

Private Security Companies in Myanmar

A Baseline Study,
Human Rights Risk Assessment
and Recommendations



ACKNOWLEDGEMENTS

This assessment was prepared by the Myanmar Centre for Responsible Business (MCRB). The Centre was set up in 2013 by the Institute of Human Rights and Business, and the Danish Institute for Human Rights with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, building of capacity, undertaking of advocacy and promotion of dialogue amongst businesses, civil society, governments, experts, and other stakeholders, with the objective of encouraging responsible business conduct throughout Myanmar.

MCRB receives funding from the governments of UK, Denmark, Norway, Switzerland, Netherlands, and Ireland. MCRB's core donor support funded the work of MCRB staff on this assessment.

The report was prepared with expert consultancy services from Niels Huby of RVN Myanmar. RVN Myanmar is a consultancy and research firm providing stakeholder engagement and political and risk assessment services in Southeast Asia. RVN's services were funded by the Voluntary Principles Association which contributed to other costs associated with the project. We are grateful to the Myanmar In-country Steering Committee for the Voluntary Principles on Security and Human Rights (VPSHR) for their oversight, and all the representatives of business, international organisations and civil society who have shared their insights and experiences with us.

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ABBREVIATIONS

ACC	Anti-Corruption Commission
BGF	Border Guard Force
CBM	Central Bank of Myanmar
CCTV	Closed-circuit television
CSO	Civil Society Organization
DCAF	Geneva Centre for the Democratic Control of Armed Forces (now renamed as Geneva Centre for Security Sector Governance)
DICA	Directorate of Investment and Company Administration
EAO	Ethnic Armed Organization
ECC	Environmental Compliance Certificate
ECD	Environmental Conservation Department
EIA	Environmental Impact Assessment
GBV	Gender-based violence
GISF	Global Interagency Security Forum
HIV	Human Immunodeficiency Virus
HRRA	Human Rights Risk Assessment
HRIA	Human Rights Impact Assessment
ICoCA	International Code of Conduct Association
IFC	International Finance Corporation
ILO	International Labour Organization
INGO	International Non-Governmental Organization
ISO	International Organization for Standardization
LGBT+	Lesbian, Gay, Bisexual, and Transgender
MCRB	Myanmar Centre for Responsible Business
MEC	Myanmar Economic Corporation
MIFER	Ministry of Investment and Foreign Economic Relations
MNHRC	Myanmar National Human Rights Commission
MoHA	Ministry of Home Affairs
MOLIP	Ministry of Labour, Immigration and Population
MP	Member of Parliament
MyCo	Myanmar Companies Online

ABBREVIATIONS

NRC	National Registration Card
NRGI	Natural Resource Governance Institute
NSC	National Security Council
O&G	Oil and Gas
OHS	Occupational Health and Safety
PMSC	Private Military and Security Company
PSC	Private Security Company
PSEA	Prevention of Sexual Exploitation and Abuse
PSSA	Private Security Services Association
SAC	State Administrative Council
SDG	Sustainable Development Goal
SMP	Security Management Plan
SEE	State-owned Economic Enterprise
SLDL	Settlement of Labour Disputes Law
SOP	Standard Operating Procedures
SWIA	Sector-Wide Impact Assessment
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
VPI	Voluntary Principles Initiative
VPSHR	Voluntary Principles on Security and Human Rights
WCC	Workplace Coordinating Committee

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EXECUTIVE SUMMARY

This is the first ever baseline study of Private Security Companies (PSCs) in Myanmar. It was undertaken at the request of In-Country Working Group of the Voluntary Principles on Security and Human Rights (VPSHR). It provides a summary of the private security value chain and ecosystem including the role played by civil society stakeholders (Part IV)

The assessment is based on interviews conducted primarily in the second half of 2020. Field visits were not possible due to the COVID-19 pandemic. It has been updated to reflect changes in the security and human rights operating environment for companies since the military took power in Myanmar on 1 February 2021. However, the situation is changing daily, underlying the need for ongoing risk assessment.

Prior to the military takeover, adverse human rights impacts in the sector were mainly related to the working conditions of workers. However, since 1 February, risks have increased, primarily due to the increased potential for interaction between companies and public security forces, and the increased security risks for workers, customers and communities.

The underlying causes for the risks and impacts observed included the lack of policies and regulation for PSCs, lack of enforcement of existing law, particularly labour law, low standards of security provision in a price-driven market, and a general lack of understanding of the sector. Part III analyses existing regulation and earlier initiatives to introduce specific regulation and oversight.

Part V of the assessment is a Human Rights Risk Assessment (HRRRA). This is structured to assist PSCs (and clients) to undertake their own HRRRA and adapt it to their circumstances, drawing on relevant local conflict analyses. Three groups of human rights risks are analysed. These are the 'substantive questions relating to internal control and policies' and 'substantive questions relating to prohibitions contained in the International Code of Conduct (ICoC)'. PSCs are expected to complete assessments of these two sets of risks as part of their membership and certification applications for the ICoC Association, and if they seek certification under ISO 18788. Each risk is covered by examining the legal and normative framework, reflecting findings from stakeholder interviews, and identifying recommendations.

The third set of risks in the HRRRA covers other risks important in the Myanmar context but not included in the ICoC. These include militarisation of investment projects in contested areas; the risk of deputation of PSCs; labour rights; and relations with communities. Data protection and privacy risks are also addressed, and the assessment contains the first analysis of regulation and responsible business practice concerning use by companies in Myanmar of closed-circuit TV (CCTV) which has become more relevant since 1 February 2021.

It is intended that the findings and recommendations will form the basis for ongoing dialogue with companies, the Private Security Services Association and others in Myanmar.

The assessment was originally intended to include recommendations to government

and parliament to introduce specific regulation for the sector, drawing on international frameworks for PSC governance. However, since there is no accountable civilian government or elected parliament to pursue regulation, recommendations are now focussed solely on companies, clients of PSCs, PSCs themselves or companies with significant in-house security. The assessment nonetheless identifies relevant frameworks which could be drawn on, should Myanmar return to democratically elected civilian rule.



1

INTRODUCTION

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This is the first ever published assessment of the private security sector in Myanmar from a human rights perspective. It analyses the private security landscape, and its impacts on the rights of workers, local communities, and other stakeholders. The private security sector includes not only specialist private security companies (PSCs) but also companies in sectors which have significant in-house security such as banks and other premises with cash and valuable assets to protect.

The private security sector has an important role to play in support of the public security authorities and in protecting human rights. These include the 'right to life, liberty and security of person' (Art.3 of the Universal Declaration of Human Rights (UDHR)) and that 'no one shall be arbitrarily deprived of his property' (Art.17 UDHR). But it can also contribute to the limitation of the enjoyment of other human rights as outlined in the Human Rights Risk Assessment (HRRRA) below. Companies must also protect the human rights of those working in the industry, in particular their right to 'just and favourable conditions of work'.

This study, begun in 2020, was originally intended to serve as a generic Human Rights Risk Assessment (HRRRA) to inform Private Security Companies about the human rights risks in various contexts in Myanmar. While primarily targeted at specialist PSCs, the human rights risks identified are also relevant for companies that manage their security in-house or contract PSCs to do so. The study's original objectives were to:

- Inform domestic and international PSCs, and client companies about the human rights risks for the private security sector in Myanmar with a view to supporting companies in developing and implementing robust Human Rights Risk Assessment (HRRRA) processes.
- Provide the - then - government with analysis and targeted recommendations to shape a legal and policy framework for the sector that will protect human rights
- Inform and build the capacity of civil society, trade unions, the National Human Rights Commission, and the media to participate in law and policy development relevant to the impacts of the private security industry; engage with law and policy makers, PSCs, and others to identify, understand and address the human right impact of the sector; and to leverage international standards and approaches in their interventions.
- Build the capacity of Myanmar researchers to better understand the practices currently in place in the private security industry, as well as international standards relevant to the sector, and to enable them to conduct human rights risk assessments (HRRRA) and impact assessments (HRIA) (see *Box 1*).

BOX 1: RISK ASSESSMENT, IMPACT ASSESSMENT AND HEIGHTENED DUE DILIGENCE

Human rights risk assessment (HRRA) and **human rights impact assessment (HRIA)** are different but related. A business enterprise's human rights **risks** are any risks that its operations may lead to one or more adverse human rights **impacts**.

HRRA is focused on predicting the future occurrence of negative impacts on people and drawing out the associated implications for the business. HRIA differs from this by focusing on actual and potential impacts on rights-holders, and actions to avoid, mitigate or remedy them. This should involve engagement with rightsholders and stakeholders.

A HRRA may be a stepping stone to an HRIA. For example, a private security company might conduct a general HRRA around its presence in Myanmar, but a specific HRIA for support to a client in a particular location where rightsholders and relevant stakeholders could be identified and engaged with.

The UN Guiding Principles on Business and Human Rights refer to '**human rights due diligence**'. This is a process for identifying, preventing, mitigating and accounting for the adverse human rights impacts with which a business is involved. A stand-alone HRIA can be a step in this ongoing due diligence.

In conflicted affected and high-risk areas like Myanmar, **heightened human rights due diligence** is required. This involves the application of **conflict analysis** and a **conflict sensitive** approach to HRIA (sometimes referred to as a Conflict and Human Rights Impact Assessment (CHRIA)).

For more detail see [Human Rights Impact Assessment Guidance And Toolbox](#), Danish Institute for Human Rights (DIHR), 2020, and [The Corporate Responsibility To Respect Human Rights: An Interpretive Guide](#)

The deteriorating security situation since 1 February 2021 has led many companies to review and enhance security arrangements. The report is therefore even more relevant.

MCRB hopes this assessment will provide a baseline of Myanmar's private security company (PSC) sector and how it is currently regulated. It is intended to contribute to building a common, public understanding of how the sector can be shaped and regulated to protect human rights, in support of responsible investment and Myanmar's Sustainable Development Plan. Through this, it aims to contribute to Myanmar's delivery of SDG 16 (Peace, Justice and Strong Institutions) and SDG17 (Partnerships).

This assessment does not address the relationship between public security and companies,

except where it is relevant to PSCs. Additional risks related to private and public security since 1 February are also covered in MCRB’s forthcoming guide to Heightened Human Rights Due Diligence.

Scope, Definitions and Methodology

Currently, there is no legislation or legal text on the private security sector in Myanmar that offers a comprehensive definition of what constitutes a ‘private security company’ or a ‘security guard’. Furthermore, the Myanmar term for ‘security’ and ‘private security’ (လုံခြုံရေး *lone-chone-yay*) are the same, and open to multiple interpretations.

To clearly define the scope of this assessment, it uses the definition in the International Code of Conduct for Private Security Service Providers (ICoC). This defines “security services” as “guarding and protection of person and objects, such as convoys, facilities, designated sites, property or other places (whether armed or unarmed)”. It also draws on definitions in Singapore legislation¹ and the International Code of Conduct to define ‘Security company’, ‘Security officer’, and ‘Bodyguard’ (see Box 2).

Research for the study was conducted in 2020 prior to the military coup on 1 February 2021 (see Box 3 Methodology). A draft was reviewed by stakeholders in January 2021 and the findings and recommendations in the report were subsequently reviewed against the current situation.

A security guard guarding a food and drink storage enclosure under a bridge in Yangon
©arvidnorberg/123RF.COM



1 [Private Security Industry Act](#) (CHAPTER 250A), Singapore Statutes Online, 2008

BOX 2: DEFINITIONS

Security Company

Private Security Company (PSC) means a person or body of persons other than a government agency, department or organization engaged in the business of providing security services including training to private security guards or providing private security guards, bouncers or bodyguards to any individuals or business.

Furthermore, and importantly for the Myanmar context, the ICoC emphasizes that “any company whose business activities include the provision of security services either on its own behalf or on behalf of another, irrespective of how such a company describes itself” is a Security Company. This definition would therefore encompass those with significant in-house security such as banks and shopping malls.

Security Officer/Security Guard

A security officer, or security guard, is an individual hired to guard and protect persons and objects, such as convoys, facilities, designated sites, property, or other places (whether armed or unarmed)² and who in the performance of his duties might need to employ use of force and apprehend individuals. The Singapore Private Security Industry Act defines Security Officer as someone who can perform the following tasks:

- patrolling or guarding another person’s property (including cash in transit) by physical means
- keeping the property (including cash in transit) of another person under surveillance, including for the purpose of preventing theft thereof;
- acting as a bodyguard or ‘bouncer’ (sometimes called a door supervisor);
- in respect of any public place or other premises and as part of his regular duties, performing any function of screening individuals seeking entry thereto

The ICoC also emphasises that Security Personnel are “persons working for the PSC regardless of the specific designation used by the Company itself”.

Bodyguard or close protection officer

A bodyguard, or close protection officer, is a person engaged in the business of providing physical security to an individual or a group of individuals.

² As defined in the [International Code of Conduct for Private Security Services Providers](#)

BOX 3: METHODOLOGY

The assessment draws on methodology developed in MCRB's Sector-Wide Impact Assessments (SWIAs), particularly for the Oil and Gas, and Mining sectors³ as well as emerging practices around the world. However, compared to those SWIAs, field research for this study was limited by COVID-19 and resource constraints.

The assessment was unable to conduct field investigations in remote areas which might be considered higher risk. In the absence of field visits, the team conducted phone interviews with labour and civil society organizations in September and October 2020. These were selected based on MCRB's networks from previous SWIAs and included groups and individuals with knowledge of limestone, copper and gold mining in Mandalay and Sagaing Regions, as well as contacts from Kyaukpyhu (Rakhine State), Lashio (Northern Shan State), Taunggyi and Pinlaung (Southern Shan State) and Kayah and Kayin States. To address security impacts in the garment sector, interviews were held with trade unions active in Hlaingthaya (Yangon).

As with MCRB's other SWIAs, the data from this field research is anonymised because the intention of the assessment is to identify trends in the sector, rather than specific company practices. Anonymity is also intended to ensure the safety and security of these interviewed.

In addition to 10 Local NGO, in 2020 the research team interviewed 7 clients of PSCs, 7 International PSCs, 7 National PSCs, 6 INGOs, 1 embassy, 1 consultancy firm, 2 associations related to private security (International and local), 1 international Agency, 1 International Federal Police, 6 companies with in-house security, 1 Peace and Conflict Analyst and 1 Pro-government body and 1 UN Organization. In total, the research team interviewed 81 participants (16 females, 65 males). Those companies which agreed to be interviewed for the survey are likely to represent those most interested in responsible security practices and should not be considered a representative sample of the sector as a whole. The research findings should not be taken to apply to all situations, organizations or companies interviewed. However, MCRB believes the interviews, combined with desk research including media reports, have identified the main human rights issues.

As well as conducting in-person and online interviews, the team also consulted reports published by international NGOs and civil society organizations as well as news archives. They conducted extensive desktop research to develop the working list of PSCs operating in the country. This list is developed through analysis of social media posts, commercial advertisements and MyCo, the online companies register.⁴

3 See [Sector Wide Impact Assessments](#), Myanmar Centre for Responsible Business (MCRB)

4 For reasons explained below, the Directorate for Investment and Companies Administration (DICA) is unable to provide a list of active registered PSCs

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SUMMARY FINDINGS AND RECOMMENDATIONS

Research for this assessment was conducted primarily in 2020, prior to the military takeover on 1 February 2021. Overall findings from the time indicated that human rights risks for the sector were mostly linked to labour practices. No systematic and serious human rights abuses by PSCs were identified during the research undertaken in 2020.

It is possible that this was due to lack of access to higher risk areas. While the team spoke with civil society contacts in some mining areas and drew on MCRB's previous SWIA research and media reports, the assessment did not cover the highest risk areas such as gems and jade mines.

Underlying reasons for there being few findings of serious human rights abuses may be because:

- Formal investment in high-risk regions of Myanmar remains limited, because of the known risks. Only a few PSCs have taken on contracts in conflict-affected regions where there is a higher possibility for human rights abuses to occur;
- PSCs are not licenced to carry firearms⁵, thereby limiting use of force;
- Many international client companies have full time managers supervising PSCs and ensuring that good practices are implemented;
- Myanmar public security forces, rather than PSCs, usually intervene to control crowds and in other high-risk situations, and most security-related human rights abuses - business-related or otherwise - are because of public security involvement;
- Myanmar does not have particularly high crime rates.

The most common finding in the assessment conducted in 2020 was widespread lack of compliance with applicable Myanmar labour laws, exacerbated by the lack of sectoral oversight of PSCs. Only a few (mainly international) clients call for, or verify, full compliance with Myanmar law, let alone relevant international standards (see *Box 4*). Consequently, private security companies, both local and foreign, were found to compete primarily on price, not quality. This has an impact on working conditions for personnel, the training they receive and the ability to provide an effective service.

Since the military takeover, the entire country, including urban areas, should be treated as a

⁵ See Part V (1) Weapons for further detail on firearms licencing which is restricted to a few individuals.

conflict-affected and high-risk area (CAHRA). The operating environment for all companies is therefore high-risk, and if the assessment was repeated in 2021, the risks associated with the private security sector would be heightened, mainly due to the greater potential for interaction between private security and public security.

This is a matter of concern since interviews, particularly with Myanmar PSCs and clients showed a low awareness of human rights issues, international norms, and relevant laws. Many PSCs lack proper training and procedures, including on human rights. In the heightened risk environment, this could result in serious human rights violations and security incidents, if security risks are not appropriately assessed and mitigated. Consequently, companies (both clients and PSCs) need to conduct 'heightened human rights due diligence' in accordance with the UN Guiding Principles on Business and Human Rights (see *Box 1*).

BOX 4: INTERNATIONAL STANDARDS RELATED TO PRIVATE SECURITY COMPANIES

- [The Voluntary Principles on Security and Human Rights](#) (VPSHR), a multistakeholder initiative launched in 2000 focussed on the extractives industries
- The 2010 [International Code of Conduct for Private Security Services Providers](#) (ICoC) which establishes standards for the private security sector in complex operating environments. This built on the '[Montreux Document](#)' of 2008 on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict.
- The 2012 [International Finance Corporation \(IFC\) Performance Standards](#), including Performance Standard 4, and its [Guidance Note 4](#) which provides best practice guidelines for client companies in assessing and managing risks.
- The 2017 [UN Security Management System Guidelines on the use of PSCs](#)
- The 2017 [International Finance Corporation \(IFC\) Use of Security Forces: Assessing and managing Risks and Impacts Guide](#) which provides guidance for client companies on how to manage security risks and PSCs.
- The 2020 [UN OHCHR Guidance on Less Lethal Weapons in Law Enforcement](#)
- [ISO 18788](#) which is a standard for the management system for private security operations and [ISO 28007](#) for private maritime security companies (PMSC) who provide privately contracted armed security personnel (PCASP) on board ships.⁶

The assessment identified four underlying themes that contribute to the human rights risk for the private security sector, and which should be taken into account by heightened human rights due diligence.

6 United States national standard [ANSI-ASIS PSC-1](#) functioned as a predecessor for ISO 18788

Lack of policies and regulation

Currently there are no primary laws or regulations for the private security sector in Myanmar. This means that:

- any company can provide security services without licence or regulation, or without even identifying this as a 'Principal Activity' with the Companies Registrar;
- there is no active government oversight of the sector: an intra-ministerial Oversight Committee established in 2018 appears inactive and sector stakeholders were barely aware of it;
- lack of legislation exposes PSCs and their personnel to lawsuits for performing basic security services
- clients and investors expecting PSCs to operate to a certain standard are required to impose and enforce this contractually, and through their own due diligence, rather than being able to rely on the domestic regulatory framework.

Lack of enforcement of existing laws, particularly labour laws

Other laws which should regulate the sector, particularly labour laws, are not systematically enforced. Lack of compliance with labour laws is common, particularly in areas such as minimum wage and overtime. This is not unique to the PSC sector but may be more prevalent than in other blue-collar jobs with less demanding shift patterns.

When the human rights of security guards themselves are not respected by their employers, this reduces the likelihood that they will respect the human rights of others. The media has reported occasional cases of violation by private security guards of other relevant laws such as the Penal Code and Arms Act. In interviews, the team also heard of cases of illegal detention and intimidation related to the provision of security for investments, including of activists, journalists, and trade unionists.⁷

Low standards of security provision

The performance of private security companies in Myanmar is considered by clients to be lower standard than counterparts in the region. Myanmar is currently a small and unprofitable market for PSCs. This means there is underinvestment in equipment, training, and management, as well as excessive hours. This results in guards unable to perform their duties to the standards expected in regional markets.

There is as an absence of accountability and lack of operational grievance mechanisms

⁷ See for example [In the Shadow of Letpadaung: Stories from Myanmar's Largest Copper Mine](#), Natural Resources Governance Institute (NRGI) 6 October 2015, and, [Myanmar Police Arrest 10 Villagers After Clash Over Chinese Cement Plant](#), Radio Free Asia, 25 March 2020

provided by companies, both PSCs and clients. Furthermore, most PSCs draw on police or army veterans, whose previous public security indoctrination can lead them to view communities and workers as potential threats. This could increase the risk of abusive use of force, illegal detention, and other human rights abuses. These risks are exacerbated since 1 February 2021.

Lack of understanding of the private security sector

The lack of regulation specific to private security companies, including lack of registration requirement, combined with a rapid increase in the number of PSCs, is leading to an unregulated and opaque private security market in Myanmar. This is the first assessment to define, map and assess the PSC sector.

Neither the government nor clients have a clear understanding of the industry, its practices or its value to the economy and the number of jobs it provides, or to 'situational' crime prevention i.e. reducing the harms caused by crime through altering immediate or situational factors in the environments where crime regularly occurs. Relevant government departments such as the Ministry of Home Affairs (MoHA) and the Directorate of Investment and Companies Administration (DICA) - lack reliable information, such as the number of DICA-registered companies offering security services. Many companies have been reluctant to engage or share information. The trade body, the Private Security Services Association (PSSA), is relatively new. Its membership covers less than a quarter of known companies.

The sector's opacity complicates the ability of client companies to choose and manage PSCs. It also makes it difficult for civil society, unions, and journalists to monitor and engage with the sector. Not all client companies have experienced security managers, including in sensitive sectors such as banking. Most stakeholders have limited understanding of the services PSCs can provide (e.g. static man guarding, patrol, cash in transit, bodyguard, close protection).

Recommendations

The study makes recommendations to private security companies, and companies recruiting PSCs, or managing their own in-house security. These cover how adverse impacts of the private security industry can be avoided and reduced, and how positive impacts can be maximized. It also identifies pointers for effective regulation of the sector, but it is recommended that this should only be pursued by a future democratically elected civilian government and parliament.

To client organisations which have security requirements

- ✓ Undertake regular and ongoing human rights risk assessment (HRRRA) particularly for high-risk activities, such as cash in transit, or operations in areas affected by violent conflict
- ✓ Establish a Security Management Plan, such as outlined in the IFC Handbook on Use of

Security Forces.⁸

- ✓ Adopt policies regarding gender equality, use of force, detention, and respect of human rights (including the right to privacy/data protection) and ensure that PSCs are aware of, and apply, these.
- ✓ Organize regular tender processes. Advertise these in English and Myanmar. Ensure tenders are transparent with clear technical criteria, and that they prioritize or give equal weight to technical aspects and quality, as well as price.⁹ In particular, ensure that tenders:
 - ✓ explicitly require working conditions for personnel to be, as a minimum, compliant with Myanmar law on issues such as minimum wage, working hours and overtime, social security, and tax, and that pricing must clearly reflect this
 - ✓ precisely describe training that PSCs are expected to provide, especially on use of force, gender equality and human rights, as well as reporting procedures
 - ✓ require PSCs to have mechanisms to handle complaints both internally and externally, as well as workplace coordination committees
 - ✓ require PSCs to identify their beneficial owners and any background in public security
 - ✓ require PSCs to identify any potential subcontractors
 - ✓ request diversity in the workforce, especially the recruitment of women
 - ✓ prioritise PSCs which will recruit members of the local communities
 - ✓ prioritise PSCs which are certified to, or align with, with international standards including ICoC. Check that claims of alignment can be demonstrated in practice.
- ✓ Conduct due diligence on potential PSCs and sub-contractors, including possible involvement in serious human rights violations.

8 [Use of Security Forces: Assessing and Managing Risks and Impacts](#), IFC, February 2017. Annex A provides a Template Invitation to Bid and Request for Proposals for Security Risk Assessment and Security Management Plan, Annex B provides Guidance for Drafting a Security Management Plan. The Global Inter-Agency Security Forum (GISF) provides resources to NGOs needing to use PSCs including [Contracting Private Security Providers](#) Sept 2020

9 Annex C of [Use of Security Forces: Assessing and Managing Risks and Impacts](#), IFC, February 2017 provides templates for Tenders and Contract with a Private Security Provider. The [Sarajevo Client Guidelines](#) (2006) outline a three stage voluntary procurement procedure that client organisations are advised to follow when contracting private security providers, and advise that clients should not employ security contractors on cost alone, but should also consider other factors when making procurement decisions, such as standards of internal governance, quality of service, levels of training and adherence to national legislation and a voluntary code of conduct. As of late 2021, ICoCA was developing a procurement guide for Private Security Services.

- ✓ Ensure that the contracts with the PSCs include clear requirements concerning respect for human rights, including the right to form a union, and collective bargaining. Include key performance indicators (KPIs) as well as penalties for non-respect.¹⁰ This should include non-respect of personnel benefits.
- ✓ Monitor performance to ensure that PSCs respect their commitments with regards to standards, labour benefits and training throughout the lifecycle of the contract.
- ✓ Designate a 'security contract manager' to manage the contract; ensure that KPIs are achieved; audit the PSC and speak directly to guards to ensure stipulated salaries, bonuses and other clauses are properly enforced.

To private security companies

PSCs, including companies who manage their security in-house, should:

- ✓ Respect human rights and operate in accordance with the UN Guiding Principles on Business and Human Rights
- ✓ Conduct a Human Rights Risk Assessment (HRRRA) based on the headings provided in Part V of this report
- ✓ Prevent and mitigate potential adverse human rights impacts (detailed recommendations to PSCs concerning respect for specific human rights are covered in Part V).
- ✓ Comply with all Myanmar laws, particularly labour laws and data protection.
- ✓ Align to the International Code of Conduct for Private Security Service Providers and consider joining the International Code of Conduct Association (ICoCA) as an Affiliate or Member.
- ✓ Participate in the Private Security Services Association (PSSA) as the body best placed to represent the industry with other Myanmar and international stakeholders.

To the Private Security Services Association

- ✓ Promote good practices in line with international standards such as the International Code of Conduct (ICoC) (see Box 3)
- ✓ Engage formally with ICoCA to strengthen capacity and understanding of how to ensure companies comply with, and integrate, the internationally recognized principles contained in the Code.
- ✓ Develop a PSSA Code of Conduct for members, like those developed by the Myanmar Garment Manufacturers Association and the Myanmar Overseas Employment Agencies

10 TOTAL's internal 'VPSHR Rule' (introduced May 2019) includes a requirement for contracts with PSCs to have a standard VPSHR clause requiring the PSC to comply with VPSHR commitments and Group requirements.

Federation.¹¹ Establish a process to review implementation by companies of the Code. This will give credibility to the Code so that PSSA membership will act as a signal to potential clients of commitment to good practice.

- ✓ Develop common training programmes/curricula.¹²
- ✓ Accept any PSC registered with DICA as a member, whether they are identified as a foreign or Myanmar company.
- ✓ Consider - possible Associate - membership for companies employing significant in-house security.
- ✓ Take collective action where client companies appear to be requiring prices or arrangements that are not compliant with labour laws or ask for inappropriate services.
- ✓ Cooperate to establish and maintain a database of personnel dismissed for gross misconduct, to enable members to check employee history before recruiting personnel. However, to avoid such a database being abused by employers e.g. to blacklist guards who raise grievances about working conditions, or participate in labour organisations, this database should be based on clearly identified criteria i.e. gross misconduct, and operate transparently, with the former employee able to access information, and have an appeal mechanism. Ensure that this data is protected, based on Myanmar legislation and privacy principles¹³ and access is limited to senior managers.

Options for Future Regulation

Sector-specific legislation, and its effective implementation will take time to put in place in Myanmar and should not be attempted in the absence of a democratically elected and accountable legislature. However this section identifies some sources of good practice on PSC regulation that could be useful in future.

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) (now renamed the Geneva Centre for Security Sector Governance) state in their 'Legislative Guidance Tool for States to Regulate Private Military and Security Companies'¹⁴ that:

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- 11 [Code of conduct for members of Myanmar Garment Manufacturers Association](#) and [Code of conduct for members of the Myanmar Overseas Employment Association](#), August 2016. Examples of Codes in other countries for the PSC sector can be found in pp41-42 of [State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety](#), UNODC 2014
- 12 Examples of topics for curricula can be found in Box 20 of the [UNODC e-book](#) (ibid)
- 13 [Myanmar Electronic Transactions Law \(ETL\), amended 2021](#), and the [OECD Privacy Framework](#), 2013
- 14 Legislative Guidance Tool for States to Regulate Private Military and Security Companies, The Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2016

“It is difficult to offer one “best practice” solution as the most suitable definition will be highly dependent on each State’s needs, requirements and the operating environments of PSCs. To determine the permitted and prohibited activities of PSCs, States should endeavour to have a comprehensive overview and understanding of the industry, taking into account the services currently and likely to be provided by private security contractors. States should also consider in what contexts these services will be provided before deciding which activities can and cannot be outsourced.

In addition to the protection of persons and objects, this may include such services as risk management, training of security forces and security risk advisory functions. States should hold discussions at both parliamentary and national policy levels to clearly identify the services PSCs should be allowed to provide. States should also participate in the discussions on this topic at the international level. Furthermore, when defining the permitted and prohibited activities of PSCs, States should take care to minimize the likelihood that PSC personnel could become involved in direct participation in hostilities in the context of an armed conflict”.

DCAF (now GCSSG) have also published a set of basic principles and requirements for state regulatory frameworks on the Use Of Force by Private Security Providers¹⁵ and a policy brief on gender and private security regulation.¹⁶ DCAF and the Danish Institute for Human Rights have published a thematic supplement on private security to accompany DIHR’s toolkits on National Action Plans (NAP) on business and human rights, which notes that ‘Given the elevated risks of human rights impacts related to private security, States should give special consideration to this sector within the framework of their NAP on business and human rights’.¹⁷ Part 3.2 of the supplement sets out a checklist of issues to consider when undertaking a Baseline Assessment for the NAP including questions around the existing regulatory framework. Myanmar has not yet developed a NAP.

An earlier 2014 eBook by the UN Office on Drugs and Crime (UNODC) on state regulation of PSCs focusses on PSCs operating in-country, and their role in crime prevention and community safety, and offers many good practice examples relevant for Myanmar.¹⁸ It covers issues such as regulation and licensing, enforcement, inspection and complaints, training, transparency, and relationships between PSCs and public authorities, particularly the police.

Making existing regulation more effective

Prior to the adoption of specific legislation on the private security sector, existing regulators - including the Central Bank - could improve the governance of the sector by:

- 15 [Regulating the Use of Force by Private Security Providers: A Guidance Tool for States](#), DCAF, 2020
- 16 [Gender and Private Security Regulation](#), Policy Brief, DCAF, February 2020
- 17 [Private Security Governance and National Action Plans \(NAPs\) on Business and Human Rights](#), DCAF & DIHR 2019
- 18 State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety, UNODC 2014

- ✓ Ensuring that all private security providers register with DICA, and register a Principal Activity as “80 - Security and investigation activities” or “8010: Private security activities”
- ✓ Inspecting PSCs to check they are compliant with existing laws, particularly labour law
- ✓ Reviewing labour law and other regulations applying to PSCs, in discussion with the industry, to ensure that they meet the needs of the sector e.g. on working hours to address the needs of shift systems
- ✓ Allowing banks to outsource security services, including cash-in-transit, to qualified PSCs.
- ✓ Identifying private security as an ‘essential service’ (for example during curfews and pandemic response).



3

REGULATION OF THE PRIVATE SECURITY SECTOR IN MYANMAR

There is no sectoral regulation of private security services in Myanmar, and it is rarely mentioned specifically in other laws. However, it is regulated by laws applying to business, such as labour law, the Companies Law, and the Electronic Transactions Law. Other laws are relevant to the sector-specific activities and risks, such as the Penal Code and Arms Act. This regulation is described in the HRRR section. This section addresses regulations which apply to the sector concerning ownership and registration. It also summarises recent and - as yet - inconclusive, proposals to introduce sector-specific regulation.

Companies Law

As Myanmar's economy opened up after 2011, the number of Myanmar-owned PSCs increased. Foreign-owned PSCs also entered Myanmar. The (then) complex process for registering a company with the Directorate of Investment and Companies Administration (DICA) under the 1914 Companies Law required companies to specify whether they would undertake 'manufacturing' or 'services'. Foreign companies were also required to apply to government for a 'permit to trade' which was referred to the relevant line ministry if they identified their specific activities. Tight military control over 'security' related activities meant that only individuals with personal connection to the Ministry of Home Affairs (MoHA) appear to have been allowed - albeit without a formal process - to overtly operate a private security company in Myanmar and use the word 'security' in the company name. To avoid a referral to MoHA, companies generally registered to provide services but avoided mentioning 'security'.

This requirement for a 'permit to trade' disappeared following the adoption of the **2017 Companies Law**, and with it, the need to refer security service providers to MoHA. The 2017 Myanmar Companies Law, 2018 Rules and associated procedures, accessible via the online MyCo companies registry, encourage, but do not require, companies to identify their Principal Activities from a list which includes '80 - Security and investigation activities'. Our desk-based survey of the current PSCs shows that some security companies select '80', some do not select any Activities, and some who are not known to be engaged in security tick all the Principal Activity boxes.

In late 2020, DICA refined this list to include three categories:

- 8010: private security activities
- 8020: security systems services activities and
- 8030: investigation activities

The scope of this report is category 8010.

Restrictions on Ownership of Private Security Companies

Under the Myanmar Companies Law, companies in which more than 35% of the equity is held by non-Myanmar citizens are considered 'foreign' companies. These face restrictions on certain sectors and types of investment such as jade/gems¹⁹.

It appears that there are no restrictions on foreign ownership of private security companies. The **1989 State-Owned Economic Enterprises Law**²⁰ is the basis for restricting 100% private sector involvement - either Myanmar or foreign - in certain sectors, some of which are off-limits to foreign companies, or to the private sector as a whole. The 1989 Law also designates certain sectors to be only undertaken by the private sector in the form of a joint venture (JV) with government. In the 1989 law, private sector involvement is not permitted in the "*Manufacture of products relating to security and defence which the Government has, from time to time, prescribed by notification*". However, this clearly does not relate to security service provision, but the manufacturing of weapons and ammunitions. Furthermore, private security services are not listed as "Economic Enterprises to be carried out Solely by the Government" or with government in a Joint Venture (such as mining). The assessment did not identify any subsequent amendments to the 1989 law related to the private security sector. Therefore, private companies, both Myanmar and foreign owned, appear to be allowed to offer security services.

The **2016 Myanmar Investment Law**²¹ also does not mention the private security sector, although Chapter 22 (security exemption), Section 90 stipulates that:

- a) Nothing in this Law shall be construed to prohibit the Government from adopting or enforcing necessary measures for the protection of its essential security interests.
- b) The provisions under this Law shall not prevent any of the following actions necessary for the Government to protect essential security interests, including but not limited to:
 - i. action relating to the traffic in arms, ammunition and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying military or other security forces;
 - ii. action taken, as required, in time of war or other emergency in international relations.

Although the private security sector is not mentioned, S.90b) (ii) could justify the deputation of PSCs (both foreign and local) by authorities in case of emergency (*see Part V for more details about risks of deputations*). During interviews in 2020, this issue was raised by clients operating in conflict-affected areas such as Rakhine, who were concerned that in case of emergency, private guards could be placed under the authority of the public security forces, or required to participate in crack downs on demonstrations. This risk is heightened across the country since 1 February.

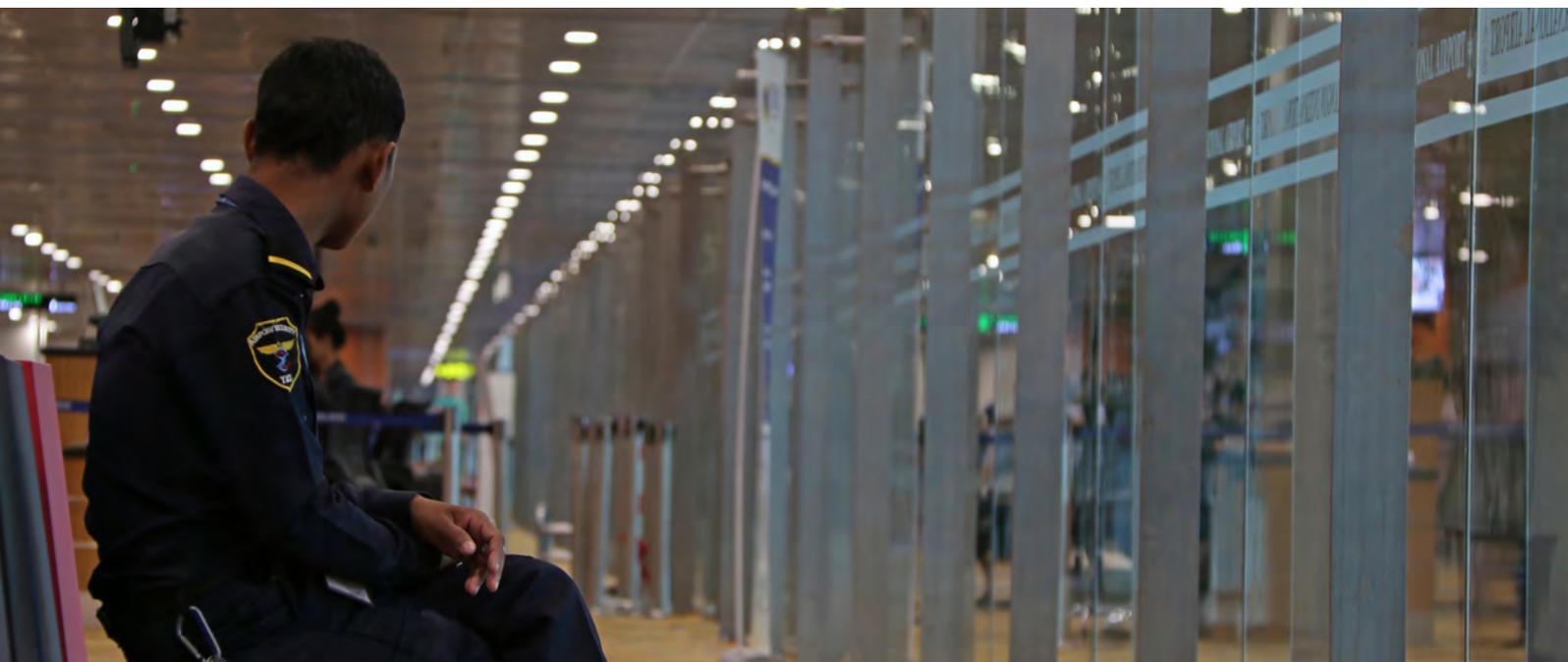
19 [Myanmar Companies Law](#), December 2017

20 [State Owned Economic Enterprises Law](#), March 1989

21 [Myanmar Investment Law](#), October 2016

The only mention of private security companies we have found in a Myanmar legislative text is the **“List of Restricted Investment Activities” DICA Notification 15/2017²²** adopted under S.42 and S.100(b) of Myanmar Investment Law. “Airport Security Services” are listed in Section (D) *“Investment activities to be carried out with the approval of the relevant ministries”* as an activity which requires the approval of the Ministry of Transport and Communication”. Annex A of List of Restricted Investment Activities provides a comprehensive definition of the Airport Security Services as:

- a) Airport Access Control Services
- b) Security guard and Patrol of Landside and Airside of Airport Services
- c) Airport Screening check point Services
- d) Aircraft Security Search and check Services
- e) Air Cargo and mail Security Access point Services
- f) Airport Car Parking Control Services
- g) Civil Aviation Security Equipment Maintenance Services
- h) Civil Aviation Security Training Services
- i) Civil Aviation Security Quality Control Services



Airport Security, Yangon International Airport. Photo: auuhoo/123rf.com

22 [List of restricted investments](#), Directorate for Investments and Companies Administration, April 2017

While the provision of private security services by an international or Myanmar PSC is only mentioned in the context of airport security, it is reasonable to conclude that if a PSC is able to provide security for sensitive sites such as international airports, it is implicit that they would not be restricted from supplying security to less-sensitive areas.

It is theoretically possible that if a Ministry were identified as being an authorising agency for PSCs, they might seek to restrict permits to Myanmar companies. However, this would contradict the intended equal treatment of Myanmar and foreign investors under the Myanmar Investment Law; there is no reference to security services in Section B of Notification 15/2017 (Investment activities that are not allowed to be carried out by foreign investors).²³

As of November 2020, MCRB has identified 16 foreign private security companies that are or were registered with DICA; 11 of them have declared *80 - Security and investigation activities* as a Principal Activity.

Consequence of Lack of Sector-Specific Regulation for Private Security

The existence of PSCs operating in critical areas such as international airport security highlights the need for greater oversight and regulation of the sector. Interviews for this assessment demonstrated that the lack of formal recognition, clear definitions and regulation for the private security sector has operational consequences for PSCs in Myanmar, and is a source of concern for them, particularly where they operate in high-risk areas.

Two examples of the consequences of a lack of legal recognition which were raised in interviews were:

- The lockdowns in Myanmar as a result of COVID-19 introduced a curfew and effectively shut down all economic activity except for sectors deemed as ‘essential services’ such as food stores, banks and health/pharmacies. However, unlike most countries in the region such as Thailand, Singapore or Japan, private security services were not deemed ‘essential’. PSCs offering patrolling or quick reaction services were unable to provide their services and respond to emergencies during curfew time. Static guards, who compose most of the industry, had to adapt their shifts so they could travel to/from deployment sites outside curfew hours, if they could leave their township at all. This resulted in longer shifts, which were sometimes non-compliant with labour laws. Some PSC managers were able to get letters from their clients or their clients’ regulatory ministry allowing them to operate freely, but they were the exception and not the rule.
- One PSC manager shared an example of security guards deployed on a private property who tried to catch a trespasser. After a fight with the guards, the trespasser was apprehended and handed over to the police. The trespasser later pressed charges against the security guards and the security company for violence and unlawful detention.

²³ Despite the absence of a published legal basis, some stakeholders met by the assessment team appeared to believe that foreign companies could not operate in Myanmar’s private security sector.

These examples demonstrate the need for a clearly defined legal framework for private security companies to be legally recognized and protected for doing their duties lawfully.

This assessment has also identified widespread violations of labour law and working conditions of guards (see Human Right Risk Assessment section of this assessment). If a system existed to register and regulate PSCs, this could include provisions for companies - and/or their owners - to lose their PSC licence because of serious or persistent infringements of labour laws.

Previous Proposals to Regulate the Private Security Sector

Proposals from the Private Sector

In 2016, the Private Security Services Association (PSSA)²⁴ was formed and registered with DICA. It reregistered in 2019 under the new Myanmar Companies Law as a Company Limited by Guarantee (Association) with a Principal Activity as 94 - Activities of membership organizations.²⁵ The Association has approximately 30 member companies, drawn from the larger locally owned PSCs.

Inter alia, the Association is seeking to raise standards of PSCs and improve regulation. In 2017, it met with MPs and the then “Legal Affairs and Special Cases Assessment Commission” of Parliament chaired by former Speaker and former Chief of General Staff of the Armed Services retired General Thura U Shwe Mann to discuss possible introduction of regulation for PSCs (the Commission was dissolved in February 2019). However, Parliament did not take further action.

While the PSSA’s proposed ideas for regulation are not in the public domain, they are believed to have been inspired by PSC regulation in India, Japan, and Singapore (The Singaporean Private Security Industry Act has also been a reference point for this study, although this law does not fully integrate human rights safeguards).

The PSSA are understood to have included in their proposal elements on certification of PSCs, governmental oversight of the industry and training of guards. It is not clear whether they included proposals to restrict foreign PSCs although such a restriction would not be consistent with the existing Myanmar legal framework, as well as international obligations on equal treatment of investment (see above).

Oversight by government

On 23 January 2018, a ‘Security Oversight Committee’ was established under Presidential Notification 13/2018 to oversee companies ‘registered under the Ministry of Planning and Finance and who are providing security’.²⁶ The Committee was subsequently reorganized

24 [PSSA Facebook page](#)

25 [Private Security Services Association, MyCo, DICA](#)

26 DICA and the Companies Registry have since been transferred to a new Ministry of

by Notification 58/2019 of 23 April 2019.²⁷ It does not appear to have been revived or restructured since 1 February 2021.

The formation of this Oversight Committee appears to have been prompted by the arrest at Nay Pyi Taw airport in October 2017 of Phyo Ko Ko Tint San, son of a former Minister and general, who was carrying guns, bullets, and drugs. Further guns, 'National Security Council' badges, walkie-talkies, and camouflage jackets with SWAT badges similar to those worn by Presidential bodyguards were seized at his properties. He claimed that the weapons and badges collection were intended to start a private security company. Phyo Ko Ko Tint San was charged with illegal possession of firearms and drugs, the Export and Import Law, Telecommunications Law and under the State Secrets Act for unauthorized use of NSC logos. He was jailed for 30 years in March 2020.²⁸

The reorganized Oversight Committee as of 2019 included 16 representatives from various ministries. It was chaired by the Deputy Minister of Home Affairs. Its PSC oversight responsibilities were:

- a. Establishing qualifications for company employees providing security services
- b. Ensuring security staff attend necessary security training
- c. Coordination and scrutiny with relevant departments/ministries concerning necessary security equipment for use by security companies
- d. Scrutinising and permitting staff organisation and strength
- e. Coordinating with security authorities to ensure that uniforms, badges, and designations are distinct from those of the authorities
- f. Oversight of the operations of security companies to ensure that they are systematic and in line with the rules
- g. Investigation of any cases of private security companies undertaking activities in violation of the rules laid down by the committee
- h. Checking whether private security services are advertising and operating under the name registered with government agencies, or using other names or imitating government organisations
- i. Checking whether private security companies are imitating government organisations, or betting others to do so
- j. Warning organisations who are not complying with the designated activities and taking action against them in accordance with existing laws.

Investment and Foreign Economic Relations (MIFER)

27 [Myanmar law information system \(MLIS\)](#)

28 [The Curious Case of Phyo Ko Ko Tint San](#), 20 Frontier Myanmar, October 2017; [Ex-Myanmar Minister's Son Jailed for 30 Years After Drugs and Guns Bust](#), Irrawaddy, 30 March 2020.

Where organisations are registered in accordance with the [2014] Law on Registration of Associations, the Committee will scrutinize:

- a. Whether or not they are operating in accordance with the objectives mentioned at the time of registration
- b. Whether or not they are operating within the area designated when they registered
- c. Whether or not they are compliant with existing law in relation to their badges and uniforms

The Notification states (d) that *“For organizations without registration, if their activities, clothing and uniforms is not compliant with existing laws they will be called in for a warning and if they do not comply, legal action will be taken against them”*.

Elements of the Notification draw on existing laws. For example, points (h) and (i) applying to companies appear to refer to Article 171 of the 2016 amendment of the Penal Code²⁹ which stipulates that *“Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class or public servants, shall be punished with imprisonment or either description for a term which may extend to three months, or with fine which may extend to twenty thousand kyats, or with both”*.

It may also refer to Article 6(1)(a) of The Myanmar Official Secrets Act³⁰ that refers to anyone that *“uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform”*.

The establishment of this Oversight Committee was a first step towards regulation of companies and other organisations providing private security services, and greater governmental oversight. However, its creation through a Presidential Notification was a recognition that there is no current law regulating PSCs. Furthermore, the existence of the Oversight Committee and its mandate is poorly known, and there appears not to have been any outreach to enforce its stated objectives, or draft detailed rules. At most, some PSC managers have reported being contacted by the police to ensure that their guards’ uniforms are distinct from these of national security forces.

Even identifying the landscape of existing PSCs appears to be a challenge for MoHA and the Committee. The Deputy Home Affairs Minister in November 2019 told the VPSHR In Country Working Group that there were around four private security companies in Myanmar.³¹

29 [Penal Code](#), 1861

30 [Official Secrets Act](#), 1989

31 [Members of the Myanmar VPSHR Steering Committee meet the Deputy Home Minister, Myanmar Centre for Responsible Business](#), 26 November 2019

However, this assessment has identified almost 150 Myanmar and foreign companies believed to be providing security services, and this list, based on desktop research, may not be complete. In the absence of a requirement to register as a PSC under a PSC law, or for all companies intending to provide security to identify 80 - *Security and investigation activities* or one of its subcategories as a Principal Activities in MyCo, it is not clear how the Oversight Committee could identify and oversee DICA-registered companies who intend to provide security services. While the PSSA is an important stakeholder for the Oversight Committee and gives access to around 30 Myanmar-owned PSCs, its membership does not extend to all Myanmar companies providing security services. It has not yet opened its membership to foreign-owned companies.

Unlike some Committees, the Security Oversight Committee does not appear to have been renewed since 1 February 2021. It is unclear whether it still exists. It is also not known whether the Ministry of Home Affairs of the military's State Administration Council has any plans to regulate PSCs.



4

THE PRIVATE SECURITY ECOSYSTEM IN MYANMAR

The private security ecosystem includes PSCs, both foreign and Myanmar owned, client companies, and in-house security, and their employees. This chapter examines these components. It also considers the role played by state security, ethnic armed organisations and civil society in the wider private security ecosystem.

The value chain has evolved since the transition to civilian government in 2011. The 1 February 2021 coup has further impacted it. Prior to 2011 most embassies and international organisations hired their own security personnel. Foreign investors, mainly in oil and gas, sometimes recruited local security providers but had internal teams to provide extensive training to the guards. They - and other companies - now have a wider choice of both Myanmar and foreign PSCs which they can contract to provide outsourced services.

However, there is no contracting out to PSCs of public security/police functions such as transport of prisoners, unlike in some other countries. Nor is there an estimate of the value of the industry to Myanmar, or the numbers employed.³²

Private Security Companies

PSCs in Myanmar offer a wide unregulated range of services such as static man guarding, patrol, event security, cash in transit and close protection. Some, but not all, active PSCs have registered a Principal activity as “80 Security and Investigation activities” with the Directorate of Investment and Company Administration (DICA) (see Annex A for a working list of all PSCs identified). The team also believe that an unknown number of companies offer private security services without proper company registration.

Foreign and Myanmar PSCs tend to operate within their own markets, each targeting a specific group of clients. For example Japanese companies mainly target global Japanese clients invested in Myanmar. However, it should be remembered that the term ‘foreign PSC’ obscures the fact that Myanmar citizens make up 98-99% of foreign companies’ workforce, including in senior managerial roles, and generally enjoy wages and benefits at least compliant with Myanmar labour laws.

Foreign-owned PSCs

The study identified about sixteen partially or fully foreign-owned PSCs in Myanmar, both

32 By comparison, [Singapore estimates the private security sector](#) employs 47,000 security officers and comprises 240 security agencies.

Western and Asian. These PSCs offer private security services such as static man guarding, patrol and event security. In some case, they also provide cash in transit and close protection (bodyguards). Most foreign PSCs interviewed for this assessment recruit and operate their own workforce. Some subcontract manpower management to a Myanmar-owned PSC.

Around half of foreign PSCs in Myanmar are local branches of international PSC groups. The others are companies established only in Myanmar with foreign ownership and management. In branch PSCs, managers are usually expatriates from the same company seeking to replicate the company's operating procedures. In addition to expatriate managers, some foreign companies also recruit veterans from foreign armed forces or police to run their operations department, manage specific contracts or act as close protection officers.

Training provided by foreign PSCs generally appears to be in line with international standards and covers use of force and basic human rights. PSCs that are part of larger international groups have translated their in-house training material to Myanmar and are applying the same process that they do worldwide. However, some clients observed that the initial training delivered to guards at the headquarters and the good quality processes in place differ from actual delivery of security services on the ground. This divergence is more prominent in locations outside of Yangon where direct management is limited.

Some foreign PSCs have invested time and resources to obtain international accreditations such as ISO 9001, ISO 18788 (private security industry company certifications) and membership of ICoCA including certification to the International Code of Conduct.³³ They integrate these processes into their daily operations. However, as one security manager from a client commented, reflecting the view of many client companies interviewed, *"these certifications are only as good as the day they are delivered"*.

Clients view the quality of services provided by foreign PSCs as superior to Myanmar PSCs in terms of reporting and compliance with international standards. However, some contract managers from client companies commented that some international PSCs operating in Myanmar offer lower standards than counterparts in neighbouring markets.

Oil and gas companies interviewed hoped to see PSCs currently in Myanmar offer innovative services in line with international trends and to wanted to see more companies - both foreign and Myanmar - participate in their tender processes.

Myanmar Private Security Companies

The assessment identified 128 Myanmar private security companies operating in the country with 113 of them being registered with DICA. We identified 15 companies apparently offering security services without registration, but the real number of unregistered security providers is likely far higher.

³³ EXERA has ISO 18788 certification. IDG is an ICoCA member. Atalian Myanmar's [2021 Communication on Progress to the UN Global Compact](#) covers its human rights management systems and their alignment to international standards.

The majority of Myanmar PSCs (as elsewhere in the world) are owned or managed by veterans of the Myanmar public security forces, either Army (Tatmadaw) or Police. In many cases these owners have recruited former subordinates from army/police as managers, thus effectively replicating the structure and management 'style' of their former unit in particular, and public security forces in general. Even PSCs owned by 'civilians' employ veterans in managerial roles leading to potential replication of public force operating procedures and standards.

This military influence extends to some PSC training material. The assessment found that several PSCs base their training style on that of the Tatmadaw, with significant indoctrination, and little focus on rules of engagement, use of force etc. Other examples of training material appeared more 'civilian oriented', and therefore more in line with client needs and international standards.

Low salaries mean that most guards come from lower socio-economic backgrounds and have limited education. Many are veterans looking to top up their pensions. Working conditions (see HRR section of the report) differ greatly in Myanmar PSCs. Some Myanmar PSCs require employees to do 24-hour shifts and make them pay for their own uniforms. Other Myanmar PSCs offer working conditions similar to those in foreign-owned PSCs.

In-house security

Companies with in-house security can be broadly divided into three categories:

1. in-house security for large companies, particularly in the banking sector
2. security forces for standalone projects (factories, mines)
3. gate keepers or watchmen hired by individuals and small businesses.

The total number of people performing in-house security duties is likely to be more than the total number of security guards employed by specialist PSCs in the country. This makes in-house security an important element of the private security sector, consistent with the ICoC definition of a Security Company.³⁴ Companies with significant in-house security - and their guards - are important stakeholders in the development of legislation and relevant aspects of this legislation should apply to in-house security, at least in categories 1 and 2 above.

Where companies operate an in-house security guard force, this exposes their employees to the same safety risks as PSC staff. The risks may be even greater for in-house guards in banks (see below) and other sites which handle large amounts of cash such as money changers, supermarkets, and jewellery stores.

34 "Any company whose business activities include the provision of security services either on its own behalf or on behalf of another, irrespective of how such a company describes itself" as defined by the [International Code of Conduct for Private Security Services Providers](#)

Behaviour by in-house security staff may abuse human rights, just as is the case with PSC staff, particularly if security staff are inadequately trained to respond to situations such as trespassers and theft. Other potential human rights risks include harassment of staff by security guards, and security responses to demonstrations and strikes, which may also lead to the involvement of public security authorities³⁵ (see HRRRA in Part V for more details).

Generally, in-house security guards employed in large companies appear to enjoy the same working conditions as other employees such as bonuses and insurance. Compliance with Myanmar labour laws and working conditions therefore appeared better than many standalone PSCs.

Some of the large Myanmar companies interviewed recognise that their in-house security requires professional management and have developed appropriate processes including for risk management (see below). But other large companies do not even identify their employees as security guards, and brand them as ‘facility keepers’, ‘watchmen’ or ‘greeters’. Some leave managing their security force to the human resources function.

Some companies interviewed openly admit that security guard management is not their speciality, especially when it comes to training. They expressed interest in sub-contracting it to professional PSCs, although banks drew attention to CBM restrictions on their freedom to do this.

The assessment found in-house security to be significant in certain sectors such as banking, shopping centres, garments, and mining.

Banks

Some, but not all, banks interviewed in 2020 for this assessment appeared to run a professional security team and had the same standards as the best PSCs, with a clear recruitment process, extensive training and well-defined roles and responsibilities. However others recognised that they needed to do more or bring in experts.

The situation since 1 February 2021 has significantly raised the security risk for banks, due to disruptions to cash availability and incidents in queues which have attracted the attention of public security.³⁶ Banks have also been targeted by improvised explosive devices (IEDs), in some cases leading to fatalities and injuries for security guards or passers-by.³⁷

35 [Shoppers boycott Myanmar Plaza after attack on anti-regime protest](#), Irrawaddy, 26 November 2021

36 See for example [Yangon Bank Customers Detained by Myanmar’s Military Regime](#), 17 March 2021, Irrawaddy, [Customers queuing at bank in Mawlamyaing fired on](#) (in Burmese), Myanmar Now, 29 April 2021

37 [Security guard is wounded in bomb blast outside military-owned bank in Myanmar as civilian death toll from junta’s brutal crackdown on protesters tops 700](#), Daily Mail, 11 April 2021 and [Bomb blast outside military owned Innwa bank in Taunggyi](#), Democratic



Queue for an ATM in Yangon, April 2021. Photo: Maung Sun

Robberies of bank branches have been on the rise³⁸ and cash-in-transit has also been targeted.³⁹ The Central Bank of Myanmar is the only industry regulator to have issued security guidelines to its sector. Directive 14/2015 of 9 March 2015 provides instruction to banks on CCTV, alarm systems and cash in transit. With regards to cash in transit, it says:

2 (b): Cash in Transit Security: When banks are transporting cash, including between the head-office and the Central Bank, between the head office and bank branches (regional branches, bank branches), or between the bank branches, they must pay attention to the following:

Voice of Burma, 30 May 2021 (in Burmese), [Bomb blast at Myitkyina KBZ branch](#), 14 May 2021, and [Paletwa bomb blast injures civilian](#), Radio Free Asia, 28 May 2021

38 [Third bank robbed in Myanmar's largest city in three months](#), 22 October 2021 Associated Press

39 [Myanmar Military Regime Accuses Resistance Fighters of Bago Bank Heist](#), 15 September 2021, Irrawaddy

- (1) Cash must be transported during daytime in accordance with the usual financial procedures. In addition, to safeguard the cash, the relevant authority that is in charge of security in that area must be informed. Special attention must be paid to ensuring that information such as the transit route, the time of delivery and amount of cash etc., is not shared with any unauthorized persons.
- (2) Cash in transit must only be conducted in a secure and strong vehicle owned by the bank. Do not use external vehicles for collecting/delivering the cash. Depending on the distance and the amount of cash in transit, an additional accompanying vehicle with security should be arranged.
- (3) A secure and strong safe with a double-key lock system should be used to transport cash.
- (4) Cash in transit must be insured.
- (5) The person assigned for the task of transporting the cash must be at least at the level of Deputy Manager. Non-bank employees must not be allowed on the vehicle. Those assigned to the task are prohibited from taking drugs and alcohol.

Banks told the assessment team that they interpreted this Directive to be a requirement to use in-house security personnel for cash in transit operations.

Most managers of the banks interviewed understood the CBM Directive to mean that PSC personnel can perform other security duties such as monitoring CCTV, alarm system management and providing static security. All banks interviewed deploy their own guard force for duties such as static man guarding, patrols and cash in transit, but some use PSCs for static security and for alarm monitoring services, to complement in-house security.

Garment factories and other manufacturers

Trade unions reported that factories usually recruit their own guard force, although the assessment also interviewed foreign PSCs who provided security to garment factories.

Large-scale mines

Direct employment of community members as security staff offers mining companies the chance to boost local employment. This strengthens the mine's social licence to operate and can reduce security risk. The assessment heard that one mine which had planned to outsource security to a PSC had abandoned this plan in the face of local community opposition. Instead, they invited the PSC to provide training to their local staff.

State-owned Economic Enterprises

Although they were not interviewed for the study, State-owned Economic Enterprises (SEEs) including the military owned enterprise Myanmar Economic Corporation (MEC) usually recruit their own guard force, often composed of veterans. Guard force personnel may come from other parts of the country. This means the company misses out on the important security advantage of creating jobs for the local populations. SEEs may also rely on public

security forces, including specialised police forces such as the Oilfield Police.⁴⁰ Neither MEC or Myanmar Economic Holdings Public Company (whose shares are owned by current and former members of the military and some units) has PSC subsidiaries.

Clients

Those who choose to outsource their security rather than keeping it in-house are considered clients of PSCs. A limited number of client companies interviewed, mainly in the oil and gas, mining, and telecommunications sectors, have dedicated security managers who are specifically recruited to continually assess risks, manage contracted PSCs and ensure that Key Performance Indicators (KPIs) that are stipulated in the contract are respected. This in line with the recommendations of the IFC's Good Practice Handbook on "Use of Security Forces: Assessing and Managing Risks and Impacts" and GISF guidance for humanitarian agencies.⁴¹

For most other companies e.g. banks, supermarkets and hotels, the assessment found that security was usually the responsibility of a facilities manager, operations manager or human resources manager. Some of those interviewed by the team appeared to have limited qualification or experience in security and lacked understanding of actual security challenges and the security industry. Since the coup, some of these more exposed companies have increased the priority they place on security and in some cases have hired experts or PSCs and increased their deployment of security guards.

Risk Assessment and Management

International Finance Corporation (IFC) Performance Standard (PS) 4: Community Health, Safety and Security recognises that client companies - like companies who have in-house security - have an important responsibility in assessing risks associated with their project and managing private security companies: "A client company can outsource its security, but it cannot outsource its responsibility".⁴² IFC PS4 requires companies to:

- assess the security risk their operations may have or could create for the communities;
- develop ways to manage and mitigate these risks;
- manage private security responsibly.

Risk assessment is also reflected in the Voluntary Principles on Security and Human Rights

40 [Sector Wide Impact Assessment on Oil and Gas Part 4.7 Security](#), MCRB, September 2014

41 [Use of Security Forces: Assessing and Managing Risks and Impacts](#), International Finance Corporation (IFC), 2017 and [Security to go: a risk management toolkit for humanitarian aid agencies](#), Global Interagency Security Forum (GISF), 2020, and in particular module 14

42 [Use of Security Forces: Assessing and Managing Risks and Impacts](#), International Finance Corporation (2017) p45

(VPSHR) which state that *“The ability to assess accurately risks present in a Company operating environment is critical to the security of personnel, local communities and assets; the success of the Company’s short and long-term operations; and the promotion and protection of human rights.”*

Risk assessment is usually undertaken by company security managers. It ideally involves consultation with local communities and government. Assessing and evaluating potential risks and security threats is the first step in determining level and type of security risks and developing a Security Management Plan (SMP). This should be an ongoing process, evolving along the life cycle of the project/business.

Before 1 February 2021, risk assessment was relatively straightforward in places like Yangon, Mandalay, and industrial zones, when compared to that needed for conflict-affected ethnic border areas. However, all of Myanmar should now be considered as conflict-affected. The heightened risk associated with increased public security presence and violence requires heightened human rights due diligence, even in urban and industrial areas.⁴³

Amongst foreign organisations in Myanmar, INGO/United Nations agencies, mining, oil and gas, and telecom companies have more complex risk exposure. They were observed to update their risk assessments more proactively. In the case of the extractive companies interviewed, their practices were consistent with the VPSHR.

The main risks and concerns shared by Security Managers in client companies during interviews in 2020 were:

- Lack of regulation, and unclear roles and responsibilities of PSC and security guards especially with regards to use of force, right to apprehend and detain.
- Lack of appropriate training regarding human rights, rule of force and gender equality.
- Difficulties conducting background checks on PSC and individual guards, both for criminal record and possible past human rights violations.
- Lax compliance with labour law and decent employee compensation packages.
- Risks associated with possible deputation of guards by authorities during emergencies.
- Need to manage guards to build good relations with nearby communities, and for PSCs to work with local communities in the design and implementation of security measures on site.

43 DCAF and the ICRC have published a toolkit on [Addressing Security And Human Rights Challenges In Complex Environments](#), 3rd Edition (2019) and accompanying Knowledge Hub www.securityhumanrightshub.org. See also Guide to Heightened Human Rights Due Diligence in Myanmar, Myanmar Centre for Responsible Business, forthcoming.

Tenders and contract management

Many security contracts, even large ones, appear to be obtained by local PSCs through personal networks of the owners and without a tender process. Where there are tenders, price is usually the only criterion. Some foreign PSCs entered the Myanmar market to accompany specific clients whom they support in other jurisdictions, and these contracts are not tendered either.

Most international clients (extractives companies, INGO, telecoms, or embassies) conduct a stringent tender process every two to three years. To qualify, PSCs are expected to demonstrate that they are complying with Myanmar taxes and labour laws as well as basic international security standards with regards to use of force and human rights. Some security managers of client companies - mainly VPI member companies or UN agencies and Embassies - test this by reviewing SOPs, particularly for emergency situations such as a riot outside the site, and by asking PSC managers and guards what they would do in particular scenarios and testing their understanding of Sexual Harassment or Use of Force.

Tenders were observed in 2020 to be increasingly price driven. Over the past four years, the value of security contracts for large international clients has decreased. There is fierce competition among international PSCs, many of them financially backed by larger companies who appear to be willing to take on contracts at cost. It appears they are operating in Myanmar to gain a strategic foothold rather than making immediate profit.

The team also observed an increasing trend where foreign clients are selecting security providers (usually local PSCs) at prices that would make it impossible, even at break-even, for the PSC to respect minimum wages and labour laws. Several PSC owners or managers described clients who wanted to limit the number of guards to the bare minimum needed to effectively secure the site (or less) and then push for the cheapest price per guard. This race to the bottom forces local PSCs to further reduce their guards' salaries and increase the duration of shifts, generally in violation of Myanmar labour laws.

Some more active clients run spot checks on guards. Some even organize full scale exercises that involved security guards, other parts of the client company and even external agencies such as the fire brigade. However, the assessment team heard that a lack of proper contract management by some client companies, even of pay and conditions, has created a vacuum that has allowed some PSCs to break KPIs by reducing guards' benefits, cutting guard salaries, or cancelling bonuses.

Other Security Actors

While the Tatmadaw (army), Border Guard Forces and Ethnic Armed Organizations (EAOs) are not 'private' providers of security services, they are, in various contexts and in varying degrees of formality, providing protection to private businesses operating across the country, particularly in resource-rich and conflict-affected borderlands.

It is important to differentiate between actual provision of physical security services to legitimate

businesses (covered in this assessment), and the well-documented, and often acknowledged, extortionary practices by multiple armed actors to collect “taxes” for “protection” under the threat of violence, something which may increase with the increased prevalence of violence across Myanmar.⁴⁴ This assessment does not address this, or the provision of physical protection by armed groups to illicit activities such as smuggling, narcotic manufacturing or artisanal and small-scale mining.

Just as public forces are deployed to state and military owned enterprises (see above), Ethnic Armed Organizations (EAO) and Border Guard Forces (BGF) deploy their troops to projects operating in their areas of control. Interviews conducted for this assessment show that these businesses, whether they are directly owned by EAO/BGF leaders or by other businessmen, conduct little to no engagement with local populations. There is an ongoing risk of EAO forces harassing or intimidating civil society or communities voicing concerns about these projects.⁴⁵

Furthermore, projects in areas outside of Naypyidaw control may have illegal security arrangements. In addition to being guarded by BGF forces under the command of Saw Chit Thu, Chinese investments including casinos around Myawaddy on the Thai border are also protected by Chinese armed guards operating on Myanmar soil *“who carried high-powered rifles, wore black uniforms adorned with Chinese characters that differed from BGF uniforms, and spoke Chinese to each other”*.⁴⁶

Maritime Security

O&G companies raised the issue of maritime security and whether an attack at sea could become a credible threat to their operations. The International Maritime Bureau⁴⁷ has not reported any pirate attacks in the Gulf of Bengal in 2020 with the exception of two ships near the coast of Bangladesh. Other criminal networks operate along Myanmar coastlines such as human and weapon smugglers near the Rakhine coast and illegal fishing near Dawei and Myeik. In 2019, the Myanmar government announced it would set up a Coast Guard to tackle some of these issues and this was launched in October 2021.⁴⁸ The Myanmar government recently purchased its first submarine.⁴⁹

44 See [Business Integrity Handbook](#), pp30-31, MCRB July 2020

45 [An army, a mountain and the Asian Development Bank](#), Frontier Myanmar, 2 January 2018

46 [How the Kayin BGF’s business interests put Myanmar at risk of COVID-19](#), Frontier Myanmar, 10 April 2020 and [With conflict escalating, Karen BGF gets back to business](#), Frontier, 13 May 2021

47 [International Chamber of Commerce- Commercial Crime Services](#), IMB Piracy & Armed Robbery Map 2020

48 [What’s the Deal with Myanmar’s New Coast Guard?](#) The Diplomat, 21 October 2021

49 [Has Myanmar’s Submarine Purchase from India Hit a Nerve in Beijing?](#) Irrawaddy, 28 October 2020

In Rakhine, the Arakan Army has conducted some operations against governmental forces on rivers (capture of policemen on a ferry, artillery attacks on navy vessels) and is reportedly moving troops and conducting attacks using small boats in the river basin and near the coast. However, no EAO has shown either the capacity or the intention to attack offshore O&G operations for the time being.

Civil Society Organizations

This assessment is intended to help CSOs and human rights defenders better understand the private security sector and its risks, as well as international standards and good practice, so that they can make use of these as far as possible in the current difficult context. It should be of relevance to trade unions and to CSOs working on labour rights, gender equality, disability rights, indigenous peoples' rights, land, migrant rights, digital rights and other areas including sectors such as the extractives and hydropower.

Myanmar lacks specialised CSOs focussed on the governance of private (or public) security, such as those found in Africa.⁵⁰ Prior to 1 February 2021, CSOs with whom the assessment team engaged appeared to have limited interest in, or knowledge of the role private security companies play in protecting businesses and projects, or the human rights and security impacts of private companies. They were more focussed on adverse human rights impacts from company activity on issues such as land and pollution.⁵¹ However, both civil society actors and parliamentarians were inherently suspicious of the sector, which they associate with the military. Even prior to the coup, they voiced concern about close connections between public and private security forces whom they see co-operating together, in some cases, to intimidate local communities.

Civil Society Organizations (CSOs) are an important part of the private security ecosystem.⁵² Companies should seek their views and work with them to understand community concerns. This should include formal public participation processes such as Environmental Impact Assessments (EIAs) and Environmental Management Plans (EMPs) which should address security and human rights impacts, and ongoing stakeholder engagement.

Engaging CSOs in security and risk assessment will enhance the security of both the project and local communities. CSOs can facilitate operational grievance mechanisms and

50 The [Private Security Governance Observatory](#) supported by DCAF brings together African CSOs working on private security. A Kenyan member, the Usalama Reforms Forum was supported in 2019 to undertake a [Baseline Study on the Private Security Industry](#) which analysed the impact of the 2016 [Kenya Private Security Regulation Act](#). Similar studies have been undertaken in [Nigeria \(by the African Law Foundation\)](#) and other African countries.

51 [VPSHR Workshop Hears from Civil Society About Mining Grievances That Can Provoke Company-Community Conflict](#), MCRB 6 February 2019

52 The role of civil society organizations in promoting good governance of the private security sector, DCAF, 2018

provide victim support. They can monitor performance of private security and ensure that adverse impacts such as abusive or unnecessary use of force, detention, apprehension, and harassment, are raised either with PSC management, or the client company.⁵³ Through their involvement, more effective oversight of PSCs can be achieved. However, none of the CSOs interviewed for this assessment were consulted by PSCs prior to their deployment. Nor are they being engaged to diffuse potential tensions with local communities.

In view of the worsening security situation since 1 February 2021, risks to communities from private security may increase. Furthermore, CSOs and labour groups, including trade unions are facing multiple challenges. They face significant difficulties in undertaking advocacy, whether as groups or individuals, and some have been declared illegal.⁵⁴ Many face funding difficulties, including due to Central Bank limits on cash withdrawals and increased scrutiny of transactions and foreign funding, or difficulties in opening bank accounts. Consequently CSOs have difficulties paying staff salaries and continuing their activities.⁵⁵

Media freedom has also been significantly restricted. Between February and September 2021 following the military coup, nine media outlets had moved out of the country and another nine media outlets moved to ethnic armed controlled areas. Licenses of eight media outlets were revoked and over a hundred journalists have been detained. It will therefore be even more challenging for the media, CSOs and individual human rights defenders to play a role in holding private security accountable.

To further connect Myanmar to international expertise on private security and human rights, MCRB has joined the International Code of Conduct Association (ICoCA) as a civil society member and encourages Myanmar civil society organisations with an interest in security and human rights to do so.⁵⁶

53 For ICoCA Affiliate or Member companies, ICoCA also accepts complaints concerning alleged ICoC violations.

54 [CSOs after the coup: Operations squeezed, funding crunched](#), Frontier Magazine, 28 September 2021

55 [Myanmar Central Bank Limits ATM Transactions, Account Withdrawals](#), 1 March 2021, Irrawaddy

56 icoca.ch/civil-society-organisations/

5

HUMAN RIGHTS RISK ASSESSMENT OF THE SECTOR

This chapter is structured to assist PSCs (and clients) to undertake a Human Rights Risk Assessment (HRRA) and adapt it to their circumstances, drawing on relevant conflict analyses. It uses the headings that PSCs are expected to complete as part of their membership and certification applications for the International Code of Conduct (ICoC) Association, and if they seek certification under ISO 18788.

Three groups of human rights risks are analysed, the first two from the ICoC template,

1. Substantive questions relating to internal control and policies
2. Substantive questions relating to prohibitions contained in the ICoC
3. Other risks important in the Myanmar context

Each risk is analysed based on:

- the legal and normative framework, drawing on international standards such as the International Finance Corporation's Performance Standards (particularly PS1 and PS4),⁵⁷ the International Code of Conduct for Private Security Providers (ICoC)⁵⁸ as well as Myanmar laws, including the Penal Code.⁵⁹
- findings generated through in-person and online interviews with PSC managers and personnel, client companies, civil society organizations, international non-governmental organizations, and labour unions across Myanmar as well as consultation of open sources such as reports and news archives.

Recommendations are then made to PSCs to mitigate the risk, based on the ICoC, UN Human Rights 'Guidance on Less-Lethal Weapons in Law Enforcement'⁶⁰ and international best practices in the private security sector industry.

Findings and recommendations have been partially updated to reflect developments since 1 February 2021. However, the situation is changing on a daily basis, underlying the need for ongoing risk assessment.

57 [IFC Performance Standard 4](#), 1 January 2012

58 International Code of Conduct for Private Security Services Providers

59 [Myanmar Penal Code](#)

60 [Guidance on Less-Lethal Weapons in Law Enforcement](#), United Nations Human Rights, 2020

1. Substantive questions relating to internal control and policies

Use of Force

Legal and normative framework

Use of force is defined by the UNHR Guidance on Less-Lethal Weapons as *“the use of physical means to coerce or influence behaviour or to damage property. Such means may be kinetic, chemical, electrical or of another kind. The use of force may injure and even in certain distances kill”*. International best practice stresses the need to avoid and regulate use of force. The ICoC states that PSCs *“will require their personnel to take all reasonable steps to avoid use of force”* and that companies need to adopt Rules for the Use of Force (para 29).

IFC Performance Standard 4 states, *“guards should be clear on how to respond and appropriately use available tools in addressing that threat”*. The PS4 Guidance Note provides additional details on what is required from PSCs *“If security personnel are permitted to use force, **instructions must be clear on when and how force may be used**, specifying that security personnel are permitted to use force only as **matter of last resort** and only **for preventive and defensive purpose** in proportion to the **nature and extent of the threat**, and in a manner that respect human rights. Security personnel should be instructed to exercise restraint and caution, clearly prioritizing prevention of injuries or fatalities and peaceful resolution of dispute”*.⁶¹

Both the ICoC and PS4 also stress the importance of use of force to be consistent with applicable laws. In the absence of a dedicated law on private security, this is the Myanmar Penal Code, Articles 96 to 106 under the chapter *“Of General Exemptions, Right to self-defence”*. Article 97 clearly states that: *“Every person has a right to defend -*

*First. - **His own body, and the body of any other person**, against any offence affecting the human body;*

*Secondly - **The property**, whether moveable or immovable, of **himself or of any other person**, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass”*.

Importantly, the Penal Code also clearly stresses the **importance of proportionality**. Article 99 on *“Extent to which the right may be exercised”* states that *“The right of private defence in **no case extends to the inflicting of more harm than it is necessary** to inflict for the purpose of defence.”*

Findings

Many PSCs interviewed were not providing adequate training to their staff regarding proper use of force and had no Standard Operating Procedures (SOPs) in case of emergency. The use of force by private security companies in Myanmar is partly limited by the prohibition on carrying of firearms applying to all civilians, although guards may carry batons. This, and the

61 [Guidance Note on IFC Performance Standard 4](#)

overall Myanmar low crime environment, rather than proper training and implementation of procedures put in place by PSCs, is likely to be the reason for the low number of cases reported of abusive use of force committed by private security companies.

Private security personnel have occasionally been involved in confrontations related to land ownership where guards forcibly grabbed villagers to remove them from contested lands.⁶² Private security guards have also been involved in cracking down on protesters demonstrating for better wages in some garment factories of the Hlaingthaya industrial zones west of Yangon, and most recently responded poorly to a flash mob in a Yangon shopping centre.⁶³

However, examples of serious, or lethal, cases of abusive use of force raised or reviewed in this assessment were committed either by public security forces or EAOs, either in their capacity as security guards, or when security forces were sent as reinforcement during protests.⁶⁴

Recommendations to PSCs

- ✓ Develop Standard Operational Procedures (SOPs) for Use of Force that meet international standards and requires that *'personnel take all reasonable steps to avoid the use of force'*.
- ✓ Ensure SOPs include clear guidelines on:
 - How to avoid physical confrontation,
 - How to de-escalate tensions and
 - In the last resort, the acceptable, proportionate, and non-lethal means which guards are permitted to use.
- ✓ Provide training to private security personnel that:
 - Ensures that guards understand the policies in place regarding use of force,
 - Emphasizes de-escalation scenarios and
 - Rehearses non-lethal tactics.
- ✓ Rehearse procedures by which private security personnel solely conduct lockdown of the sites in case of emergency and do not get involved in the handling of the situation outside by public security.⁶⁵

62 [In the shadow of Letpadaung; Stories from Myanmar's Largest Copper Mine](#) Natural Resources Governance Institute blog and photo-essay, 6 October 2015

63 [Shoppers boycott Myanmar Plaza after attack on anti-regime protest](#), Irrawaddy, 26 November 2021

64 [Myanmar Police Arrest 10 Villagers After Clash Over Chinese Cement Plant](#), Radio Free Asia, 25 March 2020

65 Public security forces in Myanmar are associated with significant human rights violations, particularly since 1 February. This represents a dilemma for companies since international good practice envisages some form of engagement with public

- ✓ Put in place an Incident Reporting system for incidents involving escalation of force, compliant with para 63 of the ICoC (Box 3).

BOX 5: INCIDENT REPORTING

[Signatory] Companies will prepare an incident report documenting any incident involving its Personnel that involves the use of any weapon, which includes the firing of weapons under any circumstance (except authorized training), any escalation of force, damage to equipment or injury to persons, attacks, criminal acts, traffic, incidents involving other security forces, or such accidents reporting as otherwise required by the Client, and will conduct an internal inquiry in order to determine the following:

- a) time and location of the incident;
- b) identity and nationality of any persons involved including their addresses and other contact details;
- c) injuries/damage sustained;
- d) circumstances leading up to the incident; and
- e) any measures taken by the [Signatory] Company in response to it.

Upon completion of the inquiry, the [Signatory] Company will produce in writing an incident report including the above information, copies of which will be provided to the Client and, to the extent required by law, to the Competent Authorities.

(Taken from the International Code of Conduct (ICoC), paragraph 63)

Detention

Legal and normative framework

For the purpose of this assessment, we use the ICoC definition of detention i.e. when security personnel “*guard, transport or question detainees*”. This is also referred as a ‘custodial setting’ in the UNHR Guidance on Less-Lethal Weapons.

security to prevent abuses, including training. [A Model Clause for agreement between Government Security Forces and Companies](#) is available from the Voluntary Principles on Security and Human Rights (VPSHR). Annex E of the IFC’s Good Practice Handbook on [Use of Security Forces: Assessing and Managing Risks and Impacts](#) (based on IFC Performance Standard 4) contains a Template Memorandum of Understanding (MoU) for companies seeking an MOU with government and/or public security forces. However the reputational risks of embarking on negotiating an agreement, and low chances of obtaining one which would protect human rights, are such that these approaches are not advisable in Myanmar in the current situation.

Findings

This assessment did not identify impacts relating to detention (as defined by the ICoC) because in Myanmar only public security forces are in charge of guarding, transporting and interrogating detainees

Recommendation to PSCs

- Do not take on guarding, transportation, and interrogation of detainees until there is a legal framework that clearly defines rules, roles and responsibilities.

Apprehending Persons

Legal and normative framework

This assessment uses the definition of apprehending persons in the UN Guidance which covers a *"situation when public forces or private guards hold an individual against his or her will, including during or following an arrest."*

The ICoC provides a clear framework in paragraph 34 on apprehending persons:

"PSCs should instruct their personnel to, not take or hold any persons except when apprehending persons to defend themselves or others against an imminent threat of violence, or following an attack or crime committed by such persons against Company Personnel, or against clients or property under their protection, pending the handover of such detained persons to the Competent Authority at the earliest opportunity. Any such apprehension must be consistent with applicable national or international law and be reported to the client without delay. PSCs will, and will require that their Personnel to, treat all apprehended persons humanely and consistent with their status and protections under applicable human rights law or international humanitarian law, including in particular prohibitions on torture or other cruel, inhuman, or degrading treatment or punishment"

Articles 339-348 of the Myanmar Penal Code cover "Wrongful Restraint and Wrongful Confinement" which is defined as *"Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person"*.

However, this Penal Code definition occurs in the context of abduction. It is inadequate for the purposes of the private security industry and can lead to multiple conflicting interpretations that are discussed in the Findings.

The only article of the Penal Code that could be interpreted as allowing PSC personnel to apprehend an individual (and this only in the context of defence of property and trespassing) is Article 105 of "Of General Exemptions, Right to Self Defence". This states that *"The right of private defence of property commences when a reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues till*

the offender has effected his retreat with the property, or either the assistance of the public authorities is obtained, or the property has been recovered.”

Findings

This assessment has identified one example of an abusive arrest by private security guards when two Myanmar journalists were detained by guards after taking pictures of a casino in the border town of Myawaddy.⁶⁶ Security guards in the shopping centre flash mob case also attempted to detain protesters, apparently against company policy.⁶⁷

Even where detention involves protecting private property, apprehending persons is problematic for PSCs in Myanmar due to the lack of clear legal framework. One element of confusion is that the client, not the PSC, owns the property, and only the client can sue for trespass, which they may not do. On the other hand, the PSC can be sued by the trespasser. One PSC manager shared an example of security guards deployed on a private property who tried to catch a trespasser. After a fight with the guards, the trespasser was apprehended and handed over to the police. The trespasser later pressed charges against the security guards and the security company for violence and unlawful detention. The case appears to still be pending in court.

The issue of apprehending persons, without legal mandate, may be made worse by the lack of, or slow response by the police after they have been called to the scene, which can result in private security guards keeping the trespassers in detention for several hours.

Furthermore, once individuals are arrested by the police, there is a risk of abuse. Client companies should track any cases where individuals are taken into police custody and if necessary, seek to intervene to ensure that due process is observed.

Recommendation to PSCs

- ✓ In the absence of a legal framework on apprehending persons, follow the ICoC and develop clear SOPs for these circumstances. Upon apprehension of a trespasser, PSC personnel should immediately:
 - Log in the arrest and its circumstances,
 - Discuss with the client security manager) whether to let trespassers go with a warning; or
 - Document the holding of the arrestee until relevant authorities arrive on scene.
- ✓ Ensure that PSC personnel treat apprehended persons humanely. They should not commit any form of violence, regardless of the circumstances leading to the arrest of the person.

⁶⁶ [How the Kayin BGF’s business interests put Myanmar at risk of COVID-19](#), Frontier Myanmar, 10 April 2020.

⁶⁷ [Shoppers boycott Myanmar Plaza after attack on anti-regime protest](#), Irrawaddy, 26 November 2021

- ✓ Ensure that PSC staff do not apprehend any individual for reasons other than those in the ICoC.

Identification and Registration

Legal and normative framework

There are no requirements to register as a PSC or a security guard in Myanmar (see above section on Regulation).

The ICoC requires all PSC personnel to be individually identifiable whenever they are carrying out activities in discharge of their contractual responsibilities.

Although there is no regulation on Myanmar on identification of private security guards, impersonation of public security authorities is covered in Article 171 of the 2016 amendment of the Penal Code.⁶⁸ This states that *"Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class or public servants, shall be punished with imprisonment or either description for a term which may extend to three months, or with fine which may extend to twenty thousand kyats, or with both."*

Furthermore, Article 6(1)(a) of the Myanmar Official Secrets Act⁶⁹ refers to anyone that *"uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform"*.

Findings

There is no system for registering PSCs in Myanmar. PSCs therefore operate without licences specific to the private security industry.

There is also no obligation to inform the Companies Registrar (DICA) that the company operates as a PSC.

Most PSCs operating in Myanmar provide uniforms with the company name and an identification card to their guards.

One company noted that they were changing the grey uniform of their guards which might be confused with police uniform. This may also be motivated by a desire to keep PSC personnel safe from attacks due to mistaken identity.

68 [Penal Code](#), May 1861

69 [Official Secrets Act](#), June 1989

Recommendations to PSCs

- ✓ In the absence of a legal framework for PSC registration, register their main activity on DICA's MyCo as "80 - Security and investigation activities" or "8010: Private security activities" as a way to clearly define their business activities to potential clients, civil society and the administration.
- ✓ Ensure that uniforms are distinct from those worn by the Myanmar public security forces and clearly bear the name of the company.
- ✓ Ensure each guard has a unique and visible identification card showing their name, picture, and company identification number.

Weapons

Legal and normative framework

In Myanmar, permission to carry firearms is still officially regulated by the 1878 Arms Act⁷⁰ and other fragmented colonial era laws which are up for revision.⁷¹ There is an opaque license system, with licences reportedly only granted to former high-ranking officers or politically connected businessmen.⁷² Private security guards or companies are therefore currently unable to carry firearms without such a licence. The Arms Act does not mention whether a non-Myanmar citizen may obtain a weapon licence, although as a colonial era law, presumably this was intended at the time of adoption.

Currently Myanmar has not defined a list of authorised 'less-lethal weapons' and their use, whether by public or private security. Furthermore, there is currently no definition or classification for armoured vehicles used for cash in transit.

Part 5 of the UNHR Guidance on Less-Lethal Weapons contains a non-exhaustive list of weapons that violate international human rights law, and which should not be used in law enforcement (and by extension, not be used by PSCs). These include spiked batons; lasers designed to cause permanent blindness; and directed energy weapons liable to cause serious injury. Equipment defined as inherently degrading or unnecessarily painful which should not be used in law enforcement includes metal chains (shackles); leg or wrist irons; thumbscrews or thumb cuffs; spiked or electrified instruments of restraint; weighted instruments of restraint. Chapter 7 of the UNHR Guidance identifies certain less-lethal weapons which whose use under certain circumstances may be lawful and identifies specific risks and potential unlawful use. These include police batons, hand-held chemical irritants (e.g. pepper spray) and those launched at a distance (e.g. tear gas), conducted electrical weapons (e.g. tasers), kinetic impact projectiles e.g. rubber bullets, dazzling impact weapons (e.g. lasers), water cannons, and acoustic weapons and equipment.

70 [Arms Act, 1878](#)

71 [Ministry to replace colonial era arms laws](#), Myanmar Times, 6 February 2020

72 [Firearms and the law in Myanmar](#), Frontier Myanmar, 2 August 2018

Findings

This assessment has not identified any PSCs licensed to carry firearms, or any cases of PSCs using firearms, other than the casino security personnel in Myawaddy, and the possession of firearms by Phyo Ko Ko Tint San which he claimed were to start a PSC (both mentioned above). Some businessmen may have armed personal guards in their private residences.⁷³ Weapons are in wider circulation in the community since mid-2021, used by a variety of political groups.

Public security forces, BGFs and EAOs, routinely carry weapons while providing security to private projects and in one case, BGF troops deployed in Kayin state have shot at civilians who were trying to inspect a quarrying operation that the BGF was guarding.⁷⁴ This assessment has also reviewed multiple instances of armed public security forces personnel using their weapons to intimidate communities protesting a project.

Most PSC personnel only carry rubber batons. One PSC told the team they use pepper spray when conducting close protection (bodyguard) assignments. Another PSC has issued pepper spray to their female staff for self-defence. One PSC manager expressed a wish to obtain weapons licenses for high risk or close protection assignments.

Recommendations to PSCs

- ✓ Ensure that personnel are properly trained to use non-lethal weapons such as rubber batons and have appropriate Use of Force policies and SOPs.
- ✓ Put in place an Incident Reporting system for incidents involving use of weapons, compliant with para 63 of the ICoC (see Box 2).

Personnel Suitability

Legal and normative framework

IFC's Performance Standard 4 notes that *"Who provides security is as relevant as how security is provided"*. PS4 expects client companies to *"make reasonable inquiries to ensure that those providing security are not implicated in past abuses and that companies should not knowingly employ or use any individual or companies that have abused or violated human rights in the past."*

PS4 also refers to the need to establish possible past criminal records and human rights abuses (regardless of the circumstances in which they were committed). It applies to both the management of PSCs and security guards.

The ICoC goes in more details and expects PSCs to check that their personnel have, at a

73 [A Lexus, \\$3,600 cognac, and ex-military men shining shoes, arrested party leader's lavish lifestyle on hold](#), Myanmar Now, 2 October 2020

74 [An army, a mountain and the Asian Development Bank](#), Frontier Myanmar, 2 January 2018

minimum, **not**:

- Been convicted of a crime that would indicate that the individual lacks the character and fitness to perform security services pursuant to the principles of the ICoC,
- Been dishonourably discharged,
- Had other employment or engagement contract terminated for documented violations of one or more of the principles contained in the ICoC,
- Had a history of other conduct that according to an objectively reasonable standard brings into question their fitness to carry a weapon.

Disqualifying crimes include battery, murder, arson, fraud, rape, sexual abuse, organized crime, bribery, corruption, perjury, torture, kidnapping, drug trafficking or trafficking.

Findings

Many foreign and local PSCs interviewed for this assessment require all new recruits to provide a copy of their police record to check for potential criminal background. The manager for security services for a large bank also stated that he requested a certificate of honourable discharge from all new recruits that are veterans.

However, the lack of centralized criminal records is a challenge for PSCs as it prevents them from conducting a thorough background check of potential employees. In Myanmar, each local administrative office holds the local criminal records of citizens living in this township but not the complete background records of the individual. This allows individuals with criminal backgrounds to relocate to a new township and register with the local authorities to obtain a 'clean' police record for their job application.

Furthermore, the lack of industry-wide database of private security personnel and minimal coordination among PSCs makes it easy for those dismissed for offences to find employment with other PSCs.

A security manager for a large O&G company noted that his company mitigates these risks by only recruiting security guards from local communities where it is easy to conduct background checks and local investigation in the past of potential recruits. Several PSCs said they preferred to recruit security guards who are friends or family members of existing personnel because it is easier to check backgrounds.

Several stakeholders, both client companies and INGOs, raised concerns about how to establish whether veterans, who own many PSCs and constitute much of the PSC workforce, were involved in human rights abuses while in the military or police. PSC managers interviewed showed little understanding or concern for this issue. Most did not even identify it as a risk and were unable to provide a workable mitigation strategy.

Recommendations to PSCs

- ✓ Conduct thorough background checks on their potential employees and any allegations of past abuses, inappropriate use of force, or other criminal activity and wrongdoing. At present, pending a central Criminal Records database and/or Security Guard registration system, this includes obtaining a letter from the township police station⁷⁵ and undertaking reference checks with previous employers including asking for a certificate of honourable discharge for veterans.
- ✓ Document these checks and hold them on the employee's personnel file.

Grievance Mechanisms

Legal and normative framework

Grievance mechanisms are extensively discussed in IFC's Performance Standards with PS1 and PS4 cross-referencing one another. PS4 highlights the role of client companies to *"consider and where appropriate, investigate all allegations of unlawful or abusive acts of security personnel and take actions to prevent recurrence. Client companies should also emphasise to staff, including security staff, that intimidation of or retaliation against those lodging complaints will not be tolerated"*.

The ICoC describes in detail what is required from PSCs:

- Establish procedures for their Personnel and for third parties to report allegations of improper and/or illegal conduct to designated Personnel, including such acts or omissions that would violate the principles contained in this Code. Procedures must be fair, accessible and offer effective remedies, including recommendations for the prevention of recurrence. They shall also facilitate reporting by persons with reason to believe that improper or illegal conduct, or a violation of this Code, has occurred or is about to occur, of such conduct, to designated individuals within a Company and, where appropriate, to competent authorities;
- Publish details of their grievance mechanism on a publicly accessible website;
- Investigate allegations promptly, impartially and with due consideration to confidentiality;
- Keep records about any such allegations, findings, or disciplinary measures. Except where prohibited or protected by applicable law, such records should be made available to a Competent Authority on request;
- Cooperate with official investigations, and not participate in or tolerate from their Personnel, the impeding of witnesses, testimony or investigations;
- Take appropriate disciplinary action, which could include termination of employment in case of a finding of such violations or unlawful behaviour; and

⁷⁵ This may be challenging in the current circumstances but should still be attempted.

- g) Ensure that their Personnel who report wrongdoings in good faith are provided protection against any retaliation for making such reports, such as shielding them from unwarranted or otherwise inappropriate disciplinary measures, and that matters raised are examined and acted upon without undue delay.

Both the Performance Standards and the ICoC stress the importance of establishing two types of grievance mechanisms:

- an internal grievance mechanism allowing PSC personnel to report any harassment or malpractice within the company; and
- an external grievance mechanism that should be put in place to allow third parties to report any issue.

ICoCA notes that *“The relationship of grievance mechanisms to whistleblowing procedures often causes confusion. It is therefore important to note that these two procedures differ both in their processes and in the Company’s obligations. Whistleblowing procedures provide an avenue for personnel and third parties to share concerns about inappropriate or illegal conduct that affects others, internally or externally. These concerns may be notified to the Company or to an external organization contracted by the Company. By comparison, a grievance mechanism provides effective remedies and involves a direct dialogue with complainants”*.⁷⁶

Grievance mechanisms should be consistent with the principles 29-31 of the UN Guiding Principles on Business and Human Rights (UNGPs) including its eight effectiveness criteria.⁷⁷ These state that operational level grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, dialogue-based and a source of learning.

Where investment projects in Myanmar need to obtain an Environmental Compliance Certificate (ECC) from the Environmental Conservation Department (ECD) for example on approval of an Environmental Impact Assessment (EIA), these increasingly require the project to establish an operational grievance mechanism consistent with the UNGPs.

A limited state-based non-judicial grievance mechanism is - in principle - the Myanmar National Human Rights Commission. Victims of human rights abuses can address the Commission, which has investigatory powers. These were used in the case of the fatal shooting of Daw Khin Win in a demonstration in December 2014 at Letpadaung copper mine.⁷⁸ The MNHRC has been criticised by civil society for its case-handling. Since 1 February 2021, it has been almost dormant.

⁷⁶ Interpretative Guidance: Developing and operating fair and accessible company grievance mechanisms that offer effective remedies, ICoCA July 2020

⁷⁷ [UN Guiding Principles on Business and Human Rights](#), June 2011

⁷⁸ [Activity 3/2016 \(Protection\) Daw Khin Win](#) Myanmar National Human Rights Commission

Findings

All foreign, and a few local, PSCs have set in place some form of ad hoc grievance mechanisms allowing personnel to report abuses up the chain of management. In some cases, this has allowed female staff to report sexual harassment by colleagues or clients to their management chain, who could take remedial action. These grievance mechanisms are mostly designed for internal complaints with limited means for any third party to access it.

Grievance mechanisms in many local PSCs appear to be ineffective as they require employees to report up the management chain. This effectively prevents a low-ranking employee from reporting abuses committed by an immediate superior. There is an absence of alternatives such as a phone number to allow a staff to report grievances directly to human resources or top management.

Some client companies, particularly foreign ones, have their own internal/external grievance mechanisms that allow employees or third parties to report issues related to the contracted PSC or its personnel.

Workplace Coordination Committees (see Labour Rights, below) are also a form of internal grievance mechanism.

Recommendations to PSCs

- ✓ Establish formal grievance mechanism(s) for:
 - internal stakeholders: employees, including temporary and contract workers, to report, manage and settle grievances, for example related to discrimination and harassment;
 - external stakeholders e.g. community members.

Guidance is available from ICoCA.⁷⁹

- ✓ Ensure all grievance procedures are designed and operated in line with the criteria in Principles 29-31 of the UN Guiding Principles on Business and Human Rights.
- ✓ Ensure all staff are aware of internal/external grievance mechanisms. Ensure all security staff on the assignment are trained to inform stakeholders on how they can complain.
- ✓ Ensure that grievance mechanism(s) can provide for the handling of confidential and anonymous complaints, and involves personnel qualified to appropriately handle sensitive issues around discrimination.⁸⁰

79 [Manual: Developing and operating fair and accessible company grievance mechanisms that offer effective remedies](#), and [Interpretative Guidance](#), ICoCA July 2020

80 See MCRB's [Combatting Discrimination by Business and in the Workplace in Myanmar](#) for a comprehensive set of recommendations to companies, including for each group at risk of discrimination, September 2017

- ✓ Provide specific assurances and take measures to ensure that everyone can make complaints confidentially without fear of recrimination or retaliation
- ✓ Impartially investigate, document and address complaints immediately or in a reasonable time period.
- ✓ Ensure complaints can be submitted through or with a representative or companion, particularly where they are claims brought by someone from a vulnerable group.
- ✓ Ensure that managers understand the client's external complaints/grievance mechanism for communities, customers etc. Align the PSC external complaints procedure to the client's approach. Agree with clients on how complaints from PSC employees will be handled.
- ✓ For situations where clients do not have a complaints procedure, encourage them to establish one. In the meantime, put in place a default PSC external grievance mechanism to handle any complaints related to security personnel, in accordance with point (a) of the ICoC above.

2. Substantive Questions Relating to Prohibitions Contained in the ICoC

Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment

Legal and normative framework

International law forbids Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, regardless of the context.⁸¹ The Myanmar Penal Code, under the section 'Of Hurt' (Articles 319-337) describe and cover the acts referred as Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment by the ICoC.

Findings

This assessment has not identified cases of torture or other cruel, inhuman, or degrading treatment or punishment committed by private security providers. This may be partly because private security personnel do not perform actions which are high-risk such as crowd control and prisoner management, and rarely apprehend individuals, rather than a reflection of adequate training and procedures.

Recommendations to PSCs

- ✓ Ensure that training material addresses human rights. It should emphasize that torture or other cruel, inhuman or degrading treatment or punishment are unacceptable practices regardless of the circumstances and describe examples.
- ✓ Ensure that personnel can report safely and confidentially on any suspected cases of

⁸¹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987

torture or other cruel, inhuman, or degrading treatment or punishment.

- ✓ Put in place an Incident Reporting system for incidents involving torture or degrading treatment, compliant with para 63 of the ICoC (Box 2).

Sexual Exploitation and Gender-based Violence

Legal and normative framework

The ICoC (para 38) requires PSCs not to *'benefit from, nor allow their Personnel to engage in or benefit from, sexual exploitation (including, for these purposes, prostitution) and abuse or gender-based violence or crimes, either within the Company or externally, including rape, sexual harassment, or any other form of sexual abuse or violence. Signatory Companies will, and will require their Personnel to, remain vigilant for all instances of sexual or gender-based violence and, where discovered, report such instances to competent authorities'*.

The Myanmar Penal Code has several sections related to rape (Articles 375 and 376) and “of Kidnapping, Abduction, Slavery and Forced labour” (Article 366A: Procurement of minor girl, article 366B: Importation of girl from foreign country, Article 372: Selling minor for purposes of prostitution and Article 373 Buying minor for purposes of prostitution).

Findings

Few PSCs have comprehensive training regarding gender rights and the prevention of sexual exploitation and gender-based violence.

Moreover, grievance mechanisms of most PSCs (see above) are inadequate to properly protect victims of sexual violence.

In 2019 the media reported a PSC guard at Yangon General Hospital who attempted to sexually abuse a seven-year-old, for which he received a two-year sentence.⁸²

Recommendations to PSCs

- ✓ Develop, in consultation with employees, internal policies and processes to prevent sexual exploitation and abuse (PSEA) and disseminate these so as to ensure better awareness and understanding.
- ✓ Adopt a PSEA implementation plan.⁸³
- ✓ Explicitly prohibit sexual exploitation and abuse (SEA) in the company's code of conduct and set out the responsibilities of employees with respect to it.

⁸² A young girl was allegedly sexually abused by a security guard inside a Rangoon hospital compound, Myanmar Now, 13 February 2019

⁸³ [Guidelines for Private Security Providers on Preventing and Addressing Sexual Exploitation and Abuse](#), ICoCA, July 2020

- ✓ Embed PSEA in recruitment and performance appraisal processes and establish disciplinary procedures to respond to violations.
- ✓ Provide initial and recurrent training on PSEA. Make staff aware of relevant standards of conduct, the company's commitments, and mechanisms in place to address abuses.
- ✓ Identify and address SEA risks in advance of each operation and assess the ability of partners and subcontractors to comply with PSEA standards of conduct. Require partners and subcontractors to commit explicitly to these standards and monitor their compliance.
- ✓ Ensure that personnel or third parties could safely and confidentially report any cases of sexual exploitation and gender-based violence to top management.
- ✓ Adopt a survivor-centred approach to SEA complaints.⁸⁴ Establish clear procedures to investigate any claims of sexual exploitation and gender-based violence in a confidential manner. Consider providing adequate assistance to survivors of SEA to mitigate its harmful effects.
- ✓ Work with organisations combatting gender-based violence (GBV) and participate in campaigns and awareness-raising amongst employees to reduce domestic GBV outside the workplace.⁸⁵

Trafficking

Legal and normative framework

The ICoC (paragraph 39) expects that all PSCs will *"not, and will require their personnel not to, engage in trafficking in persons. PSCs will, and will require their personnel to, remain vigilant for all instances of trafficking in persons and, where discovered, report such instances to Competent Authorities. For the purposes of this Code, human trafficking is the recruitment, harbouring, transportation, provision, or obtaining of a person for (1) a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or (2) labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery."*

The issue of trafficking human regarding prostitution is extensively covered by the Penal Code in the section "of Kidnapping, Abduction, Slavery and Forced labour" (Article 366A: Procurement of minor girl, article 366B: Importation of girl from foreign country, Article 372: Selling minor for purposes of prostitution and Article 373 Buying minor for purposes of prostitution).

The Penal Code also differentiates two kinds of kidnapping: *"conveying any person beyond the limits of the Union of Burma without the consent of that person"* (Article 360) and *"Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age*

84 [How to research Sexual Exploitation, Abuse and Harassment \(SEAH\) safely](#), Practical Guidance note by Global Interagency Security Forum (GISF), September 2021

85 www.facebook.com/thinbarlutemalae/

if a female, or any person of unsound mind, out of the keeping of the lawful guardian" (Article 361).

Forced labour or slavery is also covered by the Myanmar Penal Code with Article 374 stating "Whoever unlawfully compels any person to labour against the will of that person shall punished with imprisonment, of either description for a term which may extend to one year, or with fine, or with both."

Findings

This assessment has not identified any cases in the private security industry of trafficking as defined by the ICoC.

Recommendations to PSCs

- ✓ Ensure that the recruitment procedures prevent any form of trafficking
- ✓ Ensure that training of personnel covers what trafficking is and how to prevent it
- ✓ Develop effective grievance mechanisms that would allow personnel or third parties to report cases of trafficking.⁸⁶

Prohibition of Slavery and Forced Labour

Legal and normative framework

The ICoC (paragraph 40) states that 'Signatory Companies will not use slavery, forced or compulsory labour, or be complicit in any other entity's use of such labour'. Forced labour is any work that a person is required to do against their will, under threat of any form of penalty if they do not comply or cooperate. Forced labour also includes forced recruitment and/or underage recruitment into the armed forces. Myanmar Law prohibits the use of forced labour and prohibits the recruitment into the military of any child under the age of 18 years.

The Myanmar Penal Code addresses forced labour in Art.374. "Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment, of either description for a term which may extend to one year, or with fine, or with both".

A major concern in Myanmar for several decades was the widespread and systematic use of forced labour of civilians by the Myanmar army and the civilian administration, despite the Government's 1955 ratification of ILO Convention No. 29 against Forced Labour. A process for cooperation between Myanmar and the ILO to eliminate forced labour (including underaged recruitment) had made progress. In 2019 the ILO received 108 forced labour complaints, 48 of which were assessed as being within the definition of forced labour while there were no complaints received of forced labour related to the involuntary use of civilians

86 In 2021, Verité developed [a suite of tools](#) that provides guidance and assistance on combating human trafficking in supply chains to actors in the private security sector, particularly private security companies.

as guides and porters from conflict areas. Few reports of forced labour in the private sector have been received since March 2019.⁸⁷ However a 2020 study by LIFT during the pandemic found that the overall prevalence of forced labour was 16%, or 386 out of the 2,410 low-skilled workers interviewed including in construction, fishing, agriculture, manufacturing and mining.⁸⁸ Since 1 February 2021, current complaint mechanisms for addressing forced labour are weak, following the expiry of the ILO-led mechanism in 2018.

Mandatory overtime is not forced labour if it is within the limits permitted by national legislation or collective agreements. In Myanmar, legally permitted overtime is 12 hours per week in shops and establishments. Therefore, forced overtime work in excess of these limitations may violate protections against forced labour.⁸⁹

Findings

This assessment has not identified cases of slavery or forced labour as defined by the ICoC. This assessment has however identified cases of PSCs forcing their personnel to work 24 hour shifts under the threat of dismissal. Some PSC managers withhold identity documents to prevent personnel from leaving the company. These practices can constitute forced labour or ‘modern forms of slavery’ (see Labour Rights, below).

Recommendations to PSCs

- ✓ Abide by Myanmar labour laws including working hours and overtime.
- ✓ Review working practices to prevent any form of forced labour or modern slavery, either within the company or by a subcontractor.
- ✓ Ensure that personnel can report safely any suspected case of slavery or forced labour.

Child Labour

Legal and normative framework

The ICoC takes a broad approach to the issue of child labour:

- a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in provision of armed services;

⁸⁷ ILO, [Application of International Labour Standards 2020, Report of the Committee of Experts on the Application of Conventions and Recommendations](#), International Labour Conference 109th Session, Feb 2020

⁸⁸ [FROM THE RICE PADDY TO THE INDUSTRIAL PARK](#): Working conditions and forced labour in Myanmar’s rapidly shifting labour market, Livelihoods and Food Security Fund (LIFT), July 2021

⁸⁹ International Labour Organization, [Guide to Myanmar Labour Law](#), 2017 and 2022 update (forthcoming)

- b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs;
- d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

It also requires PSCs and their personnel to report any instances of the activities referenced above.

Myanmar's 2019 Child Law provides that those aged 18 or older are considered to be adults, in line with international standards.⁹⁰ It is important to distinguish between the term 'child work' which defines permissible areas of work for children (those under 18) and the term 'child labour' which has a specific meaning under international law. 'Child labour' involves children working in conditions which are prohibited. These prohibitions are intended to protect them from economic exploitation and from performing any work that is likely to be hazardous or interferes with the child's education or is otherwise be harmful to the child's health or physical, mental, spiritual, moral or social development.⁹¹ Although Myanmar has ratified ILO Convention 182 (1999) on the Worst Forms of Child Labour it has not yet defined a list of hazardous work as required by the Convention. That might include security guarding.

Findings

This assessment has not identified any cases of children under 18 working in the private security industry or instances of child labour as defined by the ICoC. Most PSCs in Myanmar check the National Registration Card (NRC) of potential recruits during the recruitment process and ensure that they are older than 18 years old.

However, inadequate 'Speak Out' (whistle-blowing) mechanisms in most PSCs might mean personnel could not report instances of child labour.

Recommendations to PSCs

- ✓ Ensure that recruitment procedures include checking the age of any potential recruits.
- ✓ Develop effective grievance mechanisms that would allow personnel or third parties to report cases of child labour.

Discrimination

Legal and normative framework

The ICoC expects that PSCs *"will not, and will require that their personnel do not, discriminate*

90 [The Child Rights Law](#) 22/2019, 23 July 2019

91 For further information see [Children's Rights and Business in Myanmar](#), p18, MCRB, April 2017.

on grounds of race, colour, sex, religion, social origin, social status, indigenous status, disability, or sexual orientation when hiring personnel and will select personnel on the basis of the inherent requirements of the contract”.

Groups in Myanmar particularly at risk of being discriminated against in hiring practices and the workplace include people with disabilities, women, ethnic and religious minorities, people living with HIV, and lesbian, gay, bisexual, and trans-gender (LGBT+) people. Moreover, some individuals face discrimination on multiple grounds, for example women who are members of ethnic minorities, or women with disabilities.⁹²

In Myanmar, the 2008 Constitution does not include an effective constitutional guarantee of substantive equality, and also includes discriminatory provisions concerning women. Article 350 of the 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 equal work of equal value’. The right of persons with disabilities not to be discriminated against is addressed in the 2015 Law Protecting the Rights of Persons with Disabilities.⁹³

Findings

Myanmar societal discrimination towards women, ethnic and religious minorities, people living with HIV, and lesbian, gay, bisexual, and trans-gender (LGBT+) people is present and often magnified in the private security industry. PSC owners and managers often exhibit the chauvinism which is present in public security forces.

Many PSCs ask potential recruits to state their race and religion in applications. This may lead to discrimination and reduce the chances of recruitment for minority populations.

This assessment has identified that only about 3 to 5% of private security sector workforce is female. Most PSCs only deploy female personnel at the request of their client. These requests are usually made when guards are required to perform body searches on female staff in factories. Salaries and benefits for female guards appear to be the same as male guards, but fewer female guards appear to be promoted to manager level.

Many PSC managers noted that it is difficult to attract women to work as security guards. However, CSO and labour unions said they hoped to see more women recruited by PSCs because they believed it would help smooth relations with workers and communities.

The multiple benefits of recruiting women in the private security sector have been well

92 [Combatting Discrimination by Business and in the Workplace in Myanmar](#) (2017) and [LGBT+ Equality in the Workplace: A bilingual resource for employers](#) (2020), Myanmar Centre for Responsible Business.

93 For further information see [‘Handbook for Employers on Employing Persons with Disabilities in Myanmar’](#), MCRB, 3 December 2018

documented elsewhere.⁹⁴ A higher proportion of female in the guard force is observed to:

- Improve relations with local communities or workers
- Be a source of valuable information about the security and social situation,
- De-escalate tension and prevent breakout of violence,
- Reduce risk of disciplinary incidents, especially related to drugs and alcohol, and sexual harassment by guards.

This assessment has not identified persons with disabilities working for PSCs, although disability is not uncommon amongst veterans. The employment of people with disabilities in the private security industry will need to be addressed in any future legislation about the sector, as well as any legislation requiring compulsory quotas for employing persons with disabilities.

Recommendations to PSCs

- ✓ Adopt and implement a policy of non-discrimination, equal opportunities, and a prohibition on harassment for all, which can be incorporated into a company's Code of Conduct. Include a reference to the Myanmar legal framework the policy is based on (such as the 2008 Myanmar Constitution and relevant labour and other laws) so that all workers understand that non-discrimination is a requirement under Myanmar law. The policy should be supported and signed off by senior management.
- ✓ Only recruit personnel based on their skills and suitability for the contract. Do not require applicants to provide details of their ethnicity, religion, or marital status on application forms.
- ✓ Implement policies through human resources management systems which:
 - Clearly communicate policies on discrimination and equal opportunity to all managers, workers, and business relationships.
 - Raise awareness and train human resources staff to identify and address discrimination in the workplace.
 - Review and analyse hiring practices, placement, training, and advancement decisions for staff at all levels to ensure that all applicants receive equal consideration and to detect possible discrimination.
 - Proactively encourage all qualified applicants, including women, ethnic and religious minorities, people with disabilities, people living with HIV, and LGBT+ people, to apply for employment. Where considered appropriate, explicitly mention this in job advertisements.
 - Where appropriate, provide additional support and mentoring to workers and managers from groups traditionally subject to discrimination.

94 [Gender in SSR toolkit](#), DCAF February 2008

- ✓ Be alert to possible intimidation, harassment, and bullying of workers by fellow workers or supervisors. Provide support to any workers who are victims of discriminatory words or acts and take effective disciplinary actions against those responsible for the abuse.⁹⁵
- ✓ Establish formal grievance to report, manage and settle grievances concerning discrimination, including in the workplace. Consider appointing an employee ombudsman, who plays a neutral role and is available to employees on a confidential basis.
- ✓ Develop specific procedures regarding the recruitment and retention of female guards that include:
 - Deploying female guards to sites where they have an added value
 - Conducting gender sensitivity training for all staff
 - Designing and implementing a strict policy to prevent sexual harassment and gender-based violence
 - Ensuring an effective grievance mechanism to handle these issues.
 - Providing specific self-defence and communication trainings adapted for women
 - Promoting suitable female guards to managerial roles.

3. Other human rights risks relevant to Myanmar

Paragraph 21 of the ICoC notes that *'Signatory Companies will comply, and will require their Personnel to comply, with applicable law which may include international humanitarian law, and human rights law as imposed upon them by applicable national law, as well as all other applicable international and national law. Signatory Companies will exercise due diligence to ensure compliance with the law and with the principles contained in this Code and will respect the human rights of persons they come into contact with, including, the rights to freedom of expression, association, and peaceful assembly and against arbitrary or unlawful interference with privacy or deprivation of property'*. Many of these human rights are highly relevant to Myanmar, particularly since 1 February 2021.

Militarisation of investment projects in contested areas

Legal and normative framework

The VPSHR note that *'although governments have the primary role of maintaining law and order, security and respect for human rights, Companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting Company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and*

⁹⁵ For a detailed action plan see [Guide on Prevention of Sexual Harassment in the Workplace](#), ILO & Women Watch China, December 2010

national laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur’.

To reduce the risk of such abuses and to promote respect for human rights generally, the VPSHR aim to guide relationships between companies and public security regarding security provided to companies.⁹⁶

Findings

Experience has shown that the Myanmar authorities may deploy public forces, either police or army, to ‘protect’ foreign managed infrastructure or development projects, even where this is not requested. An increased military presence can increase the security threat to the project, including PSC personnel, if it encourages EAOs or other opposition forces to target the government presence. This risk has increased since 1 February 2021.

Furthermore, such militarisation has been shown to be associated with human rights abuses. Examples include the Letpadaung copper mine, the Southeast Asia Gas Pipeline from Kyaukphyu to China⁹⁷ and the UNOCAL pipeline in Tanintharyi. The last of these led to a major international court case concerning abuses by the military linked to the pipeline.⁹⁸

Involvement of public security is primarily a risk for the Project/client to manage, in accordance with the Voluntary Principles on Security and Human Rights and the recommendations in Section H on Managing Relations with Public Security of the IFC Handbook. The client should ensure that PSC subcontractors understand client policies, and that these are incorporated into contracts. Client companies interviewed said they sought to discourage the deployment of public security to guard their operations, particularly where they judged the threat to be low. However, they recognised that they may not be able to prevent it.

Recommendations to PSCs

- ✓ Maintain a dialogue with communities on the impacts of public security forces and incorporate this into risk assessments.
- ✓ Ensure incident reporting of all incidents involving other security forces, including public security (see Box 2)

96 See Model Clauses for Agreements between Government Security Forces and Companies with Respect to Security and Human Rights, Voluntary Principles on Security and Human Rights, 2014

97 [Supply and Command](#), Shwe Gas movement, July 2006

98 [UNOCAL Lawsuit \(re Myanmar\)](#) Business and Human Rights Resource Centre

Deputation of private security companies

Legal and normative framework

Deputation/deputizing, a practice common in the USA, is the process whereby government authorises citizens, for example private security guards, to act as law enforcement agents. There is no explicit law regulating the deputation of private security companies in Myanmar. There is a possible risk of deputation of a company's security personnel, either formally – although this has not been observed in practice – or more likely informally through personal networks between public security and private security staff.

Several laws might be relevant to deputation. Chapter IX of the Code of Criminal Procedure, Section 127/128 gives the police the power to disperse *'unlawful assemblies or any assembly of five or more persons likely to cause a disturbance of the public peace'* and if necessary to use *'civil force'* to do so by *'requiring the assistance of any male person, not being an officer, soldier, sailor or airman in the Myanmar Army, Navy or Air Force or a member of either of the Forces constituted by the Myanmar Territorial Force Act or the Myanmar Auxiliary Force Act.* Chapter 22 (security exemption), S.90 of the 2016 Myanmar Investment Law stipulates that:

- a) *Nothing in this Law shall be construed to prohibit the Government from adopting or enforcing necessary measures for the protection of its essential security interests.*
- b) *The provisions under this Law shall not prevent any of the following actions necessary for the Government to protect essential security interests, including but not limited to:*
 - i. *action relating to the traffic in arms, ammunition and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying military or other security forces;*
 - ii. *action taken, as required, in time of war or other emergency in international relations.*

Although the private security sector is not mentioned, S.90(b)(ii) might conceivably be used to justify the deputation of PSCs (both foreign and local) and their guards by authorities in case of emergency, including in conflict affected areas.

Although not targeted at the private sector, Section 340 of the 1959 Defence Services Act also notes that *'With the approval of the National Defence and Security Council, the Defence Services has the authority to administer the participation of the entire people in the Security and Defence of the Union. The strategy of the people's militia shall be carried out under the leadership of the Defence Services'*. This has not been observed to have been used in relation to private companies.

Findings

Owners of local PSCs often have a state security background. Some appear to perceive the private security sector as a continuation of state security. While they are responsible for protecting private assets, some believe they should have a role in assisting security forces in specific circumstances. For example, one local PSC manager commented that they would

be willing to provide security for the 2020 general election. According to NRGi, private security participated with police in the crackdown on protesters at Letpadaung copper mine in November 2012.⁹⁹

This unofficial and de facto deputation process is underpinned by personal relations between security guards, mostly veterans, and public forces who share the same training, and in many cases served together. This observed closeness was negatively commented on by some civil society interlocutors, more so since 1 February.

Clients raised their concerns about the potential for deputation in politically sensitive and conflict areas. They worry that in case of emergency, private guards subcontracted to them will be placed under the authority of the public security forces and may be complicit in human rights abuses.

Recommendations to PSCs

- ✓ In the absence of legal framework, strictly limit activities to the protection of personnel and assets of client companies.
- ✓ Provide training to personnel on their role and responsibilities (as defined by international standards), appropriate use of force and human rights.
- ✓ Depending on client perceptions of risk and feasibility/desirability, work with client companies to engage with relevant public authorities in line with VPSHR guidance, to ensure that the role and responsibilities of the PSC is well understood by public security, and that they understand that PSC personnel will solely perform the task to protect the client's assets and employees.
- ✓ In case of public unrest or demonstration against a client site, limit the role of PSC staff to locking down the site and trying to de-escalate tension, while leaving the client and the authorities in charge of mediation and crowd control.

Labour rights

Legal and normative framework

Myanmar is a party to only three of the eight fundamental ILO Conventions: the Forced Labour Convention (C.29, ratified March 1955); the Freedom of Association and Protection of the Right to Organise Convention (C.87, ratified March 1955); and the Worst Forms of Child Labour Convention (C.182, ratified December 2013).¹⁰⁰

Freedom of association and the right to collective bargaining, dispute settlement

The 2008 Constitution affirms the right of every citizen to form and participate in associations and organisations and the 2011 Labour Organisation Law (currently under revision) permits

99 [In the shadow of Letpadaung; Stories from Myanmar's Largest Copper Mine](#), Natural Resources Governance Institute (NRGI) blog and photo-essay, 6 October 2015

100 [Ratifications for Myanmar](#), ILO

the exercise of freedom of association. The 2012 Settlement of Labour Disputes Law provides for dispute resolution institutions and mechanisms. Since 2011, hundreds of enterprise-level trade unions have been formed and registered; however, the proportion of workers in trade unions remains very low.

Although Myanmar has been a party to ILO C.87 on Freedom of Association and Protection of the Right to Organise since 1955, gaps remain in protecting freedom of association in both the Constitution and labour laws. The current law sets a relatively high threshold for forming a union at company level and makes it difficult for unions to establish themselves beyond this level.¹⁰¹ Moreover, the lack of protection for trade union members and leaders, who are at risk of dismissal from employment for union activities, is a concern which has been heightened since 1 February 2021, due to a crackdown on trade unionists involved in protests.

In 2018, the ILO Committee on the Application of Standards regretted the absence of progress with respect to the long-awaited legal framework in which workers and employers may freely exercise their rights under the Convention and called on the government to *'ensure that the Labour Organization Law and the Settlement of Labour Disputes Law are brought into full compliance with C.87 by availing itself of ILO technical assistance during the legislative reform process; [and] ensure that workers are able to carry out their trade union activities without threat of violence or other violations of their civil liberties by police or private security'*. Finally, the Committee urged the Government of Myanmar to accept a Direct Contacts Mission and to report back on progress made regarding its recommendations.¹⁰²

The Settlement of Labour Disputes Law (SLDL)¹⁰³ aims to *"safeguard the rights of workers through good relationships between employers and workers, and to make workplaces peaceful by settling disputes between employers and worker justly"*. (This law does not cover army and police personnel).

Labour disputes can be either collective disputes or individual disputes. Labour disputes should first be addressed by the company's Workplace Coordinating Committee (WCC) which the SLDL requires all companies with more than 30 employees to establish *'to promote the good relationship between the employer and worker or labour organization, negotiation and coordination on the conditions of employment, terms and conditions and occupational safety, health, welfare and productivity'*. This must include representatives of both workers and the employer. The Committee is intended to promote a good relationship between the employer and the worker and/or their labour organisation, through negotiation and coordination on the terms and conditions of employment, occupational health and safety (OHS), welfare, and productivity. Disputes not resolved by the WCC can be taken to township-level Conciliation Bodies, and then State/Region Dispute Settlement Arbitration Body and ultimately the courts.

101 [Foreign direct investment in Myanmar: What impact on human rights?](#), ITUC, 05 November 2015

102 [Individual Case \(CAS\) - Discussion: Publication 107th ILC Session](#), International Labour Organization, 2018

103 [The Settlement of Labour Dispute Law](#), 28 March 2012

Employment contracts and training

Under the Employment Skills Development Law (2013), the employment relationship is governed by a contract; an employer and worker shall sign an Employment Contract within 30 days after the employer has employed a worker for any job. Employment contracts cannot offer conditions that are less than the minimum provisions provided by the law (for example, the Leave and Holiday Act, the Payment of Wages Act, the Minimum Wage Law, see below)¹⁰⁴ and in the model contract.¹⁰⁵

There are no mandatory requirements for worker training in Myanmar¹⁰⁶, and the Skills Development Fund and associated levy on employers envisaged under the 2013 Employment Skills Development Law (ESDL) is not yet in operation.¹⁰⁷

Minimum Wage

Myanmar enacted a Minimum Wage Act in 2013 and a Payment of Wages Law in 2016. The minimum wage came into effect in September 2015 and covers employers with 15 employees or more. In addition to full time workers, the law also covers part-time and hourly workers. The daily rate is based on eight hours per day. Employers may establish higher compensation rates than the minimum wage through employment contracts and collective agreements.¹⁰⁸ A revised minimum wage rate of 4,800 Myanmar kyats per day came into effect on 14 May 2018 and is overdue to be revised again.¹⁰⁹

The 2013 Minimum Wage Act provides that both women and men should receive the minimum wage without discrimination. This is the first time that a labour law has prohibited discrimination based on sex.¹¹⁰

Overtime

Mandatory overtime is not forced labour if it is within the limits permitted by national legislation or collective agreements. In Myanmar, legally permitted overtime is 12 hours per week in shops and establishments. Therefore, forced overtime work in excess of these limitations may

104 [Guide to Myanmar Labour Law](#), International Labour Organization, 2017 and 2022 update (forthcoming)

105 Model contract, informal translation Lincoln Legal Services, 2015

106 By comparison, Singapore includes the private security into its '[Progressive Wage Model](#)' and lays down indicative wages and a Skills Framework for Security as part of its 2018 [Security Industry Transformation Map](#)

107 The [Levy System of Establishing Skills Development Fund](#), Global New Light of Myanmar, 9 August 2020.

108 See Footnote 104

109 Consult Myanmar, [New Minimum Wage comes into effect in Myanmar from today](#), 29 May 2018

110 See Footnote 104

violate protections against forced labour.¹¹¹

Furthermore, the ILO Committee of Experts on the Application of Conventions and Recommendations says of overtime work: *"Although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both. In cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment; it becomes one of imposing work under the menace of a penalty which calls for protection of the workers."*¹¹²

Leave and Holidays

The Leave and Holidays Act amended in July 2014 covers any temporary or permanent employee in factories, railways, ports, oilfields, mines, shops and establishments, and government-controlled factories. All workers earn 10 days of paid leave per year after the first 12 continuous months of work. Public holidays are announced by the government every year, generally around 15 days per annum. Pregnant mothers are provided with 6 weeks' prenatal leave and 8 weeks postnatal leave. Fathers are entitled to 15 days' paternity leave.¹¹³ The 2018 Leave and Holiday Rules states *"Security staff and workers with assigned shifts shall be entitled for alternate days off as agreed with the employer"*.¹¹⁴

Social Security

The 2012 Social Security Law¹¹⁵ provides for:

- a health and social care insurance system;
- a family assistance insurance system;
- invalidity benefit, superannuation benefit and survivors' benefit insurance system; and
- an unemployment benefit insurance system from a social security fund, which both employers and workers pay into (Art 2(c) and (e)).

Casual workers are not covered by the social security scheme.

According to the 2012 Social Security Law, victims of workplace accidents are entitled to 12 months' pay at 70% of their last four months' average salary (S.55 and 56(a) and (c)). In case of permanent disability, the employee is entitled to the same cash benefits for 5, 7 or 9 years depending on the severity of the injury (S.58). In case of the death of a worker, their

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ [Leave and Holiday Rules](#), Smart Myanmar, 26 April 2018

¹¹⁵ [Social Security Law](#), 15/2012, 31 August 2012

dependents are entitled to receive her/his invalidity or pension fund benefits for 36 months. However, less than 5% of the population is covered by the social security program.¹¹⁶

Occupational Health and Safety (OHS)

In March 2019, Parliament adopted an Occupational Health & Safety (OHS) Law which covers an extensive list of sectors in Article 4 of the Law, including all those previously covered by the Factories Act, and the Shops and Establishments Act. Although security is not mentioned as a separate sector, contractors and subcontractors are included in the scope. The Law requires companies (S.12b) to establish OHS committees in workplaces to prevent work related incidents (no threshold size of company has yet been set). It places obligations in S.26 on employers to conduct risk assessments, ensure safe workplaces and provide personal protective equipment for free to employees, inter alia.¹¹⁷ The OHS Law has yet to come into force pending notification by the President, and the development of detailed cross-sectoral and sectoral regulations.

Findings

Non-compliant labour conditions are common in the private security sector and have an impact on employees' rights to livelihood and just and favourable conditions of work. This assessment has identified that some PSCs pay their guards below the legal minimum wage. Even where PSCs are paying the minimum monthly wage for a full-time job, some require guards to work overtime without proper compensation as stipulated in the labour law.

One PSC commented that to cut costs or to fit client's financial requirements, some other PSCs force their guards to take on 12 or even 24 hour shifts at the same post without proper breaks. However, some guards prefer 12 hour shifts to reduce commuting at night, particularly if companies do not provide transport home. Travel restrictions during COVID made it harder to manage shift changes, and therefore increased shift lengths, particularly as security guards were not recognised as essential services.

Other findings included a PSC which forced guards to pay for their own uniforms or deducted the cost from monthly salary. To prevent the high turnover of personnel, some PSCs implement bonds on training, effectively forcing guards to remain in the company for a period of time irrespective of labour conditions. Some PSCs even confiscate National Registration Cards of guards to force them to stay in the company, a form of forced labour.

This assessment has also identified several cases of PSC management unilaterally reducing salaries or cutting yearly bonuses without consultation. The COVID 19 pandemic and subsequent economic and social crisis have exacerbated these tendencies with managers threatening to dismiss any employee complaining about these cost cutting measures.

116 Social Security Board Reforms Enhance and Extend Health Protection in Myanmar, ILO, 13 February 2020

117 [Occupational Safety and Health Law](#), March 2019

Some companies interviewed had registered employees for social security, a legal requirement (with some commenting that their guards also did not want to make the 2% employee deductions). Generally, they did not provide additional insurance for employees, unless the client required this.

COVID-19 measures seeking to prevent infected patients from entering public places have put private security personnel in exposed positions. Security personnel have been tasked to carry out body temperature checks at client site entrances without adequate training or awareness of risks and, in some cases, without proper protective equipment.

The Labour Inspectorate under MOLIP has a mandate to inspect workplaces. However, the number of inspectors is insufficient for Myanmar's workforce.¹¹⁸ This assessment has not identified any instances of the Inspectorate checking labour conditions in PSCs.

Due to the nature of the industry, PSCs are scattered throughout client sites and often unable to communicate among themselves to form unions or engage in collective bargaining with management. No PSC was found to have a Workplace Coordination Committee, and most had not heard of this legal requirement (there is generally low awareness of this law among Myanmar employers). Some PSCs - wrongly - regarded it as not relevant to them since although they had more than 30 employees, they were dispersed across many sites.

Recommendations to PSCs

- ✓ Comply with all applicable labour laws
- ✓ Where the company has more than 30 employees (regardless of whether they are off-site), establish a Workplace Coordination Committee in line with the SLDL, to facilitate management-worker dialogue.
- ✓ Ensure the workplace safety of employees and work closely with safety managers of clients. Clients in turn should ensure that they meet their responsibility for the safety of their subcontractor PSCs under the new OHS law.

Relations with workers, local communities, civil society organisations, and journalists

Legal and normative framework

IFC Performance Standards and the VPSHR clearly state that client companies have the duty to protect their assets and personnel and the local communities from harm. PS4 states that *"client companies should make reasonable enquiries to ensure that those providing security... have appropriate conduct towards workers and affected communities."* Paragraph 64 of the ICoC requires PSCs to *"assess risks of injury to personnel as well as the risks to the local population generated by the activities of the company and/or personnel."*

118 [Child labor and forced labor reports, Burma](#), US Department of Labor, 2017

When security guards are involved in intimidating workers, the local population or others, this undermines their right to freedom of expression and association. Guidance Note 4 (GN4) notes that *“security personnel that interact with workers should not harass or intimidate workers exercising their rights. If community members decide to associate, assemble and speak out in opposition to the project, the client and any security personnel who interact with them should respect the right of the local community to do so. The instructions for security personnel should also make clear that the arbitrary or abusive use of force is prohibited.”*¹¹⁹

Chapter 22 (“Of criminal intimidation, insult and annoyance”) of the Myanmar Penal Code clearly defines the act of criminal intimidation *“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”*

PS1 and PS4 both emphasize the importance of community engagement as a key element of effective security. Client companies should lead engagement with local communities but should integrate their security provider into this. GN4 notes that *“community engagement is an important aspect of an appropriate security strategy, as good relations with workers and communities can be the most important guarantee of security”*. Clients should communicate their security arrangements to workers and communities as much as they can, subject to overriding safety and security needs. The IFC’s *“Use of security forces: assessing and managing risks and impacts”* states that PSCs and client company working together may help create or identify opportunities to speak with community members and involve them in discussions about security arrangements that may affect them.

Furthermore, where Environmental Impact Assessments (EIAs)/Initial Environment Examinations (IEE) are required under Myanmar law, Myanmar’s EIA Procedure requires clients (Project Proponents) to identify and manage adverse impacts on community health and safety, and address emergency response. The EIA Procedure requires Project Proponents to ensure the assessment is based on public participation at different stages. Furthermore, as mentioned above, the ECC issued at the end of the EIA process increasingly requires the project to establish an operational grievance mechanism, consistent with the UNGPs, to receive and resolve community complaints.

Findings

The lack of clear roles and responsibilities for security guards, low recruitment standards and perceived impunity by both client companies and some PSCs have resulted in instances of private security personnel intimidating workers, journalists, civil society organisations (CSOs) and communities. In addition to the attempted detention of the protesters in the shopping centre and intimidation of journalists by casino guards in Myawaddy, which have been reported in the media (see above), a CSO claimed that a company had recruited informers within the

119 [IFC Performance Standard Guidance Note 4, 2012](#)

community to report any discontent against the company and to intimidate villagers.

In many cases, private security guards' main tasks are to provide access control, prevent theft from workers and secure the factory perimeter in case of demonstrations. However, labour union and civil society organizations operating out of Hlaingthaya, the industrial area in western Yangon, have claimed some security guards are recruited to break up protests and intimidate workers' leaders.

Labour unions interviewed in 2020 for this assessment commented that guards also harass workers by limiting their toilet breaks and break time and harass them to speed up in the production line. Labour unions also complain about insufficient female guards in some factories, resulting in male guards body-searching female workers and inspecting the toilets of female staff.

This inappropriate behaviour demonstrates the need for clear definition of security guard roles and responsibilities, as well as SOPs and training on use of force and apprehension.

Local communities want client companies and PSCs to recruit local people, noting that this did not happen in the case of SEEs which tended to recruit army veterans. Some clients, mostly international energy and mining companies with commitment to the VPSHR, have requested their PSCs to recruit a guard force originating from local communities. In every case examined by this assessment, the recruitment of local community members has had positive impacts including:

- a) Improved relations between the client and PSC, and the communities;
- b) Better exchange of information to assess the security and social environment,
- c) The possibility to act on potential grievances before they escalate into tension,
- d) Preventing the recruitment of personnel with criminal backgrounds or human rights abuses.

However, very few PSC managers interviewed in 2020, whether local and international, recognised the importance of working with communities on security issues. Given the heightened risks since 1 February 2021, it is even more important that community relations are prioritised within security management in future.

Recommendations to PSCs

- ✓ Refuse assignments that require performance of tasks outside the internationally agreed role of security guards
- ✓ Train guards to behave respectfully towards communities at all times, including when off duty.
- ✓ Recruit guard forces from nearby communities. This recruitment should be conflict-sensitive, and conscious of any intra-communal issues

- ✓ Provide communication and de-escalation training to guards to prevent unnecessary arguments with workers and communities.
- ✓ Ensure personnel in no circumstances engage in harassment or intimidation of workers, community members, civil society groups or media. This should be covered in training.
- ✓ Establish effective grievance mechanisms to allow personnel or local rightsholders and stakeholders to report concerns or potential abuses.
- ✓ Encourage clients to apply international best practice, such as IFC Performance Standards and the Voluntary Principles on Security and Human Rights) in their community relations including safety. This includes establishing SOPs for handling demonstrations and protests, including when to involve the police.
- ✓ Generally, but particularly where clients have significant numbers of female workers, discuss with clients whether to increase the number of female guards.

Data protection and privacy

Legal and normative framework

The right to privacy or private life is enshrined in the Universal Declaration of Human Rights (*Article 12*). Activities that restrict the right to privacy, such as surveillance, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued e.g. only recording what is needed to comply with the task, and protecting and retaining it only for the time necessary.

Section 357 of the Myanmar Constitution states that *“The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.”*

In 2017, the NLD Government adopted the Law Protecting the Privacy and Security of Citizens¹²⁰ which included provisions in Article 8 that might be considered relevant to the work of PSCs although they were targeted at ‘responsible authorities’ who are defined as *‘The relevant government department, government organization or government official’*:

8. In the absence of an order, permission or warrant issued in accordance with existing law, or permission from the Union President or the Union Cabinet, a Responsible Authority:

- a. *Shall not enter into a citizen’s private residence or a room used as a residence, or a building, compound or building in a compound, for the purpose of purpose of search, seizure, or arrest.*
- b. *Shall not surveil, spy upon, or investigate any citizen in a manner which could disturb their*

120 [Law Protecting the Privacy and Security of Citizens, 5/2017 of 8 March 2017](#) as amended by Law 16/2020 of 28 August 2020.

privacy and security or affect their dignity.

- c. *Shall not intercept or disturb any citizen's communication with another person or communications equipment in any way*
- d. *Shall not demand or obtain personal telephonic and electronic communications data from telecommunication operators.*
- e. *Shall not open, search, seize or destroy another person's private correspondence, envelope, package or parcel.*
- f. *Shall not unlawfully interfere with a citizen's personal or family matters or act in any way to slander or harm their reputation.*
- g. *Shall not unlawfully seize the lawfully owned movable or immovable property of a citizen, or intentionally destroy either directly or by indirect means.*

However, SAC Law 4/2021 of 13 February 2021 suspended Section 5, 7 and 8 of this Law.¹²¹ There is no stand-alone data protection law in Myanmar. However on 15 February 2021, the State Administration Council (SAC) adopted an amendment to the Electronic Transactions Law (ETL) which added an aim of 'protecting personal data' to the existing law.¹²² Chapter 10 includes provisions on personal data (Article 27-bis) taken from the draft Cybersecurity Law and as of 2022, it appeared likely that this law, if adopted, would reabsorb these data protection provisions, and rescind the ETL.¹²³ **Personal Data** is defined in Article 2(l) as '*information that identifies or is capable of identifying an individual*'. Article 2(m) defines a **Personal Data Management Officer** as '*a person and its staff authorised by a governmental department or an organisation to be responsible for collecting, retaining, and using personal data in accordance with the law, or any existing laws*'.

The ETL amendment also added penalties concerning failure to protect personal data, spreading misinformation, and committing cyberattacks. However, it lacks clarity on how collected data should be handled, such as provisions on retention period, classification of the information to be stored and storage location.

Privacy and protection of sensitive personal data relates to a number of elements of PSC work. This could include employee information such as personnel files and disciplinary records, and metadata from security systems (alarms, entry systems, GPS trackers). It could also include data on clients.

¹²¹ [Amendment of the Law protecting Privacy and Security of Citizens, State Administration Council Law 4/2021](#)

¹²² [See MCRB's consolidated version of the 2004 Electronic Transactions Law](#), as amended in 2014 and 2021, and unofficial translation

¹²³ Free Expression Myanmar's analysis of 18 February '[Myanmar's new Electronic Transactions Law Amendment](#)', highlights the relationship to the draft Cybersecurity law which had received widespread criticism, including from business associations.

Public authorities may require PSCs to provide them with data when this is necessary to prevent a real danger to public safety or to suppress potential criminal offence. However the legal framework for this needs to be clear and must come with safeguards and oversight to prevent abuse.¹²⁴ Chapter 10 of the amended ETL states that:

27-bis. (b) The investigation team, or the person mandated or instructed to act on their behalf, who receives information that includes personal data in accordance with the existing laws, shall keep the information confidential except when disclosing the information to persons permitted in accordance with the Law.

27-bis. (c) The provisions relating to the management of personal data shall not apply in the following scenarios:

- i. prevention, search and enquiry, investigation, or providing evidence before a court by a governmental department authorised by the Central Committee, the Investigative Team or a rule of law team in relation to cybersecurity, cyber-attacks, Cyber Terrorism, Cyber Misuse and cyber accidents or Cyber Crimes;*
- ii. search and enquiry, investigation, gathering information, filing a charge, or providing evidence before a court by a governmental department authorised by the Central Committee, the Investigative Team or a rule of law team mandated to work on a criminal matter;*
- iii. enquiry, investigation, gathering information or coordination of information is undertaken if cybersecurity and Cyber Crimes issues are of concerns to the state sovereignty, peace and stability or national security;*
- iv. when carrying out activities set out in sub-section (iii), either the Central Committee, a relevant department, or organization assigned by the Central Committee having a separate authority and working on it in accordance with such standards.*

Findings

Although the right to privacy is briefly mentioned in ICoC paragraph 21 it is not addressed in the ICoCA HRRRA and was therefore not in the initial scope of the study which focussed on physical guarding. It was not raised in interviews as an issue by the limited number of companies that offer remote security provision. The study predated amendment of the Electronic Transactions Law (ETL), so there were no meaningful data protection provisions in Myanmar law.

There is an inadequate legal framework and generally low awareness of data protection and privacy in Myanmar. PSCs and their clients need to incorporate this into their risk assessments, SOPs, contracts, and training. Privacy issues in the PSC sector are particularly connected to the use of recording equipment which can capture personal data of individuals such as

124 See for example the Spanish approach to data sharing, in State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety, Box 2 p17, UNODC, 2014

closed-circuit TV cameras (CCTV), for which there is no specific legal framework or licensing requirement, although the ETL can be considered to apply. There is also no clarity as to whether this would apply to CCTV cameras which filmed only domestic private property.¹²⁵

Since 1 February 2021, there has been increased awareness of the human rights issues connected to CCTV. Public security forces have demanded access to company CCTV cameras, for example to identify possible protesters.¹²⁶ CCTV camera footage of abuses by public security have been circulated on social media.¹²⁷ Cameras have been destroyed by public security and opposition forces, and company personnel installing CCTV, apparently on behalf of Mandalay municipality, have even been shot at.¹²⁸ To reduce these risks, clients/PSCs appear to be reducing the use of CCTV in public areas.

Recommendations to PSCs

- ✓ Incorporate privacy, data protection and digital safety risk into risk assessments. Consider the potential for situations in which personal data held by the PSC could be used to abuse human rights, particularly by public security.
- ✓ Establish an Information Security Management System consistent with [ISO 27001 standards](#) including an ICT and data inventory, and processes for transfer and maintenance of ICT assets to reduce the risk of data breaches.
- ✓ Establish clarity between PSC and client concerning ownership of, and responsibility for, personal data (including that collected by CCTV) and control access to it.
- ✓ Appoint a Personal Data Management Officer for the company, consistent with the amended Electronic Transactions Law (ETL).
- ✓ Set data retention time limits for different categories of personal data, after which it will be erased. Data should not be retained for longer than necessary to fulfil the purpose for which they were obtained in the first place.
- ✓ Ensure surveillance equipment e.g. CCTV, microphones, entrance cards, data storage, data centres, clouds, laptops, cell phones, are purchased from internationally recognized vendors committed to privacy principles.
- ✓ Include privacy and confidentiality provisions in client and staff contracts, and codes of conduct.
- ✓ Train all staff on privacy, digital safety and security and what these mean in practice.

¹²⁵ See [Domestic CCTV systems - guidance for people using CCTV](#), UK Information Commissioner's Office.

¹²⁶ [Customers withdrawing cash from KBZ Bank arrested](#), Myanmar Now, 16 March 2021

¹²⁷ [After soldiers murdered him in cold blood on CCTV, military claims teenager died falling from motorbike](#), Myanmar Now, 30 March 2021

¹²⁸ [Two shot while installing CCTV in Mandalay](#), Voice of Myanmar (in Burmese) 2 December 2021

Closed Circuit TV (CCTV)

- ✓ Consider whether deployment of CCTV or other recording equipment addresses a legitimate pressing need that cannot be addressed by other means.¹²⁹
- ✓ Ensure that CCTV is only used for designated purposes and legitimate aims, such as prevention of crime, and not, for example, to spy on employees, customers or neighbours.
- ✓ Ensure that CCTV deployment is proportionate to the need. Disable audio recording. Consider whether a live feed is sufficient, rather than recording.
- ✓ Undertake a data protection impact assessment when surveillance cameras are deployed, camera positions changed or new technological capabilities such as automatic facial recognition are used.¹³⁰
- ✓ Where CCTV is in use, place clear signs in English and Myanmar to inform the public that they may be recorded.
- ✓ Control access to recordings. Establish SOPs including escalation to senior management to respond to any demands for data from public authorities. Seek to have requests for data put in writing. Do not give unrestricted access to public authorities to CCTV monitoring points.
- ✓ Provide access to recordings of individuals who have been recorded, on their request.
- ✓ Retain CCTV footage for as short a time as possible and not more than 30 days, unless it is being used as criminal evidence, or shows evidence of human rights abuses and may be useful to those seeking redress.
- ✓ For scenarios involving peaceful protest, consider adopting SOPs to stop recording and immediately delete CCTV data where there is a risk that it will otherwise be used by the authorities to arrest those exercising their right to freedom of expression.

129 For further guidance see the 12 Guiding Principles of the [Amended Surveillance Camera Code of Practice](#), UK Government, December 2021

130 A [template for an data protection impact assessment](#) for surveillance cameras has been developed by the UK Information Commissioner Office and the Surveillance Camera Commissioner.



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