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Chapter 4.8 Groups At Risk



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Groups at Risk

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A. Context

Myanmar is one of the most culturally diverse countries in Southeast Asia, making for a complex interplay of ethnic identities. Many ethnic minority leaders believe that the Burman (Bamar)-dominated central Government instituted a policy of ‘Burmanisation’ to suppress ethnic minority cultures, languages and religions, and treat ethnic minorities as ‘second-class citizens’.⁵²⁵ There are also several other groups that are at risk of marginalisation. These groups are particularly vulnerable to the impacts of increasing change in the country, due to poverty; lack of stature to make their voices heard in the process of shaping those changes; and an inability to resist more powerful forces. They risk being left behind in Myanmar’s rush to transform itself.

Human Rights Defenders

According to the United Nations, a ‘human rights defender’ is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified primarily by what they do. It is through a description of their actions and of some of the contexts in which they work that the term can best be explained.⁵²⁶ As in most countries, there are many human rights defenders in Myanmar, including people working in civil society organisations (CSOs) and ethnic minority community-based organisations (CBOs), trade union, student and religious leaders, journalists, and Myanmar people working in INGOs and UN agencies.

A vibrant and resourceful network of CSOs and CBOs is active at both the national and local levels in Myanmar, including many ethnic minority-based groups. In the aftermath of

⁵²⁵ For a further explanation and discussion of these issues, please see Transnational Institute/Burma Centrum Netherlands reports from 2011 to 2013.

⁵²⁶ See further: [Office of the UN High Commissioner for Human Rights](#).

Cyclone Nargis in May 2008, Myanmar CSOs greatly expanded and organised as they worked to help survivors. They remain a significant positive force in the country and have been able to engage with the Government to some extent. Since 2011 Myanmar civil society groups have been granted a greater degree of latitude by the Government and have taken that opportunity to increase their activities to help people claim their rights.

While many developments since the 2011 reform process have increased the space for human rights defenders to operate, there have been some disturbing recent developments, such as the arrests and imprisonment of several local journalists (see [Chapter 4.1](#) on Freedom of Expression); the continuing arrests of peaceful demonstrators under the 2011 *Peaceful Assembly Law*, many of them protesting against land grabs⁵²⁷; and unchecked inter-communal violence. The run-up to the General Elections scheduled to take place in November 2015; the uncertain constitutional amendment process; and the ongoing peace talks with armed ethnic minority groups are all factors which have led and may lead to greater tensions between civil society, including journalists, and the Government, and within civil society itself.⁵²⁸ Moreover, people staging peaceful public protests in the context of the upcoming elections may be at risk of arrest and imprisonment by the authorities.

Religious Communities

Buddhist and Muslim

After the controversies around how ethnic minorities could identify themselves in the March-April 2014 census, the Government decided not to publish ethnicity and religion data.⁵²⁹ Analysis of census information reveals that an estimated total of 1,206,353 people were not enumerated in parts of Rakhine State, Kachin State and Kayah State. This represents 2.34 percent of the population. However the number was counted in the overall Myanmar population total figure of 51,486,253.⁵³⁰

The percentage of Muslims in the population is also an extremely sensitive issue in the light of recent violence and Buddhist fears of an increasing Muslim population.⁵³¹ Muslims, who live in many parts of Myanmar, are a minority of the population. Anti-Muslim sentiment and discrimination are widespread in Myanmar, not only against the Rohingya,⁵³² a Muslim group living in Rakhine State, but also against other Muslims in different parts of the country. Inter-communal violence between Buddhists and Muslims broke out in Rakhine State during June 2012 but has also affected other areas of the country. Moreover, there has been Buddhist violence against Muslims since June 2012 not only in Rakhine State, but also in Meiktila, and to a much lesser degree in Mandalay and other parts of the country.⁵³³

⁵²⁷ Burma Partnership and the Assistance Association for Political Prisoners in Burma, "[How to Defend the Defenders?](#)" (July 2015).

⁵²⁸ Myanmar Centre for Responsible Business "[Civil Society Organisations and the Extractives Industries in Myanmar – a Brief Overview](#)" (October 2014).

⁵²⁹ Republic of the Union of Myanmar, "[2014 Myanmar Population and Housing Census, Census Report Volume 2-A](#)" (May 2015).

⁵³⁰ Ibid.

⁵³¹ For a discussion of Muslim population figures in the context of the March-April 2014 census, see International Conflict Group, "[Myanmar Conflict Alert: A Risky Census](#)", (Feb. 2014).

⁵³² The Myanmar Government does not accept the term 'Rohingya' and refers to the population as 'Bengali'.

⁵³³ In Meiktila in the centre of the country, over 40 people were killed in March 2013. In July 2014 further inter-communal violence broke out in Mandalay, Myanmar's second largest city, resulting in two deaths and dozens arrested and wounded DVB, "[Mandalay riots reveal splintered community, complex agendas](#)" (8 July 2014).

In the wake of the 2012 violence, almost 140,000 people in Rakhine State remain displaced,⁵³⁴ many of them in camps in extremely poor conditions, most of them Muslim. Muslims living in camps in Rakhine State are not able to travel in order to access employment or health care. Muslims who live in north-western Rakhine State also face longstanding restrictions on movement and cannot leave their townships without official permission, greatly impacting their livelihoods.⁵³⁵ On 11 February 2015 the President revoked all temporary identity cards, known as White Cards, leaving many Muslims, including Rohingyas, but also some ethnic minorities, without a valid form of identity card, impacting on their ability to travel, obtain employment and vote.⁵³⁶ In June former White Card holders did not appear on the voter lists and were thus disenfranchised and will be unable to participate in the November 2015 elections.⁵³⁷

Some members of the Buddhist Sangha (clergy) in Myanmar lead the '969' movement, which claims, amongst other things, that Muslims are trying to take over the country. The '969' movement encourages Buddhists to boycott Muslim businesses, and has some popular support.⁵³⁸ Of the two international telecoms companies granted licenses in Myanmar, Ooredoo is based in Qatar, a Muslim-majority country. After the awards were granted, some radical nationalist Buddhist monks called for a boycott of the company and a general boycott of all Muslim-owned shops and businesses in Myanmar.⁵³⁹ This has impacted on the company's ability to obtain tower sites in some areas.

Moreover, building on widespread anti-Muslim sentiment, some Buddhist leaders called on the Government to enact legislation to "protect" Buddhism. There are three laws in Parliament restricting the following: religious conversion to non-Buddhist religions; inter-faith marriage; population; and polygamy. The *Population Control Healthcare Bill* was passed by Parliament in April 2015. Parliament enacted the *Buddhist Women's Special Marriage Act* in July 2015. This law requires Buddhist women (but not men) to seek permission from the authorities to marry a non-Buddhist man.⁵⁴⁰ International human rights organisations have noted that the *Population Control Healthcare Bill* may be used selectively against certain ethnic and religious minorities as there is no non-coercion or discrimination clause in the bill.⁵⁴¹

Other faiths

People of other faiths also face discrimination and marginalisation. Christians comprise a small minority in the country, but most Chin and Kachin ethnic groups are Christian, with smaller numbers of Karen and Karenni Christians. Christians, like other members of minority religions, are generally not promoted to senior positions within the civil service or military. Ethnic minority Christians face restrictions on their religious freedom, including

⁵³⁴ USAID, "[Burma - Complex Emergency Fact Sheet #1, Fiscal Year \(Fy\) 2015](#)" (6 Feb 2015).

⁵³⁵ Brief Overview of the current human rights situation in Northern Arakan/Rakhine State, Myanmar, February – July 2014, Arakan Project, on file with IHRB.

⁵³⁶ The White Cards expired on 31 March 2015. International Crisis Group, "[CrisisWatch No 139](#)" (2 March 2015), pg 12.

⁵³⁷ Myanmar Times, "[Former white card holders cut from Rakhine voter lists](#)" (24 June 2015).

⁵³⁸ ICG, [The Dark Side of Transition: Violence Against Muslims in Myanmar](#) (Oct 2013).

⁵³⁹ [Nationalists call for Ooredoo boycott](#), Myanmar Times, 6 June 2014,

⁵⁴⁰ The Irrawaddy, "[Union Parliament Passes 'Interfaith Marriage Bill'](#)" (18 July 2015).

⁵⁴¹ See Amnesty International and International Commission of Jurists, "[Myanmar: scrap 'race and religion laws' that could fuel discrimination and violence](#)" (3 March 2015); Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, Advance Unedited Edition, A/HRC/28/72, p 9-10, 9 March 2015; and "Burma's Population Control Bill Threatens Maternal Health Program", Physicians for Human Rights, 22 April 2015, *Population Control Healthcare Bill*.

limitations on building places of worship and destruction of religious venues and artefacts. These abuses are particularly acute in the context of the armed conflict in Kachin and northern Shan States.⁵⁴²

Women

Myanmar acceded to the *UN Convention against All Forms of Discrimination against Women* (CEDAW) in July 1997. The 2008 *Myanmar Constitution* does not include an effective constitutional guarantee of substantive equality⁵⁴³ nor in practice do women receive equal pay for work of equal value.⁵⁴⁴ Although the law guarantees equality between men and women, enforcement is weak and women are under-represented in Government and in most traditionally male occupations. In order to address some of these issues, in October 2013 the Government launched a 10 year action plan for the advancement of women.⁵⁴⁵ The ADB and the UN have supported the Government in carrying out a Gender Status Analysis that provides a detailed assessment of the status of women in the country; the results were announced during January 2015.⁵⁴⁶

Women can be particularly at risk of negative impacts because they have fewer livelihood options than men, due to social status, family and cultural roles and expectations, and lower literacy levels,⁵⁴⁷ and as a result, are disproportionately affected by poverty.⁵⁴⁸ While the 2014 census reported an overall female literacy rate of 86.9%,⁵⁴⁹ girls are often not able to attend school, particularly in remote mountainous border regions, which means that women are on the whole are less educated, leading to a lower literacy rate. Without access to education, women cannot access the job market, remain in low paid positions and are more prone to exploitation.

Sexual violence against women in the context of internal armed conflict in Myanmar has been reported for many years.⁵⁵⁰ However an October 2014 report by the Gender Equality Network discussed violence against women in non-conflict situations, such as intimate partner violence, including marital rape, and sexual assault and harassment outside the home. The report recommended that companies implement policies to address and effectively respond to sexual harassment and violence in the workplace.⁵⁵¹

Women's organisations in Myanmar speak out on a range of issues, including on the impact of business operations.⁵⁵² Article 19 has published a report, 'Censored Gender',

⁵⁴² United States Commission on International Religious Freedom, "[2013 Annual Report](#)" (2013), pg 22-25.

⁵⁴³ Article 350 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 the term "similar work" will not achieve the same equalities outcome as the principle of equal pay for work of equal value used in CEDAW. Myanmar Legal Framework Background Paper for IHRB, p 83, on file with IHRB.

⁵⁴⁴ UNFPA Myanmar, "[The 100th International Women's Day celebrated in Yangon, Myanmar](#)" (8 Mar. 2011).

⁵⁴⁵ UNDP, "[Women's National Strategic Plan for Women Advancement Released](#)" (4 October 2013).

⁵⁴⁶ UNFPA, "[Myanmar's Gender Status Analysis gets the Go-ahead](#)" (18 January 2015).

⁵⁴⁷ The Republic of the Union of Myanmar, "[2014 Myanmar Population and Housing Census, Census Report Volume 2-A](#)" (May 2015). pg. 37 on literacy ratios: male 92.6%, female 86.9%

⁵⁴⁸ US Department of State, "[Burma 2013 Human Rights report](#)".

⁵⁴⁹ The Republic of the Union of Myanmar, "[2014 Myanmar Population and Housing Census, Census Report Volume 2-A](#)" (May 2015).

⁵⁵⁰ UN General Assembly, "[Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee](#)" A/HRC/28/72 (9 March 2015), para 35.

⁵⁵¹ Gender Equality Network "[Behind the Silence: Violence against women and their resilience in Myanmar](#)" (October 2014).

⁵⁵² The Tavoyan (Dawei) Women's Union reported in February 2015 that women who protested about damage to livelihoods and the environment caused the Dawei Special Economic Zone and related projects in

examining how the right to freedom of expression and information applies to women in Myanmar and what gender-based violence is experienced by women as a result of what they say.⁵⁵³ Some women's organisations campaigning against discrimination against women have received anonymous death threats via Facebook and their mobile phones.⁵⁵⁴

Other women's organisations are focussing on the gap between men and women working in the ICT sector. The founder of 'Geek Girls', a women in technology community in Myanmar, noted that 60% of the students at computer universities are female, but that women are lagging behind men in employment in the ICT sector, including in start-ups.⁵⁵⁵

Children

The Myanmar Government ratified the *International Convention on the Rights of the Child* (CRC) in 1991, and acceded to the *CRC Optional Protocol on the Sale of Children, Child Prostitution, and Child Sexual Abuse Images* in January 2012⁵⁵⁶ and *ILO Convention No. 182 on the Worst Forms of Child Labour* in December 2013. Nonetheless Myanmar law diverges from the CRC in some significant areas. For example, the provisions of the 1993 *Child Law* define a child as becoming an adult at 16 rather than 18 years, and sets the minimum age of criminal responsibility at seven years old. Although the Government has said that it will reform the law to bring it into line with the CRC, this has not yet occurred.

When discussing potential private sector impacts on children, the usual and often exclusive focus of companies is on child labour. However, ICTs can have a wider set of impacts on children, as a consequence of their physical and cognitive immaturity and vulnerability to exploitation. There is an increasing range of tools regarding children available to assist companies in identifying and understanding potential impacts on children.⁵⁵⁷

the southeast of the country also experienced harassment. Tavoyan Women's Union "[Women activists facing harassment by proponents of the Dawei Special Economic Zone](#)" (25 February 2015).

⁵⁵³ '[Censored gender: women's right to freedom of expression in Myanmar](#)' Article 19, June 2015

⁵⁵⁴ See The Irrawaddy, "[We Will Not Back Down](#)" (19 June 2014).

⁵⁵⁵ The Irrawaddy, "[In Myanmar, Men are Leading the ICT Industry and Women are Lagging](#)" (8 May 2015).

⁵⁵⁶ [UN Treaty Collection](#)

⁵⁵⁷ UNICEF and the Danish Institute for Human Rights, "[Children's Rights in Impact Assessments - A guide for integrating children's rights into impact assessments and taking action for children](#)" (2013).

Child Labour

The 2008 Constitution reaffirms the State's responsibility to provide free basic education and health care for children.⁵⁵⁸ The majority of children attend primary school, but the net completion rate is only 54%. Of these, only 58% go on to secondary school.⁵⁵⁹ Due to widespread poverty and the unstable economic situation, many children drop out of school and work for low pay to help earn money for their families.⁵⁶⁰

Child labour is widespread and visible throughout Myanmar in various sectors (see census data in [Chapter 4.6](#) on Labour). Children also end up as beggars on the streets, bus and railway stations and at tourist attractions. One survey found that one third of child labourers worked as street vendors.⁵⁶¹ The Government is working with the ILO and UNICEF to reform laws and end the worst forms of child labour. The minimum age for the employment of children is set at 13 years, which is in line with international standards for light work, but not in line with the international standard of 15 years for regular work.⁵⁶² The 1993 *Child Law* classifies children between the age of 14 and 17 as youths, and allows them to engage in "light duties". However, the term "light duties" is not defined.⁵⁶³ Children are frequently victims of economic exploitation, as employers generally pay them less despite their high contribution of labour.⁵⁶⁴

Child Sexual Abuse Images Online

The increasing use of ICTs to distribute and access child abuse images⁵⁶⁵ has given rise to numerous global coalitions and initiatives to identify and protect child victims and disrupt posting of and access to such images.⁵⁶⁶ Distribution and accessing child abuse images are violations of children's rights and are a crime under international law. As noted by one of the leading NGOs working on disrupting the availability of child sexual abuse content hosted anywhere in the world, many legitimate online services are misused by those wishing to distribute child sexual abuse imagery.⁵⁶⁷ Given the relatively low penetration of ICTs in Myanmar to date,⁵⁶⁸ this has not been a major concern for children protection groups, but this is changing as the country opens further.⁵⁶⁹

⁵⁵⁸ Ibid, pg. 4-5

⁵⁵⁹ UNICEF, "[Situation Analysis Myanmar](#)" (July 2012) pg. 76 and 83.

⁵⁶⁰ Democracy for Burma, "[Child labour continues in Burma](#)" (4 February 2011).

⁵⁶¹ UNICEF, "[Situation Analysis of Children](#)" (2012), p 116.

⁵⁶² Freedom House, "[The Global State of Workers' Rights – Burma](#)" (31 August 2010).

⁵⁶³ US Department of State, "[2013 Country reports on Human Rights practices, Burma 2013 Human Rights report](#)" (2013).

⁵⁶⁴ Child Rights Forum of Burma, "[CRC Shadow Report Burma](#)" (29 April 2011).

⁵⁶⁵ A note on terminology: although the Optional Protocol to the UN Convention on the Rights of the Child uses what was the common term at the time to protocol was adopted "child pornography", the terminology has shifted to using the term "child abuse images" in order to convey more clearly the concept that any involvement with such images is a crime.

⁵⁶⁶ See for example: European Commission, "[A Global Alliance against Child Sexual Abuse Online](#)" (last accessed August 2015).

⁵⁶⁷ Internet Watch Foundation, "[New tactics mean 137% increase in identified child sexual abuse imagery](#)" (13 April 2015)

⁵⁶⁸ See for example UNICEF, "[Situation Analysis Myanmar](#)" (July 2012), which highlighted many other existing child protection concerns in the country, but as of the 2012 date, there would have been little significant data or practice available about online exploitation. See also, Myanmar Centre for Responsible Business,

Under Section 66 of Myanmar's *Child Law*, the production or resale of child sexual abuse images can result in maximum fine of 10,000 MMK and a two-year prison sentence.⁵⁷⁰ The use of a computer to sell, let to hire, distribute, publically exhibit, or put into circulation obscene objects is criminalised⁵⁷¹ under the Myanmar *Penal Code*, including for legal persons.⁵⁷² However, Myanmar does not have explicit provisions requiring Internet Service Providers (ISPs) to report suspected child sexual abuse images to law enforcement or other agencies upon discovering suspected child sexual abuse images or other types of child abuse/child sexual exploitation circumstances on their network.⁵⁷³

Ethnic Minorities

Ethnicity is a complex, contested and politically sensitive issue. Ethnic groups have long believed that the Government manipulates ethnic categories for political purposes.⁵⁷⁴ (See [Chapter 4.10](#) on Conflict and Security for information about ethnic minority armed groups). Myanmar's ethnic minorities make up an estimated 30 – 40% of the population, and ethnic states occupy some 57% of the total land area along most of the country's international borders.⁵⁷⁵ Political boundaries in Myanmar are to some extent organised according to ethnic demographics. The seven states are named after seven large ethnic minority groups – namely, Kachin, Kayah, Kayin, Chin, Mon, Rakhine, and Shan States. Although the Bamar do not have a specific state named after them, they are the dominant ethnic group living in the country, especially in the seven Regions (Sagaing, Magwe, Tanintharyi, Mandalay, Yangon, Ayeyarwady, and Bago). There are also six self-administered areas that are part of Regions or States, each named after the minority national race that forms the majority in the relevant area (Naga, Danu, Pa-O, Palaung, Kokang and Wa Self-Administered Areas)⁵⁷⁶.

The term 'Indigenous Peoples' is not widely understood in Myanmar, nor generally used. The 2008 *Myanmar Constitution* makes no reference to ethnic minorities or indigenous peoples, instead using the term "*national races*". However, "*national races*" is not defined, and is generally interpreted by applying the 1982 *Myanmar Citizenship Law*, which defines 135 national races in its 1983 *Procedures*.⁵⁷⁷ Under the *Myanmar Citizenship Law*, nationals of Myanmar include the "*Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D.*"⁵⁷⁸

Article 22 of the Constitution, provides for "(i) development of language, literature, fine arts and culture of the national races; and (ii) promotion of solidarity, mutual amity and respect

"[Myanmar Tourism Sector Wide Impact Assessment](#)" that highlighted rising concern and attention to the exploitation of children in tourism, pg. 157-158.

⁵⁶⁹ See for example, UNICEF, "[Child Safety Online – Global Challenges and Strategies](#)" (2011).

⁵⁷⁰ Burma Library, "[SLORC's Child Report – 4](#)" (26 January 1997).

⁵⁷¹ *Myanmar Penal Code*, Section 292.

⁵⁷² *Ibid*, Section 11.

⁵⁷³ International Centre for Missing and Exploited Children, "[Myanmar Country Report](#)" (2014).

⁵⁷⁴ International Crisis Group, "[Myanmar Conflict Alert: A Risky Census](#)" (Feb. 2014).

⁵⁷⁵ Transnational Institute/Burma Centrum Netherlands, "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)", (May 2013).

⁵⁷⁶ *Myanmar Constitution* (2008), Article 56.

⁵⁷⁷ See: Burma Library, "[Burma Citizenship Law of 1982](#)" (last accessed August 2015).

⁵⁷⁸ *Myanmar Citizenship Law*, Article 3.

and mutual assistance among the national races; and promotion of socio-economic development including education, health, economy, transport and communication, of less-developed national races”.

Almost all Rohingya are denied citizenship under the 1982 *Myanmar Citizenship Law*, either because they do not meet its stringent and discriminatory citizenship requirements, or where they do, because they lack the documentary evidence required. People of Chinese, Indian or Nepali heritage are mostly denied full citizenship under this law because they do not automatically qualify under “*national races*”.

The 2014 national census used the 135 categories of national races, with people required to check one of them, or indicate “*other*”; there was no option to indicate the frequent mixed heritage of many residents. This 135 national races categorisation is strongly contested by ethnic minorities, as they believe it does not accurately represent their true ethnicity and also that the Government, comprised primarily of ethnic Bamar, is using this to lower the real number of each broad ethnic group. A last minute Government decision prevented those Muslims in Rakhine State identifying as Rohingya to write in “*Rohingya*” as their ethnic group during the census process.⁵⁷⁹ The Government has not yet released 2014 census ethnicity data.

The Protection of the Rights of National Races Law⁵⁸⁰ enacted on 24 February 2015 gives further effect to Article 22 of the 2008 Constitution. Article 3 includes the purposes of the law: “(e) *to aim for the socio-economic development of less-developed national races including education, health, economics and transportation.*” While Article 3 of the law provides for “*access to equal citizenship rights for all ethnic groups*”, and for “*ethnic groups to have full access to rights enshrined in the Constitution*”, it does not explicitly protect ethnic minorities against discrimination. The law states that no one can behave with intent to incite hatred, animosity and disunity among “*national races*” and that ethnic rights and entitlements cannot be restricted without a sound reason.

The 2015 Law establishes a Minister for National Races to be appointed by the president with the approval of the union Hluttaw. This has not yet taken place. In article 9 the Ministry’s duties and mandate includes: “(e) *carry out all round development activities including education, health, economics and transportation of less developed national races for their socio-economic development and article;*” and (j) “*carry out activities to develop, maintain, protect and improve language, literature, arts, culture and traditions of minority and ethnics’ tribes in danger of extinction*”. It is not yet clear whether this will extend to supporting the development of online content in ethnic minority languages.

⁵⁷⁹ See International Crisis Group, “[Counting the Costs: Myanmar’s Problematic Census](#)” (15 May 2014).

⁵⁸⁰ Available at: <http://www.pyithuhluttaw.gov.mm/lawdatabase/?q=my/law/431> (Burmese only).

People Living With Disabilities

The 2014 Census reported a disability rate of 4.6% of the total population.⁵⁸¹ A 2010 study noted that people with disabilities in Myanmar suffer from widespread discrimination and exclusion within their communities, families, and from society as a whole. Disabled children and women were identified as the most vulnerable.⁵⁸² Moreover, Myanmar activists have reported that people living with disabilities are not adequately protected by law and have called for stronger protection for this population, as they are at risk of abuse.⁵⁸³ There is a severe lack of education for people living with disabilities; a Myanmar Government study reported that almost 50% of disabled people received no education whatsoever. The survey also reported that 85% of disabled people were unemployed.⁵⁸⁴ There have been very few employment training programs for people with disabilities, and there is a need for more vocational training and employment, supported by funding.

Myanmar acceded to the *International Convention on the Rights of Persons with Disabilities* (CRPD) in December 2011.⁵⁸⁵ The Ministry of Social Welfare is the Myanmar Government entity responsible for people with disabilities (PWD) ⁵⁸⁶. A Disability Rights Law 30/2015, drafted with input from disabilities advocacy organisations, was adopted in June 2015⁵⁸⁷. This provides for the creation of a National Committee for Disability Rights with extensive government and NGO participation (but not business). The Committee will address issues such as access to employment, discrimination and vocational training. Tax relief will be available for goods produced by PWDs, and for organizations or private business *‘that employ more than the designated quota of PWDs’*.

No further details are given about the envisaged quota system, which it appears will be defined by the National Committee. The Law sets out the responsibilities of employers to obey and implement the policy of National Committee for creation of job and training opportunities for PWDs; employ PWDs (including those who are registered at township Labour Offices) in suitable workplace in accordance with the quota system. Where the employer is unable for whatever reason to employ PWDs, they shall contribute to a fund for PWD rights according to a rate to be laid down. The Ministry of Social Welfare is expected to begin work on bye-laws in late 2015.

The Myanmar Centre for Responsible Business (MCRB), along with the Deaf Resources Centre, has published a bilingual Guide for companies wishing to integrate people with disabilities into their Corporate Social Responsibility (CSR) policies, increase the level and quality of employment for people with disabilities, and contribute to the improvement of products and services for people with disabilities.⁵⁸⁸

⁵⁸¹ The report listed four types of disability: walking, seeing, hearing, intellectual/mental. The Republic of the Union of Myanmar, “[2014 Myanmar Population and Housing Census, Census Report Volume 2-A](#)” (May 2015).

⁵⁸² Salai Vanni Bawi, “[Understanding the Challenges of Disability in Myanmar](#)” (2012).

⁵⁸³ Myanmar Times, “[Activists call for stronger laws to protect Myanmar’s disabled](#)” (21 January 2013).

⁵⁸⁴ The Irrawaddy, “[In Burma, Children with Disabilities Struggle to Access Schools](#)” (5 November 2013).

⁵⁸⁵ [United Nations Treaty Collection](#).

⁵⁸⁶ [Myanmar Ministry of Social Welfare](#).

⁵⁸⁷ <http://www.pyithuhluttaw.gov.mm/?q=download/file/fid/5478> only availability in Burmese

⁵⁸⁸ MCRB and Deaf Resources Centre “[Corporate Social Responsibility and Disability \(CSR-D\)](#)” (Aug 2014).

Lesbian, Gay, Bisexual and Transgendered (LGBT) People

Article 377 of the *Penal Code*, based on British colonial law, criminalises any activity that the Myanmar authorities decide constitutes “*carnal intercourse against the order of nature*”.⁵⁸⁹ The LGBT Rights Network in Myanmar has called for the abolition of this article, which can be used against people in same-sex relationships. Although greater freedom has led to greater visibility for LGBT activists, this has meant that they are now exposed to more abuse. LGBT activists have reported widespread discrimination, and general societal lack of support.⁵⁹⁰ The US State Department’s 2014 Annual Human Rights Report states that LGBT people in Myanmar face discrimination in employment, including denial of promotions and dismissal. Openly gay men and lesbians also report limited opportunities for work and harassment by the police.⁵⁹¹ LGBT activists have reported online abuse; homophobic groups shared photos of some prominent LGBT activists. After the wedding of two gay men, there was a spike in such abuse online, including death threats against all gay people. Online abuse against the LGBT community is a serious problem in Myanmar and ICT companies should be aware of the potential for such abuse.

B. Field Research Findings

Religious Communities

Human Rights Implicated: Right to non-discrimination

Field Assessment Findings

- As noted in [Chapter 4.6](#) on Labour, **racial and religious tensions were observed, mainly where communities identified the company or its workers as Muslim:**
 - Researchers heard of several incidents in which subcontractors of a company from a majority Muslim country were disturbed in their work by communities protesting the company’s presence in their area.
 - Workers were denied accommodation due to working for a Muslim company.
- Communities threw stones at cars carrying workers of companies that were perceived to be owned by Muslims.

Gender

Human Rights Implicated: Right to non-discrimination

Field Assessment Findings

- With respect to the acquisition or leasing of land for tower or cable sites, in principle, there is no legal impediment to **providing payment for land or lease compensation to women or women-headed households**. Nonetheless, households are registered in the husband’s name and therefore in general compensation was handed over to the male household head. However, widows or single mothers would also be able to obtain compensation same way as male headed households.

⁵⁸⁹ Lawyers’ Collective, “[LGBT Section 377](#)” (23 November 2010). This *Myanmar Penal Code* is still used by many countries formerly ruled by the British, including India, Malaysia, and Myanmar.

⁵⁹⁰ The Irrawaddy “[LGBT Groups Call for Burma’s Penal Code to Be Amended](#)” (29 November 2013).

⁵⁹¹ US State Department, “[Burma 2013 Human Rights Report](#)” (2013) pg. 40 – 41.

- As noted in [Chapter 4.6](#) on Labour, it was very unusual for **any women to work on tower construction**.
 - This was often justified on the grounds it was unsafe for them due to night work and the distances between the site and their village/ accommodation.
 - Where women were able to work on tower construction sites, they were only allowed to do certain manual tasks, such as backfilling or moving materials.
- **Perceptions of women working in the ICT sector were mixed** amongst interviewees. Given traditional cultural norms in Myanmar, many indicated women and girls should not work and should stay at home to support their families. However, just as many indicated that female workers were excelling at programming and that there were more female students than male students at computer universities, including at masters level.
- Some stakeholders suggested that in order to protect women against such online harassment or hate speech, the **draft Anti-Violence Against Women Law** should include provisions addressing these problems.

Children & Young People

Human Rights Implicated: Rights of the child

Field Assessment Findings

- Field researchers heard **repeated appeals for better curricula and facilities within schools and universities, especially regarding technology and engineering**:
 - Myanmar universities and the ICT industry were seen as disconnected; many students felt the university curriculum needed to be redesigned in consultation with industry.
 - The computer and tech university curriculum was seen as 10 years behind, for example teaching students Visual Basic programming language (created in 1991) rather than the more recent successor visual basic.NET (created in 2002). Companies seeking to hire qualified local staff noted skill gaps, and low job-readiness skills as limiting factors.
 - Primary schools have not yet integrated ICT education into curricula, leading to a lack of basic skills needed to successfully pursue university programmes on ICT amongst the majority of Myanmar young people
- **Numerous cases of the negative impacts of over-use or misuse of the Internet were shared with researchers**, particularly by concerned parents. This was mainly ascribed to the sudden exposure to the Internet without any education on the safe or balanced use of technology. As in many other parts of the world, **parents expressed concern about children** becoming 'addicted' to computer games either offline or online. In some cases this has led to children dropping out of school.
- As noted in [Chapter 4.6](#) on Labour, occasional practices of reviewing identification to verify workers' age were reported in fibre cable installation projects, but many more instances of lack of identification cards or documents were described to researchers, indicating a **general lack of basic measures to prevent underage workers in fibre and cable installation in particular**.
 - Fibre cable line workers often had to travel long distances from their homes in order to take up work. Due to lack of childcare, and shifting worksites, they would bring children with them. As a consequence **children were regularly left waiting in the worker camps during the 10 hour shift periods**.

Myanmar Good Practice Examples:

- One company has reported that their Code of Conduct covers human rights and also has a Myanmar-specific statement on human rights due diligence requirements. They have established a community outreach program with State Liaison Officers to act as a link between ethnic groups and the company, and a local hotline to which people may report grievances related to sustainability issues.⁵⁹²

C. Groups At Risk: Recommendations for ICT Companies

Understanding and Addressing Differentiated Impacts of Projects

- **Understand the Myanmar context:** Myanmar has a very diverse population in a complex and often conflict-ridden environment. Myanmar legal standards often fall below international legal standards to protect groups at risk. The groups at risk are often (at best) neglected parts of the population and at worst, subject to persecution by the Government or others. In these situations, in addition to international guidance on engagement and employment or contractual arrangements with groups at risk, experts on the specific vulnerable group in question should be consulted.
- **Identify and engage:** A first step in understanding what potential impact a project or services may have on groups at risk is to identify which vulnerable groups may be in the potential workforce and surrounding community as part of the company's due diligence process. The ICT value chain is spread across the country and their workers and stakeholders will vary in different locations. This assessment may require additional specialist sociological or anthropological expertise and methods to identify, locate and engage individuals or groups at risk of abuse and marginalisation. Engagement may often need to be done separately, and sometimes discretely.
- **Ensure assessments and prevention are differentiated:** The objective of an assessment is to better understand how impacts may affect each potential group at risk, and in particular, to understand who could experience adverse impacts from the proposed project or service more severely than others. Disaggregated data and community consultations/focus groups will be needed to identify, assess and discuss potential impacts. Differentiated prevention or mitigation measures may be required to address the greater severity of impacts. Monitoring should track impacts on individuals or groups on a disaggregated basis.
 - Groups at risk should also be able to benefit from ICT sector equally with others. This too may require distinct measures. For example, if job training is offered, there may be a need for specialised or separate training provided for individuals from groups at risk who face exclusion from the dominant group, e.g. people living with disabilities.
- **Consider the potential exposure of users at risk:** As noted elsewhere (See in particular [Chapter 4.1](#) on Freedom of Expression and [Chapter 4.4](#) on Surveillance and [Chapter 4.2](#) on Hate Speech), some of those groups highlighted in this Chapter are subject to specific risks within Myanmar. ICT companies who provide services for or affecting these groups (such as by hosting online content) should consider these vulnerabilities in advance of offering services. They should consider what steps can be taken to modify policies, procedures or services to avoid or minimise negative impacts on them, which might derive from hate speech, bullying or unlawful surveillance.

⁵⁹² See further: Telenor, "[Response by Telenor: Myanmar Foreign Investment Tracking Project](#)", Business & Human Rights Resource Centre (last accessed September 2015).

- **Address child safety online:** As Myanmar does not have specific laws covering child safety online and is unlikely to be able to prioritise these issues, given the wide range of other child protection challenges in the country, it will fall to companies to take action to protect young users and to disrupt the use of their services to transmit child abuse images. Telecommunications operators and web based services, as well as software companies, need to consider the range of potentially severe impacts on children that can occur through different forms of violence and exploitation. For example, the online sale and trading of child abuse images is considered a crime in most jurisdictions and prohibited under international human rights law. Other negative impacts arise from broader child safety issues online, such as ‘cyber bullying’, ‘grooming’, the illegal sale of products such as alcohol or tobacco to children, or graphic content encouraging self-harm. Companies should report clearly abusive images or behaviours promptly to law enforcement authorities once they become aware of them. Beyond this, there is a range of approaches that companies should draw on, including:
 - making it clear how users can report abusive images or behaviour such as bullying
 - training moderators of online forums and services for children to help identify and respond to concerning or suspicious behaviour
 - implementing effective age and identity verification mechanisms at the level of individual users
 - implementing appropriately heightened security measures for personal information that has been collected from children (including any location-related information, which can pose particular risks to children)
 - seeking parental consent before using or disclosing information collected from children;
 - considering any unintended consequences of decisions on child safety (for example, posting information about unaccompanied children on privately-run, post-disaster family reunification websites), and
 - engaging with external child safety and children's rights experts, including relevant civil society organisations and the Government, to provide on-going feedback and guidance on the company's approaches.⁵⁹³

Business Leadership

- **Model equal opportunity:** Addressing entrenched discrimination demands a change in societal attitudes, which often requires prompts from many directions to tip the balance towards broader acceptance. These can include messages from the political leadership – the President’s office has repeatedly called for building an “*inclusive and sustainable*” Myanmar – as well as changes in law and changes in peer countries. However, changes can also start with the private sector modelling equal opportunity and demonstrating the benefits. This is an important role that businesses of all sizes in the ICT value chain can play, through leadership messages and by creating workplaces that are not only visibly free of discrimination but also moving towards equal opportunity for the groups at risk of marginalisation noted above.

⁵⁹³ See for example: ITU et al, “[Guidelines on Child Protection Online](#)”; GSMA, “[The Mobile Alliance against Child Sexual Abuse Content](#)”, European Commission, “[Global Alliance on Child Sexual Abuse Online](#)” (last accessed August 2015). The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children has not made online protection a priority in its “[Work Plan \(2012-2016\) and Rules of Procedures \(ROP\)](#)” (2012).

- **Highlight impacts on investment climate:** Societal discrimination and exclusion are not unique to Myanmar. However, if discrimination and exclusion becomes more entrenched and overt, it will undermine ongoing political and economic reforms. Businesses, collectively or individually, should highlight how the negative impacts of discrimination and inter-communal violence, and an inadequate response from the Government on protecting those at risk, can harm the investment climate.
- **Design ICTs for vulnerability and accountability:** As outlined in [Chapter 3](#) on sector-level impacts, there are more opportunities for positive impact from the ICT sector than potentially any other industry developing within Myanmar's fast moving landscape. The nature of the ICT sector – able to bridge long distances affordably and in real time – positions it to combat exclusion and vulnerability. For example, ICT can increase access to doctors and medical services for the elderly, disabled or displaced who are in desperate need of healthcare but often unable to travel or afford it; provide people with disabilities with accessible online employment opportunities; and offer hotlines for groups at risk.

D. Relevant International Standards and Guidance on Groups at Risk

Relevant International Standards:

- [IFC Performance Standard 2 and Guidance Note – Labour and Working Conditions](#)
- [ILO, Discrimination \(Employment and Occupation\) Convention \(No. 111\)](#)
- [UN Convention on the Elimination of Discrimination Against Women](#)
- [UN Convention on the Rights of Persons with Disabilities](#)
- [UN Convention on the Rights of the Child](#)

Relevant Guidance:

- European Commission, "[ICT Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)"
- IFC, "[Good Practice Note, Non-Discrimination and Equal Opportunity](#)"
- ILO, "[Working Conditions of Contract Workers in the Oil & Gas Industry](#)"
- ILO, "[Disability in the Workplace – Company Practices](#)"
- CSR-D, "Guide on Corporate Social Responsibility and Disability" and in Burmese, MCRB and DRC, "[Corporate Social Responsibility and Disability \(CSR-D\) – A Guide for Companies in Myanmar](#)"
- UNICEF, UN Global Compact, Save the Children, "[Children's Rights and Business Principles](#)"
- UN Global Compact, "[Women's Empowerment Principles](#)"
- UN "[Inter-Agency Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'](#)"