such legislation. 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

³⁷⁷ [The Right to Peaceful Assembly and Peaceful Procession Act](#), Pyidaungsu Hluttaw, December 2011. Requirements include an application form submitted at least five days in advance; the biographies of assembly leaders and speakers; the purpose, route, and content of “chants”; approximate number of attendees, etc., Chapter 3, 4.

³⁷⁸ [Peaceful Assembly Bill passed, now awaits President’s signature](#), *Democratic Voice of Burma*, 19 June 2014.

³⁷⁹ [Despite Amnesty, Political Prisoners Remain](#), *Myanmar Times*, 17 January 2014.

³⁸⁰ [The Run on Myanmar, Stumbling Blocks on the Way to Responsible Tourism](#), Tourism Watch.

³⁸¹ [Seven charged over Inle Lake Hotel Zone protest](#), *Myanmar Times*, 25 February 2013.

³⁸² [Farmers in hiding near Inle Lake as officials crackdown on ‘plough protests’](#), *Democratic Voice of Burma*, 16 June 2013.

³⁸³ [NGO Law Monitor: Myanmar \(Burma\)](#), ICNL, 25 July 2014.

³⁸⁴ [Activists relay worries of draft association law to parliament](#), DVB, 5 June 2014.

President's and Ministries' websites.³⁸⁵ For example the Ministry of Labour, Employment, and Social Security publishes the text of recent laws and provides information about benefits,³⁸⁶ and the Directorate of Investment and Company Administration's website which provides access to a Myanmar Investment Guide and a list of proposals approved by the Investment Commission has recently been upgraded.³⁸⁷ More information is also being made available about tax and public finances.

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. The Union Government has responded by creating the Myanmar Human Rights Commission or forming investigative bodies to deal with complaints. However, it has not been given powers to resolve the many hundreds of complaints they have received, for example in relation to land disputes. Protesters, particularly those involved in land disputes, are still being arrested and charged for peaceful activities by local authorities.

Given the executive's influence over, 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. More information on tourism in ethnic minority regions can be found in Part 3.1.

Grassroots ethnic minority organizations in Myanmar have indicated that there is a lack of consultation for future tourism development in current or post-conflict areas. There are particular challenges in conducting effective consultations in these areas. The fact that local authorities are either not neutral or not perceived as such constitutes one of the main challenges in developing tourism in a participatory manner in ethnic and post-conflict 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 to

³⁸⁵ See for example: <http://www.president-office.gov.mm/en/> and <http://www.modins.net/myanmarinfo/ministry/home.htm>

³⁸⁶ Available at: <http://www.mol.gov.mm/en/>

³⁸⁷ Available at: <http://dica.x-aas.net/dica/permitted-investment-company>

identify 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.

Recent government policy documents, if implemented, should address some of these challenges. The Myanmar Tourism Master Plan and the Policy on Community Involvement in Tourism (CIT) incorporate principles of stakeholder consultation and participation. In the Master Plan 'consultation and participation' is one of seven cross-cutting themes identified; the Master Plan states 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.³⁸⁸ The Plan 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.³⁸⁹

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 of this policy addresses 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.³⁹⁰

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 the establishment of the role of local communities in the management of tourism.³⁹¹

³⁸⁸ [Tourism Master Plan](#), p. 26.

³⁸⁹ [Tourism Master Plan](#), Key objective 3.2.3, p. 47.

³⁹⁰ Policy on [Community Involvement in Tourism](#), pp. 14-15.

³⁹¹ [Responsible Tourism Policy](#), Aim 7, p. 17.

Box 20: Case Study – Stakeholder Engagement and Transparency in the Tourism Sector

Kuoni's Human Rights Impact Assessments

Swiss-based travel company Kuoni, together with the firm TwentyFifty, have conducted two Human Rights Impact Assessments (HRIAs) in Kenya and India, both of them published.³⁹² The HRIA in India was led by Kuoni head office with the Human Rights Focal Point of Sita Travels, Kuoni's counterpart in India, who were in charge of designing the assessment methodology, conducting desk research and liaising with experts, on-site assessment, and facilitating the identification of findings, conclusions and mitigating actions with project partners and stakeholders. As part of the assessment, Sita management and employees, accommodation providers, transportation companies and souvenir shops were interviewed, as well as trade unions and associations, academia, UN bodies, clients, NGOs, community members, government and statutory bodies and children.

The assessment team was supported by an international stakeholder advisory group consisting of a number of NGOs, UNICEF, and the Swiss Centre for Expertise in Human Rights. Their input was sought throughout the process in through a series of individual discussions. The advisory group advised on the identification of the stakeholders to engage with before and during the on-site assessment, provided the project team with early insights into the human rights impacts of tourism in India related to their particular field of expertise, utilized their networks with civil society to seek meaningful and appropriate consultations with rights-holders and/or their representatives, gave feedback on the design of the impact assessment process, the methodology and the drafting of the final report.

B. Cumulative Impacts

- With the development of large scale tourism projects in Myanmar, a number of cumulative impacts related to stakeholder engagement, participation and grievance mechanisms can be identified:
- Impact assessments will have to be carried out for specific projects such as hotels, airports, golf courses and other large-scale tourism projects. Each assessment, if carried out correctly, will involve consultation of stakeholders including community members. This will put a pressure on the same communities over and over again, causing consultation fatigue. Strategic Environmental/Impact Assessments of whole destinations rather than of projects could reduce consultation fatigue and provide for more holistic consultation processes. These do not exist yet in Myanmar.

³⁹² [Assessing Human Rights Impacts, India Project Report](#), Kuoni, February 2014, p. 6 and pp. 36-38.

C. Assessment Findings

Consultation and 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.
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- 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 the Inle Lake region, **neither the government nor companies consulted the community to try to find out who the true owners or users of the land were.**
 - **Reluctance to permit or accept direct engagement by companies with communities** was reported. One Yangon-based tour operator submitted a request to the Union of Myanmar Tourism Association (UMTA) 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 the 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 still face 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**.

C. Examples of Emerging Good Practices 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, which was conducted by the Ministry of Hotels and Tourism and a development group, led to consent of the community to 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 at the acquired land intact** at 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 about 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.

D. Relevant International Standards and Guidance

Box 21: Relevant International Standards and Guidance on Stakeholder Engagement and Grievance Mechanisms

Relevant International Standards:

- [UN Declaration on the Rights of Indigenous Peoples](#)
- [IFC Performance Standard 1](#)

Relevant Guidance:

- [IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#) (2007)
- [BSR, Back to Basics: How to Make Stakeholder Engagement Meaningful for Your Company](#) (January 2012)
- Corporate Social Responsibility Initiative, Harvard University, Kennedy School of Government, [Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders](#) (2008)
- The UNWTO's [Global Code of Ethics for Tourism](#), Article 10, provides a potential mechanism for all stakeholders involved in tourism development for dealing with disputes regarding the interpretation and implementation of the Code, which can be raised with the World Committee on Tourism Ethics

Cumulative & Project Level Impacts

Community Impacts



Community Impacts

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- E. Relevant International Standards and Guidance

A. National Context

Many Myanmar communities are characterized by low levels of education, high rates of poverty and lack of adequate health care. As of 2011, approximately 70% of the population was occupied in agriculture and related activities.³⁹³ The UNDP reports that the national poverty rate is 26% and that poverty rates are twice as high in rural areas as compared with urban areas.³⁹⁴ However, more recent information reported in May 2014 by the World Bank in Myanmar suggests a national poverty rate of 37.5%, and a higher rate of urban poverty using a higher number of minimum calories per day as a cut-off point for poverty.³⁹⁵

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. Low secondary school enrolment rates,³⁹⁶ often due to poverty, present continuing challenges. Official literacy rates are more than 90 percent. But one survey has found that a third of rural people (from a small sample) were functionally illiterate, which is indicative of a widely observed problem.³⁹⁷ Access to safe drinking water and electricity varies significantly across different states and regions. On average, 69.4% of the population has access to safe drinking water.³⁹⁸ Access to electricity in 2011 was 26%, calculated as a national average.³⁹⁹

The 2010 poverty rates in certain key 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).⁴⁰⁰

³⁹³ Myanmar Ministry of Labour Handbook on Human Resources; Development indicators 2009, Ministry of Labour Nay Pyi Taw, 2011.

³⁹⁴ [Interim Country Partnership Strategy: Myanmar 2012 – 2014](#), *Poverty Analysis*, Summary, p. 4

³⁹⁵ [Data tweaks change face of poverty](#), Myanmar Times, 19 May, 2014

³⁹⁶ [Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar](#), UNICEF, p.10 .

³⁹⁷ [Creating a Future: Using Natural Resources for New Federalism and Unity](#), Harvard Kennedy School, Ash Center, July, 2013

³⁹⁸ For more inclusive growth and equitable opportunities, [Multidimensional Review of Myanmar, Initial Observations, OECD, 2013](#), p. 168

³⁹⁹ [Myanmar in Transition: Opportunities and Challenges](#), Asian Development Bank, p. 22, August, 2012

⁴⁰⁰ Interim Country Partnership Strategy, World Bank, *op. cit.*

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.⁴⁰¹ Tourism can enhance economic values of natural and cultural heritage assets.⁴⁰² 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.⁴⁰³

The Myanmar Responsible Tourism Policy (MRTP) stresses the need to empower and engage host communities in tourism skills training, planning and management. This will maximise opportunities for people from local communities to gain employment in the tourism sector and to sell goods and services to visitors.⁴⁰⁴ Another, lower priority, aim of the Responsible Tourism Policy is the promotion of the purchase of local products to promote local economic development and the development of local transport infrastructure, to maximise local economic benefits in major destinations.⁴⁰⁵

Box 22: Case Study – Community-Owned Tourism Organization in Belize

Toledo Ecotourism Association Belize

The Toledo Ecotourism Association (TEA) is a community-owned organization operated by a number of villages in Belize. The objective of TEA is to share the benefits of tourism as widely as possible throughout each participating village. Guides, food providers and entertainers rotate among seven to nine families in each village. All decisions related to tourism are taken by villagers.⁴⁰⁶

The Policy on Community Involvement in Tourism (CIT) sets out guidelines for community involvement to contribute towards rural development and poverty alleviation.⁴⁰⁷ The Myanmar Tourism Master Plan identifies actions related to community involvement and empowerment in the planning and management of tourism, provision of 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 a further goal. The Tourism Master Plan also seeks to improve linkages between the tourism industry and local producers and communities that supply goods and services such as farm products, handicrafts, food and beverages, cultural performances, and transportation services.⁴⁰⁸

⁴⁰¹ [Mekong Tourism Coordinating Office](#)

⁴⁰² [Tourism Sector in the Greater Mekong Subregion](#), ADB, SAP: REG 2008-58 Sector Assistance Program Evaluation, December 2008

⁴⁰³ [Travel companies in Myanmar provide cyclone relief](#), Los Angeles Times, 10 May, 2008 and [Donations for Myanmar Cyclone Victims](#), Exotissimo

⁴⁰⁴ [Responsible Tourism Policy](#) p. 10.

⁴⁰⁵ [Responsible Tourism Policy](#), Aim 2, p. 11-12.

⁴⁰⁶ [Trouble in Paradise: Tourism and indigenous land rights: towards ethical solutions](#), Briefing Minority Rights International, January 2007.

⁴⁰⁷ Official launch of the Policy on Community Involvement in Tourism, *op. cit.*

⁴⁰⁸ [Tourism Master Plan](#), p. 11, pp. 49-50.

Box 23: Case Study – Community Participation in Tourism Policy

Jharkand Peoples' Policy on Sustainable Tourism – India

In 2003, a group of people in Jharkand, India, mostly belonging to various indigenous communities from different districts within the State, developed the Jharkand Peoples Policy on Sustainable Tourism. The Peoples' Policy includes benefit sharing of resources, access to natural resources and provision of a core team formed by communities looking after planning, implementation and monitoring. The policy was presented to the state tourism department. While the policy has not yet been acknowledged by the government, this initiative is a step towards achieving greater participation in decision making processes related to tourism development.⁴⁰⁹

B. Cumulative Impacts

The development of tourism leads to a number of cumulative impacts on communities living in and around tourist destinations in Myanmar such as:

- Increased prices of food and goods due to the presence of tourism businesses, which makes these goods unaffordable for local populations.
- Successive construction of hotels in the same areas repeatedly disrupts communities;
- Gentrification, i.e. a shift in an urban community that increases the presence of tourism businesses and raises property values can lead to the displacement of poorer residents who are unable to pay the higher rents;
- Reduced fish catches, and disruptions to marine environment in coastal areas and lakes due to waste disposal by hotels, restaurants and tourists, can affect the livelihoods of fisher folk and others dependent on the sales of fish.

C. Assessment Findings

Livelihoods

Human Rights Implicated: Right to an adequate standard of living

Assessment Findings

- In all locations, 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. Local tour guides are now opening their own tour agencies, souvenir shops are experiencing increased

⁴⁰⁹ [The tourist welcomed: The adivasi exiled...Unmasked: reflections on tourism's impacts on indigenous communities in India](#), in *Who Really Benefits from Tourism: Working Paper Series 2007-08*, Equations India, p. 57.

business and fishermen obtain better prices for their fish in tourist locations such as Ngwesaung.

- However, **small local businesses confront challenges when competing with businesses that have greater access to capital.** For example, horse-cart drivers in some tourist destinations, such as Bagan, can no longer compete against businesses, such as electric bikes, and must find alternative livelihoods.
- **The price of food has increased** in some locations (e.g. Inle Lake, Chaungtha) due to increased demands from businesses catering to tourists; this benefits producers but affects local consumers.
- **Land prices have risen in many areas**, negatively impacting locals, who can no longer afford to buy land.
- **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, where plans for hotel zones drive land price inflation. They may also not find jobs in the tourism sector, particularly where hotels and jobs take time to materialize, or demand particular skills and literacy.
- In addition to the loss of farming land for hotel zones, many communities depend on firewood for cooking. For example, trees have been cleared for the construction of a hotel zone at Inle Lake. This has **impacted villagers' ability to cook and also the income they formerly received from sales of firewood.** Villagers have asked the local government to pave a road to the forest to enable access to more distant firewood, but at the time of the field assessments this had not yet been granted.
- In one village in Bagan, 80 percent of 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. **Many small-scale souvenir sellers and other shopkeepers dependent on tourism along the walking routes have closed their shops.** Further, porters took part in the construction of the road, having been encouraged to believe it would lead to better job opportunities. In practice, **fewer porters can now 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** to locations that were far away from beach areas, and had poor access to the beach and limited permission to access fishing grounds.

Public & Community Services

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

Assessment Findings

- 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 and the specific needs of the community have been conducted.
 - Access to **electricity** has been **identified as a key demand from most communities**. In Ngwesaung villagers 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 have not provided it.
 - Functioning municipal waste systems are lacking in a number of locations. In all locations the SWIA team identified **a lack of proper waste management** by hotels and restaurants, **including waste water management**.
- One hotel in Bagan **failed to prevent its waste water overflowing and affecting surrounding communities**. While it claimed it could not solve the problem, the hotel said it had supported community livelihoods by allowing a horse-cart station outside the hotel, providing approximately 100 villagers with an income.
- In Kyaikhtiyo **availability of water** has been 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 the 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** 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 increased numbers of small independent tour operators in Yangon. This has **increased jobs and led to more stable incomes**.
- However, in Inle Lake region it has been reported that **local communities are not able to participate sufficiently in decision-making processes related to the hotel zone development**, and that they feel that they **have not benefited 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.
- In Kyaikhtiyo, businesses that wished to open up competition in the tourist transport sector 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. However the boats need to undergo annual inspections to

obtain permits to operate, and in some cases boat operators have 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 required 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 & 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 must buy bamboo from other locations which led to increased construction costs.
- In all locations tourism projects have contributed to **rising costs of land and housing**, which could lead to an expansion of illegal housing and slums on the fringes of urban areas.

D. Examples of Emerging Good Practices 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 the 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. A vocational training center has also been opened in Yangon.
- 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. In Chaungtha **the Hotel Owners Association** provided an **ambulance for community use**.

E. Relevant International Standards and Guidance

Box 24: Relevant International Standards and Guidance on Community Impacts

Relevant International Standards:

- [International Covenant on Economic, Social and Cultural Rights](#)
- [IFC Performance Standards \(2012\) 1,3, 4, 5, 7 and 8](#)
- [Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A6, A7, A8, B1-B10](#)

Relevant Guidance:

- [Addressing Project Impacts on Fishing-Based Livelihoods: Baseline Assessment and Development of a Fisheries Livelihood Restoration Plan](#) (2014) International Finance Corporation
- [Strategic Community Investment: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#) (June 2010) International Finance Corporation
- UN World Tourism Organization's (UNWTO) [Global Code of Ethics on Tourism](#) (GCET), Article 1, 4 and 5
- OHCHR/UN Habitat - [The Right to Adequate Housing, Fact Sheet](#)

Cumulative & Project Level Impacts

Land



Myanmar Times/Myat Nyein Aye

In this section:

- A. National Context
- B. Cumulative Impacts
- C. Assessment Findings
- D. Examples of Emerging Good Practices in Myanmar
- E. Relevant International Standards and Guidance

A. National Context

Land is often the most significant asset of rural families. 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.⁴¹⁰ The field assessments confirmed what is evident from secondary research: that for the vast majority of the Myanmar population, who are 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, where provided, rarely keeps 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.⁴¹¹ Another famous example, although not accompanied by subsequent large-scale development at the time, and which the government justified as a cultural conservation measure, was the forced relocation to Bagan Myo-Thit (new town) in 1990 of all residents living among ancient pagodas in Old Bagan.⁴¹²

Land Regime

Reform of land policy and law in Myanmar remains incomplete. As the recent OECD Investment Policy Review of Myanmar notes: “[l]and tenure remains insecure for most smallholder farmers for a wide range of reasons: i) a complex and long registration process resulting in low land registration rates; ii) rigid land classifications that do not reflect the

⁴¹⁰ [Access Denied: Land Rights and Ethnic Conflict in Burma](#), *op. cit.*

⁴¹¹ [Ngwesaung: A Tourist Paradise at the Expense of the Locals](#), *The Irrawaddy*, 27 December 2013.

⁴¹² [New projects infringing on Old Bagan](#), *Myanmar Times*, 26 January 2014.

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.”⁴¹³ 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 guidance provided in IFC Performance Standard 7, which is based on UNDRIP.⁴¹⁴

There is a recognized need in Myanmar for a comprehensive written land use policy. The Land Allotment and Utilisation Scrutiny Committee (LAUSC), a Cabinet-level committee, was established in July 2012⁴¹⁵ and replaced in October 2014 with a temporary National Land Resource Management Committee⁴¹⁶. A working group of the former Committee, which includes civil society representation and external experts, released a draft land use policy for consultation in October 2014. The intention was to collect feedback from all Regions and States and complete a final draft by the end of 2014. Civil society groups have expressed concern at the short time frame which would not allow to sufficiently consider the views of those mostly affected and so the deadline has been extended. The policy will be used as the basis for an umbrella land law to be submitted to parliament.⁴¹⁷

International organizations criticized the draft for not explicitly emphasizing poor, marginalized and vulnerable people, as called for under the 2012 FAO Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries, and Forests.⁴¹⁸ The draft is silent on how to deal with past takings of land and complete landlessness, which are pressing issues in the country. Positive aspects of the draft include provisions that require that, when a land taking requires resettlement, equivalent housing, land and infrastructure must be established before the resettlement takes place. It also provides for recognition of the legitimacy of customary land practices in ethnic areas. It is not clear from the draft if compensation in cases of resettlement would also include restoration of livelihoods, which international standards call for as part of any resettlement process.

For the time being, the land regime in Myanmar is characterised by a patchwork of new and old laws resulting in 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.⁴¹⁹ 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 or cannot be sold, which varies with its classification. UN

⁴¹³ [OECD Investment Policy Reviews: Myanmar 2014](#), p. 292.

⁴¹⁴ *Ibid.*

⁴¹⁵ [Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#), Land Core Group, November 2012.

⁴¹⁶ [National Land Resource Management Committee holds first collaboration meeting](#), President’s Office website, 10 December 2014.

⁴¹⁷ [Land consultations too short, CSOs warn](#), *Myanmar Times*, 24 November 2014.

⁴¹⁸ [Pro-Business or Pro-Poor?, Making sense of the recently unveiled draft National Land Use Policy](#), Transnational Institute, 23 October 2014, p. 7.

⁴¹⁹ [OECD Investment Policy Reviews: Myanmar 2014](#), OECD, March 2014, *op. cit.*, p. 108.

Habitat recently announced a new cooperation with the Government on the implementation of a land administration and management programme.⁴²⁰

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 organizations in many parts of the country. Large-scale land allocation has increased significantly in the past decade.⁴²¹ 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 would begin to return some of the land.⁴²² 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 discussed 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.⁴²³ 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 several 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.

The Tourism Master Plan and the Policy on Community Involvement in Tourism (CIT) both address involuntary resettlement. The Master Plan identifies several activities directed to strengthening tourism-related social and environmental safeguards, including a review of social safeguard policies related to involuntary resettlement.⁴²⁴ The CIT Policy states that in order to avoid and minimize involuntary resettlement resulting from tourism projects, safeguards must be formulated for involuntary resettlement. Where resettlement cannot be avoided, displaced persons should be given a legal guarantee that their livelihoods will be improved or at least restored to pre-project levels. The CIT Policy incorporates an additional

⁴²⁰ [UN-Habitat to help strengthen land administration and management in Myanmar](#), UN-Habitat, June 2014.

⁴²¹ [OECD Investment Policy Reviews: Myanmar 2014](#), OECD, March 2014, *op. cit.*, p. 324.

⁴²² [Vice President defends land seizures by Tatmadaw](#), *Mizzima*, 12 May 2014.

⁴²³ [Parliament Sets Deadlines for Govt to Resolve Land Disputes](#), *The Irrawaddy*, 20 February 2014.

⁴²⁴ [Tourism Master Plan](#), Key objective 3.2.2., p. 48.

core principle related to land, namely respect for the relationship of ethnic communities to land and landownership.⁴²⁵

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.⁴²⁶ 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 where 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). (The Gazette has limited circulation, although it is now available online⁴²⁷.) 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. Therefore they are not able to lodge an objection during the short window mandated by 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 organizations have pointed out that land which the Government classifies as vacant, fallow and virgin may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices. The complicated registration procedures under the new agricultural laws mean that smallholder farmers - 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 so-called VFV land, which has in fact long been occupied. By not recognising informal land rights, and formalising land rights

⁴²⁵ [Policy on Community Involvement in Tourism](#), Core Principles Linked to All Objectives, p. 16.

⁴²⁶ Myanmar Constitution, Articles 35, 37, 356, 372.

⁴²⁷ Available in Myanmar from <http://www.moi.gov.mm/ppe/?q=pyantan>

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.⁴²⁸

With respect to land designated as vacant, fallow and virgin (VFV), foreign investors with Myanmar Investment Commission (MIC) permits, those in joint ventures with Government bodies, or citizen and Myanmar citizen investors may acquire land by applying to the Government for land rights over VFV lands. Foreign investors without MIC permits do not appear to be permitted to do the same. 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 of land or the compensation provided, and there are no procedures for judicial review, a situation 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 “organizations” include Government departments or organizations, non-governmental organizations and companies (Articles 6(b), 7(b), which are also permitted to apply. 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.⁴²⁹ 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”⁴³⁰ 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 the compensation awarded, or for judicial review.

⁴²⁸ [Access Denied: Land Rights and Ethnic Conflict in Burma](#)

⁴²⁹ [Myanmar at the HLP Crossroads](#), Displacement Solutions, October 2012.

⁴³⁰ 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.

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.⁴³¹ The Government may however allow exemptions from these restrictions. Union Government Notification No. 39 of 2011⁴³² 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.”⁴³³

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.”⁴³⁴ 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.⁴³⁵ 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.⁴³⁶

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

⁴³¹ *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).

⁴³² [Notification 39, 2011 on the Right to Use of Land relating to the Republic of the Union of Myanmar, Foreign Investment Law](#)

⁴³³ [Notification 11/2013, Foreign Investment Rules](#), Ministry of Planning and Economic Development, 31 January 2013.

⁴³⁴ *Ibid.*, Chapter 15, para. 126.

⁴³⁵ *Ibid.*, Chapter 15, para 126.

⁴³⁶ *Ibid.*, Chapter 15, para. 125.

agreement with a company, without any additional requirement of public interest. Even the more recent Farmland and VFV Laws, provides only general authorisations on expropriation “in the public interest” with no further procedural or substantive restrictions, leaving this process open to abuse.

- 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.
- The new land laws⁴³⁷ do not sufficiently recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their “usufruct” rights.⁴³⁸
- Myanmar also does not have detailed regulations defining specific compensation levels for all types of land⁴³⁹ or on involuntary resettlement processes where it is necessary to move households or where there is economic but not physical displacement (although it does have some restrictions on what appears to be involuntary resettlement).⁴⁴⁰
- There are also no core principles or mitigation hierarchy (avoid, minimize, compensate/offset), which is contrary to international human rights law and other international standards. The objective for resettlement in line with international standards⁴⁴¹ is full livelihood restoration, not simply compensation for assets, with priority given to land-based compensation over monetary compensation⁴⁴² in order to avoid loss of sustainable livelihood assets and the rapid dissipation of financial compensation.

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.

⁴³⁷ *Vacant, Fallow and Virgin Lands Management Law* (2012) and *Farmland Law* (2012). See for further description, [Land Core Group, “Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law”](#) (November 2012).

⁴³⁸ “...the written and unwritten rules which have developed from the customs and traditions of communities...” Land Core Group, above, pp. 15-16.

⁴³⁹ However, there are some limited protections: foreigners who lease land from private owners or users are required to pay the current market value and submit the lease to the Myanmar Investment Commission (MIC). DICA, “[Notification 39/2011](#)” (2011), art. 15. The Ministry of Home Affairs’ General Administration Department (GAD) reportedly has rules on compensation, but it is not known if they are properly and consistently implemented. The [1894 Land Acquisition Act](#) (unofficial translation) provides for compensation at market value with adjustments, including for crops, Art. 23.

⁴⁴⁰ 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.

⁴⁴¹ See [IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement” \(2012\)](#).

⁴⁴² International human rights on the right to an adequate standard of living, which includes the right to housing. See IFC, “Performance Standard 5”, as above. See also Asian Development Bank, “[Involuntary Resettlement Safeguards” \(2012\)](#). These standards 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.

The government's 2013 Tourism Master Plan (Key Objective 3.3 – see below) rightly 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.

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'.

The Master Plan underlines the need for participatory approaches to zoning which should be aligned with the MRTP. Action point 3.3.1 of the Master Plan⁴⁴³, for action in 2014-2015, also identifies the need to 'Review the status of hotel zone development'. To date, it is unclear whether these reviews have begun.

Meanwhile several disputes have arisen between communities and investors over compensation for hotel zone development.⁴⁴⁴ At Inle Lake, seven villagers who protested against inadequate compensation for their farm land were charged for obstruction.⁴⁴⁵ Land that was taken by the military from villagers in Ngwesauung 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.⁴⁴⁶ 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 as 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.⁴⁴⁷ On 10 January 2015 Tada Oo Hotel Zone was officially inaugurated. It took the Myanmar Tourism Development Co, the developers of the hotel zone more than 2 years to negotiate with villagers to obtain land. Farmers who were willing to sell their land to the developers were paid 10 million Kyat per acre, but not all farmers have agreed to sell, saying their land is worth more.⁴⁴⁸ 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.⁴⁴⁹ In 2000, the military seized 36 acres of land from locals in Ngapali beach, with the understanding that it would be 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.⁴⁵⁰

⁴⁴³ 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'.

⁴⁴⁴ [Hotel zones hold promise but acquiring land difficult](#), *Bangkok Post*, 22 April 2013.

⁴⁴⁵ [Seven charged over Inle Lake Hotel Zone protest](#), *Myanmar Times*, 25 February 2013.

⁴⁴⁶ [Yachting federation boss deflects criticism over venue land dispute](#), *Myanmar Times*, 27 October 2013.

⁴⁴⁷ [Tada Oo hotel zone brings sleepless nights](#), *Myanmar Times*, 15 May 2014.

⁴⁴⁸ [Tada-U developers start on hotel zone](#), *Myanmar Times*, 19 January 2015.

⁴⁴⁹ [Protests Continue for Confiscated Farms and Land](#), *The Irrawaddy*, 2 November 2012.

⁴⁵⁰ [Ngapali at a crossroads?](#), *Mizzima*, 4 May 2014.

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.⁴⁵¹ 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.⁴⁵² 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.⁴⁵³

B. Cumulative Impacts

- Tourism development and in particular the development of 'hotel zones' has contributed to land acquisition processes without adequate compensation, displacement of communities and loss of livelihoods. Hotel zones are being developed in urban and coastal areas, where communities are dependent on natural resources like land and the coast for their livelihoods.
- Land speculation due to high demand for land for hotel construction has led to unaffordability of land for local communities and future generations. For example, in Inle Lake region, land prices have doubled since 2010, as a rush of tourists has led to more hotels and other tourism businesses setting up in the area. According to local brokers it is getting more difficult to obtain permission to build a hotel near Inle Lake, so business people have purchased land near the town of Nyaungshwe. The increase in land prices is affecting small businesses such as people who want to buy a market stall but can no longer afford to.⁴⁵⁴
- Successive land acquisitions for hotel zones or several establishments within one area rapidly diminishes the remaining land available for livelihoods for local agricultural populations.⁴⁵⁵

C. Assessment Findings

Consultation Prior to Land Acquisition

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

⁴⁵¹ [Vice-President returns unused farmland to farmers](#), *The New Light of Myanmar*, 13 May 2014.

⁴⁵² [Tada-U farmers win back half their land, vow to fight on](#), *Democratic Voice of Burma*, 1 July 2014.

⁴⁵³ [Land Compensation in Agriculture Sector](#), Max Myanmar Ltd., 19 August 2013.

⁴⁵⁴ [Inle area land prices ride tourism boom](#), *Myanmar Times*, 27 October 2014.

⁴⁵⁵ [Expert Roundtable on Cumulative Human Rights Impacts](#), Office of High Commissioner for Human Rights, 8 May 2013.

Assessment Findings

- There has been inadequate consultation and information on existing and future projects affecting villagers and the acquisition of their land. 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 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; some land has recently been returned.
- In Inle there were indications that the **authorities were postponing or changing the place of court hearings** at very short notice to prevent supporters or journalists being present.

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 and 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, and unsatisfactory compensation conditions were **accused of being instigators of conflict and disorder in the community**. The villagers were arguing 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**, which had been acquired for tourism purposes, **was not replaced by another piece of land and no compensation** was given to the users of the land.

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 a hotel zone. When villagers tried to intervene, the persons involved were arrested. During the time of writing, the case against two persons was still pending in court.

Involuntary Resettlement

Human Rights Implicated: Right to 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 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.

D. Examples of Emerging Good Practices 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 conflicts 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.

E. Relevant International Standards and Guidance

Box 25: Relevant International Standards and Guidance on Land

Relevant International Standards:

- [ILO Convention 169, Indigenous and Tribal Peoples Convention](#) (1989), Part II - Land
- [IFC Performance Standards 1,5 and 7](#)
- UN World Tourism Organization's (UNWTO) [Global Code of Ethics for Tourism](#) (GCET), Articles 3 and 5.3
- [Global Sustainable Tourism Criteria for Hotels and Tour Operators](#), criteria A6.1, B10 and D3.4

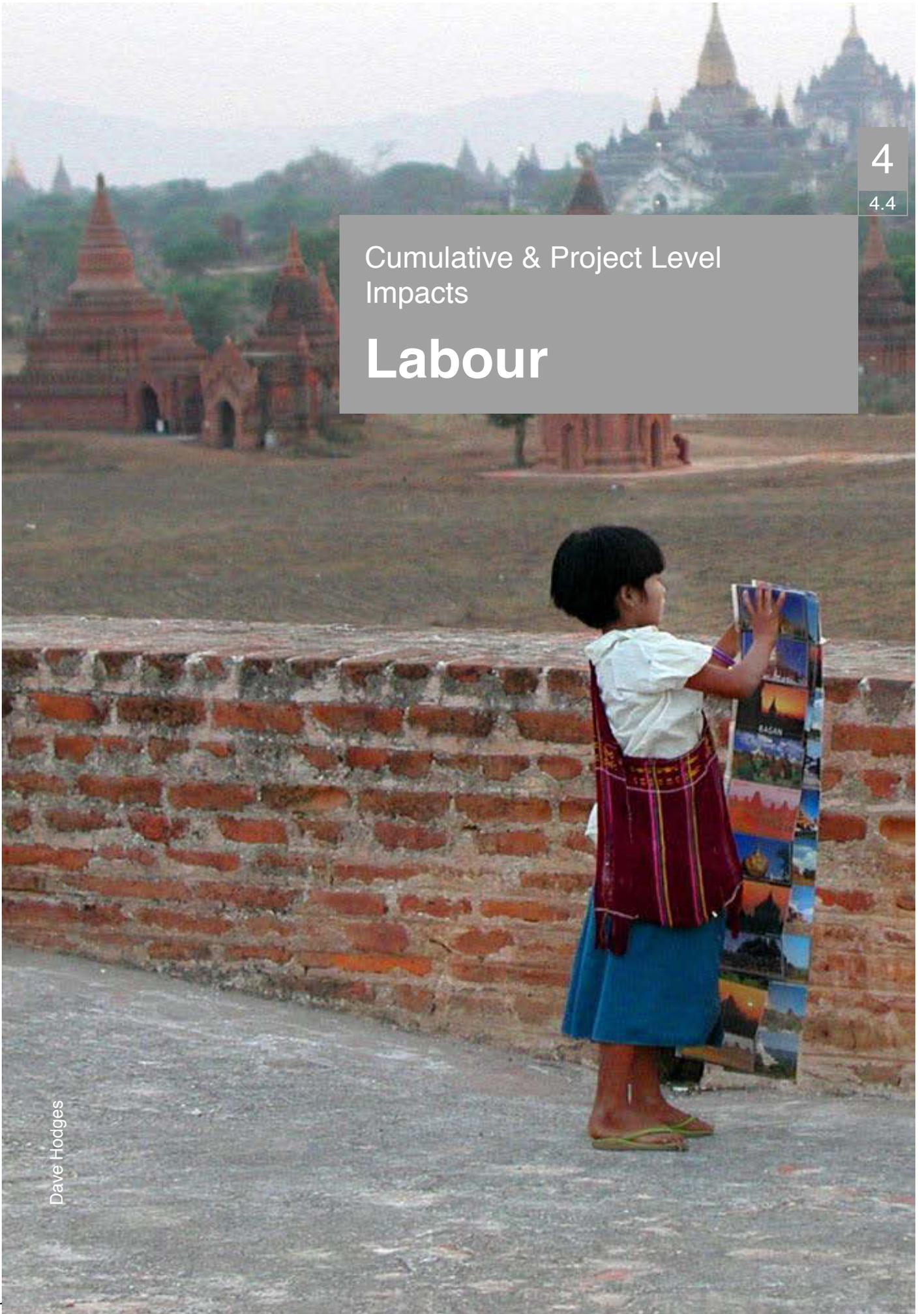
Relevant Guidance:

- FAO, [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security](#) (2012)
- UN Special Rapporteur on Adequate Housing, [Basic Principles and Guidelines on Development-based Evictions and Displacement](#)

Cumulative & Project Level
Impacts

Labour

Dave Hodges



Labour

In this section:

- A. National Context
- B. Cumulative Impacts
- C. Assessment Findings
- D. Examples of Emerging Good Practices in Myanmar
- E. Relevant International Standards and Guidance

A. National Context

Labour issues in Myanmar pose several challenges to responsible business conduct. For 50 years, independent trade unions and employer organizations 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 remains an ongoing problem.

An estimated 70% of the population is engaged in agriculture or related activities; 23% in services, and 7% in industry.⁴⁵⁶ Underemployment⁴⁵⁷ in Myanmar was 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike, and young people in particular.⁴⁵⁸ The economy in Myanmar is predominantly informal. According to the statistics of the Ministry of National Planning and Economic Development of Myanmar from 2011, 74% of the workforce can be classified as informal.⁴⁵⁹ According to the OECD, 80% of all businesses in Myanmar were informal in 2013.⁴⁶⁰ 41% of the workforce in Myanmar is classified as own-account workers, while 15% are contributing family members and 18% casual workers.

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 Organization (ILO) support, are undertaking a comprehensive national labour force survey in 2014/2015.⁴⁶¹

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

⁴⁵⁶ [Myanmar - Interim strategy note for the period FY13-14](#), World Bank, October 2012.

⁴⁵⁷ 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.

⁴⁵⁸ [Interim Country Partnership Strategy: Myanmar, 2012-2014](#), World Bank, p. 3.

⁴⁵⁹ [Asian Development Bank, Myanmar unlocking the potential](#), August 2014, p. 126.

⁴⁶⁰ [OECD Investment Policy Reviews: Myanmar, 2014](#), p. 144.

⁴⁶¹ [ILO, Myanmar sign agreement on National Labour Force Summary](#), ILO, 14 November 2013. The survey is intended to inform national labour policy and will examine youth employment, child labour, forced labour, and social security.

nationals.⁴⁶² There are high expectations of employment from local communities, but there is likely to be a lack of skills and education to match job requirements. Furthermore, while companies may meet “local hire requirements” by hiring workers from other parts of Myanmar, local communities will expect locals from the very immediate area to be employed.

Informal Workers

Myanmar’s informal economy ranges in size from small family businesses to large enterprises.⁴⁶³ In the tourism sector, there are many informal workers. The informal economy in tourism has been defined by some as “all those individuals and businesses that engage with tourists and the tourism industry, but are not members of any formal association or trade organization”.⁴⁶⁴ Street vendors, unofficial tour guides, shoe shiners, transport providers, musicians, artisans, sex workers, providers of homestays, holders of food stalls and maids are all part of the informal tourism economy. Their activities are generally beyond the effective control of tourism authorities.

Work performed within the informal economy continues to be undervalued. Also, the informal economy often fails to fall under labour protection laws. Workers therefore often become vulnerable to discrimination, marginalization, human rights abuses, or physical and sexual abuse. Problems such as excessively long working hours, lack of free time, poor working and living conditions are common amongst individuals working within the informal tourism sector.⁴⁶⁵

The Policy on Community Involvement in Tourism recognizes the position of informal workers in the Myanmar tourism sector. The policy articulates a long-term of enabling community members to move out of the informal into the formal sector.⁴⁶⁶

Freedom of Association and the Right to Collective Bargaining

The 2008 Constitution and new labour laws enacted in 2011 and 2012 provide for independent trade union activity. Nonetheless, there are some gaps in protecting freedom of association in both the Constitution and the laws (although Myanmar has been a party to ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize since 1955). 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. 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

⁴⁶² [Myanmar Foreign Investment Law](#), Article 24(a), 2012.

⁴⁶³ [A New Policy Framework for Myanmar’s SME](#), UN Economic and Social Commission for Asia and The Pacific, Working Paper No. 142, February 2014.

⁴⁶⁴ [Contested labour – challenges and opportunities of informal labour in tourism](#), Çakmak, Portegies and Van der Sterren, Academy of Tourism NHTV Breda University of Applied Sciences, Netherlands, June 2013.

⁴⁶⁵ [Country Report to the workshop on Promoting Decent Work for Workers in Informal Economy: Union Strategies and Actions](#), 21–25 August 2013.

⁴⁶⁶ [Policy on Community Involvement in Tourism](#), p. 12.

beyond the enterprise level. A lack of understanding, or in some cases entrenched attitudes, could 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.⁴⁶⁷ The ILO has recommended a number of amendments to the new laws on freedom of association to improve the way the laws function, including the creation of an obligation on parties to engage in collective bargaining in good faith, and to strengthen the enforceability of decisions of the labour arbitration bodies.⁴⁶⁸

In November 2014 the Federation of Trade Unions Myanmar headed a protest of some 600 workers in Mandalay, calling for amendments to the 2012 Settlement of Labor Dispute Law. According to them, the law completely favours employers. They demanded that prison sentences are included as penalties in the Labour Dispute Law so that action can be taken against employers and parliamentarians who exploit work conditions. Other demands include the participation of union or workers' representatives in the drafting of any future labour laws.⁴⁶⁹

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 areas⁴⁷⁰. President Thein Sein has made a public commitment to end forced labour by 2015. A Memorandum of Understanding between the Government and the ILO was signed in March 2012. A complaints mechanism has been put in place to allow victims of forced labour, with the assistance of the ILO Liaison Officer, to seek redress and/or remedies from the government authorities."⁴⁷¹

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.⁴⁷² 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.⁴⁷³ The lack of job opportunities in many of the poorest parts of Myanmar however can create the possibility of exploitative working conditions and practices that may in some cases fall within the definition of forced labour, for example where work is exacted from a person under the menace of a penalty.

⁴⁶⁷ [International Labour Office, Governing Body 316th Session](#), Geneva, 1–16 November 2012, p. 11.

⁴⁶⁸ [ILO Governing Body, 317th Session](#), Geneva, 6–28 March 2013. Article 30 a), p.15

⁴⁶⁹ [Workers protest Labour Dispute Law in Mandalay](#), *Democratic Voice of Burma*, 24 November 2014.

⁴⁷⁰ [Extract from Record of Proceedings, ILO Committee on the Application of Standards](#), 18 June 2012.

⁴⁷¹ Available at: <http://ilo.org/yangon/complaints/lang--en/index.htm>

⁴⁷² [Meeting with ILO](#), 5 December 2013

⁴⁷³ [Update on the operation of the complaint mechanism in Myanmar](#), report of the ILO Liaison Officer to ILO Governing Body, 319th Session, Geneva, 16–31 October 2013, GB.319/INS/INF/2. NB complaints include underage military recruitment.

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 amendments to the Shops and Enterprises Act, the Occupational Health and Safety Act and the Factories Act. The ILO is currently working with the Government to develop an overall legal and policy framework, with the aim of drafting one comprehensive labour law. In November 2014 a new initiative to Promote Fundamental Labour Rights and Practices in Myanmar was launched. The Initiative is intended to build upon Myanmar's existing labour reform efforts, including ongoing legislative reform activities supported by the ILO.⁴⁷⁴

The new Minimum Wage Law provides for salaried workers to be granted 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). Protection 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 wage⁴⁷⁵ but there have been delays in setting a minimum wage rate, or rates. Labour experts note that neither employers nor workers in Myanmar fully understand the concept of a minimum wage. According to labour activists many current wages do not amount to a living wage.⁴⁷⁶

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 casual leave with wages aggregate 6 days in a year.⁴⁷⁷ While the 1951 Factories Act allows for one 24-hour rest period per week and 21 days paid holiday per year, enforcement is rare.⁴⁷⁸ According to the Social Security Act, a minimum one-year service and six-month contribution to the social insurance scheme is required for women to enjoy 14 weeks of maternity leave.

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

⁴⁷⁴ [New initiative to improve labour rights in Myanmar](#), International Labour Organization, 14 November 2014.

⁴⁷⁵ [The Minimum Wage Law](#), Draft 2012, Ministry of Labour, Employment and Social Security.

⁴⁷⁶ [Demands grow for minimum wage](#), *The Myanmar Times*, 24 November 2014.

⁴⁷⁷ [Myanmar Leave and Holidays Act](#), 1951.

⁴⁷⁸ *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](#).

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 1954⁴⁷⁹, and came into effect on 1 April 2014.⁴⁸⁰ Social security rules and regulations were promulgated on 1 April 2014, making it mandatory for most companies to cover its employees regardless of income. Currently only 1% of the population is registered in the social security system, according to the head of the Social Security Board.⁴⁸¹ Companies with two or more employees in the manufacturing, entertainment, transportation, extractive industries, foreign enterprises, and financial sector are required to pay social security.⁴⁸² The Ministry of Labour has announced that some benefits from the new social security scheme would be paid beginning in April 2014.⁴⁸³

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 came into effect on 30 November 2013 and revoked the Employment and Training Act, 1950.⁴⁸⁴

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

A review of the Myanmar Tourism Law, including aspects related to labour standards, is one of the objectives in the Tourism Master Plan.⁴⁸⁵ The Policy on Community Involvement in Tourism recognizes that all tourism activities should be carried according the approach of 'Decent Work'; which include employment in conditions of freedom, equity, human security and dignity.⁴⁸⁶

One of the objectives of the Responsible Tourism Policy is to build national hospitality training centres⁴⁸⁷. The Tourism Master Plan recognizes the need to build a more skilled workforce.⁴⁸⁸

Awareness and Enforcement of Labour Rights

There is an overall lack of awareness by workers of labour 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.

⁴⁷⁹ [The Social Security Law, 2012](#)

⁴⁸⁰ [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.

⁴⁸¹ [Burma's Social Security Enrollees to See Benefits Boosted by April](#), *The Irrawaddy*, 29 January 2014.

⁴⁸² [Social security scheme in the pipeline](#), *Myanmar Times*, 24 March 2014.

⁴⁸³ [Burma's Social Security Enrollees to See Benefits Boosted by April](#), *The Irrawaddy*, 29 January 2014.

⁴⁸⁴ [Employment and Skill Development Law](#), 30 August 2013.

⁴⁸⁵ [Tourism Master Plan](#), Key objective 1.5.4, p. 44.

⁴⁸⁶ [Policy on Community Involvement in Tourism](#), Core Principles Linked to All Objectives, p. 16.

⁴⁸⁷ [Responsible Tourism Policy](#), p. 10.

⁴⁸⁸ [Tourism Master Plan](#), p. 28.

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 be suffered by workers in lower-skilled, lower paid, manual labour positions working on a temporary, seasonal or irregular basis.

Discrimination

Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth, but the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited by the Constitution, leaving significant gaps in protection against discrimination. Groups particularly at risk of being discriminated include people with disabilities, women, ethnic and religious minorities as well as lesbian, gay, bisexual and trans-gender (LGBT) people. The disabled are an invisible group in the population and even more invisible in the workforce. The potential for ethnic and religious tensions and discrimination (particularly Buddhist/Muslim) in recruitment and the workplace is high in Myanmar. (See Section 4.5 – Groups at Risk for more details).

B. Cumulative Impacts

- The tourism industry could be a vehicle for **job creation** if local communities are included in tourism development. However, if no capacity building activities are undertaken, tourism businesses such as hotels will not be able to hire local community members, stimulating in-migration.
- Other cumulative impacts related to labour include the **lack of capacity of labour inspectors** to deal with inspections of tourism operations such as hotels, resorts, cruise ships, airports and airlines
- Increased demand for workers results in **wage and price inflation**.

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 are generally not provided**, or if they are, contracts are 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 the high season**, but dismissed these workers during low season.
- **Contracts often contained clauses to retain staff** and there are cases where workers have been forced to sign contracts stating that they would have to pay back a part of their salary if they left 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 do not have contracts.

Freedom of Association & Collective Bargaining

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

Assessment Findings

- 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.
- 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. Workers in general did not feel 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 another 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 USD50, contracts and provision of accommodation allowance and medical insurance.

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 crushing and carrying heavy limestone.

Working Hours, Wages and Benefits

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

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 were required 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 (approximately 1 USD a day) was usually not enough to survive on. However:

- 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. Salaries for restaurant staff were found to be as low as 30,000 (USD 30) 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, they 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**. For example:
 - At a restaurant in Yangon service charges were not shared with employees for a period of time, to cover the rent of the establishment.
 - 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.

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 were required to stand throughout 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 desk.**
- 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.

Health & 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
 - an 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. However some good examples 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 their 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.

Non-Discrimination, Equal & 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, employers 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 several locations **external tour guides felt discriminated against** because they not allowed to enter hotel lobbies where their clients were staying and had to wait outside. (See also 'Groups at Risk, Part 4.5)

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- Vocational training centers for youth have been established in Inle Lake region and Yangon which provide hospitality and catering skills, as well as 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 few trade unions have yet been established in the tourism sector, some 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.

E. International Standards and Guidance

Box 26: Relevant International Standards and Guidance on Labour

Relevant International Standards:

- [ILO Core Labour Conventions](#)
- [IFC Performance Standard 2](#)
- UN World Tourism Organization's (UNWTO) [Global Code of Ethics for Tourism](#) (GCET), Articles 2 and 9
- [Global Sustainable Tourism Criteria for Hotels and Tour Operators](#), criteria A2, A3, B7 and B8

Relevant Guidance:

- [IFC Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development](#) (2007)
- [ILO Guide on Social dialogue in the Tourism Sector](#) (2008) Designed to help and enable policy-makers, trainers and practitioners to understand, promote and facilitate social dialogue in the hospitality sector.
- [ILO Occupational Health and Safety Manual for the Tourism Sector](#) (2009). A training manual on Health and Safety for businesses in the tourism sector.
- [ILO Good Practices Guide for Guesthouses and Small Hotels](#) (2012). An activity-based learning program for managers or business owners who wish to manage customer service effectively. Provides information and training for receptionists, housekeeping and breakfast services.
- [IUF model agreement against child exploitation](#) by the International Union of Food and Agricultural Workers calls upon companies in the hospitality sector to adopt or improve policies to fight exploitation of children in the industry.
- [ILO and UNWTO: Measuring Employment in the Tourism Industries](#) – Guide with Best Practices.
- The [Global Business Coalition Against Human Trafficking \(GBCAT\)](#), a global coalition of corporations committed to eradicating trafficking in supply chains, including forced labour and all sex trafficking, notably child prostitution and a thought leaders' forum to develop and share best practices for addressing the vulnerability of businesses to human trafficking in their operations.

Cumulative & Project Level Impacts

Groups at Risk



Groups at Risk

In this section:

- A. National Context
- B. Cumulative Impacts
- C. Assessments Findings
- D. Examples of Emerging Good Practices in Myanmar
- E. Relevant International Standards and Guidance

A. National Context

As noted above, Myanmar is one of the most culturally diverse countries in Southeast Asia, with many ethnic minority leaders believing that the Burman-dominated central Government has instituted a policy of “Burmanisation” that suppresses ethnic minority cultures, languages and religions, and treats ethnic minorities as “second-class citizens”.⁴⁸⁹ In addition to this complex interplay of ethnic identities, there are several other groups that are also at risk of marginalisation, who are particularly vulnerable to the impacts of increasing change in the country due to poverty, lack of stature to make their voices heard in the process of shaping those changes, and an inability to resist more powerful forces. They risk being left behind in Myanmar’s rush to transform itself. Tourism businesses may potentially have an impact on many of these groups. They may exacerbate their problems; ensure that any impacts are neutral; or develop equal opportunity workforces and social investment programmes to support needed infrastructure, services or income generation opportunities for excluded groups.

Religious Minorities

Buddhists and Muslims

The 2008 Constitution provides for freedom of religion, but with a notable exception. Articles 34 and 354 of the Constitution generally provide for freedom of conscience, religion and customs, but subject to a number of restrictions. Restrictions on the basis of security, law and order, and public order and morality are provided for under international law.⁴⁹⁰ However, Article 354’s permitted restrictions for ‘community peace and tranquility’ allows expansive interpretations that set a low threshold for justifying infringements to the guaranteed right.⁴⁹¹

⁴⁸⁹ For a further explanation and discussion of these issues, please see Transnational Institute/Burma Centrum Netherlands reports from 2011 to 2013.

⁴⁹⁰ [Analysis of the Guarantees of Freedom of Expression in the 2008 Constitution of the Republic of the Union of Myanmar](#), International Support and Centre for Law and Democracy, August 2012, p. 7.

⁴⁹¹ Legal Review commissioned by the authors, Appendix 2 (on file with MCRB).

Muslims, who live in many parts of Myanmar, are a minority of the population, but in the absence of the full 2014 census results, there is no precise figure.⁴⁹² Anti-Muslim sentiment and discrimination are widespread – not only against the Rohingya,⁴⁹³ which is the clearest case, but also against other Muslims in other parts of the country. As noted above, inter-communal violence between Buddhists and Muslims broke out in Rakhine State during June 2012. In its wake, some 143,000 people in Rakhine State remain displaced, many of them in camps, in very poor conditions,⁴⁹⁴ the vast majority of them Rohingya.⁴⁹⁵ The violence has also affected other areas, particularly Meiktila in the centre of the country, where over 40 people were killed in March 2013. In July 2014 further inter-communal violence broke out in Mandalay, Myanmar's second largest city, resulting in dozens arrested and wounded, at least two deaths, and a strict curfew being imposed on the city.⁴⁹⁶

Some members of the Buddhist Sangha (clergy) in Myanmar lead the “969” movement, which claims *inter alia* that Muslims are trying to take over the country. The “969” movement encourages Buddhists to boycott Muslim businesses, and has some popular support.⁴⁹⁷ Moreover, some Buddhist leaders have called on the Government to enact legislation to “protect” Buddhism. There are currently four legislative proposals that would restrict the following: religious conversion to non-Buddhist religions; inter-faith marriage; non-Buddhist family size; and polygamy. The draft Religious Conversion Law requires that anyone wishing to convert to another religion must obtain permission from the township Registration Board on religious conversion. Such a process includes questioning by the board and the issue of a “certificate of religious conversion”.⁴⁹⁸

Other Faiths

People of other faiths also face discrimination and marginalisation. Christians comprise a small minority in the country, but the vast majority of the Chin and Kachin ethnic minorities are Christian, with many Karen/Kayin and Karenni (Kayan) also Christians. Christians, like other members of minority religions, are generally not promoted to senior positions within the civil service or military. Ethnic minority Christians face restrictions on their religious freedom, including restrictions on building places of worship and destruction of religious venues and artefacts. These abuses are particularly acute in the context of the armed conflict in Kachin and northern Shan States. Bamar/mixed race Christians also face certain restrictions on building churches and holding public ceremonies, although to a lesser degree compared to Christians in conflict zones.⁴⁹⁹

⁴⁹² For a discussion of Muslim population figures in the context of the March-April 2014 census, see International Conflict Group, [Myanmar Conflict Alert: A Risky Census](#), February 2014.

⁴⁹³ The Myanmar Government refuses to accept the term ‘Rohingya’ and refers to the population as ‘Bengali’

⁴⁹⁴ [Myanmar: Displacement in Rakhine State](#), UN Office for the Coordination of Humanitarian Affairs, September 2013.

⁴⁹⁵ Brief Overview of the current human rights situation in Northern Arakan/Rakhine State, Myanmar, The Arakan Project, August 2013.

⁴⁹⁶ [Mandalay riots reveal splintered community, complex agendas](#), *Democratic Voice of Burma*, 8 July 2014.

⁴⁹⁷ [The Dark Side of Transition: Violence Against Muslims in Myanmar](#), International Crisis Group, October 2013.

⁴⁹⁸ Draft *Religious Conversion Law*, unofficial translation on file with MCRB.

⁴⁹⁹ United States Commission on International Religious Freedom, [2013 Annual Report](#) (2013), pp. 22; 23-25.

Internally Displaced People

As a result of internal armed conflicts over the past few decades, hundreds of thousands of people have been internally displaced, and others have fled to neighbouring countries. The UN Refugee Agency (UNHCR) estimates that there are around 587,000 internally displaced persons (IDPs) in Myanmar. In Rakhine State around 140,000 people, the majority of them Muslim Rohingyas, fled their homes in 2012 and live in government-designated IDP camps near the state capital, Sittwe and in surrounding townships. In Kachin State and northern Shan State, more than 100,000 IDPs are displaced⁵⁰⁰ and some 128,000 live in camps in Thailand near the Myanmar border.

IDPs are at risk of human rights abuses, including being trafficked into forced marriage or used as labourers. They also suffer from food insecurity and often lack access to basic services, such as healthcare and education. Conditions in camps in both the Rakhine and Kachin States are poor. Moreover, IDPs are at risk of losing their original land, as others may occupy the land in their absence.⁵⁰¹ If the Government and armed ethnic groups can agree a nationwide ceasefire, IDPs and refugees may eventually return to their home villages. However, this poses significant challenges as their land has been claimed by others or may remain seeded by landmines.

Persons with Disabilities

Myanmar acceded to the UN Convention on Disabilities in December 2011.⁵⁰² The Government entity responsible for people living with disabilities is the Ministry of Social Welfare.⁵⁰³ Several international and Myanmar aid agencies are actively working to assist and advocate for disabled people, including through working with local CSOs. A recent study noted that people with disabilities suffer from widespread discrimination and exclusion within their communities, families, and from society as a whole. Disabled children and women were the most vulnerable. There is a severe lack of education for people living with disabilities; a Myanmar Government study reported that 50% of disabled people received no education whatsoever, very few disabled children are mainstreamed into formal education⁵⁰⁴. Hospital and health clinic facilities and infrastructure are also limited for the disabled. The survey also reported that 85% of disabled people were unemployed.⁵⁰⁵ There have been very few employment training programs for people with disabilities, and there is a much greater need for more vocational training and employment, supported by funding. A draft law on disabilities was published by the Parliament on 22 December 2014. It was drafted by a group of disability advocacy organisations and the Department of Social Welfare, and includes requirements for the workplace.

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

⁵⁰⁰ [2015 UNHCR country operations profile – Myanmar](#), UNHCR, accessed on 19 January 2015.

⁵⁰¹ [Myanmar: comprehensive solutions needed for recent and long-term IDPs alike](#), Internal Displacement Monitoring Centre, 1 July 2014.

⁵⁰² [United Nations Treaty Collection](#)

⁵⁰³ [Myanmar Ministry of Social Welfare](#)

⁵⁰⁴ [In Burma, Children with Disabilities Struggle to Access Schools](#), *The Irrawaddy*, 5 November 2013.

⁵⁰⁵ [Understanding the Challenges of Disability in Myanmar](#), Salai Vanni Bawi, 2012.

disabled co-workers.⁵⁰⁶ A cross-cutting theme ambition of the Tourism Master Plan is to 'ensure that people with disabilities are equally able to participate in vocational and professional opportunities in tourism as well as in the recreational opportunities that tourism provides'. It is intended that they should be included in the Human Resources Development strategy (Objective 2.1). Activity 3.5.2 of the Master Plan calls for the promotion of architecture and facilities design that meets the needs of people with disabilities. This activity includes preparing national guidelines to support expansion of barrier-free tourism; providing incentives such as tax reductions and affordable finance to support an increase in the availability of tourist facilities that are accessible to people with disabilities; and implementing an information and education campaign on barrier-free tourism targeting architects, accommodation providers, and tour operators.

Lesbian, Gay, Bisexual and Transgendered (LGBT) People

Article 377 of the Penal Code, a British colonial law, criminalises any activity that the authorities decide constitutes "carnal intercourse against the order of nature."⁵⁰⁷ The LGBT Rights Network in Myanmar has called for the abolition of this article, which can be used against people in same-sex relationships. The US State Department's 2013 Annual Human Rights Report states that LGBT people face discrimination in employment, including denial of promotions and dismissal. Activists reported limited job opportunities for openly gay people, and general societal lack of support.

Women

Women tend to occupy low paid and low-status jobs in the global tourism sector and often perform unpaid work in family tourism businesses.⁵⁰⁸ It is estimated that at least 50 percent of the workforce in the tourism sector in Myanmar is female.⁵⁰⁹

Myanmar acceded to the UN Convention against All Forms of Discrimination Against Women (CEDAW) in July 1997.⁵¹⁰ In 1996, the Myanmar National Committee for Women's Affairs (MNCWA) was established with the primary aim of ensuring development and security for women.⁵¹¹ In October 2013, the Government launched a 10-year action plan for the advancement of women.⁵¹²

Causes of gender inequality in Myanmar include traditional gender norms and the fact that women are on the whole less educated; girls in rural areas may not be able to attend school

⁵⁰⁶ [MCRB/Deaf Resources Centre bilingual guide on CSR and disability](#), (2014); and, ILO, [Disability in the Workplace: Company Practices, 2010](#)

⁵⁰⁷ [LGBT Section 377](#), Lawyers' Collective, 23 November 2010. This Penal Code is still used by many countries formerly ruled by the British, including India, Malaysia, and Myanmar.

⁵⁰⁸ [Global Report on Women in Tourism 2010](#), United Nations World Tourism Organization (UNWTO); [International Perspectives on Women and Work in Hotels, Catering and Tourism](#), ILO Working Paper 1/2013, p. 16.

⁵⁰⁹ [The Union of Myanmar travel association report](#), Overseas Development Institute (ODI), May 2014, p. 6.

⁵¹⁰ [Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women](#), Committee on the Elimination of Discrimination against Women (CEDAW), 25 June 1999.

⁵¹¹ [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](#), Committee on the Elimination of Discrimination against Women (CEDAW), 4 September 2007.

⁵¹² [Women's National Strategic Plan for Women Advancement Released](#), UNDP, 4 October 2013.

or education in monasteries, leading to a lower literacy rate. Based on the OECD's Social Institutions and Gender Index, Myanmar ranked 44th out of 86 countries in 2012, and 6th of 7 ASEAN countries. Legislation dealing with sexual harassment and rape cases is in place, but remains inadequate. Meanwhile, legislation is planned for dealing with domestic violence. Under the law, women have equal legal rights to own and buy land, but the reality is that they are restricted from doing both. Women also have a legal right to access credit, but in practice they face discrimination, such as high interest rates than are applied to male borrowers.⁵¹³

Without access to education, women cannot access the jobs market and remain in low paid positions and are more prone to exploitation.⁵¹⁴ The ADB is supporting the Government in carrying out a gender situational analysis that will provide a more detailed assessment of the status of women in the country.⁵¹⁵

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.⁵¹⁶ In practice, women do not receive equal pay for work of equal value.⁵¹⁷ Although the law guarantees equality between men and women, enforcement is weak and women are underrepresented in Government and in most traditionally male occupations.

Maternity leave is provided to female employees covered by the Social Security Act 1954 for six weeks before and 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.⁵¹⁸ 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.

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. A direct correlation has been identified between the depletion of natural resources and the imposition of an increased burden on women. Tourism often restricts access to, or contributes to the depletion of natural resources such as water and firewood and it is often women who suffer the most from these challenges.⁵¹⁹ The government has also identified its relevance. Gender is one of the seven cross-cutting

⁵¹³ [Myanmar: Unlocking its potential, a country diagnostic study, Asian Development Bank, p. 136-138, September 2014.](#)

⁵¹⁴ [Sex workers struggle in Myanmar](#), *Myanmar Times*, 11 August 2013.

⁵¹⁵ [46484-001: Support to the Preparation and Dissemination of the Myanmar Gender Situational Analysis](#), ADB, December 2012.

⁵¹⁶ Myanmar Legal Framework Background Paper for authors of this report, p. 83, on file with MCRB.

⁵¹⁷ [The 100th International Women's Day celebrated in Yangon, Myanmar](#), UNFPA Myanmar, 8 March 2011. 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.

⁵¹⁸ [Labour Laws in Myanmar, Asian Monitor Resource Centre](#), May 2014.

⁵¹⁹ [Who really benefits from Tourism, Working Papers Series 2007-2008](#), Equations, 2008, p. 70.

themes mainstreamed in the Tourism Master Plan⁵²⁰ which commits to include it 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.⁵²¹

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.⁵²² 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.⁵²³ 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, provision of support to local female artisans and raising of awareness and prevention of sexual exploitation of women.⁵²⁴

Prostitution is illegal in Myanmar and those convicted under Burmese law on prostitution charges face up to three years in prison.⁵²⁵ Massage parlors, model shows and karaoke lounges serve as disguised brothels in many Myanmar towns and cities.⁵²⁶ In December 2014 a proposal to legalise and regulate karaoke bars and massage parlours in Yangon was put forward at the regional parliament session, but rejected by the government.⁵²⁷

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, which caters to Western and Asian sex tourists. There are fears that Myanmar will become a new destination.⁵²⁸ 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.⁵²⁹ The government of Myanmar recognizes the 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 Policy⁵³⁰ and in the Tourism Master Plan (key objective 3.2.) through collaboration between MoHT and other internal and external agencies, awareness raising and prevention.⁵³¹

⁵²⁰ [Tourism Master Plan](#), p. 11.

⁵²¹ [Tourism Master Plan](#), p. 10.

⁵²² [Policy on Community Involvement in Tourism](#), pp. 15, 19 and 47, 2013.

⁵²³ *Ibid.*, pp. 15, 24.

⁵²⁴ [Responsible Tourism Policy](#), pp. 12, 18 and 19.

⁵²⁵ [The Suppression of Prostitution Act](#), 1949.

⁵²⁶ [No Changes to Burma's 60-Year-Old Prostitution Law, Police Chief Says](#), *The Irrawaddy*, 10 July 2013.

⁵²⁷ [Massage parlours avoid the squeeze as bribery remains entrenched](#), *Myanmar Times*, 24 December 2013.

⁵²⁸ [Burmese Are Wary of Tourism's Dark Side](#), *New York Times*, 10 April 2012.

⁵²⁹ [Can Burma Avoid the Curse of Sex Tourism?](#), *Time Magazine*, 12 April 2013.

⁵³⁰ [Responsible Tourism Policy](#), p. 19.

⁵³¹ [Tourism Master Plan](#), Key objective 3.2.1, p. 47 and Key objective 6.3.3, p. 54.

Box 27: Case Study – Addressing Sex Tourism in Nosy Be, Madagascar

In response to sex tourism in Nosy Be, Madagascar, a social protection network against sex tourism has been set up. The network includes representatives from the police, judiciary, NGOs, doctors, schools and the tourist industry, and meets at once a month to review and devise strategies.

Since the '90s, Foyer Social, a skills centre, provides sex workers with a second chance. In 2010 about 60 former sex workers, some as young as 16 years, received training. The local tourist industry recruits receptionists, secretaries and other personnel from Foyer Social.⁵³²

Children

The Myanmar Government ratified the Convention on the Rights of the Child (CRC) in 1991, and acceded to the CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in January 2012⁵³³ 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 of age. 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 Child to facilitate the implementation of the CRC, but challenges remain, which can be linked amongst others, to weak monitoring.⁵³⁴ In November 2014 more than 200 civil society organizations sent an open letter to President Thein Sein calling on the government to promote child rights and draw up effective laws to protect children from rights violations including child labour, child trafficking and child sexual abuse.⁵³⁵ Although there is no estimate of child labour for Myanmar, given its link to poverty, a significant prevalence of child labour may be expected.⁵³⁶

The 2008 Constitution reaffirms the State's responsibility to provide free basic education and health care for children.⁵³⁷ A wide range of enrolment figures for primary education exist with some estimating it to be as high as 97 percent.⁵³⁸ However, others estimate that more than half of Myanmar children do not complete primary school⁵³⁹. 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.⁵⁴⁰

⁵³² [Madagascar, Fighting a rising tide of sex tourism](#), *IRIN News*, 26 November 2010.

⁵³³ [United Nations Treaty Collections](#)

⁵³⁴ [Myanmar National Plan of Action for Children 2006-2015](#), and [Situation Analysis of Children in Myanmar](#), UNICEF, July 2012.

⁵³⁵ [Child Rights in Burma Spotlighted on World Children's Day](#), *The Irrawaddy*, 20 November 2014.

⁵³⁶ Call for expression of interest, [Consultant for A Legal Review on National Laws and Regulations related to Child Labour](#) (ILO)

⁵³⁷ *Ibid.*, pp. 4-5.

⁵³⁸ [EU Development Cooperation with Burma/Myanmar](#), European Union, 2012.

⁵³⁹ [What to do for Burma's Children?](#) The National Bureau of Asian Research (NBR), A. Kirkwood, 2009.

⁵⁴⁰ [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.

Child Labour

Not all work done by children should be classified as “child labour”. For example, helping parents around the home, assisting in a family business or earning money outside school hours and during school holidays does not normally constitute child labour. “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 Labour⁵⁴¹ and has committed to implement the Convention which came into force on 18 December 2014.⁵⁴²

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.⁵⁴³ 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%.⁵⁴⁴

Children work in various sectors throughout Myanmar, including construction of both roads and buildings, 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.⁵⁴⁵ One survey found that one third of child labourers worked as street vendors.⁵⁴⁶ They are frequently victims of economic exploitation, as employers generally pay less to children despite their similarly high labour contribution in comparison to adults.⁵⁴⁷ Many children are working in the cities’ informal sector,⁵⁴⁸ where they are exposed to drugs and petty crime, risk of arrest and trafficking for sex and labour exploitation. In the tourism sector children are often seen working in small restaurants, selling souvenirs, as tourist guides or begging for money. In hotels children work as bell boys, waiters and waitresses, maids. In the travel business children sometimes work as porters, coolies and cleaners, assistants and as porters carrying loads on treks.⁵⁴⁹

In January 2014 the Myanmar Government introduced a four-year plan to eliminate child labour, which includes a number of 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

⁵⁴¹ [Myanmar ratifies the Worst Forms of Child Labour Convention](#), 19 December 2013.

⁵⁴² [Myanmar vows to implement ILO Convention on child labor](#), *Global Post*, 7 July 2014.

⁵⁴³ [The Global State of Workers’ Rights - Burma](#), Freedom House, 31 August 2010; and [Minimum Age Convention, 1973](#) (No. 138) Article 7, ILO.

⁵⁴⁴ [Situation Analysis of Children in Myanmar](#)

⁵⁴⁵ [No Horsing Around for Beach Boys along Mon State Coast](#), *The Irrawaddy*, 29 May 2013; [In Bagan, Child Guides Eke Out a Living for Their Families](#), *The Irrawaddy*, 28 September 2013; [Spotlight on Poverty and Child Labor in Burma](#), *Rehmonnya*, 22 January 2014; [Rampant child labour in Burma: “11 years old and waiting tables”](#), *France 24*, 27 June 2013.

⁵⁴⁶ [Situation Analysis of Children in Myanmar](#), p. 116.

⁵⁴⁷ [Child Rights Forum of Burma](#), CRC Shadow Report Burma, 29 April 2011.

⁵⁴⁸ [Union of Myanmar Country data](#), *Education International*, Myanmar, 2011.

⁵⁴⁹ [Child Labour: An ugly face of Tourism. Equations Paper for the ILO Karnataka Child Labour Project](#), 11 September 2007, p. 73, *Equations India*, in Working Papers Series 2007-2008, p. 31.

conformity with international laws. Together with UNICEF, the government plans to collect data on child labour.⁵⁵⁰

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. Finally, the detection and prevention of child abuse and awareness raising and prevention of sexual exploitation of children are key action points.⁵⁵¹ 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.⁵⁵² 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.⁵⁵³

Box 28: Case Study – ChildSafe Tourism Campaign, Cambodia

The ChildSafe Tourism campaign was launched by World Vision Cambodia in partnership with the Cambodian Ministry of Tourism. The campaign aims to prevent child sexual exploitation in the tourism sector by enlisting responsible tourists to keep children safe from any abuse occurring in the first place. This campaign is part of an Australian Government initiative – Project Childhood Prevention Pillar.

In partnership with the Ministry of Tourism, World Vision has produced 120,000 stickers, 10,000 tent cards and 36 signboards with ChildSafe Tourism messages, which are being distributed in major tourism locations by government, public and private stakeholders working in the tourism sector.⁵⁵⁴

As in Cambodia, Myanmar is vulnerable to the attentions of paedophiles and awareness needs to be raised of the growing risk.⁵⁵⁵ In recent years, 13 foreigners have been blacklisted by the government after engaging in or attempting to engage in child sex while visiting Myanmar.⁵⁵⁶ Research conducted by the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism demonstrated that in Yangon, Mandalay, Nay Pyi Taw, Bagan and Inle Lake area, there is a high risk for children falling victim to commercial sexual exploitation. The Code also received a report about underage sex workers working in a hotel in Mong La, northeastern Myanmar.⁵⁵⁷ 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.⁵⁵⁸

⁵⁵⁰ [Myanmar, UNICEF to collect data on child labour](#), *Business Standard*, 3 July 2014.

⁵⁵¹ [Responsible Tourism Policy](#), p. 19.

⁵⁵² [Tourism Master Plan](#), Key objective 3.2.1, p. 47.

⁵⁵³ Policy on Community Involvement in Tourism, Objective 3, Action points e) and h), p. 19.

⁵⁵⁴ [ChildSafe Tourism](#)

⁵⁵⁵ [Let's talk about sex](#), *Myanmar Times*, 18 November 2013.

⁵⁵⁶ [Can Burma Avoid the Curse of Sex Tourism?](#) *Time Magazine*, 12 April 2013.

⁵⁵⁷ This information is based on input from the Code provided to MCRB after the Tourism SWIA Consultations were held in Yangon in August 2014.

⁵⁵⁸ [Myanmar warns visitors on child sex tourism](#), ETN Global Travel Industry News, 21 November 2012.

B. Cumulative Impacts

- Increased numbers of foreign tourists visiting locations with high levels of poverty presents a risk of a developing an ‘orphanage tourism’ industry as seen in Cambodia where tourists can visit an ‘orphanage’ (genuine or otherwise) for a few hours or pay money to volunteer at an orphanage for a week. Myanmar has many monastic education schools and ‘orphanages’ (in which most children have at least one parent). Orphanage tourism has driven unscrupulous practices and trafficking of children elsewhere. In Cambodia there has been a rise of 65% in the number of orphanages since 2005 due to the rising visitor numbers. However, the majority of these children are not orphans and have at least one living parent. Furthermore, these already vulnerable children risk exposure to travelers who are paedophiles. They may also suffer long-term psychological damage when they bond with volunteers who then leave again.⁵⁵⁹ ChildSafe has produced guidance on the consequences of treating children as tourism attractions.⁵⁶⁰

C. Assessment Findings

NB: The SWIA field assessment teams only observed findings related to the rights of women and children within groups at risk.

Non-Discrimination, 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, guesthouses, 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, making it more challenging for employees to claim their rights.
- In one hotel in Mawlamyine, **female employees had to sign a form 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.

⁵⁵⁹ [Voluntourism tips: is it ethical to visit orphanages?](#) Lonely Planet, 25 April 2013.

⁵⁶⁰ [Children are not tourist attractions](#), ChildSafe Tourism Campaign.

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 were **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

- In a very small number of cases **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.

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 across the country, 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 reported that **children between the ages of 14 and 17** were working fulltime in souvenir shops throughout the high season and laid off during the low season.

- **Children as young as 9 years of age 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 engaged in harmful practices such as glue sniffing and alcohol consumption. In Kyaikhtiyo **child workers aged 13-16 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 being required 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, may increasingly be engaged in sex work**, with foreign tourists as their clients. It was reported 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 reported**. Fears were expressed of increasing child prostitution and child sex tourism in the region due to its proximity to Thailand.

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- As of September 2014, fourteen Myanmar companies (mostly tour operators) have signed up to the **Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism ('The Code')**. The Code 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 2014.⁵⁶¹ From July to September 2014, seven child protection workshops were organized by The Code in Yangon, Mandalay, Bagan and Inle Lake, reaching 267 tourism professionals, including tour guides. The workshops aimed to strengthen understanding of commercial sexual exploitation of children, especially prostitution of children, child trafficking and child sex tourism and what participants can do in terms of: identifying and reporting cases.⁵⁶²

⁵⁶¹ [Myanmar's tourism boom may put children at risk](#), The Code, 15 July 2014.

⁵⁶² This information is based on input from the Code provided to MCRB after the Tourism SWIA Consultations were held in Yangon in August 2014.

E. Relevant International Standards and Guidance

Box 29: Relevant International Standards and Guidance on Groups at Risk

Relevant International Standards:

- [ILO Convention 111 on Discrimination \(Employment and Occupation\)](#)
- [UN Convention on the Elimination of Discrimination against Women \(CEDAW\)](#)
- [UN Convention on the Rights of Persons with Disabilities](#)
- [UN Convention on the Rights of the Child](#)
- [ILO Convention 182 on the Worst Forms of Child Labour](#) and [ILO Convention 138 on the Minimum Age for Admission to Employment and Work](#)
- [IFC Performance Standard 2 and Guidance Note – Labor and Working Conditions](#)
- UN World Tourism Organization's (UNWTO) [Global Code of Ethics for Tourism \(GCET\)](#), Articles 2.2, 2.3
- [Global Sustainable Tourism Criteria for Hotels and Tour Operators](#), criteria B6, B7

Relevant Guidance:

- [IFC Discrimination Good Practice Note](#)
- UNIFEM and United Nations Global Compact – [Women's Empowerment Principles](#)
- UNICEF, UN Global Compact and Save the Children, [Children's Rights and Business Principles](#)
- [Corporate Social Responsibility and Disability \(CSR-D\)](#) - A Guide for Companies in Myanmar (2014)MCRB and DRC (bilingual English/Myanmar language)
- The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism ('[The Code](#)')
- [Be a ChildSafe traveller](#), ChildSafe Tourism
- [Engaging Stakeholders on Children's Rights](#) (September 2014) UNICEF

Cumulative & Project Level Impacts

Culture

**FOOT WEARING
PROHIBITED**

Culture

In this section:

- A. National Context
- B. Cumulative Impacts
- C. Assessment Findings
- D. Examples of Emerging Good Practices in Myanmar
- E. Relevant International Standards and Guidance

A. National Context

As Myanmar opens up after decades of self-imposed and externally imposed isolation, and foreign media from Korean soap operas and K-Pop to Facebook and Coca-Cola become available, foreign cultural influences are starting to have an impact on society, particularly in the cities. While some of these changes, such as increased opportunity and choice, and increased freedom of expression is a positive, the change is creating generational tensions, and a fear among more conservative older generations that ‘Myanmar culture’ and ‘Myanmar values’ may be overwhelmed. The positive and negative impacts of tourism at the sectoral level are outlined above (Part 3).

Box 30: Case Study – Raising Awareness to Houseboat Tourists in Kerala, India

Houseboats on the backwaters of Kerala, India are located in the middle of communities who live and sustain themselves from the Backwaters. To address some of the culturally insensitive behavior of tourist on houseboats in South India’s backwaters, Sita Travels, Kuoni’s local subsidiary in India has developed a customer information brochure, which is distributed to all customers travelling on the houseboats.⁵⁶³

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.⁵⁶⁴ 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.⁵⁶⁵

⁵⁶³ [Visiting Backwaters Responsibly](#), Brochure for houseboat customers, Sita Travels.

⁵⁶⁴ [Responsible Tourism Policy](#), Aim 3, p. 13.

⁵⁶⁵ [Policy on Community Involvement in Tourism](#), 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 enable 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 capital⁵⁶⁶ and in 2012 the government put a number of historic buildings up for tender⁵⁶⁷. But the process is slow⁵⁶⁸ and controversies have arisen as to whether certain 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.⁵⁶⁹ 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.⁵⁷⁰ In September 2014 the Minister of Culture announced that fines for the misuse of properties that are designated as culturally significant will be enforced.⁵⁷¹

Box 31: Protection and Preservation of Cultural Heritage Regions Law

The Ministry of Culture has the duty under this law to scrutinize applications of permission for construction and assess whether:

- it can cause obstruction of the view of the cultural heritage regio;
- it is clear of the ancient monument or ancient site;
- it can obstruct the surrounding natural landscape;
- it can undermine the grandeur of the ancient monument;
- it can affect the security of the cultural heritage; or
- it can cause environmental pollution.

The Law also prohibits destruction of ancient monuments, the wilful altering of the original ancient form and structure or original ancient workmanship of an ancient monument; and excavations to search for antiques and exploration for petroleum, natural gas, precious stones or minerals in a cultural heritage site. It is also prohibits to ploughing and cultivating or carrying out any activity that may cause damage to the cultural heritage.

Since 2012 UNESCO has worked with the Ministry of Culture on the conservation and the management of 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.⁵⁷² World Heritage Status was achieved in June 2014 for the ancient Pyu cities of Sri Ksetra, Halin and Beikthano⁵⁷³. 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

⁵⁶⁶ [Yangon Heritage Trust](#)

⁵⁶⁷ [Govt tender winner details released](#), *Myanmar Times*, 16 July 2012.

⁵⁶⁸ [Conservation projects in Yangon face long road ahead](#), *Myanmar Times*, 3 November 2013

⁵⁶⁹ [The Myanmar Protection and Preservation of Cultural Heritage Regions Law \(1998\) Amended by Law. No.1/2009](#)

⁵⁷⁰ [Ministry bans building within Bagan, other heritage sites](#), *Democratic Voice of Burma*, 28 November 2013.

⁵⁷¹ [Culture ministry to protect buildings, nature](#), *Democratic Voice of Burma*, 8 September 2014.

⁵⁷² [UNESCO to Launch Project for Safeguarding Cultural Heritage in Myanmar](#), 30 March 2012.

⁵⁷³ [Burma's Culture Ministry Vows to Limit Building in Pyu Cities](#), *The Irrawaddy*, 24 July 2014.

infrastructure development⁵⁷⁴. The government halted hotel construction there in March 2014.⁵⁷⁵ However in October 2014 the Ministry of Culture called for even stricter enforcement of hotel development rules in Bagan if the country wants to sustain its cultural heritage.⁵⁷⁶ The Government is working with Japan to develop sustainable tourism in Bagan.⁵⁷⁷

Myanmar ratified the UNESCO [Convention for the Safeguarding of the Intangible Cultural Heritage](#) (2003), which entered into force in August 2014 and has now begun to inventory this, beginning with a participatory workshop in the Inle Lake region⁵⁷⁸.

Ethnic Minority Cultures

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.⁵⁷⁹ There are multiple other cultures, ethnicities, languages and religions present throughout the country, which is part of its attraction as a tourism destination.

The government actively promotes the unique and dominant Bamar/Burman Buddhist culture, including through its tourism publicity⁵⁸⁰. That said, 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 groups⁵⁸¹ and the Tourism Master Plan recognizes that tourism development should promote full respect for the cultural uniqueness of ethnic peoples.⁵⁸²

Ethnicity is a complex, contested and politically sensitive issue (see Part 3.1. - 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 135 national races in its 1983 Procedures.⁵⁸³ 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 and relationships of particular groups.⁵⁸⁴

Further, almost all Rohingya⁵⁸⁵ 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

⁵⁷⁴ [Myanmar Tourism's 'Crown Jewel' Feels Strains of Growth](#), *The Irrawaddy*, 31 March 2014.

⁵⁷⁵ [New Hotels banned in ancient Bagan](#), *Democratic Voice of Burma*, 20 March 2014.

⁵⁷⁶ [Call for stricter development rules in Bagan](#), *Myanmar Times*, 10 October 2014.

⁵⁷⁷ [Japan Supports Bagan Tourism](#), *TTR Weekly*, 26 May 2014.

⁵⁷⁸ [Workshop on community based inventorying in Myanmar](#), 28 October 2014.

⁵⁷⁹ [Access Denied: Land Rights and Ethnic Conflict in Burma](#)

⁵⁸⁰ [Myanmar: Let the journey begin](#) (2013 promotional video, Image Diplomacy)

⁵⁸¹ [Responsible Tourism Policy](#), Aim 3, p. 13.

⁵⁸² [Tourism Master Plan](#), Key objective 3.2.3, p. 48.

⁵⁸³ [Burma Citizenship Law of 1982](#)

⁵⁸⁴ [Myanmar Conflict Alert: A Risky Census](#), International Crisis Group, February 2014.

⁵⁸⁵ The Myanmar government does not recognize the term 'Rohingya' and refers to those self-identifying as Rohingya as 'Bengali' or 'Bengali Muslim'.

heritage are mostly denied full citizenship under this law because they do not automatically qualify under “national races”.

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.⁵⁸⁶

B. Cumulative Impacts

The influx of large numbers of tourists to a particular region or location, or operation of multiple tourism businesses in a particular location, can have cumulative impacts on the culture of specific destinations in Myanmar:

- Tourism can have a distorting effect on cultural heritage, as communities may change heritage to suit tourists’ demands, or create differences among groups or communities by recognizing one living expression and not another. There is also a danger of freezing heritage through a ‘folklorisation’ process or the quest for ‘authenticity’. Tourism may lead to the disregard of customs that govern access to secret or sacred information.
- Tourism can lead to a ‘market value’ being placed on the intangible cultural heritage instead of its cultural value, leaving it open to inappropriate commercial exploitation⁵⁸⁷. For example, the traditional fishing culture of the Moken, an ethnic minority group from the Myeik Archipelago, risks being negatively impacted by the influx of large numbers of tourists on trips to ‘Moken village’, as it has in nearby Thailand.⁵⁸⁸
- There is a risk that tourism destinations will be standardized to satisfy tourists’ desires for familiar facilities such as international fast-food chains, thereby replacing local restaurants offering traditional food.
- Large numbers of tourists showing lack of respect for local customs and values could lead to conflicts between communities and tourists.
- Tourism could have an impact on the preservation of cultural heritage where tourists and tourism businesses do not respect sites. Cultural heritage sites can also be affected by physical destruction due to large numbers of visitors.

⁵⁸⁶ [Free, prior and informed consent in Myanmar](#), International Alert, October 2012.

⁵⁸⁷ [Intangible Heritage Frequently Asked Questions](#), UNESCO.

⁵⁸⁸ [Tourism threatens Moken people of Myanmar's Mergui archipelago](#), *South China Morning Post*, 23 March 2014.

Traditions, Social and Cultural Practices

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

Assessment Findings

- In certain tourist areas, particularly in Bagan, so-called **'Temple Dinners' have been introduced**, where tourists consumed dinner and drinks inside the pagoda compounds. The sale and **consumption of alcohol** is prohibited around pagodas according to local customs, so this practice was not accepted by Myanmar people and the Tour Guides Association campaigned for it to be banned.
- At Kyaikhtiyo, locals associated an **increase in theft, gambling, alcohol consumption, and related 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 around dress code when entering a pagoda**, for example by not removing their shoes or not covering their legs above the knee and shoulders.
- 'The human zoo' phenomenon was 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 movement⁵⁸⁹.

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 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 facing tourism development were generally not invited to identify their intangible and tangible cultural heritage**.

⁵⁸⁹ [Women from Padaung Tribe in Bagan](#), *Myanmar Tourism Watch*, 3 April 2011.

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- UNESCO is working on the **preservation and documentation of non-tangible culture**, such as the knowledge of 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**.
- In May 2014 a workshop was held in Yangon with 50 key stakeholders representing local government, development and civil society organizations, academics, town planners, guides and travel agencies to discuss the development of heritage tourism products in Yangon.

Do's and Don'ts for Tourists in Myanmar

In 2012, the Myanmar Ministry of Hotels and Tourism, supported by the Hanns Seidel Foundation and Tourism Transparency, worked together to create a set of guidelines for tourists in Myanmar to support greater awareness by visitors. The project incorporated consultation with more than 250 tourism stakeholders throughout the country, at all levels, from villager to government, to identify the most common problems associated with tourism so far. The findings and cartoon recommendations were then discussed and approved by 17 Ministries related to tourism. Since the launch of the project, approximately 40,000 Do's and Don'ts booklets have been distributed across the country, with additional thousands of PDF and mobile device downloads from the Do's and Don'ts website.

E. Relevant International Standards and Guidance

Box 32: Relevant International Standards and Guidance on Culture

Relevant International Standards:

- [International Covenant on Economic, Social and Cultural Rights](#) and [Myanmar language version](#)
- [UNESCO Convention Concerning the Protection of World Cultural and National Heritage](#) (1972)
- [UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, \(2003\) ratified by Myanmar in May 2014](#)
- [IFC Performance Standard 7 on Indigenous peoples and 8 on Cultural Heritage](#)
- UN World Tourism Organization's (UNWTO) [Global Code of Ethics for Tourism](#) (GCET), Articles 1.1, 2.5, 4, 5.1, 7 and 9.5
- [Global Sustainable Tourism Criteria for Hotels and Tour Operators](#), criteria A1, A3, A6.1, A6.2 and B1

Relevant Guidance:

- [Guidelines for Sustainable Cultural Tourism in Historic Towns and Cities](#), European Associations Historic Towns and Regions, September 2009

Cumulative & Project Level Impacts

Physical Security



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Physical Security

In this section:

- A. National Context
- B. Assessment Findings
- C. Relevant International International Standards and Guidance

A. 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., which addressed the development of systems to promote visitor safety.⁵⁹⁰ Tourist police training has been conducted in all major tourist regions in the country.⁵⁹¹ Aim 6 of the Responsible Tourism Policy promotes health, safety and security provisions for visitors.⁵⁹²

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.⁵⁹³ In October 2014 a bomb exploded in the border town of Myawaddy, causing one death and resulting in a decreased number of tourists to the area.⁵⁹⁴ 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 scanners⁵⁹⁵ 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.⁵⁹⁶ Inter-communal anti-Muslim violence at Thandwe near Ngapali beach left five dead and many homes destroyed in October 2013 and resulted in an increased security presence.⁵⁹⁷ 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

⁵⁹⁰ [Tourism Master Plan](#), Key objective 1.4, p. 43.

⁵⁹¹ [Tourist Police deployed next month](#), *The Nation*, 26 March 2013.

⁵⁹² [Responsible Tourism Policy](#), Aim 6, p. 15.

⁵⁹³ [Fear Rises in Rangoon After Bomb Blast](#), *The Irrawaddy*, 15 October 2013.

⁵⁹⁴ [Myawaddy's tourism business declines sharply after deadly blast](#), *Eleven Media*, 16 October 2014.

⁵⁹⁵ [Security Plan upgraded for this year's Thingyan Festival](#), *Eleven Media*, 19 March 2014, and [You're safe with us: Government seeks to allay security fears](#), *Myanmar Times*, 21 October 2013.

⁵⁹⁶ [Rakhine violence does not stall Myanmar's tourism](#), *Myanmar Times*, 22 November 2012.

⁵⁹⁷ [Burma's beach paradise still safe despite riots, say officials](#), *Democratic Voice of Burma*, 9 October 2013.

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.⁵⁹⁸ The tourist travel advice provided by the UK's Foreign and Commonwealth advises (as of January 2015) against all but essential travel to Rakhine State except for the tourist resort of Ngapali and travel to/from the resort via Thandwe airport⁵⁹⁹.

Air safety facilities at airports in Myanmar are considered insufficient to ensure safe operations. At many of the local airports in Myanmar, aircraft operation is being done with radio navigation systems of low precision, otherwise by visual flight, which makes it difficult to respond to sudden weather changes during the flight. Some of the local airports are not equipped with security equipment to detect explosives or no security equipment is installed.⁶⁰⁰ Seven aviation incidents are recorded on the Aviation Safety Network database since 2007, although only one resulted in (two) fatalities.⁶⁰¹

The Tourism Master Plan includes Key Objective 5.1.4, which aims to conduct a review of the international domestic aviation industry in 2014-2015. Under this objective a review of current routing, infrastructure and ground services will be conducted and improvements recommended with a view to improve safety, security and service.⁶⁰² To date no information is available as to whether this review is underway. In 2013 Japan International Cooperation Agency (JICA) signed an agreement with the Government of Myanmar to improve safety and security equipment of Myanmar's international and major airports (Yangon, Mandalay, Nyaung-U, Heho, Thandwe and Dawei).⁶⁰³

B. 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.
- However 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.
- In most cases businesses were found to have **insufficient policies and capacity concerning security arrangements**, in particular at smaller hotels and guesthouses. Most large **hotels strengthened their security procedures and practices** to ensure

⁵⁹⁸ [Medical gap threatens lives in Rakhine](#), *Myanmar Times*, 11 March 2014.

⁵⁹⁹ [UK Government, Foreign travel advice, Burma](#)

⁶⁰⁰ [Grant Agreement for the Republic of the Union of Myanmar](#), Japan International Cooperation Agency (JICA), 22 March 2013.

⁶⁰¹ [Aviation Safety Network, Aviation Safety Database](#)

⁶⁰² [Myanmar Tourism Master Plan](#), Key Objective 5.1.4, p. 51.

⁶⁰³ *Ibid.*, note 604.

better security for their staff and guests following the 2013 bomb blasts. Hotels in large cities had security gates and CCTV cameras installed.

C. Relevant International Standards and Guidance

Box 33: Relevant International Standards and Guidance on Security

Relevant International Standards:

- [IFC Performance Standard 4: Community Health, Safety, and Security](#)
- [Voluntary Principles on Security and Human Rights](#)

Relevant Guidance:

- UN World Tourism Organization's (UNWTO) [Global Code of Ethics for Tourism](#) (GCET), Article 1 (Tourism's contribution to mutual understanding and respect between peoples and societies), 1.4 and 1.6

Cumulative & Project Level Impacts

Environment & Ecosystem Services



Part 4.8

Environment and Ecosystem Services

In this section:

- A. National Context
- B. Cumulative Impacts
- C. Assessment Findings
- D. Examples of Emerging Good Practices in Myanmar
- E. Relevant International Standards and Guidance

A. National Context

Myanmar's rich, varied and relatively preserved natural environment is one of the key assets for the development of tourism. Myanmar has one of the largest forest reserves in Southeast Asia, with 47% of the territory being covered with forest⁶⁰⁴ providing for a rich biodiversity. It has a diverse coastal and marine habitat, including coral reefs, seagrass beds, mangroves, sandy beaches and mudflats. The country also has abundant water resources, although water availability is highly seasonal and parts of the country experience serious drought during the dry season⁶⁰⁵. However, Myanmar's biodiversity is under increased pressure, with the acceleration of forest destruction, including mangroves and land degradation.

These factors, together with mining, expansion of agriculture and industry as well as large-scale tourism development – including illegal removal of sand from beaches for resort construction - are placing additional pressure on the environment. Many Myanmar citizens, and local and international civil society organizations, fear Myanmar's rich biodiversity and natural habitats will be depleted and damaged by greater investment, in particular in the area of resource extraction⁶⁰⁶.

Water and Waste Management

Access to safe drinking water varies significantly among different states and regions in Myanmar. A 2011 study indicated that just 68% of households had access to improved water sources, but only 17% of households had a safe way of extracting water from sources, thereby increasing the risk of contamination.⁶⁰⁷ Water scarcity is considered a problem in

⁶⁰⁴ [Ministry of Environmental Conservation and Forestry \(MOECAF\)](#)

⁶⁰⁵ [Asian Development Bank, Myanmar: Agriculture, Natural Resources, and Environment Initial Sector ASR](#), p. 4.

⁶⁰⁶ [Myanmar: A Biodiversity Hotspot under threat](#), *Asian Scientist*, 1 August 2013.

⁶⁰⁷ [Situation Analysis of Children](#), UNICEF, 2012, pp. 55 and 57.

certain regions in Myanmar, particularly in the dry zones. In a study carried out by the University of Kent on the impacts of coastal tourism in Ngapali beach concerns were expressed that existing old water reservoirs would not be sufficient to cope with increased tourist numbers, especially if new hotels built large fresh water swimming pools and other water features.⁶⁰⁸

River and lake pollution from sewage, industrial waste and solid waste disposal in particular are serious problems in Myanmar. Littering is also endemic, including in tourist areas, although some awareness raising campaigns are being conducted.

Air Quality and Pollution

There are at present no air quality standards in place in Myanmar, nor is there advanced technology (or capacity) for air quality measurement. Attention to date has focused mainly on the largest city, Yangon, where air quality is becoming a visible concern,⁶⁰⁹ and pollution monitoring equipment is beginning to be installed in the city. Despite this focus on Yangon, many other areas around the country are also anticipating industrial development and increased activities by heavy footprint and high emissions industries.⁶¹⁰

Forest Conservation and Land Degradation

Almost half of the total land area of Myanmar is forested, well above the average for the rest of East Asia and the Pacific, but the country is experiencing deforestation due to over-exploitation of natural resources and unsustainable land management practices.⁶¹¹ During the period 1990-2010 Myanmar lost 7,445,000 hectares (19.0% of its forest cover).⁶¹² Myanmar still remains one of the ten countries in the world with the largest annual net loss of forest area and among the five countries (Indonesia, Australia, Myanmar, Madagascar and Mozambique) with the largest net loss of mangrove area during the period 2000–2010.⁶¹³ Similarly, soil erosion is a serious concern in the upland areas, with the government's land rehabilitation schemes not keeping pace with new cultivation by upland farmers, sustained by high rates of population growth.⁶¹⁴

Protected Areas

There are currently 43 officially recognised protected areas but little information is available on their status; these cover 7.3% of the country.⁶¹⁵ The Nature and Wildlife Conservation

⁶⁰⁸ *Coastal tourism and local impact at Ngapali Beach: Initial Findings*, Dr. Mark Hampton and Dr Julia Jeyacheya, University of Kent, November 2014. A copy of the report was provided to MCRB.

⁶⁰⁹ [Pollution Control and Air Quality Management in Myanmar](#), Statement of the Myanmar Deputy Minister for Transport. Recent reports showed particulate matter levels in Yangon 60% above WHO recommended maximums. See for example: [Our growing air pollution problem](#), *Myanmar Times*, 13 February 2012.

⁶¹⁰ [Air pollution monitors to be installed in Yangon](#), *Mizzima*, 20 February 2014.

⁶¹¹ [Myanmar's National Adaptation Programme of Action](#), p. 23.

⁶¹² [Myanmar Forest Information and Data](#), Mongabay, accessed 25 July 2014.

⁶¹³ [Global Forest Resource Assessment \(FRA\). Country Report Myanmar](#), Food and Agricultural Organization (FAO), 2010.

⁶¹⁴ [Myanmar National Environmental Performance Assessment Report](#), ADB, 2008.

⁶¹⁵ [Myanmar Protected Areas: Context, Current Status and Challenges](#), Istituto Oikos, Biodiversity and Natural Conservation Association (BANCA), p. 4. According to [MOECA](#), 38 Protected Areas amount to 5.61% of the country's area.

Division (NWCD) of the Forest Department, is responsible for their management and biodiversity conservation.

Box 34: Case Study – Natma Taung National Park

Natma Taung National Park, Chin State

Natma Taung (formerly known as Mount Victoria) National Park is located in Chin State, western Myanmar. The area is famous for its rich biodiversity. The area is inhabited by local Chin communities. There are 6,000 Chin people living around the park and about 100 inside the park.⁶¹⁶ The park has been prioritised as an ecotourism site. The Ministry of Hotels and Tourism is planning to build a hotel zone, near the National Park, to promote ecotourism in the area.⁶¹⁷

Natma Taung is designated as an ASEAN Heritage Park and is included in the List of Protected Areas of Myanmar, managed by the Nature and Wildlife Conservation Division of the Ministry of Environmental Conservation and Forestry (MOECAF). On February 25, 2014, MOECAF nominated Natma Taung National Park, to be included on the UNESCO World Heritage List. At present the site remains on the Tentative list.

One of the threats impacting the biodiversity of the National Park is the construction of new roads and pathways in the area. The road is being constructed by the government without prior environmental impact assessment (EIA) and without coordination or approval of the National Park Warden. The new road does not take into consideration the habitat needs of the wildlife. Adverse environmental impacts have been identified, such as erosion, uncontrolled waste disposal, and forest fires near the road. According to the administrator of the National Park, if more money were allocated to the project, roads could have been built along different routes to avoid traversing the park.⁶¹⁸

In addition to road construction, other harmful activities were observed within the premises of the park⁶¹⁹, including sand and rock mining for the road construction, hunting and firewood extraction by local Chin communities, irresponsible tourism demonstrated in waste disposal, poorly maintained toilets near the mountain top, cars causing erosion and land degradation. The government of Myanmar also promotes tea plantations within the premises of the park, which damages the natural site.⁶²⁰ During the SWIA consultation, a case was mentioned of a tourist who stayed without a guide overnight on the mountain to collect butterflies, in contravention of the law, and was later arrested at the airport.

Even though national level strategies, action plans, policies and laws have been developed to sustain biodiversity, manage Protected Areas effectively and promote ecotourism, this example demonstrates that enforcement of such strategies is still lacking.

⁶¹⁶ [Natma Taung National Park](#), UNESCO.

⁶¹⁷ [Hotel Zone Slated for Chin State](#), *The Irrawaddy*, 25 September 2014.

⁶¹⁸ [Road Construction Could Damage National Park in Chin State](#), *The Irrawaddy*, 8 July 2014.

⁶¹⁹ Natma Taung National Park, National World Heritage Assessment, Spectrum (Sustainable Development Knowledge Network). The assessment was provided to MCRB.

⁶²⁰ [Myanmar Protected Areas, Context, Current Status and Challenges](#), Instituto Oikos and BANCA (2012).

Despite the long coastline and the threats facing the marine areas including overfishing, destructive fishing practices such as dynamite and cyanide and coastal development, there are only 4 marine protected areas in Myanmar. Through international conventions, the Myanmar government has committed to put 10% of its marine areas under protection by 2020. However the lack of biological and socio-economic data and a lack of financial and technical resources severely constrain the ability of the government and other actors to meet this target⁶²¹. Environmental NGOs are advocating for a new marine Marine Protected Area in Mergui Archipelago.⁶²²

The number and size of Protected Areas have increased over the years but also some terrestrial habitat types are still underrepresented, in particular beach and dune, mangrove and swamp forests. In 2011, 12 out of 43 PAs were listed among Myanmar ecotourism sites but access to 8 of them was allegedly difficult and in most cases special permits were required for foreign visitors. According to a study conducted by Istituto Oikos and Biodiversity and Natural Conservation Association (BANCA) on Protected Areas in Myanmar, the presence of tourists is reported more as a threat than as a resource due to the fact that tourist revenues do not directly contribute to supporting management of protected areas.⁶²³

In 2014, Myanmar applied for a number of sites to be placed on the UNESCO World Heritage list, of which most are natural heritage sites such as the Northern Mountain Forest Complex), Indawgyi Lake Wildlife Sanctuary, Natma Taung National Park (see below box 45), Myeik Archipelago, Hukaung Valley Wildlife Sanctuary and Tanintharyi Forest Corridor.⁶²⁴

Environmental Sustainability and Tourism

Environmental sustainability is one of the seven cross-cutting themes of the Myanmar Tourism Master Plan. Key Objective 3.3 states that all tourism infrastructure projects will seek to avoid and minimize negative impacts on the physical environment and respect the cultural landscape.⁶²⁵ The planning process should include mapping and zoning of sites and destinations to ensure the protection of key habitats and natural and cultural assets.⁶²⁶ The Master Plan also addresses the issue of tourism and climate change and the storage and treatment of solid waste and waste water.⁶²⁷ Finally, green technologies are promoted in order to reduce energy use under key objective 3.5.1.⁶²⁸

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

⁶²¹ [Building Capacity for Community-based Marine Conservation in Myanmar](#), Lighthouse Foundation.

⁶²² [Govt, Environmentalists Discuss Marine Protection Area for Mergui Archipelago](#), *The Irrawaddy*, 10 November 2014.

⁶²³ [Myanmar Protected Areas, Context, Current Status and Challenges](#), *op. cit.*

⁶²⁴ [Tentative list for Myanmar](#), UNESCO World Heritage Centre.

⁶²⁵ [Tourism Master Plan](#), p. 25.

⁶²⁶ [Tourism Master Plan](#)

⁶²⁷ [Tourism Master Plan](#), p. 52.

⁶²⁸ [Tourism Master Plan](#) Key objective 3.4 and 3.5.1, pp. 48-49.

support for the establishment and improvement of management of protected areas.⁶²⁹ 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.⁶³⁰

The rapid rise of tourism poses a threat to numerous natural habitats in Myanmar, such as Inle Lake, coastal areas such as Ngwesaung and the Myeik Archipelago. 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.

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.⁶³¹ Litter from Myanmar tourists accrues at many sites including U Bein Bridge and Taungthaman Lake in Mandalay despite signs introduced by the archaeological department⁶³². In Kyaikhtiyo, which experiences the heaviest traffic of Myanmar pilgrims, rubbish is simply dumped over the edge of the mountain.

At Inle Lake, lack of adequate conservation management has led to the lake silting up and drying out, poor water quality and soil erosion⁶³³. According to a recent study, the site, designated as a Protected Area, is in a state of 'environmental emergency'⁶³⁴. Villagers living near the lake now have to travel up to 1.5 hours by boat to fetch water for their households.⁶³⁵ The tourism industry contributes only some of the cumulative impacts on this fragile ecosystem: watershed deforestation, poor agricultural practices, including poorly controlled expansion of Inle's famous 'floating gardens' and excessive use of pesticides also each contribute.⁶³⁶ 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 USD 35 million tackling the ecosystem loss of Inle Lake caused by the tourism boom.⁶³⁷

There is interest in investing in and expanding the tourism industry in the largely undeveloped Myeik/Mergui Archipelago.⁶³⁸ In June 2014 the Myeik Public Corporation (MPC) states that it plans to invest USD 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.⁶³⁹ However the archipelago has suffered heavily from dynamite fishing which has impacted corals and fish populations, undermining its potential as a dive destination⁶⁴⁰.

⁶²⁹ [Responsible Tourism Policy](#), p. 14.

⁶³⁰ [Policy on Community Involvement in Tourism](#), p. 18.

⁶³¹ [The paradox of Tourism](#), Exo Foundation.

⁶³² [Travel industry slams Myanmar tourists over rubbish](#), *The Myanmar Times*, 24 June 2013.

⁶³³ [Inle Lake struggles amid tourism boom](#), Myanmar News Links, 31 August 2013.

⁶³⁴ [Myanmar Protected Areas, Context, Current Status and Challenges](#), Istituto Oikos and Biodiversity and Natural Conservation Association (BANCA).

⁶³⁵ [Inle water shortage](#), *Democratic Voice of Burma*, 24 May 2013.

⁶³⁶ [Inle report highlights tourism impact](#), *Myanmar Times*, 12 November 2012.

⁶³⁷ [Myanmar's Tourism Boom Endangers Fragile Ecosystems](#), *National Geographic*, 7 April 2014.

⁶³⁸ [Burma's Marine Eden Braces for Tourism](#), *The Irrawaddy*, 22 March 2014.

⁶³⁹ [Thura NewsViews](#), Issue 118, 12 June 2014.

⁶⁴⁰ [Coral Survey Confirms Marine Habitat in the Southern Myeik Archipelago Impacted by Heavy Fishing Pressure](#), IUCN, 6 March 2014

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 suggests including tourism companies in site stewardship in protected areas.

The MOHT, MOECAF and the International Centre for Integrated Mountain Development (ICIMOD) are currently developing an Ecotourism Policy and Management Strategy, which will set out practical actions to promote sustainable ecotourism products and services in and around 21 of Myanmar's protected areas.

Legal and Regulatory Framework

Myanmar currently has a weak framework for the protection and conservation of the environment. There are only few laws in place and some others in the process of being adopted, most importantly the regulatory process for environmental and social impact assessment. 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 Constitution does not guarantee the right to a healthy environment but establishes that citizens have to assist the government in environmental protection.

MOECAF is charged with establishing a regulatory framework under the 2012 Environment Conservation Law. MOECAF has just adopted the Environmental Conservation Rules 2014 and is in the process of developing environmental quality standards for air and water. The Law confers powers on MOECAF to regulate and to establish a "prior permission scheme"⁶⁴¹ for a range of business activities that "may cause impact on environmental quality". The Law also incorporates a number of prohibitions, such as in relation to importing, exporting, trading or producing any materials that may impact the environment. While the law provides for general environmental protection obligations, it does not stipulate whether and how infringements of the law are punishable and it does not specify any sector-specific obligations and regulations. The law must be complemented by more detailed laws and regulations as well as sector-specific standards. Other government departments authorised to approve business activities may do so only after obtaining the relevant permission from MOECAF.⁶⁴² Central to this is the emerging environmental and social impact assessment process (also see Legal framework, Part 2).

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.

⁶⁴¹ [Environmental Conservation Law \(2012\)](#), Article 26.

⁶⁴² [Foreign Investment Law](#), Article 38.

- 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 m³ 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.⁶⁴³

In addition to the Environmental Conservation Law, there are a number of existing laws relating to pollution, disposal or other harmful impacts on the environment. The 1993 Myanmar Hotel and Tourism Law includes one objective related to tourism and environmental protection; chapter II of the law includes as an objective the prevention of destruction and damage of Myanmar cultural heritage and natural scenic beauty, caused by the hotel and tourism industry.⁶⁴⁴ The Directives for Coastal Beach Areas laid down since 2004 aim at regulating construction, operation and management of coastal beach areas. The 2006 Conservation of Water Resources and River Laws provide a general prohibition on pollution of water (see Legal framework, Part 2).

B. Cumulative Environmental Impacts

The presence of several hotels, resorts and recreational areas for tourists, in the same area can have a number of cumulative impacts.

- Increased pollutant concentrations in soil or sediments, impacting the livelihoods of farmers and fishermen.
- Water quality and quantity can decrease due to excessive use and discharge into rivers, lakes or the sea by hotels, golf courses, restaurants and tourists.
- There is a risk of traffic congestion, road degradation and increased noise and dust from multiple construction projects in one area or increased tourism-related traffic such tour buses and taxis.
- Tourism can cause an increased pressure on municipal systems for drainage, sewage treatment, garbage disposal, roads, and other municipal services.
- In particular the location of, size and components within hotel zones are likely to cause significant environmental impacts. To date EIAs are not compulsory for entire hotel zones, but only for individual hotels or resorts with more than 80 rooms. Furthermore, there are no provisions in place yet to monitor the cumulative environmental impacts of hotel zones or periodic reviews of the ecological effects of the functioning of these hotel zones.

⁶⁴³ The Draft [Projects Categorization for IEE/EIAs](#)

⁶⁴⁴ [Myanmar Hotels and Tourism Law 1993](#), Chapter II.

- Due to increased number of tourist investments, the capacity of national and regional government to effectively consider EIAs and how to manage cumulative impacts risks being overwhelmed.

C. Assessment Findings

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

Water & Waste Management

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 companies. Examples of this included:

- In many cases there was **no sewage treatment system in tourist areas**. Waste water and garbage was often disposed of through 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 where tourist facilities used communities' water sources.
- In one case in Inle Lake region a water pipeline had been destroyed by a hotel project, causing water shortages for the locals.
- In Kyaikhtiyo, water shortages, which were probably linked to water usage by visitors, meant that 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 e.g. Chaungtha, there were reports 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 & 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, leading to air and noise 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 smells**. 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**.
- Unregulated tourist activity and too many climbers risk damaging the **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 had been 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 were concerned that the development of hotel zones and tourism projects would **spoil or destroy the natural scenery**, thereby removing the foundation for tourism.

- In Kyaikhtiyo, **villagers feared further 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.

D. Examples of Emerging Good Practices 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.
- 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 clean-up 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 encouraged villagers to clean up and not dispose of 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 negative impacts of the tourism industry on the surrounding environment, such as **tree planting initiatives and collection of waste**.
- **Tour guides in Bagan** have 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), MOECA and MOHT agreed to implement a **community-based ecotourism project at Indawgyi Lake** in central Kachin State.⁶⁴⁵ 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.

⁶⁴⁵ [Community-Based Ecotourism Project Launched at Indawgyi Lake](#), *The Irrawaddy*, 18 June 2014.

E. Relevant International Standards and Guidance

Box 35: Relevant International Standards and Guidance on Environment

Relevant International Standards:

- [IFC Performance Standards 3 and 6](#) (2012)
- Convention on Biodiversity: [Guidelines on Biodiversity and Tourism Development](#)

Relevant Guidance:

- IFC, [Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development](#)
- UN World Tourism Organization's (UNWTO) [Global Code of Ethics for Tourism](#) (GCET), Articles 1.5, 3.1, 3.3, 5.4 and 10.2
- [Global Sustainable Tourism Criteria for Hotels and Tour Operators](#), section D
- Centre for Housing Rights and Eviction, [Manual on the Right to Water and Sanitation](#) (2008)
- [Rainforest Alliance Training on Sustainable Tourism Management](#)
- [World Bank, Pollution Prevention and Abatement Handbook](#) (1999), includes recommendations how developers in the tourism can control pollution
- International Finance Corporation, [Excellence in Design for Greater Efficiencies, Introducing The EDGE](#) Green Buildings Certification System, a tool for construction of green buildings in emerging markets