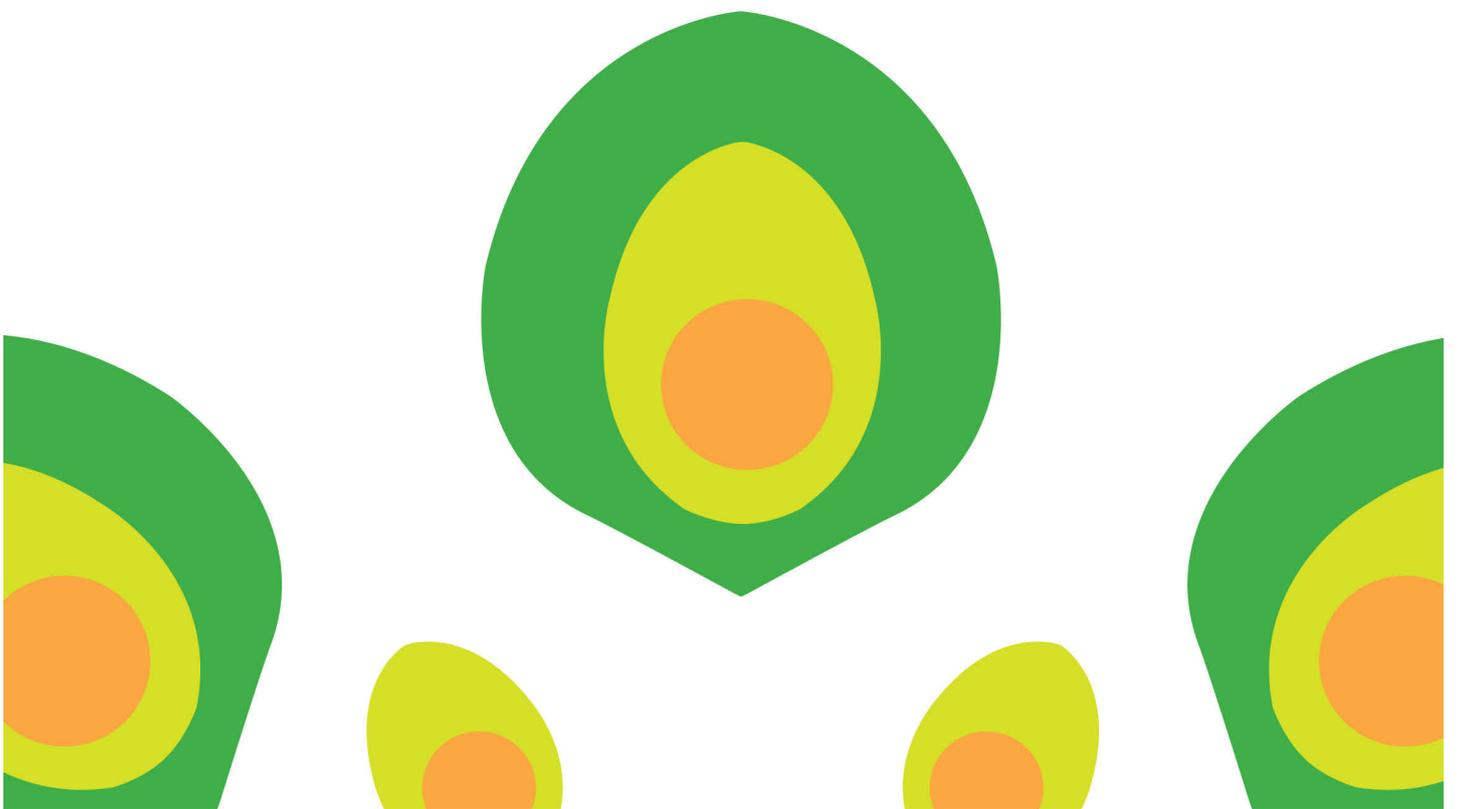


Introduction



INTRODUCTION

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A. How to Use this Sector-Wide Impact Assessment (SWIA)

In countries such as Myanmar, emerging from decades of ethnic conflict, authoritarian rule and a long period of economic sanctions, responsible business requires enhanced due diligence to determine what impacts business activities may have on society, including on human rights. To facilitate this, MCRB, DIHR and IHRB are carrying out a series of Sector Wide Impact Assessments (SWIA) of key sectors of the Myanmar economy.

This report presents the findings of a SWIA of the human rights impacts of the oil and gas (O&G) sector in Myanmar. The O&G SWIA was conducted by the MCRB in collaboration with IHRB and DIHR between August 2013 and March 2014, using both desk-based and field-based research.

The scope of a SWIA covers a whole sector and involves assessing not only impacts on individuals and groups that may arise from projects but also the sector's potential impact on the society as a whole. It sets out the context for responsible business in Myanmar. A SWIA is intended to sensitise planners, decision-makers, businesses and civil society, including the media, by highlighting the likely risks and impacts of business activities, so that at an early stage appropriate steps can be taken to prevent and mitigate risks and amplify positive human rights impacts through changes in policy, law, contracts, operations or other relevant steps.

Since a SWIA is a new concept, the report is extensive in scope and targeted at multiple audiences who may find it useful for different purposes. It gives details of the SWIA methodology which others may want to undertake elsewhere ([Annex A](#)). For those who will be conducting or otherwise engaged in detailed analysis and impact assessment of projects in Myanmar, there is an analysis of the current Myanmar context concerning responsible business and the legal framework which may also be of use to those outside the O&G sector. For those unfamiliar with international standards the SWIA provides extensive references.

Readers, particularly from business, who are keen to understand the immediate implications for them are encouraged to read the sections entitled “Key Human Rights Implications for the O&G Sector” in the eight chapters of [Part 4](#) on Project Level Impacts. In addition, [Part 7](#) gives recommendations to companies, government, civil society, development partners and investors. Other sections will serve as useful references in understanding the evolving Myanmar context.

B. Why a SWIA on Oil and Gas (O&G) in Myanmar

Oil and gas is considered a high-risk sector for human rights and the impacts of the extractive industry, including O&G, on a range of human rights have been well documented.¹ In Myanmar, investments in the O&G sector have been associated with human rights abuses in the past and although decreasing, still remain a concern. The Government of Myanmar (the Government) has recently awarded numerous new onshore and offshore O&G blocks. Negotiations between companies and the state owned Myanma Oil & Gas Enterprise (MOGE), are under way on new production sharing contracts (PSC). As investments in the sector are increasing rapidly, it is a priority for all stakeholders – companies, Government, civil society and donors – to understand the potential impacts of the sector if they are to improve the outcomes for Myanmar and all of its people.

This SWIA for the O&G sector looks at upstream and midstream (transportation) activities but not processing and sale as these are currently fairly limited activities in Myanmar. See [Annex B](#), which provides a brief description of the phases of an O&G operation with a brief overview of the kinds of companies (foreign and national) involved in Myanmar’s O&G sector.

This SWIA aims to:

- Inform **companies** conducting project-level Environmental and Social Impact Assessments (ESIA) or other due diligence and help them understand the overall potential impact of their sector and their project(s) on the country. SWIA will provide a strategic review of the broader policy and legal frameworks relevant to their sector where those frameworks are in place. It also crystallises the acute issues that are central to operating in Myanmar and require proactive management by O&G companies and highlights a number of issues that will be best served if tackled collectively.
- Help the **Government and Parliamentarians** as they shape policy and law, licensing and other initiatives so that they better prevent and mitigate harms and enhance the potential for positive outcomes. Adequate attention to longer-term impacts on human rights supports more equitable growth and poverty reduction for the broader Myanmar population.
- Support **local communities**, who are generally the rights-holders most directly impacted by O&G projects, to engage with investors and local authorities, and call on international standards to support their case. Support **trade unions, national civil**

¹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (herein “SRSG”), [“Addendum, Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse”](#), A/HRC/8/5/Add.2 23 (2008).

society groups, and the media so that they can participate in policy development and project planning, leveraging international standards and approaches in their interventions.

- Enable **development partners** to align their support and policies to the sector such that human rights are better respected and protected
- **Build the capacity of local researchers** to better understand international standards relevant to operations of the sector in Myanmar and to be able to assess performance in light of those standards.

C. The Reference Framework for the SWIA

“Responsible business conduct,” and the standards that help define that conduct, require businesses to take responsibility for the impacts they have on society. “Impacts on society” is understood very broadly to include human rights, social, environmental, ethical, and consumer concerns. The standards that cover such conduct are diverse and they are not always labelled as “human rights” or even created with human rights in mind. However, given the breadth and depth of human rights, they are intimately intertwined with human rights. Some impact pathways will be direct: suppression of a protest has an immediate impact on the right to freedom of expression. Impacts on the environment can have both direct and indirect impacts on human rights. Pollution can directly harm someone’s health and impact on the right to health, while at the same time degrade the quality of the soil or water so that crops can no longer be grown or grown in sufficient quantities, impacting on the right to food. Wider governance issues, including a lack of transparency and corruption² have indirect impacts as they can weaken the accountability systems needed to address human rights impacts.

When the “human rights” label or terminology becomes a stumbling block rather than a facilitator to better outcomes, the use of other terms may be appropriate. But it will still be important for those dealing with these issues in companies and any others who routinely engage with stakeholders, to have an understanding of internationally-recognised human rights and their implications for company processes.

This SWIA does not address technical operating standards for the O&G industry. Instead it focuses on the following international standards relevant to responsible business conduct, particularly those concerning impacts of business on human rights:

- the [UN Guiding Principles on Business and Human Rights](#) (“the UN Guiding Principles” or “UNGPs”)
- the [OECD Guidelines on Multinational Enterprises](#) (which apply to companies domiciled in an OECD country and the 10 additional countries adhering to the OECD Guidelines).³ The human rights chapter of the OECD Guidelines on Multinational Enterprises is aligned with the UN Guiding Principles.

² While this SWIA Report addresses corruption because it has an impact on the quality of governance more generally and the resources governments have available to fulfil human rights, it does not include a specific review of all the steps that would be needed to reduce corruption in the country. See for example, Devex, [“How Myanmar can curb corruption to boost development”](#) (30 Jan 2014).

³ Additional signatories to the OECD Guidelines are: Argentina, Brazil, Colombia, Egypt, Latvia, Lithuania, Morocco, Mexico, Peru, and Tunisia.

- the sustainability policies of international financial institutions (Asian Development Bank and World Bank Group), and in particular, the [IFC Performance Standards](#) and [World Bank Group Environmental, Health and Safety \(EHS\) Guidelines](#). The IFC Performance Standards and EHS Guidelines are designed to be applied by the private sector, contain quite detailed standards for many areas relevant to O&G operations, and specifically cover and are aligned with many human rights standards.
- [ISO 26000 and the UN Global Compact](#) are also aligned with the UN Guiding Principles and often important references in the region.
- It also draws on guidance from leading industry groups such as [IPIECA](#).

As the O&G SWIA is particularly focused on human rights, the [UN Guiding Principles on Business and Human Rights](#) are its primary benchmark. These principles were unanimously endorsed by the UN Human Rights Council in 2011 and are now an authoritative global reference point on business and human rights. At a minimum business must ensure that its activities do not infringe the human rights set out in the [International Bill of Human Rights](#),⁴ the principles concerning fundamental rights set out in the International Labour Organisation’s [Declaration on Fundamental Principles and Rights at Work](#), as well as other human rights instruments relevant to the circumstances.⁵

The UN Guiding Principles provide operational guidance to States and business for the implementation of the [UN “Protect, Respect and Remedy” Framework](#), which articulates the complementary but distinct roles of States and business in protecting and respecting human rights. The SWIA process is designed to support the implementation of the UN Guiding Principles within Myanmar as follows:

- **The State Duty to Protect** against human rights abuses by third parties, including businesses, means the State should adopt effective policies, legislation, regulations and adjudication to prevent, investigate, punish and redress human rights abuses as a result of domestic business operations. As the Government of Myanmar and Parliamentarians develop sectoral policies and laws, they will be making choices about the future direction of the country, balancing potential negative and positive impacts of their decisions. The O&G SWIA provides an analysis that helps inform law, policy and administrative procedures in ways that prevent and mitigate harms and enhance positive outcomes. Foreign governments supporting economic development in Myanmar can also use the SWIA to better understand the human rights impacts of the O&G sector in Myanmar, and align their foreign direct investment support and policies.
- **The Corporate Responsibility to Respect** human rights, means that companies should avoid infringing on the human rights of others and address negative impacts with which they are involved. The SWIA provides both a preview of factors contributing to a sectoral “social license to operate” and a better understanding of potential human rights impacts at the project level. This should assist companies to incorporate attention to human rights issues into their investments and operations.
- **Access to Effective Remedy** for victims of business-related human rights abuses should be provided through both judicial and non-judicial means. While the O&G

⁴ Comprised of the UN Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

⁵ See: OHCHR, [“The Core International Human Rights Instruments and Their Monitoring Bodies”](#) (accessed 15 July 2014).

SWIA is not a comprehensive review of rule of law and access to justice in Myanmar, it is intended to support workers and local communities in understanding and protecting their rights. It is also intended to encourage businesses to put in place operational level grievance mechanisms that enable both communities and workers to raise their concerns regarding O&G sector impacts, in order that they can be addressed as early and effectively as possible.

D. Expectations for Responsible Business in Myanmar

The President of Myanmar, U Thein Sein, Daw Aung San Suu Kyi, leader of the National League for Democracy (NLD), numerous governments and international organisations, have all called for “responsible business” in Myanmar. The Government has made repeated references to its desire to attract responsible investment to its extractive sector. The most visible manifestation is its candidacy for the Extractive Industries Transparency Initiative (EITI). The Government recently conducted with the OECD an “investment policy review” of the country. The 300+ page report starts with a chapter on responsible business, focused on human and labour rights and how international standards of responsible business conduct can be introduced in the country (See Box 1 below for a list of the OECD recommendations on responsible business conduct).⁶ In discussing the report, the Myanmar’s Union Minister of National Planning and Economic Development, Dr Kan Zaw, “praised the comprehensive nature of the report and said that it would help to guide the Government in solidifying investment climate reforms and in promoting more and better investment.”⁷

Box 1: Recommendations from the OECD as part of the Myanmar Investment Policy Review Chapter on Responsible Business Conduct⁸

- Ratify major international human rights, labour and environmental conventions
- Enact and enforce domestic legislation consistent with these standards
- Strengthen the independence and expand the mandate of the National Human Rights Commission
- Promote revenue transparency, such as through the EITI
- Ensure that domestic enterprises, including state owned enterprises, conform to the new standards of behaviour and prosecute lawbreakers
- Expand the role of civil society (labour unions, local community organisations) to help ensure that businesses obey the law
- Prepare sectoral master plans which include responsible business conduct (e.g. tourism)
- Provide adequate protection of property rights, including for customary land
- Free, prior and informed consent (FPIC) for land acquisitions, relocations, etc.
- Develop grievance mechanisms in other areas and provide redress to victims
- Work with home governments to promote respect for the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational

⁶ OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014).

⁷ ASEAN Secretariate News, “[Myanmar Welcomes International Support for Responsible Investment](#)” (March 2014).

⁸ OECD, above, pg. 32.

Enterprises. Require foreign investors receiving a permit from the MIC to commit to these principles.

Thus at the highest level the indications point to a Government interested and willing to re-join the international community and align itself with international standards. The hard work of translating those commitments into relevant laws, policies and practices throughout the country is just beginning to take root. While Myanmar has taken significant steps towards reintegration into the global community, it is still a “high risk” or “weak governance” country, requiring a higher level of rigour and sensitivity in conducting business. There are deep challenges ingrained by over fifty years of military government and isolation that will have to be addressed to ensure that the benefits of enhanced extractive revenue contribute to widespread development. Entrenched elite interests, widespread corruption, lack of state capacity and a lack of comprehensive social policies have led to low levels of state legitimacy, social cohesion and trust. At the same time, high-risk countries like Myanmar need responsible investment more than elsewhere. However, the economic, social and political benefits companies can bring to such societies should not obscure, or be obscured by, the detrimental economic, social and political impacts that companies can cause if operations are not carried out responsibly. If the extractive revenues are not developed and invested well, as one commentator noted it may be better to “keep oil and natural resources in the ground” until they can be.⁹

There are high expectations and intense scrutiny of companies entering or operating in Myanmar, particularly in the extractive sector, with a particular focus on whether they are in line with the UN Guiding Principles on Business & Human Rights and other relevant international standards. As noted in OECD guidance on weak governance zones, “because legal systems and political dialogue in weak governance zones (almost by definition) do not work well, international instruments that provide guidance on acceptable behaviours are particularly useful in these contexts.”¹⁰

International operators are expected to act as industry leaders on environmental and social performance but so too can home governments also play a key role in expressing and incentivising expectations for corporate behaviour and then following up to ensure that the standards are applied. In lifting its sanctions on Myanmar, the EU noted that it would “[p]romote the practice of the highest standards of integrity and corporate social responsibility.”¹¹ In 2013 the G8 welcomed the Government’s commitment to responsible investment.¹² However the US’s Burma Responsible Investment Reporting Requirements¹³ (see Box 2 below) are the only example to date of explicit home country

⁹ van der Ploeg and Venables, “[Harnessing Windfall Revenues: Optimal Policies for Resource-Rich](#)” (March 2011).

¹⁰ OECD, “[OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#)” (2006).

¹¹ Council of the European Union, “[Council Conclusions of 22 July 2013 on the Comprehensive Framework for the European Union’s policy and support to Myanmar/Burma](#)” (2013). The Council Conclusions go on to name the OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights and the EU CSR Strategy 2011-2014 as sources of these standards.

¹² UK Foreign & Commonwealth Office, “[G8 Foreign Ministers’ meeting statement](#)” (April 2013).

¹³ US Department of the Treasury, Office of Foreign Assets Control (OFAC) “[Burma Responsible Investment Reporting Requirements](#)” (2012).

requirements on businesses investing in Myanmar. They are intended to prompt businesses entering the country to consider and address key risks upfront. These reporting requirements should be replicated or referenced by other home countries, thereby reinforcing the message and levelling the playing field. Some home countries have however introduced general responsible business expectations of their companies, which are not Myanmar specific.¹⁴ Chinese companies are expected to follow guidelines that refer to meeting international standards (see Box 2 below).

Investors are demanding information on company actions in Myanmar, and research providers are now providing specialised information on this.¹⁵ Several foreign investors have already faced “specific instances” under the OECD Guidelines for their actions in Myanmar.¹⁶ Other stakeholders interested in O&G company actions in the country have an increasingly wide range of sources information on O&G operations in Myanmar.

Box 2: Examples of Home Country Requirements/Expectations

US Reporting Requirements on Responsible Investment in Burma¹⁷

Companies subject to the US reporting requirements must, inter alia notify the US Department of State of any investment with the Myanmar Oil and Gas Enterprise (MOGE), of their policies and procedures on human rights, labour rights, land rights, community consultations and stakeholder engagement, environmental stewardship, anti-corruption, arrangements with security service providers, risk and impact assessment and mitigation, payments to the Government, and any investments with and contact with the military or non-state armed groups.

Chinese Guidelines

- China’s [SASAC 2008 Guidelines](#) to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities include responsibilities for legal and honest business operation, sustainable profits, innovation, resource conservation and environmental protection, duties toward employees’ well-being and development, community engagement, and reporting on implementation.
- In 2013, the Chinese Ministry of Commerce (MOFCOM) and the Ministry of Environmental Protection (MEP) co-issued [Guidelines on Environmental Protection in Foreign Investment and Cooperation](#) that urge Chinese companies doing business abroad to respect host country environmental protection laws, religions, and customs, and ensure rights and interests of workers; in addition, they suggest that companies follow established principles and practices of international organisations and multilateral financial institutions.¹⁸

¹⁴ For example, the UK National Action Plan. See, HM Government, “[Good Business Implementing the UN Guiding Principles on Business and Human Rights](#)” (Sep 2013).

¹⁵ EIRIS, “[New service enables investors to manage conflict-related investment risks in Burma/Myanmar](#)” (May 2014).

¹⁶ See a list involving the UK, Canadian, French, the Netherlands, South Korean and US NCPs considering specific instances regarding activities in Myanmar up to 2011 here:

<http://www.tuacoecdmguidelines.org/cases.asp>

¹⁷ OFAC, above.

¹⁸ IHRB, “[‘Going Out’ in Search of Oil and Gas: How should Chinese companies investing abroad tackle human rights challenges?](#)” M. Aizawa commentary (24 March 2014).

As one investor blog recently noted, “[c]ompanies investing in Burma are exposed to a complex business environment and those that are seen to benefit from violations of human rights face serious reputational risks.”¹⁹ To fully understand the direct and indirect risks that arise from weak governance, enhanced due diligence is needed to understand and manage those risks.²⁰ Some of the many challenges and opportunities of operating in Myanmar are set out in the subsequent chapters of this Report. This is the context that companies must either change where appropriate or adapt to in the context of running operations in a responsible manner, rather than simply accepting the deficiencies as they are. Companies operating in a high-risk environment have a particular responsibility to influence that operating environment, within the bounds of their own impacts (which may be broader than just their own operations) by operating according to international standards. Where appropriate, this includes engaging with the Government, quietly, collectively or even publicly to prompt it to take up those same standards, as well and on broader issues that can affect the business environment and society – peace, security, human rights, good governance. A transparent approach to applying international standards on responsible business conduct will help provide a common floor for all. The choices companies make in responding to these conditions will play a major role in whether the O&G sector is seen as a positive contributor to national development in Myanmar.

E. The Corporate Responsibility to Respect Human Rights in Myanmar

Box 3: The Corporate Responsibility to Respect Human Rights

Under the [UN Guiding Principles on Business and Human Rights](#), companies are expected to:

- Adopt a **policy commitment** that commits the company to respecting human rights (this may be a standalone commitment or integrated with other commitments to responsible business conduct)
- Carry out **human rights due diligence** (which can be integrated into other types of due diligence procedures that assess and manage the company’s impacts on society and the environment).²¹ This includes:
 - **Identifying** and assessing actual and potential impacts (impact assessments are a common method used in the O&G sector to structure due diligence around the potential impact of O&G operations and the related impacts of the value chain)
 - Acting on and integrating the assessment findings into a management plan for operations

¹⁹ Eiris, “[An Australian perspective on human rights, conflict risk and investment](#)” (June 2014).

²⁰ IHRB, “[From Red Flags to Green Flags, The Corporate Responsibility to Respect Human Rights in High-Risk Countries](#)” (2011), pg. 21.

²¹ See Danish Institute for Human Rights and IPIECA, “[Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry](#)” (2013). See also, European Commission, “[Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#)” (2013).

- Tracking and monitoring performance in managing impacts
- **Communicating** that performance to relevant stakeholders
- Provide or cooperate **in remedying** actual impacts caused or contributed to and set up or participate in operational level grievance mechanisms²² to manage and address actual or potential impacts.

Companies should not assume that in Myanmar complying with national law will be sufficient to meet the responsibility to respect human rights. The evolving domestic legal framework still lags behind international standards in many areas, and compliance with national law is unlikely to be sufficient to also meet international standards.

The UN Guiding Principles and the OECD Guidelines on Multinational Enterprises require companies to assess and manage their potential adverse impacts as a core part of meeting the corporate responsibility to respect human rights. Being as transparent as possible, including communicating the dilemmas they face and the measures they are taking to address them is part of “knowing and showing” that a company is taking steps to respect human rights.²³

A few points on human rights due diligence should be emphasised in particular:

- Because situations and operations change, due diligence should be an on-going activity, carried out particularly when operations change phases or the context evolves. While due diligence can feed into and build from one-off events such as an impact assessment at the start of a new project, there should be continuous assessment of potential impacts during the full lifecycle of operations or a company’s role in operational activities. The Myanmar Environmental Impact Assessment Procedures (which we refer to as the E(S)IA Procedures since the inclusion of ‘social’ impacts is partial), if adopted in its draft form, would require updates to an E(S)IA as operations or situations change and a management plan (an environmental management plan (the E(S)MP) to guide actions following the assessment. This would reinforce an approach of continued assessment and management as needed.
- Due diligence should be built on a recognition that different types of activities can have quite distinct impacts on different human rights and can affect different groups, or some individuals within certain groups differently. For example, impacts can be more severe where individuals or groups are marginalised or at risk (see [Part 4.6](#) on Groups at Risk in Myanmar).²⁴
- The current fluidity in the national legal framework is another reason why all companies should look to international standards as an anchor for their social, human rights and environmental due diligence. Benchmarking due diligence against only national requirements is difficult (given the difficulties of obtaining copies of old legislation, and the even greater difficulties of obtaining copies of drafts of legislation

²² See, IPIECA, “[Community Grievance Mechanism toolbox](#)” (May 2014).

²³ See the International Chamber of Commerce, “[Guidelines for International Investment](#)” (2012) that call on businesses to respect human rights in line with the UN Guiding Principles, pg. 18.

²⁴ To see some indicative examples of impacts on different stakeholders during different O&G activities, see: European Commission, “[Oil & Gas Sector Guide on Implementing the UN Guiding Principles](#)” (2013), pg 10.

as Myanmar does not yet have a transparent system for making draft legislation available), and could result in benchmarking against outdated laws.

- Due diligence should also cover risks that business relationships pose to human rights (see Box 4 below). While all companies – international and local - operating in the sector, including suppliers, have their own standalone responsibility to respect human rights, they must also assess and address the impacts of business relationships that are directly linked to their operations, products or services.²⁵

Box 4: Business Relationships in the O&G Sector in Myanmar²⁶

This SWIA Report mostly focuses on the O&G operators, since they are the party contracting with the state to conduct O&G operations and will be the driver of most of the actions from the contracting phase through to decommissioning. O&G operators may contribute to or be linked to adverse human rights impacts not only through their own activities but also as a result of their business relationships, so must also assess and address the actions of their Myanmar business partners. Apart from deep water offshore operations, O&G operators must have Myanmar companies as business partners. Additionally, O&G operators typically have a wide range of business relationships, relying on many different contractors for services including: shooting seismic, logistics, transportation, security, catering, construction, drilling, etc.

Companies will need to carry out careful due diligence on the background, ownership, policies and practices of potential business partners, including whether they are or have been subject to any current or former US or EU sanctions, and – given that many Myanmar companies are involved in other sectors – how they conduct their business in those other sectors.

Finding the right business relationships in Myanmar will therefore require enhanced due diligence throughout the life of the particular relationship:

- **Before entering into the relationship:** Carry out due diligence on business partners and their policies and practices for addressing environmental, social, human rights impacts and corruption; the Ministry of Energy’s listing of local service companies should not be seen as an evaluation or endorsement of those entities’ compliance with responsible business conduct standards.
- **Documenting the terms of the relationship:** Include contractual requirements on meeting relevant international standards.
- **Supporting the relationship:** Provide advice, training, and capacity building on how business partners or entities in the value chain should responsibly conduct themselves.
- **Monitoring the relationship:** Include requirements ranging from self-assessment and reporting, visual inspections, to third party monitoring,

²⁵ UN Guiding Principle 11, Commentary: “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations.”

²⁶ See for example, the sections on business relationships in each chapter of: European Commission, “[Oil & Gas Sector Guide on Implementing the UN Guiding Principles](#)” (2013), pg 10. See also, IHRB, “[State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships](#)” (Dec 2013).

depending on the business relationship's level of risk.

- **Ending the relationship:** Include provisions to escalate and permit termination of the contract if for example there are findings or credible allegations of severe human rights violations or failure to take the required corrective actions.

These relationships provide the opportunity to promote better corporate governance²⁷ practices and share policies and practices on managing environmental, social and human rights impacts.²⁸ This opportunity to promote responsible business practice also holds true for the most important business relationship which is common to all operators in Myanmar, i.e. with MOGE²⁹.

F. SWIA Methodology

The SWIA Design

The methodology for this O&G SWIA has been developed by IHRB and DIHR in cooperation with MCRB. [Annex A](#) contains more details on the methodology.

A SWIA is built on well-established processes and procedures for environmental impact assessments (EIA) and social impact assessments (SIA), and emerging practices around human rights impact assessments (HRIA). HRIA are grounded in EIA/SIA methodologies but look at potential impacts through a human rights lens and using international human rights standards as a reference framework. EIA/SIA/HRIA approaches are used to understand the potential impacts of specific projects at particular sites within a particular context in order to prevent or mitigate negative impacts as a project is designed and developed.

This SWIA, building on existing impact assessment and management techniques and on the UN Guiding Principles, emphasises the on-going management of potential negative and positive impacts as well as using management systems that can adapt to situations (i.e. actual impacts) that were not predicted at the design stage of a project. Myanmar is undergoing rapid changes so companies operating in the sector will need to be well-equipped to assess and manage change.

Box 5: SWIA Mitigation Hierarchy

Impact assessments should incorporate a mitigation hierarchy with respect to potential impacts:

- first to anticipate potential impacts in order to avoid or prevent them,
- where avoidance is not possible, then to minimise where residual impacts remain, to

²⁷ OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014), pg. 269.

²⁸ See, IHRB, "[State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships](#)" (Dec 2013).

²⁹ MOGE has the exclusive right to carry out all exploration and production of petroleum in the country. Under the production sharing contract PSC, MOGE is responsible for the management of the operations while the operator is responsible to conduct the operations.

restore

- where other mitigation approaches are neither possible nor fully effective, to compensate or remediate impacts.³⁰

This hierarchy fits well with the UN Guiding Principles on Business and Human Rights which emphasises prevention of negative human rights impacts first and foremost, with mitigation where that is appropriate and remediation where impacts have not been prevented. For particularly serious human rights abuses, avoidance or prevention is the only appropriate response if an impact assessment were to identify risks of such serious abuses.

Three Levels of Impact: Sector, Project and Cumulative

As the SWIA is a sector-wide assessment, it looks at potential impacts at three levels of analysis: sector-, project- and cumulative-level.

- **Sector level:** These are broader, aggregate, country-wide impacts – positive and negative – of the sector itself on the national economy, governance and the overall environment and society. In order to be able to address the root cause of potential negative impacts, the SWIA includes an analysis of the relevant policy and legal frameworks that help shape business conduct (where available) and the national context that businesses and civil society need to address in order to achieve more responsible business conduct. The SWIA also draws out recommendations on opportunities to improve human rights outcomes at the sectoral level. A sectoral view should help stakeholders see the “bigger picture” of potential negative impacts of projects in a whole sector, as well as potential opportunities for positive human rights outcomes, and to make choices based on a broader perspective.
- **Project level:** The SWIA looks across a range of existing projects in the O&G sector in Myanmar. The findings represent common project level impacts that are relevant to O&G operations, recognising that impacts are often very context-specific and importantly can be avoided or shaped by (good and bad) company practices. In addition to looking at actual and potential negative impacts from projects in the sector, the SWIA also catalogues positive impacts observed in Myanmar during the SWIA desk and field research.
- **Cumulative level:** Where there are numerous O&G companies operating in the same area, this may create cumulative impacts on surrounding society and the environment that are different and distinct from impacts of any single company or project. Managing those impacts typically requires the host government authorities taking a leading role. However, company–Government cooperation or at least company–company cooperation is also essential. The SWIA identifies potential areas or activities that may lead to cumulative impacts and identifies options for collective sectoral action to address the impacts observed in and predicted for Myanmar.

³⁰ See Danish Institute for Human Rights and IPIECA, “[Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry](#)” (2013), pg. 17-18.

Box 6: SWIA – Three Levels of Impact

1

