



Sector-Wide Impact Assessment

# Human Rights and Business Fact Sheet

## Groups at Risk



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

Equality and non-discrimination are core human rights concepts – everyone should be treated equally, no matter what their status. Human rights are also concerned about power relationships and ensuring that more vulnerable individuals and groups have rights to protect them from more powerful members – of their family, their local community, the government. Myanmar has a long history of not recognising human rights and of the powerful acting without check.

Vulnerability can stem from a person's physical or social status (for example their gender or ethnic origin or disability), their situation (for example, they are children separated from their parents, single women or migrant workers coming from another part of the country, night workers or illiterate workers, poor people, internally displaced people) or government actions (for example, government action towards opposition activists, ethnic groups, people identifying themselves as Rohingyas).

There are vulnerable groups in every society and every community but it is often convenient for those in power and for companies to ignore them because to recognise them means reconciling a wider range of perspectives and taking additional steps to address their rights and needs. With respect to company operations, the concern is that vulnerable individuals and groups may be directly and disproportionately (more heavily) affected by a project because of their disadvantaged or vulnerable status. Where individuals or groups are identified as disadvantaged or vulnerable, companies may need to take differentiated (additional or special) measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing any benefits and opportunities from the project.

Companies can have a positive impact on vulnerable groups where they make additional efforts to provide jobs, training or business opportunities, where they demonstrate the positive impacts of non-discrimination, and where they create opportunities for vulnerable groups.

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

- **Equal access to jobs, resources and benefits:** Some of the key areas of unequal treatment for vulnerable groups with respect to private sector operations is in securing access to jobs and equal treatment while at work and in access to and rights over key resources such as land that are often very important for livelihoods. If there are direct benefits distributed to community members from projects, or the company has some social development projects to benefit the community, vulnerable groups may be at risk of being excluded from receiving such benefits.
- **Perpetuating discrimination / contributing to conflict:** Companies perpetuate discrimination if they do not take account of this issue. Finding the right line between respecting cultural practices that may include discriminatory norms and respecting the right to non-discrimination is not always easy. The first step is recognising the issue. Companies may also purposely perpetuate discrimination, playing ethnic groups off against each other to gain a commercial advantage for example, and in doing so, starting or adding to conflict in the area.
- **Identifying and consulting vulnerable groups:** Vulnerable groups can often be “invisible” – the predominant group in the community does not consider them important and so will not necessarily think about or communicate their concerns. There may be strong social norms against these groups speaking up – within the community or with outsiders. It may therefore be necessary for companies to try to meet with these groups separately to discuss the project so that women or minorities or the disabled have the opportunity to discuss how a project may have a bigger impact on them, make suggestions on what the company should do to address the impacts and participate in designing responses.
- **Addressing differentiated impacts:** If a company establishes that project impacts will fall more heavily on vulnerable individuals and groups, it should take additional steps to try to mitigate the

impacts so they do not fall disproportionately on vulnerable people. Examples include: designing buildings or services so that they are accessible to people with disabilities; making sure that if compensation is paid to the community, some of the payment goes directly to women rather than assuming compensation will reach them by simply giving it to men, putting in place road transport safety crossings where children are especially likely to cross the road, providing special or additional training for ethnic minorities.

- **Monitoring:** It is important to monitor whether the additional steps are having the effect of lessening the impact of the project or even providing positive impacts. That should involve the vulnerable individuals or groups.

## Why this is Relevant to Local and International Companies Operations

**It is relevant to ask about groups at risks to establish whether:**

- Companies are making an effort and taking steps to address vulnerable groups: *Myanmar is a very multicultural society so at some level is used to dealing with diversity; however the government has at times used that diversity to play groups off against each other. Promoting development that values all members of society – and protects them as needed, will require a bottom up approach from companies and communities and strong top-down signals from the government. Experience in other countries shows that companies can play a role in promoting and demonstrating equality.*
- Communities are willing to recognise the vulnerable among them: *changing social norms that may be based on discriminatory views is a long-term process that often starts with recognising and discussing the issues. It will be harder for companies to address the issue in the face of strong community opposition.*

## Human Rights References

- The right to non-discrimination is the one right that appears in all the major human rights treaties because it is core to the concept of the dignity of each individual.
- This is supplemented by additional specific conventions about discrimination involving: race (CERD), women (CEDAW), and disability (CRPD)
- There are separate human rights treaties for women (CEDAW) and for children (CRC), both of which have been ratified by Myanmar
- Two fundamental ILO Conventions deal with non-discrimination at work: Equal Remuneration Convention, (No. 100), Discrimination Convention (No. 111).
- For indigenous peoples, there is ILO Convention 169 (which has limited ratifications) and the non-binding UN Declaration on the Rights of Indigenous Peoples.

## Women

### ***Why pay attention to women?***

Projects may have different impacts on women and men, due to:

- their differentiated socioeconomic roles for example, if it is the women and girls traditional role to gather food or water and the project will make access to these resources more difficult, it may change the pattern of the way women and girls spend their day – and could ultimately result in girls not having time to attend school) and

- their different degrees of control over and access to assets (like houses or bicycles), productive resources (like land or livestock), and
- opportunity to take up and be offered formal employment.
- There may be social norms, societal practices, or legal barriers that impede the full participation of persons of one gender (usually women, but potentially men) in consultation, decision-making, or sharing of benefits at the community level. These legal and societal norms and practices may lead to gender discrimination or inequality.
- Their vulnerability (for example where there is an influx of male workers for the project who then harass and exploit women in the community)

### ***Key Considerations:***

- **Women as employees:** Companies need to be aware of the stereotypical differences in labour roles between men and women and how the project may reinforce those roles or offer women new opportunities outside those roles through new jobs or training programmes (for example, women are offered jobs only as receptionists at hotels while men are offered the management jobs). Other issues include non-discrimination in working conditions, pay and benefits, paid maternity leave, prohibition against sexual harassment in the work place, needs of pregnant and/or nursing women.
- **Women as stakeholders:** Particularly in areas where there is strong discrimination against women, companies need to specifically assess key issues for women such as differences in access to and control over material and non-material resources, and the legal basis for gender equality/inequality. The assessment should include providing opportunities to participate and influence decision-making through separate consultations and grievances, and develop measures that allow both women and men equal access to any benefits of the project (such as land titles, compensation, and employment).
- **Women as entrepreneurs:** Companies will often need supplies or services from the local community and these purchases can be important drivers in developing the local economy. Companies can make a positive contribution by directing business to women, minority-owned businesses or supporting/training these entrepreneurs.

## **Children**

### ***Why pay attention to children?***

- **Childhood is a unique period of rapid development** in which young people's physical, mental and emotional health and well-being can be **permanently influenced for better or worse. Everyday harms (pollution, migration, conflict) impact children differently and more severely than adults.**
- **Children** employed or affected by business are **often unseen and uncounted. Children lack a public voice to speak up for themselves** – in their communities and with local government.
- **Children's rights extend beyond labour issues.** Companies can have impacts on children through their operations, their products and services, their marketing methods, and their investment in local communities. Child labour in or connected to a project is important to identify and address, but it is not the only issue for children.

### ***Key Considerations:***

#### **Child labour – formal or informal:**

- Child labour refers to children working when they are under the age designated by law (in Myanmar it is 13 years old generally although the government has indicated it intends to

raise the minimum age to 15 to align with international standards) or in harmful circumstances (even where they are older than the minimum age but below the age of being an adult (18 years)). Children working part-time with their parents such as in fields or shops is permitted as long as children can still go to school and it is not excessive (long hours into the night) or too physically demanding (like carrying heavy goods or working in hazardous areas). Companies should make arrangements that these young workers receive appropriate training, support and supervision. Many children work to support their families – out of necessity and/or because they do not have access to school or school is such poor quality that their parents consider it is not worth their time attending.

- Companies should not employ children below the working age; if there are children in the workplace, companies should discuss with parents, try to transition them to school, make sure they do not end up in worse situations. Harder to deal with is where companies see children working outside the company fence or facilities – selling or offering services to company workers. This requires companies to be more proactive in developing policies that forbid their own workers from buying services from children and could involve working with the community and local/international NGOs and international organizations active in the protection of children’s rights to find other opportunities for children and positive economic opportunities for youth who want to start their own businesses.

### **Exploitation of children**

- Exploitation can be sexual or economic (making children work for no pay or very low pay). Exploitation often also involves controlling children using violence, threats, and deprivations – which involves more harm. Exploitation of children is prohibited under international and Myanmar law.
- Companies should be alert to children in and around their premises.
  - For tourism companies, a big concern is guests using hotel or other facilities to have sex with children which is prohibited under international law and Myanmar law. There are existing initiatives involving tourism companies to address the sexual exploitation of children.
  - Companies should be alert to economic exploitation of children in and around their facilities and in the suppliers/service providers or contractors the companies use. Companies should have specific rules prohibiting business partners from employing children.

### **Impacts on children’s health, nutrition, schooling**

- Children’s bodies do not react the same to pollution, lack of water or food as adults do. Because children are growing, this can have a permanent effect on children. Where companies are operating in areas where they will come into close contact with children, they should consider whether their operating standards are sufficient to protect children.
- Companies can affect children’s schooling by employing them directly, by attracting children to work informally, by physically impeding access to school because of new transportation routes or operations, or relocation, or by polluting the environment so much or using so much of community water, that children must be pulled out of school to help the family gather new resources.

## Indigenous Peoples

### *Why pay attention to Indigenous Peoples (IP)?*

Myanmar has a very wide diversity of ethnic groups. The Government has not officially recognised any of the groups as “indigenous peoples” (IPs). IPs are a recognised group under international law and international human rights law. There is no standard definition of IP under international law but they are generally recognised as tribal peoples whose cultural patterns, social institutions and legal system distinguish them from other sections of the national community; they have been living in the country as pre-invasion and pre-colonial societies that developed on their territories, and consider themselves distinct from other sectors of the societies now dominant. They are usually determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples. There may be a number of reasons why the Government does not want to recognise any groups as IP: it would require choosing among the wide range of the complex ethnic groups in the country, concern that it would dilute a national identity, concerns the groups would claim IP rights under international law. Nonetheless the international IP movement has been expanding rapidly in the last twenty years, gaining acceptance that IP are a separate group to be protected by international law. As Myanmar opens up, it is likely that there will be more active debate on IP rights. As a result, companies who carry out projects on ancestral territories are coming under increasing pressure also to recognise the additional rights of IP.

### *Key Considerations (based on UN Declaration on the Rights of Indigenous Peoples):*

- **Right to Self-Determination:** is the right to an autonomy to maintain their distinct political, legal, economic, social and cultural institutions, to govern their own local affairs. These rights give IP control over their own lives and their futures, and their community’s place in the world, free from outside coercion.
- **Land and natural resources:** the right to own, use, develop and control the lands, territories, and resources that IP have traditionally owned, occupied, used or otherwise acquired, as well as providing a process for redress where lands have been taken, occupied, or used without consent. Together with the right to self-determination, this means that indigenous peoples have an inalienable right to full sovereignty over all of their natural wealth and resources. In many countries, including Myanmar, where the government does not recognise IPs or their rights to land, companies are nonetheless expected to recognize IP rights to the lands or territories they use or inhabit even when such rights are not protected by national law. This recognition can come from companies seeking the free, prior and informed consent (“FPIC”) of IP before using their land and resources, agreeing with them on how land and resources are used and agreeing on how benefits from the use of the land or resource are allocated. FPIC has been a hotly contested concept – some seeing it as a right to block development projects and instead calling for a lesser standard of free, prior informed consultation (in place of consent). Most agree on the need for active and respectful engagement with IP. The same rule of active and respectful engagement should apply across any ethnic group.
- **Resettlement:** a right not be forcibly removed from their lands or territories, and FPIC obtained before any relocation takes place. This should involve full information, meaningful and non-coercive negotiations and “just and fair” compensation for any such relocation.

### *Key Considerations for Companies*

- **Engagement:** Businesses are at risk of infringing upon IP rights if they undertake activities that may adversely affect indigenous peoples, their lands or their rights without first properly consulting with them and taking their perspectives into account in developing such activities. These rights may restrict businesses from having an impact on areas where indigenous

communities are resistant to certain forms of development; that is, development should not be forced on indigenous peoples.

- **Impact:** Assess and consider not only the “usual” business impacts but also consider the additional impact that business activities may have on IP unique way of life and their long-standing ties to their land. This will often require specialised expertise in understanding traditional ways of life, and additional, more in-depth engagement to better understand and agree on the impacts and their mitigation.
- **Opportunities:** Because IP are considered owners of the land and resources they use and autonomous in governing their own affairs, there is an expectation that they are considered more as partners in projects involving their assets, rather than stakeholders. Consequently, there is a stronger emphasis that companies should agree with IP on how benefits from those assets should be shared out.