

Project Level Impacts

# Labour



# Labour

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## A. National Context

Labour issues in Myanmar pose several challenges to responsible business conduct. For 50 years, independent trade unions and employer organisations were prohibited; laws covering labour protection were antiquated and/or restrictive; forced labour of civilians by the military and civil authorities was common; and child labour is still an ongoing problem. Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth but the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited by the Constitution, leaving significant gaps in protection against discrimination.

An estimated 70% of the population is engaged in agriculture or related activities; 23% in services, and 7% in industry.<sup>295</sup> Underemployment in Myanmar was 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike, as well as young people in particular.<sup>296</sup> However, there is a lack of reliable statistics and other accurate data in Myanmar with regard to labour. The Ministry of Labour, Employment and Social Security, with International Labour Organisation (ILO) support, will undertake a comprehensive national labour force survey in the third quarter of 2014.<sup>297</sup>

### Freedom of Association and the Right to Collective Bargaining

With respect to the protection of workers' and employers' rights and obligations, for the first time in 50 years, the 2008 Constitution and key new labour laws provide for independent trade union activity – though there are some gaps in protecting freedom of association in both the Constitution and the laws. The 2011 Labour Organisation Law permits the exercise of freedom of association and the 2012 Settlement of Labour Dispute Law provides for disputes resolution institutions and mechanisms. Hundreds of independent trade unions have since been registered, mostly at the enterprise level.

<sup>295</sup> Labour Background Paper commissioned for IHRB, p 2 (on file with IHRB).

<sup>296</sup> Underemployment refers to people who worked or had a job during the reference week but were willing and available to work more. ILO, "[Underemployment Statistics](#)" (accessed 25 July 2014).

<sup>297</sup> ILO, "[Myanmar sign agreement on National Labour Force Summary](#)", (14 November 2013). The survey is intended to inform national labour policy and will examine youth employment, child labour, forced labour, and social security.

On a national scale, there is an opportunity to build from scratch the sort of “development” model of industrial relations the country needs. The current law however promotes fragmentation of industrial relations by making it difficult for unions to establish themselves beyond the enterprise level. A lack of understanding, or in some cases entrenched attitudes, can see the new rights-based industrial relations framework drift towards a conflict model. This risk has been increased by the perceptions created by several high profile disputes and the weaknesses in the law and its implementation, which mean that, in practice, employers can discriminate against workers who seek to exercise their rights in accordance with the new laws. The ILO has recommended a number of amendments to the new laws on freedom of association to improve their functioning, including an obligation on parties to engage in collective bargaining in good faith, and to strengthen the enforceability of decisions of the labour arbitration bodies.

### Forced Labour

A major concern in Myanmar has been the widespread and systematic use of forced labour of civilians by the *tatmadaw* (the Myanmar army) and the civilian administration for several decades, despite the fact that the Government had ratified ILO Convention 29 against forced labour in 1955. There have been allegations of forced labour in relation to a variety of infrastructure projects, including in connection with security provided in the area of an international or domestic O&G pipelines. Since the reform process began in 2011, many observers, including the ILO, have welcomed the decrease in forced labour, but noted that the practice is still continuing in some areas<sup>298</sup>. President U Thein Sein has made a public commitment to end forced labour by 2015.

While there is now less risk to companies of forced labour being used in relation to projects, such as road construction, there is a need to remain vigilant, as it was a common practice for several decades, and local government and other authority figures still sometimes use it.<sup>299</sup> The ILO noted that while there are relatively few complaints of forced labour in the private sector, this may be because in Myanmar forced labour is generally associated with the Government.<sup>300</sup> However, in the past there were numerous allegations of forced labour in relation to O&G projects, most recently about the Shwe Gas Pipeline. In September 2011 a Myanmar NGO reported that forced labour was used to construct roads in Rakhine State and build pipeline-related infrastructure in Magwe Region.<sup>301</sup> The UN Special Rapporteur on Myanmar noted in his March 2010 report that he had received reports of rampant forced labour in areas near the Shwe gas pipeline and the Kanbauk to Myaing Kalay gas pipeline project in Southeastern Myanmar.<sup>302</sup>

<sup>298</sup> ILO Committee on the Application of Standards [Extract from Record of Proceedings](#) (June 2012), para 18.

<sup>299</sup> Meeting with ILO, 5 December 2013.

<sup>300</sup> ILO, “[Update on the operation of the complaint mechanism in Myanmar](#)”, report of the ILO Liaison Officer to ILO Governing Body, 319<sup>th</sup> Session, Geneva, (16-31 October 2013), GB.319/INS/INF/2. Please note that complaints include underage military recruitment.

<sup>301</sup> Shwe Gas Movement, “[Sold out, Launch of China pipeline project unleashes abuse across Burma](#)” (Sep. 2011).

<sup>302</sup> UN General Assembly, “[Progress Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana](#)”, A/HRC/13/48, (10 March 2010), section 112.

## Child Labour

Child labour is widespread throughout Myanmar, including as tea shop or restaurant attendants, street vendors, manual labour, waste collectors or beggars, in food processing and light manufacturing, and on farms in rural areas. The risk of child labour to companies operating in Myanmar is high, as they are working in a wide variety of industry sectors, although not generally directly in the O&G sector. Moreover, ascertaining someone's age in Myanmar is not always straightforward.

Birth registration in urban areas was reported at 94%, but in rural areas the rate was only 64%.<sup>303</sup> In May 2014 local media reported that the Ministry of Labour is aiming to eradicate the worst forms of child labour by 2015, in line with the Government's ratification of ILO Convention No 182 on the Worst Forms of Child Labour in December 2013.<sup>304</sup>

## Labour Laws

In addition to the laws on freedom of association and collective bargaining noted above, new laws with regard to labour passed by Parliament include the Employment and Skill Development Law (30 August 2013), the Social Security Law (August 2012), and the Minimum Wage Act, 2013. Other laws are believed to be in draft form or in the process of being drafted, including the Shops and Enterprises Act, 2013, the Occupational Health and Safety Act and the Factories Act Amendment Bill, 2013. The ILO is currently working with the Government to come up with an overall legal and policy framework, with the aim of drafting one comprehensive labour law.

The new Minimum Wage Law provides for salaried workers to have one day off per week with pay, and for the payment of over-time if a salaried worker works on the day of leave (Article 16d). Protections for daily wage workers is predictably less. However, if a worker in a daily wage job works less than the set hours per day not because of the worker, but because of the employer, the worker should still receive the full wage for the day (Article 16(e)). The law covers part-time work, hourly jobs and piecework (Article 16c) and provides that both men and women should receive the minimum wage without discrimination (Article 16f). The Minimum Wage Law also provides for penalties if the employer fails to pay the minimum wage<sup>305</sup> but the minimum wage rate, or rates, have not yet been set. The Labour Minister announced in January 2014 that it would be established by the end of the year.<sup>306</sup> Labour experts have noted that both employers and workers in Myanmar do not fully understand the concept of a minimum wage. Working hours are generally very long but with new labour laws in place, there is a focus on reducing hours.

The new Social Security Law (August 2012) 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

<sup>303</sup> UNICEF, "[Situation Analysis of Children in Myanmar 2012](#)" (2012).

<sup>304</sup> Eleven Media, "[Myanmar Vows To Root out Child Labour By 2015](#)", (4 May 2014).

<sup>305</sup> Ministry of Labour, Employment and Social Security, "[The Minimum Wage Law draft 2012](#)".

<sup>306</sup> Eleven Media, "[Myanmar to announce minimum wage by end of year](#)" (17 January 2014).

pay into. The Law revokes the Social Security Act 1954<sup>307</sup>, and came into effect on 1 April 2014.<sup>308</sup> Currently only 1% of the population is registered in the social security system, according to the head of the Social Security Board.<sup>309</sup> Social security rules and regulations were also due to be promulgated on 1 April 2014, making it mandatory for most companies to cover its employees regardless of income. Companies with two or more employees in the manufacturing, entertainment, transportation, extractive industries, foreign enterprises, and financial sector are required to pay social security.<sup>310</sup> The Ministry of Labour announced that some benefits from the new social security scheme would be paid beginning in April 2014.<sup>311</sup>

The Employment and Skills Development Law provides for skills training and a fund into which employers pay. The Law also provides for the establishment of an employment and labour exchange office by the Ministry of Labour, Employment and Social Security. Significantly, written employment agreements between employer and employee will now be required under Chapter 3 of the law. The law went into effect on 30 November 2013 and revoked the Employment and Training Act, 1950.<sup>312</sup>

The new Occupational Health and Safety Act is expected to be passed by Parliament in the latter part of 2014. There is a recognised need for an increase in the number of Government labour inspectors on workplace safety and health. According to the Ministry of Labour, new inspectors have been hired to work on the O&G sector, but they need to be trained before becoming operational. The 1951 Oilfields (Labour & Welfare) Act prescribes a wide range of protection measures for O&G workers, covering health, safety and worker welfare issues. It also covers working hours, holidays and extensive prescriptions on employing children as well as setting up an inspection service, complemented by a range of penalties but it is unclear whether there has been inspection and enforcement of these basic provisions.

### Awareness and Enforcement of Labour Rights

There is an overall lack of awareness by workers of these new legal rights and safeguards. Enforcement of the new laws is piecemeal, and full-scale implementation will be a long-term process. This was reflected in the findings of the field assessments, where labour conditions and worker satisfaction were reported to vary greatly, indicating a lack of consistency in enforcing labour laws – a recognised weakness in Myanmar.

<sup>307</sup> *The Social Security Law*, 2012, on file with IHRB.

<sup>308</sup> New Light of Myanmar, "[State is also exerting efforts to ensure fair protections without affecting the interest of both workers and employers](#)" (1 May 2014).

<sup>309</sup> The Irrawaddy, "[Burma's Social Security Enrollees to See Benefits Boosted by April](#)" (29 January 2014).

<sup>310</sup> Myanmar Times, "[Social security scheme in the pipeline](#)" (24 March 2014).

<sup>311</sup> The Irrawaddy, "[Burma's Social Security Enrollees to see Benefits Boosted by April](#)" (29 January 2014).

<sup>312</sup> *Employment and Skill Development Law* (30 August 2013), unofficial translation on file with IHRB.

## B. Key Human Rights Implications for the O&G Sector

### Workplace Issues

- **Trade unions:** There is a need to provide relevant information and explanation to employees and other workers on their labour rights, particularly in light of the many new laws and the fact that independent trade unions are permitted for the first time in 50 years. The very limited number of trade unions in the sector are unlikely to be ready to fulfil that role fully in the near future. Given the non-existent to nascent awareness and understanding of the right to freedom of association and collective bargaining, companies should ensure that their workers are aware of and able to exercise their rights, and engage constructively with trade unions where workers choose to establish them.
- **Benchmarking international standards:** Given the rapid succession of labour laws being adopted, it is likely that there will be overlap and contradiction within the laws, and missed opportunities to align with international labour standards. As noted above, the ILO is working with the Government to develop one harmonised, overarching labour law. Until such time, benchmarking policies and practices against international standards provides for sound worker-management relationships.<sup>313</sup>

### Expectations of Local Employment

- **Different perceptions of “local”:** There are high expectations of employment from local communities but very often a lack of skills and education matching job requirements. While companies may meet “local hire requirements” by hiring workers from other parts of Myanmar, for local communities “local” hiring means from within the very immediate area. This mismatch in terminology and perceptions may create longer-term tensions around projects, and genuinely “local” workers are likely to be frustrated with the limited numbers and levels of jobs available which were largely unskilled, low wage and temporary. According to the Foreign Investment Law, all unskilled workers must be Myanmar nationals. Beyond construction periods where unskilled labour is needed, local communities often do not have the skill set to match requirements in operational periods.
- **Local employment targets:** O&G companies may struggle to meet “local content” employment targets due to stiff competition for the limited pool of skilled Myanmar workers. The Foreign Investment Law has requirements for the appointment of skilled citizens: 25% within 2 years, at least 50% within 4 years, and at least 75% within 6 years. The model Production Sharing Contract (PSC) requires the O&G company entering into the contract to “endeavour to employ Myanmar citizens in accordance with the Foreign Investment Law and other laws, and to present a staffing plan” (clause 15.1); they must spend a minimum of \$50,000 per year on data and/or training (clause 15.2). MOGE is encouraging O&G companies to recruit fresh graduates and women. Under similar circumstances in other emerging economies, this competition has driven wage and price inflation, disproportionately impacting low paid employees or the informal segment of the workforce.

<sup>313</sup> In addition to the ILO core labour standards, IFC Performance Standard 2 on Labour and Working Conditions and Guidance Note provides relevant guidance on relevant issues.

- **Local employment during exploration:** Some companies have been told that the local employment rules in the FDI law do not apply during exploration. However, it may create tensions if local communities see companies operating in their area for three - four years with very little local employment.

### Forced Labour and Other Forms of Labour Exploitation

- **Forced labour decline:** While the incidence of forced labour in areas of O&G operations is diminishing, O&G operators should still be vigilant to the potential risks of forced labour related to their operations. There is still the potential for forced labour by the *tatmadaw* in connection with an extractive project to be a driver or at least a contributor to conflict between the Union Government and ethnic groups. The link between O&G operations and forced labour has been almost exclusively via the *tatmadaw* or local authorities conscripting local villagers for portering, either to carry supplies for the military that provides security around extractive operations and related O&G infrastructure like pipelines, or to supply labour to build roads or other infrastructure. As noted above, while the incidence of reported forced labour is decreasing, the ILO is not yet proposing to disband the Forced Labour Complaints Mechanism and change will take time to trickle down, particularly where there are financial, strategic or other advantages to be gained in using forced labour of local villagers.<sup>314</sup>
- **Other forms of labour exploitation:** Myanmar is a least developed country (LDC) with a high degree of rural poverty; uneducated populations; underemployment; many with a keen wish to be part of a changing economy; corruption and a current lack of worker awareness about their rights and few trade unions. Many of the jobs for such local communities will be in unskilled, daily wage jobs, often controlled via third party labour brokers operating either formally or informally. The field assessments indicated labour brokers taking a high percentage of the wages that were to be distributed to workers; basic protections for workers (written contract, defined working conditions, living wage) were often lacking; and long delays in payments to workers (2-3 months during construction) among Myanmar and foreign sub-contractors. In addition, the field assessments indicated that even for longer-term unskilled or semi-skilled employment such as local security guards, existing O&G operators are moving to outsource many non-core jobs. While the prevailing pattern has been one of out-migration from Myanmar to other countries in search of work, as the economy develops, that trend may reverse with migrant workers from surrounding countries entering in search of work, particularly in border regions. Migrant workers are often particularly vulnerable to labour exploitation.<sup>315</sup>
- **Migrant and temporary workers:** The circumstances described above create the possibility of exploitative working conditions and practices that can in some cases fall within the definition of forced labour – where work is undertaken by a person under the menace of a penalty. Workers indicated they are keen for any kind of paid work, so

<sup>314</sup> The ILO reports a reduction in occurrences generally throughout the country but notes that “forced labour remains a problem,” and that the “number of reported cases of forced labour in the private sector is relatively small ... but that this does not necessarily reflect the actual situation as there appears to be a general belief that forced labour is in some way an offence committed only by the Government.” ILO, “[Update on the operation of the complaint mechanism in Myanmar](#)”, GB.319/INS/INF/2 (October 2013).

<sup>315</sup> See the [Dhaka Principles for Migration with Dignity](#).

they are often very reluctant to speak out about what can be exploitative working conditions. Companies will need to pay careful attention to the working arrangements and conditions for day labourers or temporary workers engaged through a third party to ensure that they are not directly linked to situations of exploitation. International labour standards prohibit labour brokers from taking fees from workers for job placements; instead, any placement fees should be paid by the employer. While the Myanmar Government has not ratified this particular international labour convention,<sup>316</sup> it is a global standard in this emerging area of human rights risk that serves a relevant guide for company practice. Employers should set in place a clear recruitment policy for hiring of staff or use of labour brokers; ensure that supervisors and managers are aware of the signs of exploitation; and understand that accepting payments or other inducements from labour brokers or workers is prohibited; monitor the allocation of jobs and use of agencies for signs of suspicious practices; and ensuring that all workers, including temporary workers, have access to the grievance mechanism. The risks of labour rights violations tend to increase with each tier of the supply chain. Most negative human rights impacts tend to occur to those workers in lower-skilled, lower paid, manual labour positions which are temporary or irregular and was often dependent on whether the workers were contracted directly for an O&G operator or for their sub-contractors.

### Child Labour

- **Business partners:** While there is a very low likelihood of child labour in direct O&G operations in skilled operations, given the prevalence and general acceptance of child labour in Myanmar and the difficulties of validating age, companies should be alert to the possibility of child labour being used in supplying products or services, such as in construction or catering, directly linked to their operations. As noted above, assessments will need to include a specific focus on different vulnerable groups, and there are an increasing range of tools available on children to assist companies.<sup>317</sup> (See also [Part 4.6](#) on Groups At Risk)

### Discrimination

- **Female representation in the workforce:** Discrimination against women and girls in education and the workplace is widespread.<sup>318</sup> Educational institutions related to O&G, such as engineering, require female students to have higher marks than their male counterparts. MOGE is encouraging companies to hire female engineers which is an important signal promoting women in non-traditional roles in the sector. The current rate of female employment in the sector is low, as it is in many other countries. Similarly, as in other countries, it will take positive, active steps by employers to increase their percentage of female workers beyond traditional roles in catering and cleaning. (See [Part 4.6](#) on Groups At Risk)

<sup>316</sup> ILO, *C181 - Private Employment Agencies Convention*, 1997 (No. 181).

<sup>317</sup> 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).

<sup>318</sup> For example, in Coca Cola's report to the US State Department on its activities in Myanmar, the company highlighted that it found that women were being paid approximately 11% less than male colleagues for the same work. See: <http://www.ihrb.org/commentary/staff/coca-cola-report-myanmar-operations.html>

- **Ethnic and religious discrimination in the workforce:** Employers need to be aware of the potential for ethnic and religious tensions and discrimination in recruitment and the workplace, as workers' ethnicity/religion will not be readily apparent, particularly to non-Myanmar managers. Inter-communal tensions between Buddhists and Muslims elsewhere mean companies will need to be alert to the potential for discrimination recognising that who represents the company and in which positions, is an issue of high importance.<sup>319</sup> The best way to understand the ethnic make-up of the workplace is challenging; surveys of nationalities in mixed settings may create more tensions than they solve and many Myanmar citizens anyway are of mixed origin or self-identify in various ways. A better approach may be management awareness of the sensitivities, clear company policies on non-discrimination, reinforcement of those messages and modelling an approach to equal opportunities that includes active measures to achieve those outcomes. There are few easy answers on how to address hostility that may spill over into the workplace; specialised expertise and re-emphasising a commitment to non-discrimination are a good place to start.
- **Community composition considerations:** It is also essential that companies are aware of the ethnic composition of communities where they operate and from where they may recruit. One location may have a mixture of ethnicities. For example in Mon State, there may be Mon, Kayin/Karen and even Pa-O close by in addition to Bamar; and in the Rakhine State there are Rakhine Buddhist communities and Muslim communities in the same area. Different ethnicities have different languages and traditions, which need to be taken into account in the workplace.
- **The disabled:** The disabled are an invisible group in the population and even more invisible in the workforce. As in many other countries, it will take positive, active steps by employers to recruit and maintain disabled workers, and making them an integrated part of a workforce not used to disabled co-workers.<sup>320</sup> Where possible, companies may consider incorporating the principles of universal design (defined as the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design). (See also [Part 4.6](#) on Groups At Risk)
- **Lesbian, gay, bisexual and trans-gender (LGBT):** Employers need to be aware of discrimination against LGBT people in the workplace and society more generally, and the fact that same-sex relationships are still criminalised. (See also [Part 4.6](#) on Groups At Risk)

### Health & Safety

- **Accident rate data:** Health and safety are core concerns in O&G operations with company standards among big operators typically far exceeding the basic provisions in the 1951 Oilfields (Labour & Welfare) Act. Unlike many other countries, the accident rate at O&G operations in Myanmar is not publicly available.
- **Health risks:** Given the range of communicable diseases (malaria, TB, HIV/AIDS) in the country, this can pose a risk to operations by affecting the availability of a labour pool and the productivity of the workforce, just as actions by companies involved in an

<sup>319</sup> From IHRB, "[From Red Flags to Green Flags: The corporate responsibility to respect human rights in high risk countries](#)", (2011), pp. 73-76.

<sup>320</sup> See MCRB, Deaf Resources Centre, "[Corporate Social Responsibility and Disability \(CSR-D\) – A Guide for Companies](#)" (Sept. 2014). See also, ILO, "[Disability in the Workplace: Company Practices](#)" (2010).

O&G project can exacerbate the spread of such diseases. Integrating assessment of potential health impacts into ESIA's and other steps (such as health checks – provided the information will not be used for exclusion from employment or any other form of discrimination) can provide relevant information in devising a strategy for workers and the local communities. In many places long-haul truckers have significantly higher rates of sexually transmitted diseases than the host communities. A specific education and training programs for transportation contractors may be necessary if there are a lot of trucking services to be used.

### Labour Rights among Sub-Contractors

- **Business partners:** Local Myanmar companies will need support in meeting a wider range of contracting requirements around quality, health and safety, anti-corruption, etc. Operators and the main contractors should put in place specific contractual requirements together with monitoring, support, and relevant incentives and disincentives with business partners supplying goods and services to prompt uptake and respect for relevant international, national and company standards. As highlighted during the field assessments, health and safety issues were raised by workers of sub-contractors, in lower-skilled, lower paid, manual labour positions working on a temporary or irregular basis where working conditions and preventative measures could be haphazard, with unclear access to operator provided health services or facilities.

## C. Field Assessment Findings

Employment Status
<p><b>Human Rights Implicated:</b> Right to just and favourable conditions of work; right to equal payment for equal work</p>
<p><b>Field Assessment Findings</b></p> <ul style="list-style-type: none"> <li>■ Among workers with sub-contractors, <b>written employment contracts</b> were not always provided, or where there were written contracts that workers were asked to sign, they were not always given a copy to retain for their records.</li> <li>■ <b>Wage slips</b> itemising pay and deductions were not always provided, other than for skilled, permanent staff. <ul style="list-style-type: none"> <li>• One operator has introduced standard requirements for contracts and payslips by its subcontractors.</li> </ul> </li> <li>■ <b>Long-term status as “temporary” staff</b> was common. In order to avoid the costs associated with pensions and social benefits of permanent workers, workers are often held in temporary positions for years, facing worse working conditions than permanent employees and without access to social benefits.</li> <li>■ There were common cases of <b>employment agencies and brokers</b>, which are regularly used during construction phases of O&amp;G projects in Myanmar, and increasingly for other services, <b>taking large placement fees</b> directly from workers in direct contravention of international law and labour standards.</li> <li>■ Operators are not commonly practicing heightened <b>oversight of contractors’</b></li> </ul>

labour standards.

### Working Hours, Wages and Benefits

**Human Rights Implicated:** Right to just and favourable conditions of work; right to an adequate standard of living

#### Field Assessment Findings

- **Temporary daily wage workers** typically work every day possible to maximise income while work is available, thereby exceeding the limits under the labour law.
- **Overtime** pay is very rare in MOGE, though it was paid by many other companies.
- **Awareness of rights to wages and benefits varied considerably.** Many workers admitted to a **very low level of understanding of their rights** vis-à-vis employers or the Government. There was also little to no information regarding labour rights or working conditions shared proactively by most companies with their workers, which will be important as a number of new labour laws, such as the minimum wage law have recently come into force.

### Health, Safety & Environment (HSE)

**Human Rights Implicated:** Right to the highest attainable standard of physical and mental health; right to life, liberty and security of the person

#### Field Assessment Findings

- **HSE practices vary** between companies as well as sub-contractors; some of the international O&G companies and international service providers typically have robust HSE practices. Many operators maintain the same HSE requirements for sub-contractors working on site.
  - Through contractual requirements, monitoring and support, there is an opportunity to build the awareness and skills of local companies around HSE management. One large company does this for their subcontractors.
- Workers in some operations noted a **lack of HSE training or HSE awareness** by supervisor to workers which in some cases led to dangerous worker apathy about the need for careful attention to HSE.

### Freedom of Association & Collective Bargaining

**Human Rights Implicated:** Right to assembly; right to freedom of association and collective bargaining

#### Field Assessment Findings

- **Only three labour** organisations in the O&G sector had been formed across the companies operating within the six project areas visited.
- This appears to be due to a **lack of understanding amongst O&G workers regarding the role of trade unions** (labour organisations), rather than complaints

about active suppression or harassment as has been exhibited in other industries. Independent unions are new in Myanmar and labour is not yet well organised. Workers also generally lacked of awareness about alternatives to trade unions where they could address their grievances.

- One company had the ILO present a pilot session about the concept of union with their workers last year.
- There was a **lack of worker-management engagement** in most companies, and only a few companies provided grievance mechanisms through which workers could raise complaints regarding their jobs and seek a resolution.
- **Unskilled workers tend to be relieved to secure a job at all** due to greater demand for work than supply of jobs available. This leads to a tendency for workers to **refrain from raising workplace and employment related complaints**, such as unpaid or inadequate wages, poor health and safety (H&S) standards, or barriers to unionising.

### Non-Discrimination and Equal & Fair Treatment

**Human Rights Implicated:** Right to non-discrimination; right to work; right to just and favourable conditions of work

#### Field Assessment Findings

- There was a fairly clear and **assumed gender division of roles** (for example regular sentiments of “women aren’t doing these jobs as these are for men”) that was rarely being challenged by local workers or the companies. The extractive sector typically has a very low percentage of women across a wide range of jobs and this was evident across the field assessments.
- **Local communities in some cases noted the tensions that would be created in workplaces if Muslims were hired.** This indicates the high level of challenge in applying a non-discrimination policy in the workforce in Rakhine in particular, though reported discriminatory attitudes are also widespread throughout the country. One company had placed a local Muslim worker offshore as a preventive step at a time of tension.
- The impact of the **influx of other workers from some surrounding countries**, as co-workers and as managers **was less remarked upon** than might be expected; instead comments tended to focus on particular incidents of discriminatory behaviour. However there was a recent well-publicised violent incident between foreign and local workers in a company which resulted in damage to property.

### Provision of Facilities to Workers

**Human Rights Implicated:** Right to an adequate standard of living; right to just and favourable conditions of work; right to non-discrimination

#### Field Assessment Findings

- **Housing** was not consistently provided around construction sites, but was generally

provided in permanent sites. In some sites housing for Myanmar nationals was separate from housing for foreign workers, whereas in other sites, all workers were provided housing together of the same standard.

- Most non-permanent workers stay in camps in order to be available for the daily job allocations each day. The field team also noted that at one site many workers reported having to **construct their own shelters**, the quality of which can be poor and inadequate to keep them dry, warm and protected. As such, workers **experience poor housing quality and sanitation levels**, for themselves as well as their families staying there.

### Forced Labour and Child Labour

**Human Rights Implicated:** Right to freedom from forced labour and servitude; right to freedom from child labour; right to an adequate standard of living; right to education

#### Field Assessment Findings

- Occasional cases have been reported locally by community-based organisations about **forced labour** by local authorities on infrastructure related to O&G and not by companies, but the assessment team did not observe any cases directly.
- The assessment team did not observe cases of **child labour** within any of the sites visited. Nor was this expected, given industry practice and emphasis on health & safety. Child labour is a recognised common phenomenon in the Myanmar but would be more likely to be found in the tea shops and bars near O&G sites.
- **Age verification** of workers was routinely practiced at the projects observed.

### Business Relationships

**Human Rights Implicated:** Right to just and favourable conditions of work

#### Field Assessment Findings

- There was lack of respect for various labour rights, such as working hours and documented contracts among workers in some parts of the **value chain of business relationships**, which took place in both foreign and Myanmar companies.
- The more rigorous control of working conditions at operators is **not consistently carried through to business partners**, even where there may be contractual conditions committing sub-contractors to meeting business partners' standards. A number of operators noted that they have such commitments and monitoring systems in place, though it is often focused on principal, long-term business partners.
- Some companies noted the practice that recruitment agencies or sub-contractors **were taking a disproportionate share of the budget allocated for worker's wages**, pocketing it as profit while leaving workers earning less than minimum or subsistence wages.

**Myanmar Good Practice Examples:**

- **Due diligence on business relationships:** One operator has introduced standard requirements for labour contracts and payslips to be provided to workers by its subcontractors.
- **Awareness raising among workers on labour rights:** One company had the ILO present a pilot session about the concept of trade unions to their workers last year.

**Box 19: Relevant International Standards and Guidance on Labour Issues, and Linked Initiatives in Myanmar****Relevant International Standards:**

- IFC/World Bank Group:
  - [Performance Standard 2 and Guidance Note – Labour and Working Conditions](#)
  - [General Environmental, Health and Safety Guidelines](#)
  - [Environmental, Health and Safety Guidelines for Offshore Oil and Gas Development](#)
  - [Environmental, Health and Safety Guidelines for Onshore Oil and Gas Development](#)
- ILO, [Declaration on Fundamental Rights and Principles at Work](#)
- [UN Guiding Principles on Business and Human Rights](#)

**Relevant Guidance:**

- IFC:
  - [“Good Practice Note: Non-Discrimination and Equal Opportunity”](#)
  - [“Good Practice Note: Workers’ accommodation: processes and standards”](#)
  - [“Measure & Improve Your Labor Standards Performance: Performance Standard 2 Handbook for Labor and Working Conditions”](#)
- IHRB, [“Dhaka Principles for Migration with Dignity”](#)
- ILO:
  - [“Indicators of Forced Labour”](#)
  - [“Combating forced labour: a handbook for employers and business”](#)
  - [“Working Conditions of Contract Workers in the Oil & Gas Industry”](#)
  - [“The Labour Principles of the UN Global Compact – A Guide for Business”](#)
- Verite, [“Help Wanted programme and Fair Hiring Toolkit”](#)

**Myanmar Initiatives on Labour Linked to the O&G Sector:**

- ILO, [initiative Decent Work Country Programme in Myanmar](#)
- ILO, [Forced Labour Complaints Mechanism](#)
- Government of Norway, [Capacity building and technical assistance on implementation of the Freedom of Association Law](#)