



Sector-Wide Impact Assessment

Myanmar Oil & Gas Sector-Wide Impact Assessment Executive Summary



The Myanmar Centre for Responsible Business (MCRB) was set up in 2013 by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, capacity, and dialogue amongst businesses, civil society organisations (CSO) and governments to encourage responsible business conduct throughout Myanmar. Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.

© Copyright Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB), and Danish Institute for Human Rights (DIHR), September 2014.

Published by MCRB, IHRB and DIHR.

All rights reserved. MCRB, IHRB and DIHR permit free reproduction of extracts from this publication provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to the headquarter addresses below. Requests for permission to reproduce and translate the publication should be addressed to MCRB, IHRB and DIHR.

Myanmar Centre for Responsible Business
15 Shan Yeiktha Street
Sanchaung, Yangon, Myanmar
Email: info@myanmar-responsiblebusiness.org
Web: www.myanmar-responsiblebusiness.org
or www.mcrb.org.mm

Institute for Human Rights and Business (IHRB)
34b York Way
London, N1 9AB
United Kingdom
Email: info@ihrb.org
Web: www.ihrb.org

Danish Institute for Human Rights (DIHR)
Wilders Plads 8K
1403 Copenhagen K
Email: info@humanrights.dk
Web: www.humanrights.dk



Acknowledgements

The partner organisations would like to thank the Governments of Denmark, Ireland, Netherlands, Norway, Switzerland and United Kingdom for their on-going support to MCRB. IHRB would also like to give specific thanks to the General Electric Foundation for its support in this work.



The partner organisations would also like to thank all those who participated in the field assessments across Myanmar, and in the March and April 2014 consultations on the draft SWIA report. They also thank the Union Government, as well as the Governments of Magway Division, Rakhine State, Shan State, and Tanintharyi Division, for their support in the research phase.

Particular thanks are also due to PeaceNexus Foundation and Dr Richard Horsey for their support and comments on the conflict dimensions of the drafts.

The report was written by: Margaret Wachenfeld, Donna Guest and Haley St. Dennis of IHRB, together with Vicky Bowman and Thi Thi Thein of MCRB, with important contributions from Allan Jorgensen, Frank Seier, Tulika Bansal, and Elin Wrzoncki of the Danish Institute for Human Rights.

The team would also like to recognise the contributions of the MCRB oil & gas field team: Research Leader Aung Kyaw Soe and researchers: Kyaw Thura, Khin Moet Moet Myint, Sandar Cho Oo, Hlaing Min Oo, Thet Naing Oo and Ohmmar Swe. The research also draws on background papers developed for the MCRB by Delphia Lim, Ross Wilson, Chandler Vandergrift and Andie Lambe.

Contents of the full report

List of Terms and Abbreviations	5
List of Boxes	6
Executive Summary	6
PART 1: INTRODUCTION	6
PART 2: GOVERNMENT STRUCTURE & LEGAL FRAMEWORK	14
PART 3: SECTOR-LEVEL IMPACTS	28
PART 4: PROJECT-LEVEL IMPACTS	45
4.1 Stakeholder Engagement & Grievance Mechanisms	72
4.2 Communities	84
4.3 Land	99
4.4 Labour	115
4.5 Ethnic Minority Groups / Indigenous Peoples	129
4.6 Groups at Risk	140
4.7 Security	151
4.8 Environment	160
PART 5: CUMULATIVE-LEVEL IMPACTS	172
PART 6: REGIONAL CONFLICT ANALYSES	179
6.1 Rakhine	180
6.2 Tanintharyi	183
PART 7: RECOMMENDATIONS	186
7.1 to the Government of Myanmar	189
7.2 to Companies Operating in Myanmar's O&G Sector	196
7.3 to Civil Society	204
7.4 to Development Partners / Home Governments	205
7.5 to Investors in Myanmar's O&G Sector	207
7.6 on Cumulative Impacts	208
Annex to the Recommendations: Suggested Changes to the Model PSCs	209
Annex A: Additional Information on SWIA Methodology	214
Annex B: O&G Operations and Operators in Myanmar	225

EXECUTIVE SUMMARY

Myanmar is currently facing a rapid increase in investment in its oil and gas (O&G) sector with the award of 16 onshore and 20 offshore blocks in the space of 12 months in 2013-2014. Even though the country is emerging from decades of ethnic conflict, authoritarian rule and economic isolation it is, and will remain for some time, a high-risk country with poor governance. It is highly vulnerable to the 'resource curse'. Responsible business conduct in the O&G sector in Myanmar therefore requires enhanced due diligence to determine what impacts business activities may have on society, including on human rights. This must include robust approaches to managing those impacts in a manner that provides benefit to Myanmar, its people and business alike.

The Myanmar Centre for Responsible Business (MCRB) has conducted a sector-wide impact assessment (SWIA) on Myanmar's O&G sector in partnership with its co-founders, the Institute of Human Rights and Business and the Danish Institute of Human Rights, to provide guidance to underpin responsible business conduct in the sector. The SWIA draws on established environment and social impact assessment methodologies, but applies a human rights lens. The scope of a SWIA goes beyond a particular project. It is about a whole sector and involves assessing not only impacts on individuals and groups that may arise from particular projects but also the potential for the sector's impact on society as a whole. It therefore looks at impacts on three levels: (i) sector-level impacts that covers the aggregate impacts of the sector and paints the "bigger picture" of the interaction between the sector and Myanmar society (**Part 3**); (ii) project level impacts (**Part 4**) that cover eight areas of common project level impacts: stakeholder engagement and grievance mechanisms; communities; land; labour; ethnic minority groups and indigenous peoples; groups at risk; security and the environment; and (iii) cumulative level impacts arising from the combined impacts of O&G – and potentially other economic – activities in the same area or timeframe (**Part 5**). The SWIA is based on both desk-based and field-based research in six locations throughout Myanmar which have already experienced O&G related investment. It includes in-depth analysis of existing Myanmar policy and legal frameworks as well as the challenging historical, political and economic context that is reflected throughout the SWIA.

The SWIA highlights relevant international standards of responsible business conduct, particularly from the United Nations (UN), the International Finance Corporation (IFC) and the Organisation for Economic Cooperation and Development (OECD). It makes recommendations on how these standards can be incorporated into policy-making and practice, as the SWIA's objective is to help maximise the positive and minimise the negative outcomes of the O&G sector in Myanmar at a time of increased investment, by pointing the way towards how to achieve responsible business conduct. The intended audiences are multiple: the Myanmar Government, companies in the O&G sector, civil society including the Myanmar media, development partners and investors. The analysis and the recommendations targeted to each intended audience will enable each to take steps to prevent and mitigate risks and amplify positive outcomes for the sector through changes in policy, law, contracts, investment choices and operations as relevant.

The SWIA can assist companies in their 'human rights due diligence' which they are expected to conduct in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs). It provides detailed analysis for businesses to inform project level Environmental and Social Impact Assessments (ESIA), and equally importantly, the development of appropriate Environmental and Social Management Plans to manage risks and impacts

throughout operations, both relatively new concepts in Myanmar. The SWIA encourages companies to undertake ESIAAs which address the broad range of their potential impacts on the environment and society, beyond what may be strictly required by domestic law to ensure that the assessments effectively capture the full picture.

It is hoped that this SWIA offers a common analysis to underpin the ESIAAs that need to be conducted to make them more efficient and consistent and reducing duplication of effort. It is also intended to support the Myanmar Government and civil society organisations (CSOs) in their roles as regulators and monitors of company performance, and help them ask the right questions of companies. Beyond ESIAAs, the SWIA highlights human rights considerations to be incorporated into other types of relevant due diligence, for example for the business relationships O&G operators will need to establish.

Four main themes emerge from the report specific to Myanmar in 2014. These are analysed in more depth in the sector and project level analysis.

The first is that engagement, information and genuine two-way communication by business with stakeholders has historically been almost completely absent, leading to mistrust, misunderstanding and occasionally conflict. Businesses, whether those already present or investing for the first time, need an in-depth understanding of local priorities and concerns, through greater engagement with and accessibility to workers, local communities, national level stakeholders and the local and national media. Appropriate engagement from the start of relationships with workers and communities matters because it demonstrates respect, where, until recently, they have often experienced either neglect or reprisals for complaints. Furthermore, the lack of judicial and non-judicial mechanisms for effective resolution of those complaints means that constructive and responsible approaches to establishing operational mechanisms to resolve grievances will be even more important.

Second, Myanmar's extractive industries have become intimately entwined with ethnic conflict over the last few decades. The desire of ethnic minority groups for more control over and benefit from natural resources in their areas has been one of the key drivers of conflict and demands for constitutional change. Currently ethnic minorities see very little benefit from O&G extraction in their areas. The extractive sector is consequently pulled into the complex dynamics around three ongoing processes: proposed Constitutional reform, peace negotiations between the Union Government and non-state armed groups, and the push for transparency around and more localised distribution of revenue flows. The recent acceptance of Myanmar as a candidate country in the Extractives Industries Transparency Initiative (EITI) should lead to a change in the opaque practices which have characterised the sector. Business need to play a constructive role in supporting EITI implementation and the emerging national dialogue on natural resource governance and revenue-sharing.

Foreign companies, particularly those with operations which will impact on ethnic areas, need to understand Myanmar history, local legacies and multiple viewpoints. Brief regional analyses focus on conflict dynamics in two locations with increasing O&G activity – Rakhine and Tanintharyi – drawing out the implications for companies operating in those areas. Both here and elsewhere, it will be important to take the time to engage directly with as wide a range of stakeholders as possible to get a more complete picture of the conflict and communal dynamics. Expert location and context-specific advice on conflict-sensitive business practices should be used to help shape engagement and operations.

The existence of active or recent conflict or inter-communal violence in a number of O&G areas, often associated with militarisation, means that companies need to pay particular attention to human rights risks associated with security. The nationwide ceasefire process, even if successful, will not necessarily bring an end to insecurity in Myanmar's border areas

due to continued lack of economic opportunities, easy availability of weapons, and weak security and rule of law. Given the history of human rights violations perpetuated by the military and the low level or complete lack of awareness of human rights standards and training of the military and police, O&G companies and contractors will need to be particularly attentive to ensuring that their security arrangements respect human rights. This should include constructive outreach to police and military through consultation, as well as training on human rights, potentially building on the Voluntary Principles on Security and Human Rights and the experience and expertise of several O&G companies operating or soon to be operating in Myanmar that are members of the initiative.

The third point to highlight is that land is possibly the most complex challenge any business investing in Myanmar with a land footprint will face. The reform of the land policy and laws in Myanmar is incomplete. It is characterised by a patchwork of old and new laws and regulations that leads to overlap, contradiction and confusion that can and has been exploited to deprive people of their land. Land is often the most significant asset for most rural families, but they are vulnerable to exploitation and have limited protection under the existing and even new land laws. Field research findings indicated that there was often absent or inadequate community consultation about land acquisitions, accompanied by a lack of due process, and concerns about corruption in the payment of compensation when it was forthcoming.

Fourth, during the transition, businesses, government and development partners need to take steps to fill the existing gaps in Myanmar's legislative framework on the protection of the environment, society and human rights. The Government has an immediate and important opportunity in the new production sharing contracts to fill these gaps through contractual requirements to meet the International Finance Corporation Performance Standards and World Bank Group Environmental, Health and Safety Guidelines. To ensure a level playing field, the Government should impose the same requirements on all operators and not just new entrants. Companies should publicly commit to operating to the same international standards.

The Government has made a commitment to high environmental and social standards in its 2012 Framework for Economic and Social Reforms. But if there are neither relevant domestic laws nor contractual requirements to these standards, the environmental and social costs of O&G operations risk being externalised on local populations, with workers and local communities bearing the brunt of any environmental and social harms with little or no accountability for the companies operating in the sector.

Development partners have an important role to play in supporting the Myanmar Government's current regulatory and enforcement capacity, as well as supporting the emergence of robust national legislation to fill these gaps in the future. They also have a role to play as home governments to companies operating in Myanmar, exercising their leverage over companies from their jurisdiction to meet international standards of responsible business conduct.

Many of the other risks and impacts highlighted in this report will be familiar from other developing countries with O&G resources, particularly those with weak governance and vulnerable land-based rural populations. The analysis and recommendations, drawing on field analysis from Myanmar and experience from other countries, aim to identify prevention and mitigation steps the different actors can take to address these risks.

Rapidly changing labour laws and low awareness of rights means workers and potentially employers are not well informed of even the most basic **labour protections**. While that function is often filled by trade unions in other countries, in Myanmar, trade unions are only just emerging after many years of prohibition. The forced labour previously associated with military operations around O&G operations has almost disappeared. But the increasing

use of temporary workers and labour contractors, as well as inadequate enforcement by Government of new laws risks replacing this with other forms of labour exploitation. Another familiar challenge is the mismatch in expectations around requirements for “**local**” hires - with O&G companies hiring skilled and semi-skilled workers from other parts of Myanmar to meet statutory local hire requirements, while local communities consider “local” to mean from within the very immediate area.

The recommendations cover the importance of companies taking active steps to build **local capacity** to provide goods and services to spread local economic benefits and meet local content requirements. **Social investment** programmes should build on community requests, an informed analysis of community needs, coordination with local government programming and a link to business strategy, rather than treating the programmes as a matter of local philanthropy.

Businesses will need to take active steps to respect the rights of groups at risk, given the often high level of discrimination and marginalisation that exists for many at risk groups. The SWIA highlights discrimination in Myanmar, which is based both on legislation and societal attitudes towards a number of groups including religious minorities; women; people living with disabilities, and Lesbian, Gay, Bisexual and Transgendered People (LGBT). There are several other groups that are also vulnerable to impacts from O&G operations, including children, the landless and in some areas, internally displaced. Generally the trend in Myanmar is towards reduced discrimination and increased legal recognition of minority rights. However religious discrimination and related violence is a growing problem and in recent times particularly impacting the Muslim community. O&G operations may potentially have an impact on many of these groups, with the possibility of either exacerbating their vulnerabilities or improving their situation through equal opportunity workforces, appropriate prevention and mitigation strategies and social investment programmes to support needed infrastructure, services or income generation opportunities for excluded groups. Inclusive business practices also send important signals to wider Myanmar society.

The report also highlights typical concerns from communities about the impacts of O&G operations on the **environment**. The research approached this through the lens of those impacts on an adequate standard of living and health, rather than looking at broader environmental impacts. Predictably, there were a range of localised environmental impacts that affected health or community water or soil, with varying levels of response from companies and frustration over where to take complaints when concerns were unresolved. Companies have an opportunity to address widespread concerns about environmental impacts, leakages and emergency procedures, by providing information and training through a single point of contact and through developing community based monitoring.

The large number of new production sharing contracts expected to be signed in 2014 when combined with ongoing economic development and reform initiatives, and weak administrative capacity means that Myanmar is likely to be particularly challenged in handling **cumulative impacts**. The Government’s draft Environmental Impact Procedures anticipate the assessment and management of cumulative impacts. Managing them typically requires company–Government cooperation or at least company–company cooperation. The SWIA identifies potential areas or activities that may lead to cumulative impacts on institutions, society and the environment and identifies options and initial recommendations for collective action.

Recommendations

The following is a summary of the recommendations to the main actors in Myanmar's O&G sector. A fuller explanation of these recommendations and suggestions for how they can be implemented are included in the full report (**Part 7**).

The effective management of cumulative impacts is just one area where multi-stakeholder dialogue is likely to be more effective than individual action. This assessment of the Myanmar O&G sector has identified other areas where such a dialogue is desirable and the Myanmar Centre for Responsible Business stands ready to facilitate those discussions.

<p style="text-align: center;">Myanmar Government</p> <ol style="list-style-type: none"> 1. Strengthen requirements concerning social and human rights issues in the Environmental (and Social) Impact Assessment (E(S)IA) Procedures. 2. Strengthen the environmental, social and human rights requirements in the Production Sharing Contract (PSC). 3. Improve transparency of the O&G sector at various levels of government, including full implementation of EITI, complemented by a modern Access to Information Law. 4. Improve policy planning and enact legislative reform to establish a coherent framework for the O&G sector with adequate safeguards. 5. Adopt appropriate models of local benefits sharing from extractive projects. 6. Undertake security sector reform aimed at protecting people and private sector operations in a way that respects human rights. 7. Develop and strengthen effective non-judicial grievance mechanisms and require businesses to provide operational level grievance mechanisms 	<p style="text-align: center;">O&G Companies</p> <ol style="list-style-type: none"> 1. Adopt a policy commitment to responsible business conduct and respect for human rights, communicate and implement this. 2. Commit to applying international standards of responsible business conduct in the absence of developed national legal frameworks. 3. Take account of local complexities and legacies when assessing the impacts operations may have, and integrate and act on these findings 4. Integrate consideration of conflict issues - latent, existing and potential - into all phases of operations. 5. Monitor and track responses to risks and impacts, involving workers and communities 6. Communicate with stakeholders, particularly communities, to build understanding and demonstrate transparency and accountability 7. Be prepared for negative impacts by having mechanisms that can address grievances quickly and effectively. 8. Develop strategies for creating positive impacts at the local, regional and national level. 9. Take collective action where appropriate to address environmental, social and human rights issues. 	
<p style="text-align: center;">Investors in the O&G sector</p> <ol style="list-style-type: none"> 1. Identify and conduct enhanced due diligence on companies in their portfolios that are involved in Myanmar. 2. Engage with investee companies to ensure that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar. 3. Urge companies doing business in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country. 	<p style="text-align: center;">Civil society</p> <ol style="list-style-type: none"> 1. Engage actively in the ESIA consultation and disclosure processes, study the documents and hold companies to account. 2. Continue to engage in the Myanmar Extractives Industries Transparency Initiative (MEITI) and press for MEITI to adopt the full range of options under the 2013 Standard. 3. Encourage companies and government to engage in multistakeholder discussion on other extractives issues that are not part of the EITI mandate. 4. Increase media reporting of the O&G sector 	<p style="text-align: center;">Development Partners</p> <ol style="list-style-type: none"> 1. Support better governance and management of the oil and gas sector and programmes to ensure its potential positive impact is realised. 2. Support the strengthening of environmental and social policy and legal frameworks 3. Support implementation of the corporate responsibility to respect human rights in Myanmar by international companies. 4. Ensure investment and free trade agreements negotiated with the Government of Myanmar reinforce responsible business practices.
<p style="text-align: center;">Addressing cumulative impacts (all stakeholder groups)</p> <ol style="list-style-type: none"> 1. Regional governments, companies and relevant national ministries should work together to plan for and prevent or mitigate potential cumulative impacts. 		