Project-Level Impacts

Groups at Risk
In this section:
A. National Context
B. Key Human Rights Implications for the O&G Sector
C. Field Assessment Findings

A. National Context

As noted above, Myanmar is one of the most culturally diverse countries in Southeast Asia, with many ethnic minority leaders believing that the Burman-dominated central Government instituted a policy of “Burmanisation” that suppresses ethnic minority cultures, languages and religions, and treats ethnic minorities as “second-class citizens”. In addition to this complex interplay of ethnic identities, there are several other groups that are also at risk of marginalisation, who 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. O&G operations may potentially have an impact on many of these groups, exacerbating their problems; ensuring that any impacts are neutral; or developing equal opportunity workforces and social investment programmes to support needed infrastructure, services or income generation opportunities for excluded groups.

Religious Minorities

Buddhists and Muslims

The 2008 Constitution provides for freedom of religion, but with a notable exception. Articles 34 and 354 of the Constitution generally provide for freedom of conscience, religion and customs, but subject to a number of restrictions. Restrictions on the basis of security, law and order, and public order and morality are provided for under international law. However, Article 354’s permitted restrictions for “community peace

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353 For a further explanation and discussion of these issues, please see Transnational Institute/Burma Centrum Netherlands reports from 2011 to 2013.
354 Article 34 of the Constitution states that, “Every citizen is equallyentitled to freedom of conscience and the right to freely profess andpractice religion subject to public order, morality or health and to other provisions of this Constitution.” Article 354 states that, “every citizen shall be at liberty...if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility...to develop religion and customs without prejudice to the relations between one national race and another or among national races to other faiths.” See also the United States Commission on International Religious Freedom, “2013 Annual Report” (2013), p 22.
and tranquillity” allows expansive interpretations that provide a low threshold for justifying infringements to the guaranteed right.\textsuperscript{356}

Muslims, who live in many parts of Myanmar, are a minority of the population. In the absence of the March-April 2014 census results, it is not only difficult to give a more precise estimate, it is also an extremely sensitive issue in the light of recent violence and Buddhist fears of an increasing Muslim population.\textsuperscript{357} Anti-Muslim sentiment and discrimination are widespread – not only against the Rohingya,\textsuperscript{358} which is the clearest case, but also against other Muslims in other parts of the country. As noted above, inter-communal violence between Buddhists and Muslims broke out in Rakhine State during June 2012. In its wake, some 143,000 people in Rakhine State remain displaced, many of them in camps, in very poor conditions.\textsuperscript{359} The vast majority of them are Rohingya.\textsuperscript{360} The violence has also affected other areas, particularly Meiktila in the centre of the country, where 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 dozens arrested and wounded, at least two deaths, and a strict curfew being imposed on the city.\textsuperscript{361}

Some members of the Buddhist Sangha (clergy) in Myanmar lead the “969” movement, which claims inter alia that Muslims are trying to take over the country. The “969” movement encourages Buddhists to boycott Muslim businesses, and has some popular support.\textsuperscript{362} Moreover, in the midst of such violence, some Buddhist leaders have called on the Government to enact legislation to “protect” Buddhism and there are currently four proposals that would restrict the following: religious conversion to non-Buddhist religions; inter-faith marriage; non-Buddhist family size; and polygamy. At least one of these – the Religious Conversion Law – has been drafted and is currently with Parliament. The draft Religious Conversion Law requires that anyone wishing to convert to another religion must obtain permission from the township Registration Board on religious conversion. Such a process includes questioning by the board and the issue of a “certificate of religious conversion”.\textsuperscript{363}

\textbf{Other faiths}

People of other faiths also face discrimination and marginalisation. Christians comprise a small minority in the country, but the vast majority of the Chin and Kachin ethnic minorities 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

\textsuperscript{356} Legal Review commissioned by IHRB, Appendix 2 (on file with IHRB).

\textsuperscript{357} 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).

\textsuperscript{358} The Myanmar Government refuses to accept the term ‘Rohingya’ and refers to the population as ‘Bengali’.

\textsuperscript{359} UN Office for the Coordination of Humanitarian Affairs, “Myanmar: Displacement in Rakhine State” (Sep. 2013).

\textsuperscript{360} The Arakan Project, “Brief Overview of the current human rights situation in Northern Arakan/Rakhine State, Myanmar”, (Aug. 2013), on file with IHRB.

\textsuperscript{361} DVB, “Mandalay riots reveal splintered community, complex agendas” (8 July 2014).

\textsuperscript{362} ICG, “The Dark Side of Transition: Violence Against Muslims in Myanmar” (Oct. 2013).

\textsuperscript{363} Draft Religious Conversion Law, unofficial translation on file with IHRB.
freedom, including restrictions 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. Bamar/mixed race Christians also face some restrictions on building churches and holding public ceremonies, although to a lesser degree compared to Christians in conflict zones.\textsuperscript{364}

**Internally Displaced People**

As a result of internal armed conflicts over the last several decades, hundreds of thousands of people have been internally displaced, and others have fled to neighbouring countries. The UN Refugee Agency (UNHCR) estimates that over 490,000 people in Myanmar are internally displaced, the vast majority of them members of ethnic minority groups. Over 230,000 people remain displaced in southeast Myanmar, and some 128,000 refugees live in camps in Thailand near the Myanmar border.\textsuperscript{365} As noted above, there has also been significant internal displacement in Rakhine State due to inter-communal violence, with 143,000 people, the vast majority of them Muslim Rohingyas now in IDP camps.

IDPs are at risk of human rights abuses, including being trafficked into forced marriage or as labourers. They also suffer from food insecurity and often lack access to basic services, such as healthcare and education. Conditions in camps in both the Rakhine and Kachin States are poor. Moreover, internally displaced people (IDP) are at risk of losing their original land, as others may occupy the land in their absence. If the Government and armed ethnic groups can agree a nationwide ceasefire, IDPs and refugees may eventually return to their home villages. However, this poses significant challenges as their land have been claimed by others or may remain seeded by landmines (see Part 4.3 on Land).

**Landless**

See Part 4.3.A on Land for a brief overview of landlessness.

**Women**

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 and as a result, are disproportionately affected by poverty.\textsuperscript{366} Girls are often not able to attend school, which means that women are on the whole are less educated, leading to a lower literacy rate. In many remote mountainous border regions, illiteracy among women is 80%.\textsuperscript{367} Without access to education, women cannot access the job market and remain in low paid positions and are more prone to exploitation.

Myanmar acceded to the UN Convention against All Forms of Discrimination against Women (CEDAW) in July 1997. The 2008 Constitution does not include an effective constitutional guarantee of substantive equality; Article 350 of the 2008 Constitution


\textsuperscript{367} Burma Women's Union, “Women's issues in Burma” (2012).
guarantees that women have the enforceable right to the “same rights and salaries” as that received by men “in respect of similar work.” The use of “similar work” will not achieve the same equalities outcome as the principle of equal pay for work of equal value used in CEDAW. In practice, women do not receive equal pay for work of equal value. Although the law guarantees equality between men and women, enforcement is weak and women are underrepresented 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. The ADB is supporting the Government in carrying out a gender situational analysis that will provide a far more detailed assessment of the status of women in the country.

Maternity leave is provided to female employees covered by the Social Security Act 1954 for six weeks before and eight weeks after the expected date of childbirth on the condition that the employees have to have contributed 26 weeks to the social insurance system during the 52 weeks before confinement. Sexual harassment is prohibited by the penal code and carries a penalty of fines or up to one year's imprisonment. However, such crimes go largely unreported due to the sensitivity of the topic in Myanmar.

Myanmar women's groups and CSOs have strongly protested against the proposed Interfaith Marriage Law in particular as discriminating against women and have also stated that “faith based extremist nationalism can destroy state peace and incite conflict.” Several individuals, including women, who have protested against these proposed laws have received anonymous death threats via Facebook and on their mobile phones. International organisations have also objected to this law, which reportedly would require people holding other beliefs to convert to Buddhism in order to marry a Buddhist, and would require Buddhist women to receive permission from their parents to marry a non-Buddhist man. Men would not need such permission.

Children

The Myanmar Government ratified the 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 Pornography in January 2012 and ILO Convention 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 years rather than 18 years, and sets the minimum age of criminal responsibility at seven years old. Although the Government has

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368 Myanmar Legal Framework Background Paper for IHRB, p 83, on file with IHRB.
373 See for example “Statement of Women’s Groups and CSOs on preparation of draft Interfaith Marriage Law”, signed by 97 groups, 5 May 2014, on file with IHRB.
374 See The Irrawaddy, “We Will Not Back Down” (19 June 2014).
376 UN Treaty Collection
stated that it will reform the law to bring it into line with the CRC, this has reportedly not yet occurred.

Child labour is widespread and visible throughout Myanmar in various sectors (see Part 4.4 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. 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. The 1993 Child Law classifies children between the age of 14 and 17 as youths, and allows them to engage in “light duties”. However, “light duties” is not defined. Children are frequently victims of economic exploitation, as employers generally pay them less despite their high contribution of labour.

Although the recruitment of under-18s into the military is illegal and the Government is working with the ILO to eliminate this practice, both the Myanmar army and ethnic minority armed groups continue to recruit and use child soldiers. Ethnic minority children are adversely affected by ongoing internal armed conflict in Kachin and northern Shan States, and by inter-communal violence between Buddhist and Muslim communities in Rakhine State and elsewhere. Tens of thousands are internally displaced, many in very poor conditions, and face disruption to their education and family lives, with a heightened risk of them becoming involved in child labour, including being trafficked.

The 2008 Constitution reaffirms the State’s responsibility to provide free basic education and health care for children. The majority of children attend primary school, but the net completion rate is only 54%. Only 58% of children attend secondary school. 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.

**Persons with Disabilities**

Myanmar acceded to the UN Convention on Disabilities in December 2011. The Government entity responsible for people living with disabilities is the Ministry of Social Welfare. Several international and Myanmar aid agencies are actively working to assist and advocate for disabled people, including through working with local CSOs. A recent study noted that people with disabilities suffer from widespread discrimination and exclusion within their communities, families, and from society as a whole. Disabled

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381 US State Department, above.
382 UNICEF, above. pg. 4-5
383 UNICEF, above, p. xviii.
386 Myanmar Ministry of Social Welfare.
There is a severe lack of education for people living with disabilities; a Myanmar Government study reported that 50% of disabled people received no education whatsoever. The survey also reported that 85% of disabled people were unemployed. There have been very few employment training programs for people with disabilities, and there is a much greater need for more vocational training and employment, supported by funding. A law on disabilities was drafted by a group of disabilities advocacy organisations and the Department of Social Welfare, and is now with the Attorney General’s Office, amidst hopes that the law will be passed by Parliament by the end of 2014. (See also Part 4.4 on Labour.)

Lesbian, Gay, Bisexual and Transgendered (LGBT) People

Article 377 of the Penal Code, a British colonial law, criminalises any activity that the authorities decide constitutes “carnal intercourse against the order of nature.” The LGBT Rights Network in Myanmar has called for the abolition of this article, which can be used against people in same-sex relationships. The US State Department’s 2013 Annual Human Rights Report states that LGBT people face discrimination in employment, including denial of promotions and dismissal. Activists reported limited job opportunities for openly gay people, and general societal lack of support. (See also Part 4.4 on Labour)

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

Business Leadership

- **Impacts on investment:** Societal discrimination and exclusion are not unique to Myanmar, but such discrimination and exclusion, particularly with respect to Muslims, could become even more entrenched and overt, thus going in the opposite direction of the general trend of openness signalled by the recent political changes. There has been widespread condemnation of the recent intercommunal violence and violence against Muslims, the Government’s inadequate response to the violence, and the extremely poor conditions in IDP camps in Rakhine State, which is the responsibility of the Union Government to correct. Businesses, collectively and individually, could highlight the impact that communal violence has on the investment climate.

- **Modelling 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’ 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 modelling equal opportunity and

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389 Lawyers’ Collective, “LGBT Section 377” (23 November 2010). This Penal Code is still used by many countries formerly ruled by the British, including India, Malaysia, and Myanmar.
391 Even the Government’s own investigations have been critical of the response. After March 2014 mob violence against international humanitarian organisations led to the evacuation of scores of aid workers from Rakhine State, the Government appointed a body to investigate the situation, which found that the security forces’ response to the violence had been “sluggish”. Republic of the Union of Myanmar President’s Office, “Union Government to fully Protect aid groups in Rakhine State” (8 April 2014).
demonstrating the benefits. This is an important role that businesses of all sizes in the O&G 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.

Understanding and Addressing Differentiated Impacts of Projects

- **Identification and engagement**: A first step in understanding what potential impact a project may have on groups at risk is to identify who may be in the potential workforce and surrounding community from these various groups. This assessment may require specialist sociological and health expertise and methods to identify, locate and engage vulnerable individuals or groups, which may often need to be done separately, and sometimes quietly. There is long-standing guidance on consulting women separately, and increasing guidance on engagement with other groups as well. As noted previously, in some cases, one community may even object in principle to consultations with another community, due to concerns that this may give legitimacy to that community and its viewpoints. Moreover, local authorities are often not neutral. Such situations need to be handled with great delicacy, and require a detailed understanding of local dynamics.

- **Differentiated assessments and prevention**: The objective of an assessment is to better understand how impacts may affect each potential group at risk, and in particular, understanding who could experience adverse impacts from the proposed project more severely than others. This should be done using disaggregated data and community consultations to identify, assess and discuss potential impacts and measures to appropriately avoid, minimise, mitigate or compensate for impacts. This may require differentiated prevention or mitigation measures to address the greater severity of impacts. Groups at risk should be able to benefit from project opportunities equally with others and this too may require differentiated benefit-sharing processes and levels. For example, if job training is offered, there may be a need for specialised or separate training provided for individuals or groups from any of these groups who might lack the necessary skills to find a job with the project and may face exclusion from the dominant group. Monitoring of project impacts should track impacts on these individuals or groups on a disaggregated basis.

**Labour**

See [Part 4.4](#) on Labour for a discussion on addressing discrimination in the workplace.

**Women & Children**

- **Children**: While the usual and often exclusive focus is on child labour when discussing potential impacts on children, extractive projects can have a wider set of impacts on children, as a consequence of their physical and cognitive immaturity. For example, children are at greater risk from environmental hazards than adults due to their physical size, developing bodies, metabolic rate, natural curiosity and lack of knowledge about the threats in their environment. Children and youth are often left out of consultation processes that would enable them to express their views on the impact of land acquisition on their future. Male relatives or community members may override women and child-headed households in consultations and securing benefits. Security
staff may need to be specifically instructed in respecting children’s rights such as prohibitions on requiring children to carry out unpaid personal services or using physical punishment of children. There is an increasing range of tools regarding children available to assist companies in identifying and understanding potential impacts.392

**Women:** While community members did identify concerns about sexual harassment of women in connection with an influx of male workers, particularly foreign male workers, no community members spoke of sexual exploitation of children around operations during the field assessments, which is often a taboo subject. Sexual exploitation, including of children, is a common phenomenon in connection with extractive projects that tend to attract large groups of men around peak periods such as exploration and development phases. Awareness raising among workers, inclusion of prohibitions on sexual contact with children in company codes and contracts, monitoring by company security forces and access to company level grievance mechanisms are all useful steps.

### C. Field Assessment Findings393

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<th><strong>Human Rights Implicated:</strong></th>
<th>Right to non-discrimination; right to work; right to just and favourable conditions of work</th>
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<tr>
<td><strong>Field Assessment Findings</strong></td>
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<td>- <strong>There was a fairly clear and assumed gender division of roles</strong> (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.</td>
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<td>- <strong>While there is a cultural reticence to raise difficult issues, particularly those related to personal privacy, a few cases of sexual harassment were brought to the team’s attention.</strong> The cases most often revolved around claims involving foreign men, rather than locals, including one complaint that resulted in a foreign supervisor being returned to his country of origin.</td>
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<td>- <strong>In principle, there is no legal impediment to providing compensation to women or women-headed households</strong>, but households are registered in the husband’s name and therefore in general compensation was handed over to the husband in the family. However, widows or single mothers would also be able to obtain compensation same way as male headed households.</td>
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<td>- <strong>Despite the presence of security guards, women indicated a rising sense of insecurity in some areas of O&amp;G operations</strong>, in light of the presence of the often predominantly male workforce, with a particular concern about foreign male workers.</td>
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393 The field assessment teams did not access to Muslim IDPs in and around Kyaukphyu so were not able to interview those living in the camps.
Some community members remarked with concern on the marked rise of bars in the areas of O&G operations. They noted drinking at all hours of the day and a particular concern about young adolescents drinking in the bars. There was a worry that the introduction of readily available alcohol into the community would lead to a decrease in security with fights and petty crimes.

### Child Labour

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

Field Assessment Findings

- 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 by the projects observed.

### Education

Human Rights Implicated: Right to education

Field Assessment Findings

- Cases were observed of schools being built in host communities as part of community development projects which in principle is beneficial to children and families. However, they were not always consultation with local communities about the schools.
- **In some cases, the Government was not able to provide sufficient number of teachers for these schools.** There is a nationwide shortage of primary school teachers and problems of retention in remote areas. As a result the buildings were not used or under utilised.
- Community skills building programmes were not observed with one exception.
- Several companies are providing scholarships for secondary or higher education, others are supporting early childhood and vocational training programmes.

**Myanmar Good Practice Examples:**

- Cases were observed of schools being built in host communities as part of community development projects which in principle is beneficial to children and families.
- Several companies are providing scholarships for secondary or higher education, others are supporting early childhood and vocational training programmes.
### Box 21: Relevant International Standards and Guidance on Engaging with Groups at Risk, and Linked Initiatives in Myanmar

#### 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:
- 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”
- IFC, “Good Practice Note, Non-Discrimination and Equal Opportunity”
- IFC, “Gender Dimensions of the Extractive Industries”
- ILO, “Working Conditions of Contract Workers in the Oil & Gas Industry”
- ILO, “Disability in the Workplace - Company Practices”
- 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’”

#### Myanmar Initiatives on Groups at Risk Linked to the O&G Sector:
- European Union, Towards improved services delivered by local associations to disabled people in Myanmar