

# Introduction



# INTRODUCTION

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

In countries such as Myanmar, which is 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, DIHR, IHRB and MCRB are carrying out a series of Sector Wide Impact Assessments (SWIA) of key sectors of the Myanmar economy. The first published SWIA focussed on the Oil and Gas sector<sup>1</sup>.

This report presents the findings of a SWIA of the human rights impacts of Tourism sector in Myanmar. It was conducted by the MCRB in collaboration with DIHR and IHRB between August 2013 and January 2015, using both desk-based and field-based research.

The scope of a SWIA encompasses 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 steps.

Since a SWIA is a new concept, for the sake of completeness, the report is extensive 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 use elsewhere. 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. For those unfamiliar with international standards, we have given extensive references to the relevant standards.

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<sup>1</sup> [Myanmar Oil and Gas, Sector-Wide Impact Assessment, September 2014](#)

Readers, particularly from business operating in the tourism sector, who are keen to understand the immediate implications for them are encouraged to read the section entitled 'Recommendations to Tourism Businesses' in Part 5.2.

## B. Why a SWIA on Tourism in Myanmar?

Myanmar has recently seen an unprecedented growth in international tourist arrivals. Visitor numbers surpassed the 1 million mark in 2012 and 3 million arrivals per year in 2014<sup>2</sup>. However arrival statistics do not distinguish accurately between types of visitor and some in the Myanmar tourism industry question the 3 million figure and consider more accurate trends could be taken from analysing foreign visitors to the Shwedagon and Bagan<sup>3</sup>. The total number of foreign tourists visiting between 2013 and 2020 is projected to be at least 20.4 million, and 29.2 million domestic tourists<sup>4</sup>.

The Government of Myanmar wants the country to become a prime tourism destination<sup>5</sup> and tourism bears a significant potential for economic and human development. At the global level, the travel and tourism sector contributes to 9.5% of the GDP, and one out of 11 jobs on the planet is linked to tourism<sup>6</sup>. Tourism impacts on society in many different ways: this labour-intensive sector provides employment and revenues, necessitates infrastructure development and construction of hotels and recreational areas, and entails interaction between the local populations and visitors, both foreign and domestic. As witnessed in many countries, including in South East Asia, the effects of large-scale tourism can have dramatic effects on society. Moreover the Myanmar government is keen to develop new destinations for tourism across the country including in ethnic areas or post-conflict areas.

This Tourism SWIA looks at different segments within tourism including the hotel sector, tour operators and tour guides, restaurants, souvenir shops and airlines. These segments of the tourism value chain were selected as it was perceived that they have the most actual and potential positive and negative impacts on society and environment. A broader description of the tourism value chain can be found in Section 3.

This SWIA aims to:

- **Inform companies** about the overall impacts of their sector on the country and help them understand the potential impact of specific operations, so that they can take those into account when conducting due diligence including through environmental and social impact assessments.
- **Provide Government and Parliamentarians with analysis and targeted recommendations** on shaping and adapting policy and law making, licensing and

<sup>2</sup> [Record arrivals shine light on tourism weakness, warns MTF official](#), *Eleven Media*, 15 December 2014.

<sup>3</sup> [Why Myanmar's tourist numbers don't add up](#), *Myanmar Times*, 19 January 2015.

<sup>4</sup> [JICA expects 20.4 million tourists to visit Myanmar by 2020](#), *Eleven Media*, 17 December 2014.

<sup>5</sup> [Framework for Economic and Social Reforms Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan](#).

<sup>6</sup> [WTTC World 2014 Economic Impact Report](#), World Travel and Tourism Council.

other initiatives to prevent and mitigate harms and enhance the potential for positive outcomes.

- **Support local communities** to understand and engage on tourism projects in their areas in an informed way.
- **Enable development partners to align their support** and technical assistance to the sector so that human rights are better respected and protected.
- **Build the capacity of civil society, trade unions and media** to participate in policy development and project planning and to leverage international standards and approaches in their interventions.

## C. The Reference Framework for the SWIA

This SWIA report does not address technical operating standards for the tourism industry. Instead it focuses on the international standards relevant to responsible business conduct, particularly with respect to the impacts of business on human rights. These include direct human rights impacts, as well as other types of impacts that can indirectly impact human rights, such as environmental and social impacts, impacts on wider governance issues, including transparency and corruption, and the accountability systems needed to address those 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 uses as particular references the following international standards:

- The [UN Guiding Principles on Business and Human Rights](#) (“the Guiding Principles” or “UNGPs”)<sup>7</sup>
- The [OECD Guidelines on Multinational Enterprises](#) (which apply to companies domiciled in an OECD country and operating in Myanmar).<sup>8</sup> The human rights chapter of the OECD Guidelines on Multinational Enterprises is aligned with the UN Guiding Principles.
- The **safeguard policies of international financial institutions** (Asian Development Bank and World Bank Group), and in particular, the **IFC Performance**

<sup>7</sup> [The UN Guiding Principles on Business and Human Rights](#), United Nations, June 2011.

<sup>8</sup> [OECD Guidelines for Multinational Enterprises](#), Organization for Economic Cooperation and Development, 2011 edition.

[Standards](#)<sup>9</sup> and [Environmental, Health and Safety \(EHS\) Guidelines](#).<sup>10</sup> The IFC Performance Standards and EHS Guidelines are designed to be applied by the private sector. They comprise detailed standards for many areas relevant to tourism operations. They specifically cover and are aligned with most human rights standards.

- [ISO 26000 and the UN Global Compact](#),<sup>11</sup> which are aligned with the UNGPs.

As the Tourism SWIA is particularly focused on human rights, the [UN Guiding Principles on Business and Human Rights](#) are its primary benchmark. The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011 and are now an authoritative global reference point on business and human rights. The UNGPs are applicable to all internationally recognized human rights. At a minimum this means business must ensure that its activities do not infringe the human rights set out in the [International Bill of Human Rights](#) (comprised of the UN Declaration on Human Rights<sup>12</sup>, International Covenant on Civil and Political Rights<sup>13</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>14</sup>), principles concerning fundamental rights set out in the International Labour Organization's [Declaration on Fundamental Principles and Rights at Work](#),<sup>15</sup> as well as other relevant human rights instruments.<sup>16</sup>

The UNGPs are intended to provide operational guidance to States and business for the implementation of the [“Protect, Respect and Remedy” Framework](#), which clarifies and articulates the complementary but distinct roles of States and business in protecting and respecting human rights.

The Framework is based on three pillars:

- **The State duty to protect** rights-holders against human rights abuses by third parties, including businesses, through effective policies, legislation, regulations and adjudication. States must prevent, investigate, punish and redress human rights abuses that occur as a result of domestic business operations.
  - The Tourism SWIA provides an analysis that could help inform the development of law, policy and administrative procedures. Foreign governments supporting economic development in Myanmar can also use the SWIA to better understand

<sup>9</sup> [IFC Performance Standards](#), International Finance Corporation, World Bank Group, 2012 edition.

<sup>10</sup> [IFC Environmental, Health and Safety \(EHS\) Guidelines](#), International Finance Corporation, World Bank Group, 2007.

<sup>11</sup> The [UN Global Compact](#) is based on the same core international standards as these other standards and therefore is a relevant reference, but does not provide as specific guidance so less reference is made to it in the SWIA.

<sup>12</sup> 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.

<sup>13</sup> [The International Covenant on Civil and Political Rights](#), UN General Assembly, 16 December 1966, United Nations, *Treaty Series*, vol. 999, p. 171.

<sup>14</sup> [The International Covenant on Economic, Social and Cultural Rights](#), UN General Assembly, 16 December 1966, United Nations, *Treaty Series*, vol. 993, p. 3.

<sup>15</sup> [The International Labour Organization's Declaration on Fundamental Principles and Rights at Work](#), International Labour Organization, 1998.

<sup>16</sup> [The Core International Human Rights Instruments and Their Monitoring Bodies](#).

the human rights impacts of the tourism sector in Myanmar, and align their foreign direct investment support and policies.

- **The corporate responsibility to respect** human rights, meaning that companies should avoid infringing on the human rights of others and address negative impacts with which they are involved. Companies must prevent, mitigate and, where appropriate, remedy human rights abuses that they cause or contribute to and must seek to prevent or mitigate impacts related to their operations, products or services through business relationships, even if these impacts have been carried out by suppliers or business partners.
  - The SWIA should assist tourism 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, through both judicial and non-judicial means, should be provided.
  - While the Tourism SWIA is not a comprehensive review of rule of law and access to justice in Myanmar, it is intended to support workers, local communities and other affected stakeholders 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 adverse impacts, so 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 organizations, have all called for “responsible business” in Myanmar. 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).<sup>17</sup> 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.”<sup>18</sup>

<sup>17</sup> [OECD Investment Policy Reviews: Myanmar 2014](#), OECD, March 2014.

<sup>18</sup> [Myanmar Welcomes International Support for Responsible Investment](#), ASEAN Secretariat News, March 2014.

**Box 1: Recommendations made by the OECD as part of the Myanmar Investment Policy Review Chapter on Responsible Business Conduct (RBC)<sup>19</sup>**

- 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 SEEs, conform to the new standards of behaviour and prosecute lawbreakers
- Expand the role of civil society (labour unions, local community organizations) to help ensure that businesses obey the law
- Prepare sectoral master plans which include RBC (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 OECD Guidelines for Multinational Enterprises. Require foreign investors receiving a permit from the MIC to commit to these principles.

Thus at the highest level of Government 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, 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.

International companies operating in Myanmar are expected to act as industry leaders on environmental and social performance. Home governments can 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

<sup>19</sup> [OECD 2014](#), *op. cit.*, p. 32.

social responsibility.<sup>20</sup> In 2013 the G8 welcomed the government's commitment to responsible investment in Myanmar.<sup>21</sup> However the US's Burma Responsible Investment Reporting Requirements<sup>22</sup> are the only example to date of explicit home country requirements on businesses investing in Myanmar. They are intended to prompt US businesses entering the country to consider and address key risks upfront. Some home countries have however introduced general responsible business expectations of their companies, which are not Myanmar specific.<sup>23</sup> Chinese companies are expected to follow Chinese government guidelines that refer to meeting international standards<sup>24</sup>. Investors are demanding information on company actions in Myanmar, and research providers are now providing specialised information on this.<sup>25</sup>

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.”<sup>26</sup> To fully understand the direct and indirect risks that arise from weak governance, enhanced due diligence is needed to understand and manage those risks, something this SWIA is intended to support companies in doing<sup>27</sup>.

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 as on broader issues that can affect the business environment and society such as peace, security, human rights, good governance.

<sup>20</sup> [Council conclusions of 22 July 2013 on the Comprehensive Framework for the European Union's policy and support to Myanmar/Burma](#), Council of Europe. 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.

<sup>21</sup> [G8 Foreign Ministers' meeting statement](#), UK Foreign and Commonwealth Office, April 2013.

<sup>22</sup> [Burma Responsible Investment Reporting Requirements](#), US Department of the Treasury, Office of Foreign Assets Control (OFAC), 2012.

<sup>23</sup> For example, the UK National Action Plan: [Good Business Implementing the UN Guiding Principles on Business and Human Rights](#), September 2013. A list of all national action plans is available on the [UNOHCHR website](#).

<sup>24</sup> 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 (available [here](#)) 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 organizations and multilateral financial institutions. 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).

<sup>25</sup> [New service enables investors to manage conflict-related investment risks in Burma/Myanmar](#), EIRIS, May 2014.

<sup>26</sup> [An Australian perspective on human rights, conflict risk and investment](#), EIRIS, June 2014.

<sup>27</sup> [From Red Flags to Green Flags. The Corporate Responsibility to Respect Human Rights in High-Risk Countries](#), IHRB, 2011, p. 21.

## E. The Corporate Responsibility to Respect Human Rights in Myanmar

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### Box 2: 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**. This includes:
  - **Identifying and assessing** actual and potential impacts
  - **Acting on and integrating** the assessment findings into a management plan for operations
  - **Tracking and monitoring** performance in managing impacts
  - **Communicating** that performance to relevant stakeholders
- Provide or cooperate in **remediating** actual impacts caused or contributed to, and set up or participate in operational level grievance mechanisms 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<sup>28</sup>, and also contributes to establishing a level playing field.

### Box 3: Business Relationships in the Tourism Sector

This SWIA looks at both operations of multinational companies and local companies, and highlights human rights impacts of small and large companies. Foreign investments in tourism in Myanmar might take the form of wholly foreign-owned or a joint venture with a local partner. In many cases, multinational companies, such as international hotel groups, will enter into joint ventures with a local company and in any case will work with local contractors and suppliers, in particular for services such as transportation, cleaning and laundry, security, catering, gardening etc.

The UN Guiding Principles make it clear that businesses’ responsibility to respect human rights encompasses not only impacts they are causing or contributing to through their own activities but also impacts they are linked to through business relationships. This

<sup>28</sup> 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, p. 18.

means that businesses will need to identify and address adverse impacts of their local business partners.

Myanmar companies are at very early stages in the area of corporate responsibility, and many lack transparency<sup>29</sup>. Some of the largest Myanmar companies operating in a wide array of sectors, including in tourism, are also the most controversial. A number of companies or owners of major companies still remain on the US list of Specially Designated Nationals<sup>30</sup>. Enhanced due diligence will thus be required from international companies in the tourism sector:

- **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.
- **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, 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 governance<sup>31</sup> practices amongst Myanmar companies and share policies and practices on managing environmental, social and human rights impacts.<sup>32</sup>

## F. SWIA Methodology

### The SWIA Design

The methodology for the SWIA has been developed by DIHR and IHRB in cooperation with MCRB. [Annex A](#) provides more details.

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). 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 (see Box 5 for a standard mitigation hierarchy). HRIA are grounded in EIA/SIA

<sup>29</sup> [Transparency in Myanmar Enterprises](#), Myanmar Center for Responsible Business, July 2014.

<sup>30</sup> [Burma Sanctions](#), US Department of the Treasury.

<sup>31</sup> OECD (2014), *op. cit.*, p. 269.

<sup>32</sup> [State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships](#), IHRB, December 2013.

methodologies but look at potential impacts through a human rights lens and using international human rights standards as a reference framework.

This SWIA, building on existing impact assessment and management techniques and on the UN Guiding Principles, emphasizes 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. Myanmar is undergoing rapid changes so companies operating in the sector will need to be well-equipped to assess and manage change.

#### Box 4: SWIA Mitigation Hierarchy

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

- first to anticipate potential adverse impacts in order to avoid them,
- where avoidance is not possible, then to minimize
- where residual impacts remain, to restore
- where other mitigation approaches are neither possible nor fully effective, to remediate impacts or compensate.

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 levels

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

- **Sector level:** These are broader, 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 tourism sector in Myanmar. The findings represent common project level impacts that are relevant to tourism 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:** The presence of numerous tourism companies operating in the same area may give rise to cumulative impacts on the 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 will likely lead to cumulative impacts and identifies options for collective sectoral action to address the impacts observed in and predicted for Myanmar.

Part 4 of this report describes impacts at the cumulative and project level relating to eight different areas.

#### Box 5: SWIA – Three Levels of Impact

