



Sector-Wide Impact Assessment

# Human Rights and Business Fact Sheet

## Public and Community Services



This factsheet was compiled for the use of the Myanmar Centre for Responsible Business (MCRB) sector-wide impact assessment (SWIA) research teams, but may be of wider use in understanding the human rights risks involved in particular business issues. For more information on MCRB's SWIAs, please see [www.mcrb.org.mm](http://www.mcrb.org.mm).

## Short Summary of the Human Rights Issue

Many human rights are fulfilled through provision of basic public services (such as water, electricity, sewage treatment, waste disposal, etc.- also sometimes referred to as essential services), including the right to food, right to an adequate standard of living, the right to housing, right to water and sanitation and others. There is a common misconception that economic, social and cultural rights require governments to provide free health care, water, education, food and other goods and services. Rather, States have a responsibility to ensure that facilities, goods and services required for the enjoyment of economic, social and cultural rights (such as housing, food, water, sanitation, health or education) are available at affordable prices. In some instances, ensuring equal enjoyment of rights may involve providing subsidised or free services to those who would otherwise not be able to enjoy certain rights because they cannot afford the services or in particular circumstances (e.g., providing food during a drought). Also, primary education should be provided for free by the state.

The human rights framework does not dictate a particular form of service delivery or pricing policy or whether services should be delivered by public or private service providers, or by a combination of the two. However, States are responsible for regulating and ensuring that any given form of service provision respects human rights. But since the 1980s, there has been a rising trend towards privatizing public services (water, sanitation, medicines, health care and education, etc.) in many industrialized and developing countries.

Private-sector service provision can take many forms, including formal arrangements ranging from direct provision to contracting with governments for specific services, long-term supply agreements, management of service contracts, etc. Private-sector involvement may also take place through less formal arrangements, such as companies providing local services to employees and their families or the communities in which they operate.

Companies have responsibilities for the impacts on other people that result when they use public services (as water users for example) and as service providers themselves (such as when water is privatised). If public resources are scarce, company consumption of resources may result in a shortage of public resources for local residents. A company might overuse, harm or destroy resources over which the local community or individuals have property rights, or which they use to fulfill basic needs, such as in food collection or cultivation. For example, if a company dries up a water source that five neighbouring property owners also use, such a river, the neighbouring property owners could be deprived of the possibility to use their land. Similarly, if the company overuses local natural resources relied on for hunting or agricultural activities, the local community might be unable to feed itself.

Companies will sometimes voluntarily establish community development programmes for the local community – in order to build good will in the community (sometimes called a “social license to operate”) or because it makes good business sense, or for both reasons. For example, companies can provide business development support for local entrepreneurs to set up small hotels, restaurants, convenience stores and other services to offset the strain on existing public services that come with large influxes of job seekers to a development. Similarly, many companies provide educational facilities for employee’s children, sometimes extending these to local communities. When companies provide services that are essential to the enjoyment of human rights (like education or health or water), they should provide the service while respecting human rights.

Deciding whether to provide community services can be challenging in countries or local areas where the state may not be able or willing to fulfil their public services responsibilities. By providing

the service in place of the government, the government is incentivised to rely on companies to do so. Often a better approach where possible is for the company to collaborate/support / help build the capacity of the State to fulfil these responsibilities (including through paying taxes to national and local governments) and become more responsive to their populations, as well as build the capacity of communities to demand greater government services.

### ***There are a number of different human rights issues involved:***

- Depending on the public services in question, the basic necessities of life could be at risk of abuse or unavailability, including health, education, water and sanitation. The **services need to meet certain standards of: Availability** (services need to be provided in sufficient quantities); **Accessibility** (must not be delivered in a discriminatory way, must be physically accessible, they must be affordable, and they must come with adequate information); **Acceptability** (must be respectful of culture, gender and life-cycle requirements); **Quality** (they must be scientifically and medically appropriate and of good quality).
- If a government is encouraging communities to demand and expect provision of social services by a company, without the company's understanding, this means that the state is shifting its duty to protect and fulfil human rights to the company.
- When delivering public services companies should guarantee transparent and democratic decision-making, ensure provision to the poor and marginalised, ensure their prices are affordable, ensure the quality of services, and avoid disconnection (especially of water) when users are unable to pay. These issues should be clearly addressed by states and companies when negotiating terms of private service delivery, agreeing contracts, and implementing them.
- Often those most reliant on public services are those that would be the hardest hit by their unavailability or inadequacy, namely the vulnerable and marginalised (see separate fact sheet) such as the poor, disabled, women and children. Particular attention must be paid to disenfranchised individuals, such as women, persons of lower-caste, informal settlers and immigrants. The needs of these individuals and their dependence on local natural resources might not be represented by government and local leaders in negotiations with the company over land usage and natural resources.

### **Why this is Relevant to Local and International companies operations**

Regarding services that companies provide in support of building government and community capacity, companies must ensure the roles and responsibilities of the government, company and local communities are clear, agreed upon and preferably in writing. This should align within local, regional or national government plans for the service/sector in question, where these are relevant. For example if providing schools, companies should consult with Ministry of Education. The company should have a clear exit strategy for the close out or transition of operation of the service from the beginning, to ensure it is sustainable long-term. Crucially, important decisions regarding public and community services should be taken in consultation with potentially affected communities – it should not just be based on what a company thinks is best.

As for privatised service provision, companies have a responsibility to respect the human rights at issue in the service delivery (ie the issues listed above). They should assess the potential impacts the activity could have on people, engage with the stakeholders potentially impacted, track the impacts that arise and provide effective grievance mechanisms (see separate fact sheet), as well as regularly communicate to the community these processes and their effectiveness.

Many of the challenges outlined above, as well as responsibilities expected of companies are relevant to Myanmar's Oil & Gas sector. Myanmar's Tourism sector will also have particular impacts on the delivery of basic services, particularly in culturally significant areas often located in remote

regions of the country with minimal access to electricity and basic necessities (see further the fact sheet on Cultural Rights).

***It is relevant to ask about public services and community services in order to establish:***

- Who is providing different public and community services;
- What kind of services are expected by communities, what services are actually delivered and what is lacking – this gives an indication of the kinds of services they may then turn to companies for, expecting that the companies provide the services;
- How company operations may have impacted or used existing public and community services that are needed for local community members, including prices of those services;
- Whether prices for specific services are affordable to communities;
- Whether there is a way community members are able to report concerns about the quality or availability of public and community services provided by companies or the government;
- Whether communities are involved in monitoring of public and community services;
- whether certain groups are unable to access these services.

**Human Rights References**

- Right to an adequate standard of living including the right to food, housing, water, Article 25, UDHR, Article 11, ICESCR
- Right to education, Article 26, UDHR, Article 10, ICESCR.
- Right to health, Article 12, ICESCR,